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CITY OF SALINAS
Community Development Department
65 West Alisal Street, Salinas, CA 93901
Attn: Thomas Wiles, Senior Planner

SPACE ABOVE FOR RECORDER'S USE ONLY

Title of Document

CONDITIONAL USE PERMIT NO. 2021-023

City of Salinas

Community Development Department

WHEREAS, the Salinas Planning Commission, at a public hearing duly noticed and held on September 15, 2021, found that the proposed location of the use is in accordance with the objectives of the Salinas Zoning Code and the purposes of the zoning district in which the site is located; that the location of the use and the proposed conditions under which it would be operated and maintained will be consistent with the Salinas General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or the general welfare of the City of Salinas; that the use and will comply with the provisions of the Salinas Zoning Code, including the specific conditions required for the proposed use; that the proposed on-sale alcohol-related use will neither adversely affect the welfare of the area nor nearby residentially zoned neighborhoods, giving due consideration to the distance of the proposed use from off-sale alcohol-related uses, residentially zoned property, public schools, public playgrounds, and other similar uses; and giving further consideration to crime rates, calls for emergency services, and residential densities in the surrounding area; that although the proposed off-sale alcohol-related use is located within an area of undue concentration (as defined by Business and Professions Code Sections 23958.4 and 23817.5, and administered by the State Department of Alcoholic Beverage Control), pursuant to Business and Professions Code Section 23817.7, the public convenience or necessity would be served by the issuance of the alcohol license by the ABC; and that this conditional use has been reviewed and evaluated in accordance with the California Environmental Quality Act and is considered Exempt to CEQA.

NOW, THEREFORE, the Salinas Planning Commission hereby grants and issues Conditional Use Permit No. 2021-023 pursuant to *Article VI, Division 8: Conditional Use Permits*, of Chapter 37 of the Salinas City Code and upon the following terms and conditions and not otherwise, to wit:

ISSUED TO: Jeffrey Birkemeier

PROPERTY OWNER: Greg Piini, et. al

FOR USE: Establish and operate an alcohol related use consisting of an on-sale beer and wine - eating place (Type 41) alcohol sales for consumption on or off the premises at a proposed restaurant with a wine tasting room (Amapola Kitchen and Wine Merchant).

ON PROPERTY LOCATED AT: 32 West Gabilan Street

ASSESSOR'S PARCEL NO.: 002-248-002-000

ZONING DISTRICT: Mixed Use – Central City Overlay – Downtown Core Overlay Area (MX-CC-DC)

ENVIRONMENTAL REVIEW ACTION & DATE: Exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) on September 15, 2021.

EXPIRATION DATE: None, once properly established, unless the uses authorized herein cease operation for a continuous period of six (6) months or more.

RIGHT TO OPERATE/DEVELOP

1. The Permittee shall have the right to establish and operate an alcohol related use consisting of an on-sale beer and wine - eating place (Type 41) alcohol sales for consumption on or off the premises at a proposed restaurant with a wine tasting room (Amapola Kitchen and Wine Merchant) located on the above-described property in accordance with the following exhibits incorporated herein by reference and made a part of this Permit:

Exhibit "A" Vicinity Map

Exhibit "B" Site Plan

Exhibit "C" Floor Plan

Exhibit "D" Police Department comments dated July 14, 2021

LIMITATIONS ON USE

2. Hours of operation for the alcohol related use shall be limited to 10:00 a.m. to 8:00 p.m. seven (7) days per week.
3. The premises shall be maintained free of litter at all times.
4. No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.
5. No display of alcoholic beverages shall be made from an ice tub.

