

RIGHT-OF-WAY LICENSE AND AGREEMENT

THIS RIGHT-OF-WAY LICENSE ("License") is hereby issued as of the ____ day of _____, 202__, by **THE CITY OF NORMAN, OKLAHOMA**, A Municipal Corporation, ("City"), to **S&S Noodle and Tapas Bar, LLC** (the "Licensee").

RECITALS

WHEREFORE, the Licensee has submitted an application and supporting materials and information to the City to support its request to utilize right-of-way immediately abutting a parcel of property at the following address: **121 E. Main Street, Norman, OK 73069**.

WHEREFORE, the design demonstrated elements, an outdoor seating and customer patronage area fully barricaded from nearby traffic activity according to City-approved standards and regulations, and located on the Premises (as defined below).

WHEREFORE, the City and Licensee wish to enter into an agreement whereby Licensed Improvements (as defined below) may be placed and/or maintained by Licensee within the public right-of-way subject to certain limitations and conditions.

LICENSE AND AGREEMENT

WITNESSETH, the parties hereto, for the consideration hereinafter expressed, covenant and agree as follows:

1. **Premises and Licensed Improvements.** City hereby permits Licensee, subject to the rights and easements hereinafter excepted and reserved and upon the terms and conditions hereinafter set forth, to use the following described land situated in Norman, Cleveland County, State of Oklahoma, as exhibited and described on the attached "Exhibit A" made a part hereof ("Premises"), for a term **beginning on July 25, 2023 and ending January 24, 2024** or when this License shall otherwise be terminated as hereafter provided. This License is issued solely for the purpose of placing a barricaded outdoor seating and customer patronage area, in substantial compliance with the scaled site plan attached as "Exhibit B," and detailed dimensional drawings and material descriptions attached collectively as "Exhibit C" which shall be installed and maintained according to the provisions set forth herein (collectively the "Licensed Improvements"). This License is a renewal of that previous License granted to The Meating Place, LLC, Contract K-2122-134. The Licensee may not make any improvements on the Premises that are unrelated to or not necessitated by the purposes set forth for the Licensed Improvements in this License and Agreement. The Licensed Improvements are only permitted to the extent they are compliant with the applicable Code of Ordinances for the City of Norman, Oklahoma and federal law. The Licensee may not use the Premises for any other purpose under the terms of this License and Agreement.

2. **License Subject to City Use.** City hereby excepts and reserves the right, to be exercised by City and by any others who have obtained or may obtain permission or authority from

City so to do, (a) to operate, maintain, renew and relocate any and all existing utilities, pipe, power, and communication lines and appurtenances and other facilities of like character upon, over, or under the surface of the Premises; and (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character. City shall incur no liability to Licensee for any damages to the Licensed Improvements or the Premises that may occur during the operation, maintenance, renewal, relocation of any or all existing utilities, pipes, power or communication lines, appurtenances, or facilities, and in all instances it shall remain the responsibility of Licensees to ensure that the Licensed Improvements remain compliant with the applicable Code of Ordinances for the City of Norman, Oklahoma and federal law. However, City shall provide no less than fourteen (14) calendar days' notice to Licensees, both or either of them as applicable, unless emergency circumstances dictate otherwise, for any construction, repair, or improvements that will affect Licensee's rights under this License and Agreement.

3. **License Fee.** Licensee shall pay to City for the use of the Premises as follows: THREE HUNDRED and NO/100 Dollars (\$300.00) per term payable in advance without demand. This fee is due and owing on or before the date this License is issued and thereafter shall be payable on or before the first day of each term anniversary of such date thereafter. If the fee remains unpaid for thirty days after payment is due, the penalty shall be equal to 10% of the total term amount due for each month that the fee remains unpaid. Upon termination by either party pursuant to this agreement, any non-vested portion of the term fee paid in advance by Licensee will be refunded, on a pro-rata basis, to Licensee by City.

4. **Altering the Licensed Improvements.** Prior to altering any portion of the Licensed Improvements, and prior to installation of any item within the Premises that is not already identified as a part of the Licensed Improvements, engineered plans and/or drawings must be submitted to and approved by the City of Norman Public Works Department. Upon recommendation of necessary City Personnel, and in the sole discretion of the City Manager or its designee, said alterations may be approved on a case-by-case basis. Upon discretion and advice of the City Attorney, the City Manager or its designee may also determine that Licensee must seek a new License and Agreement to pursue the proposed alternations. Any deviation from the approved plans may be grounds for revocation of this License.

