

EXCLUSIVE USE AGREEMENT
FOR THE FRONT OF 4912 WISCONSIN AVENUE, NW

This Agreement (“Agreement”) is entered into this ____ day of November, 2021, by and between 4912 Wisconsin LLC (“4912”), Abdihamid Ahmed D/B/A Tartufo Italian Restaurant (“Tartufo”) and Advisory Neighborhood Commission 3E (“ANC 3E”). The term “the Parties” collectively refers to and includes the persons and entities identified in this paragraph.

WHEREAS, 4912 Wisconsin LLC is the owner of the real property known as 4912 Wisconsin Avenue, NW, Washington, DC and said property includes a sidewalk frontage that is owned and/or treated by the District of Columbia as public space. 4912 is currently constructing an apartment building as an improvement attached to the said property;

WHEREAS, Abdihamid Ahmed, the owner and D/B/A Tartufo Italian Restaurant, located at 4910 Wisconsin Avenue, NW, Washington, DC desires to use a portion of the sidewalk frontage (some of it currently covered by a deck used by the prior owner) of 4912 Wisconsin Avenue, NW, Washington, DC as additional dining space for Tartufo Italian Restaurant; and

WHEREAS, ANC 3E, is charged with advocating for legislation, zoning regulations, and general public policy that is in the best interest of the residents and neighborhoods encompassing ANC 3E and the District of Columbia as a whole,

WHEREAS, 4912 initially sought to use the sidewalk frontage at issue as a lawn for its residents, and an ANC member stated that this would essentially privatize the public space, that the ANC would likely oppose such a use, but that the ANC was willing to work with 4912 if a suitable use could be found for the space that would be inviting to the public and help activate the space, such as an outdoor café,

NOW THEREFORE, in consideration of the foregoing, and of the promises, consideration and mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **EXCLUSIVE USE OF THE PUBLIC SPACE:** Pursuant to this Agreement, 4912 authorizes Tartufo to use the public space in front of 4912 Wisconsin Avenue, NW specified in Public Space Permit application #374388 (“Subject Space”) exclusively as an additional outdoor dining area for customers of the Tartufo Italian Restaurant (“Agreed Use”). There will be 6 tables and 12 chairs. Tartufo will use this area for dining all year, for the same hours as its indoor service, using heat lamps and other heating systems throughout the winter season. 4912 and/or Tartufo, as appropriate, shall be responsible promptly to seek all government permits necessary to make the Agreed Use. 4912 agrees with all parties that it will permit no other use of the Subject Space besides the Agreed Use, unless said use is permitted via a new application to the DC Department of Transportation Public Space Committee (“PSC”) and supported by ANC 3E (“Alternative Use”). For avoidance of doubt, notwithstanding any other rights 4912 might otherwise have, 4912 agrees that if ANC 3E does not support, by way of a formally-adopted resolution, a proposed Acceptable Use, than such proposed use shall not

constitute an Acceptable Use, even if the PSC or other government entity permits such proposed use.

2. **REMEDY FOR FAILURE TO USE PUBLIC SPACE FOR AGREED OR ALTERNATIVE USE:** If 4912 and/or Tartufo ceases to use the Subject Space as specified in Paragraph 1 above, 4912 shall have one year to obtain permission for an Alternative Use. If 4912 cannot obtain permission for an Acceptable Alternative Use in that time, 4912 agrees to remove any fencing, shrubbery or other barriers between the Subject Space and the public space surrounding it; to place seating for at least 8 persons on the Subject Space; and, to place a sign at the front of the Subject Space stating in bold lettering not smaller than 1 inch high that the public is welcome to use the space (“Remediation”). If permission from any DC governmental entity is necessary to achieve any aspect of the Remediation, 4912 shall expeditiously and conscientiously seek such permission.

3. **AUTHORIZATION OF PAYMENT:** Prior to the execution and ratification of this Agreement, 4912 has paid the District of Columbia Department of Transportation (“DDOT”) an annual user fee of approximately \$1,895 to use the public space in front of 4912 Wisconsin Avenue, NW, Washington, DC (“User Fee”). Pursuant to this Agreement, 4912 authorizes Tartufo to pay the said user fee and/or any other required fees to DDOT and Tartufo agrees to pay said fees to DDOT for the life of this Agreement.

4. **NON-OPPOSITION OF ZONING AND BUILDING PERMITS:** Pursuant to this Agreement, the Parties hereto agree to not oppose Public Space Permit application #374388 provided that the application as of 11/10/21 is modified such that all bay window projections project no further than 3 feet into public space and the areaway projects no further than 3 feet into public space as measured from the lot line or building restriction line to the inside face of the areaway wall.

5. **THIRD PARTY RIGHT OF ACTION:** The Parties agree and understand that ANC 3E has entered into this Agreement with the intent to benefit all residents within its jurisdiction and that such residents have a vested interest in the performance of this Agreement. The Parties agree and understand that all residents within the boundaries of ANC 3E otherwise competent to bring suit in the courts of the District of Columbia shall be considered as intended third-party beneficiaries of this Agreement and shall have the right to take any legal action they deem necessary in the courts of the District of Columbia to enforce this Agreement, including without limitation seeking injunctive relief.

6. **INCORPORATION INTO PSC ORDER:** The Parties agree to ask PSC to incorporate all substantive terms of this Agreement into any order or permit it issues with regard to Public Space Permit application #374388.

7. **GOVERNING LAW:** This Agreement shall be governed by and performed in accordance with the laws of the District of Columbia without regard to its conflict of laws provision.

8. **COUNTERPARTS:** This Agreement may be executed in counterparts and each counterpart will be deemed an original.

9. REPRESENTATION BY COUNSEL; UNDERSTANDING OF AGREEMENT:

All signatories to this Agreement acknowledge that they have been advised to consult with an attorney before signing this Agreement, and that they have been given a reasonable period of time in which to consider the terms of this Agreement before acting upon it. All signatories to this Agreement represent that they have carefully read and fully understand all of the provisions of this Agreement and that she has discussed all aspects of the Agreement with his attorney.

10. SEVERABILITY: Should any term or provision of this Agreement be declared illegal, invalid or unenforceable by any court of competent jurisdiction and if such provision cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

11. BINDING ON SURVIVORS: All covenants, stipulations, promises, agreements, and provisions in this Agreement shall apply to, bind and be obligatory on the parties hereto, their heirs, executors, administrators, personal representatives, assigns, and successors.

12. ENTIRE AGREEMENT: This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental understandings, whether written or oral, between the parties concerning the subject matter of this Agreement. Any modification to this Agreement must be in writing and signed by each of the Parties or their authorized representatives.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Agreement and General Release as of the date set forth below.

Dated: _____

By: _____
Reggie D. Seifu, Managing Member
4912 Wisconsin LLC

Dated: _____

By: _____
Abdihamid Ahmed
Owner, Tartufo Italian Restaurant

Dated: _____

By: _____
ANC 3E by Jonathan Bender, Chair