

**AGREEMENT FOR PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

by and between

**CITY OF YORBA LINDA
("SELLER")**

and

**EVAN CARL, EVAN'S SMOKEHOUSE
("BUYER")**

**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

This AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (“**Agreement**”) is made and entered into as of July ____, 2022 (“Effective Date”), by and between the CITY OF YORBA LINDA, a California municipal corporation (“**Seller**”) and Evan’s Smokhouse, LLC _____ (“**Buyer**”).

R E C I T A L S :

A. Seller (“**City**”) is the owner of that certain unimproved real property located at 4859 Main Street, Yorba Linda, CA 92886, County of Orange, State of California, commonly identified as APN 323-304-19 (“**Property**”). The Property is depicted in Exhibit “A”, which is attached hereto and incorporated herein by this reference.

B. Buyer desires to purchase the Property “”from Seller and Seller desires to sell the Property to Buyer, on the terms and conditions set forth herein.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and the mutual covenants herein contained, the parties hereto agree as follows:

1. **PURCHASE PRICE.**

1.1 **Amount.** Subject to the terms of this Agreement, Buyer hereby agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, for the purchase price of Two Hundred Forty Thousand Dollars (\$240,000) (the “**Purchase Price**”).

1.2 **Payment of Purchase Price.** The Purchase Price shall be paid in accordance with the following:

1.2.1 Within five (5) days after the “Opening of Escrow,” Buyer shall deposit with “Escrow Holder” (as those terms are defined in Section 3.1) as an earnest money deposit the sum of Twenty-Five Dollars (\$25,000) (the “**Earnest Money Deposit**”). ”In the event the “Escrow” (as that term is defined in Section 3.1) closes, Escrow Holder shall apply the Earnest Money Deposit towards the Purchase Price. In the event the Escrow is terminated and fails to close, for any reason other than Seller’s default of the terms hereof, Escrow Holder shall promptly, but no later than five (5) days after said termination, release the Earnest Money Deposit to Seller. Notwithstanding anything in this Agreement to the contrary, a portion of the Earnest Money Deposit, in the amount of One Hundred Dollars (\$100) (the “**Independent Contract Consideration**”), shall be released immediately to City as consideration for Seller’s execution and delivery of this Agreement and Buyer’s right to approve or disapprove any Buyer contingencies set forth in this Agreement with respect to the Property. The Independent Contract Consideration

is in all respects nonrefundable to Buyer as consideration for Seller's execution and delivery of this Agreement and Buyer's right to approve or disapprove any Buyer contingencies set forth in this Agreement.

1.2.2 On or before 5:00 p.m. on the business day preceding the "Closing Date" (as that term is defined in Section 4.1) or such earlier time as required by Escrow Holder in order to close Escrow on the Closing Date, Buyer shall deposit with Escrow Holder in Good Funds the Purchase Price, less the Earnest Money Deposit, and such additional funds as may be required to meet Buyer's portion of the closing costs as hereinafter provided.

2. **DUE DILIGENCE**. As used herein, the term "**Due Diligence Period**" shall refer to a period of time to expire upon the date that is one hundred twenty (120) days after the Effective Date. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to and conditioned upon Buyer's approval, deemed approval or waiver of the right to approve of the following contingencies set forth in this Section 2 (collectively, the "**Contingencies**"):

2.1 **Title/Survey**. Seller shall deliver to Buyer, at Buyer's expense, within five (5) days after the Effective Date of this Agreement, a preliminary title report prepared by First American Title Insurance Company (the "**Title Company**"), dated not more than thirty (30) days earlier than the Effective Date describing the state of title of the Property together with copies of all underlying documents (collectively the "**Preliminary Title Report**"). Buyer may, at its sole cost and expense, obtain a current survey of the Property or any portion thereof (the "**Survey**"), provided it commences to do so within thirty (30) days after the Effective Date.

