RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A PLANNED DEVELOPMENT PERMIT AMENDMENT AND THE GRANTING OF A DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE OFF-SALE OF ALCOHOL (FULL RANGE OF ALCOHOLIC BEVERAGES) AT AN EXISTING 24,056-SQUARE FOOT TENANT SPACE IN CONJUNCTION WITH A GROCERY STORE ON AN APPROXIMATELY 0.81-GROSS ACRE SITE LOCATED ON THE NORTHEAST CORNER OF SANTA TERESA BOULEVARD AND BERNAL ROAD (7076 SANTA TERESA BOULEVARD)

FILE NO. PDA78-011-02

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on February 14, 2019, an application (File No. PDA78-011-02) was filed by the applicant, Katy Schardt representing Grocery Outlet, with the City of San José for a Planned Development Permit Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (full range of alcoholic beverages) at an existing 24,056-square foot tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site, on that certain real property situated in the R-1-8(PD) Planned Development Zoning District and located on the northeast corner of Santa Teresa Boulevard and Bernal Road (7076 Santa Teresa Boulevard, San José, which real property is sometimes referred to herein as the "subject property"); and

WHEREAS, the subject property is all that real property more particularly described 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 June 12, 2019, 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, "Grocery Outlet," dated April 1, 2019, 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 project site is located on the northeast corner of Santa Teresa Boulevard and Bernal Road. The project site includes a 24,056-square foot vacant tenant space located within the existing approximately 170,950-square foot Santa Teresa Marketplace shopping center. Nob Hill Foods grocery store previously occupied the tenant space and held an Alcoholic Beverage Control (ABC) Type 21 liquor license. The Nob Hill grocery store closed in 2015. The Santa Teresa Marketplace shopping center has a mix of retail and commercial uses including restaurants, coffee shops, retail stores, a gym, liquor store, professional offices, children's day care, and a veterinary clinic. Vehicular access to the shopping center is provided through four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilley Lane. A 445-stsall surface parking lot is used by all tenants of the shopping center. Santa Clara Valley Transportation Authority (VTA) bus stops are located along the project site perimeter on Santa Teresa Boulevard and Bernal Road.

   The project site is surrounded by the shopping center uses along the west, east and south. There is an existing church located north, approximately 114 feet from the project site and multifamily residential located northeast of the site. The project site is located 85 feet from the nearest residential lot, northeast of the site. Residences are also located south of the site, across Santa Teresa Boulevard.

   The project is located within the Santa Teresa Boulevard/Bernal Road Urban Village, a Horizon 3 urban village that currently does not have an approved urban village plan. Projects that propose commercial uses may proceed ahead of the timeline for the approval of an urban village plan.

2. **Project Description.** The project includes a Planned Development Amendment and Determination of Public Convenience or Necessity to allow the off-sale of alcohol (full range of alcohol) at an existing 24,056-square foot vacant tenant space in the R-1-8(PD) Planned Development Zoning District on a 0.81-gross acre site. The off-sale of alcohol would consist of an approximately 789-square foot portion of the grocery store's sales area, which equates to approximately 4.9% of the total sales area.

   A State Alcoholic Beverage Control (ABC) Type 21 License is required for the sale of beer, wine, and distilled spirits for consumption off the premises. A Determination of Public Convenience or Necessity is needed because the proposed use would result in the over-concentration of the off-sale licenses in the project's census tract 5120.34. The census tract allows up to one off-sale license; currently the census tract is over-concentrated with two off-sale licenses. The two off-sale licenses include the nearby

liquor store and the previous grocery store tenant (Nob Hill). Although the Nob Hill grocery store has not operated since 2015, it has not transferred nor relocated the license; therefore, the license is still considered active and a Determination of Public Convenience or Necessity is required.

The Planned Development Permit Amendment is required to allow the off-sale of alcohol use in conjunction with the proposed grocery store use in the 24,056-square foot Grocery Outlet that would operate at this location.

3. **General Plan Conformance.** The project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This designation is intended for neighborhood serving retail, services, and commercial developments. Commercial uses in this designation should provide services and amenities for the nearby community. Additionally, the subject project is located in the East Capitol Express/Silver Creek Road Urban Village boundary. The Envision San José 2040 General Plan identifies this area as a Horizon Three Urban Village and a designated growth area. The General Plan policies allow commercial projects to develop ahead of an adopted Urban Village Plan. The policies encourage commercial uses that are consistent with the existing commercial land use designation and designs that incorporate pedestrian-focused elements into the project.

   The project conforms to the following key General Plan policies:

   a. Commercial Lands Goal LU-4: Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.

   b. Commercial Policy LU-4.2: In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.

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

      Analysis: Grocery Outlet is a full-service grocery store that would offer a wide variety of grocery products including produce, dairy products, frozen foods, vitamins, health and beauty items, houseware. The Grocery Outlet grocery store would occupy a large vacant tenant space in the shopping center that previously operated as a full-service grocery store. Allowing the use would facilitate the activation of the commercial tenant space and would provide an employment use on the site. The project is anticipated to provide up to 40 jobs. The grocery store would complement the existing commercial uses in the shopping center, such as the restaurants, coffee shops, a proposed gym, and thrift store, by providing another neighborhood-serving retail business. The project location is easily accessible from Bernal Road and Santa Teresa Boulevard, two major thoroughfares. Highway 85 is approximately one mile

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from the project site. The building entrance is also within 500 feet of VTA bus line 68.

d. 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: The full-service grocery store would provide a wide range of groceries that serve the daily necessities of the nearby community. The grocery store would occupy a tenant space recently vacated by another grocery store. The off-sale of alcohol would allow the grocery store to increase its convenience for the community and would economically benefit the shopping center. The off-sale of alcohol use would offer patrons of the store a variety of beer, wine, and distilled liquor options. The percentage of the store's sales floor area dedicated to the off-sale of alcohol would be 4.9% (789-square foot portion of the store's 15,853-square foot sales area) of the total sales area.

4. **Zoning Ordinance Compliance.** This site is in the R-1-8(PD) Planned Development Zoning District (File No. PDC66-035). The existing commercial shopping center use, established through Planned Development File No. PD73-052 conforms to Development Standards set forth in the Planned Development Zoning. The PD Zoning's Development Standards permit general commercial uses, including a grocery store.

Parking

The shopping center requires one parking space per 225 square feet of floor area. The 24,056-square foot grocery store would require 91 parking spaces. The shopping center has a total of 445 parking spaces of which 91 parking spaces are allocated to the project's tenant space in an existing covenant of easement. Seven bicycle spaces are allocated to the tenant space, consistent with San Jose Municipal Code Section 20.90.060.

Additional Development Standards

The project would occupy an existing tenant space within the Santa Teresa Marketplace shopping center. Development requirements for buildings on this site, such as landscaping and building locations were previously approved under Planned Development Permit (File No. PD73-052 and PD78-011), and were found to be in conformance with the General Development Plan of the Planned Development Zoning District (File No. PDC66-035).

Noise

Pursuant to Section 20.40.600 of the San José Municipal Code, the maximum noise level at the property line of a residential use is 55 decibels. The maximum noise level at the property line of a commercial use and other non-residential uses is 60 decibels. The project would occupy an existing tenant space in a developed shopping center.

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The nearest residential property line is approximately 85 feet from the rear of the building and would require an approximately 1,060-foot walking path from the front of the building. The existing loading dock for the tenant space and the other shopping center's tenant spaces is located behind the building. The loading space would be utilized during the site's hours of operations (6 a.m. through midnight, daily), refrigerated deliveries would be 2 to 3 times per week in the morning to mid-afternoon and other deliveries (of dry goods, produces, beverages) would be expected to occur 1 to 3 times per week in the morning to mid-afternoon. The loading hours are consistent with Section 20.40.500 which prohibits activities between the hours of 12:00 midnight and 6:00 a.m. within 150 feet of any residential zoned property. The previous tenant did not have any noise complaints on record with the city and noise levels are not expected to exceed the previous tenant levels as a result of the project There is no construction or outdoor use with this permit and the existing tenant space would continue to be used as a retail space.

Given that the operations of the use occur predominantly inside the existing building, the project would not operate during late night hours, and loading dock activities would be consistent with the loading activities of the other existing tenants, the project is not anticipated to exceed the maximum noise levels at a residential and non-residential property line.

5. **Environmental Review.** Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act, this project is 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(a) (Existing Facilities) categorical 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 the existing or former use. The off-sale of alcohol would be incidental to a future grocery store located in an existing structure that had operated as a full-service grocery store, similar to the project's use. The project requires no expansion of the building.

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

   a. The proposed use at the location requested will not:

      i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

      ii. Impair the utility or value of property of other persons located in the vicinity of the site; or

      iii. Be detrimental to public health, safety or general welfare; and

*Analysis: As indicated in a Police Department Memorandum, dated March 15, 2019, the use is located in the San José Beat Yellow Four and census tract 5120.34. The reported crime statistics are not over the 20% crime index and therefore the census tract is not considered a high crime area. The Police are neutral to this proposal. The daily hours of operation for the Grocery Outlet are from 7:00 a.m. to 11:00 p.m. daily (as stated in the project's operations plan; these hours are within the by-right allowances under the Municipal Code. The use would operate as a retail business and would not allow on-site consumption of alcohol. Therefore, this finding **can** be made.*

b. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

*Analysis: As discussed above, the project would occupy an existing building within the Santa Teresa Marketplace shopping center. The tenant space's loading space is located at the rear of the building along with the other commercial tenant's loading spaces. All other existing development features, including setbacks, loading facilities, landscaping, and parking, etc., are sufficient for the proposed use and comply with the requirements of the previously approved Planned Development Permit for this site (PD73-052 and PD78-011). This finding **can** be made.*

c. The proposed site is adequately served:

i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

ii. By other public or private service facilities as are required.

*Analysis: Access to the subject site is from four driveways along Bernal Road, three driveways along Santa Teresa Boulevard, and two driveways along Chantilley Lane; Bernal Road and Santa Teresa Boulevard are major arterial streets. The shopping center is located approximately one mile from Highway 85. The site is also within 500 feet of VTA bus route No. 68. This finding **can** be made.*

7. **Required Findings for Off-Sale of Alcohol.** A Conditional Use Permit may be issued pursuant to the applicable provisions of the Zoning Ordinance for the off-sale of any alcoholic beverages only if the decision-making body first makes the following three findings, if applicable, to the off-sale of alcoholic beverages:

a. For such use at a location closer than 500 feet from any other use involving the off-sale of alcoholic beverages, 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 1,000-foot radius from the proposed location.

Analysis: There are two off-sale of alcoholic beverage licenses within a 500-foot radius of the project: a stand-alone liquor store and the previous tenant, Nob Hill Foods. Nob Hill Foods is no longer operating in the tenant space; however, the census tract remains over-concentrated and the license valid since the license has not been transferred to a different census tract. In total there are two uses with the off-sale of alcoholic beverages within a 1,000-foot radius of this site. 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: As described above, the location of the off-sale of alcoholic beverages, while within 500 feet of two other uses involving the off-sale of alcoholic beverages the use would not result in a total of four or more establishments that provide alcoholic beverages for off-site consumption within a 1,000-foot radius from the project site. Additionally, in accordance with their operations plan, the grocery store would install a minimum 16 camera security system which would have views on all portions of the store including the alcohol sales area. This video security system would enhance the safety and general welfare of the site. Therefore, the project conforms to this requirement and this finding ***can*** *be made.*

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

   Analysis: The project use is within 500 feet of the Genius Kids day care center and within 150 feet of the nearest residential uses. However, the path of travel from the front door of the Grocery Outlet store to the nearest residential property would be

approximately 1,000 feet and approximately 700 feet of the Genius Kids day care, currently under construction. Additionally, the residential property is separated from the proposed site by a block wall without pedestrian openings and a landscaping buffer. The grocery store is located within a commercial shopping center and is oriented towards Santa Teresa Boulevard, away from the nearest residential properties to the north and the day care located within the same shopping center but oriented towards the east. There is only one public entrance for the Grocery Outlet which is monitored by security cameras and an alarm system.

Grocery Outlet does not function like a bar or nightclub, but rather a retail store with no onsite consumption of alcohol and hours of operation between 7:00 a.m. to 11:00 p.m., daily. As discussed previously, the Police Department memorandum states that the use is located within an area of low crime, and the Police are neutral to this proposal. Nonetheless, this finding ***can*** *be.*

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

   a. The premises of the proposed license are located in an area that has 20 percent greater number of reported crimes than the average number of reported crimes for the City as a whole, or

   b. The premises of the proposed license are located in a census tract where the ratio of existing retail off-sale licenses to population in the census tract exceeds the ratio in the County as a whole.

   Analysis: The project site is located within a census tract where the ratio of the existing retail off-sale licenses to the population in the census tract exceeds the ratio in the County as a whole. Therefore, for the ABC Department to be able to issue a license for this off-sale use, the City must grant a Determination of Public Convenience or Necessity. The analysis for the determination of public convenience and necessity is based on the required findings identified in Title 6 of the San José Municipal Code.

   Chapter 6.84 of Title 6 identifies the process and findings related specifically to the off-sale of alcohol and specifies that a PCN can be issued only after first making all of the findings specified below (see San José Municipal Code section 6.84.030):

   a. The proposed use is not located within a Strong Neighborhood Initiative (SNI) or neighborhood revitalization area or other area designated by the city for targeted neighborhood enhancement services or programs, or located within an area in

which the chief of police has determined based upon quantifiable information that the proposed use:

i. Would be detrimental to the public health, safety, or welfare of persons located in the area; or

ii. Would increase the severity of existing law enforcement or public nuisance problems in the area; and

*Analysis: The project is not within a SNI. 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 use would not result in more than four off-sale establishments in a 1,000-foot radius. 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: Although the entrance of the tenant space is approximately 1,000 feet from the nearest residence and 700 feet from the day care, the use is within 500 feet of a day care center and 150 feet of a residence. Therefore, this finding **cannot** be made.*

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. As a condition of the permit, the proposed off-sale would only occupy approximately 4.9% of the total sales area (789-square foot portion of the store's 15,853-square foot sales area). Therefore, this finding **can** be made.*

e. At least one of the following additional findings:

i. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

*Analysis: The census tract is not unusually configured. This finding **cannot** be made.*

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

Analysis: The off-premises sale of alcoholic beverages would enhance the service of the grocery store use and contribute to the vitality of the existing shopping center. The grocery store would occupy a vacant tenant space,

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*operate within allowed commercial hours, and include a camera security system. The grocery use would not significantly impact public health or safety. This finding **can** be made.*

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

*Analysis: The census tract has a population comparable to the surrounding census tracts and allows one off-sale license. There are two off-sale of alcoholic beverage licenses within the census tract, the adjacent liquor store and the previous tenant, Nob Hill Foods. Although Nob Hill Foods grocery store is no longer operating in the tenant space, the census tract remains over-concentrated and the license valid since the license has not been cancelled or transferred to a different census tract. The project's off-sale (Type 21) license would be the third off-sale license in the over-concentrated census tract. 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: The project is a full-service grocery store which would provide a unique and large selection of fresh produces, groceries, wine, and beer. The off-site sale of beer, wine, and distilled liquor would be allowed only within 5% of the grocery store's sales area and it would enhance the shopping convenience for patrons and residents. This finding **can** be made.*

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

- The project is within 500 feet of a day care and 150 feet of a residence; and
- Over-concentration within the census tract.

Based on all of the foregoing, the City Council finds that a significant and overriding public benefit or benefits would be provided by the 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 shopping center; (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.

In accordance with the findings set forth above, this 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.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Planned Development Permit Amendment and Determination of Public Convenience or Necessity 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 Amendment or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit Amendment.
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 Amendment. The date of issuance is the date this Permit Amendment is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit Amendment in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit Amendment.
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

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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 Planned Development Permit Amendment plans entitled, "Grocery Outlet," dated April 1, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
5. **Use Authorization.** This Planned Development Permit Amendment and Determination of Public Convenience or Necessity authorizes the off-sale of alcohol (full range of alcohol, Type 21 ABC license) in an existing approximately 24,056-square foot commercial tenant space in conjunction with a grocery store on an approximately 0.81-gross acre site.
6. **Off-sale of Alcohol.** This Planned Development Permit Amendment authorizes the off-sale of alcohol (full range of alcohol, Type 21 ABC license) at the grocery store and successors of said tenant space whereby the subsequent tenant maintains a similar use as deemed by the Director of Planning.
7. **Hours.** This facility shall be limited to operation between the hours of 6:00 a.m. to 12:00 midnight, unless a Conditional Use Permit or Planned Development Permit, as applicable, is approved by the City for other hours of operation
8. **Conformance to Other Permits**. Unless specifically modified with this Permit, this project shall conform to all the requirements of previous permit(s) including PD73-052 and PD78-011.
9. **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.
10. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages shall only be allowed in strict conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The permittee shall maintain full compliance and in good standing with the Department of ABC.

