

**FAIRMOUNT CIVIC ASSOCIATION AND ASPEN REAL ESTATE HOLDING
COMMUNITY BENEFITS AGREEMENT ("CBA") FOR 741 N 23rd STREET**

PREAMBLE: This Community Benefits Agreement (the "Agreement") is entered into by and between the Fairmount Parents, Business and Neighbors Association, Inc. d/b/a **Fairmount Civic Association**, the Registered Community Organization (RCO), hereinafter referred to as "FCA," and **Aspen Real Estate Holding, 2048 A Fairmount Avenue, Philadelphia, PA 19130**, hereinafter referred to as "**Owner(s)**" (collectively the "**Parties**").

WHEREAS, The purpose of this Agreement is to set out the conditions by which **Owner(s)** and any **tenant** who rents 741 North 23rd Street (the "Property") from **Owner(s)** shall abide concerning the conduct of any dining establishment operating at said address; and

WHEREAS, The Property is located in a residential area with homes on three sides, and the operation of a sit-down restaurant needs to be sensitive to the residential environment; and

WHEREAS, The nearby neighbors are concerned about excessive noise; intrusive signage, lighting and media, strain on availability of street parking, proper and timely trash and oil removal, outdoor smoking, security, and that patrons/staff respect the neighbors and the neighborhood.

NOW, THEREFORE, agreeing to be legally bound, the parties agree to the following:

- 1) The foregoing recitals are true and correct and incorporated herein by reference.
- 2) **Owner(s)** of the Property, shall attach this Agreement to any lease of the property, and **Owner(s)** agree that they will make a good faith effort to enforce this Agreement with any **tenant** leasing the property; and
- 3) In the event that the Property is occupied by **Owner**, **Owner** is bound by the provisions of this Agreement; and
- 4) In the event that **Owner** sells the Property, this Agreement shall be a binding addendum to any lease, management agreement, or sale and transfer agreement related to the Property.
- 5) **Owner(s)** and any **tenant** at the Property will adhere to all relevant provisions of The Philadelphia Code, regulations and rules, and engage with the neighborhood in a manner that promotes amity and good relations between residents and commercial tenants; and
- 6) **Tenant** must adhere to The Philadelphia Code and The Pennsylvania Liquor Control Board regulations related to noise and hours of operation ([http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-400noiseandexcessivevibration?f=templates\\$fn=default.htm\\$3.0\\$](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title10regulationofindividualconductanda/chapter10-400noiseandexcessivevibration?f=templates$fn=default.htm$3.0$))

[vid=amlegal:philadelphia_pa\\$anc=JD_10-401](https://codes.findlaw.com/pa/title-47-ps-liquor/pa-st-sect-47-4-493.html)), and <https://codes.findlaw.com/pa/title-47-ps-liquor/pa-st-sect-47-4-493.html>), as well as The Philadelphia Department of Public Health regulations regarding air quality. Neighbors will seek strict enforcement of all code and regulations. Neighbors' expectation is that **tenant** will cease all noise at 10:00 PM on weekdays and 11:00 PM on Friday and Saturday; and

7) **Owner(s)** agree to with at least 30 days written notice at a reasonable time, to meet with FCA, near-neighbors, the 9th District City Police Community Relations Officer and State Police representative to ensure effective enforcement; and

8) **Tenant** is prohibited from setting up any outside audio-visual media; and

9) Any additional signage to that currently existing on property (wall sign and roof sign) as of 9/13/2019 shall be subject to approval by FCA and the Near Neighbors, as described in The Philadelphia Zoning Code, Section 14-303 -12(b)(.4):

(a) Every property any portion of which is within 250 ft. of any portion of the applicant's property, and

(b) Every property on the same blockface as the primary frontage of the applicant's property or on the opposite blockface from the primary frontage of the applicant's property. For purposes of this subparagraph (.4), properties on the same or opposite blockface shall mean those properties that have an address which shares a common hundred numbers with the subject property, according to the Office of Property Assessment's property information.

FCA shall schedule discussion of any additional signage change at the earliest regularly scheduled FCA meeting upon receiving the additional signage request, and shall publicize the scheduling of discussion immediately in the FCA newsletter. FCA is responsible for all notice to neighbors and any and all efforts related to the participation of Near Neighbors. If FCA cannot organize efforts for approval of additional signage on the Property within 30 days of Owner's written request to the FCA to review additional signage for the Property, Owner shall not be unreasonably held up due to FCA's efforts and shall be permitted to submit for approval by the City as per The Philadelphia Code after that 30 day period. Tenant shall not hang additional signs from the awnings of the building; and

