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CITY OF FRESNO  
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**Regular Council Meeting  
April 21, 2022**

**FRESNO CITY COUNCIL**



**Information Packet**

**ITEM(S)**

**File ID 22-613, 1-LL**

Actions Pertaining to the Acquisition of property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03)

**Contents of Supplement:**

UPDATED Purchase and Sale Agreement - Sequoia (attachment #4 on item)

**Item(s)**

**Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

**Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**  
**AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made this \_\_\_ day of April, 2022 (“**Agreement Date**”) by and between the CITY OF FRESNO, a charter city (“**City**” or “**Seller**”), and J&A MASH & BARREL, LLC, a California limited liability company (“**Sequoia**” or “**Buyer**”), and FIDELITY NATIONAL TITLE INSURANCE COMPANY, a corporation (“**Escrow Holder**”).

**RECITALS:**

A. Seller is in the process of acquiring that certain improved real property located at 1247 North Wishon (APN 451-265-02) and 777 and 779 East Olive Avenue (APN 451-265-03) in the City of Fresno, the County of Fresno, State of California as more particularly described in Exhibit A attached hereto (“**Property**”) pursuant to that certain Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated \_\_\_\_\_, 2022 (“**Tower PSA**”) by and between Seller and Tower Theatre Productions, a California general partnership (“**Tower**”).

B. Although the Property has two (2) assessor parcel identification numbers, the Property is a single legal parcel as of the Agreement Date.

C. APN 451-265-02 (“**Pizza Parcel**”) 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 pursuant to that certain lease dated \_\_\_\_, 20\_\_ (“**Pizza Lease**”).

D. APN 451-265-03 (“**Theater Parcel**”) is improved with two (2) buildings: a pub/restaurant known as 777 and 779 East Olive Avenue, Fresno, CA 93728 and currently leased to Buyer pursuant to that certain lease effective August 1, 2012, as amended and assigned (“**Sequoia Lease**”); and (ii) a movie theater commonly known as “Tower Theater” which is on the federal register of historic buildings (“**Tower Theater**”) and which is used by Adventure Church (“**Adventure**”) for limited use on certain days (“**Adventure Agreement**”).

F. The Sequoia Lease contains a right of first refusal to buy its portion of the Property (“**RoFR**”) which requires, among other things, a parcel map in order to create a legal parcel of the portion subject to the Sequoia Lease as generally depicted on Exhibit B (“**Sequoia Parcel**”).

G. Tower Theater Productions For The Performing Arts, a CA nonprofit Public Benefit Corporation, as seller and Adventure as buyer entered into that certain Standard Offer, Agreement and Escrow Instructions for Purchase of Real Estate dated September 28, 2020 for the sale of the Theater Parcel (“**Original PSA**”).

H. The Original PSA was subsequently amended by eight (8) separate amendments which among other things, added the sale of the Pizza Parcel and extended the closing date with the final amendment extending the closing date to March 31, 2021 (collectively the “**PSA Amendments**”). The Original PSA as amended by the PSA Amendments is hereinafter referred to as the “**Amended Original PSA**.”

I. The existence of the Original PSA triggered the RoFR under the Sequoia Lease

and Sequoia exercised its rights to purchase the Brewery Parcel. However, Tower Theater Properties, Inc., disputed Sequoia's right to exercise its ROFR. On February 16, 2021, Sequoia filed a complaint in Fresno County Superior Court, Case No. 21CECG00440 ("**Sequoia Lawsuit**") and recorded a Lis Pendens on February 22, 2021 as Instrument No. 2021-0029907 in the Official Records of Fresno County ("**Sequoia Lis Pendens**").

J. Pursuant to the Amended Original PSA, Adventure had the right to either accept title subject to the Sequoia Lawsuit or to terminate the Amended Original PSA and receive the return of its deposits from escrow. Although seller requested cancellation instructions for the termination of the escrow and the return of the deposits to Adventure, Adventure refused to execute same.

K. On February 8, 2022, Adventure filed a complaint in Fresno Superior Court for breach of contract seeking specific performance under Case No. 22CECG00415 ("**Adventure Lawsuit**"). On February 10, 2022, Adventure recorded (i) a Lis Pendens against the Theater Parcel as Instrument No. 2022-0018571 in the Official Records of Fresno County ("**Theater Parcel Lis Pendens**"), and (ii) a Lis Pendens against the Pizza Parcel as Instrument No. 2022-0018572 in the Official Records of Fresno County ("**Pizza Parcel Lis Pendens**"). The Theater Parcel Lis Pendens and the Pizza Parcel Lis Pendens are hereinafter sometimes jointly referred to as the "**Adventure Lis Pendens**."

L. Government Code section 37361(a) provides that "[t]he legislative body may acquire property for the preservation or development of a historical landmark. The legislative body may also acquire property for development for recreational purposes and for development of facilities in connection therewith" and the City intends to purchase the property based on this authority.

M. Pursuant to the Tower PSA, the Sequoia Lease will be assigned to and assumed by City which includes Sequoia's RoFR and, in accordance with the obligations under the Sequoia Lease, City and Sequoia are entering into this Agreement whereby City will sell the Brewery Parcel to Sequoia pursuant to its RoFR with this sale closing concurrently with the Tower PSA with a direct deed from Tower to Sequoia.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

### **TERMS AND CONDITIONS:**

1. **RECITALS.** The foregoing Recitals and all defined terms are incorporated herein.

### **PURCHASE AND SALE OF PROPERTY**

**2.1 Property.** Pursuant to the terms and conditions of this Agreement, Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the Brewery Parcel which shall be conveyed pursuant to the New Parcel Map (in accordance with Section 2.2) or by a metes and bounds legal description pursuant to Government Code Section 66426.5 which allows such a conveyance to be a legal parcel pursuant to the Subdivision Map Act ("**Brewery Legal Description**"). The Brewery Legal Description, which shall consist of the portion subject to the Sequoia Lease as generally depicted on Exhibit B plus eight (8) existing parking spaces, shall be added to the Grant Deed (defined in Section 6.1(a)) and the Purchase Money Deed of Trust (defined in Section 5.5). In the event that the Brewery Legal Description is a metes and bounds

description, City will issue a Certificate of Compliance to be recorded with the Grant Deed (as defined in Section 6.1(a)). The Brewery Parcel shall be sold to Buyer in AS-IS condition without any representations or warranties as Buyer is and has been in possession of the Brewery Parcel for many years.

