

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A CONDITIONAL USE PERMIT AND DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY TO ALLOW THE DEMOLITION OF AN APPROXIMATELY 1,500-SQUARE FOOT CONVENIENCE STORE, AND THE CONSTRUCTION OF AN APPROXIMATELY 3,200 SQUARE FOOT CONVENIENCE STORE WITH OFF-SALE ALCOHOL (TYPE 20 ABC LICENSE) AND LATE-NIGHT USE (HOURS OF OPERATION FROM 5:00 AM TO 11:00 PM) ON AN APPROXIMATELY 0.53-GROSS ACRE SITE, LOCATED AT THE NORTHEAST CORNER OF STORY ROAD AND SOUTH JACKSON AVENUE (2305 STORY ROAD) (APN: 484-35-022)

FILE NO. CP18-027

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on July 2, 2018, a concurrent application (File No. C19-016) was filed by David Mordick, on behalf of property owner, Robinson Oil, with the City of San José, for a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the demolition of an approximately 1,500-square foot convenience store for the construction of an approximately 3,200-square foot convenience store with off-sale alcohol (Type 20 ABC License) and late-night use (hours of operation from 5:00 am to 11:00 pm) on an approximately 0.53-gross acre site, on that certain real property situated in the CN Commercial Neighborhood Zoning District and located on the northeast corner of Story Road and South Jackson Avenue. (2305 Story Road, 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,” and depicted in Exhibit “B,” entitled Plat 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 City Council conducted a hearing on said concurrent applications, notice of which was duly given; and

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

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the City's 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, "Rotten Robbie #11" dated received May 5th, 2021, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

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

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

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

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

- 1. Site Description and Surrounding Uses.** The subject 0.53-gross acre site is located on the northeast corner of Story Road and South Jackson Avenue. The site is currently developed with an existing fuel service station, fuel pumps, canopy, and an

approximately 1,500-square foot convenience store. Access is currently provided from two driveways along Story Road and two driveways along South Jackson Avenue.

The site is bordered by single-family residences to the north and east, a shopping center across Story Road to the south, and an auto repair shop across South Jackson Avenue to the west.

- 2. Project Description.** The project includes the demolition of the existing approximately 1,500-square foot convenience store to facilitate the construction of an approximately 3,200-square foot convenience store. The project would include the closure of one driveway along South Jackson Avenue. A new, single 32-foot-wide driveway would be constructed along the project frontage at South Jackson Avenue. The two existing driveways along Story Road would be reconstructed as City standard driveways with widths of 26 feet. Additional site upgrades include landscaping, the planting of nine trees, the restriping and reconfiguration of the parking lot, and the construction of a 6-foot-high masonry wall around the perimeter of the site. No trees would be removed as part of this project. The existing fuel canopy, fuel pumps, and underground storage tanks would remain.

In addition to the construction of the convenience store and site upgrades, the project also includes the off-sale of beer and wine only with the intent to obtain a Type 20 California Alcoholic Beverage Control (ABC) license. The project site is located within Census Tract 5040.02. According to the Police Department Memo, the subject site is located in San José Police Beat Charles One. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated with regards to crime. However, ratio of off-sale retail license to population in Census Tract 5040.02 would exceed the ratio of off-sale licenses to population in the county in which the applicant premises is located. Therefore, a Determination of Public Convenience or Necessity is required. The Conditional Use Permit would restrict alcohol sales to no more than five percent of the total sales floor area of the convenience store. The fuel service station and convenience store would operate between the hours of 5:00 am to 11:00 pm Monday through Friday, 6:00 am to 11:00 pm on Saturdays, and 7:00 am to 11:00 pm on Sundays. The fuel service station and convenience store would employ approximately 6 employees.

With the construction of the project, the site would be accessible from two right in/right out 26-foot-wide driveways on Story Road and one 32-foot-wide driveway along South Jackson Avenue. The project is accessible to pedestrians from a 12-foot-wide sidewalk along Story Road and a 13-foot-wide sidewalk along South Jackson Avenue. The project provides 22 vehicle parking spaces and 1 bicycle parking space.

- 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 supports a very broad range of commercial activity,

including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. 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. General office uses, hospitals and private community gathering facilities are also allowed in this designation. The subject site is also located in the Story Road Employment Area (Former Village).

The project is consistent with the following General Plan Goals and Policies:

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

Land Use Policy LU-5.4: Encourage new and intensification of existing commercial development, including stand-alone, vertical mixed-use or integrated horizontal mixed-use projects, consistent with the Land Use/Transportation Diagram.

Community Design Policy 1.7: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.

Vibrant Neighborhoods 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.

Vibrant Neighborhoods Policy VN-1.8: Include site planning, landscaping and architectural features within all new retail development, including both small-format and large-format retail uses, to promote expanded pedestrian and bicycle activity on site and greater connectivity for pedestrians and bicyclists between adjacent uses.

Analysis: The project would revitalize an existing retail use by allowing the demolition of an existing 1,500-square foot convenience store for the construction of a new approximately 3,200-square foot convenience store with associated site and landscaping improvements. The convenience store and fuel service station, as well as the new off-sale alcohol use, would provide a convenient neighborhood service to residents and employees within driving, biking, and walking distance. The newly constructed convenience store would replace an aging store and would provide substantial variation in wall plane and roof line with the addition of a parapet wall and canopy over the entrance. Variation in materials and colors would also be provided at the base, corners, and entrance of the building. Minor architectural details such as stone veneer and trellis features are included as additional design features. The project would also include perimeter landscaping

and the planting of nine trees to better integrate the use with surrounding residential uses. The project would also include repaving and restriping to improve site circulation and function. The project would construct a pedestrian pathway within the site to and from the newly constructed sidewalks on both Story Road and South Jackson Avenue.