10) **Tenant** should not use the door at 23rd and Aspen as a regular entryway or exit. The door at 742 Croskey should be an emergency exit only and should remain closed. **Tenant** shall make reasonable efforts to encourage the use of the main Aspen street entrance through regular signage; and

- 11) **Tenant** should make reasonable efforts to discourage employee use of the 3rd floor roof for recreation or relaxation; and
- 12) **Tenant** shall not use 3rd floor of the building as a restaurant seating area or bar, and no application shall be made to extend liquor license to 3rd floor; and
- 13) **Tenant** shall handle, store and remove trash in a manner consistent with The Philadelphia Code (https://www.phila.gov/media/20181003154610/Food_Regulations.pdf), and trash removal shall not take place prior to 8:00 AM. **Tenant** must dispose of oil according to the requirements of The Philadelphia Department of Public Health and The Philadelphia Streets Department. **Tenant** shall as frequently as necessary power-wash or otherwise thoroughly clean any area where trash is stored per The Philadelphia Department of Public Health requirements; and
- 14) **Tenant** shall restrict outdoor dining hours to 9:00 AM to 10 PM, weekdays and weekends, with clean-up until 11:00 p.m.; and
- 15) **Tenant** must on a daily basis or as frequently as necessary power-wash or otherwise thoroughly clean any outside sidewalk, curb, and gutter used for outside dining, specifically those on the 23rd Street side and Aspen side of the Property, to avoid food and waste accumulation. Accumulation beyond the immediate outside dining area should be reported to the Health Department at (215) 685-7495; and
- 16) **Tenant** must adhere to all provisions of The Pennsylvania Clean Indoor Air Act (<https://d3hyaksbtf7nqa.cloudfront.net/live/uploads/2016/06/Clean-Indoor-Air-Act.pdf>). If **Tenant** permits smoking outdoors, **Tenant** must provide receptacles for appropriate disposal of tobacco and other smoking products per the Guidance from The Pennsylvania Department of Health (<https://www.health.pa.gov/topics/programs/CIAA/Pages/Guidance.aspx>). **Tenant** must clean sidewalk of smoking detritus on a daily basis, if necessary; and
- 17) **Tenant** shall make reasonable efforts to discourage group smoking outside the premises by staff and patrons and encourage respect and consideration for the neighborhood; and
- 18) The **FCA** encourages **tenant** or **Owner** to install security cameras on the North 23rd Street, Aspen and Croskey sides of the building; and
- 19) **Tenant** shall limit banquet-like events to 80 patrons. Any event must be dining-oriented, such as a luncheon or a dinner, rather than entertainment-oriented, such as a dance party.
- 20) All written notice subject to this Agreement is sufficient via email or regular mail.

If by regular mail or email as follows:

Bruce Butler, President
Fairmount Civic Association

P.O. Box 56326
Philadelphia, PA 19130
president@fairmountcivicassociation.org

Rachael J. Pritzker, Esquire
Attorney for Owner
Pritzker Law Group LLC
1635 Market Street, Suite 1600
Philadelphia, PA 19103
rachael@pritzkerlg.com


- 21) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania. The parties further agree that any action brought to enforce any right or obligation under this Agreement shall be subject to the exclusive jurisdiction and venue of the courts of the Commonwealth of Pennsylvania and in the Country of Philadelphia.
- 22) This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.
- 24) All provisions of this Agreement shall be applicable only to the extent that they do not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If provisions of this Agreement, or any application thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the other provisions of this Agreement, or of any other application of such provision, shall be no way affected thereby.
- 25) If in contrast or in conflict with any other agreement, this Agreement supersedes any and all agreements by, between and among the Parties, and represents their entire agreement pertaining to the subject matter hereof. There is no agreement or understanding relating to the subject matter hereof, whether express, implied, written or oral, not set forth herein. Any amendments or changes to this Agreement must be made in writing and signed by both Parties hereto.
- 26) The persons signing this Agreement on behalf of the Parties hereto acknowledge they have the authority to do so and that they have read the provisions of this Agreement and fully understand its terms, contents, conditions and effect, that they have been represented by counsel, knowingly waived representation by counsel and have had the opportunity to consult with counsel during the negotiations of its terms, and that they voluntarily and knowingly agree to the terms of this Agreement.

27) This Agreement may be executed in any number of counterpart originals, all of which shall collectively constitute one agreement.

28) This Agreement shall be effective immediately upon signing by all Parties listed below.

IN WITNESS WHEREOF, the above parties, intending to be legally bound hereby, have executed this Agreement as of the day and year first above written.

For the FCA:

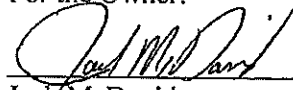


Bruce Butler, President

Date:

10/10/19

For the Owner:



Jack McDavid

Date:

10/8/19