**2.2 New Parcel Map.** Commencing with the Effective Date, City shall promptly prepare and process a new parcel map in accordance with the Subdivision Map Act (“SMA”) and the Fresno City Municipal Code subdividing the Property into not less than three (3) separate parcels: (i) the Brewery Parcel; (ii) the Pizza Parcel; (iii) the Theater Parcel; and (iv) at Seller’s election a public parking parcel (“**New Parcel Map**”). Buyer and Seller shall cooperate with respect to the layout of the New Parcel Map. Pursuant to the SMA, a parcel map title guarantee (“**PM Title Guarantee**”) may be required and accordingly, the issuance of the PM Title Guarantee is a condition precedent to Seller’s obligations under this Agreement. Buyer shall cooperate with the processing of the New Parcel Map and execute any documents reasonably required to complete and file the New Parcel Map.

**2.3 REA.** If reasonably required by the City, a reciprocal parking agreement shall be drafted and subject to the reasonable approval of City and Sequoia and recorded at the Closing (“**REA**”). As set forth in the Tower PSA, Sequoia shall have the opportunity to review and approve the REA with the final version recorded concurrently with the Closing under the Tower PSA.

**2.4 Cooperation with Tower Escrow.** Buyer shall reasonably cooperate with Seller with respect to the Tower PSA including (i) providing the Estoppel Certificate for the Sequoia Lease as that document will assist in the Closing under this Agreement, and (ii) promptly reviewing and approving the REA in a timely manner.

**3. EFFECTIVE DATE.** This Agreement shall be deemed effective upon the last to occur of: (i) execution by both parties after approval by the City Council of Fresno; and (ii) the Tower PSA is effective pursuant to its terms (“**Effective Date**”).

**4. OPENING OF ESCROW.** Within five (5) days after the Effective Date, the parties shall open an escrow (“**Escrow**”) with Fidelity National Title Insurance Company (National Commercial Division) at 555 S. Flower Street Suite 4420, Los Angeles, CA 90071 with Jessica Avila ([Jessica.Avila@fnf.com](mailto:Jessica.Avila@fnf.com)) (213)452-7132) as escrow officer (“**Escrow Officer**”). Escrow shall be deemed open upon the occurrence of all of the following (“**Opening of Escrow**”):

- a. A fully executed copy of this Agreement is deposited with Escrow Holder and Escrow Holder executes the last page accepting same;
- b. The Tower Escrow is concurrently opened with Escrow Holder.

**5. PURCHASE PRICE; PAYMENT OF PURCHASE PRICE**

**5.1 Purchase Price.** The purchase price for the Property is One Million Two Hundred Thousand Dollars (\$1,200,000) (“**Purchase Price**”).

**5.2 Special Payments/Credits.** Seller agrees to pay or credit the following amounts to Buyer in escrow in Good Funds:

- A. Fifty Thousand Dollars (\$50,000) for repairs and consideration of accepting the Brewery Parcel in AS-IS condition (“**Repair Credit**”) which

amount shall be credited against the Purchase Price.

- B. Three Hundred Twenty-Five Thousand Dollars (\$325,000) for attorney's fees incurred by Buyer in the Sequoia Litigation ("**Attorney's Fees Amounts**") which shall be paid as follows:
- (i) Two Hundred Thousand Dollars (\$200,000) shall be credited against the Purchase Price ("**Attorney's Fee Credit**").
  - (ii) One Hundred Twenty-Five Thousand Dollars (\$125,000) shall be distributed to Buyer at Closing ("**Attorney Fee Payment**").

**5.4 Payment of Purchase Price.** On or before 1:00 p.m. on the business day preceding the Closing Date or such earlier time as required by Escrow Holder in order to close Escrow on the Closing Date, the Purchase Price shall be paid as follows:

- (i) The Repair Credit;
- (ii) The Attorney's Fee Amounts; and
- (iii) The Purchase Money Note (as defined in Section 5.5) in the amount of Nine Hundred Fifty Thousand Dollars (\$950,000).

**5.5 Purchase Money Note and Purchase Money Deed of Trust.** The Purchase Money Note Secured by Deed of Trust in the amount of Nine Hundred Fifty Thousand Dollars (\$950,000) which shall be in the form attached as Exhibit E ("**Purchase Money Note**"). The Purchase Money Note shall be secured by the Purchase Money Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing a deed of trust in the form attached as Exhibit F to be recorded at Closing in first lien position against the applicable real estate ("**Purchase Money Deed of Trust**").

**5.6 Good Funds at Closing.** Prior to Closing, all funds deposited in Escrow shall be in "**Good Funds**" which means a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California.

**5.7 Release of Excess Funds to Buyer.** At the Closing, Escrow Holder shall pay to Buyer any excess funds less all charges applicable to Buyer.

## **6. CLOSING FUNDS AND DOCUMENTS REQUIRED FROM PARTIES.**

**6.1 Seller.** Seller agrees that on or before 12:00 noon on the day preceding the Closing Date, Seller will deposit or cause to be deposited with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including without limitation:

- (a) The grant deed in the form of Exhibit C executed and acknowledged by the then vested title owner ("**Grant Deed**").
- (b) The REA, if applicable, pursuant to Section 2.3.
- (c) Two (2) copies of the Termination of Lease in the form of Exhibit D executed and

acknowledged by Seller (“**Termination of Lease**”)

- (d) Three (3) copies of the Indemnity Agreement (defined in Section 13) attached as Exhibit G.
- (e) A non-foreign affidavit as required by federal law.
- (f) Such funds (including the Attorneys Fee Payment) and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**6.2 Buyer.** Buyer agrees that on or before 12:00 noon on the date preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including without limitation:

- (a) A Preliminary Change of Ownership Statement completed in the manner required in Fresno County.
- (b) Two (2) copies of the Termination of Lease executed and acknowledged by Buyer.
- (c) The Promissory Note duly executed by Buyer.
- (d) The Purchase Money Deed of Trust duly executed and acknowledged by Buyer.
- (e) The Sequoia Lis Pendens Release pursuant to Section 14.
- (f) Three (3) copies of the Indemnity Agreement (defined in Section 13) attached as Exhibit G.
- (g) The Release pursuant to Section 14 executed by Buyer.
- (h) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

**6.3 Recordation, Completion and Distribution of Documents.** Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder will date all the documents with the date of Close of Escrow. Escrow Holder will cause the Grant Deed and the Purchase Money Deed of Trust to be recorded (in that order) when it can issue the Owner’s Title Policy and Lender’s Title Policy in accordance with Section 8, and holds for the account of Buyer and Seller, respectively, the funds and items described above to be delivered to Buyer and Seller, respectively, through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof. Promptly following Close of Escrow, Escrow Holder shall distribute Escrow Holder’s closing statement and the documents deposited in Escrow as follows:

- (a) **To Buyer:**
  - (i) One (1) certified conformed copy of the Grant Deed, the original to be mailed to Buyer following recordation thereof;
  - (ii) One (1) certified copy of the Non-Foreign Affidavit;

- (iii) The Owner's Title Policy;
- (iv) One (1) certified copy of the Purchase Money Note;
- (v) One (1) certified conformed copy of the Purchase Money Deed of Trust;
- (vi) One (1) certified conformed copy of the Sequoia Lis Pendens Release;
- (vii) One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by Buyer or Seller pursuant to the terms hereof; and
- (viii) One (1) original copy of the Termination of Lease.

