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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 - Tower (attachment #3 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 among the CITY OF FRESNO, a charter city ("**City**" or "**Buyer**"), TOWER THEATRE PRODUCTIONS, a California general partnership ("**Property Owner**" or "**Seller**"), and FIDELITY NATIONAL TITLE INSURANCE COMPANY, a corporation ("**Escrow Holder**"). TOWER THEATRE PRODUCTIONS FOR THE PERFORMING ARTS, a California non-profit corporation ("**Tower Property Manager**") and TOWER THEATRE PRODUCTIONS, a California corporation ("**Tower Corporation**") are each executing this Agreement for the limited purposes set forth on the signature page. Tower Property Manager and Tower Corporation are sometimes jointly referred to as the "**Tower Entities**."

RECITALS:

A. Seller owns that certain improved real property located at 1247 North Wishon (APN 451-265-02) and 777 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 and by this reference incorporated herein ("**Property**").

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 September 1, 2016 ("**Pizza Lease**").

D. APN 451-265-03 ("**Theater Parcel**") is improved with two (2) buildings: a pub/restaurant known as 777 East Olive Avenue, Fresno, CA 93728 and currently leased to J&A Mash & Barrel, LLC ("**Sequoia**") pursuant to that certain Lease with execution date of February 12, 13 and commencement date of August 1, 2022 as amended by that certain Lease Extension Agreement dated May 1, 2017 and that certain Assignment of Lease dated March 11, 2020 ("**Sequoia Lease**"); and (ii) a stage theater (originally 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**").

E. The Property is managed by Tower Property Manager.

F. The Pizza Lease, the Sequoia Lease, the Adventure Agreement and all other leases affecting the Property are hereinafter collectively referred to as the "**Leases**" and the respective tenants under the Leases collectively referred to as the "**Tenants**."

G. The Sequoia Lease contains a right of first refusal to buy its portion of the Property ("**RoFR**") which requires, among other things, an agreement to establish the purchase price and a parcel map in order to create a legal parcel of the portion subject to the Sequoia Lease ("**Brewery Parcel**").

H. The Tower Property Manager 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**").

I. 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**."

J. The existence of the Original PSA triggered the RoFR under the Sequoia Lease and Sequoia exercised its rights to purchase the Brewery Parcel. However, the parties thereto disputed the calculation of the purchase price. On February 16, 2021, Sequoia filed a complaint in Fresno 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**").

K. 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.

L. 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**." Adventure is currently threatening to file additional lawsuits or amendments to its current lawsuit.

M. Pursuant to this Agreement, Seller will sell the Property to City pursuant to the terms specified below. Concurrently with this Agreement, City and Sequoia will enter into a separate Purchase and Sale Agreement of Real Property and Joint Escrow Instructions whereby City will sell the Brewery Parcel to Sequoia with the sale closing concurrently with this transaction ("**Sequoia PSA**").

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 Property which, at Buyer's election, shall be subject to a new Parcel Map (in accordance with Section 2.3). Seller covenants and agrees to obtain the execution by Tower Entities for any documents required to effect the sale pursuant to this Agreement.

2.2 Additional Property Included in Sale. In addition to the fee title to the Property, Seller is also selling to Buyer all of Seller's interest in all furniture, personal property, machinery, apparatus and equipment owned by Seller and currently used in the operation, repair and maintenance of the Property ("**Personal Property**"), including the following:

- (a) Seller's interest in all signs, logos, advertising trade names or styles relating to the Property, if any;
- (b) Seller's interest in all Leases;
- (c) Seller's interest in any and all transferable guaranties and warranties covering all or any part of the Property or Personal Property, if any;
- (d) Seller's interest in any and all contracts pertaining to the ownership, operation, management and/or maintenance of the Property and/or Personal Property, if any (other than any interest or claim with respect to Tenant's under their respective Lease);
- (e) Seller's interest in any other property, tangible or intangible, owned or held by Seller in connection with the Property and/or Personal Property other than any interest or claim with respect to the Tenants; and
- (f) All the items identified in Section 9.7.

Notwithstanding any of the foregoing, Seller shall be allowed sixty (60) days after the Closing to remove any personal property relating to family items of Seller or any of its owners or principals (or their owners or principals) at the Property.

2.3 Termination of Business Operations. Seller shall be solely responsible for the payment of all sales and employment taxes for the operations at the Property, all wages and other benefits due to employees and as of the Closing, and Seller hereby indemnifies Buyer with respect to the payment of such taxes and obligation. Seller shall remove all personal property not included in the sale as part of the "**Personal Property**" as defined in Section 2.2 in the time specified in Section 2.2. Seller's obligations under this Section shall survive the Closing.

2.4 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 Buyer's option, a parking parcel ("**New Parcel Map**"). Buyer shall coordinate the New Parcel map with Sequoia. 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**"). 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. Seller shall cooperate with the processing of the New Parcel Map and execute any documents reasonably required to complete and file the New Parcel Map.

2.5 Concurrent Closing of Sequoia Escrow. Notwithstanding the other provisions of this Agreement requiring the concurrent closing of the Sequoia Escrow, In the event that this Escrow cannot timely close because Sequoia has not satisfied their conditions to close under the Sequoia PSA, or if Sequoia refuses to close at that time, Buyer shall buy the entire Property consistent with the terms and conditions in this Agreement, except that Seller shall provide the Brewery Parcel Grant Deed (as defined in Section 6.1.a) conveying title to Sequoia to be held in escrow and Tower shall sign an agreement to cooperate with the Buyer with respect to the Sequoia Closing (including providing documents as reasonably required by the Title Company to issue the Brewery Parcel Owner's Title Policy) in a form satisfactory to Buyer, and provided that five percent (5%) of the

Purchase Price ("**Withheld Funds**") shall be held in Escrow until Sequoia closes on the Brewery Parcel at which time Buyer shall execute all documents reasonably required by Escrow to release the Withheld Funds to Seller. The parties shall execute a holding agreement in the form required by Escrow and the costs of such holding escrow shall be paid by Buyer. At Buyer's sole discretion, Buyer may elect to have title to the Brewery Parcel transferred to Buyer pursuant to a new Grant Deed ("**Alternate Brewery Parcel Grant Deed**") which Seller shall execute, acknowledge and deliver to Escrow (together with any additional information or documents reasonably required by the Title Company to issue the Brewery Parcel Owner's Title Policy in favor of Buyer ("**Buyer's Election Notice**"). Buyer's Election Notice must be provided to Seller not later than December 15, 2022 so that the Alternate Brewery Parcel Grant Deed can be recorded, the Brewery Parcel Owner's Title Policy can be issued and the Withheld Funds can be released not later than December 31, 2022.