2.1.1 Notwithstanding anything herein to the contrary, Seller shall be obligated to remove all monetary encumbrances against the Property excluding non-delinquent real property taxes and assessments. Buyer shall notify Seller in writing of any objections Buyer may have to title exceptions contained in the Preliminary Title Report or matters shown on the Survey (if Buyer obtains) no later than the date which is thirty (30) days after the later of (i) Buyer's receipt of the Preliminary Title Report or (ii) (if applicable) Buyer's receipt of the Survey ("**Buyer's Objection Notice**"). Buyer's approval or disapproval of the matters set forth in the Preliminary Title Report and the Survey may be granted or withheld in Buyer's sole and absolute discretion. Buyer's failure to provide Seller with a Buyer's Objection Notice within said period shall constitute Buyer's approval of all exceptions to title shown on the Preliminary Title Report and all matters shown on the Survey. Seller shall have a period of fifteen (15) days after receipt of Buyer's Objection Notice in which to deliver written notice to Buyer ("**Seller's Notice**") of Seller's election to either (i) agree to remove the objectionable items on the Preliminary Title Report and/or Survey prior to the "Close of Escrow" (as that term is defined in Section 4.1), or (ii) decline to remove any such title exceptions and/or Survey matters and terminate the Escrow and the obligations of Buyer and Seller to purchase and sell the Property under this Agreement. Seller's failure to provide Buyer with Seller's Notice within said period shall constitute Seller's election not to remove the objectionable items on the Preliminary Title Report and/or the Survey. If Seller notifies Buyer of its election, or is

deemed to have elected, to terminate rather than remove the objectionable items on the Preliminary Title Report and/or Survey, Buyer shall have the right, by written notice delivered to Seller within five (5) days after Buyer's receipt of Seller's Notice, to agree to accept the Property subject to the objectionable items, in which event Seller's election to terminate shall be of no effect, and Buyer shall take title at the Close of Escrow subject to such objectionable items without any adjustment to or credit against the Purchase Price.

2.1.2 Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, including any survey 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 fifteen (15) days following receipt of notice of such additional exceptions. The process set forth above for Buyer's review and Seller's response shall apply to any review and response with respect to any amendment or supplement to the Preliminary Title Report, and the Close of Escrow shall be extended for such period as is necessary to allow for that review and response process to be completed.

2.2 Environmental Condition. Buyer shall have access to the Property, as described in this Section 2.3, in order to permit Buyer or its directors, engineers, analysts, officers, employees, agents, contractors, representatives, attorneys or advisors (collectively, the "**Buyer Representatives**") to investigate the Property.

2.2.1 During the Due Diligence Period, Seller shall permit Buyer and Buyer Representatives, at the sole cost and expense of Buyer, to conduct physical inspections of the Property, including the site work, soil, subsurface soils, drainage, seismic and other geological and topographical matters, location of asbestos, toxic substances, hazardous materials or wastes, if any, and any other investigations as Buyer deems prudent with respect to the physical condition of the Property in order to determine the Property's suitability for Buyer's intended development. In no event shall Buyer conduct any intrusive testing procedures on the Property without the prior written consent of Seller, which consent shall not be unreasonably withheld. Such investigations may be made by Buyer and/or Buyer Representatives during any normal business hours. Seller shall cooperate to assist Buyer in completing such inspections and special investigations at no cost or expense to Seller. Such inspections and investigations shall be conducted only upon no less than twenty-four (24) hours' notice to Seller and shall be conducted at such times and in such a manner as to minimize any disruption to the Property. Seller shall have the right, but not the obligation, to accompany Buyer during such investigations and/or inspections.

2.2.2 As a condition to any such entry, Buyer shall (i) conduct all work or 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; (ii) comply with all applicable laws and governmental regulations; (iii) 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; (iv) 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; (v) provide to Seller prior to initial entry a certificate of insurance evidencing that Buyer and/or the persons entering the Property has procured and has in effect an all-risk public liability insurance policy meeting the following requirements: (1) the insurance shall be written on a per occurrence and not claims-made basis; (2) the amount of insurance shall be a combined single limit of not less than Two Million Dollars (\$2,000,000.00) with a deductible or self-insured retention amount of not more than One Hundred Thousand Dollars (\$100,000); (3) the policy shall name or be endorsed to Seller and Seller's officers, members, officials, employees, agents, and representatives (collectively, "**Seller & Seller Personnel**") as additional insureds; (4) the insurance shall not contain any special limitations on the scope of protection afforded to Seller & Seller Personnel; (5) the policy shall not be canceled by the insurer or Buyer unless there is a minimum of thirty (30) days prior written notice to Seller; (6) the insurer shall waive subrogation rights against the Seller & Seller Personnel; and (7) the insurance shall be primary insurance and not contributory with any insurance any of Seller & Seller Personnel may have; and (8) the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (vi) following Buyer's entry, repair any and all damage to the Property caused by such inspections or investigations in a timely manner. Notwithstanding anything to the contrary herein, Buyer may satisfy the above insurance requirements through self-insurance.

