

JOINT LITIGATION, DEFENSE AND INDEMNITY AGREEMENT

This Joint Litigation, Defense and Indemnity Agreement (“Agreement”) is made and entered into by and between the City of Fresno (“City”), the Tower Theatre entities, including Tower Theatre Productions, a General Partnership, Tower Theater Properties, a California Corporation, Pacific Produce Distributors, Inc., a California Corporation, Tower Theater Productions for the Performing Arts, a Non-profit Corporation, and Laurence Abbate (collectively “Tower Theatre”), J&A Mash & Barrel, LLC, a California Limited Liability Company, known as Sequoia Brewery (“Sequoia Brewery”), Jeremy Smith and Allison Richtel-Smith and necessary principals. The City, Tower Theatre, and Sequoia Brewery shall be referred to collectively as the “Parties” and individually as “Party”.

WHEREAS, Tower Theatre has agreed to sell to the City and Sequoia Brewery the real property consisting of a city block bounded by East Olive Avenue to the South, North Linden Avenue to the West, East Fern Avenue to the North and North Wishon Avenue to the East (APN 451-265-03 is improved with Tower Theatre, a historic icon (the “Tower Theatre Property”) and Sequoia Brewery at 777 East Olive Avenue, Fresno, CA 93728, APN 451-265-02 is commonly known as 1247 North Wishon Avenue, Fresno, CA 93728 which is improved with a single story building which is leased to Me N’ Eds, and inclusive of all parking spaces for all the above businesses) (collectively, the “Property”).

WHEREAS, Adventure Church (“Adventure”) was previously under contract to buy the Property and that prior purchase and sale agreement expired on March 31, 2021, without performance by Adventure (the “Prior Purchase and Sale Agreement”).

WHEREAS, Adventure has objected to the sale of the Property to the City and has threatened litigation in connection with Tower Theatre’s agreement to sell the Property to the City and Sequoia Brewery (the “Litigation”).

WHEREAS, the Parties share many meritorious claims and defenses in the anticipated Litigation and have a common interest in pursuing the goals described below.

WHEREAS, the mutual interests of the Parties have been, and will continue to be, best served by disclosing written and oral privileged and/or confidential information and materials (collectively, “Confidential Materials and Information”) to each other in order to assist in the joint defense of the Litigation and while maintaining confidentiality of the same.

WHEREAS, the Parties have agreed to enter into this Joint Litigation, Defense and Indemnification Agreement as part of the sale of the Property to the City and Sequoia Brewery.

NOW, THEREFORE, in consideration of Theatre Tower’s agreement to sell the Property to the City and Sequoia Brewery, and other consideration, City, Tower Theatre, and Sequoia Brewery agree as follows:

1. The City shall defend, indemnify and hold harmless: (i) Tower Theatre entities as entities, and each of their respective owners, principals, directors, officers, partners, agents and employees individually; and (ii) Sequoia Brewery, their principals, agents, officers, and employees

from and against any claim, demand, action, liability, loss, lawsuit and/or court proceeding (hereinafter, collectively defined as a “Claim(s)”) brought by or on behalf of Adventure or any party making a claim stemming from Adventure against any Tower Theatre entity and/or its respective individuals and Sequoia Brewery (and their above representatives) to attack, set aside, void, or annul the sale of the Property to the City and/or Sequoia Brewery or to hold such entity(ies) or individual(s) liable for the consummation of such sale of the Property to the City and/or Sequoia Brewery. The City’s obligation to defend and indemnify under this Agreement shall include payment of all court costs and reasonable attorneys’ fees incurred beginning April 7, 2022, all litigation-related costs, all costs of any judgment or awards against any Tower Theatre entities and/or its respective individuals and/or Sequoia Brewery (and their above representatives) and/or all settlement costs, which arise out of the sale of the Property to the City and/or Sequoia Brewery, except for: (1) any Claims concerning escrow deposits owed by Tower Theatre to Adventure from the Prior Purchase and Sale Agreement, which are currently approximately \$833,000 and those funds that are required to be refunded by contract to Adventure shall be promptly and unconditionally returned by Tower Theatre to Adventure and (2) this Agreement shall not apply to any third party Claims not brought by or on behalf of Adventure or any party making a claim stemming from Adventure against the Parties, such as Claims by brokers and/or real estate agents for fees or commissions against the Parties, which are a prior contractual responsibility of a Party and remain their sole responsibility.