6. No unsecured alcohol may be placed near the entrances and exits of the store.
7. No self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
8. All business owners and managers shall complete a program certified by the Department of Alcoholic Beverage Control (ABC) as a qualified responsible beverage service (RBS) program prior to the commencement of the use. Any business established after the effective date of the ordinance codified in this section shall require such training of all owners and managers within ninety days of ownership transfer or hire. Failure of managers to obtain training shall be the liability of the owner. The owner shall maintain on the premises a file containing the certificates of training and shall present the file and its contents upon request by the City at any time during normal business hours. The provisions of this section regarding responsible beverage training shall be suspended upon a finding by the City Planner that the training is not reasonably available.
9. An electronic age verification scanner shall be installed, maintained, and utilized for all off-sale alcohol sales.
10. Signs shall be posted at the location in English and Spanish with regard to prohibitions of open containers and loitering at the location, and no loitering will be tolerated.
11. No beer shall be sold from the premises for off-site consumption.
12. No malt liquor or fortified wine products (wines with greater than 15% alcohol content) shall be sold.
13. Sales of wine shall be in containers of at least 750 ml.
14. Digital surveillance system with high quality cameras focused on the points of sales, entrances/exits of the business and the parking lot, with the capability to store the digital images captured. The video/photos must be retained for 30 days and be made available to police upon request.
15. Ample lighting in the parking lots, exterior area of entrances/exits and situated in areas to enhance video surveillance equipment.
16. There shall be no coin operated video or arcade games and no adult magazines or videos shall be sold.
17. No pay telephone booths shall be permitted on the premises.
18. The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross

sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department of Alcoholic Beverage Control (ABC) on demand.

19. Full and complete meals must be offered and made available at all times the premises is exercising the privileges of its alcoholic beverage license, with the exception of the last half-hour of operation each day.
20. Any alcohol license violation and/or suspension by the Alcohol Beverage Control Board or significant criminal activity, in the opinion of the City Police Chief, shall constitute grounds for review and modification or revocation of this use Permit in accordance with Section 37-60.640: Expiration- transferability; recordation; rescission; revocation, of the Salinas Zoning Code.
21. The City Planner may conduct a review of this Permit after inauguration, and may require modifications, if appropriate. The City Planner may also schedule a review by the Salinas Planning Commission, at a public hearing, if considered necessary. In the event that a public hearing is necessary, the Permittee shall reimburse the City of Salinas for all costs and expenses required to prepare for and conduct said hearing.

CRIME PREVENTION REQUIREMENTS

22. Prior to the use being established, the applicant shall consult with the Police Department regarding crime prevention and security (See Exhibit "D").

SIGNS

23. A Sign Permit issued in accordance with *Article V, Division 3: Signs* of the Salinas City Code, shall be required for all signs.
24. No canvas signs, banners, pennants, flags, streamers, balloons or other temporary or wind signs; no mobile, A-frame, or portable signs; no roof or canopy signs extending above a building roof; no signs that resemble any official marker erected by the city, state or any governmental agency, or that by reason of position, shape, color or illumination would conflict with the proper functioning of any traffic sign or signal or would be a hazard to vehicular or pedestrian traffic; no signs which produce odor, sound, smoke, fire or other such emissions; and no animated, flashing, moving or rotating signs shall be permitted unless permitted in accordance with *Article 5, Division 3: Signs* of the Salinas Zoning Code, as may be amended from time to time.

MAINTENANCE

25. All parking areas, driveways, other paved surfaces, accessways and grounds shall be

regularly maintained and kept free of weeds, litter, and debris. All traffic signs and pavement markings shall be clear and legible at all times. All landscaped areas shall be maintained free of weeds, trash, and debris, and all plant material shall be continuously maintained in a healthy, growing condition. All exterior building and wall surfaces shall be regularly maintained, and any damage caused by weathering, vandalism, or other factors shall be repaired in conformance with the terms and conditions of this Permit.

26. The Applicant, or successor-in-interest shall eradicate graffiti painted or marked on the facility within seventy-two (72) hours of occurrence pursuant to Municipal Code Section 5-03.19(a)(4).

PERMIT NOT TO SUPERSEDE OTHER REQUIRED LICENSING OR PERMITS

27. The issuance of this Permit is required in addition to the issuance of an alcoholic beverage sales license from the State Alcoholic Beverage Control Board.
28. The issuance of this Permit shall not relieve the Permittee of any requirement to obtain permits or licensing from any county, regional, state or federal agencies. If applicable, a City Business License shall be obtained prior to commencement of use.
29. This Permit may be subject to water and sanitary sewer allocations. The Permittee will proceed at their own risk as water and sanitary sewer allocation may not be available at the time requested.

