

## Interpretation ZA-017      Off Site Parking – Written Agreement

Friday, February 28, 2020

Reference: ZA-017

Required parking spaces are required to be provided at a location that is specified under the following Section, 11 DCMR C-701.8:

C-701.8 Required parking spaces shall be located either:

(a) On the same lot as the use or structure they are meant to serve; or

(b) On another lot, subject to the following provisions:

.....

(c) Unless under common ownership, a *written agreement* shall remain in effect between the owner of the parking area and the owner of the use for which the parking spaces are required (the use); .... [*emphasis added*]

(d) A draft of the *written agreement* shall be provided as part of any building permit application associated with either the site of the parking area or the site for which the parking spaces are required. The final, original written agreement shall be filed with the Zoning Administrator prior to the issuance of the first certificate of occupancy for the use and any amendment or successor agreement must be filed no later than ten (10) days following execution by the parties; [*emphasis added*]

....

The Office of the Zoning Administrator has determined that the written agreement for instances of off site parking, under 11 DCMR C-701.8(b), (c) and (d), must be in the form of a covenant. The Zoning Administrator has developed a sample Off-Site Parking Covenant Template, attached.

## DECLARATION OF COVENANTS

For Off-Site Parking Compliant with Section C-701.8 of the Zoning Regulations

THIS DECLARATION OF COVENANTS (the "**Declaration**") is made, entered into, and declared by \_\_\_\_\_ [add if relevant: "*, a District of Columbia limited liability company*"] (the "**Declarant**"), and its successors and assigns, for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation (the "**District**"), acting by and through the Department of Consumer & Regulatory Affairs ("**DCRA**"), as of the date of execution below by the Declarant.

### RECITALS

- A. Declarant is the Owner, in fee simple, of certain real property located in the District of Columbia with the address of \_\_\_\_\_, Washington, D.C. \_\_\_\_\_ and known as Lot \_\_\_\_\_ in Square \_\_\_\_\_ and more fully described in **Exhibit A** (the "**Property**"). The Property is located in the \_\_\_\_\_ zone.
- B. Declarant has submitted to DCRA an application for a building permit number **B** \_\_\_\_\_ (the "**Application**"), which must provide \_\_\_\_\_ parking spaces to comply with Section C-702 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations) (the "**Parking Requirement**").
- C. Subtitle C, § 701.8 of the Zoning Regulations provides that:

“Required parking spaces shall be located either:

- (a) On the same lot as the use or structure they are meant to serve; or
- (b) On another lot, subject to the following provisions:
- (1) The off-site location shall be a maximum of six hundred feet (600 ft.) from the use or structure that the parking spaces serve, as measured from the nearest lot line;
- (2) The off-site location may be located within a different zone, except that the off-site parking location for a use within any zone other than an R or RF zone shall not be located within an R or RF zone, except parking for Transportation Infrastructure uses as permitted by Subtitle U § 202.1(q); and
- (3) Spaces provided off-site in accordance with Subtitle C § 701.8(b) shall not serve as required parking for any other use, unless they are shared parking spaces in accordance with Subtitle C § 701.9;
- (c) Unless under common ownership, a written agreement shall remain in effect between the owner of the parking area and the owner of the use for which the parking spaces are required (the use);
- (d) A draft of the written agreement shall be provided as part of any building permit application associated with either the site of the parking area or the site for which the parking spaces are required. The final, original written agreement shall be filed with the Zoning Administrator prior to the issuance of the first certificate of occupancy for the use and any amendment or successor agreement must be filed no later than ten (10) days following execution by the parties;
- (e) The Zoning Administrator shall maintain a file of all written agreements and amendments for the lot where the use is located and the lot providing the required parking spaces”.

- D. The Application proposes to comply with the Parking Requirement by leasing \_\_\_\_\_ parking spaces, each compliant with the requirements of Chapter 7 of Section C of the Zoning Regulations (the "**Required Parking Spaces**"), on certain real property located in the District of Columbia with the address of \_\_\_\_\_, Washington, D.C. \_\_\_\_\_ and known

as Lot \_\_\_\_ in Square \_\_\_\_ and more fully described in **Exhibit B** (the "**Off-Site Parking Property**").

- E. The Application includes a plat of the Off-Site Parking Property that depicts the location of the Required Parking Spaces, attached hereto as **Exhibit C**.
- F. To comply with the Parking Requirement, Declarant has entered into an agreement with the owner of the Off-Site Parking Property to obtain the exclusive control and use of the Required Parking Spaces for a term of \_\_\_\_ years (the "**Parking Agreement**"), which agreement is attached hereto as **Exhibit D**.
- G. The Zoning Administrator (the "**ZA**") has required that prior to approving the first certificate of occupancy (the "**CofO**") for the Property based on the Application that Declarant shall execute and record a covenant to ensure that the Declarant maintains the exclusive control and use of the Required Parking Spaces for the duration of the use of the structure of the Property that created the Parking Requirement.
- H. Declarant, by this Declaration, desires to make this covenant and record it among the Land Records of the Recorder of Deeds of the District of Columbia (the "**Land Records**").

NOW, THEREFORE, for and in consideration of the foregoing, Declarant covenants, agrees and warrants that the Property and Building are, and shall be, held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, and provisions hereinafter set forth.

1. **Recitals and Exhibits Incorporated.** The foregoing Recitals and attached exhibits are all hereby incorporated in and made a part of this Declaration to the same extent as if herein set forth in full, provided however, that said Recitals shall not be deemed to modify the express provisions hereinafter set forth.
2. **Real Covenants.** The provisions of this Declaration shall be deemed real covenants running with the Property and Building, and shall bind Declarant and its heirs, successors and/or assigns. Every promise, undertaking, agreement, and covenant herein contained on the part of Declarant to be carried out and performed shall be binding upon the Declarant, its heirs, executors, administrators, successors and assigns, and shall be binding upon any person hereafter having any right, title, interest in or to the Property. When Declarant ceases to own an interest in the Property and/or the Building, the rights, warranties, and obligations under this Declaration shall become the rights, warranties, and obligations of the successor-in-ownership and interest as to the Property and/or the Building.
3. **Declarant's Exclusive Control of Required Parking Spaces.** Declarant shall maintain the exclusive control and use of the Required Parking Spaces for the duration of the use of the structure on the Property that created the Parking Requirement on the Off-Site Parking Property.
4. **Term of Covenant.** This Declaration shall remain in full force and effect for as long as the compliance of the Property's use with the Zoning Regulations relies on the continued control

of the Required Parking Spaces, and the covenants contained herein shall be binding upon any future owners of the Property both individually and collectively.

5. **Modification of Declaration.** No modification, including but not limited to (i) the alteration of the location of the Required Parking Spaces on the Off-Site Parking Property, (ii) the change of the Off-Site Parking Property, or (iii) the termination of this Declaration, shall be allowed without the prior written approval by Office of the Zoning Administrator, DCRA, for technical sufficiency and by the Office of the Attorney General, for legal sufficiency that the modification complies with the Zoning Regulations.
6. **Termination of Declaration.** At such time as Declarant desires to extinguish this Declaration because the Required Parking Spaces are relocated to the Property or are no longer required by the Zoning Regulations, this Declaration shall be extinguished only by recordation of an appropriate instrument executed by the Declarant (or its successors or assigns in interest) that received the prior written approval by Office of the Zoning Administrator, DCRA, for technical sufficiency and by the Office of the Attorney General, for legal sufficiency that the termination complies with the Zoning Regulations.
7. **Primacy of Declaration.** Declarant shall, at its sole expense, comply with all provisions of this Declaration regardless of any conflicting requirements in any other covenant, easement, or other legal document recorded or unrecorded against the Property. Neither the entering into of this Declaration nor performance hereunder will constitute or result in a violation or breach by Declarant of any other agreement or order which is binding on the Property.
8. **Good Standing.** To the extent the Declarant is an entity, the Declarant warrants that it is (i) duly organized, validly existing and in good standing under the laws of its state of jurisdiction and is qualified to do business and is in good standing under the laws of the District of Columbia, (ii) is authorized to perform under this Declaration and (iii) has all necessary power to execute and deliver this Declaration.
9. **Specific Enforcement.** The District shall have the right to specifically enforce the covenants contained in this Declaration. Additionally, a violation of this Declaration shall be grounds for DCRA to revoke the CofO or successive building permit or certificate of occupancy issued in reliance on this Declaration and its promises to maintain exclusive control and use of the Required Parking Spaces on the Off-Site Parking Property.
10. **Counterparts.** This Declaration may be executed in one or more counterparts, which counterparts, when taken together, shall constitute a single, binding instrument.
11. **Governing Law.** This Declaration shall be governed by, construed and enforced in accordance with the laws of the District of Columbia.
12. **Recordation of Declaration.** Declarant shall, at its cost and expense, properly record this Declaration against both the Property and the Off-Site Parking Property among the Land Records and shall furnish to DCRA a copy of this Declaration certified by the Recorder of Deeds as a true copy of the recorded instrument prior to the issuance of the Certificate of Occupancy for the Building.

13. **Valid Execution and Delivery.** This Declaration has been duly executed and delivered by the Declarant, and constitutes the legal, valid, and binding obligations of the Declarant, enforceable against the Declarant and its successors and assigns, in accordance with its terms.
14. **Severability.** If any of the covenants, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Declarant, the Owner of \_\_\_\_\_, Washington, D.C., \_\_\_\_\_ has, as of the day and year first above written, executed this Declaration of Covenants.

\_\_\_\_\_

By:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_) ) ss:  
\_\_\_\_\_)

I, \_\_\_\_\_, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, party to the foregoing Declaration of Covenants, personally appeared before me and, being personally well known to me, who has been appointed its attorney-in-fact and has acknowledged said Declaration of Covenants to be the act and deed of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ [owner/ground lessee] of the Property, and that he delivered the same as such.

GIVEN under my hand and seal this \_\_\_\_ day of \_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

[NOTARIAL SEAL]

Covenant For Off-Site Parking Compliant with Section C-701.8 of the Zoning Regulations –  
B \_\_\_\_\_, Lot \_\_\_\_ in Square \_\_\_\_\_

APPROVED AS TO TECHNICAL SUFFICIENCY:

\_\_\_\_\_  
Zoning Administrator  
Department of Consumer & Regulatory Affairs

\_\_\_\_\_  
Date

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_  
Assistant Attorney General  
Office of the Attorney General

\_\_\_\_\_  
Date

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Legal Description of the Off-Site Parking Property

EXHIBIT C

Plat Depicting the Required Parking Spaces in the Off-Site Parking Property

EXHIBIT D

Parking Agreement for Declarant's Exclusive Use of the Required Parking Spaces on the Off-Site Parking Property