4. Zoning Ordinance Compliance. The project is in the CN Commercial Neighborhood Zoning District.

Pursuant to Section 20.40.100 and Table 20-90 of the Municipal Zoning Code, retail is permitted in the CN Commercial Neighborhood Zoning District. Therefore, a Site Development Permit is required for the construction of the convenience store. Off-sale alcohol and Late-Night use require the issuance of a Conditional Use Permit.

Setbacks and Height

The project would conform with all required height and setback requirements of the CN Commercial Neighborhood Zoning District.

Standard	Required	Provided
Front setback	10 feet (minimum)	19 feet, 7 inches
Side, interior setback	None	34 feet, 48 feet
Side, corner setback	12.5 feet (maximum)	10 feet
Rear, corner setback	None	6 feet
Maximum height	50 feet	20 feet, 6 inches

Parking

Use	Ratio	Required
Fuel Service Station	1 per employee, plus 1 per air and water pump area, plus 1 per space for information stop	8
Convenience Store	1 per 200 sf of floor area	14
Total Provided		22

Pursuant to Section 20.90.060 of the San José Municipal Zoning Code the project requires 22 vehicle parking spaces and 22 are provided. The project also requires one bicycle parking space and two are provided.

Noise

Pursuant to Section 20.40.600 of the Zoning Code, the maximum allowed decibel level for a commercial project adjacent to a property used or zoned for residential purposes is 55 decibels. The subject site shares a property line with residential uses to the north and east. Therefore, the maximum allowed noise level for the project is 55 decibels. A

noise study was prepared by ECORP Consulting, Inc. on March 19, 2019. The noise consultant took measurements of noise sources at three locations surrounding the subject site. Two measurements were taken at the residential property lines directly adjacent to the north and east of the subject site. The third measurement was taken at the commercial shopping center across Story Road to the south. The noise study found that the existing decibel level at the nearest residential receptor (approximately 20 feet from the proposed convenience store building to the property line) is between 65.1 and 73.8 decibels as a result of vehicle traffic from Story Road and South Jackson Avenue, activity at the bus stop, and air craft flying overhead. Therefore, the existing noise levels from external sources already exceed the maximum allowable noise level of 55 decibels at the residential property line. The noise study noted that the operational noise level at the fuel service station and convenience store would not exceed the noise levels that are currently caused by nearby external sources. Furthermore, the existing use and hours of operation at the subject site would not change. The site would continue to operate as a convenience store and fuel service station opening no earlier than 5:00 am and closing no later than 11:00 pm. While the existing use and hours of operation would not change, the project would incorporate design features to soften the transition and reduce the potential noise impacts of the commercial use from the existing adjacent residential uses. A new 6-foot-high concrete wall, nine trees, and additional landscaping would be installed around the northern and eastern perimeter of the site where the property is adjacent to residential uses. The existing refueling area is located at the southernmost end of the site, away from the adjacent residential uses to the north and east. The entrance to the new convenience store would also face south, toward the street and away from the residential areas. All delivery and loading activities are to be conducted between 6:00 am and 9:00 pm as conditioned in this permit. Construction would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. The project includes standard permit conditions as part of the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan for the reduction of noise related to construction activities. These standard permit conditions are included as part of this Conditional Use Permit.

5. City Council Policy 6-27: Evaluation of 24-hour Uses

The fuel service station and convenience store would operate between the hours of 5am to 11pm Monday through Friday, 6am to 11pm on Saturdays, and 7am to 11pm on Sundays. Therefore, the project was evaluated for consistency with the following relevant criteria of City Council Policy 6-27:

- 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. Uses which are largely take-out and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site. Given the potential

for problems arising from such uses which may or may not have been anticipated at the time of approval, all such permits should include a condition for a Compliance Review based on written complaints, and all such complaints should be referred to the Planning Commission.

Analysis: Based on available records, a fuel service station and associated convenience store have existed at the subject site since at least 1991. As previously discussed, the fuel service station and convenience store would operate between the hours of 5:00 am and 11:00 pm Monday through Friday, 6:00 am to 11:00 pm on Saturdays, and 7 am to 11 pm on Sundays. These hours would not change from the hours of operation at the existing fuel service station and convenience store. The approved Operations Plan includes mitigation measures for trash, graffiti, loitering, site maintenance, security, lighting, noise, and employee training. Loitering would not be tolerated, and all employees would be required to go through a strict training process for alcohol and tobacco sales.

- 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. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on the intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria.

Analysis: The subject site is adjacent to residentially zoned properties to the north and east. The entrance of the existing convenience store is located approximately 50 feet to the nearest residential property line. The entrance to the newly constructed convenience store would be located approximately 56 feet to the south of the nearest residential property line. While less than the 300-foot separation requirement, the distance from the convenience store entrance to the residential property line would increase by approximately 6 feet with the construction of the new convenience store. However, there would be no change in the existing land uses or hours of operation at the subject site. The fuel service station currently operates from 5:00 am to 11:00 pm Monday through Friday, 6:00 am to 11:00 pm on Saturdays and 7:00 am to 11:00 pm on Sundays. While the existing land use and hours of operation would not change, the project has incorporated design features to soften the transition and reduce the potential noise impacts of the commercial use from the existing adjacent residential uses. A new 6-foot-high concrete wall, nine trees, and additional landscaping would be installed around the northern and eastern perimeters of the site where the property is adjacent to

residential uses. Outdoor activities such as refueling are located at the southernmost portion of the site, away from the residential uses to the north and east. The entrance to the convenience store would also face south, toward the street and away from the residential areas. Additionally, all delivery and loading activities are to be conducted between 6:00 am and 9:00 pm as conditioned in this permit.

