

RIGHT OF WAY USE PERMIT

This **RIGHT OF WAY USE PERMIT** is issued this ___ day of _____, 2023, by the City of Coweta, Oklahoma, a municipal corporation organized and existing under and by virtue of the laws of the State of Oklahoma, hereinafter referred to as “CITY”, to 918 Holdings, LLC, an Oklahoma Limited Liability Company, hereinafter referred to as “PERMITTEE”.

WHEREAS CITY holds in trust for the Public a City Street in the City of Coweta, Wagoner County, State of Oklahoma. Such public street is designated on the City’s Major Street and Highway Plan as Cypress Street.

WHEREAS PERMITTEE is the Owner of Record of Lot 11, Block 52, New Coweta City, Wagoner County, State of Oklahoma according to the Recorded plat thereof. The real property is also described as 124 South Broadway, Coweta, OK 74429. PERMITTEE owns and operates a restaurant on the above-described site said restaurant being named and popularly referred to as “1843 On Broadway” . PERMITTEE desires to locate outdoor customer seating immediately adjacent to the restaurant for purposes of providing outdoor food and beverage sales and services.

WHEREAS an accurate description of the area intended to be constructed and utilized for food and beverage seating, sales and service is attached hereto. Such is hereinafter referred to as “Site”. The use intended will encroach upon Cypress Street. The encroachment would constitute a trespass if CITY were not to permit PERMITTEE to use the Site adjacent to the restaurant for purposes of providing outdoor food and beverage sales and services.

NOW THEREFORE, for the payment to CITY of the sum of Ten and no/100s Dollars

(\$10.00) per year, such sum due and payable on the ___ day of _____, 2023 and a like amount on the same date of each succeeding year hereafter, as well as other good and valuable consideration, the CITY hereby grants to PERMITTEE this RIGHT OF WAY USE PERMIT authorizing PERMITTEE to utilize portions of Cypress Street for purposes of providing outdoor food and beverage sales and services.

PERMITTEE may construct, install, locate, and maintain the seating upon Cypress Street to the extent depicted in the above referred to accurate description or as thereafter permitted by the express written consent of the City Manager of the City of Coweta, Oklahoma.

PERMITTEE may utilize the described area on Cypress Street solely for purposes of provision of food and beverage sales and service, PROVIDED, such provision of food and beverage sales and service shall always be in accordance with local, state, and federal laws applicable thereto.

Unless sooner terminated for cause or convenience of the CITY, PERMITTEE may operate such food and beverage sales and services on the Site in the areas depicted for a period of ___ years.

INDEMNITY: TO THE MAXIMUM EXTENT PERMITTED BY STATE LAW, PERMITTEE SHALL WITHOUT LIMITATION REIMBURSE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF COWETA, OKLAHOMA, ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FOR AND FROM ANY CLAIM IN ANY WAY RELATING TO OR ARISING OUT OF PERMITTEE'S CONSTRUCTION, INSTALLATION, OPERATION AND/OR UTILIZATION OF THE ABOVEREFERRED SITE UPON CYPRESS STREET. THIS INDEMNITY SHALL COVER LOSSES FOR PROPERTY DAMAGES TO CYPRESS STREET, OR ADJACENT PROPERTY,

INCLUDING ENVIRONMENTAL DAMAGE THERETO OR REMEDIATION OF SUCH, AND PERSONAL INJURY OR DEATH ARISING FROM OR RELATED TO THE ACTIVITY CONDUCTED BY PERMITTEE OR ITS AFFILIATES, OR THEIR EMPLOYEES, AGENTS, CONTRACTORS OR INVITEES ON THE AREA OF CYPRESS STREET OR IN AREAS IMMEDIATELY ADJACENT THERETO. CLAIM INCLUDES, WITHOUT LIMITATION, ANY CLAIM, SUIT, LOSS, COST, EXPENSE, LIABILITY DAMAGE OR ACTION (INCLUDING COURT COSTS AND ATTORNEY'S FEES).

PERMITTEE SHALL OBTAIN AND MAINTAIN POLICIES OF LIABILITY INSURANCE IN SUCH AMOUNTS AS MAY BE REQUIRED BY THE CITY MANAGER OF THE CITY OF COWETA, OKLAHOMA FROM REPUTABLE CASUALTY INSURANCE COMPANIES AUTHORIZED TO DO BUSINESS IN THE STATE OF OKLAHOMA INSURING TO THE FULLEST EXTENT FOR THE INDEMINFICATION AND HOLD HARMLESS ABOVE REFERRED TO NAMING THE CITY OF COWETA, OKLAHOMA, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, AS NAMED INSURED. THIS PARAGRAPH SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS PERMIT AND LAST FOR A PERIOD OF TWO (2) YEARS FOLLOWING REMOVAL OF ALL OF THE PERMITTEE'S PROPERTY FROM CYPRESS STREET AND CESSATION OF THE FOOD AND BEVERAGE SALES AND SERVICE ACTIVITY REFERRED TO ABOVE.

CITY may terminate this RIGHT OF WAY USE PERMIT upon breach of any term of such or any amendment thereto, INCLUDING, but not limited to, failure of Permittee to initiate

improvement on the site and initiation of the use of the Site for the purposes herein intended within _____ days (____) of the date hereof, as well as the removal, disrepair or non-use of the Site above referred to for a period of _____ (____). CITY may terminate this RIGHT OF WAY USE PERMIT FOR ITS CONVENIENCE AND WITHOUT CAUSE upon providing PERMITTEE thirty (30) days written notice thereof.

PERMITTEE explicitly recognizes that notwithstanding the costs of improvements of and alterations to the Site incurred by PERMITTEE hereunder, CITY'S right to terminate this RIGHT OF WAY USE PERMIT shall be absolute and without compensation to PERMITTEE in any manner including, but not limited to, replacement value or for the fair market value of any improvement or other property whether personal or real placed on or near the Site.

PERMITTEE shall, upon termination or expiration of this RIGHT OF WAY USE PERMIT remove any personal, real, or mixed-use property, rehabilitate, and leave Cypress Street and other areas adjacent to the Site in a clean, safe, and useable condition.

NO assignment of this RIGHT OF WAY USE PERMIT or any of the rights hereunder by PERMITTEE shall be valid without the express written consent of the City Manager of the City of Coweta, Oklahoma.

City of Coweta, Oklahoma
P.O. Box 850
Coweta, OK 74429

Signature: _____
Name: Roger Kolman

Title: City Manager

State of Oklahoma)
) ss.
Wagoner County)

The foregoing instrument was acknowledged before me this _____, _____, by Roger Kolman as City Manager of the City of Coweta, Oklahoma on behalf of the City of Coweta, Oklahoma.

Signature:

Notary Public

My Commission No. _____

My Commission expires: _____

The terms and conditions of the foregoing are unconditionally accepted by 918 Holdings, LLC.

918 Holdings LLC

124 S. Broadway

Coweta, OK 74429

Signature: _____

Name: Joe Howard

Title: Managing Member

State of Oklahoma)
) ss.
Wagoner County)

The foregoing instrument was acknowledged before me this _____, _____, by Joe Howard as Managing Member of 918 Holdings, LLC on behalf of 918 Holdings, LLC.

Signature:

Notary Public

My Commission No. _____

My commission expires: _____