2.6 Limited Waiver and Release. As of the Closing, the purchase price for the Property to be paid by Buyer to Seller under this Agreement is all-inclusive of Seller's interest in the Property and all damages of every kind and nature suffered, or to be suffered as a result of Buyer's acquisition of the Property for public purposes. Upon Close of Escrow, Seller and its successors and assigns shall be deemed to have knowingly and voluntarily waived, released and discharged Buyer from liability and responsibility for or related to any right Seller has, has had or in the future may have to any claim for compensation or damages or liability of any kind, whether known, unknown, foreseen or unforeseen, relating in any way to or arising out of Buyer's acquisition of the Property. In that regard, Seller and its successors and assigns knowingly and voluntarily waive and release Buyer, its employees, agents and officers from liability as to the following: any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes including, without limitation, Seller's fee interest in the land, severance damages, relocation expenses or damages, loss of business goodwill and/or lost profits, loss or impairment of any "bonus value" attributable to any lease; damage to or loss of improvements pertaining to realty, costs, interest, attorneys' fees, and any claim whatsoever of Seller which might arise out of or relate in any respect to the acquisition of the Property by Buyer. Nothing in this Section 2.6 shall have any effect upon the obligations of Buyer and Seller under that certain Joint Defense, Litigation and Indemnity Agreement dated April __, 2022.

Seller's Initials: _____

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 execution of the Sequoia PSA by its parties, both of which must occur no later than June 1, 2022 ("**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 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) (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 Deposit (as defined in Section 5.2 below) is deposited with Escrow Holder; and
- c. The Sequoia Escrow is concurrently opened with Escrow Holder.

5. PURCHASE PRICE; DEPOSIT; PAYMENT OF PURCHASE PRICE

5.1 Purchase Price. The purchase price for the Property is Six Million Five Hundred Thousand Dollars (\$6,500,000) ("**Purchase Price**").

5.2 Deposit. Concurrently with Opening of Escrow, Buyer shall deposit with Escrow Holder in Good Funds (as defined in Section 5.4), the sum of One Hundred Thousand Dollars (\$100,000) ("**Deposit**") to be held by Escrow Holder for the benefit of the parties and applied against the Purchase Price at Closing or refunded or forfeited in accordance with the terms of this Agreement. The Deposit shall be fully refundable to Buyer on or before the expiration of the Due Diligence Period. If the Closing does not occur due solely to Buyer's default, the Escrow Holder shall disburse the Deposit to Seller as liquidated damages pursuant to Section 15 below.

5.3 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, Buyer shall deposit into Escrow the balance of the Purchase Price in Good Funds.

5.4 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.

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 deeds executed and acknowledged by Seller in the form of Exhibit B-1 for the Tower Parcel to Buyer ("**Tower Parcel Grant Deed**") and Exhibit B-2 for the Brewery Parcel to Sequoia¹ ("**Brewery Parcel Grant Deed**"). The Tower Parcel Grant Deed and the Brewery Parcel Grant Deed are sometimes jointly referred to as the "**Grant Deeds**."
- (b) A Bill of Sale in the form of Exhibit C ("**Bill of Sale**") executed by Seller in favor of Buyer for the Personal Property (in accordance with Section 9.7) for the Property.
- (c) Two (2) copies of the Assignments and Assumption of Leases in the form of Exhibit D ("**Lease Assignment**") executed by Seller for the Leases which, if requested by Buyer, shall also be executed by either or both of the Tower Entities.
- (d) Two (2) copies of the General Contract Assignment and Assumption Agreement in the form of Exhibit E ("**General Assignment**") for the Contracts as set forth in Section 9.4(c) executed by Seller.
- (e) Estoppel Certificates in accordance with Section 9.8 for all the Tenants.
- (f) The REA, if applicable, pursuant to Section 2.3.
- (g) A non-foreign affidavit as required by federal law.
- (h) If requested by the Title Company or Buyer, a quitclaim deed executed by Tower

¹ In the event that the Sequoia Escrow does not close concurrently pursuant to Section 2.5, the Sequoia Parcel Grant Deed will be held in Escrow.

Property Manager to terminate any possible interest it may have in the Property as a result of its execution of the Amended Original PSA.

- (i) Two (2) copies of the Theater Operations Contract substantially in the form of Exhibit E executed by Laurence Abbate as an individual ("**Theatre Operations Contract**").
- (j) Such funds 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) The statutorily required Certificate of Acceptance of the Tower Parcel Grant Deed in the form attached to the Tower Parcel Grant Deed (and if applicable to the Brewery Parcel Grant Deed) ("**Certificate of Acceptance**") prior to recordation.
- (c) The REA, if applicable.
- (d) Two (2) copies of the Lease Assignment executed by Buyer.
- (e) Two (2) copies of the General Assignment executed by Buyer.
- (f) Two (2) copies of the Theatre Operations Contract executed by Buyer.
- (g) 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 (including, but not limited to, Bill of Sale, Assignment of Leases and General Assignment) with the date of Close of Escrow. Escrow Holder will cause the REA (if applicable) and the Grant Deed (with the Certificate of Acceptance attached) to be recorded (in that order) when it can issue the Owner'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 Tower Parcel Grant Deed (with the Certificate of Acceptance), the original to be mailed to Buyer following recordation thereof;
- (ii) One (1) certified conformed copy of the Brewery Parcel Grant Deed, the original to be mailed to Sequoia following recordation thereof;
- (iii) One (1) certified conformed copy of the Non-Foreign Affidavit;

- (iv) The Owner's Title Policy;
- (v) One (1) original each of the Bill of Sale, the Assignment of Leases and the General Assignment;
- (vi) The original Estoppel Certificates from each of the Tenants;
- (vii) One (1) original of the Theatre Operations Contract; and
- (viii) One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by Buyer or Seller pursuant to the terms hereof.

(b) **To Seller:**

- (i) One (1) original each of the Assignment of Leases, the General Assignment, and the Non-foreign Affidavit;
- (ii) One (1) conformed copy of the Bill of Sale; and
- (iii) One (1) certified copy, conformed if recorded, of any other document delivered to Escrow Holder by Buyer or Seller pursuant to the terms hereof.

(c) **To Abatte:**

- (i) One (1) originally executed copy of the Operations Management Contract.

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 Sequoia Escrow closes concurrently². The terms "**Close of Escrow**" and/or "**Closing**" are used herein to mean the time Grant Deed (with the Certificate of Acceptance) is recorded in the Official Records of the County Recorder of Fresno County, California.

7.2 Limited Automatic Extension. Notwithstanding the above, in the event Escrow is legally prohibited from closing, included 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. In the event of such occurrence, the parties shall notify Escrow Holder.

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

7.4 Possession. Upon the Close of Escrow, exclusive possession and occupancy of the Property shall be delivered to Buyer free and clear (i) of all personal property except for the Personal Property being transferred to Buyer pursuant to the Bill of Sale; (ii) all debris; and (iii) all the Tenants subject to their respective Lease.