- c. Outdoor Activities. Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area. Due to the unique combination of uses in the Downtown Core Area, 24-hour outdoor activities will be evaluated on a case-by-case basis. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 midnight and 6:00 a.m., except for specific development types identified under Policy 2. More restrictive hours and days of operation may be imposed in order to implement policy requirements. Other late night outdoor activities on the site such as truck deliveries, maintenance and garbage collection should be reviewed and may be conditioned to minimize noise impacts.

Analysis: Outdoor activities would be limited to the fuel pump islands. There are no changes to the existing fuel pump islands or fuel canopy. As previously stated, the fuel service station and convenience store are existing uses that have operated at the subject site since at least 1991. Under the Operations Plan provided, no loitering and no alcoholic beverage consumption signs would be posted on-site in both English and Spanish.

- 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. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late-night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.

Analysis: Based on the Police Memo, dated June 24, 2019, the Police Department is neutral to the issuance of a Conditional Use Permit to allow both off-sale alcohol and late-night use at the subject site. The site is located in San José Police Beat Charles One. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, and thus the location is not considered unduly concentrated with regards to crime. As previously discussed, the project would conform to the approved Operations Plan, which includes mitigation measures for

trash, graffiti, site maintenance, loitering and panhandling, lighting, security, and employee training.

- e. Restroom Facilities. Restroom facilities required by other codes or policies shall remain open and be available during late night business hours. Customer access to restrooms is not required for drive-through facilities when there is no customer access permitted to interior areas. Restrooms that have exterior access will be analyzed from a safety and surveillance aspect and will remain open on a case-by-case basis.

Analysis: Restrooms would be available to all employees and customers during hours of operation.

- f. 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. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.

Analysis: A noise study was prepared by ECORP Consulting, Inc. on March 19, 2019. The noise consultant took measurements of noise sources at three points surrounding the subject site. Two measurements were taken at the residential property lines directly adjacent to the north and east of the subject site. The third measurement was taken at the commercial shopping center across Story Road to the south. The noise study found that the existing decibel level at the nearest residential receptor (approximately 20 feet from the proposed convenience store building to the property line) is between 65.1 and 73.8 decibels due to vehicle traffic from Story Road and South Jackson Avenue, activity at the bus stop, and air craft flying overhead. The noise study noted that the operational noise level at the fuel service station and convenience store would not exceed the noise levels that are currently caused by nearby external sources. Furthermore, the existing use and hours of operation at the subject site would not change. The site would continue to operate as a convenience store and fuel service station opening no earlier than 5:00 am and closing no later than 11:00 pm. While the existing use and hours of operation would not change, the project would incorporate design features to soften the transition and reduce the potential noise impacts of the commercial use from the existing adjacent residential uses. A new 6-foot-high concrete wall, nine trees, and additional landscaping would be installed around the northern and eastern perimeter of the site where the property is adjacent to residential uses. The existing refueling area is located at the southernmost end of the site, away from the adjacent residential uses to the north and east. The entrance to the new convenience store would also face south, toward the street and away from the residential areas. All delivery and loading activities are to be conducted between

6:00 am and 9:00 pm as conditioned in this permit. Construction would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. The project includes standard permit conditions as part of the Initial Study/Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan for the reduction of noise related to construction activities. These standard permit conditions are included as part of this Conditional Use Permit. Furthermore, the project would be required to comply with the Operations Management Plan, titled "City of San Jose Planning File No. CP18-027 Rotten Robbie #11 which requires that the project make all efforts to limit the amount of noise emanating from the business at all times.

- g. Lighting. Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Typically, light levels of 1.5 or greater foot-candles average illumination at ground surface are encouraged. Twenty-four-hour uses may be required to install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium. Higher lighting levels may be required for 24-hour uses in the Downtown Core Area on a case-by-case basis.

Analysis: The project would conform with the lighting plan shown on the Conditional Use Permit Plan Set. The fueling and parking areas would be well lit. All lighting would be downward facing and directed away from adjacent residential areas to the north and east. As shown in Detail 16 on Sheet A103 of the plan set, the pole mounted lighting that would exceed 4,500 lumens per lamp would be fully shielded. The average foot-candle for the proposed lighting is 2.0 fc. The project would be required to conform with City Council Policy 4-3: Outdoor Lighting on Private Developments.

- h. Cleaning and Maintenance. Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.

Analysis: As previously discussed, the project would be required to conform with the approved Operations Plan, which includes mitigation measures for site maintenance and noise. Use of mechanical blowers, vacuums and other noise generating equipment would only be allowed to be used between the hours of 7:00 am to 10:00 pm. This is included as a condition of approval within this Permit.

- i. Site Improvements. As a function of the review process for 24-hour uses, the physical condition of the site should be considered. Aesthetic improvements and maintenance conditions may be required to prevent blight.