2.2.3 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 of lien against the Property. In the event a claim of lien is recorded by reason of Buyer's entry on the Property, Buyer, within twenty (20) days of such recordation, shall either (i) record or deliver a surety bond sufficient to release such claim or lien in accordance with applicable law; or (ii) provide Seller with such other assurance as Seller may require for the payment of the claim or lien. Seller may elect to record and post notices of non-responsibility from time to time on and about the Property.

2.2.4 Prior to expiration of the Due Diligence Period, Buyer shall notify Seller in writing (i) of Buyer's election to terminate the Escrow and this Agreement, if Buyer disapproves of the physical or environmental conditions of the Property and, as a result, does not wish to proceed with purchasing the Property ("**Buyer's Property Termination Notice**"), or (ii) of any objections Buyer may have (the "**Disapproved Property Matters**") to any physical or environmental conditions of the Property ("**Buyer's Property Objection Notice**"). Buyer's approval or disapproval of the physical and environmental conditions of the Property may be granted or withheld in Buyer's sole and absolute discretion. In the event Buyer terminates this Agreement pursuant to this Section, Buyer and Seller shall be relieved of all further liability under this Agreement, and Buyer shall be entitled to the refund of Earnest Money Deposit. Buyer's failure to provide Seller with a Buyer's Property Termination Notice or a Buyer's Property Objection Notice prior to the expiration of the Due Diligence Period shall constitute Buyer's approval of the condition of the Property. If Buyer provides to Seller Buyer's Property Objection Notice, Seller shall have a period of fifteen (15) days after receipt of Buyer's Property Objection Notice in which to deliver written notice to Buyer ("**Seller's Response**") of

Seller's election to either (i) agree to remove the Disapproved Property Matters prior to the Close of Escrow, or (ii) decline to remove the Disapproved Property Matters and terminate Escrow and the obligations of Buyer and Seller to purchase and sell the Property under this Agreement. Seller's failure to provide Buyer with Seller's Response within said period shall constitute Seller's election not to remove the Disapproved Property Matters prior to the Close of Escrow. If Seller notifies Buyer of its election, or is deemed to have elected, to terminate rather than remove the Disapproved Property Matters, Buyer shall have the right, by written notice delivered to Seller within five (5) days after Buyer's receipt of Seller's Response, to agree to accept the Property subject to the Disapproved Property Matters, in which event Seller's election to terminate shall be of no effect, and Buyer shall take title at the Close of Escrow subject to such Disapproved Property Matters without any adjustment to or credit against the Purchase Price.

3. ESCROW.

3.1 Opening of Escrow. Closing of the sale of the Property shall take place through an escrow ("**Escrow**") to be established within three (3) business days after the Effective Date with First American Title Insurance Company, at its office located at 18500 Von Karman Avenue, Suite 600, Irvine, CA 92621 ("**Escrow Holder**"). The opening of the Escrow (the "**Opening of Escrow**") shall be deemed to be the date that a fully executed copy of this Agreement is delivered to the Escrow Holder. Escrow Holder is instructed to notify Buyer and Seller in writing of the date of the Opening of Escrow.

3.2 Escrow Instructions. This Agreement, once deposited in Escrow, shall constitute the joint escrow instructions of Buyer and Seller to Escrow Holder. Additionally, if Escrow Holder so requires, Buyer and Seller agree to execute the form of escrow instructions that Escrow Holder customarily requires in real property escrows administered by it. In the event of any conflict or inconsistency between Escrow Holder's standard instructions and the provisions of this Agreement, the provisions of this Agreement shall supersede and be controlling.

