

**TERM SHEET FOR LEASE AGREEMENT TO MANAGE AND OPERATE AN OUTDOOR PUBLIC MARKET
ON CITY OF ROCKLIN PROPERTY**

This term sheet is provided for negotiation purposes only and does not create a binding agreement between the parties hereto. Only a Lease Agreement outlining management and operation terms duly executed by the parties will be enforceable. The terms of such agreement will supersede any terms contained herein. The parties to the proposed lease agreement ("Agreement") include the City of Rocklin ("Lessor") and Ale Yard Ventures, LLC also known as BEER 40 of Rocklin ("Lessee").

A. GENERAL

1. Project

Lessor will grant Lessee the right to utilize City owned property to design, fund, construct, and operate an Outdoor Public Market ("Market") offering a vast selection of independent craft beer, wine and non-alcoholic beverages, and seasonal local farm food dining. The Market will include modified cargo containers in support of food and beverage sales, both shaded and non-shaded outdoor seating, a small stage (live performance), kids-area, games area, restrooms, and office along with approximately 19 on-site parking spaces in accord with the attached drawing and proposal (see Exhibit 1). The Market may include retail sales, non-profit events, family movie nights, and incorporate a seasonal "farmers market".

2. Term

- i. The Agreement shall be effective as of the date of execution thereof and remain in effect for an initial five (5) year three (3) month term unless the parties mutually agree in writing to terminate earlier.
- ii. The Agreement will include one option for renewal for up to five (5) years to be exercised at the sole discretion of the Lessee based on an escalation of 2% base rent increase per year or at the rate of CPI, whichever is greater, for the duration of the initial and extension term.
- iii. Subject to restrictions in federal, state, and local law, Lessee shall be granted First Right of Refusal should Lessor elect to sell the land within thirty (30) days following the termination of the Agreement.

3. Maintenance

- i. Lessee will be responsible for regular maintenance and cleanliness of the Market and all improvements installed by the Lessee.
- ii. Lessor is to maintain the surrounding infrastructure, including, but not limited to; access road and drive aisles, off premise drainage swales, off premises landscaping and irrigation, and exterior fencing and gates.

4. Equipment

- i. Lessee will purchase any equipment necessary to operate the Market in the normal course of business.

5. Accounting

- i. Lessee shall provide Lessor with monthly rental payments including a quarterly Income Statement supporting the Additional Rental payment calculation, referenced in Section B2. Lessee shall prepare and deliver to the Lessor on an accrual basis and in accordance with generally accepted accounting principles, regular quarterly and annual financial statements.

- ii. Lessee will provide an annual report to the City covering basic operational information (i.e. number of guests, sales, growth opportunities, etc.)

6. Permitting

- i. Lessee shall be responsible for obtaining and maintaining all permitting, licensure, easements, zoning conditions, use permits, and any other necessary land use approvals for the intended use of the property.
- ii. To the extent allowed by federal, state, and local law, Lessor will defer City permitting and entitlement fees. City permit and entitlement fees will be deferred to year (2) two. The City fees will be amortized over 48 months and billed to Lessee beginning month 13 through month 60. Should the Agreement be terminated by either party for any reason whatsoever, all deferred fees shall become immediately due.

7. Security

- i. Lessee is responsible for the everyday security of the Market from unauthorized and unsupervised use.

8. Utilities and Permanent Structures

- i. Lessee is responsible to arrange for, obtain, and pay for both deposits and monthly charges for all utilities (water, sewer, electric, gas, internet, etc.) necessary to support Market operations.
- ii. Lessee and its sub-contractors shall pay the general prevailing rate of per diem wages for any construction or maintenance activities which qualify under the California Labor Code.
- iii. Lessee is required to bond for any improvements which may require bonding under federal, state, or local law.

9. Parking

- i. Lessee, with Lessor's approval, may stripe one parking stall to allow patron access to the Market across the existing swale.
- ii. Lessee may not mark, label, block, or otherwise control any parking stalls for its use or patron use without Lessor's written consent.

10. Hours of Operation

- i. Lessee will work with the Planning Commission and staff to establish hours of operation which will be documented through the planning entitlement process.

B. RENT

1. Base Rent

- i. The Lessee shall pay to the Lessor a base rent of \$1,000 per month. Rent shall commence on December 1, 2021 or within 90 days following the issuance of a Temporary or Permanent Certificate of Occupancy, whichever occurs later. Rent shall escalate at a rate of 2% per year or the rate of CPI, whichever is greater, for the duration of the Agreement.

2. Additional Rent

- i. In addition to the base rent, the Lessee shall pay additional rent based on a percentage rent of 4% of Gross Sales (Net Sales Tax) per quarter, capped at \$1,000/mo. or \$3,000/quarter. Additional rent shall be offset by non-reusable tenant improvement cost of site specific improvements of up to \$100,000 amortized over the initial Agreement term. Any rent to be offset by tenant improvement costs must be supported by itemized receipts and approvals by the Lessor that such item was necessary for the construction of the improvement.

- ii. At a minimum, a late fee of five percent (5%) of the amount due shall be added if any rent remains unpaid beyond the due date. Rent shall be due on the 1st day of each month, and delinquent after the 5th day of each month.

C. DEFAULT, TERMINATION AND REMEDIES

1. Lessor Default

- i. Default shall occur if Lessor fails to perform any material obligation set forth in the Agreement. Lessor must be provided with notice and an opportunity to cure.
- ii. If no cure, Lessee may terminate the Agreement and pursue all rights and remedies available in law or equity, provided, however, that Lessor shall waive any right it may have to seek or claim consequential, special, punitive or similar damages.

2. Lessee Default

- i. Default shall occur if Lessee fails to operate the Market or perform material obligations set forth in Agreement, bankruptcy or insolvency of Lessee. Lessee must be provided notice and an opportunity to cure.
- ii. If no cure, Lessor may re-enter the property and, without terminating the Agreement, re-let all or a portion of the property.
- iii. If no cure, Lessor may terminate the Agreement and pursue all rights and remedies available in law or equity, provided, however, that Lessee shall waive any right it may have to seek or claim consequential, special, punitive or similar damages.
- iv. Upon the continuance of any material default beyond the applicable notice and cure periods, Lessor may, but is not obligated to cure the default at Lessee's cost.

3. Termination for Convenience

- i. Either party may terminate this Agreement upon one hundred twenty (120) days prior written notice to the other party.
- ii. If Lessor is the terminating party, Lessor shall reimburse Lessee for tenant improvement costs that are required to be, but have not been, reimbursed through operations by the time of termination.

4. Fixed Structures Following Termination

- i. Any fixed or permanent improvements made to the property shall, at the Lessor's election, become the property of Lessor, at no cost to Lessor. Fixed improvements exclude the proposed containers and equipment within the container.

D. INDEMNIFICATION AND INSURANCE

1. Indemnification

- i. Lessee shall be required to agree to the Lessor's indemnification, defense, and hold harmless terms.

2. Insurance

- i. Lessee shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee. Minimum limits include, but are not limited to:

- 1. **Commercial General Liability: Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and

completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.
3. Any other insurance terms and coverage deemed necessary by Lessor.