Analysis: The project would include various site improvements, including the demolition of the existing aging convenience store for the construction of a new

approximately 3,200-square foot convenience store. The parking lot would be repaved and restriped. A new trash enclosure would be constructed to store garbage and recycling receptacles and prevent windblown litter and odor. The site would be fully landscaped along the perimeter nearest to the residential uses to the north and east, as well as the space along the southwest corner of the site at the intersection. Landscaping improvements also include stormwater treatment as conditioned by the Department of Public Works. A 6-foot-high masonry wall would be installed around the north and east perimeter of the site. The project would include the closure of the driveway along South Jackson Avenue, nearest to the intersection of Story Road, which would improve pedestrian connectivity and reduce the space where cars would cross the sidewalk.

- j. Mitigation Management Plan. A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.

Analysis: As previously discussed, the approved Operations Plan includes mitigation measures for trash, graffiti, loitering, site maintenance, security, lighting, noise, and employee training. Loitering would not be allowed on the site and all employees would be required to go through a strict training process for alcohol and tobacco sales.

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

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

7. Commercial Design Guidelines

The project is subject to the City's Commercial Design Guidelines. The guidelines address issues of neighborhood compatibility, project function and aesthetics. The guidelines seek to assure that new commercial development preserves or improves the positive character of the existing neighborhood. The following guidelines apply to the project:

- Site Organization
 - The site should be designed to accommodate all legitimate, anticipated circulation patterns, but those patterns should be defined by reduced areas

of paving and well-placed landscape areas. Driveway cuts should be limited to one, occasionally two, per street.

- All structures on the site (including kiosks, gas pump columns, etc.) should be architecturally consistent with the main structure.
- All building elevations facing public streets, whether such elevations function as the front, side, or rear of the building should be architecturally detailed to avoid the appearance of the “back of the building”; buildings should contribute a positive presence to the street scene.

Analysis: The approximately 0.53-gross acre site is large enough to accommodate the existing fuel canopy and fuel pumps as well as the new approximately 3,200-square foot convenience store, trash enclosure, and associated parking and landscape areas. The fuel canopy would be painted to match the colors of the newly constructed convenience store and would include similar architectural details such as the stone veneer. The primary building entrance would be located along Story Road and would be oriented towards the street. Blank walls would be mitigated with variations in color and materials as well as the addition of landscaping to the perimeter of the site.

- Structures

- Monotony of building design should be avoided. Variation in wall plane, roof line, detailing, materials, and siting may be used to prevent a monotonous appearance in buildings.
- Parapet walls should be treated as an integral part of the building design.
- Materials and colors should be varied where appropriate to provide architectural interest.

Analysis: The newly constructed convenience store would provide substantial variation in wall plane and roof line with the addition of a parapet wall and canopy over the entrance. Variation in materials and colors would also be provided at the base, corners, and entrance of the building. Minor architectural details such as stone veneer, and trellis features are included as additional design features.

- Special Requirements for Gas Stations

- Areas should be provided on self-service station sites to allow patrons to service their vehicles with water and air. These facilities should be located where they do not obstruct the circulation patterns of the site.
- Public restrooms are required on service station sites and must be available during all hours of operation of the service station.

- Each pump island should include stacking for two vehicles (40 feet) on-site.
- Truck circulation patterns and positions for tank filling should not conflict with critical customer circulation patterns or cause a potential for stacking overflow onto a street.

Analysis: The project would include stations for air and water and public restrooms would be available to the public at all hours of operation. Each pump island provides stacking for vehicles that is greater than 40 feet. Two 26-foot-wide driveways along Story Road and a new, approximately 32-foot-wide driveway along South Jackson Avenue would allow for trucks to safely enter and exit the site.

- Landscaping

- All areas not covered by structures, service yards, walkways, driveways, and parking spaces should be landscaped.
- The perimeter of the site should be landscaped to provide parking lot screening, a buffer for adjacent uses, and an attractive view from the street.
- A mixed planting of trees, shrubs, and groundcover in the area between buildings and the sidewalk should be included

Analysis: The entire perimeter of the site would be landscaped except for the driveways. The project would include the planting of nine (9) trees in addition to ground cover, shrubs, and areas dedicated to stormwater treatment. The trees planted at the perimeter would screen the parking lot, canopy, and convenience store from adjacent residential areas.

- Service Facilities

- All trash and garbage bins should be stored in an approved enclosure unless bins are stored in an approved service yard.
- Trash enclosures should be constructed with masonry walls and heavy wood and/or metal doors and should be architecturally compatible with the project
- Trash enclosures should include provisions for concrete stress pads to reduce pavement damage from disposal trucks.

Analysis: The project would include the construction of a trash enclosure at the northeast corner of the parking lot. The trash enclosure would be constructed with masonry walls and a metal gate and roof. A concrete stress pad would be provided in front of the trash enclosure to reduce damage from disposal trucks.

8. Environmental Review.

The City of San José, as the lead agency for the project, prepared an Initial Study/Mitigated Declaration (MND) in full compliance with CEQA. The MND was circulated for public review and comments from October 5, 2020 through October 27, 2020. One formal letter was received from the Santa Clara County Department of Roads and Airports during the public circulation period, with comments regarding the Local Transportation Analysis (LTA). Another comment letter was received from Pacific Gas & Electric Company, to acknowledge the project would not directly interfere with existing PG&E facilities. The comments letters did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. These environmental comments are addressed by staff in a formal Response to Comments document.

The Initial Study identified one relevant mitigation measure for potential impacts related to hazardous materials contamination on the project site. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for controlling dust and exhaust during construction, tree replacement, compliance with the Habitat Plan, uncovering buried archaeological or historic resources and human remains during construction activities, preventing impacts from lead-based paint and asbestos during demolition activities, preventing stormwater pollution during construction, and reducing construction noise levels. The mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) and both the mitigation measure and standard permit conditions are made a part of this permit.