2. Tower Theatre and Sequoia Brewery shall notify the City promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, the City shall assume the defense of the claim, action, or proceeding, including through the employment of counsel selected by the City, or through payment to the party’s existing counsel for their reasonable attorneys’ fees, at the sole discretion of the City. In the event of a disagreement between the City, Tower Theatre, and/or Sequoia Brewery over litigation issues, the City shall have the authority to control the litigation and make litigation decisions, including but not limited to, settlement or other disposition of the matter.

3. As a condition of indemnification, Tower Theatre and Sequoia Brewery shall use good faith efforts to cooperate fully with the City and attorneys retained to represent Tower Theatre and Sequoia Brewery in the defense of any claim, action, liability or proceeding brought by Adventure related to the sale of the Property. Tower Theatre and Sequoia Brewery’s duty of cooperation will include, but not be limited to, participation of officers and employees in the aid of defense, as well as identifying and producing witnesses, documents, and information relevant to or helpful in the defense. The lack of cooperation by Sequoia Brewery hereunder shall not affect the City’s indemnity of Tower Theatre and the lack of cooperation by Tower Theatre hereunder shall not affect the City’s indemnification of Sequoia Brewery.

4. All Confidential Materials and Information that will be produced to joint defense counsel by any Party to this Agreement, and any Confidential Materials and Information obtained from any expert or consultant to any of the Parties to this Agreement (collectively, “Confidential Matter”), shall remain confidential and shall be protected from disclosure to any third party except as provided herein or as required by law, beginning when Adventure first threatened litigation against the City and effective starting January 1, 2021. The purpose of this Agreement is to ensure

that any exchanges and disclosures of Confidential Matter as contemplated herein do not constitute a waiver of any privilege otherwise available.

a. Unless otherwise required by law, the Parties to this Agreement shall not disclose Confidential Matter received from other Parties to this Agreement, or the contents thereof, to anyone other than the Parties to this Agreement or a consultant hired to assist in prosecuting or preparing a defense to the litigation, without first obtaining the written consent of the other Parties to this Agreement. Disclosure of Confidential Matter to a Party to this Agreement or to a consultant hired to assist in prosecuting or preparing a defense to the Litigation will be conditioned upon their agreeing to maintain the confidentiality of the information. If Confidential Matter is disclosed to any consultant or expert, the recipient, as a precondition to such disclosure, must agree in writing to maintain the confidentiality of the material except as otherwise required by law.

b. If any Confidential Matter is divulged, disclosed, or provided to any person or entity not a party to this Agreement, except as otherwise provided in this Agreement, it shall be a violation of this Agreement and shall not constitute a waiver of the attorney-client privilege or work product doctrine.

c.. If Confidential Matter is sought by a non-party to this Agreement by discovery request, subpoena, or otherwise, such Confidential Matter shall not be disclosed except as required by applicable law or court order. To the extent that a Party to this Agreement receives a request or demand for Confidential Matter other than through discovery or other process in the Litigation, the compelled party shall give advance written notice to the other Parties to this Agreement as soon as practicable to give the other Parties an opportunity to prevent such disclosure.

d. Nothing in this Agreement shall obligate the Parties to disclose any privileged and/or confidential information to the other Parties to this Agreement or any other person or entity.

e. All Confidential Materials and Information provided under this Agreement shall be used solely for the defense of any claim, action, liability or proceeding brought by or on behalf of Adventure or any party making a claim stemming from Adventure against any Tower Theatre entity and/or its respective individuals and Sequoia Brewery (and their above-described representatives) to attack, set aside, void, or annul the sale of the Property to the City and/or Sequoia Brewery or to hold such entity(ies) or individual(s) liable for the consummation of such sale of the Property to the City and/or Sequoia Brewery.