4. CLOSE OF ESCROW.

4.1 Close of Escrow; Outside Closing Date. Provided that all of the conditions of this Agreement precedent to the "Close of Escrow" (as hereinafter defined) have been satisfied (or waived by the appropriate party) prior to or on the "Outside Closing Date," (as hereinafter defined) the closing of this transaction for the sale and purchase of the Property shall take place on the date which is five (5) days after the date on which all of "Buyer's Conditions to Closing" and all of "Seller's Conditions to Closing" (as those terms are defined in Section 8) have been satisfied (or waived by the appropriate party); provided, however, in no event shall the closing of this transaction occur, if at all, later than July 31, 2023 ("**Outside Closing Date**"). The terms "**Close of Escrow**" and the "**Closing Date**" are used herein to mean the time Seller's grant deed conveying fee title to the Property to Buyer, substantially in the form attached hereto and incorporated herein as Exhibit "B" (the "**Grant Deed**") is recorded in the Official Records of the Office of the County Recorder of Riverside ("**Official Records**"). If Escrow is not in a condition to close by the Outside Closing Date, either party not then in default hereunder may, upon five (5)

days advance written notice to the other party and Escrow Holder, elect to terminate this Agreement and the Escrow. No such termination shall release either party then in default from liability for such default. If neither party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon as possible.

4.2 Recordation; Release of Funds and Documents. Upon the Closing Date, Escrow Holder shall deliver (i) the Purchase Price, less any of Seller's closing costs, to Seller, and (ii) conformed copies of all recorded documents to both Buyer and Seller.

4.3 Escrow Cancellation Charges. If the Escrow does not close due to a default by one of the parties, the defaulting party shall bear all "Escrow Cancellation Charges" (as that term is defined below). If the Close of Escrow does not occur for any reason other than the default of a party, then Buyer and Seller shall each pay fifty percent (50%) of any Escrow Cancellation Charges. As used herein, "Escrow Cancellation Charges" means all fees, charges and expenses incurred by Escrow Holder or third parties engaged by Escrow Holder, as well as all expenses related to the services of the Title Company in connection with the issuance of the Preliminary Title Report and other title matters.

5. DELIVERY OF DOCUMENTS REQUIRED FROM BUYER AND SELLER.

5.1 Buyer's Obligations. Buyer agrees that on or before 5:00 p.m. of the last business day immediately preceding the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following:

- (a) the Purchase Price, less the Earnest Money Deposit; and
- (b) any and all additional funds, instruments or other documents required from Buyer (executed and acknowledged where appropriate) as may be reasonably necessary in order for the Escrow Holder to comply with the terms of this Agreement.

5.2 Seller's Obligations. Seller agrees that on or before 5:00 p.m. of the last business day immediately preceding the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder each of the following:

- (a) the executed and acknowledged Grant Deed;
- (b) a Certificate of Non-Foreign Status (the "**Non-Foreign Affidavit**") Necessary executed and acknowledged by Seller in the form attached hereto as Exhibit "C"; and
- (c) all other funds, items, and instruments required from Seller (executed and acknowledged where appropriate) as may be reasonably necessary in order for Escrow Holder to comply with the provisions of this Agreement.

6. TITLE INSURANCE POLICY.

6.1 Title Policy. At the Closing Date, the Title Company, as insurer, shall issue a standard ALTA owner's standard coverage policy of title insurance ("**Title Policy**"), in favor of Buyer, as insured, with liability in the amount of the Purchase Price, subject to the following:

- (a) non-delinquent real property taxes and assessments;
- (b) title exceptions approved or deemed approved by Buyer pursuant to Section 2.2 above;
- (c) title exceptions, if any, resulting from Buyer's entry onto the Property pursuant to the provisions of Section 2.3 above;
- (d) any other exceptions approved by Buyer; and
- (e) the standard printed conditions and exceptions contained in the ALTA standard coverage owner's policy of title insurance regularly issued by the Title Company.

6.2 Payment for Title Policy. Buyer shall be responsible for all charges for the Title Policy. Buyer shall also pay for the ALTA survey, if applicable.

7. CONDITIONS PRECEDENT TO CLOSING.

7.1 Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement to purchase the Property and close the Escrow shall be subject to the satisfaction or signed written waiver by Buyer of each and all of the following conditions precedent (collectively "**Buyer's Conditions to Closing**"):

- (a) Buyer shall have obtained all project entitlements required for Buyer's proposed development of a restaurant, including, without limitation, a conditional use permit and design review, as required by the City and approved by the Yorba Linda Planning Commission;
- (b) Buyer shall have approved the condition of the title to the Property, in accordance with Section 2.2 hereof;
- (c) Buyer shall have approved the condition of the Property, in accordance with Section 2.3 hereof;
- (d) on the Closing Date, the Title Company shall be irrevocably committed to issue the Title Policy pursuant to Section 6 above insuring fee title to the Property as being vested in Buyer;

(e) Escrow Holder holds all instruments and funds required for the Close of Escrow and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement;

(f) except as otherwise permitted by this Agreement, all representations and warranties by the Seller in this Agreement shall be true on and as of the Closing Date as though made at that time and all covenants of Seller pursuant to this Agreement shall have been fulfilled by the Closing Date;

(g) Seller is not in material default of any term or condition of this Agreement.

