

**MEMORANDUM OF AGREEMENT
BOARD OF ZONING ADJUSTMENT CASE NO. 21144**

This MEMORANDUM OF AGREEMENT (“**MOA**”) is made this 10th day of July, 2024, by and among Taco Bell of America, LLC (“**Taco Bell**”), Zusin Development LLC, a District of Columbia limited liability company, and its successors and assigns (“**Property Owner**”), and the neighboring signatory residents, tenants, and/or owners in Square 902 in the District of Columbia (collectively, the “**Neighbors**”, and together with Taco Bell and Property Owner, the “**Parties**” or individually, a “**Party**”).

RECITALS

- I. Property Owner is the owner of certain real property and existing improvements in the District of Columbia located at 411 8th Street, SE and also known as Lot 16 in Square 902 (the “**Property**”).
- II. Taco Bell filed an application to the D.C. Board of Zoning Adjustment (hereinafter referred to as “**BZA**” or the “**Board**”) requesting zoning relief to (i) allow to the operation of a fast food restaurant at the Property and (ii) permit the configuration of certain rooftop structures intended to mitigate any adverse impacts to the Neighbors (the “**Application**”). The Application is being processed as BZA Case No. 21144.
- III. As part of the Application, Taco Bell and the Neighbors negotiated and agreed to a list of proposed conditions with incorporated exhibits, which is marked as Exhibit 22B in the public record for BZA Case No. 21144 (the “**Proposed Conditions**”).
- IV. Two of the Proposed Conditions imposed obligations specific to Property Owner and to which Property Owner consented, as reflected by the letter marked as Exhibit 31 in the public record for BZA Case No. 21144.
- V. During the public hearing on the Application held on July 3, 2024, the BZA held that five of the Proposed Conditions were outside of the Board’s jurisdiction and/or could not be integrated into a final order approving the Application (the “**BZA Order**”).
- VI. The Parties wish to memorialize the Proposed Conditions to which all Parties have agreed, but will not be included in the BZA Order, to be in effect for the duration of the BZA Order.

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, as further described herein, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- A. **Agreement of the Neighbors.** In consideration of the following promises made by Taco Bell and Property Owner, the undersigned Neighbors agree to continue to support the Application.
- B. **Conditions Related to Taco Bell's Use of the Property**
1. **Maintenance of Abutting Public Space.** During the hours of operation, including upon opening and closing, Taco Bell shall monitor the abutting public space at the front of the building for trash, litter, and/or debris, and any such debris removed. The abutting public space shall be kept in clean condition. Further, Taco Bell shall install a hose bib for regular cleaning and maintenance.
 2. **Landscaping.** Any pruning or trimming of trees on adjacent properties will only be done with the prior consent of the adjacent property owners.
- C. **Conditions Related to Property Owner's Ownership of Property**
1. **Leasing First Floor to Future Third Party for Fast Food Restaurant.** Property Owner agrees that, in the event Taco Bell is no longer a tenant and Property Owner leases the first floor of the Property to a third party for the purpose of operating a fast food restaurant pursuant to the BZA Order (the "**Third Party**"), Property Owner will expressly reference this MOA and the BZA Order in the formal lease to the Third Party. As such, Property Owner benefitting from the BZA Order is responsible for requiring the terms of this MOA and the conditions in the BZA Order to ensure ongoing compliance for the Neighbors.
 2. **Future Tenancy of Second Floor.**
 - a. **No Restaurant Use on Second Floor.** Property Owner commits to not leasing the second floor of the Property to a restaurant, prepared food shop, or fast food restaurant, so long as the BZA Order is valid, and any conditions thereunder are in full force and effect.
 - b. **Soundproofing for Additional HVAC Units.** Property Owner agrees that, so long as the BZA Order is valid, and in the event that (i) Property Owner leases the second floor of the Property to another tenant in accordance with Paragraph C.2.a (the "**Second Floor Tenant**") and (ii) additional HVAC units must be installed for the Second Floor Tenant's use, including upon the rooftop or in the rear courtyard, said HVAC units will require the installation of sound barriers, or comparable soundproofing material, manufactured by ArtUSA Industries, Inc. ("**ArtUSA**") or,

if ArtUSA is no longer in business, another sound mitigation company of equal experience and expertise. This Condition C.2.b shall be included in the formal lease between Property Owner and the Second Floor Tenant.

3. **Applicable to Future Owners of the Property.** Property Owner agrees that the conditions in this MOA shall be binding upon future owners of the Property so long as the MOA is in effect, and Property Owner agrees to incorporate this Condition C.3 into any document transferring the Property to a future owner.

D. Additional Conditions. If the BZA does not include any of the other Proposed Conditions set forth in Exhibit 22B (including incorporated Exhibits A-E) in the BZA Order, such Proposed Conditions shall be deemed to be included in this MOA and enforceable under the terms of this MOA.

E. Enforcement by Suit or Arbitration. If the Neighbors find that Taco Bell and/or Property Owner has not satisfied the conditions of this MOA, and following the notice and cure provisions in Paragraph F.2, the Neighbors, each of whom is authorized to act individually on behalf of any or all of the Neighbors, may, at their election, (a) seek to enforce the MOA in accordance with the laws of the District of Columbia, including any remedies at law or in equity, including the remedy of specific performance, or (b) submit the dispute to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) in Washington, D.C., using a single arbitrator (the “**Arbitrator**”), who shall be a licensed attorney working in Washington, D.C. with at least fifteen (15) years of experience in commercial or real property litigation. If arbitration is selected, the Arbitrator’s decision shall be conclusive and binding, and it shall not be subject to appeal. Each Party shall bear their own attorneys’ fees and costs, and (i) if the dispute involves two of the three Parties herein, each Party shall bear one-half of the cost of the arbitration proceeding and the Arbitrator’s fee; and (ii) if the dispute involves all three Parties herein, each Party shall bear one-third of the cost of the arbitration proceeding and the Arbitrator’s fee.