The Initial Study concluded that the proposed project would not result in any significant and unavoidable environmental impacts, with implementation of identified mitigation measures. Therefore, an EIR is not required, and an Initial Study/Mitigated Negative Declaration is the appropriate level of CEQA clearance for the project.

The entire IS/MND, Responses to Comments, and other related environmental documents are available on the Planning web site at www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/rotten-robbie-on-story-rd.

9. Conditional Use Permit Findings: Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

Analysis: As stated above, the project use would conform with the General Plan Land Use Designation of Neighborhood/Community Commercial as it would continue to provide a convenient service and retail option to the residents and

employees of the surrounding area. The project would provide employment to approximately six employees and would include upgrades that would beautify the site. The applicant has provided an Operations Plan with mitigation measures to ensure that the late night and off-sale alcohol uses are compatible with the surrounding residential and commercial uses.

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As previously discussed, late night use and off-sale alcohol require the issuance of a Conditional Use Permit for properties located in the CN Commercial Neighborhood Zoning District. See the findings for off-sale alcohol below.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed in the City Council Policy section above, the project is consistent with City Council Policy 6-24 for the Evaluation of 24-hour uses. As previously discussed, the gas station and convenience store would operate between the hours of 5:00 am and 11:00 pm Monday through Friday, 6:00 am to 11:00 pm on Saturdays, and 7:00 am to 11:00 pm on Sundays. These hours would not change from the hours of operation at the existing fuel service station and convenience store. Based on the Police Department memo dated June 24, 2019, the site is not located in an area of high crime. The project would conform to the approved Operations Plan, which includes mitigation measures for trash, graffiti, noise site maintenance, loitering and panhandling, lighting, security, and employee training.

- d. 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;
- ii. or 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 previously discussed, the hours would not change from the existing hours of operation at the existing fuel service station and convenience store. Based on the Police Department memo dated June 24, 2019, the site is not located in an area of high crime. The project would conform to the approved Operations Plan, which includes mitigation measures for trash, graffiti, site maintenance, loitering and panhandling, lighting, security, and employee training.

- e. 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: The approximately 0.53-gross acre site is adequate in size to accommodate the existing fuel pumps and canopy as well as the newly constructed convenience store, trash enclosure, parking areas, and landscaping. The project would allow for adequate vehicular and pedestrian circulation and would also allow for safe ingress and egress for trucks to refuel.

- f. 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: The subject site is directly accessible from two driveways along Story Road and one driveway along South Jackson Avenue. VTA Service (Bus Routes 25, 70, and 522) are located within 1/3 mile of the site. A bus stop is located directly in front of the site along South Jackson Avenue. Bike lanes are provided along South Jackson Avenue. Regional access is provided by both Interstate 680 to the north and U.S. Route 101 to the west. The site is served by all necessary public and private utilities.

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

Analysis: Construction hours would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. Any impacts related to noise, vibration, dust, draining, erosion, stormwater runoff, and odor, would be temporary during construction. This Conditional Use Permit also includes standard permit conditions to reduce impacts during construction. The project also includes the addition of pervious surface and the construction of a trash enclosure to improve and treat stormwater runoff. Therefore, the project would not result in any unacceptable negative effects on adjacent property or properties.

10. Site Development Permit Findings. Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: As previously discussed, the construction of the convenience store would be consistent with the General Plan Land Use Designation of Neighborhood Community Commercial. The convenience store would provide general retail goods at a convenient location. Additionally, the fuel service station would continue to provide a necessary service to residents and employees of the surrounding area. The project would also provide employment to approximately six employees. The project is consistent with applicable General Plan policies related to Vibrant Neighborhoods, Community Design, Land Use, and Implementation.

- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: As discussed in the Zoning Section above, general retail is a permitted use within the CN Commercial Neighborhood Zoning District. The project would conform with all applicable height and setback requirements of the CN Zoning District. The project would also meet all parking requirements for vehicle and bicycle parking. Based on the noise study conducted by ECORP Consulting, Inc. on March 19, 2020, there would be no change in noise over the existing noise levels at the current site.

- c. The Site 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 6-27: Evaluation of 24-Hour Uses. Staff also followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. An on-site sign was also posted on the project frontage. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The approximately 3,200-square foot convenience store would replace an existing approximately 1,500-square foot convenience store on-site. All buildings and structures on-site would be one-story and would be architecturally compatible. The existing fuel canopy would be painted to match the colors of the newly constructed convenience store and would include similar architectural details such as the stone veneer.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The newly constructed convenience store would match the existing pattern of development in the surrounding commercial area as it would be setback from

Story Road at the rear of the site. All buildings on site would be one story and would be consistent with other commercial and residential buildings in the surrounding neighborhood. The project would upgrade an existing use in the neighborhood with the construction of a new convenience store and would include site improvements such as landscaping and restriping.