(b) **To Seller:**

- (i) The original Promissory Note;
- (ii) One (1) certified conformed copy of the Purchase Money Deed of Trust, the original to be mailed to Seller following recordation thereof;
- (iii) The Lender's Title Policy;
- (iv) One (1) certified conformed copy of the Sequoia Lis Pendens Release with the original to be mailed to Seller following recordation thereof;
- (v) One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by Buyer or Seller pursuant to the terms hereof;
- (vi) One (1) original copy of the Termination of Lease; and
- (vii) One (1) original copy of the Release.

**7. CLOSING DATE; OPTION TO EXTEND CLOSING; TIME IS OF ESSENCE**

**7.1 Closing Date.** Subject to Section 7.2 below, Escrow shall close within fifteen (15) days after Buyer delivers the Due Diligence Notice approving the Property condition pursuant to Section 9, but in no event, later than forty-five (45) days from the Effective Date ("**Closing Date**") provided that the Tower Escrow closes concurrently. The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time Grant Deed is recorded in the Official Records of the County Recorder of Fresno County, California.

**7.2 Possession.** Upon the Close of Escrow, Buyer shall remain in possession of the Brewery Parcel.

**7.3 Time is of Essence.** Buyer and Seller specifically agree that time is of the essence of this Agreement.

**7.4 City Manager's Authority.** Buyer by its execution of this Agreement hereby agrees that the City Manager of the Buyer or their designee (who has been designated by City Manager's written notice delivered to Seller and Escrow Holder) shall, in City Manager's sole and exclusive discretion, have authority:

(i) to execute documents on behalf of Buyer including, but not limited to, issuing approvals, disapprovals and extensions. Any such approval, disapproval or extension executed by the City Manager or their designee shall be binding on Buyer.

(ii) make minor modifications to this Agreement in order to fulfill the direction of the City Council, provided that such minor modifications must be approved by the City Attorney.

**7.6 Limited Automatic Extension.** Notwithstanding the above, in the event Escrow is legally prohibited from closing, including, but not limited to, a prohibition arising out of a court order or other legal action, Escrow shall be automatically extended until seven (7) days after the legal prohibition is lifted or otherwise ceases to prevent Close of Escrow.

**7.7 Seller Right To Terminate.** If a permanent restraining order is issued by a court of competent jurisdiction against either this Agreement and/or the Tower PSA, Seller shall have the right to terminate this Agreement and Escrow upon five (5) days written notice to Buyer.

## **8. TITLE POLICIES.**

### **8.1 Approval of Title**

(a) Promptly following execution of this Agreement but, in no event, later than five (5) days following Opening of Escrow, a preliminary title report shall be issued by Fidelity National Title Insurance Company ("**Title Company**"), describing the state of title of the Property, together with legible copies of all exceptions specified therein and a map plotting all easements specified therein ("**Preliminary Title Report**"). Within ten (10) business days after Buyer's receipt of the Preliminary Title Report, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report ("**Disapproved Exceptions**").

(b) In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of ten (10) days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions (other than any obligations of Buyer under Section 9.5), Buyer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within five (5) business days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

(c) Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) days following receipt of notice of such additional exceptions.

However, when the Brewery Legal Description is provided to the Title Company



pursuant to Section 1.2, Buyer will have the right to approve only any new exceptions which were not previously shown in the original Preliminary Title Report.

(d) Nothing to the contrary herein withstanding, Buyer shall be deemed to have automatically objected to all leases, deeds of trust, mortgages, judgment liens, federal and state income tax liens, delinquent general and special real property taxes and assessments and similar monetary encumbrances affecting the Property, and Seller shall discharge any such non-permitted title matter of record prior to or concurrently with the Close of Escrow except as otherwise specifically provided in this Agreement.

## **8.2 Title Policies.**

(a) **Owner's Title Policy.** At the Close of Escrow, Escrow Holder shall furnish Buyer with an ALTA non-extended owner's Policy of Title Insurance ("**Owner's Title Policy**") insuring title to the Property vested in Buyer, containing only (i) non delinquent real property taxes and assessments; (ii) exceptions approved by Buyer in accordance with Section 8.1; (iii) the Purchase Money Deed of Trust; and (iv) exceptions caused solely by the acts of Buyer. The amount of the insurance coverage shall be in the amount of the Purchase Price. The cost of the Owner's Title Policy to Buyer shall be paid by Tower in the Tower Escrow. Buyer shall be responsible to secure a survey at its own cost and expense. The Title Policy may include any available title insurance, extended coverage or endorsements that Buyer may reasonably request, provided, however, that Buyer shall obtain the survey if required, and any such extended coverage and any such endorsements requested by Buyer shall be at Buyer's sole cost and expense.

(b) **Loan Title Policy.** At the Close of Escrow, Escrow Holder shall furnish Seller with an ALTA loan policy of title insurance ("**Loan Title Policy**") insuring the Purchase Money Deed of Trust in first lien position against the Property with title to the Property vested in Buyer, containing the exceptions noted in Section 8.2.a. The amount of the insurance coverage shall be the amount of the Purchase Money Note secured by the Purchase Money Deed of Trust. The cost of the Loan Title Policy shall be paid by Buyer.

**8.3 Adventure Lis Pendens.** At the Closing, the Adventure Lis Pendens may not have been removed from record title although the parties agree that the Owner's Title Policy shall either not show the Adventure Church Lis Pendens as exceptions or provide an endorsement protecting Buyer from the effect of same. However, although Seller will use its best efforts to have the Owner's Title Policy issued as set forth above, ultimately the decision of the Title Company is outside Seller's control and, therefore, the Title Company's issue of the Owner's Title Policy with respect to the Adventure Church Lis Pendens as set forth above is a condition precedent to Seller's obligations.