² The requirement of the concurrent closing with the Sequoia Escrow is subject to the provisions of Section 2.5.

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

7.6 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.

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.

(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 Owners Title Policy.

A. Tower Parcel 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 ("**Tower Parcel Owner's Title Policy**") insuring title to the Tower Parcel 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 Pizza Lease; (iv) the Adventure Lis Pendens; and (v) exceptions caused solely by the acts of Buyer. The amount of the insurance coverage shall be in the amount of the Five Million Three Hundred Thousand Dollars (\$5,300,000). The cost of the Tower Parcel Owner's Title Policy shall be paid by Seller. The Tower Parcel Owner's Title Policy shall include any available title insurance, extended coverage or endorsements that Buyer may reasonably request provided, however, Buyer shall be responsible to timely obtain the survey and the cost of such extended coverage requested by Buyer shall be at Buyer's cost and expense.

B. Brewery Parcel Owner's Title Policy. At the Close of Escrow, Escrow Holder shall furnish to Buyer with an ALTA non-extended owner's Policy of Title Insurance ("**Brewery Parcel Owner's Title Policy**") in accordance with the terms of the Sequoia Escrow³ in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000). The cost of the Brewery Parcel Owner's Title Policy shall be paid by Seller. The Brewery Parcel Owner's Title Policy shall include any available title insurance, extended coverage or endorsements that Buyer may reasonably request provided, however, Buyer shall be responsible to timely obtain the survey and the cost of such extended coverage requested by Buyer shall be at Buyer's cost and expense.

C. Owners' Title Policies. The Tower Parcel Owner's Title Policy and the Brewery Parcel Owner's Title Policy are jointly referred to as the "**Owners' Title Policies.**"

8.3 Lis Pendens. Concurrently with the Closing, the Sequoia Lis Pendens shall be removed from record title pursuant to the Sequoia PSA⁴. The parties anticipate that, unless they are able to settle with Adventure, that the Adventure Lis Pendens will remain of record and that the Owner's Title Policy will reflect such as exceptions.

9. DUE DILIGENCE.

9.1 Seller's Obligation to Deliver Due Diligence Items. Within ten (10) days following Opening of Escrow, Seller shall promptly deliver all Due Diligence Items (as defined in Section 9.4) to Buyer.

9.2 Due Diligence Delivery; Due Diligence Date; Due Diligence Period. The term "**Due Diligence Date**" shall mean the date which is thirty (30) following the date of this Agreement. The term "**Due Diligence Period**" shall mean the period beginning on the date of the Agreement

³ Subject to the terms of Section 2.5, in the event that the Sequoia Escrow does not close concurrently, the Brewery Parcel Grant Deed is to be held in escrow until the closing of the Sequoia Escrow. In the event that the Brewery Parcel is transferred to Buyer pursuant to the Alternate Brewery Parcel Grant Deed (defined in Section 2.5, the Brewery Parcel Owner's Title Policy shall be issued to Buyer subject to the same exceptions specified for the Tower Parcel Owner's Title Policy but also including the Sequoia Lis Pendens.

⁴ Subject to the terms of Section 2.5 and Footnote 3 above.

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).

9.4 Due Diligence Items and Related Obligations

(a) Due Diligence Items. The term "**Due Diligence Items**" shall mean the following documents relating to the Property to the extent such documents are in the possession or control of the Seller:

- Full and complete copies of all Leases;
- Original architectural and current "as-built" building plans, if any;
- Any engineering, soils studies, soils compaction reports and grading plans, if any;
- Environmental audits and reports, environmental remediation plans and any documents related thereto, if any;
- Inspections, reports, notices and/or correspondence regarding structural, seismic, roof, HVAC, soil, paving, environmental and ADA compliance, if any;
- Permits, inspections, reports, notices and/or correspondence regarding governmental agency review and approval respecting fire, building, health, zoning and use compliance, if any;
- Copy of any documents related to an existing survey, recorded map and CC&Rs affecting the Property;
- NHD Report (pursuant to Section 9.6);
- Copy of any documentation related to the physical condition of the Property, including but not limited to geological, soils, engineering, structural, mechanical, and safety inspections and reports;
- Copies of all maintenance and operations contracts with third parties with respect to the Property ("**Contracts**");
- Operating Statements for the last two (2) years and the 2022 projections;
- A list of all capital improvements made to the Property within the last five (5) years and related documentation;
- Copies of any governmental correspondence regarding zoning, use or code compliance issues affecting the Property;
- Copies of lease agreements affecting the Property together with a rent roll with security deposits listed; and
- Such other information as Buyer may reasonably request.

Buyer has the right to provide copies of all Due Diligence Items to Sequoia.

(b) Return of Documents. If Buyer does not acquire the Property, all documents delivered by Seller or otherwise obtained by Buyer and relating to the Property shall be returned or delivered to Seller within ten (10) days following termination of this Agreement.

9.5 Entry for Investigation.

(a) Right to Investigate. At Buyer's sole cost and expense, Buyer and its agents and contractors shall have the right at reasonable times during normal business hours upon reasonable prior notice to Seller to make an analysis of the Property consisting of such engineering, feasibility studies, soils tests, ADA/Title 24 compliance review; inspections, environmental studies, surveys and any and all other investigations of any kind as Buyer may desire, in its sole discretion, in order that Buyer may determine the suitability of the Property for Buyer's contemplated uses and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property. All costs and expenses under this Section 9.5 shall be Buyer's sole responsibility. Notwithstanding the foregoing, Buyer shall not conduct any intrusive testing or inspection (e.g. core sampling) without the prior written consent of Seller which shall not be unreasonably withheld or delayed.

(b) Property Occupied by a Tenant. To the extent of its rights under the respective Lease, Seller shall provide Buyer access to the respective portion of the Property subject to that Lease.

(c) Conditions to Entering Property. Prior to entering the Property, Buyer shall (i) notify Seller prior to each entry of the date and purpose of intended entry and provide to Seller the names and affiliations of the persons entering the Property; (ii) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (iii) comply with all applicable laws and governmental regulations; (iv) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; (v) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the property in the amounts required by the State of California; (vi) provide to Seller prior to initial entry reasonable evidence of public liability insurance of not less than One Million Dollars (\$1,000,000); and (vii) return the Property to its original condition following Buyer's entry.

(d) Obligation to Discharge Liens. Buyer shall promptly pay and discharge all demands for payment relating to Buyer's entry on and investigation of the Property and take all other steps to avoid the assertion of claims or lien against the Property.

(e) Indemnity. Buyer hereby agrees to indemnify, and hold Seller, its officers, agents and employees free and harmless from and against any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, causes of action, judgments, court costs and legal or other expenses (including attorneys' fees) which Seller may suffer or incur as a direct consequence of Buyer's exercise of the license granted pursuant to this Section 9.5 or any act or omission by Buyer, any contractor, subcontractor or material supplier, engineer, architect or other person or entity acting by or under Buyer (except Seller and its agents) with respect to the Property, excepting to the extent such claims arise out of the negligence or misconduct of Seller.

