

LEASE AGREEMENT BY AND BETWEEN
CITY OF YORBA LINDA AND EVAN'S SMOKEHOUSE

(Third Amendment)

This Lease Agreement describes the lease of City-owned property located mid-block on Main Street, Yorba Linda (APN 323-304-19), which serves as a public parking lot (as further described in the attached Exhibit A and herein referenced as "Property"), to be leased by Evan Carl, dba Evan's Smokehouse BBQ, Sole Proprietorship, ("Lessee") from the City of Yorba Linda ("Lessor" or "City").

The Lessee has been leasing the property consistently since November 2020 and wishes to continue to utilize the property as the location to host an outdoor eating establishment on a month to month basis while in escrow to acquire the property. The Lessee is being granted continued use of the property beginning September 1, 2022 through June 30, 2023 for the sole purpose of an outdoor barbeque establishment. The following provisions are considered terms of the temporary lease agreement:

4. Lessee shall be allowed to utilize the subject property for a period of time beginning September 1, 2022 through June 30, 2023. Should the Lessee require an extension of the lease beyond June 30, 2023, the request for up to an additional six months extension must be made in writing at least 30 days prior to the lease expiration date and will be considered along with the status of the escrow process. Extension of the lease is not automatic and will require review and approval by the City Manager.
2. Lessee and/or Lessor may terminate the lease during the lease period with a 30-day written notice to vacate.
3. Lessee will be responsible for the installation and maintenance of all on-site improvements, including ground cover, landscaping, lighting, furnishings, etc. Lessee to pay all utility costs associated with the operation.
4. Lessee shall operate and maintain kitchen equipment and dining area in accordance with OC Health standards.
5. Lessee must maintain pedestrian access from the site to the Olinda public parking lot at all times.
6. The Lessee shall be subject to all applicable City ordinances and regulations, including the acquisition of an Encroachment Permit, Temporary Use Permit and City Business License prior to commencement of operations.
7. The hours of operation for onsite activity shall be consistent with the City of Yorba Linda's Municipal Code and is expected to operate between the hours of 11am and 11pm. The lease is granted for operating four days per week (Thursday, Friday, Saturday and Sunday), but may be extended to additional days with approval from the City Manager.

8. The property shall be maintained in a neat and orderly manner to the satisfaction of the City during the entire lease period. Once vacated, the property shall be cleaned and cleared of all debris to the satisfaction of the City.
9. A deposit of \$1,000 is required to be retained by the City and may be used to cover costs associated with clean up and/or damage that is not remedied at conclusion of the lease period. Upon vacation of the property, and should the City retain ownership, City will evaluate the site and identify any necessary repairs in restoring the property to its original state. Any portion of the deposit that is not necessary will be refunded to the Lessee within 30 days of the site inspection. Should the Lessee acquire the property during the leasehold the property will be transferred in "as-is" condition.
10. The Lessee shall incur a negotiated monthly lease rate of \$1,208.00 per month. The lease rate may be adjusted at the time of any extensions consistent with the Consumer Price Index (CPI). The lease payment is due to the City by the 1st of each month, and will be deemed late after the 5th of the month, for which a \$25 late fee may be assessed.
11. The Lessee shall carry minimum insurance requirements as described in more detail below:

Prior to commencement of the Lease, Lessee shall provide proof of General Liability insurance with coverage at least as broad as Insurance Services Office "occurrence" Form CG 0001 and Automobile Liability insurance with coverage at least as broad as Insurance Services Office Form CA 0001 in the amount of \$1,000,000. The City, its officials, officers, employees, agents and volunteers shall be additional insured with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Lessee; or (4) contain any other exclusions contrary to this Agreement. If the existing policies do not meet these insurance requirements, Lessee agrees to amend, supplement or endorse the policies to do so. If Lessee is an employer or otherwise hires one or more employees during the term of this Lease, Lessee shall also provide proof of workers' compensation coverage as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

Lessee shall defend, indemnify and hold the City, their officials, officers, employees, agents, and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages, and injuries, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Lessee, its officials, officers, employees, agents, consultants, contractors, subconsultants, or subcontractors arising out of or in connection with the performance of the Lease, including, without limitation, the payment of all consequential damages, attorneys fees and other related costs and expenses. Lessee's obligation to

indemnify shall not be restricted to insurance proceeds, if any, received by the City, their directors, officials, officers, employees, agents, and volunteers.

Lessee warrants that the individual who has signed this Agreement has the legal power, right and authority to make this Agreement and bind the Contractor hereto. If you agree with the terms of this Letter of Agreement, please indicate by signing and dating where indicated below. A fully executed copy of this Letter of Agreement will be returned to you for your records.

CITY OF YORBA LINDA:

By: _____
Mark Pulone
City Manager

Attest:

By: _____
Marcia Brown
City Clerk

Approved as to form:

By: _____
Rutan & Tucker LLP
City Attorney

LESSEE:

Reviewed and Accepted by Lessee:

By: _____
Signature

Name

Title

Date