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

Analysis: Construction hours would be limited to between the hours of 7:00 am to 7:00 pm Monday through Friday. Any impacts related to noise, vibration, dust, draining, erosion, stormwater runoff, and odor, would be temporary during construction. This Conditional Use Permit also includes standard permit conditions to reduce impacts during construction. The project also includes the addition of pervious surface and the construction of a trash enclosure to improve and treat stormwater runoff. Therefore, the project would not result in any unacceptable negative effects on adjacent property or properties.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The entire perimeter of the site would be landscaped except for the driveways. The project would include the planting of nine (9) trees in addition to ground cover, shrubs, and areas dedicated to stormwater treatment. The trees planted at the perimeter would screen the parking lot, canopy, and convenience store from adjacent residential areas. The project would also include the construction of a 6-foot-high masonry wall along the northern and eastern perimeter of the site, adjacent to residential uses. The project would include the construction of a trash enclosure at the northeast corner of the parking lot. The trash enclosure would be constructed with masonry walls and a metal gate and roof. A concrete stress pad would be provided in front of the trash enclosure to reduce damage from disposal trucks.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: Traffic access would be provided from both Story Road and South Jackson Avenue. Pedestrian access would be provided with the construction of a 12-foot-wide sidewalk along Story Road and a 13-foot-wide sidewalk on South Jackson Avenue. A pedestrian pathway would also be constructed around the parking lot to provide a safe path of travel from Story Road and South Jackson Avenue to the newly constructed convenience store. As previously discussed, all required vehicle and bicycle parking would be provided.

11. Demolition Permit Findings. Chapter 20.80 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow 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 that 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 includes the demolition of one approximately 1,500-square foot convenience store for the construction of an approximately 3,200-square foot convenience store. The approval of the demolition permit would not result in the creation or continued existence of a nuisance, blight or dangerous condition. The failure to approve the permit would not jeopardize public health, safety or welfare. The demolition permit would facilitate a project that is compatible with the surrounding neighborhood. As previously discussed, the project is consistent with all applicable General Plan goals and policies, zoning code requirements, applicable city council policies, and design guidelines. The demolition of the existing building would facilitate the construction of an approximately 3,200-square foot convenience store that would offer retail services to the surrounding neighborhood. Given the scope of the project, the rehabilitation or reuse of any of the existing buildings on-site would not be feasible. The Initial Study/Mitigated Negative Declaration evaluated all structures on-site for potential historical significance. The project would not demolish any buildings or sites of historical significance. Based on the findings of the Initial Study/Mitigated Negative Declaration, the subject site does not contain any acknowledged historic structures on site. The nearest identified historic resource is the Remillard/Dandini Residence at 755 Story Road, located approximately two miles from the subject site. Therefore, the demolition of the existing convenience store would not have any effect on historic resources. The demolition of any existing buildings on-site would not be approved until the issuance of a grading permit as conditioned in the Conditional Use Permit for the subject site

12. Off-Sale Alcohol Findings. Section 20.80.900 of the San José Municipal Zoning Code specifies the required findings for the allowance of off-sale alcohol

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

Analysis: The project location would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the project location. There are currently three off-sale alcohol establishments within a one-thousand-foot radius of the subject site. Story Liquor is located approximately 370 feet to the west, Jack's Liquor is located approximately 200 feet to the south, and Quik Stop is located approximately 500 feet to the east. Rotten Robbie would be the fourth establishment within a one-thousand-foot radius of the subject site. Therefore, this finding can be made.

- b. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one-thousand-foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing in or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. Be detrimental to public health, safety or general welfare

*Analysis: As previously stated, the use would not result in a total of more than four off-sale alcohol establishments within a one-thousand-foot radius of the project site. The nearest off-sale establishment is Jack's Liquor, located across Story Road approximately 200 feet to the south. As indicated in the San José Police Memorandum, dated June 24, 2019, the Police Department is neutral regarding the project use. Additionally, the Operations Plan, prepared by the project applicant, provides provisions for trash and graffiti removal, security and safety, noise, loitering, panhandling, and employee alcohol sales training. Therefore, this finding **can** be made.*

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

*Analysis: The subject site would not be located within five hundred feet from a child care center, public park, social services agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The site is located within 100 feet of a residentially zoned property as the site is adjacent to single-family residences to the north and east. Therefore, this finding **cannot** be made.*

13. Determination of Public Convenience or Necessity Findings. Chapter 6.84 of the San José Municipal Code of Title 6 identifies the process and findings related specifically to the off-sale of alcohol.

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

*Analysis: The subject site is located within the East Valley/680 Communities SNI Area. Therefore, this finding **cannot** be made. As previously discussed, the project site is located within Census Tract 5040.02. According to the Police Department Memo dated June 24, 2019, the subject site is located in San José Police Beat Charles One. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index; thus, the location is not considered unduly concentrated with regards to crime. The Police Department has indicated that it is neutral to off-sale alcohol at the subject site. Additionally, the approved Operations Plan includes mitigation measures for staff training, security, loitering, panhandling, trash, graffiti removal, noise, and addressing neighborhood concerns. Therefore, the project would not increase the severity of existing law enforcement and would not be detrimental to the public health, safety, or welfare of persons located in the area.*

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

Analysis: As previously stated, the project location would not result in a total of more than four establishments that provide alcoholic beverages for off-site

*consumption within a one-thousand-foot radius from the project location. There are currently three off-sale alcohol establishments within a one-thousand-foot radius of the subject site. Story Liquor is located approximately 370 feet to the west, Jack's Liquor is located approximately 200 feet to the south, and Quik Stop is located approximately 500 feet to the east. Rotten Robbie would be the fourth establishment within a one-thousand-foot radius of the subject site. Therefore, this finding **can** be made*

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

*Analysis: As previously stated, the subject site would not be located within five hundred feet from a child care center, public park, social services agency, residential care facility, residential service facility, elementary school, secondary school, college, or university. The site is located within 100 feet of a residentially zoned property as the site is adjacent to single-family residences to the north and east. Therefore, this finding **cannot** be made*

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

*Analysis: As shown on the site plan in the approved plan set, the total square footage of alcohol sales would not exceed 5% of the total sales floor area. The total approximate floor area of the convenience store would be 2,720 square feet. The total alcohol sales area would be approximately 114 square feet, located in the walk-in cooler. Therefore, the alcohol sales area would be approximately 4.1% of the total sales floor area. Additional products sold would include drinks, snacks, grab and go sandwiches, burritos, deli items, frozen foods, pastries, chips, candy and other common convenience store items. 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 subject site is not located in an unusually configured census tract. Therefore, this finding **cannot** be made.*

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

*Analysis: The project would include the demolition of an aging convenience store for the construction of a new approximately 3,200-square foot convenience store with additional services and site improvements. As previously discussed, the project site is located within Census Tract 5040.02. According to the Police Department Memo (June 24, 2019), the subject site is located in San José Police Beat Charles One. The reported crime statistics as defined by B&P Section 23958.4(c) are not over the 20% crime index, thus the location is not considered unduly concentrated with regards to crime. The Police Department has indicated that it is neutral to off-sale alcohol at the subject site. Additionally, the approved Operations Plan includes mitigation measures for staff training, security, loitering, panhandling, trash, graffiti removal, noise, and addressing neighborhood concerns. Therefore, this finding **can** be made.*

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

*Analysis: The census tract in which the project outlet is located does not have a low population density in relation to other census tracts in the city. The outlet would contribute to an over-concentration of outlets for off-sale alcohol in the area. Therefore, this finding **cannot** be made.*

- iv. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

*Analysis: As shown on the site plan in the approved plan set, the total square footage of alcohol sales would not exceed 5% of the total sales floor area. The total approximate floor area of the convenience store would be 2,720 square feet. The total alcohol sales area would be approximately 114 square feet, located in the walk-in cooler. Therefore, the alcohol sales area would be approximately 4.1% of the total sales floor area. Therefore, this finding **can** be made.*

The City Council may issue a Determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where the City Council does all of the following:

- a. Makes a determination that not all of the required findings set forth in Subsection B of Section 6.84.030 of the Municipal Code can be made; and
- b. Identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

Analysis: Given the analysis above, not all findings for a Conditional Use Permit, Off-Sale Alcohol, and Determination of Public Convenience or Necessity can be made. Therefore, City Council must make a determination that the off-sale alcohol establishment would provide a significant and overriding public benefit. The off-sale establishment would provide beer and wine in an approximately 114-square foot space within the larger approximately 2,270-square foot sales floor area. Based on the Police Department Memo, dated June 24, 2019, the subject site is not located in an area of high crime. The Police Department is neutral to the issuance of a Conditional Use Permit for off-sale alcohol and late-night use. While the project is located in an overconcentrated census tract, it would not lead to the grouping of more than four off-sale establishments within a 1,000-foot radius of the site. The convenience store would be open from no earlier than 5:00 am to no later than 11:00 pm. The Operations Plan includes mitigation measures for addressing neighborhood concerns, trash clean up, loitering, graffiti, security, noise, lighting, and employee training. Staff has not received any public comments on this project prior to the hearing date. Therefore, based on the above analysis and findings, it can be determined the project would provide a significant and overriding public benefit.

In accordance with the findings set forth above, a Site Development Permit, Conditional Use Permit and Determination of Public Convenience or Necessity to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit, Site Development Permit, and Determination of Public Convenience or Necessity (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no

Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of an existing approximately 1,500-square foot convenience store for the construction of an approximately 3,200-square foot convenience store, and a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale alcohol (Type 20 ABC License – Beer and Wine Only) with late-night use (hours of operation 5:00 am to 11:00 pm) on an approximately 0.53-gross acre site. The project is required to conform with the Operations Management Plan titled “City of San Jose Planning File No. CP18-027 Rotten Robbie #11.”
5. **Hours of Operation.** The hours of operation for the fuel service station and convenience store are limited to between the hours of 5:00 am to 11:00 pm, 7 days per week.
6. **Conformance with ABC Requirements.** The project is required to conform with all applicable requirements for the obtainment and operation of a valid Type 20 license from the California Department of Alcoholic Beverage Control (ABC).
7. **Affordable Housing Financing Plans.** The San José City Council (“City”) approved the Envision San José General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San José.

The City has adopted a Commercial Linkage Fee Ordinance (San José Municipal Code Chapter 5.10) and Resolution, which may apply to this project. The City is also in the process of developing financing plans to help fund affordable housing and related amenities and services. Other financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); and/or (v) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations

related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing. By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

8. **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.
9. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Conditional Use Permit plans entitled, "Rotten Robbie #11" dated May 5, 2021, 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".
10. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this Permit, the permittee shall maintain the validated Permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
11. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.

12. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
13. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
14. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
15. **Window Glazing.** Unless otherwise indicated on the Approved Plan, all windows shall consist of a transparent glass.
16. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
17. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
18. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
19. **Mechanical Equipment.** The location and type of mechanical equipment shall be shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
20. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m.
21. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
22. **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.
23. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
24. **Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.

25. **Outdoor Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property
26. **Landscaping.** Planting and irrigation shall be provided, as indicated, on the Approved Plan Set. Landscaped areas shall be maintained and watered, and all dead plant material shall be removed and replaced by the property owner. Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping.
27. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
28. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
29. **Loading Activities.** All loading and delivery activities shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
30. **Building and Property Maintenance.** The permittee shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the building such as paint, roof, paving, signs, lighting and landscaping.
31. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
32. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set for in Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
33. **Demolition Permit.** A demolition permit may be issued for the demolition of the existing approximately 1,500-square foot convenience store only upon

the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.