9.6 NHD Report. Within five (5) days of Opening of Escrow, Escrow 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.

9.7 Personal Property. Seller shall cooperate with Buyer in creating a list of the Personal Property which shall be attached as Exhibit 1 to the Bill of Sale which shall include the following: business assets including all fixed auditorium chairs and fixed furnishings, all rights to: "Tower Theater" brand rights, lobby etched glass of the Huntsman, all lighting/sound/projection equipment and ancillary equipment (to extent owned by Seller or an entity related to Seller), JBL speakers on the sides of the auditorium, inventory of all beer, wine and food stuffs, all cooking/bar equipment and tables & chairs in the Tower lounge and all furniture and fixtures that are a part of the

historic designation of the Property on the federal historic list including, but not limited to, the official designation plaque and the awards for the historic restoration the California Preservation Foundation Award for Outstanding Achievement in Restoration and the Award of Honor from the AIA, San Joaquin Chapter.

9.8 Estoppel Certificates. At least ten (10) days prior to the Closing Date, Seller shall have delivered to Buyer through Escrow Holder an Estoppel Certificate in the form reasonably required by Buyer executed by each Tenant ("**Estoppel Certificates**"). The Estoppel Certificates shall be consistent with any information provided by Seller on the Rent Roll. In the event of an inconsistency between the Rent Roll and the Estoppel Certificates, the Estoppel Certificates shall control. In the event that any Tenant is not required to execute an estoppel certificate under its Lease or refuses to execute an estoppel certificate, Seller shall provide to Buyer the information which would otherwise be in the estoppel certificate in a form required by Buyer under penalty of perjury which shall survive the Closing.

9.9 Assignment of Contracts. As to those contracts Buyer elects to assume after review in accordance with Section 9.4 for the Property, Seller shall assign same which shall be listed on an Exhibit 1 to be attached to the General Assignment for the Property. As to those contracts Buyer does not elect to assume, Seller shall terminate; provided, however, in the event Seller is unable to terminate any contract which Buyer elects not to assume, Seller shall notify Buyer and Buyer may otherwise agree to assume such contracts and so notify Seller. If Buyer does not elect to assume such contracts, Seller shall promptly terminate the respective Contract.

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.
- (b) The New Parcel Map is issued and filed in the Official Records of Fresno County and the PM Title Guarantee (as defined in Section 2.4).
- (c) Buyer has issued Buyer's Due Diligence Notice approving all due diligence matters provided Section 7.
- (d) The Sequoia Escrow closes concurrently (subject to Section 2.5).
- (e) Seller has executed and delivered to Escrow Holder the REA (if applicable), Grant Deed, Bill of Sale, Assignment of Leases and General Assignment.
- (f) Estoppel Certificates have been executed by the Tenants and delivered to Escrow Holder and which have been approved by Buyer pursuant to Section 9.8.
- (g) All of the information provided by Seller including information provided in the representations and warranties or otherwise provided to Buyer as part of the Due Diligence is true and correct as of the Closing.
- (h) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.

- (i) 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) Buyer has executed the acceptance of the Certificate of Acceptance and delivered same to Escrow Holder to be attached to the Grant Deed prior to recordation.
- (b) Buyer has executed and delivered to Escrow Holder two (2) copies of the Assignment of Leases and General Assignment.
- (c) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (d) Buyer is not in default of its obligations under this Agreement.

11. REPRESENTATIONS AND WARRANTIES.

11.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Buyer, each of which is true in all respects as of the Opening of Escrow and shall be true in all respects on the date of Close of Escrow with respect to the Property:

- a. This Agreement has been duly authorized and executed on behalf of Seller. As of the Opening of Escrow, this Agreement constitutes a valid and binding agreement, enforceable in accordance with its terms.
- b. Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer, or otherwise dispose of any portion or portions of the Property except as otherwise provided herein.
- c. Seller represents that: (i) neither the Property nor any part thereof is in breach of any environmental laws; (ii) no part of the Property has ever been used as a landfill, dump, toxic waste disposal site or storage area; (iii) there are no underground storage tanks at the Property, or, with respect to removed tanks, at the time of removal, any contaminated soil was removed; and (iv) the Property is free of any Hazardous Materials that would trigger response or remedial action under any environmental laws or any existing common law theory based on nuisance or strict liability. This warranty is limited to matters of which Seller has actual knowledge, and Buyer acknowledges that Seller has not made any affirmative investigation as to environmental issues affecting the Property in connection with this Agreement. As used in this Agreement, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any applicable federal, state or local laws or regulations, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

- d. Except as set forth in the Recitals, there is no litigation pending, threatened against or by Seller or the Property which relates to, or if decided adversely, could have a material adverse effect upon, the Property.
- e. Except as disclosed to Buyer by Seller as part of the Due Diligence Items, the Property is not subject to any operating, maintenance, or repair contract or other agreements that will bind the Property or Buyer after the Closing.
- f. Except as noted below, none of the Tenants are in breach of its respective Lease and all the information provided by each Tenant in the Estoppel Certificate is true and correct. Notwithstanding the foregoing, Seller has sent Sequoia a number of notices and demands for compliance with the Sequoia Lease which remain unresolved.

No representation, statement or warranty by Seller in this Agreement contains or will contain any untrue statements or omits, or will omit, a material fact necessary to make the statement of fact therein recited not misleading. If, after Seller's execution of this Agreement and prior to the Closing, any event occurs or condition exists of which Seller becomes aware which renders any of the representations contained herein untrue or misleading, Seller shall promptly notify Buyer in writing. The representations and warranties shall survive the Closing and delivery of the Grant Deed and shall not be affected by any investigation, verification or approval by either party or by anyone on behalf of either party. Until the Closing, if Seller learns of any fact or condition which would cause any of the warranties and representations in this Section not to be true as of the Closing, Seller shall immediately give written notice of such fact or condition to Buyer.

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

11.2.1 Municipality; Authority. Buyer is a municipal corporation 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/Threatened Actions. 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. To Buyer's knowledge, 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 except as disclosed in the Recitals and as threatened by Adventure.

The representations and warranties provided in this Section 11 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 provide 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 REA, if applicable, and Grant Deed to Buyer at 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 Fresno County, 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 Prorations; Security Deposits; and Utilities.

a. Real Estate Taxes. All non-delinquent general and special real property taxes and assessments shall be paid current at Close of Escrow. Real property taxes shall not be prorated. After Closing, Seller shall have the right to recover any excess taxes paid directly from the County. Buyer shall cooperate with any filing for a refund by Seller.

b. Utilities. Buyer and Seller shall cause all utilities which are in the name of Seller to be transferred to the name of Buyer as of the Close of Escrow or as soon thereafter as practicable. Utilities shall be prorated to the Close of Escrow. In the event final amounts with respect to said prorations are not available as of Close of Escrow, the proration shall be done on an estimated basis and the parties shall prepare a final proration within sixty (60) days following Close of Escrow. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within thirty (30) days after completion of the final proration.

c. Rents and Security Deposits under Leases. Rents under the Leases and Adventure Agreement (if applicable) shall be prorated to the Closing Date. Buyer shall also be credited with the security deposits under the Leases.

d. Contracts. All Contracts being assigned to Buyer shall be prorated to the Closing.

e. Prorations. All prorations shall be to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year.

