

City of Takoma Park, Maryland

Office of the City Manager

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7500 Maple Avenue
Takoma Park, MD 20912
www.takomaparkmd.gov

Suzanne R. Ludlow, City Manager

Via email - June 8, 2018

Rachel Hardwick, President Board of Representatives
Hussein Choteka, Acting General Manager
Takoma Park Silver Spring Cooperative, Inc.
201 Ethan Allen Avenue
Takoma Park MD 20910

SUBJECT: Notice of Termination of Land License Agreement

Dear Ms. Hardwick and Mr. Choteka;

In accordance with Section 3 of the Third Amendment to the 1998 Land License for Parking, Loading Dock and Designated Uses, executed by the City of Takoma Park and the Takoma Park Silver Spring Cooperative, Inc. on November 4, 2015, this letter is to notify you that the City will be terminating our Land License Agreement with the Takoma Park Silver Spring Cooperative, Inc. effective August 31, 2018. Per the agreement, you are required to remove the storage sheds, trash and recycling containers, fencing, and other equipment or structures you have placed on the site for use by the Coop on or before the termination date.

As detailed in Section 2 - Development of License Area of the referenced Land License Agreement, the City has entered into an agreement with the Neighborhood Development Company (NDC) for the development of the property and executed a Ground Lease with the firm which becomes effective September 1, 2018. If you are interested in continuing use of the property on an interim basis while the project progresses, we encourage you to contact NDC's Development Associate Ms. Jingjing Liu at (202) 567-3205 or by email at jliu@neighborhooddevelopment.com.

If you have any questions regarding this notice or would like assistance contacting Ms. Liu, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne R. Ludlow".

Suzanne R. Ludlow
City Manager

Enclosed: Third Amendment to Land License (November 4, 2015)
Land License for Parking, Loading Dock and Designated Uses (July 28, 1998)

THIRD AMENDMENT TO
LAND LICENSE FOR PARKING, LOADING DOCK, AND DESIGNATED USES

THIS THIRD AMENDMENT TO LAND LICENSE FOR PARKING, LOADING DOCK, AND DESIGNATED USES ("Land License") made this 4 day of November, 2015, by the City of Takoma Park, Maryland, a municipal corporation, ("City" or "Licensor") for the benefit of the Takoma Park-Silver Spring Cooperative, Incorporated, a Maryland corporation ("Co-op" or "Licensee").

WHEREAS, on July 28, 1998, the City and the Co-op entered into a Land License providing for the Co-op to use portions of land owned by the City at Takoma Junction for parking spaces, containerized storage, trash receptacles, and a loading dock in conjunction with the Co-op's operation of a retail grocery store known as the TPSS Co-op at 201 Ethan Allen Avenue, Takoma Park, MD 20912 ("License Area"); and

WHEREAS, in consideration for the right to use portions of the City's land for these purposes, the Land License provides for the Co-op to pay a license fee to the City; and

WHEREAS, the parties extended the Land License from Years 12 – 14 (July 1, 2009 – June 30, 2012) by an Amendment to Land License made January 11, 2010; and

WHEREAS, the parties further extended the Land License from Years 15 – 17 (July 1, 2012 – June 30, 2015) by a Second Amendment to Land License made August 7, 2012; and

WHEREAS, the parties desire to further renew the Land License and to clarify the City's right to modify, restrict or terminate the Land License.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and the Co-op agree as follows:

1. License Fees. As consideration for the Land License, the Co-op shall pay the City license fees in the following amounts:

License Fee for Year 18 (July 1, 2015 - June 30, 2016). The Co-op shall pay the City a license fee for Year 18 in the amount of \$21,800.00. This license fee shall be paid in semi-annual installments of \$10,900.00; the first semi-annual installment is due upon execution of this Third Amendment to Land License and the second semi-annual installment is due by January 1, 2016.

License Fee for Year 19 (July 1, 2016 - June 30, 2017) and Future Years. The License Fee shall increase for Year 19 and each future years of the Land License on July 1st of each year of the Land License by a cost-of-living adjustment based on the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) All Items for Washington, DC – Baltimore, MD, SMSA from the first quarter of the preceding license year to the first quarter of the next year; provided, however, any such adjustments to the License Fee shall be subject to the limitation that in no event shall the annual License Fee be

increased on an annual basis over the term hereof by more than three percent (3%) per year. If there is no increase in such CPI-W, then the license fee shall remain the same. The License fee shall be paid in semi-annual installments on July 1 and January 1 of each year of the Land License.

2. Development of License Area. The parties acknowledge that the City has chosen a developer for the redevelopment of the City property at Takoma Junction, which development will include the License Area. As part of the development of the City property at Takoma Junction, the Co-op's parking privileges, containerized storage privilege, trash receptacle storage privilege, and loading dock placement and access to all or a portion of the License Area may be modified, restricted, suspended or terminated by the City. In such event, the City will give the Co-op at least 30 days written notice of termination, restriction or modification of the Land License. The City agrees that it will employ all reasonable efforts to minimize any adverse impact of the development on the Co-op's business operations.

3. Termination or Modification of Land License. The parties may amend, modify or terminate this Land License by mutual consent. The City also retains the right, at the City's sole option to restrict or modify the Co-op's license to use all or any part of the License Area or to terminate the Land License upon 30 days' prior written notice to the Co-op. If the City terminates the License Agreement, then any License Fees paid by the Co-op in advance will be prorated to the effective date of termination.

4. Notices. Any required notices or other communications under this Land License shall be in writing and personally delivered, sent by facsimile (with delivery receipt), or mailed by certified U.S. first-class mail, return receipt requested, as follows:

If to Co-op: Takoma Park-Silver Spring Cooperative, Incorporated
Attn: General Manager
201 Ethan Allen Avenue, Takoma Park, MD 20912
Telephone (301) 891-2667 (store); Fax (301) 891-2695

If to the City: City of Takoma Park
Attn: Sara Anne Daines, HCD Director
7500 Maple Avenue, Takoma Park, MD 20912
Telephone (301) 891-7224; Fax (301) 270-4568

Either party may change the person, address, phone, or fax, for notices to the other party by a notice in writing to the other. Any notices under this Land License shall be deemed given when the notice is delivered to the other party or, for notices given by mail, three business days after the notice is deposited, properly addressed and postage prepaid, in the United States mail.

5. Exhibit A. The attached Exhibit "A" (Site Plan) shows the License Area and the location of the Co-op's parking spaces, loading dock, and trash container on the License Area. This Site Plan replaces Exhibit "A", Takoma Junction Development Parking Lot Plan, of the July 28, 1998 Land License Agreement.

6. Provisions of July 28, 1998 Land License. All other provisions of the Land License for Parking, Loading Dock, and Designated Uses made July 28, 1998, not changed or amended by this Third Amendment to Land License shall remain in full force and effect.

IN WITNESS WHEREOF, Licensors and Licensee have signed this Third Amendment to Land License effective on the day and year first above written.

Attest:



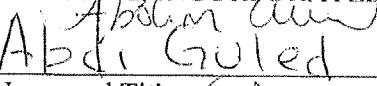
CITY OF TAKOMA PARK, MARYLAND,
Licensors

By:  (SEAL)
Suzanne R. Ludlow, City Manager

Date signed: 11-4-15

Attest:

TAKOMA PARK-SILVER SPRING,
COOPERATIVE, INCORPORATED, Licensee

By:  (SEAL)
Print Name and Title: GM

Date signed: 11/2/15

LAND LICENSE FOR PARKING, LOADING DOCK AND DESIGNATED USES

THIS LAND LICENSE FOR PARKING, LOADING DOCK AND DESIGNATED USES (the "License") made this 28th day of July, 1998, by the Mayor and City Council of Takoma Park, Maryland, a municipal corporation organized and existing under the laws of the State of Maryland (the "Licensor") for the benefit of Takoma Park - Silver Spring Cooperative, Incorporated, a Maryland corporation (the "Licensee").

RECITALS

R-1 The Licensor is the owner of land identified as "BF Gilbert's Addition to Takoma Park" Block 19, Lots 34-36, Lot 39 and parts of Lots 32, 33 and 37 (the "Licensor Land").

R-2 The Licensee is the lessee of land identified as 201 Ethan Allen Avenue, Takoma Park, Maryland (the "Leased Premises"). The Licensee intends to operate a retail food store on the Leased Premises. Such food store is hereinafter identified as the "Use".

R-3 In order to facilitate the Use, the Licensee has requested the right to use portions of Licensor's land for parking spaces, containerized storage, trash receptacles and a loading dock which loading dock will extend onto the lands of the Licensor.

R-4 Licensor is willing to permit the Licensee to use a portion of the Licensor's land as described on Exhibit A attached hereto (the "License Area") subject to the terms and conditions of this License.

R-5 Licensor and Licensee acknowledge that this is a bare license only and not a license coupled with an interest nor is it intended to be and shall not be construed as a lease.

NOW THEREFOR, subject to the terms hereof, the Licensor does grant and the Licensee does accept the following license in land:

1. GRANT OF LICENSE

1.1 Licensor hereby grants to Licensee a revocable but non-exclusive license over the License Area for the privileges of parking customer and employee vehicles during the business hours for which Licensee's store is open to the public, including access for ingress and egress which access is granted over Licensor Land; constructing and using a loading dock to service the Use, including a right of access for ingress and egress to such loading dock which access is granted over Licensor Land; for containerized storage and maintaining trash receptacles and for no other purpose. Unless notified in writing by Licensor, there shall be no restriction on the size of trucks utilizing the License Area and servicing Licensee's loading dock. Upon receipt of written notice from Licensor restricting the size of trucks utilizing the License Area, this License shall be deemed amended to include such restriction. Licensor shall stripe parking locations for Licensee's use. Licensor at its discretion may hatchmark other areas of Licensor's Land to clarify parking exclusions. At such time as Licensor (or any successor in title to Licensor) develops and improves the License Area, Licensee's parking privilege, containerized storage privilege and trash receptacle storage privilege granted herein may be modified, restricted or terminated. In addition, Licensee's configuration of its loading dock may have to be modified to accommodate Licensor's use and development, however, access to

Licensee's loading doors will be provided so long as this License remains in existence.

1.2 Licensors hereby reserves the right to suspend the use of this License by Licensee at any time for a period of up to 48 hours. At any time that Licensors requires the exclusive use of the License Area, Licensors shall advise Licensee five (5) days in advance and Licensors and Licensee shall meet to establish a schedule of use that will minimize any adverse impact on Licensee business operation.

2. CONDITION OF LICENSE AREA

2.1 Licensee recognizes that Licensors has no duty or responsibility in regard to the License Area on the date hereof or at any time hereafter, and Licensee accepts the License Area "AS IS".

3. CONSIDERATION; MAINTENANCE

3.1 As consideration for the license herein granted, Licensee shall pay to Licensors the license fee of the following amounts:

Year 1-4	\$12,000
Year 5-7	\$15,000
Year 8-11	\$18,000
Year 12 -	subject to negotiation between Licensors and Licensee

Licensee shall maintain the License Area in clean, neat order and in good repair during the term of the License. Any outside overnight storage shall be containerized and is permitted only on the License Area within the stripped parking area as now provided

or subsequently revised. The consideration set forth above shall be paid in semi-annual installments commencing July 1, 1998.

3.2 Licensee shall install lights to illuminate the License Area in a manner acceptable to Licensor. Licensee shall submit a lighting plan including light source locations, light intensity and installation schedule to Licensor for approval on or before September 15, 1998. If Licensee fails to submit such plan or fails to comply with the installation schedule approved by Licensor, then Licensor may, at its option and without terminating the License, restrict use of the License Area to daylight hours. Such lights shall be maintained in good working order by Licensee, including the payment of electricity charges and bulb replacements, and shall be designed such that illumination is shielded from any residential area (other than residential land owned by Licensor).

4. TERM AND BENEFIT

4.1 This License shall commence upon the date of its execution and shall continue until terminated by Licensor which termination shall be at Licensor's option.

4.2 Licensee shall have the right to terminate this License during the first license year upon payment to Licensor of the total amount due under paragraph 3.1 discounted to current value at a discount rate of three percent (3%). If as a result of Licensor's development Licensee has no parking spaces privileges then all obligation for further payment of the License Fee shall terminate. If as a result of Licensor's development Licensee has a reduced number of parking spaces then Licensee's payment pursuant to

paragraph 3.1 shall be in accordance with the following:

10-16 spaces	Full compensation
7-10 spaces	2/3 compensation
3-6 spaces	1/3 compensation
1-2 spaces	15% compensation

4.3 This License is intended to be for the benefit of Licensee and shall not be deemed a right appurtenant to the Leased Premises nor assignable by Licensee.

5. INDEMNIFICATION AND INSURANCE

5.1 Licensee hereby agrees to indemnify and hold harmless Licensor and its elected officials, officers, employees and agents from any and all claims, demands, actions, causes of action, damages, expenses, losses, or liabilities arising in any way out of Licensee's use of the License Area. During the term of this License, Licensee shall maintain public liability insurance for amounts satisfactory to Licensor naming Licensor as an additional insured. Licensee shall furnish Licensor with a duplicate original of such insurance policy which shall include a provision that the policy will not be cancelled, modified, or accepted for cancellation without thirty (30) days' prior written notice to Licensor. At least thirty (30) days prior to the end of each policy term, Licensor shall furnish evidence that the policy has been extended and the premium paid or shall furnish a duplicate original of a policy complying with the terms of this Section.

6. NOTICE OF TRANSFER

6.1 Licensee shall advise Licensor in writing should Licensee sell, grant, convey or transfer its interest in the Leased Premises by notice including the name of the transferee. Licensor shall

advise transferee that this License is non transferrable without the written approval of Licensor.

7. RECORDATION

7.1 This License shall not be recorded in the land records or in any other government records and in the event of such recordation with no further act of the parties required, this License shall become null and void.

8. HAZARDOUS WASTE

8.1 To the extent that Licensee utilize the License Area to load or unload any Hazardous Waste as such term is defined from time to time in any government regulations or the extent there is a spillage of Hazardous Waste on the parking area, then such Hazardous Waste shall be managed and cleaned up if required strictly in accordance with all applicable government regulation. In the event that Licensor's property is contaminated by Hazardous Waste resulting from Licensee's use of the License Area, Licensee shall be responsible for any clean up required of Licensor's property to fully remediate such property.

9. MISCELLANEOUS.

9.1 Notifications. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, a "Notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. A Notice that is sent by mail will be deemed given three (3) business days after it is deposited in first-class United States mail,

postage prepaid, return receipt requested. Any party may designate, by notice to all of the others, substitute addresses or addressees for Notices; and, thereafter, Notices are to be directed to those substitute addresses or addressees. The initial addresses of the parties shall be:

City of Takoma Park
7500 Maple Avenue
Takoma Park, Maryland 20912
Attn: City Administrator

with copy to: Ellis J. Koch, Esq.
5904 Hubbard Drive
Rockville, Md. 20852

Takoma Park-Silver Spring Cooperative
201 Ethan Allen Avenue
Takoma Park, Md. 20912

9.2 Survival. The terms and conditions of this Agreement shall survive until terminated by Licensor.

9.3 Complete Agreement. This License constitutes the complete and exclusive statement of the agreement among the parties. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. This License may not be amended without the written consent of all of the parties.

9.4 Applicable Law. All questions concerning the construction, validity, and interpretation of this License and the performance of the obligations imposed by this License shall be governed by the internal law, not the law of conflicts, of the State of Maryland.

9.5 Section Titles. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the

scope of this License or the intent of the provisions hereof.

9.6 Jurisdiction and Venue. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the District of Maryland or any Maryland State Court having jurisdiction over the subject matter of the dispute or matter. All parties hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding. Each party further agrees for the benefit of the other that the right to elect a jury trial in the event of any dispute is waived and any dispute shall be tried to the court without jury.

9.7 Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person may in the context require.

9.8 Counterparts. This License may be executed simultaneously in two or more counterparts each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

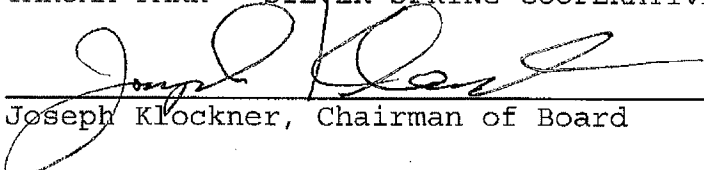
9.9 Assignment. This License may not be assigned by Licensee without the express written consent of Licensor.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

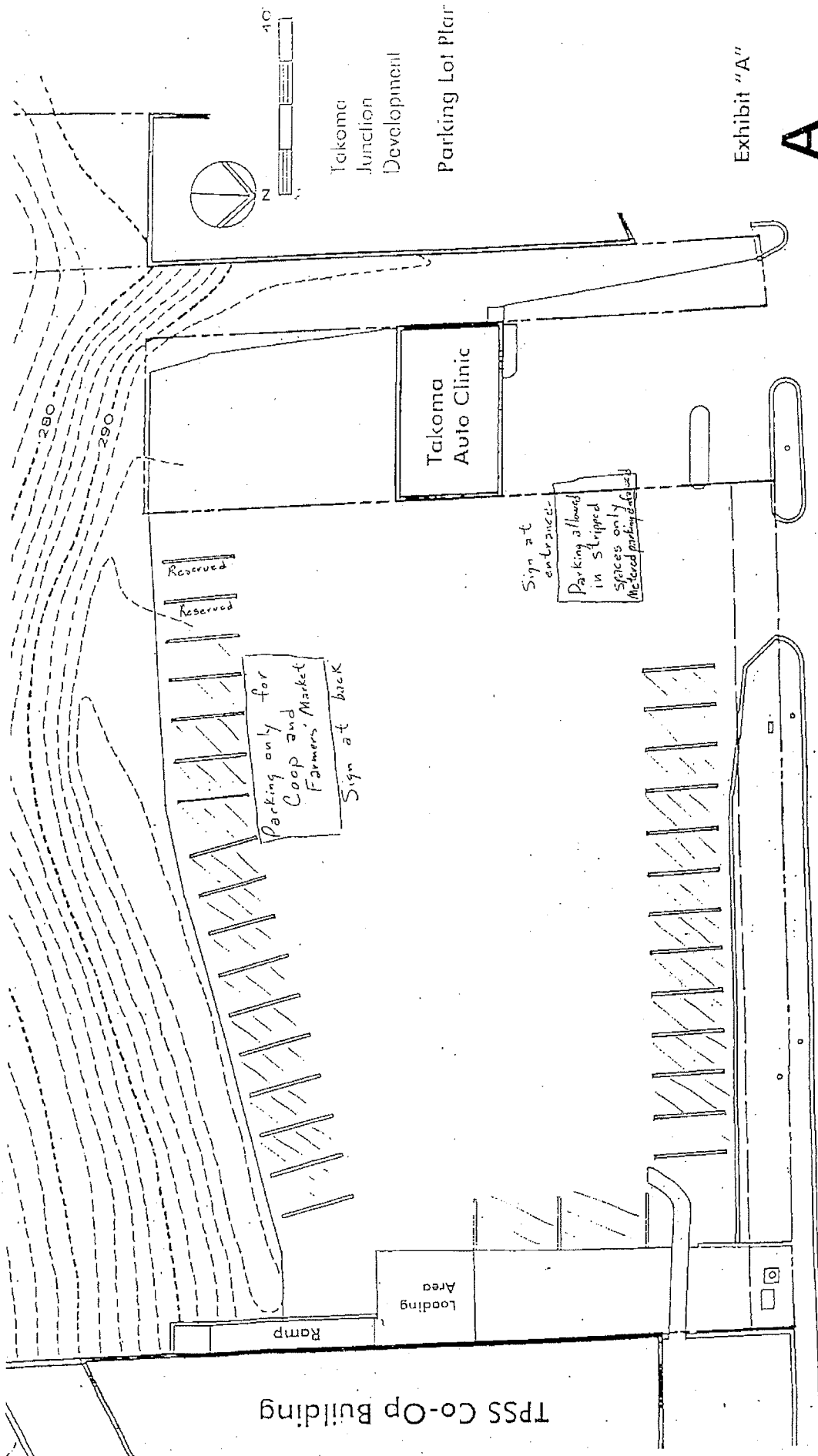
MAYOR AND CITY COUNCIL OF TAKOMA PARK

By:  7/28/98
Beverly Habada, City Administrator

TAKOMA PARK - SILVER SPRING COOPERATIVE, INC.

By: 
Joseph Klockner, Chairman of Board

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CARROLL AVENUE Md Rts. 195 & 410

Exhibit "A"

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