In the event that any of Buyer's Conditions to Closing are not satisfied, or waived in a writing signed by Buyer, prior to the expiration of the applicable period for satisfaction or waiver, Buyer may terminate this Agreement. In the event of such termination, neither party shall thereafter have any obligations to, or rights against, the other under this Agreement, except for any obligations that expressly survive the termination of this Agreement.

7.2 Conditions Precedent to Seller's Obligations. The obligations of Seller under this Agreement shall be subject to the satisfaction or signed written waiver by Seller of each and all of the following conditions precedent ("**Seller's Conditions to Closing**"):

(a) Escrow Holder holds the Purchase Price and all other instruments and funds required for the Closing and will deliver to Seller the instruments and funds, including but not limited to the Purchase Price (less Seller's closing costs), accruing to Seller pursuant to this Agreement;

(b) except as otherwise permitted by this Agreement, all representations and warranties by the Buyer in this Agreement shall be true on and as of the Closing Date as though made at that time and all covenants of Buyer pursuant to this Agreement shall have been fulfilled by the Closing Date;

(c) Buyer is not in material default of any term or condition of this Agreement.

In the event that any of Seller's Conditions to Closing are not satisfied, or waived in a writing signed by Seller, prior to the expiration of the applicable period for satisfaction or waiver, Seller may terminate this Agreement. In the event of such termination, neither party shall thereafter have any obligations to, or rights against, the other under this Agreement, except for any obligations that expressly survive the termination of this Agreement.

7.3 Recording of Covenant. Seller acknowledges and consents that a covenant similar in form to the draft covenant attached hereto as Exhibit D is acceptable to Seller and shall be recorded on the Property prior to the Close of Escrow

8. ALLOCATION OF COSTS.

8.1 Buyer's Costs. Buyer shall pay the following costs:

- (a) fifty percent (50%) of Escrow Holder's escrow fee;
- (b) Buyer's own attorney's fees incurred in connection with this Agreement and the transactions contemplated hereby;
- (c) fifty percent (50%) of all the charges for recording the Grant Deed, if any;
- (d) the costs for the ALTA policy of title insurance; and
- (e) any additional title insurance coverages Seller is not required to pay for plus any title endorsements requested by Buyer.

8.2 Seller's Costs. Seller shall pay:

- (a) fifty percent (50%) of the Escrow Holder's escrow fee;
- (b) Seller's own attorney's fees in connection with this Agreement and the transactions contemplated hereby;
- (c) any documentary transfer taxes associated with the conveyance; and
- (d) fifty percent (50%) of all the charges for recording the Grant Deed, if any.

9. AS-IS SALE; RELEASE.

Buyer shall rely solely and exclusively upon the results of its due diligence investigations of the Property, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Property by Buyer and any other matters relevant to the condition or suitability of the Property for the Project, as Buyer may deem necessary or appropriate. Seller makes no representation or warranty to Buyer relating to the condition of the Property or suitability of the Property for any intended use or development by Buyer.

Buyer shall accept all conditions of the Property, without any liability of Seller whatsoever, upon Buyer's approval of the Property pursuant to Section 2.3. Buyer's approval of the Property pursuant to Section 2.3 shall evidence Buyer's unconditional and irrevocable acceptance of the Property in the Property's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION and with full knowledge of the physical condition of the Property, all zoning, other land use laws and other governmental requirements

affecting the Property, and of the conditions, restrictions, encumbrances and all matters of record relating to the Property. Buyer's acceptance of the Property pursuant to Section 2.3 indicating Buyer's unconditional acceptance of the Property shall constitute Buyer's representation and warranty to Seller that Buyer has received assurances acceptable to Buyer by means independent of Seller or any agent of Seller of the truth of all facts material to Buyer's acquisition of the Property pursuant to this Agreement, and that the Property is being acquired by Buyer as a result of its own knowledge, inspection and investigation of the Property and not as a result of any representations made by Seller or any employee, official, consultant or agent of Seller relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. Seller hereby expressly and specifically disclaims any express or implied warranties regarding the Property.