## **9. DUE DILIGENCE.**

**9.1 Buyer's Due Diligence.** Upon Seller's receipt under the Tower PSA, Seller shall provide copies of any materials provided to Seller for Buyer's review and approval. All such items are provided to Buyer without any representation or warranty by Seller and Buyer acknowledges that Seller is merely a conduit providing same for Buyer's review.

**9.2 Due Diligence Delivery; Due Diligence Date; Due Diligence Period.** The term "**Due Diligence Date**" shall mean the date which is twenty-five (25) days following the Effective

Date. The term “**Due Diligence Period**” shall mean the period beginning on the Effective Date and ending on the Due Diligence Date.

**9.3 Buyer’s Due Diligence Notice.** Buyer shall notify Seller in writing (“**Buyer’s Due Diligence Notice**”) on or before the Due Diligence Date of Buyer’s approval or disapproval of each Due Diligence Item delivered to or available for review by Buyer pursuant to this Agreement, and of Buyer’s approval or disapproval of the condition of the Property (including, but not limited to, the financial viability of the Property as well as the feasibility of the Property for Buyer’s intended uses, both as determined by Buyer in its sole discretion) and Buyer’s investigations with respect thereto (excluding title which are to be approved or disapproved pursuant to Section 8). ***Buyer’s Due Diligence Notice must be delivered timely to Seller as it may affect Seller’s elections under the Tower PSA.***

**9.4 NHD Report.** Within five (5) days of Opening of Escrow, Escrow Holder shall order and deliver to Buyer and Seller a Natural Hazards Disclosure report for the Property issued by Disclosure Source (“**NHD Report**”). The cost of the NHD Report shall be paid by Seller.

## **10. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**10.1 Conditions to Buyer’s Obligations.** The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent (“**Buyer’s Conditions Precedent**”):

- (a) Title Company will issue the Owner’s Title Policy as specified in Section 8.2(a).
- (b) The Tower Escrow closes concurrently.
- (c) Escrow Holder holds and will deliver to Buyer the instruments and the funds accruing to Buyer pursuant to this Agreement.
- (d) Seller is not in default of its obligations under this Agreement.

**10.2 Conditions to Seller’s Obligations.** The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent:

- (a) The New Parcel Map is filed with the County in accordance with Section 2.2 with the PM Title Guarantee issued by the Title Company.
- (b) Title Company will issue the Lender’s Title Policy as specified in Section 8.2(b).
- (c) The Title Company will issue the Owner’s Title Policy with respect to the Adventure Lis Pendens in accordance with Section 8.3.
- (d) The Tower Escrow closes concurrently.
- (e) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (f) Buyer is not in default of its obligations under this Agreement.
- (g) Buyer shall have executed and deposited into the Tower Escrow any documents

reasonably required to close the Tower Escrow, including, the estoppel certificate for the Sequoia lease.

## **11. REPRESENTATIONS AND WARRANTIES.**

**11.1 No Seller Representations or Warranties.** Buyer is in possession of the Brewery Parcel and accordingly has full knowledge of the condition of the Brewery Parcel including the building located thereon. As Seller is only acquiring the Brewery Parcel concurrently with the Closing, Seller has no knowledge of the Brewery Parcel.

**11.2 Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

**11.2.1 Authority.** Buyer is a limited liability company validly formed in the State of California. Upon execution of this Agreement by Buyer, Buyer has the full right and authority to enter into this Agreement, this Agreement shall be a binding obligation of Buyer and Buyer shall have authority to consummate the transaction contemplated hereby, including execution and delivery of all applicable documents.

**11.2.2 Conflicts and Pending Actions.** Except as disclosed in the Recitals, (i) there is no agreement to which Buyer is a party or, to Buyer's knowledge, binding on Buyer which is in conflict with this Agreement; and (ii) as of the Effective Date there is no action or proceeding pending or threatened against Buyer which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

The representations and warranties provided in this Section 11.2 shall survive the Closing and shall not be affected by any investigation, verification or approval by either party or by anyone on behalf of either party.

## **12. ESCROW PROVISIONS.**

**12.1 Escrow Instructions.** Sections 1 through 8, inclusive; 10, 12, 16 and 17 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

**12.2 General Escrow Provisions.** Escrow Holder shall deliver (i) the Owner's Title Policy to the Buyer and instruct the Fresno County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 16 after recordation; and (ii) the Lender's Title Policy to Seller and instruct the Fresno County Recorder to mail the Purchase Money Deed of Trust to Seller to the address set forth in Section 16 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in California and may be disbursed to any other general escrow account or accounts. All

disbursements shall be according to that party's instructions.

**12.3 Real Estate Taxes.** All non-delinquent general and special real property taxes and assessments shall be paid current at Close of Escrow as specified in the Tower Escrow. Real property taxes shall not be prorated.

**12.4 Rent and Security Deposit.** Rent under the Sequoia Lease shall be prorated to the Closing. Also any security deposit under the Sequoia Lease shall be credited to Buyer and charged to Seller.

### **12.5 Payment of Costs**

**(a) Cost Allocation.** Seller shall pay the costs of the NHD Report, documentary transfer taxes, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). The cost of the Owner's Title Policy shall be paid by Tower in the Tower Escrow. Buyer shall pay the cost of recording the Grant Deed and the Purchase Money Deed of Trust, the Lender's Title Policy and one-half (1/2) of the escrow fees ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder for major commercial real estate transactions in Central California.

**(b) Closing Statement.** At least two (2) business days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the Parties.

**12.6 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, either party may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Upon cancellation, Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided Escrow Holder receives written instructions from both Buyer and Seller directing Escrow Holder to return such funds and documents. The parties shall promptly execute and deliver any documents reasonably required to effect the return of the funds and documents in accordance with this Agreement. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

**12.7 Information Report.** Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party

reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

**12.8 No Withholding as Foreign Seller.** Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

**12.9 Brokerage Commissions.** Buyer and Seller each represent and warrant to the other party that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

**13. INTENTIONALLY OMITTED.**

**14. SEQUOIA ACTION AND ADVENTURE LITIGATION.** Buyer shall provide a release of the Sequoia Lis Pendens in a form acceptable to the Title Company ("**Sequoia Lis Pendens Release**"). Immediately following the Close of Escrow, Buyer shall promptly dismiss the Sequoia Lawsuit as against Tower with prejudice. A copy of the dismissal shall be promptly provided to Seller. By close of escrow, Buyer shall execute a general release of any and all claims against the City, its elected and appointed officials, employees, attorneys and agents and a release of any and all claims against Tower, its officers, employees, attorneys and agents in a form acceptable to Seller ("**Release**"). The provisions of this Section 14 shall survive the Closing.

