

AMENDMENT TO DECLARATION OF COVENANTS

For Prohibiting Residents of 501 H Street, NE, Washington, D.C. from Applying
for Residential Parking Permits and Visitor Parking Permits

THIS AMENDMENT TO DECLARATION OF COVENANTS (the "Amended Declaration") is made, entered into, and declared as of this ____ day of _____, 20 ____ by JEMAL'S CDC L.L.C., 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").

RECITALS

- A. Declarant is the Owner of certain real property located in the District of Columbia with the address of 501 H Street, NE, Washington, D.C. and known as Lot 47 in Square 833 and more fully described on Exhibit A (the "Property").
- B. The Declarant built a six story building, with 28 dwelling units and approximately 23,949 square feet of retail use (the "Building") pursuant to permit B1601189 issued by DCRA, as revised by permit B 1711570. The Building was constructed and the first Certificate of Occupancy was issued for the base Building in November, 2017.
- C. The construction of the Building required the grant of flexibility from the parking, loading, rear yard, and H Street Overlay regulations, which were approved by the Zoning Commission on June 29, 2015 (Z.C. Order No. 14-14) subject to certain conditions.
- D. Condition C(2)(f) of the Z.C. Order stated:

Residential Parking Permit ("RPP") Program Exclusion: Prior to the issuance of a certificate of occupancy for the building, the Applicant shall prevent residential tenants of the building from obtaining RPPs by: (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs upon pain of mandatory lease termination to the full extent permitted by law; (ii) ensuring that DDOT removes the Subject Property from the list of properties eligible for RPP, or if it is not on the list, classifying it as ineligible for RPP; (iii) should the Applicant offer any units for sale, adding a covenant that runs with the land prohibiting residents from applying for or obtaining RPPs; and (iv) executing a covenant that runs with the land that generally embodies the aforementioned RPP restrictions; and

- E. Pursuant to Condition C(2)(f)(ii), above, Declarant requested DDOT remove the Property from the list of properties eligible for RPP. DDOT replied by a September 25, 2017 email from the Curbside Management and Operations

Planner that "Either the whole block has RPP, or no one on the block has RPP. DDOT can't be selective of who on the block can get RPP." DCRA has received independent confirmation from DDOT that this statement represents DDOT's policy.

- F. By Declaration dated October 12, 2017, and recorded in the Land Records of the Recorder of Deeds of the District of Columbia (the "Land Records") on October 13, 2017 as Instrument No. 2017113692, Declarant covenanted, agreed, and warranted that it and its heirs, successors, and/or assigns would include in its standard residential apartment lease for the Building and in any other lease or agreement granting to any third party the right to occupy as a residential tenant any portion of the Building, the following provision:

"PROHIBITION FROM APPLYING FOR A RESIDENTIAL PARKING PERMIT
The construction of 501 H Street, NE was authorized by Order No. 14-14 of the Zoning Commission, which granted zoning relief, including a parking variance. The zoning relief granted was made subject to certain conditions. One of conditions required a provision in each residential lease or sales agreement prohibiting the lessee or purchaser from applying for a residential parking permit. PLEASE NOTE: As a resident at 501 H Street, NE, you are prohibited from applying for a residential parking permit from the District of Columbia, regardless of the ownership of the 501 H Street, NE Building, and for the life of the Building."

- G. The Declaration also stated that if the Building is ever converted to a condominium or cooperative regime, and the apartments are sold individually, the Declarant and any successor-in-ownership party shall include the language in the provision above in any sales contract and/or materials and in any condominium declaration to be recorded covering the Building and/or the Property.
- H. On April 25, 2019, the Declarant filed a Modification of Consequence to Z.C. Order No. 14-14 to permit office use on the second floor of the Building and to install four new glass windows on the second floor of the Building. Pursuant to Z.C. Order No. 14-14A, dated _____ and effective on _____, the Zoning Commission approved the proposed modifications.
- I. Advisory Neighborhood Commission ("ANC") 6C, the ANC in which the Property is located, submitted a letter in support of Z.C. Case No. 14-14A, which was contingent on the Declarant agreeing to certain conditions contained in a Memorandum of Understanding with the ANC. Once such condition was to amend the Declaration to include restrictions on residents of the Building from obtaining RPPs, annual Visitor Parking Permits ("VPP"), and/or 15-day Visitor Parking Permits ("Temporary VPP") (collectively "Parking Permits"). The purpose of this Amended Declaration is to satisfy that requirement.