BUYER, ON BEHALF OF ITSELF, ITS SUCCESSORS, AND ASSIGNS, WAIVES AND RELEASES SELLER FROM ANY RIGHT OF ACTION THAT MAY BE AVAILABLE TO ANY OF THEM WITH RESPECT TO THE CONDITION OF THE PROPERTY. BUYER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 5.9, WHICH READS AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY INITIALING BELOW, BUYER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 10:

Buyer's Initials

10. REPRESENTATIONS AND WARRANTIES.

10.1 Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which is true in all respects as of the date hereof and shall be true in all respects on the Closing Date:

10.1.1 Seller is duly organized and existing.

10.1.2 Seller has the legal power, right, and authority to execute, deliver and perform Seller's obligations under this Agreement and the documents executed and delivered by Seller pursuant hereto.

10.1.3 All requisite action (corporate, trust, partnership, or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent of any partner, shareholder, member, creditor, investor, judicial or administrative body, authority or other entity is required which has not been obtained to permit Seller to enter into this Agreement and consummate the transactions contemplated hereby.

10.1.4 The entering into this Agreement does not violate any provision of any other agreement to which Seller is bound.

10.1.5 There is no pending or threatened litigation, lawsuit or administrative proceeding which would adversely affect the Property.

10.1.6 With the exception of the BBQ Lease, there are no contracts affecting the Property and no agreements entered into, by or under Seller which shall survive the Close of Escrow.

10.1.7 Seller has no knowledge of the presence of any hazardous materials on the Property, or any portion thereof, and Seller has not been advised or notified by any third parties, prior owners of the Property, or any federal, state or local governmental agency, of the presence of any hazardous materials on the Property.

In the event Seller becomes aware of a change in circumstance during the term of the Escrow which would cause any of the representations or warranties of Seller under this Section 12 to be untrue, Seller shall advise Buyer of such change in circumstance in writing within five (5) business days from Seller's discovery thereof. Buyer shall then have fifteen (15) business days from receipt of such notice from Seller to deliver written notice to Seller of Buyer's election to either (i) terminate this Agreement, or (ii) waive objection to such change in circumstance and to accept title to the Property at the Close of Escrow subject to such change in circumstance. Buyer's failure to notify Seller in writing within said fifteen (15) business day period shall conclusively be deemed Buyer's election to waive objection to such change in circumstance and to proceed to close this Escrow subject to such change in circumstance. As used herein, the phrase "Seller has no knowledge" shall refer to the actual knowledge of the City Manager of Seller, without any duty of inquiry or investigation.

10.2 Buyer's Representations, Warranties and Covenants.

10.2.1 Buyer is duly organized and existing.

10.2.2 Buyer has the legal power, right, and authority to execute, deliver and perform Buyer's obligations under this Agreement and the documents executed and delivered by Buyer pursuant hereto.

10.2.3 All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein and the consummation of the transactions contemplated hereby. No consent is required which

has not been obtained to permit Buyer to enter into this Agreement and consummate the transaction hereby.

10.2.4 The entering into this Agreement does not violate any provision of any other agreement to which Buyer is bound.

11. CONDEMNATION. In the event that, prior to the Close of Escrow, any governmental entity shall commence any proceedings of or leading to eminent domain or similar type proceedings to take all or any portion of the Property, Buyer and Seller shall promptly meet and confer in good faith to evaluate the effect of such action on the purposes of this Agreement and following such meeting either Buyer or Seller may terminate this Agreement.

12. 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 thereafter. In the event that 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 fifteen (15) business 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 fifteen (15) business 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. 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, Buyer shall have no right to any insurance proceeds.

13. WAIVER OF DAMAGES; SPECIFIC PERFORMANCE. In the event a party defaults under this Agreement, the non-defaulting party's sole and exclusive remedy will be for specific performance of this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO PURSUE DAMAGES RESULTING FROM A DEFAULT OR BREACH OF THIS AGREEMENT, AND IN NO EVENT SHALL THE DEFAULTING PARTY BE LIABLE FOR DAMAGES FOR A DEFAULT OR BREACH OF DEFAULTING PARTY'S OBLIGATION UNDER THIS AGREEMENT, ALL OF WHICH RIGHTS ARE HEREBY WAIVED AND RELINQUISHED BY THE NON-DEFAULTING PARTY. The parties agree that the foregoing limitation on their respective remedies and measure of damages is reasonable under all of the circumstances of this Agreement, and is material consideration for the parties entering into this Agreement.