**15. [INTENTIONALLY OMITTED]**

**16. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, or (iii) by personal delivery. Notice deposited in the mail in the manner hereinabove described shall be effective upon receipt or rejection of such notice. Notice given in any other manner shall be effective only if and when received (or rejected) by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. California time of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; however, no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

**To Buyer:**

J&A Mash & Barrel, LLC  
6671 N Sandrini Avenue  
Fresno, CA 93722

Attn: Jeremy Smith, Manager

**With a copy to:**

Tuttle & McCloskey  
750 E. Bullard Ave. Ste. 101  
Fresno, CA 93710  
Attn: Craig R. Meredith

**To Seller:**

City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attention: City Manager

**With a copy to:**

Aleshire & Wynder, LLP  
18881 Von Karman Ave  
Suite 1700  
Irvine, CA 92612  
Attention: Anthony Taylor, Esq.

**With a copy to:**

City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attention: City Attorney

**To Escrow Holder:**

Fidelity National Title Insurance Company  
555 S. Flower Street Suite 4420  
Los Angeles, CA 90071  
Attn: Jessica Avila, Escrow Officer

**17. GENERAL PROVISIONS**

**17.1 Assignment.** Neither party shall have the right to assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

**17.2 Attorney's Fees.** In any action between the parties hereto, seeking enforcement or interpretation of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

**17.3 Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**17.4 No Waiver.** No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of

this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

**17.5 Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

**17.6 Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**17.7 Merger.** This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby including, but not limited to the LOI, and all prior to contemporaneous agreements, understandings, representations and statements (including letters of intent), oral or written, are merged herein and shall be of no further force or effect.

**17.8 Execution of Documents.** The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

**17.9 Inducement.** The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

**17.10 Relationship of Parties.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed as contemplated hereby.

**17.11 Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

#### **17.12 Exhibits**

The following exhibits attached hereto are incorporated herein by reference:

Exhibit A      Legal Description of Property

- Exhibit B Depiction of Brewery Parcel
- Exhibit C Grant Deed
- Exhibit D Termination of Lease
- Exhibit E Purchase Money Note
- Exhibit F Purchase Money Deed of Trust

**17.13 Execution in Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

**17.14 Authority** The person executing this Agreement on behalf of Buyer has the authority to bind that entity and that entity is legally bound under this Agreement.

**17.15 No Third Party Beneficiary.** This Agreement is only between the parties, and is not intended to be nor shall it be construed as being for the benefit of any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement As of the date set forth above.

**BUYER:**

J&A Mash & Barrel, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Jeremy Smith, Manager

**READ AND ACCEPTED:**

**ESCROW HOLDER:**

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY, a corporation

By: \_\_\_\_\_  
Jessica Avila, Escrow Officer

**SELLER:**

CITY OF FRESNO, a charter city

By: \_\_\_\_\_  
Georgeanne White, City Manager

**ATTEST:**

\_\_\_\_\_  
Todd Stermer, City Clerk

APPROVED AS TO FORM

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Anthony Taylor, Special Counsel



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:

Lots 1 to 10, inclusive, in Block 5 of Wilson's North Fresno Map thereof recorded November 16, 1908, in Book 4, Page 44 of Record of Surveys, in the City of Fresno, County of Fresno, State of California records of said County;

Except the South 22 feet of Lots 5 and 6, conveyed to the City of Fresno for street purposes.

Assessor's Parcel Numbers(s): 451-265-02 & 451-265-03

**EXHIBIT B**  
**DEPICTION OF BREWERY PARCEL**

(To be added prior to execution of PSA)

**EXHIBIT C**

**GRANT DEED**

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

J&A Mash & Barrel, LLC  
6671 N Sandrini Ave  
Fresno, CA 93722  
Attn: Jeremy Smith, Manager

APNs.

(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code §6103)

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, \_\_\_\_\_ ("**Grantor**"), hereby grants to the J&A MASH & BARREL, LLC, a California limited liability company ("**Grantee**"), that certain real property in the City of Fresno, County of Fresno, State of California, legally described as set forth on Exhibit A attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by its respective officers or agents hereunto as of the date first above written.

**"GRANTOR"**

NOT TO BE EXECUTED UNTIL CLOSING

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A" TO GRANT DEED  
LEGAL DESCRIPTION OF THE PROPERTY**

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 \_\_\_\_\_ )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, a 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.

\_\_\_\_\_  
Notary in and for the State of California

[SEAL]

**EXHIBIT D**

**TERMINATION OF LEASE**

**RECORDED AT REQUEST OF  
AND WHEN RECORDED, MAIL TO:**

CITY OF FRESNO  
2600 Fresno Street  
Fresno, California 93721  
Attention: City Clerk

APN \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**TERMINATION OF LEASE**

This Termination of Lease ("**Termination Agreement**") is made as of \_\_\_\_\_, 2022, by and between the CITY OF FRESNO, a charter city ("**Lessor**"), and J&A MASH & BARREL, LLC, a California limited liability company ("**Lessee**").

**RECITALS:**

- A.** Lessor is the fee owner of that certain real property situated in the City of Fresno, County of Fresno, State of California, as described on the attached Exhibit A ("**Property**").
- B.** The Property is subject to that certain Lease as summarized on Exhibit B ("**Lease**").
- C.** Lessee is the current owner of the leasehold estate under the Lease.
- D.** Lessee is acquiring the fee interest in the Property from Lessor.

NOW, THEREFORE, the parties agree as follows:

**AGREEMENT**

- 1. Effective Date.** This Agreement shall be effective upon recordation in the Official Records of Fresno County concurrently with the recordation of the Grant Deed from Lessor conveying the Property to Lessee.
- 2. Termination of Lease.** As of the Effective Date, the Lease shall be terminated.
- 3. Execution in Counterpart.** This Termination Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**4. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**IN WITNESS WHEREOF,** Lessor and Lessee have executed this Termination Agreement as of the date specified above.