MODIFICATION OF APPROVED USE AND PLANS

30. Any modification to the terms and conditions of this Permit are subject to the issuance of a new Permit. The City Planner may approve minor modifications to this Permit if the City Planner finds the modification to be in substantial compliance with the original approval.

VIOLATION; REVOCATION

31. Use of the property shall be conducted in such a way that it does not constitute a nuisance to the use and enjoyment of surrounding properties or the City. Any permittee, person, firm, corporation, whether as principal, agent, employee or otherwise, violating, causing or maintaining the violation of any of the provision of this Permit shall be guilty of a misdemeanor or an infraction, as charged. Alternatively, any violation of this Permit may be prosecuted administratively pursuant to the City's Administrative Remedies Ordinance and/or other applicable laws, regulations or codes. Upon determination by the City Planner that there are reasonable grounds for revocation of this Permit, a revocation hearing shall be set to be heard before the Salinas Planning Commission in accordance with *Article VI, Division 18: Enforcement and Penalties* of the Salinas Zoning Code or such codes as

may be subsequently adopted.

SUBSTANTIAL ACTION TIME LIMIT

32. This Permit shall expire one year after its effective date unless:
- a. The use is established in conformance with the provisions of the Zoning Code; or
 - b. The City Planner determines that substantial action has commenced to carry out the terms and intent of the Conditional Use Permit.

PERMIT VALIDATION

33. Pursuant to Zoning Code Section 37-60.530, this Permit shall be null and void and all terms and conditions shall have no force or effect unless this Permit is signed by the Permittee(s) and returned to City of Salinas Community Development Department within 90 days of approval. ***It is the applicant's responsibility to track the 90-day expiration date. No notice will be sent.***

STANDARD CONDITIONS

34. Pursuant to **Salinas City Code Section 1-8.1: Civil action enforcement**, and **Section 1-8.2: Liability for costs**, permittee shall reimburse the City of Salinas for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by the City in enforcing the provisions of this Permit.
35. The applicant(s) shall defend, indemnify, and hold harmless the City of Salinas or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of this project/use. For Tentative Maps, this shall also apply when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the applicant(s) of any such claim, action, or proceeding. The City shall cooperate in the defense. Nothing contained in this condition shall prohibit the City from participation in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.
36. Notwithstanding any of the provisions in this permit, all improvements and uses shall comply with all other ordinances and regulations of the City of Salinas and all local, state and federal laws and regulations.
37. No further development other than that shown on this permit or attached exhibits shall be allowed unless or until an amendment to this permit has been approved. Requests for a minor modification of an approved permit may be granted by the City Planner provided the modification is substantially in compliance with the original

approval and conditions.

NOTICE OF CHALLENGE LIMITATIONS

38. Code of Civil Procedure Section 1094.6 requires all Court challenges to the decision to grant this Permit be initiated within 90 days of the final decision of the City in this matter.

EXECUTIONS

THIS CONDITIONAL USE PERMIT *was approved by action of the Salinas Planning Commission on September 15, 2021, and shall become effective on the following date unless appealed to the City Council of the City of Salinas in accordance with Article VI, Division 17: Appeals:*

Effective Date: September 28, 2021

Courtney Grossman
Planning Manager, City of Salinas

(Signatures Listed Below on Pages 8 through 9 Must Be Notarized)

THIS CONDITIONAL USE PERMIT *is hereby accepted upon the express terms and conditions hereof, and the undersigned Permittee agrees to strictly conform to and comply with each and all of this Permit's terms and conditions.*

Dated: _____

Jeffrey Birkemeier
Permittee

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
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STATE OF CALIFORNIA
COUNTY OF MONTEREY

On _____ 202__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

CONSENT is hereby granted to the Permittee to carry out the terms and conditions of this Conditional Use Permit.

Dated: _____

Greg Piini, Piini Realty
Property Owner

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF MONTEREY

On _____ 202__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature _____