

INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT (“Agreement”), made by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California (“COUNTY”), and Lytton Vineyard & Winery, L.P., a California Limited Partnership, doing business as Avensole Vineyard & Winery (“PROPERTY OWNER”), relating to the PROPERTY OWNER’S indemnification of the COUNTY under the terms set forth herein:

WITNESSETH:

WHEREAS, the PROPERTY OWNER has a legal interest in the certain real property described as APN 951-140-041 (“PROPERTY”); and,

WHEREAS, on August 27, 2014, PROPERTY OWNER filed applications for Conditional Use Permit No. 3711 and Change of Zone No. 7848 and on December 8, 2014, filed an application for Noise Exemption No. 00007 (“PROJECT”); and,

WHEREAS, judicial challenges of projects requiring discretionary approvals, including, but not limited to, California Environmental Quality Act determinations, are costly and time consuming. Additionally, project opponents often seek an award of attorneys’ fees in such challenges; and,

WHEREAS, since property owners are the primary beneficiaries of such approvals, it is appropriate that such owners bear the expense of defending against any such judicial challenge, and bear the responsibility of any costs, attorneys’ fees and damages which may be awarded to a successful challenger; and,

WHEREAS, in the event a judicial challenge is commenced against the PROJECT, the COUNTY has requested and the PROPERTY OWNER has agreed to defend, indemnify and hold harmless the COUNTY, its agents, officers, or employees from any claim, action or proceeding against the COUNTY, its agents, officers, or employees to attack, set aside, void or annul any approval of the COUNTY, its advisory agencies, appeal boards, or legislative body concerning the PROJECT or its associated environmental documentation (“LITIGATION”); and,

WHEREAS, this Agreement is entered into by the COUNTY and PROPERTY OWNER to establish specific terms concerning PROPERTY OWNER’S indemnification obligation for the PROJECT.

NOW, THEREFORE, it is mutually agreed between COUNTY and PROPERTY OWNER as follows:

1. **Indemnification.** PROPERTY OWNER , at its own expense, shall defend, indemnify and hold harmless the COUNTY, its agents, officers, and employees from and against any claim, action or proceeding brought against the COUNTY, its agents, officers, and employees to attack, set aside, void or annul any approval of the PROJECT including any associated costs, damages, and expenses including, but not limited to, costs associated with Public Records Act requests submitted to the COUNTY related to the PROJECT and an award of attorneys' fees and costs incurred or arising out of the above-referenced claim, action or proceeding brought against the COUNTY ("Indemnification Obligation.")

2. **Defense Cooperation.** PROPERTY OWNER and the COUNTY shall reasonably cooperate in all aspects of the LITIGATION. Nothing contained in this Agreement, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, appeal or to decline to settle or to terminate or forego defense or appeal of the LITIGATION. It is also understood and agreed that all litigation pleadings are subject to review, revision and approval by COUNTY's Office of County Counsel.

3. **Representation and Payment for Legal Services Rendered.** COUNTY shall have the absolute right to approve any and all counsel retained to defend COUNTY in the LITIGATION. PROPERTY OWNER shall pay the attorneys' fees and costs of the legal firm retained by APPLICANT to represent the COUNTY in the LITIGATION. Failure by PROPERTY OWNER to pay such attorneys' fees and costs may be treated as an abandonment of the PROJECT and as a default of APPLICANT's obligations under this Agreement.

4. **Payment for COUNTY's LITIGATION Costs.** Payment for COUNTY's costs related to the LITIGATION shall be made on a deposit basis. LITIGATION costs include any associated costs, fees, damages, and expenses as further described in Section 1. herein as Indemnification Obligation. Within thirty (30) days of receipt of notice from COUNTY that LITIGATION has been initiated against the PROJECT, PROPERTY OWNER shall initially deposit with the COUNTY's Planning Department the total amount of Twenty Thousand Dollars (\$20,000). PROPERTY OWNER shall deposit with COUNTY such additional amounts as COUNTY reasonably and in good faith determines, from time to time, are necessary to cover costs and expenses incurred by the COUNTY, including but not limited to, the Office of County Counsel, Riverside County Planning Department and the Riverside County Clerk of the Board associated with the LITIGATION. Within ten (10) days of written notice from COUNTY, PROPERTY OWNER shall make such additional deposits. Collectively, the initial deposit and additional deposits shall be referred to herein as the "Deposit."

5. **Return of Deposit.** COUNTY shall return to PROPERTY OWNER any funds remaining on deposit after ninety (90) days have passed since final adjudication of the LITIGATION.

6. **Notices.** For all purposes herein, notices shall be effective when personally delivered, delivered by commercial overnight delivery service, or sent by certified or registered mail, return receipt requested, to the appropriate address set forth below:

COUNTY:
Office of County Counsel
Attn: Melissa Cushman
3960 Orange Street, Suite 500
Riverside, CA 92501

PROPERTY OWNER :
Lytton Vineyard & Winery, L.P.
Attn: Sheldon H. Lytton
24910 Las Brisas Road, Suite 102
Murrieta, CA 92562

With copies to:
Bratene Construction and Engineering
Attn: Oz Bratene
41625 Enterprise Circle South #B-2
Temecula, CA 92590

Temecula Valley Winery Management
Attn: Rebaux Steyn
27495 Diaz Road
Temecula, CA 92590

7. **Default and Termination.** This Agreement is not subject to termination, except by mutual agreement or as otherwise provided herein. In the event of a default of PROPERTY OWNER's obligations under this Agreement, COUNTY shall provide written notification to PROPERTY OWNER of such alleged default and PROPERTY OWNER shall have ten (10) days after receipt of written notification to cure any such alleged default. If PROPERTY fails to cure such alleged default within the specified time period or otherwise reach agreement with the COUNTY on a resolution of the alleged default, COUNTY may, in its sole discretion, do any of the following or combination thereof:

- a. Deem PROPERTY OWNER's default of PROPERTY OWNER's obligations as abandonment of the PROJECT and as a breach of this Agreement;
- b. Rescind any PROJECT approvals previously granted;
- c. Settle the LITIGATION.

In the event of a default, PROPERTY OWNER shall remain responsible for any costs and attorney's fees awarded by the Court or as a result of settlement and other expenses incurred by the COUNTY related to the LITIGATION or settlement.

8. **COUNTY Review of the PROJECT.** Nothing in this Agreement shall be construed to limit, direct, impede or influence the COUNTY's review and consideration of the PROJECT.

9. **Complete Agreement/Governing Law.** This Agreement represents the complete understanding between the parties with respect to matters set forth herein. This Agreement shall be construed in accordance with the laws of the State of California.

10. **Successors and Assigns.** The obligations specific herein shall be made, and are binding on the successors in interest of the PROPERTY OWNER, whether the succession is by agreement, by operation of law or by any other means.

11. **Amendment and Waiver.** No modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by all parties.

12. **Severability.** If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. **Survival of Indemnification.** The parties agree that this Agreement shall constitute a separate agreement from any PROJECT approval, and if the PROJECT, in part or in whole, is invalidated, rendered null or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Agreement, which shall survive such invalidation, nullification or setting aside.

14. **Interpretation.** The parties have been advised by their respective attorneys, or if not represented by an attorney, represent that they had an opportunity to be so represented in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement.

15. **Captions and Headings.** The captions and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.

16. **Jurisdiction and Venue.** Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to

any other court or jurisdiction.


17. **Counterparts; Facsimile & Electronic Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. To facilitate execution of this Agreement, the parties may execute and exchange facsimile or electronic counterparts, and facsimile or electronic counterparts shall serve as originals.

18. **Joint and Several Liability.** In the event there is more than one PROPERTY OWNER, the liability of PROPERTY OWNER shall be joint and several, and PROPERTY OWNER each of them shall be jointly and severally liable for performance of all of the obligations of PROPERTY OWNER under this Agreement.

19. **Effective Date.** The effective date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the effective date.


IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed by their authorized representatives as of the date written.

COUNTY:
COUNTY OF RIVERSIDE,
a political subdivision of the State of California

By: 
Steven Weiss
Riverside County Planning Director

Dated: 9/10/15

PROPERTY OWNER:
Lytton Vineyard & Winery, L.P, a California Limited Partnership
DBA Avensole Vineyard & Winery

By:
Lytton Estates, LLC
Its General Partner
By: 
Sheldon H. Lytton
Managing Member

Dated: 9/09/2015

FORM APPROVED COUNTY COUNSEL
BY:  9/10/15
MICHELLE GLACK DATE

California All-Purpose Certificate of Acknowledgment

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 Riverside

s.s.

On Sept. 9, 2015 before me, Maria L. Olson, Notary Public
Name of Notary Public, Title

personally appeared Sheldon Lytton
Name of Signer (1)

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.

M. Olson
Signature of Notary Public

Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Indemnification Agreement containing 5 pages, and dated 9/9/2015.

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-fact
- Corporate Officer(s) _____
Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____
Name(s) of Person(s) Entity(ies) Signer is Representing

| Additional Information | |
|---|---|
| Method of Signer Identification | |
| Proved to me on the basis of satisfactory evidence: | |
| <input type="checkbox"/> form(s) of identification | <input type="checkbox"/> credible witness(es) |
| Notarial event is detailed in notary journal on: | |
| Page # _____ | Entry # _____ |
| Notary contact: _____ | |
| Other | |
| <input type="checkbox"/> Additional Signer | <input type="checkbox"/> Signer(s) Thumbprints(s) |
| <input type="checkbox"/> | _____ |