f. Much, if not all, of the Confidential Materials and Information is protected by the work product and/or attorney-client privileges of the producing attorneys and/or their clients. Because of the commonality of interest between the parties to this Agreement in defending any claim, action, liability or proceeding brought by or on behalf of Adventure or any party making a claim stemming from Adventure related to the sale of the Property, such privileges are not waived by disclosure of the Confidential Materials and Information

to the joint defense attorneys or their clients. In addition, the discussions among joint defense counsel shall be protected by the work product and/or attorney client privileges.

g. Each Party to this Agreement shall take all appropriate and necessary steps to assert all applicable rights and privileges with respect to Confidential Matter. No Party to this Agreement has the right to unilaterally waive a work product, attorney-client, or any other privilege held by another party to this Agreement.

h. In the event one of the Parties to this Agreement settles or is otherwise dismissed from the any claim, action, liability or proceeding, the Parties agree to preserve the confidentiality of Confidential Matter and any and all privileges pertaining to Confidential Matter. Upon resolution of any claim, action, liability or proceeding brought by or on behalf of Adventure or any party making a claim stemming from Adventure related to the sale of the Property, a Party who received Confidential Matter (“Recipient Party”) from another Party (“Providing Party”) shall destroy all such Confidential Matter received from the Providing Party. Notwithstanding the foregoing, a Recipient Party shall destroy all Confidential Matter received from a Providing Party prior to the resolution of any claim, action, liability or proceeding brought by Adventure related to the sale of the Property, upon receipt of a written request from the Providing Party.

5. All available legal and equitable remedies, including injunctive relief, to preserve and enforce the provisions of this Agreement, are reserved and retained by the parties to this Agreement.

6. All notices required under this Agreement shall be in writing and delivered by the United States Postal Service, any commercially available letter or package delivery service, or electronic mail (email) provided that a copy of the email is retained that shows the date and time of transmission. The notices shall be addressed to the following:

CITY OF FRESNO

Anthony R. Taylor
ALESHIRE & WYNDER, LLP
18881 Von Karman Ave., Suite 1700
Irvine, California 92612
(949) 223-1170
ataylor@awattorneys.com

TOWER THEATRE

David M. Camenson
642 Pollasky Ave, Suite 220,
Clovis, CA 93612
(559) 299-4422
Camensonlaw@aol.com

SEQUOIA BREWERY

Craig R. Meredith, Esq.
750 East Bullard, Suite 101
Fresno, California 93710-5545
(559) 437-1770
craigm@t-m-law.com

7. Each party executing this Agreement represents and warrants that it has been duly authorized to enter into this Agreement, and has full and complete authority to do so. Each party expressly waives any defense to this Agreement based on any lack of authority to enter into and be bound by the terms of this Agreement.

8. This Agreement shall constitute the complete understanding of the parties with respect to the matters set forth herein. None of the Parties are relying on any other representation, oral or written. This Agreement may not be changed except by a written amendment signed by both parties. This Agreement may be executed in counterparts with copies of signatures being treated as original signatures.

9. While the City's obligation to defend the Parties and their representatives shall begin once this Agreement is signed by the City, the City's indemnification obligation shall only be effective when all Parties have executed all documents related to the sale and are fully cooperating to complete the sale as set forth in the purchase and sale agreements and related documents. The City's defense and indemnification obligations shall terminate at such time if, for an unforeseen reason, the City may be legally and finally prohibited from completing the purchase of the Tower Theatre Property, or when the purchase is completed of the Tower Theatre Property and the statute of limitations for any applicable claims has expired and if no lawsuit is filed by Adventure thereafter. This Agreement shall also expire and have no force or effect if the Fresno City Council does not approve the purchase of the Tower Theatre Property, provided that the obligations to maintain all Confidential Materials and Information shall survive termination of this Agreement.

IN WITNESS HEREOF, the Parties do hereby agree to the terms of this Agreement.

By: _____

Print: _____
For all Tower Theatre Entities

By: _____

Print: _____
For Sequoia Brewery

By: _____

Print: _____
For City of Fresno