34. 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. _____

35. Standard Environmental Conditions

a. AIR QUALITY

- 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. Remove visible mud or dirt track-out onto adjacent public roads 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. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads 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. Minimize idling times either by shutting off equipment 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). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

b. BIOLOGICAL RESOURCES

- i. Santa Clara Valley Habitat Plan: The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of

any grading permits. The permittee will be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatagency.org.

c. CULTURAL RESOURCES

- i. Subsurface Cultural Resources. If 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 Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. 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. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall 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:

1. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
2. The MLD identified fails to make a recommendation; or
3. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d. GEOLOGY AND SOILS

- i. To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes 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.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- v. 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. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, 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 permittee shall

be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the PBCE.

e. HAZARDS AND HAZARDOUS MATERIALS

- 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(s) 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 Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- iii. All potentially friable asbestos containing materials shall be removed in accordance with National Emission Standards for Air Pollution guidelines prior to demolition or renovation activities that may disturb asbestos-containing materials. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of asbestos-containing materials 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 Bay Area Air Quality Management District regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with Bay Area Air Quality Management District requirements and notifications.
- vi. Based on Cal/OSHA rules and regulations, the following conditions are required to limit impacts to construction workers.
 1. Prior to commencement of demolition activities, a building survey, including sampling and testing, shall be completed to identify and quantify building materials containing lead-based paint.
 2. 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, Section 1532.1, including employee training, employee air monitoring and dust control.

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

f. HYDROLOGY AND WATER QUALITY

- 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 be covered 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 site 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 permittee 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.

g. NOISE

- 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. Limit construction 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.

36. Bureau of Fire Department Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the project must comply with the California Fire Code as adopted or updated by the city.

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

- a. *Construction Plans.* This Permit file number, CP18-027 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).
- 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.

38. Public Works Clearance. 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 will 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 <http://www.sanjoseca.gov/devresources>.

- 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:

- i. In alignment with State of California Senate Bill 743 (SB743), the City of San José Policy, Transportation Impact Policy - Council Policy 5-3 has been replaced with a new Transportation Analysis Policy - Council Policy 5-1. Council Policy 5-1 replaces the transportation impacts threshold from Level of Service (LOS) under Council Policy 5-3 to Vehicle Miles Traveled (VMT).
- ii. A Local Transportation Analysis has been performed for this project based on 95 AM and 21 PM peak hour trips. The subject project will be in conformance with the City of San José Transportation Analysis Policy (Council Policy 5-1) and a determination for a negative declaration can be made with respect to traffic impacts. See separate Traffic memo dated 4/30/20 for additional information

- c. **Street Vacation** An easement vacation of the Building Setback Line (BSL) is required in order to accomplish the land use plan as shown. The easement vacation process requires further discretionary approval by the Director of Public Works and the project will be subject to this process prior to Public Works Clearance.

d. Grading/Geology:

- i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

- 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. 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 report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. 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.
- e. **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 and source controls measures to minimize stormwater pollutant discharges.
- i. A design of the pervious pavement by a Licensed Geotechnical Engineer shall be submitted prior to the issuance of a Public Works Clearance.
 - ii. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed for conformance with City Policy 6-29.
 - iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- f. **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).
- g. **Flood Zone AO: Depth 1 foot**
- i. Elevate the lowest floor 1 foot or more above the existing highest adjacent grade to the proposed structure or floodproof to the same elevation. For

- insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
- ii. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
 - iii. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.
 - iv. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the depth of flooding or protected from flood damage.
 - v. Construction materials used below the depth of flooding must be resistant to flood damage.
- h. **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 prior to the issuance of Public Works clearance.
- i. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Story Road and South Jackson Avenue 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 2021 base fee is \$532 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.).
- j. **Street Improvements:**
- i. Remove existing curb, gutter, and sidewalk along project frontage and construct 12-foot-wide attached sidewalk with tree wells along Story Road.
 - ii. Remove existing curb, gutter, and sidewalk along project frontage and construct 13-foot-wide attached sidewalks with tree wells along Jackson Avenue.
 - iii. Construct 32-foot-wide driveway per City of San José detail R-6 along Jackson Avenue project frontage.
 - iv. Remove, relocate, and reconstruct the bus pad along Jackson Avenue.
 - v. Protect the existing curb ramp at the southwest corner of the project site.

- vi. Permittee shall be responsible for locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - vii. 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.
 - k. **Electrical:** 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.
 - l. **Street Trees:**
 - i. The locations of the street trees will 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.
 - ii. *Pistacia chinensis* should be planted along Story Road project frontage, *Zelkova serrata* 'Village Green' should be planted along East Jackson Street project frontage or consult the City Arborist for alternatives.
 - m. **Referrals:** This project should be referred to City of Santa Clara, Valley Transportation Authority (VTA), and County of Santa Clara for coordination.
35. **Revocation, Suspension, Modification.** This Conditional Use Permit, Determination of Public Convenience or Necessity and Site Development Permit 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 Conditional Use Permit or Site 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.

EFFECTIVE DATE

The effective date of this Permit (File No. CP18-027) shall be the effective date of the Conforming Rezoning Ordinance for File No. C19-016, passed for publication on _____, 2021 (the “Conforming Rezoning Ordinance”) and shall be no earlier than the effective date of said Conforming Rezoning Ordinance.

ADOPTED this ____ day of _____, 2021, 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.