

**STATE OF GEORGIA
COUNTY OF COBB**

After recording return to:
COCHRAN & EDWARDS, LLC
2950 Atlanta Road SE
Smyrna, Georgia 30080-3655
770-435-2131

ACCESS AND USE EASEMENT AGREEMENT

THIS ACCESS AND USE EASEMENT AGREEMENT (“**Agreement**”), is made and entered into this 20th day of September, 2021, by and between **THE CITY OF SMYRNA, GEORGIA**, a public body corporate and politic, organized and existing under the laws the State of Georgia (“**Grantor**”), and **SMYRNA RESTAURANT CONCEPTS, LLC**, a Georgia limited liability company (“**Grantee**”).

W I T N E S S E T H:

WHEREAS, Grantee is the owner of certain real property in Smyrna, Cobb County, Georgia, being specifically located at 1061 Concord Road (Cobb County, Georgia, Tax Parcel ID # 17045201110), such property being more particularly described on Exhibit “A” attached hereto and by this reference incorporated herein (hereinafter the “Benefitted Property”); and

WHEREAS, Grantee operates a restaurant on the Benefitted Property; and

WHEREAS, Grantor owns certain real property immediately adjacent to the Benefitted Property to the north and east, being specifically located at 1043 Concord Road (Cobb County, Georgia, Tax Parcel ID # 17045200370) (hereinafter the “Encumbered Property”), on which the restaurant on the Benefitted Property has located a garbage receptacle and a grease trap servicing the restaurant (the “Services”); and

WHEREAS, Grantee has requested permission of Grantor to continue the use of the garbage receptacle and grease trap indefinitely for the benefit of the Benefitted Property; and

WHEREAS, Grantor has agreed to allow Grantee access to and use of a portion of Grantor's property for the purposes above stated; and

WHEREAS, as consideration for the right to access and use Grantor's property for the purposes above stated, Grantee has agreed to restrict use of Grantee's property to commercial use as a restaurant.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid at and before the execution and delivery of these presents, the above-mentioned recitals, the mutual covenants and conditions contained herein, and in other documents referenced herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do agree as follows:

1. Easements Granted

(a) Access and Use Easement. Grantor hereby grants, bargains, sells, and conveys unto Grantee, its successors and assigns, a non-exclusive, perpetual (subject to Grantor's default remedies below) easement on, across, over and upon the Encumbered Property for the sole purposes of access to and use of the garbage receptacle and grease trap located thereupon, including access by Grantee's employees, agents, contractors, and designees for the sole purpose of service access to the Services.

2. Grantee's Rights of Maintenance and Repair: In addition to the right of access for use as set forth above, Grantor expressly grants, bargains, sells, and conveys to Grantee the non-exclusive right to enter upon the easement area and property immediately adjacent thereto as necessary to maintain and repair the garbage receptacle and grease trap as and when needed, it being Grantee's sole obligation to maintain the said Services.

3. Grantor's Right of Entry onto Benefitted Property: Grantee hereby grants to Grantor a license to cross the Benefitted Property for purposes of providing emergency access to Grantor's property to the north and east of the Benefitted Property should Grantor be unable, in Grantor's sole judgment, to access its property through the Grantor's other adjacent properties.

4. Term of Easements: The access and use easements granted herein and related maintenance obligations set forth herein shall be conditionally revocable by Grantor and shall terminate in the event Grantee, or its successors or assigns: (a) fails to perform its obligations as specified in this Agreement or (b) ceases operations at the Benefitted Property as a restaurant. In the former event, the easement granted herein shall terminate immediately. In the latter event, the easement granted herein shall not terminate until more than sixty (60) have passed since the last date of operation of the Benefitted Property as a restaurant; and such shall not terminate if Grantee, its successors or assigns, make good-faith efforts toward commencing or re-commencing commercial operations at the Benefitted Property as a restaurant, including but not limited to making application for all necessary permits with the City of Smyrna.

5. Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the

breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other chosen dispute resolution procedure. All claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the chosen form of binding dispute resolution. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share all costs of mediation, including the mediator's fee and any filing fees, equally. The mediation shall be held in Smyrna, Cobb County, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

6. Grantor's Rights: Grantor shall retain all other customary incidents and rights of ownership with respect to the City Property, specifically including but not limited to the right to use the City Property in any manner not conflicting with or impairing the easement rights granted hereunder.

7. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matters hereof. This Agreement may be modified or amended only by a writing executed by the parties hereto.

8. Controlling Law: This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.

9. Notices. All, notices, requests, and demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered (a) by certified mail, return receipt requested, (b) by Federal Express or other recognized, reputable overnight courier, or (c) by hand delivery by a recognized, reputable courier, to the appropriate party(ies) at the address(es) set forth below:

(a) If to Grantor: The City of Smyrna, Georgia
 2800 King Street SE
 Smyrna, Georgia 30080

With copy to: Scott A. Cochran
 Cochran & Edwards, LLC
 2950 Atlanta Road
 Smyrna, Georgia 30080

(b) If to Grantee: Smyrna Restaurant Concepts, LLC
 1061 Concord Road
 Smyrna, Georgia 30080

Grantee hereby covenants to provide Grantor and its attorney written notice of the proper address

of any of Grantee's successors or assigns from time to time.

10. Time: Time is of the essence in the performance of this Agreement by each party hereto.

11. Counterparts: This Agreement may be signed in any number of counterparts, each of which shall, for all purposes constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this Access and Use Easement Agreement to be executed under seal as of the day and year above written.

“GRANTOR”

THE CITY OF SMYRNA, GEORGIA

Signed, sealed, and delivered in
the presence of:

Witness By: _____

Name: **Derek Norton**

Notary Public Title: Mayor of the City of Smyrna, Georgia

My Commission Expires:

[NOTARY SEAL]

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

“GRANTEE”

**SMYRNA RESTAURANT CONCEPTS,
LLC**, a Georgia limited liability company

By: _____
Jason McClure, Managing Member

Signed, sealed, and delivered in
the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

EXHIBIT "A"

("BENEFITTED PROPERTY")

All that tract or parcel of land lying and being in Land Lot 452 of the 17th District, City of Smyrna, Cobb County, Georgia and being more particularly described as follows:

COMMENCING at a Right-of-Way Monument found at the southwesterly-most corner of a mitered right-of-way of the northerly Right-of-Way of Concord Road (Variable Right-of-Way) with the Westerly Right-of-Way of Hollis Road (Variable Right-of-Way); THENCE, along the existing Northerly right-of-way of Concord Road on a bearing of North 83 degrees 15 minutes 37 seconds West, a distance of 65.13 feet to a Right-of-Way Monument; THENCE, North 89 degrees 39 minutes 02 seconds West, a distance of 71.51 feet to a point; THENCE, leaving the existing Right-of-Way of Concord Road on a bearing of North 06 degrees 43 minutes 15 seconds East, a distance of 8.02 feet to a point; Said point also being the POINT OF BEGINNING.

THENCE, from the POINT OF BEGINNING on a bearing of North 83 degrees 12 minutes 40 seconds West, a distance of 82.63 feet to a point;

THENCE, following the common property on a bearing of North 06 degrees 43 minutes 15 seconds East, a distance of 74.78 feet to a point;

THENCE, South 83 degrees 02 minutes 19 seconds East, a distance of 82.65 feet to a point;

THENCE, South 06 degrees 44 minutes 05 seconds West, a distance of 74.53 feet to the POINT OF BEGINNING.

The herein described tract of land contains 0.142 Acres or 6,170 Square Feet of land, more or less. The above described property is subject to any and all Easements, Encumbrances and or Restrictions of record.

Property address: 1061 Concord Road, Smyrna, Georgia 30080

Cobb County, Georgia, Tax Parcel ID # 17045201110

EXHIBIT “B”

(“ENCUMBERED PROPERTY”)

All that tract or parcel of land lying and being in Land Lot 452, 17th District, 2nd Section, Cobb County, Georgia, being Lot 12, Block E, Estate of Mary A. Dunton Subdivision, as more completely shown on that plat dated April 7, 1950, recorded at Plat Book 8, Page 137, Cobb County Records.

Further being a part of the same tract or parcel conveyed by Warranty Deed dated October 16, 2007, from Daniel L. Wood as Grantor to the City of Smyrna as Grantee, recorded on October 25, 2007, in Deed Book 14548, Page 5293, Cobb County, Georgia Records.

Property address: 1043 Concord Road, Smyrna, Georgia 30080-4205

Cobb County, Georgia, Tax Parcel ID # 17045200370