Seller's Initials

Buyer's Initials

14. MISCELLANEOUS.

14.1 Assignment. 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. Neither party to this Agreement may assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent and approval of the other party, which consent and approval may be withheld in the sole and absolute discretion of either party. No provision of this Agreement is intended nor shall in any way be construed to benefit any party not a signatory hereto or to create a third party beneficiary relationship.

14.2 Choice of Laws. This Agreement shall be governed by the internal laws of the State of California and any question arising hereunder shall be construed or determined according to such law without regard to conflict of law principles. Service of process on Buyer shall be made in accordance with California law. Service of process on Seller shall be made in any manner permitted by California law and shall be effective whether served inside or outside California.

14.3 Attorney's Fees. In the event of any action, including an arbitration proceeding, between Buyer and Seller seeking enforcement of any of the terms and conditions to this Agreement or the Escrow or otherwise in connection with the Property, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees.

14.4 Notices. All notices under this Agreement shall be effective (i) upon personal delivery, (ii) upon delivery by reputable overnight courier that provides a receipt with the date and time of delivery, or (iii) three (3) business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To Seller:	City of Yorba Linda 4845 Casa Loma Avenue Yorba Linda, CA 92886 Phone No: 714-961-7110 Attn: City Manager
Copy to:	Rutan & Tucker, LLP 611 Anton Boulevard, Suite 1400 Costa Mesa, CA 92628-1950 Phone No: (714) 641-5100 Attn: Todd Litfin, Esq.
To Buyer:	Evan Carl Evan's Smokehouse BBQ 17160 Coriander Court Yorba Linda, CA 92887

14.5 Fair Meaning. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto.

14.6 Headings. The headings at the beginning of each numbered Section of this Agreement are solely for the convenience of the parties hereto and are not a part of this Agreement.

14.7 Nonliability of Buyer Officials. No officer, official, member, employee, agent, or representative of Buyer shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

14.8 Gender; Number. As used in this Agreement, masculine, feminine, and neuter gender and the singular or plural number shall be deemed to include the others wherever and whenever the context so dictates.

14.9 Survival. This Agreement and all covenants to be performed after the Closing Date, and, except as otherwise set forth herein, all representations and warranties contained herein, shall survive the Closing Date and shall remain a binding contract between the parties hereto.

14.10 Time of Essence. Time is of the essence of this Agreement and of each and every term and provision hereof, it being understood that the parties hereto have specifically negotiated the dates for the completion of each obligation herein.

14.11 Waiver. A waiver of a provision hereof shall be effective only if said waiver is in writing, and signed by both Buyer and Seller. No waiver of any breach or default by any party hereto shall be considered to be a waiver of any future breach or default unless expressly provided herein or in the waiver.

14.12 Broker's/Consulting Fees. Neither the Buyer nor the Seller has employed a real estate broker to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any broker's commission in connection with the conveyance of the Property arising out of agreements by the indemnifying party to pay any commission.

14.13 No Withholding Because Non-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 Certificate of Non-foreign Status on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the regulations promulgated thereunder and a California Form 593-C.

14.14 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be of equal legal force and effect.

14.15 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to persons, entities, or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14.16 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit "A"	Legal Description of Property
Exhibit "B"	Grant Deed
Exhibit "C"	Certificate of Non-Foreign Status

14.17 Covenants of Seller. Seller agrees that during the period between the Effective Date of this Agreement and the Closing Date:

(a) Seller shall maintain the Property in not less than the state of repair as that existing on the Effective Date (excepting ordinary wear and tear);

(b) Seller shall not convey, grant, license, assign, mortgage, hypothecate, encumber, or otherwise transfer (on or off record) the Property or any interest therein; provided, however, that Buyer acknowledges and agrees that the BBQ Lease is in effect;

(c) Seller shall not alter the physical condition of the Property or introduce or release, or permit the introduction or release, of any Hazardous Material in, from, under, or on the Property;

(d) Prior to the Closing Date, Seller shall maintain Seller's existing insurance on the Property.

14.18 Covenant Against Discrimination. Seller covenants that in its performance of this Agreement it shall not discriminate against any person or group of persons on account of any impermissible classification including but not limited to race, color, creed, gender, sexual orientation, age, religion, marital status, national origin, or ancestry.

14.19 Entire Agreement; Amendment. Except as set forth above, this Agreement and the exhibits incorporated herein contain the entire agreement of Buyer and Seller with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized officers or representatives of each of the parties hereto.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Buyer and Seller each hereby represents that it has read this Agreement, understands it, and hereby executes this Agreement to be effective as of the day and year first written above.

“Seller”

CITY OF YORBA LINDA
a California municipal corporation

Date: _____, 2019

By: _____

Name: Mark Pulone
Its: City Manager

ATTEST:

Marcia Brown, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: _____
Todd Litfin, City Attorney

“Buyer”

Evan Carl,
a _____

Date: _____, 2019

By: _____

Name:
Its:

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

APN 323-304-19

Real property in the City of Yorba Linda, County of Orange, State of California,
described as follows:

LOTS 52 AND 53 OF THE NEWMARK TRACT, AS SHOWN ON A MAP RECORDED
IN BOOK 7, PAGES 45 AND 46 OF MISCELLANEOUS MAPS, RECORDS OF
ORANGE COUNTY, CALIFORNIA.

EXHIBIT "B"

FORM OF GRANT DEED

[SEE FOLLOWING PAGES]

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary transfer tax \$ _____

Computed on the consideration of the full value of property conveyed

[Exempt from recorder's fee pursuant to
Government Code Section 27383]

The undersigned declares exemption
under the following:

Exempt from fee per Government Code
Section 27388.1 (a)(2).1 (a)(2);
recorded concurrently in connection with a
transfer subject to the imposition of
documentary transfer tax

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CITY OF YORBA LINDA, a California municipal corporation (the "**Grantor**"), hereby grants to _____, a _____ (the "**Grantee**"), that certain real property ("**Property**") located in the City of Yorba Linda, County of Orange, State of California, described in the legal description attached hereto as Attachment No. 1 and incorporated herein by this reference, subject to all matters of record.

"Grantor"

CITY OF YORBA LINDA,
a California municipal corporation

Date: _____, 2020

By: _____

Name: _____

Its: _____

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)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

ATTACHMENT NO. 1

LEGAL DESCRIPTION OF PROPERTY

APN 323-304-19

Real property in the City of Yorba Linda, County of Orange, State of California,
described as follows:

LOTS 52 AND 53 OF THE NEWMARK TRACT, AS SHOWN ON A MAP RECORDED
IN BOOK 7, PAGES 45 AND 46 OF MISCELLANEOUS MAPS, RECORDS OF
ORANGE COUNTY, CALIFORNIA.

EXHIBIT "C"

CERTIFICATE OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest in Barton SOCO WEST, INC., a Delaware corporation ("Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Seller's U.S. employer identification number is _____; and
3. Seller's office address is _____.

Seller understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete. I further declare that I have authority to sign this document on behalf of Seller.

"Seller"

CITY OF YORBA LIND,
a California municipal corporation

Date: _____, 2020

By: _____

Name: _____

Its: _____

EXHIBIT "D:

FORM OF AFFORDABILITY COVENANT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Yorba Linda
4845 Casa Loma
P.O. Box 87014
Yorba Linda, CA 92885-8714
Attn: City Clerk

(SPACE ABOVE FOR RECORDER'S USE)

This Covenant is recorded at the request and for the benefit of the City of Yorba Linda, and is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

Covenant

If ten (10) or more residential units are developed on the property identified in Exhibit A (the "Property"), not less than 15 percent of the total number of residential units developed on the Property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the

violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

IN WITNESS WHEREOF, the City has executed this Covenant by and through the signatures set forth below:

“City”

CITY OF YORBA LINDA, a California municipal corporation

By: _____
Mark Pulone, City Manager

ATTEST:

Marcia Brown, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: _____
Todd Litfin, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Yorba Linda, County of Orange, State of California, described as follows:

LOTS 52 AND 53 OF THE NEWMARK TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 7, PAGES 45 AND 46 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

APN: 323-304-19

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 Orange

Subscribed and sworn to (or affirmed) before me on this ___th day of _____, 2022,
by _____, proved to me on the basis of satisfactory
evidence to be the person(s) who appeared before me.

Signature _____

[Seal]