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 Amended 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 Amended 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. **Inclusion in Lease.** The Declarant will include in its standard residential apartment lease for the Building and in any other lease or agreement granting to any third party the right to occupy as a residential tenant any portion of the Building, the following provision:

"PROHIBITION FROM APPLYING FOR A RESIDENTIAL PARKING PERMIT

The construction of 501 H Street, NE was authorized by Order No. 14-14 of the Zoning Commission, which granted zoning relief, including a parking variance. The zoning relief granted was made subject to certain conditions. One of conditions required a provision in each residential lease or sales agreement prohibiting the lessee or purchaser from applying for a residential parking permit. PLEASE NOTE: As a resident at 501 H Street, NE, you and your visitors are prohibited from applying for or obtaining a parking permit from the District of Columbia, regardless of the ownership of the 501 H Street, NE Building, and for the life of the Building. The types of parking permits prohibited include but are not limited to: (i) annual Residential Parking Permits issued by the DC Department of Motor Vehicles; (ii) annual Visitor Parking Permits issued by the District Department of Transportation; and (iii) 15-day Visitor Parking Permits issued by the Metropolitan Police Department. Violation of this term is grounds for lease termination"

4. **Inclusion in any Condominium or Cooperative Regime Documents.** If the Building is ever converted to a condominium or cooperative regime, and the apartments are sold individually, the Declarant and any successor-in-ownership party shall include the language in Provision 3 above in any sales contract and/or materials and in any condominium declaration to be recorded covering the Building and/or the Property.
5. **Term of Covenant.** This Amended Declaration shall remain in full force and effect for as long as the Building shall exist, and the covenants contained herein shall be binding upon any future owners of the Building both individually and collectively. This Declaration may only be amended or terminated by recordation of an appropriate instrument executed by the Declarant (or its successors or assigns in interest) in a form approved for technical and legal sufficiency by DCRA and recorded among the Land

Records.

6. **Primacy of Declaration.** Declarant shall, at its sole expense, comply with all provisions of this Amended 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 Amended Declaration nor performance hereunder will constitute or result in a violation or breach by Amended Declarant of any other agreement or order which is binding on the Property.
7. **Good Standing.** To the extent the Declarant is an entity, the Declarant warrants that it is 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 Amended Declaration and (iii) has all necessary power to execute and deliver this Amended Declaration.
8. **Specific Enforcement.** The District shall have the right to specifically enforce the covenants contained in this Amended Declaration.
9. **Counterparts.** This Amended Declaration may be executed in one or more counterparts, which counterparts, when taken together, shall constitute a single, binding instrument.
10. **Governing Law.** This Amended Declaration shall be governed by, construed and enforced in accordance with the laws of the District of Columbia.
11. **Recordation of Declaration.** Declarant shall, at its cost and expense, properly record this Amended Declaration among the Land Records and shall furnish to DCRA a copy of this Amended Declaration certified by the Recorder of Deeds as a true copy of the recorded instrument.
12. **Valid Execution and Delivery.** This Amended 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.
13. **Severability.** If any of the covenants, conditions or terms of this Amended 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]

APPROVED AS TO TECHNICAL SUFFICIENCY:

Zoning Administrator
Department of Consumer & Regulatory Affairs

Date

APPROVED AS TO LEGAL SUFFICIENCY:

General Counsel, Office of the General Counsel
Department of Consumer & Regulatory Affairs

Date

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot or parcel of land situated, lying and being in the District of Columbia, and being more particularly described as follows:

Lot numbered Forty-Seven (47) in Square numbered Eight Hundred Three-three (833) in in a subdivision made by the D.C. Redevelopment Land Agency as per plat recorded in Book 175 at Page 60 in the Office of the Surveyor for the District of Columbia.