The provisions of this Section 12.3 shall survive Close of Escrow. If either party fails to pay its pro rata share of taxes or other expenses by the times herein provided, interest shall accrue on all unpaid amounts from when owing until paid at five percent (5%) per annum.

12.4 Payment of Costs

(a) Cost Allocation. Seller shall pay, if applicable, the Seller's Broker Commission (as defined in Section 12.8) ("**Seller's Charges**"). Buyer shall pay the costs of the Owner's Title Policy, the NHD Report, and 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.

NOTE: No documentary transfer taxes shall be payable pursuant to R&T Code Section 11922 and no recording fees for the Grant Deeds shall be payable pursuant to Government Code Section 27383.

(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.

12.5 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.

12.6 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.

12.7 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.

12.8 Brokerage Commissions. Seller's broker under the Original PSA was Strong Holdings, Inc. (dba KW Commercial) ("**Seller's Broker**") which may be entitled to a commission out of Seller's net proceeds as may be determined by Seller prior to the Closing ("**Seller's Broker Commission**"). If Seller determines, in Seller's sole discretion, that Seller's Prior Broker is entitled to a Seller's Broker Commission, joint instructions between Seller and Seller's broker shall be deposited with Escrow Holder with respect to the amount to be paid. Except as set forth above, 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. RISK OF PHYSICAL LOSS. Risk of physical loss to the Property shall be borne by Seller prior to the Close of Escrow and by Buyer after Close of Escrow. In the event that prior to the Closing the Property shall be damaged by fire, flood, earthquake or other casualty Buyer shall have the option to terminate this Agreement, provided notice of such termination is delivered to Seller within twenty (20) days following the date Buyer learns of the occurrence of such casualty. If Buyer fails to terminate this Agreement pursuant to the foregoing sentence within said twenty (20) day period, Buyer shall complete the acquisition of the Property, in which case Seller shall assign to Buyer the interest of Seller in all insurance proceeds relating to such damage (subject to the rights of tenants under leases of the Property). In the event the Buyer does not terminate this Agreement as provided above, Seller shall consult with Buyer regarding any proposed settlement with the insurer and Buyer shall have the reasonable right of approval thereof. Seller shall hold such proceeds until the Close of Escrow. In the event this Agreement is terminated for any reason (other than any obligation of Buyer under Section 7.5), Buyer shall have no right to any insurance proceeds.

14. INTENTIONALLY OMITTED.

15. DEFAULT OF BUYER; LIQUIDATED DAMAGES. IF BUYER SHOULD DEFAULT UNDER THIS AGREEMENT, THEN BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT BY BUYER OR FAILURE OF ESCROW TO CLOSE ON OR BEFORE THE CLOSING DATE, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IN THE EVENT OF AND FOR SUCH DEFAULT BY BUYER, THE DEPOSIT SHALL BE SELLER'S SOLE MONETARY REMEDY THEREFOR. THE FOREGOING LIMITATION OF DAMAGES SHALL NOT APPLY TO ANY DEFAULT OR OBLIGATION OF BUYER UNDER SECTION 9.5(e).

Seller's Initials

Buyer's Initials

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 Seller:	Tower Theatre Properties 815 E. Olive Avenue Fresno, CA 93728 Attn: James L. Abbate
With a copy to:	Coleman & Horowitz 499 West Shaw Avenue, Suite 116 Fresno, California 93704 Attn: Fred Meine, Esq.
To Buyer:	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 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

Exhibit B-1	Tower Parcel Grant Deed (with Certificate of Acceptance)
Exhibit B-2	Brewery Parcel Grant Deed
Exhibit C	Bill of Sale
Exhibit D	Lease Assignment
Exhibit E	General Assignment
Exhibit F	Operators Management Agreement

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 Seller and Tower Property Manager 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.

Note: Sections 2.6 and 15 need to be separately initialed as indicated.

SELLER:

TOWER THEATRE PROPERTIES,
a California general partnership

By: Tower Theater Properties,
a California corporation
General Partner

By: _____
Its: _____

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: _____
Its: _____

TOWER PROPERTY MANAGER:

**Agrees and confirms its obligations under
Sections 6.1(h), 6.1(j) & 17**

TOWER THEATER PRODUCTIONS
FOR THE PERFORMING ARTS,
a California non-profit corporation

By: _____

Its: _____

BUYER:

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

ABBATE:

**Agrees and confirms his obligations
under Section 6.1(i)**

Laurence Abbate

READ AND ACCEPTED:

ESCROW HOLDER:

TOWER CORPORATION:

Agrees and confirms its obligations under the applicable sections of this Agreement

TOWER THEATER PRODUCTIONS, a
California corporation

By: _____

Its: _____

FIDELITY NATIONAL TITLE INSURANCE
COMPANY, a corporation

By: _____
Jessica Avila, Escrow Officer

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-1

TOWER GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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, TOWER THEATRE PRODUCTIONS, a California general partnership ("**Grantor**"), hereby grants to the CITY OF FRESNO, a charter city ("**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"

TOWER THEATRE PRODUCTIONS, a
California general partnership

Date: _____, 2022

By: Tower Theater Properties,
a California corporation
General Partner

By: _____

Its: _____

NOT TO BE EXECUTED UNTIL CLOSING

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: _____

Its: _____

NOT TO BE EXECUTED UNTIL CLOSING

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

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

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by TOWER THEATRE PRODUCTIONS, a California general partnership ("**Grantor**"), by that certain Grant Deed dated _____, 2022 ("**Grant Deed**") to the CITY OF FRESNO ("**Grantee**"), is hereby accepted by the undersigned officer and agent of the CITY OF FRESNO and that the CITY OF FRESNO consents to the recording of the Grant Deed.

Signed and dated at Fresno, California on _____, 2022.