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11. **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.
12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal 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 Planned Development Permit Amendment shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined below.
13. **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 Amendment incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
14. **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.
15. **Loading Activity Hours**. All loading activities shall be limited to the hours of 6:00 a.m. through 12:00 midnight.
16. **Generators.** This Planned Development Permit Amendment 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.
17. **Window Glazing.** Unless otherwise indicated on the approved plan, all windows shall consist of a transparent glass.
18. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance shall be abated immediately upon notice by the City.
19. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set. The outdoor sale of goods may be permitted, in accordance with San José Municipal Code Section 20.40.520.

20. **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.
21. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. All publicly used areas shall be maintained free of litter, trash, cigarette butts and garbage.
22. **Loitering.** Loitering shall not be allowed in the public right-of-way adjacent to the subject site.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping
24. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
25. **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 numbers PDA78-011-02 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 permittee 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.
26. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment 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 Amendment and Determination of Public Convenience or Necessity was not abated, corrected or rectified within the time specified on the notice of violation; or

DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

c. The use as presently conducted creates a nuisance.

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

APPROVED and issued this ____day of _____, 2019, 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:

PARCELS I AND II AS SHOWN ON THE PARCEL MAP RECORDED JANUARY 17, 1977 IN BOOK 386 OF MAPS, AT PAGE 52, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

NON-EXCLUSIVE EASEMENT AS GRANTED AND RESERVED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF COVENANTS, AND RESTRICTIONS RECORDED JULY 14, 1976 IN BOOK C140, PAGE 403, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF COVENANTS AND RESTRICTIONS RECORDED MAY 10, 1979 IN BOOK E485, PAGE 401, OFFICIAL RECORDS, OVER, ACROSS AND UPON PARCEL B, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED ON JULY 14, 1976 IN BOOK 374 OF MAPS, AT PAGE 52.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS CONVEYED BY MOBIL OIL CORPORATION, A NEW YORK CORPORATION TO PROPERTY DEVELOPMENTS WEST, A CALIFORNIA LIMITED PARTNERSHIP BY INSTRUMENT RECORDED SEPTEMBER 26, 1978 IN BOOK D978, PAGE 151, OFFICIAL RECORDS, OVER, UPON AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

BEGINNING AT THE SOUTHERLY CORNER OF PARCEL ONE AS DESCRIBED IN THE DEED TO MOBIL OIL CORPORATION RECORDED JULY 9, 1975 IN BOOK B498, PAGE 241 OFFICIAL RECORDS OF SANTA CLARA COUNTY, SAID CORNER LYING ON THE NORTHEASTERLY LINE OF SANTA TERESA BOULEVARD; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL ONE NORTH 53° 24' 02" WEST 13.00 FEET; THENCE NORTH 51° 10' 25" EAST 51.66 FEET TO THE INTERSECTION THEREOF WITH THE SOUTHEAST LINE OF SAID PARCEL ONE; THENCE SOUTHWESTERLY ALONG SAID SOUTHEAST LINE OF PARCEL ONE SOUTH 36° 35' 58" WEST 50.00 FEET TO THE POINT OF BEGINNING.

PARCEL FOUR

THOSE CERTAIN RIGHTS AS PROVIDED IN LICENSE AGREEMENT FOR MAINTENANCE OF A CURB AND DRIVE-THROUGH BANKING LANE AND INGRESS AND EGRESS GRANTED BY MOBIL OIL CORPORATION, A NEW YORK CORPORATION TO PROPERTY DEVELOPMENTS WEST, A CALIFORNIA LIMITED PARTNERSHIP, RECORDED SEPTEMBER 26, 1978 IN BOOK D 978, PAGE 156, OFFICIAL RECORDS.

APN: 706-28-018 (Affects a portion of Parcel I);
706-28-019 (Affects a portion of Parcel I);
706-28-020 (Affects a portion of Parcel I);
706-28-022 (Affects a portion of Parcel I);
706-28-023 (Affects a portion of Parcel I);
706-28-024 (Affects a portion of Parcel I);
706-28-025 (Affects a portion of Parcel I);
706-28-027 (Affects a portion of Parcel II);
706-28-029 (Affects a portion of Parcel II);
706-28-030 (Affects a portion of Parcel II); and
706-28-031 (Affects a portion of Parcel II);