**LESSEE:**

J&A Mash & Barrel, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Manager

**LESSOR:**

CITY OF FRESNO, a charter city

By: 

NOT TO BE EXECUTED UNTIL CLOSING
----------------------------------

  
Georgeanne White, City Manager

**ATTEST:**

\_\_\_\_\_  
Todd Stermer, City Clerk

APPROVED AS TO FORM

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Anthony Taylor, Special Counsel

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:



## **EXHIBIT "B"**

### **SUMMARY OF LEASE**

1. Lease dated February 12, 2013 between Tower Theatre Properties, a California corporation as "Lessor" and Craig Scott Kendall and Michele Kendall dba Sequoia Brewing Company Bar & Grill as "Lessee."
2. Lease Extension Agreement dated May 1, 2017 between Tower Theatre Properties, Inc., a California corporation as "Landlord" and Craig Scott Kendall and Michele Kendall dba Sequoia Brewing Company Bar & Grill as "Tenant."
3. Assignment of Lease date May 11, 2020 between Craig Scott Kendall and Michele Kendall dba Sequoia Brewing Company Bar & Grill as "Assignor" and J&A Mash & Barrel as "Assignee" which was consented to by Tower Theatre Properties, Inc., a California corporation.



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                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022 before me, \_\_\_\_\_, a 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.

\_\_\_\_\_  
Notary Public

SEAL:

**EXHIBIT E**

**PURCHASE MONEY NOTE**

**PURCHASE MONEY NOTE SECURED BY DEED OF TRUST**

\$ 950,000

\_\_\_\_\_, 2022

FOR VALUE RECEIVED, J&A MASH & BARREL, LLC, a California limited liability company ("**Borrower**") hereby promises to pay to the CITY OF FRESNO, a charter city, or order ("**Holder**"), at a place designated by Holder, the principal sum of NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) ("**Loan Amount**"), or such lesser amount which shall from time to time be owing hereunder pursuant to the terms hereof.

**1. Interest.** The Loan Amount shall bear interest at the rate of Three and One-Half Percent (3.5%) per annum until paid in full.

**2. Monthly Payments.** Borrower shall make monthly payments to Holder equal to Four Thousand Two Hundred Sixty-Five Dollars and Ninety-Two Cents (\$4,265.92) ("**Monthly Payment**") commencing thirty (30) days from the date that the Deed of Trust (defined in Section 18) is recorded in the Official Records of Fresno County ("**Effective Date**") and then on the same day of each succeeding month until paid in full.

**3. Maturity Date.** The entire principal shall be fully due and payable thirty (30) years from the Effective Date ("**Maturity Date**").

**4. Payments.** All payments shall be paid in lawful money of the United States of America at such places as the Holder may designate in writing from time-to-time. Unless otherwise agreed to in writing or otherwise required by applicable law, payments will be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid collection costs, late charges and other charges. All payments shall be made to the Holder at the City Treasurer's office located at 2600 Fresno Street Fresno, CA 93721. Any payments must be specifically identified as being made under this Note. Any payment not received by Holder by 5:00 p.m. by the tenth (10) day of each month will be deemed "late" and the Holder may, at its sole option, assess the Late Charge (as defined in Section 6).

**5. Default Interest Rate.** During the period commencing with any default hereunder and continuing until such default is cured, Holder, at its option, may increase the interest rate to Six Percent (6%) per annum ("**Default Interest Rate**").

**6. Late Charge.** If Borrower shall fail to make any payment of interest or principal, including the final combined principal and interest installment, within ten (10) days after the date the same is due and payable, a late charge by way of damages shall be immediately due and payable. Borrower recognizes that default by Borrower in making the payments herein agreed to be paid when due will result in the Holder incurring additional expense in servicing this obligation, in loss to the Holder of the use of the money due and in frustration to the Holder in meeting its other financial and loan commitments. Borrower agrees that, if for any reason Borrower fails to pay the amounts due under this Note when due, the Holder hereof shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent

of such damages. Accordingly Borrower agrees that a sum equal to five percent (5%) of each payment which becomes delinquent ("**Late Charge**") is a reasonable estimate of said damages to the Holder of this Note, which sum Borrower agree to pay on demand.

**7. Acceleration on Transfer or Encumbrance of Property.** The Deed of Trust contains the following provision: "If Trustor transfers, sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is any change of management or ownership in Trustor of the beneficial ownership interests of that entity as exists as of the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's sole option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust."

**8. Right to Prepay.** This Note may be prepaid in whole or in part at any time without penalty, fee or charge.

**9. Default; Acceleration.** A default of this Note shall occur upon Borrower's failure to timely perform the obligations under this Note or any default by Borrower under the Deed of Trust. In the event Borrower is deemed in default under this Note, Holder may, at its option, declare this Note and the entire obligations hereby evidenced immediately due and payable and collectible then or thereafter as Holder may elect, regardless of the date of maturity.

**10. Modifications.** No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by both Holder and Borrower, and then only to the extent therein specifically set forth.

**11. No Waiver by Holder.** No waiver of any breach, default or failure of condition under the terms of this Note shall be implied from any failure of Holder to take action, or any delay be implied from any failure by Holder in taking action, with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.

**12. Usury.** Notwithstanding any provision in this Note, the total liability for payment in the nature of interest shall not exceed the limit imposed by applicable laws of the State of California.

**13. Attorneys' Fees.** In any legal action or other proceeding is brought for the enforcement of this Note, or because of an alleged dispute, breach, default or misrepresentation in connection with or arising out of any of the provisions of this Note, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.

**14. Applicable Law.** This Note has been executed and delivered by Borrower in the State of California and is to be governed and construed in accordance with the laws thereof.

**15. Partial Invalidity.** If any provision or any word, term, class or part of any provision of this Note is deemed to be invalid for any reason, the same shall be ineffective but the remainder of this Note and of the provisions shall not be affected and shall remain in full force and effect.

**16. Time of Essence.** Time is of the essence in the performance of the obligations and provisions set forth in this Note.

**17. Notices.** All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, certified mail, return receipt requested, or overnight guaranteed delivery service and addressed as follows:

**To Borrower:** J&A Mash & Barrel, LLC  
6671 N Sandrini Avenue  
Fresno, CA 93722  
Attn: Jeremy Smith, Manager

**With a copy to:** Tuttle & McCloskey  
750 E. Bullard Ave. Ste. 101  
Fresno, CA 93710  
Attn: Craig R. Meredith

**To Holder:** City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attention: City Manager

**With a copy to:** City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attention: City Attorney

Notices shall be effective upon the earlier of receipt or refusal of delivery. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

**18. Secured by Deed of Trust.** This Note is secured by that certain Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith (“**Deed of Trust**”).

IN WITNESS WHEREOF, the parties hereto have executed this Note as of the Note Date.