GRANTEE:

CITY OF FRESNO, a charter city

By: _____

NOT TO BE EXECUTED UNTIL CLOSING

Georgeanne White, City Manager

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 B-2

BREWERY PARCEL GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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, TOWER THEATRE PRODUCTIONS, a California general partnership ("**Grantor**"), hereby grants to the _____ ("**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"

TOWER THEATRE PRODUCTIONS, a
California general partnership

Date: _____, 2022

By: Tower Theater Properties,
a California corporation
General Partner

By: _____

Its: _____

NOT TO BE EXECUTED UNTIL CLOSING

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: _____

Its: _____

NOT TO BE EXECUTED UNTIL CLOSING

**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 C
BILL OF SALE

This Bill of Sale is provided by TOWER THEATRE PRODUCTIONS, a California general partnership ("**Seller**") in favor of the CITY OF FRESNO, a charter city ("**Buyer**"), with respect to the sale and transfer of all right, title and interest in and to the Personal Property defined in Section 2.2 of that certain Purchase and Sale Agreement Under Threat of Condemnation and Joint Escrow Instructions ("**PSA**"), dated April ____, 2022, between Seller and Buyer (collectively, the "**Assets**").

NOW, THEREFORE, this Bill of Sale is issued by Seller in favor of Buyer in accordance with the following:

1. Seller represents, warrants and covenants to Buyer that it is the lawful owner of the Assets, and that it has the right to sell, transfer, and convey the same.
2. Seller hereby sells, assigns, transfers and conveys to Buyer all of Seller's right, title and interest in and to the Assets as part of the consideration under that certain PSA related to that certain real property located at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) in the City of Fresno, CA ("**Property**").
3. The Assets are located at the Property.
4. The provisions of this Bill of Sale shall bind and benefit the legal representatives, successors and assigns of Buyer and Seller.
5. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California. This Bill of Sale may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of _____, 2022.

SELLER:

TOWER THEATRE PRODUCTIONS,
a California general partnership

By: Tower Theater Properties,
a California corporation
General Partner

By: NOT TO BE EXECUTED UNTIL CLOSING
Its: _____

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: NOT TO BE EXECUTED UNTIL CLOSING
Its: _____

EXHIBIT D

LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment Agreement**") is dated as of _____, 2022 ("**Assignment Date**"), by and between TOWER THEATRE PRODUCTIONS, a California general partnership ("**Assignor**"), and the CITY OF FRESNO, a charter city ("**Assignee**").

RECITALS

A. Assignor is the owner of that certain real property located in the City of Fresno, County of Fresno, State of California, located at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) in the City of Fresno, CA together with all improvements thereon (collectively, "**Property**").

B. On _____, 2022, Assignor and Assignee entered into an Agreement for Purchase and Sale of Real Property under Threat of Condemnation and Joint Escrow Instructions pursuant to which Assignee agreed to purchase the Property from Assignor ("**Purchase Agreement**").

C. The Property is subject to that certain lease identified on Exhibit A attached hereto and incorporated herein by reference ("**Lease**").

D. Assignee wishes to acquire, and Assignor is willing to transfer, Assignor's interest in the Lease concurrent with the Assignee's acquisition of the Property from Assignor. Accordingly, this Assignment Agreement shall only be effective upon the close of escrow conveying the Property from Assignor to Assignee pursuant to the Purchase Agreement which date is set forth above as the Assignment Date.

NOW, THEREFORE, in consideration of the mutual promises of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Recitals.** All of the foregoing recitals are true and correct and are incorporated herein by reference.

2. **Assignment.** Assignor hereby assigns, sells, conveys, and otherwise transfers to Assignee all of Assignor's interests, rights, and obligations under the Lease. This assignment shall be effective as of the Assignment Date. Assignee's execution hereof confirms that Assignor shall no longer be liable for the performance of any obligations, terms, covenants, or conditions under the Lease arising after the Assignment Date and that Assignee hereby agrees to forever release Assignor from the performance of any such obligations, terms, covenants, and conditions under the Lease.

3. **Assumption of Obligations and Rights.** Assignee hereby accepts all of Assignor's interests, rights, and obligations under the Lease arising after the Assignment Date and assumes and agrees to perform all of Assignor's corresponding obligations, terms, covenants, and conditions under the Lease accruing from, and after the Closing Date.

4. **Representations, Warranties and Covenants.** All Assignor's and Assignee's representations, warranties and covenants set forth in the Purchase Agreement shall survive the Closing and are incorporated into this Assignment Agreement.

5. **Due Execution.** The person(s) executing this Assignment Agreement on behalf of

the parties hereto warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Assignment Agreement on behalf of said party; (iii) by so executing this Assignment Agreement, such party is formally bound to the provisions of this Assignment Agreement; and (iv) the entering into of this Assignment Agreement does not violate any provision of any other agreement to which said party is bound.

6. Effect on Assigned Lease. Except for the assignment of Assignor's interests to Assignee in accordance with the provisions of this Assignment Agreement, the parties further agree that nothing in this Assignment Agreement shall be deemed as modifying or otherwise affecting any of the provisions of the Lease.

7. Indemnification. Assignor agrees to indemnify, defend, and hold harmless Assignee and all persons and entities affiliated with Assignee including their respective officers, agents and employees from and against any and all claims, liabilities, and losses (collectively, "**Claims**") arising out of the Lease arising before the Assignment Date, including any Claims arising as a result of any inaccuracies in Assignor's representations and warranties set forth in the Purchase Agreement and in this Assignment Agreement. Assignee shall indemnify, defend, and hold harmless Assignor and all persons and entities affiliated with Assignor including their respective officers, agents and employees from and against any and all Claims arising out of the Lease arising after the Assignment Date, including any Claims arising as a result of any inaccuracies in Assignee's representations and warranties set forth in the Purchase Agreement and in this Assignment Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the Assignment Date.

ASSIGNOR:

TOWER THEATRE PRODUCTIONS, a
California general partnership

By: Tower Theater Properties,
a California corporation
General Partner

By: NOT TO BE EXECUTED
UNTIL CLOSING

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: _____
Its: _____

ASSIGNEE:

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 1
IDENTIFICATION OF LEASES

EXHIBIT E

GENERAL CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS GENERAL CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment Agreement**") is dated as of _____, 2022 ("**Assignment Date**"), by and between TOWER THEATRE PRODUCTIONS, a California general partnership ("**Assignor**"), and the CITY OF FRESNO, a charter city ("**Assignee**").

RECITALS

A. Assignor is the owner of that certain real property located in the City of Fresno, County of Fresno, State of California, located at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) in the City of Fresno, CA together with all improvements thereon (collectively, "**Property**").

B. On _____, 2022, Assignor and Assignee entered into an Agreement for Purchase and Sale of Real Property under Threat of Condemnation and Joint Escrow Instructions pursuant to which Assignee agreed to purchase the Property from Assignor ("**Purchase Agreement**").

C. The Property is subject to certain service, maintenance and other contracts identified on Exhibit A attached hereto and incorporated herein by reference ("**Contracts**").

D. Assignee wishes to acquire, and Assignor is willing to transfer, Assignor's interest in the Contracts concurrent with the Assignee's acquisition of the Property from Assignor. Accordingly, this Assignment Agreement shall only be effective upon the close of escrow conveying the Property from Assignor to Assignee pursuant to the Purchase Agreement which date is set forth above as the Assignment Date.

NOW, THEREFORE, in consideration of the mutual promises of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Recitals.** All of the foregoing recitals are true and correct and are incorporated herein by reference.

2. **Assignment.** Assignor hereby assigns, sells, conveys, and otherwise transfers to Assignee all of Assignor's interests, rights, and obligations under the Contracts. This assignment shall be effective as of the Assignment Date. Assignee's execution hereof confirms that Assignor shall no longer remain liable for the performance of any obligations, terms, covenants, or conditions under the Contracts arising after the Assignment Date and that Assignee hereby agrees to forever release Assignor from the performance of any such obligations, terms, covenants, and conditions under the Contracts.

3. **Assumption of Obligations and Rights.** Assignee hereby accepts all of Assignor's interests, rights, and obligations under the Contracts arising after the Assignment Date and assumes and agrees to perform all of Assignor's corresponding obligations, terms, covenants, and conditions under the Contracts accruing from, and after the Closing Date.

4. **Representations, Warranties and Covenants.** All Assignor's and Assignee's representations, warranties and covenants set forth in the Purchase Agreement shall survive the

Closing and are incorporated into this Assignment Agreement.

5. Due Execution. The person(s) executing this Assignment Agreement on behalf of the parties hereto warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Assignment Agreement on behalf of said party; (iii) by so executing this Assignment Agreement, such party is formally bound to the provisions of this Assignment Agreement; and (iv) the entering into of this Assignment Agreement does not violate any provision of any other agreement to which said party is bound.

6. Effect on Assigned Contract. Except for the assignment of Assignor's interests to Assignee in accordance with the provisions of this Assignment Agreement, the parties further agree that nothing in this Assignment Agreement shall be deemed as modifying or otherwise affecting any of the provisions of the Contracts.

7. Indemnification. Assignor agrees to indemnify, defend, and hold harmless Assignee and all persons and entities affiliated with Assignee including their respective officers, agents and employees from and against any and all claims, liabilities, and losses (collectively, "**Claims**") arising out of the Contracts arising before the Assignment Date, including any Claims arising as a result of any inaccuracies in Assignor's representations and warranties set forth in the Purchase Agreement and in this Assignment Agreement. Assignee shall indemnify, defend, and hold harmless Assignor and all persons and entities affiliated with Assignor including their respective officers, agents and employees from and against any and all Claims arising out of the Contracts arising after the Assignment Date, including any Claims arising as a result of any inaccuracies in Assignee's representations and warranties set forth in the Purchase Agreement and in this Assignment Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement as of the Assignment Date.

ASSIGNOR:

TOWER THEATRE PRODUCTIONS, a
California general partnership

By: Tower Theater Properties,
a California corporation
General Partner

By: _____
Its: NOT TO BE EXECUTED
UNTIL CLOSING

By: Pacific Produce Distributors, Inc.,
a California corporation
General Partner

By: _____
Its: _____

ASSIGNEE:

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 1
IDENTIFICATION OF CONTRACTS

EXHIBIT F

THEATER OPERATOR CONTRACT

OPERATOR AGREEMENT CITY OF FRESNO, CALIFORNIA

THIS AGREEMENT is made and entered into, effective _____, 2022, by and between the CITY OF FRESNO, a California municipal corporation ("**City**"), and LAURENCE ABBATE ("**Operator**").

RECITALS

A. City owns that certain real property commonly known as _____ ("**Property**") improved with the Tower Theater building which contains an operating theater ("**Theater**") and a number of businesses and an adjacent building currently leased to Me 'N Eds.

B. City desires to obtain continued management services for the Theatre (the performing arts theater only) ("**Project**") to allow currently scheduled performances to continue as planned.

C. Operator is engaged in the business of furnishing services as the operations manager of Theatre, a performing arts venue, and hereby represents that he desires to and is professionally and legally capable of performing the services called for by this Agreement.

D. Operator acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107.

E. This Agreement will be administered for City by its City Manager ("**Administrator**") or their designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. **Scope of Services.** Operator shall perform to the satisfaction of City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A** ("**Services**").
2. **Term of Agreement and Time for Performance.** This Agreement shall be effective from the date on which the City acquires fee title to the Property ("**Effective Date**") and shall continue in full force and effect for one (1) year from the Effective Date, subject to any earlier termination in accordance with this Agreement. The Services shall commence on the Effective Date and all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) Operator's sole compensation for satisfactory performance of all Services shall be a total fee of Eight Thousand Dollars (\$8,000) per month, payable monthly. Such fee shall be net of all operating expenses, including, but not limited to, expenses related to employees, promoters, sound systems, etc., incurred by Operator in performance of the Services.

(b) Operator and City shall develop an estimated monthly expense report prior to the commencement of this Agreement. City shall be responsible for payment of such expenses in a timely manner as such expenses have historically been paid or to reimburse Operator for the payment of such expenses. Expenses exceeding the estimated monthly amount by more than five percent (5%) shall be borne by Operator unless prior approval for such expenses has been obtained in writing from City. Detailed statements shall be rendered monthly for Services performed and expenses incurred in the preceding month and will be payable in the normal course of City business.

(c) The parties may modify this Agreement to increase or decrease the scope of Services or provide for the rendition of Services not required by this Agreement, which modification shall include an adjustment to Operator's compensation. Any change in the scope of Services must be made by written amendment to the Agreement signed by an authorized representative for each party. Operator shall not be entitled to any additional compensation if Services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of City to Operator thereafter upon the earlier of: (i) Operator's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Operator; (ii) sixty (60) calendar days' prior written notice with or without cause by Operator to City; or (iii) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, Operator shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Operator that are owned by City. Subject to the terms of this Agreement, Operator shall be paid compensation for Services satisfactorily performed prior to the effective date of termination. Operator shall not be paid for any work or Services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of Operator to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Operator, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

(d) Upon any breach of this Agreement by Operator, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by

appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, Operator may pursue damages against the City accordingly.

(e) Operator shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Operator fails to comply with any terms or conditions of this Agreement.

(f) Operator shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Operator and without its fault or negligence, including, but not limited to, acts of God or the public enemy, acts of City in its contractual capacity, nonperformance by performers and/or promoters, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, picketing, community unrest, unusually severe weather, and delays of common carriers. Operator shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by Operator pursuant to this Agreement shall not be made available to any individual or organization by Operator without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Operator shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including, but not limited to, business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media, except (i) where such information is now or becomes part of the public domain through no fault of Operator, (ii) information which is already in Operator's possession at the time of the disclosure, (iii) information which comes into Operator's possession from a third party without breach of this Agreement, or (iv) information that is independently developed by Operator or a third party without recourse to or utilization of any portion of the Confidential Information imparted or transmitted hereunder. All Confidential Information shall be and remain confidential and proprietary in City.