5. **City Right to Inspect.** Licensee shall allow City to enter upon the Premises at reasonable times for the purpose of inspection. Should Licensee not comply fully with the above-stated obligations of this section, City may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee. Any waiver by City of any breach of Licensee's obligations shall not constitute a waiver of the right to terminate this Lease for any subsequent or continued breach which may occur, or to enforce any other provision of this License. Upon termination, Licensee shall be governed by Section 13 of this License and Agreement regarding Licensee's surrender of possession of the Premises. Any termination of the License herein will not serve to terminate any other obligations by Licensee under this Agreement.

6. **Licensee's Duty to Maintain.** The Licensee shall keep and maintain the Premises and Licensed Improvements in such safe, sanitary and sightly condition as shall be satisfactory to City, and otherwise in compliance with applicable submittals and regulations relating to the use

proposed in this License and Agreement. If Licensee fails or refuses within fifteen (15) days after receipt of any request by City so to perform repair or maintenance of the Premises or Licensed Improvements, City may, at its option, perform such work, and in such event, Licensee shall, within thirty (30) days after the rendition of bill therefore, reimburse City for the cost so incurred. City may also, at its option, provide Licensee five (5) days' notice of termination of this License upon Licensee's failures pursuant to this Section.

7. **No Liens on Premises.** Licensee shall promptly pay any contractors hired for installation, repair or maintenance of the Licensed Improvements, and shall not permit or allow the placement of any lien upon the Premises. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alteration or repair work done, or suffered or permitted to be done, by Licensee on the Premises, and City is hereby authorized to post any notices or take any other action with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of City to take any such action shall not relieve Licensee of any obligation or liability under this or any other paragraph hereof.

8. **Indemnification by Licensee.** The Licensee shall indemnify, defend and hold harmless City against all actions or causes of action, claims, liability, loss, cost, damage or expense, or whatever kind and nature, including but not limited to those arising under the Federal Employer's Liability Act, or under any Workers' Compensation Act, and any amendment to said Acts now or hereafter in effect, including attorney fees and other expenses of litigation, and including any suit instituted to enforce the obligations of this provision, which City may sustain or incur, or for which it may become liable, by reason of use of, damage to or destruction of property, including the loss of use thereof and lost profits, or by reason of injuries, including death, to any person or persons including, but not limited to, the person or property of the parties hereto and their employees (hereafter "Loss and Damage"):

(a) Arising out of, or directly or indirectly due to, any failure by Licensee to satisfy, promptly and faithfully, its obligations under this License;

(b) Arising out of, or directly or indirectly due to, any accident or other occurrence whatsoever causing injury, including death, to any person or persons or damage to or destruction of any property, including the loss of use thereof and lost profits, resulting from the use, occupancy or condition of the Premises and Improvements by Licensee, their employees, invitees and licensees; and

(c) Arising out of any mechanic's lien or other lien, tax, assessment or charge of any and every nature that may at any time be established against the Premises or the Improvements, or any part thereof, as a consequence, direct or indirect, of the existence of Licensee's interest under this Agreement.

No settlement by Licensee for Loss and Damage shall affect City's right to indemnity, contribution or defense under this agreement.

Upon written notice from City, Licensee agrees to assume the defense of any lawsuit, administrative action or other proceeding brought against City by any public body, individual, partnership, corporation, or other legal entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or to save and hold harmless the City. Licensee shall pay the entire costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity or under the rules of any administrative agency shall be covered by this Section, including, but not limited to, the theories of intentional misconduct, negligence, breach of statute or ordinance, or upon any theory created by statute or ordinance, state or federal.

9. **Licensee Insurance.** The Licensee shall maintain commercial general liability insurance and Workers' Compensation Insurance (as applicable) and shall provide the City with evidence thereof, such evidence to be continually updated by Licensee upon renewal. Any commercial general liability policy shall have minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, and no less than Two Hundred and Fifty (\$250,000.00) in coverage for damages to the property, including the Premises and Licensed Improvements. Said policy shall name the City of Norman as an additional insured for the purposes of the Premises and Licensed Improvements.

10. **No liability to Licensee.** In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, City shall not be liable to Licensee for any damage of any nature whatsoever, or to refund any fee paid hereunder, except the proportionate part of any fee paid in advance. City shall further not be liable to Licensee in any way relating to the actions or decision of third parties.