**BORROWER:**

J&A Mash & Barrel, LLC,  
a California limited liability company

By: 

NOT TO BE EXECUTED UNTIL CLOSING
----------------------------------

  
\_\_\_\_\_  
Manager

**EXHIBIT F**

**PURCHASE MONEY DEED OF TRUST**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

CITY OF FRESNO  
2600 Fresno Street  
Fresno, California 93721  
Attention: City Clerk

APN \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**This PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Deed of Trust”)**, is made \_\_\_\_\_, 2022, between J&A MASH & BARREL, LLC, a California limited liability company (“**TRUSTOR**”), whose address is 6671 N Sandrini Avenue, Fresno, CA 93722 and Fidelity National Title Insurance Company, a corporation (“**TRUSTEE**”), for the benefit of CITY OF FRESNO, a California municipal corporation (“**BENEFICIARY**”). This Deed of Trust is subject to that certain Rider to Purchase Money Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing attached hereto and incorporated herein by reference.

WITNESSETH: That Trustor grants to Trustee in trust, with power of sale, Trustor’s estate, dated on or about the date hereof, in that property in the City of Fresno, County of Fresno, State of California, described as on **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”) together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) payment of the original sum of Nine Hundred Fifty Thousand Dollars (\$950,000) with interest thereon according to the terms of that certain Purchase Money Promissory Note Secured by Deed of Trust of even date herewith made by Trustor, payable to order of Beneficiary, and extensions, modifications or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein which specifically references that it is secured by this Deed of Trust; and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

This Deed of Trust is subject to the terms of the Rider to Deed of Trust attached hereto and incorporated herein by reference.

To protect the security of this Deed of Trust, and with respect to the Property, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the book and at the

page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Fresno	T-3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	Fresno	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Fresno	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego	SERIES 5 Book 1964, Page 149774				

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

**TRUSTOR:**

J&A MASH & BARREL, LLC,  
a California limited liability company

By: NOT TO BE EXECUTED UNTIL CLOSING

Its: \_\_\_\_\_



The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

4) To pay: at least ten (10) days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from the date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

1) That any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default,

Beneficiary may at any time without notice, either in person, by agent, or be a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6) That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledges, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

**DO NOT RECORD**

REQUEST FOR FULL RECONVEYANCE

TO \_\_\_\_\_, TRUSTEE:

The undersigned is the legal owner and holder of the note or notes and of all indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, an all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated \_\_\_\_\_

Please mail Deed of Trust, \_\_\_\_\_  
Note and Reconveyance to \_\_\_\_\_

**DO NOTE lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.**

**RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT  
OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

**THIS RIDER TO PURCHASE MONEY DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (“Rider”)** is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by J&A MASH & BARREL, LLC, a California limited liability company (“**Trustor**”) in favor of the CITY OF FRESNO, a charter city (“**Beneficiary**”) who are the same parties to that certain Purchase Money Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, to which this Rider is attached. This Rider is made a part of and is incorporated into said Deed of Trust. This Rider shall supersede any conflicting term or provision of the form Deed of Trust to which it is attached.

Reference is made to that certain Purchase Money Promissory Note Secured by Deed of Trust by and between Trustor (as borrower) and Beneficiary (as holder) of even date herewith and any modifications, extensions or renewals (“**Promissory Note**”).

1. **Property.** The estate subject to this Deed of Trust is Trustor’s fee estate in the real property legally described in this Deed of Trust (“**Property**”). In addition, Trustor grants to Beneficiary a security interest in all of Trustor’s rights, title, and interest in and to the following:

(a) All present and future equipment (as those terms are defined in the California Commercial Code) and all other present and future personal property now or hereafter located at, upon or about the Property which is to be used solely in connection with or relating to the repair and maintenance of Property and/or the improvements thereon, including without limitation all present and future furniture, furnishings, fixtures, goods, tools, machinery, plumbing and plumbing material and supplies, concrete, lumber, hardware, electrical wiring and electrical material and supplies, heating and air conditioning material and supplies, roofing material and supplies, window material and supplies, doors, paint, drywall, insulation, cabinets, ceramic material and supplies, flooring, carpeting, appliances, fencing, landscaping and all other materials, supplies and property of every kind and nature.

(b) All present and future accounts, general intangibles, chattel paper, contract rights, deposit accounts, instruments and documents as those terms are defined in the California Commercial Code, now or hereafter relating or arising with respect to the Property and/or the improvements located thereon, including without limitation: (i) all rights to the payment of money, including escrow proceeds arising out of the sale or other disposition of all or any portion of the Property; (ii) all architectural, engineering, design and other plans, specifications and drawings relating to the development of the Property and/or any construction thereon; (iii) all use permits, occupancy permits, construction and building permits, and all other permits and approvals required by any governmental or quasi-governmental authority in connection with the development, construction, use, occupancy or operation of the Property; (iv) any and all agreements relating to the development, construction, use, occupancy and/or operation of the Property between Trustor and any contractor, subcontractor, project manager or supervisor, architect, engineer, laborer or supplier

of materials; (v) all lease, rental or occupancy agreements and payments received thereunder; (vi) all insurance proceeds and condemnation awards arising out of or incidental to the ownership, development, construction, use, occupancy or operation of the Property; (vii) all reserves, deferred payments, deposits, refunds, cost savings, bonds, insurance policies and payments of any kind relating to the Property; and (viii) all water stock, if any, relating to any Property and all shares of stock or other evidence of ownership of any part of or interest in any Property that is owned by Trustor in common with others; and (ix) all supplements, modifications and amendments to the foregoing.

(c) All fixtures located upon or within the Property or now or hereafter attached to, installed in, or used or intended for use in connection with the Property, including without limitation any and all partitions, generators, screens, awnings, boilers, furnaces, pipes, plumbing, elevators, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating ventilating, air conditioning and air cooling equipment, and gas and electric machinery and equipment.

(d) All present and future accessories, additions, attachments, replacements and substitutions of or to any or all of the foregoing.

(e) All cash and noncash proceeds and products of any and all of the foregoing, including without limitation all monies, deposit accounts, insurance proceeds and other tangible or intangible property received upon a sale or other disposition of any of the foregoing.

2. **Obligations Secured.** Trustor makes this grant and assignment for the purpose of securing the following obligations ("**Secured Obligations**"):

(a) Payment to Beneficiary of all indebtedness at any time owing under the terms of the Promissory Note;

(b) Payment and performance of all obligations of Trustor under this Deed of Trust;

(c) Payment and performance of all future advances and other obligations of Trustor or any other person, firm, or entity with the approval of Trustor, may agree to pay and/or perform for the benefit of Beneficiary, when the obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(d) All modifications, extensions and renewals of any of the obligations secured hereby, however evidenced.