F. Miscellaneous Provisions.

1. **Neighbors’ Successors and Assigns.** The Neighbors’ rights and obligations under this MOA shall be applicable to their successors and assigns as residents, tenants, and/or owners in Square 902 in the District of Columbia.
2. **Default and Opportunity to Cure.** In the event that a Party fails to perform any of its obligations under this MOA, the Neighbors shall notify the non-performing Party thereof and non-performing Party shall be given thirty (30) days to cure the defect. If

the non-performing Party does not cure the defect within such period, the Neighbors may take action under Paragraph E of this MOA.

3. **Entire Agreement and Modification.** This MOA constitutes the complete agreement among the Parties and shall not be modified or amended except by written agreement of the Parties hereto.
4. **Termination.** This MOA shall automatically terminate as to Taco Bell at such time as it no longer operates a fast food restaurant on the first floor of the Property permitted by the BZA Order. This MOA shall automatically terminate as to Property Owner at such time as neither Taco Bell nor the Third Party operates a fast food restaurant on the first floor of the Property permitted by the BZA Order.
5. **Counterparts.** This MOA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same MOA.

IN WITNESS WHEREOF, Taco Bell, Property Owner, and the Neighbors, have each caused this Memorandum of Agreement to be executed and delivered in its name by its duly authorized representative(s) as of the day and year first above written.

[SIGNATURES FOLLOW]

TACO BELL:

TACO BELL OF AMERICA, LLC

By: Mary Lattarulo Digitally signed by Mary Lattarulo
Date: 2024.07.06 13:50:44 -04'00'

Name: Mary Lattarulo

Title: Sr. Manager, Construction

PROPERTY OWNER:

ZUSIN DEVELOPMENT, LLC,
a District of Columbia limited liability company

By: _____
Ilya Zusin, Authorized Person

[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]

TACO BELL:

TACO BELL OF AMERICA, LLC

By: _____

Name: Mary Lattarulo

Title: Sr. Manager, Construction

PROPERTY OWNER:

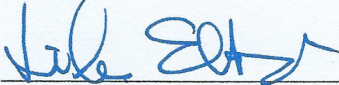
ZUSIN DEVELOPMENT, LLC,
a District of Columbia limited liability company

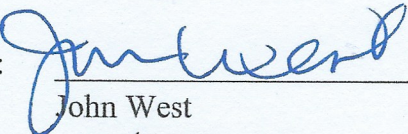
By: _____

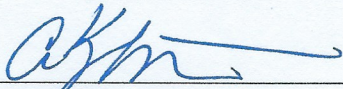
Ilya Zusin, Authorized Person

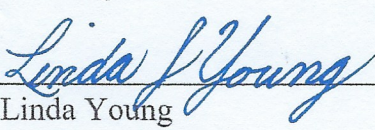
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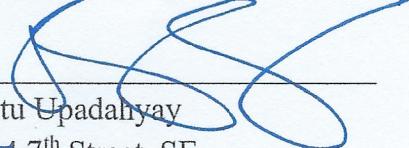
NEIGHBORS:

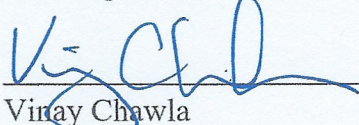
By: 
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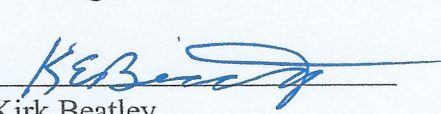
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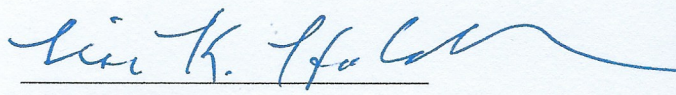
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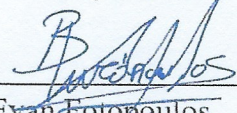
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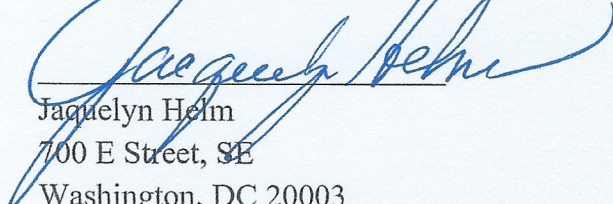
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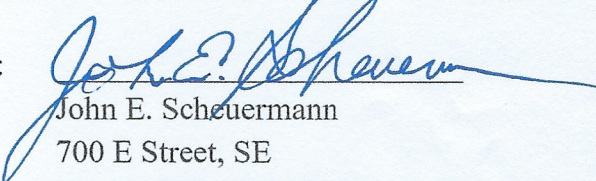
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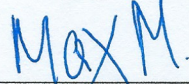
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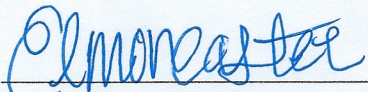
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By: 
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Washington, DC 20003

By: 
Lizzie Moncaster
The Prout Condos, 418/420 7th St., SE
Washington, DC 20003
The Prout HOA Treasurer