(b) Any and all writings and documents prepared or provided by Operator pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Operator shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Operator should subcontract all or any portion of the Services, Operator shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. **Indemnification.** To the furthest extent allowed by law, Operator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Operator, its employees, agents, or volunteers in the performance of this Agreement.

If Operator should subcontract all or any portion of the Services, Operator shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

7. **Insurance.**

(a) Throughout the life of this Agreement, Operator shall obtain and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Operator or any of its subcontractors/sub-Operators fail to maintain any required insurance in full force and effect, all Services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Operator shall be withheld until notice is received by City that the required insurance has been restored to full force and effect. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Operator of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Operator shall not be deemed to release or diminish the liability of Operator, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Operator. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Operator, its agents, employees, persons under the supervision of Operator, suppliers, invitees, sub-contractors, or anyone employed directly or indirectly by any of them.

(d) If Operator should subcontract all or any portion of the Services, Operator shall require each subcontractor to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Operator and City prior to the commencement of any Services by the subcontractor. Operator and any subcontractor shall establish additional insured status for City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

8. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, Operator shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, Operator shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Operator in such statement.

(b) Operator shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Operator shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Operator and the respective subcontractor(s) are in full compliance with all laws and regulations. Operator shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Operator shall immediately notify City of these facts in writing.

(c) In performing the work or Services to be provided hereunder, Operator shall not employ or retain the Services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Operator represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither Operator, nor any of Operator's subcontractors performing any Services shall bid for, assist anyone in the preparation of a bid for, or perform any Services pursuant to, any other contract in connection with this Agreement unless fully disclosed to and approved by the City Manager, in advance and in writing. Operator and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Agreement unless such interest is in accordance

with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Operator shall remain responsible for complying with Section 9(b), above.

(f) If Operator should subcontract all or any portion of the Services, Operator shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 8 shall survive expiration or termination of this Agreement.

9. Recycling Program. In the event Operator maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno solely to fulfill its obligations under the terms of this Agreement, Operator shall, at the City's expense:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

10. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of Operator's expenses pertaining to this Agreement shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Operator pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Operator should subcontract all or any portion of the Services, Operator shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 10(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by City, Operator shall have provided evidence to City that Operator is licensed to perform the Services (or that no license is required). If Operator should subcontract all or any portion of the Services, Operator

shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the Services (or that no license is required) before beginning work.

11. Nondiscrimination. To the extent required by controlling federal, state and local law, Operator shall not employ discriminatory practices in the provision of Services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Operator agrees as follows:

(a) Operator will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Operator will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Operator shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Operator's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Operator will, in all solicitations or advertisements for employees placed by or on behalf of Operator in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Operator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Operator's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Operator should subcontract all or any portion of the Services, Operator shall cause each subcontractor to also comply with the requirements of this Section 11.

12. Independent Contractor.

(a) In the furnishing of the Services, Operator is acting solely as an independent contractor. Neither Operator, nor any of its , agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Operator shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Operator is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Operator and City. Operator shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Operator shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Operator and its agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Operator shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Operator shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Operator's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Operator may be providing services to others unrelated to City or to this Agreement.

13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

14. Binding. Subject to Section 15, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

15. Assignment.

(a) This Agreement is personal to Operator and there shall be no assignment by Operator of its rights or obligations under this Agreement without the prior written

approval of the City Manager or designee. Any attempted assignment by Operator, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) Operator hereby agrees not to assign the payment of any monies due Operator from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Operator directly to Operator.

16. **Compliance With Law.** In providing the Services, Operator shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. Operator shall be solely responsible for determining whether payment of prevailing wage is required. Operator shall indemnify, hold harmless, and defend (with counsel acceptable to City) the City against any claim for damages, compensation, fines, penalties, or other amounts arising out of the failure or alleged failure of any person or entity (including Operator, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with other applicable provisions of Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations.
17. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
18. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
19. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
20. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
21. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
22. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the

prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

23. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
24. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
25. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
26. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
27. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Operator.
28. **Authority to Sign.** The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY:

CITY OF FRESNO,
a California municipal corporation

By: _____
Georgeanne White, City Manager

APPROVED AS TO FORM:

City Attorney's Office

By: _____
Douglas Sloan, City Attorney

ATTEST:

TODD STERMER, CMC
City Clerk

By: _____
Deputy

Address:

City of Fresno
Attention: Georgeanne White,
City Manager
2600 Fresno Street, Room 2064
Fresno, CA 93721
Phone: (559) 621-7770
E-mail: [E-mail address]

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

OPERATOR:

LAURENCE ABBATE

Address:

Laurence Abbate

Phone: [area code and #]
E-mail: [E-mail address]

EXHIBIT A

SCOPE OF SERVICES

**Operator Service Contract between City of Fresno (City)
and Laurence Abbate (Operator)
Continued Management of Theatre**

Operator is currently engaged in the business of furnishing services as an operations manager of Theatre as a performing arts center, and he agrees to maintain the same performances currently scheduled, and traditionally held at Theatre, and to cooperate with the City in good faith on community access rights to use and enjoy Theatre. Any scheduling changes shall require pre-approval in writing by the City. The City may also request scheduling changes be made. Operator shall use his best efforts to maximize the use of the Theatre. .

The form of the contract to be used with any performers shall be approved by City together with the rate to be charged. The processing of all monies shall be pursuant to the directions of the City.

Use of any related entities to perform services for the Theater shall be approved in writing by City in advance.

Nothing herein shall be construed to require that Operator act as the property manager for the Property and Operator shall have no duty or right to negotiate any leases for the Property.

EXHIBIT B

INSURANCE REQUIREMENTS **Operator Service Agreement between City of Fresno (City)** **and Laurence Abbate (Operator)** Continued Management of Theater

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agent, and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to Operator’s profession. Architect and engineer’s coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

Operator, or any party the Operator subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY:
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
- 2. COMMERCIAL AUTOMOBILE LIABILITY:
\$1,000,000 per accident for bodily injury and property damage.
OR*
PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:
 - (i) \$100,000 per person;
 - (ii) \$300,000 per accident for bodily injury; and,
 - (iii) \$50,000 per accident for property damage.
- 3. WORKERS' COMPENSATION INSURANCE as required by the State of California with statutory limits.
- 4. EMPLOYER'S LIABILITY:
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
- 5. PROFESSIONAL LIABILITY (Errors and Omissions):
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event Operator purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Operator shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Operator shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Operator shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Operator shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, Operator's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Operator's insurance and shall not contribute with it. Operator shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Operator and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Operator.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Operator, Operator must purchase "extended reporting" coverage for a minimum of five years after completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice by certified mail, return receipt requested, has been given to City. Operator is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Operator shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Operator shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

Operator shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Operator shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST
Continued Management of Theater

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.

Signature

Date

Name

Company

Address

City, State Zip)