3. **Obligations.** The term "obligations" is used herein in its broadest and most comprehensive sense and shall be deemed to include, without limitation, all interest and charges, late charges and fees at any time accruing or assessed on any of the Secured Obligations. All persons who may have or acquire an interest in the Property shall be deemed to have notice of the terms of all of the foregoing documents.

4. **Mortgagee-in-Possession.** Neither the assignment of rents set forth in this Deed of Trust nor the exercise by Beneficiary of any of its rights or remedies hereunder shall be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property, unless Beneficiary, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Property by any court at the request of Beneficiary or by agreement with Trustor, or the entering into possession of the Property by such receiver, shall not be deemed to make Beneficiary a “mortgagee-in-possession” or otherwise liable in any manner with respect to the Property.
5. **No Cure.** In the event Beneficiary collects and receives any rents under this Deed of Trust upon any default hereof, such collection or receipt shall in no way constitute a cure of the default.
6. **Opportunity to Cure.** Trustor’s failure or delay to perform any term or provision of this Deed of Trust constitutes a default under this Deed of Trust; however, Trustor shall not be deemed to be in default unless and until any applicable provision for the notice of default and default cure periods under the Loan Agreement have been fulfilled.
7. **Possession upon Default.** Subject to Section 7 above, upon the occurrence of a default, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary may, at its option, without any action on its part being required and without in any way waiving such default, take possession of the Property and have, hold, manage, lease and operate the same, on such terms and for such period of time as Beneficiary may deem proper, and may collect and receive all rents and profits, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem proper to Beneficiary, and to apply such rents and profits to the payment of (a) the cost of all such alterations, renovations, repairs and replacements, and all costs and expenses incident to taking and retaining possession of the Property, and the management and operation thereof, and keeping the same properly insured; (b) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment of the Note, and premiums for insurance, with interest on all such items; and (c) the indebtedness secured hereby, together with all costs and attorney’s fees, in such order or priority as to any of such items as Beneficiary in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding. Any amounts received by Trustor or its agents in the performance of any acts prohibited by the terms of this assignment, including, but not limited to, any amounts received in connection with any cancellation, modification or amendment of any lease prohibited by the terms of this assignment and any rents and profits received by Trustor after the occurrence of a default shall be held by Trustor as trustee for Beneficiary and all such amounts shall be accounted for to Beneficiary and shall not be commingled with other funds of the Trustor. Any person receiving any portion of such trust funds shall receive the same in trust for Beneficiary as if such person had actual or constructive notice that such funds were impressed with a trust in accordance therewith.

8. **Acceleration.** If Trustor transfers, sells, contracts to sell, gives an option to purchase, conveys, leases with an option to purchase, encumbers, or alienates the Property, or any interest in it, or suffers its title to, or any interest in, the Property to be divested, whether voluntarily or involuntarily; or if there is any change of management or ownership in Trustor of the beneficial ownership interests of that entity as exists as of the date of this Deed of Trust; or if Trustor changes or permits to be changed the character or use of the Property; or if title to such Property becomes subject to any lien or charge, voluntary or involuntary, contractual or statutory, without Beneficiary's prior written consent, then Beneficiary, at Beneficiary's sole option, may, without prior notice, declare all sums secured by this Deed of Trust, regardless of their stated due date(s), immediately due and payable and may exercise all rights and remedies in this Deed of Trust.
9. **Receiver.** In addition to any and all other remedies of Beneficiary set forth under this Deed of Trust or permitted at law or in equity, if a default shall have occurred, Beneficiary, to the extent permitted by law and without regard to the value, adequacy or occupancy of the security for the Promissory Note and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents and profits and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction by ex parte application and without notice, notice of hearing being hereby expressly waived. The expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the power herein contained shall be secured by this Deed of Trust.
10. **Security Agreement and Fixture Filing.** This Deed of Trust also constitutes a security agreement with respect to all personal property in which Beneficiary is granted a security interest under Section 1 above, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as enacted in California ("**California Uniform Commercial Code**") as well as all other rights and remedies available at law or in equity. Trustor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Trustor and Beneficiary agree that the filing of a financing statement in the record normally having to do with personal property shall never be construed as in any way derogating from or impairing the lien of this Deed of Trust and the intention of Trustor and Beneficiary that everything used in connection with the operation or occupancy of the Property is and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property or goods which are or are to become fixtures, irrespective of whether (i) any such item is physically attached to the buildings and improvements on the Property; (ii) serial numbers are used for the better identification of certain equipment items capable of being filed by the Beneficiary; or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing

statements is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the California Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government. Trustor covenants and agrees to reimburse Beneficiary for any costs incurred in filing such financing statement and any continuation statements.

Upon the occurrence of default hereunder, and after delivery of notice and the expiration of all applicable cure periods, Beneficiary shall have the right to cause any of the Property which is personal property and subject to the security interest of Beneficiary hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Beneficiary shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law, specifically including without limitation the right to proceed as to both the real property and the personal property contained within the Property as permitted by Uniform Commercial Code Section 9501(4), including conducting a unified sale thereof. Any such disposition may be conducted by an employee or agent of Beneficiary or Trustee. Any person, including both Trustee and Beneficiary, shall be eligible to purchase any part or all of such property at any such disposition.

**This Deed of Trust constitutes a fixture filing under Sections 9102 and 9502 of the California Uniform Commercial Code, as amended or recodified from time to time.**

- 11. Notices, Demands, and Communications.** Formal notices, demands, and communications between Trustor and Beneficiary shall be given by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

**Trustor:** J&A MASH & BARREL, LLC  
6671 N. Sandrini Avenue  
Fresno, CA 93722  
Attn: Jeremy Smith, Manager

**Copy to:** Tuttle & McCloskey  
750 E. Bullard Ave. Ste. 101  
Fresno, CA 93710  
Attn: Craig R. Meredith

**Beneficiary:** City of Fresno  
2600 Fresno Street  
Fresno, CA 93721  
Attn: City Manager

**Copy to:** City of Fresno  
2600 Fresno Street



Fresno, CA 93721  
Attn: City Attorney

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second (2<sup>nd</sup>) business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate by mail.

IN WITNESS WHEREOF, Trustor has executed this Rider concurrently with this Deed of Trust to which it is attached.

**TRUSTOR:**

J&A MASH & BARREL, LLC,  
a California limited liability company

By: NOT TO BE EXECUTED UNTIL CLOSING

Its: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

That certain real property in the City of Fresno, County of Fresno, State of California legally described as follows:

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                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2022 before me, \_\_\_\_\_, a 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.

\_\_\_\_\_  
Notary Public

SEAL: