

COOPERATION AGREEMENT

This **COOPERATION AGREEMENT** (the "Agreement") is made as of this 10th day of October 2018 (the "Effective Date"), by and between **TAKOMA PARK – SILVER SPRING COOPERATIVE, INC.**, a Maryland corporation (the "Co-op"), and **NDC TAKOMA JUNCTION, LLC**, a Maryland limited liability company ("NDC"). The Co-op and NDC may sometimes be referred to in this Agreement collectively as "Parties," and individually as "Party," as the context may require.

WITNESSETH

WHEREAS, the Co-op is the sole tenant of the real property located at 201 Ethan Allen Avenue in Takoma Park, Maryland (the "Turner Building") at which the Co-op operates a food cooperative;

WHEREAS, NDC and the City of Takoma Park, Maryland (the "City") entered into a Development Agreement and Ground Lease, both dated August 1, 2016, for the development of the City-owned parking lot adjoining and west of the Turner Building (the "Takoma Junction Parking Lot");

WHEREAS, NDC has entered into a Purchase and Sale Agreement with the Owner of the real property immediately west of the of the Takoma Junction Parking Lot (the "Takoma Auto Clinic Property");

WHEREAS, NDC intends to construct a mixed-use development (the "Project") on the combined Takoma Junction Parking Lot – Takoma Auto Clinic Property site (the "Takoma Junction Property");

WHEREAS, on July 25, 2018, the City Council of the City approved NDC's Combined Site Plan for the Project; and

WHEREAS, the parties have agreed to coordinate their activities on their respective properties prior to, during, and after the construction of the Project as set forth in this Cooperation Agreement

NOW, THEREFORE, in consideration of the payments and mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

PRE-CONSTRUCTION PERIOD

1. **Parking Lot Sub-lease.** NDC and the Co-op have entered into a sub-lease (the "Parking Lot Sub-lease") with respect to the Takoma Junction Parking Lot to allow the Co-op to continue its current use of the Parking Lot until the commencement of the construction of the Project. The City will provide snow removal services for so long as the Co-op makes the Parking Lot available to the public for free parking.
2. **Trash.** During the term of the Parking Lot Sub-lease, the Co-op will be able to use the Takoma Junction Parking Lot as currently used, including for deliveries, storage of trash bins, and trash pick-up.

3. **Turner Building Access.** The Co-op agrees, with two (2) business days advance written email notice, to give NDC and its consultants access to all levels of the Turner Building and its roof to evaluate and measure the walls of the building, location of its basement, and footings. The Co-op agrees that it will not interfere with or oppose NDC's discussions with the owner of the Turner Building to permit underpinnings and other types of steps to protect the Turner Building during and after construction of the Takoma Junction Project. The Co-op may attend meeting(s) between NDC and the owner, and NDC will provide the Co-op with 24 hours advance written email notice of such meetings to the Co-op's General Manager at gm@tpss.coop.

4. **Delivery Information.** On or before October 15, 2018, the Co-op will provide NDC with a list summarizing information from the current delivery survey of all its suppliers, which survey will be undertaken for the two-week period between September 17, 2018 to September 30, 2018. The summary will include (i) a code for the name of each supplier; (ii) the type and length of truck used by each supplier; (iii) the category of items being delivered by each supplier (e.g. refrigerated goods, frozen goods, vegetables, etc.); (iv) the frequency, day, and time each supplier is expected to make a delivery or deliveries; and (v) the estimated length of time of each delivery. After the list is prepared, the Co-op commits to make a good faith effort to coordinate delivery schedules among its suppliers so that deliveries can be accommodated during the Construction and Post-Construction Periods. NDC will do the same with respect to Project tenant deliveries.

CONSTRUCTION PERIOD

1. **Lay-by.** NDC will construct the lay-by at its sole cost as a first priority when construction of the Project begins. The lay-by will be constructed of concrete and it will be level with the loading area immediately between the lay-by and the sidewalk, subject to the review and approval of the Maryland State Highway Administration (SHA). Once construction of the lay-by is completed, the Co-op will have exclusive access to the lay-by during Project construction. NDC agrees to direct Project construction vehicles to not use the lay-by. During Project construction, and prior to the completion of construction of the lay-by and its availability for use by the Co-op, the Co-op will continue to have access to and use of the Takoma Junction Parking Lot for customer parking, deliveries, and storage, provided the Co-op is not in default as defined in the Parking Lot Sub-Lease. The parties recognize that construction equipment and materials will use portions of the Takoma Junction Parking Lot during the construction of the lay-by and prior to commencement of construction of the Project. At all times the Co-op shall have access to the Takoma Junction Parking Lot or the lay-by, provided the Co-op is not in default of the Parking Lot Sub-Lease.

2. **Trash and Other Containers.** No later than thirty (30) days after receipt of a Notice of Termination of the Parking Lot Sub-lease from NDC, the Co-op will remove all trash, recycling, and storage containers from the Takoma Junction Property.

3. **Employee and Customer Parking.** The Co-op will be responsible to make alternative arrangements for employee and customer parking no later than thirty (30) days after receipt of a Notice of Termination of the Parking Lot Sub-lease from NDC.

4. **Additional Elevator.** In addition to an elevator on the west side of the Project, NDC will construct a second elevator to connect the Project's underground parking garage with the street level at the northeast corner of the Project. The additional elevator will be located next to the stairs and service corridor that are located between the Project and the Turner Building. The additional elevator will be designed to accommodate at least four grocery shopping carts, will be open to the public, and will be available to the Co-op and Project tenants for deliveries. NDC will construct the elevator at a to-be-determined cost. Provided the Co-op is still operating in a building adjacent to the Project and/or has leased space in the Project when construction begins, the Co-op will pay the first \$150,000 in construction costs of the second elevator and split construction costs on a 50/50 basis with NDC if the cost of the second elevator exceeds \$150,000. NDC will pay all warranty, service contract, and repair and maintenance costs associated with the second elevator. The Co-op will pay seventy-five percent (75%) of the actual cost of the second elevator's replacement, provided the Co-op is still operating in a building adjacent to the Project and/or has leased space in the Project at the time of such replacement.

POST-CONSTRUCTION PERIOD

1. **Leasing.** At this time, the Co-op will not lease retail space in the Project.

2. **Deliveries.** NDC and the Co-op commit that the Project's property management company and the Co-op staff will be in weekly contact with each other to coordinate the Co-op's and the Project's tenants' use of the lay-by. The Co-op and NDC each commit to make good faith efforts to coordinate and adjust delivery schedules among suppliers so that deliveries can be accommodated during the Post-Construction Period. Each party will work in good faith to minimize disruptions and accommodate the other's needs. The Co-op will have priority use of the lay-by for deliveries during the hours between 4:00 a.m. and 9:30 a.m.; provided, however, in the event a Project tenant(s) (e.g. restaurants, other food establishments) is/are unable to schedule deliveries after 9:30 a.m., the Co-op and the Project's property management company will be obligated to make a good faith effort to reasonably accommodate such tenant's or tenants' delivery prior to 9:30 a.m. In the event a reasonable accommodation cannot be made, the Co-op will have the final decision. The Co-op will have access through the Project to its current door on the west side of the Turner building for deliveries. NDC will permit trucks up to 18 feet in length, 6 feet 6 inches in width, and 8 feet in height to make deliveries using the Project's underground parking garage and deliver goods to the Co-op from the garage by use of the additional elevator.

2. **Trash and Other Containers.** The Co-op's trash, recycling, and storage containers will remain off the Takoma Junction Property, but pick up of the Co-op's trash and recycling may occur in the lay-by. The Co-op and the Project's property management company may pursue a joint contract with one waste removal company to reduce costs. Upon completion of construction, the Co-op will advise NDC of its then current pricing for trash removal and disposal and with whom it currently contracts.

3. **Public Parking in Project Garage.** In the garage, NDC will provide one free 18-foot long parking space exclusively for Co-op use and deliveries. At this time, the Co-op does not intend to rent other parking spaces in the garage. To the extent free parking is made available to parkers using the Takoma Junction garage by NDC or the operator of the garage, Co-op parkers will receive the same benefit.

4. **Management of Grocery Carts.** NDC will provide one space in the Project garage for use as grocery cart corral, which the Co-op will build at its sole expense and rent for \$75 per month. The Co-op will be responsible for the return of grocery carts from the garage to the Turner Building.

5. **Lay-by Maintenance.** If at any time the SHA or other governmental entity requires the Project to bear the cost of the repair and maintenance of the lay-by, the Co-op will pay 25% of such costs.

6. **Noninterference Agreement.** Each party and each of its respective officers and board members hereby agrees that the Cooperation Agreement and Combined Site Plan approved by the City Council on July 25, 2018 ("City-approved Site Plan") together provide a sufficient set of reasonable accommodations to the business operations of the Co-op before, during, and after the construction of the new Takoma Junction Project to justify entering into the Cooperation Agreement. The Co-op and its officers and board members will not oppose the City-approved Combined Site Plan unless the City-approved Site Plan is materially changed in a manner that does not conform to the City's Resolutions or to this Agreement (regardless of whether the change is initiated by NDC or required by a regulatory or legislative body) and such change would materially adversely impact the Co-op's operations, in which case this clause is rendered null and void.

This Noninterference Agreement does not limit the Co-op's ability to participate in public proceedings or to publicly communicate with elected and appointed officials in connection with proposed changes to the intersection of MD routes 410 and 195 to the extent that such proposed changes would materially adversely affect the Co-op's operations.

7. **Joint Statement.** The parties agree to simultaneously issue the following joint statement to the public and post it on their respective web sites:

In keeping with the City's resolution of July 25, 2018, the Co-op and NDC engaged in mediation to identify solutions to a number of operational issues. Both parties engaged in the mediation in good faith, recognizing that the nature of such negotiations requires compromise. While neither party got everything it wanted, they agreed on terms that provide benefits to both. These terms were memorialized in a Cooperation Agreement. The Cooperation Agreement, together with the Combined Site Plan approved by the City Council on July 25, 2018, provide a sufficient set of reasonable accommodations to the business operations of the Co-op before, during, and after the construction of the new Takoma Junction Project to justify entering into the Cooperation Agreement. The full text of the Cooperation Agreement is available on the City's web site.

The parties agreed to the following mutual accommodations: NDC construction of the lay-by as part of the first stage of construction to ensure the ability of the Co-op to continuously receive all product deliveries; exclusive Co-op use of the lay-by during construction; priority morning Co-op use of the lay-by for deliveries; Co-op access through the Project to the Co-op's current door on the west side of the Turner building for deliveries; the parties' commitment to make good faith efforts to coordinate and adjust delivery schedules among suppliers of the Co-op and all Project tenants so that all deliveries can be accommodated; Co-op and Project use of the lay-by for trash pickup; Co-op use of the parking garage and one free underground parking space adjacent to the Co-op for some deliveries; availability of parking for Co-op customers on the same basis as others parking in the building; the Co-op's ability to rent parking space for its

customers in the parking garage; and Co-op funding of a second elevator sized for Co-op customers with carts that also will be available for public and Project tenant use that NDC will repair and maintain. The parties have also agreed that the Co-op will not rent space in the Takoma Junction project at this time.

As a result of the Cooperation Agreement, the Co-op will not oppose the Takoma Junction Project or seek further accommodations from the City or NDC absent changes to the Project by NDC, the City, or any other governmental body that would materially adversely affect the Co-op's operations. In addition, the parties are committed to working with the State Highway Administration as it explores ways to reconfigure and improve the Takoma Junction intersection at MD Routes 195 and 410. The Co-op and NDC will work to address any operational issues that that may arise to make the Takoma Junction project, the Co-op, and local businesses successful.

ADDITIONAL PROVISIONS

1. Each Party hereby represents to the other Party that (i) it is in good standing under the laws of the State of Maryland; (ii) the individual executing this Agreement is duly authorized and empowered to do so on behalf of such Party; and (iii) it has had the advice of independent counsel.

2. Any communication, notice, or request for approval furnished hereunder must be in writing addressed to the appropriate party at the addresses set forth below, or such other address designated by a party, and shall be deemed to have been duly served on the other party on the day it is: (i) delivered in person; (ii) sent by email; (iii) delivered by same day or overnight delivery service; or (iv) delivered by first class U.S. Mail. Service by email shall be deemed effective upon transmission.

To CO-OP:

201 Ethan Allen Avenue
Takoma Park, Maryland 20912
Attn: Rachel Hardwick, President
Email: Hardwick.Rachel@gmail.com

With a copy to:

201 Ethan Allen Avenue
Takoma Park, Maryland 20912
Attn: TPSS Co-op General Manager
Email: gm@tpss.coop

With a copy to:

The Law Office of Michele Rosenfeld LLC
1 Research Court, Suite 450
Rockville, MD 20850
Attn: Michele Rosenfeld
Email: rosenfeldlaw@mail.com

To NDC:

c/o The Neighborhood Development Company, L.L.C.
3232 Georgia Avenue
Suite 100
Washington, D.C. 20010
Attn: Adrian Washington
Email: awashington@neighborhooddevelopment.com

With a copy to:

JF Bonder PLLC
3383 Stephenson Pl., NW
Washington, DC 20015
Attn: Joel F. Bonder
Email: jbonder@jfbonder.com

Any communication required or permitted by this Agreement may be given by either Party's attorney and shall have the same effect as if such notice was given by the Co-op or NDC, as applicable.

3. No failure or delay on the part of either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

4. This Agreement represents the final, complete, and entire agreement between the Parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without giving effect to its conflict of laws principles or rules. In the event any disagreement or dispute arises hereunder, the parties agree, after 5 business days' written notice of such disagreement or dispute by one party to the other, to meet in good faith to resolve their disagreement or dispute. If the parties are unable to resolve their disagreement or dispute within fifteen (15) calendar days of the date of a party's notice, the parties agree to submit the matter to nonbinding mediation conducted by Mr. Daniel Dozier of Press, Dozier & Hamelburg, LLC, Bethesda, Maryland or another neutral third-party selected by the Parties. Any lawsuit or action arising under or related to this Agreement shall be filed in the Montgomery County, Maryland Circuit Court, and each party irrevocably submits to the jurisdiction of such Court.

6. This Agreement may be signed in any number of counterparts, each of which shall be an original, but all of which together, shall constitute one and the same instrument. Such counterparts may be transmitted in PDF form to the other parties by email and shall be originals. All counterparts shall collectively constitute a single Agreement.


7. This Agreement shall be binding on each Party's successors and assigns.

8. This Agreement may not be modified, except by an instrument in writing signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have executed and delivered this Cooperation Agreement as of the date first written above.

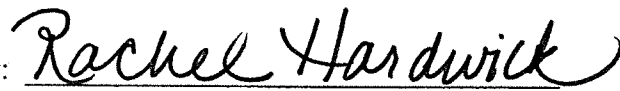
NDC TAKOMA JUNCTION LLC

By: The Neighborhood Development Company, L.L.C.,
its Managing Member

By: 

Adrian Washington
Manager

TAKOMA PARK – SILVER SPRING COOPERATIVE, INC.

By: 

Rachel Hardwick, President
Board of Representatives