11. **Other Termination Rights.**

(a) If any fee shall be due and unpaid, or if default shall be made in any of the covenants or agreements of Licensee herein contained, or in the case of any assignment or transfer of this License by operation of law, City may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee; but any waiver by City of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults.

(b) This License may be terminated for any reason at any time by either party by serving thirty (30) days' written notice of termination upon the other party, stating therein the date that such termination shall take place, and upon the expiration of the time specified in such notice, this License and all rights of Licensee hereunder shall absolutely cease and terminate.

(c) City retains the ability to revoke this License to address any City need reasonably originating from the City's right to ensure the public's health, safety and general welfare. In such case as this provision is invoked, the City shall provide thirty (30) calendar days' notice to Licensee.

removed and the Premises restored or City elects to take and hold the Improvements as its sole property as hereinabove provided.

(e) Upon termination of this License by the City, Licensee further agrees and covenants that it will, at its own cost, perform any construction or restoration in conformance with the applicable Code of Ordinances of the City of Norman, including but not limited to the Center City Form Based Code set forth in Section 36-540 of the Norman City Code.

14. **Assignment or Transfer by Licensees.** Neither Licensee, nor its heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License and Agreement or any interest herein, without the written consent and approval in each instance of City.

15. **Successors Bound.** All the covenants and agreements of Licensee herein contained shall be binding upon the heirs, legal representatives, successors and assigns of Licensee and shall inure to the benefit of the successors and assigns of City.

IN WITNESS WHEREOF, this License has been duly executed in duplicate by the parties hereto as of the date and year first above written.

{Remainder of this page left intentionally blank}

12. **Notices.** Any notice to be given by City to Licensee hereunder shall be deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to Licensee at:

S&S Noodle and Tapas Bar, LLC
Attn: Vicky Su
121 E. Main Street
Norman, Oklahoma 73069

Any notice to be given hereunder by Licensee to City shall be deemed to be properly served if the same be deposited in the United States mail, postage prepaid addressed to:

City of Norman
Attn: The Office of the City Clerk
P.O. Box 370
Norman, Oklahoma 73070

13. **Termination Procedures, Requirements, Remedies and Rights.**

(a) Upon the termination of this License in any manner herein provided, Licensees shall forthwith surrender to City the possession of the Premises and shall, at their own cost, remove the Licensed Improvements, excepting any barricade equipment which shall be addressed separately, and shall complete construction or otherwise restore the structures to which the Licensed Improvements were attached in conformance with applicable approvals and code provisions.

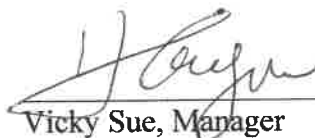
(b) In the case of barricade equipment, Licensee shall be obligated to work with the City to coordinate the removal of barricades between thirty (30) and sixty (60) days following termination of the License, or such other time period for removal which may be mutually agreed to by the parties.

(c) In the case Licensee shall fail within thirty (30) days after the date of such termination to perform such construction or restoration, then City may, at its election to be exercised within thirty (30) days thereafter, remove the Licensed Improvements and perform such construction or restoration in conformance with applicable approvals and code provisions, and in such event Licensee shall, within thirty (30) days after the rendition of bill therefore, reimburse City for the cost so incurred. If the Licensee fails to remove the Licensed Improvements, and the City is required to remove the Licensed Improvements, the City may take and hold the Licensed Improvements as its sole property.

(d) If Licensee fails to surrender to City the Premises, upon any termination of this License, all the liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered; and no termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or the date, if later, when the Improvements are

LICENSEE:**S&S Noodle and Tapas Bar, LLC**

By:



Vicky Sue, Manager

STATE OF OKLAHOMA
COUNTY OF CLEVELAND

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Before me, the undersigned, a Notary Public in and for said County and State, on this 19th day of JULY, 2023, personally appeared HANG SU, to me known to be the identical person, who executed the foregoing agreement and acknowledged to me that he executed the same as a free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year above written.

Signed:



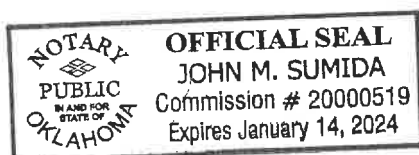
By:

John Sumida

Title:

Notary Public

(SEAL)

My Commission expires: 01/14/2024.

CITY:

APPROVED by the Norman City Council this _____ day of _____, 2023.

By: _____
MAYOR

ATTEST:

City Clerk

APPROVED as to legality and form this 19 day of July, 2023.

Elizabeth I. Iwchala
City Attorney