

**DECLARATION OF MIKE HOUSTON, TPSS CO-OP GENERAL MANAGER**

I, Mike Houston, being over 18 years of age and of sound mind state as follows:

1. I am the General Manager for the Takoma Park- Silver Spring Food Co-op (Co-op) and have served in that position since 2018. Since the time of my hire, I have overseen the day-to-day operations of the Co-op, including deliveries.

**Purpose of My Declaration**

2. The purpose of my declaration is to support the Co-op’s Motion For Temporary Restraining Order and Preliminary Injunction (“Co-op Motion”) and supporting Memorandum, which have been filed in conjunction with my declaration.
3. Exhibits 1A – 10 and Exhibit 12, attached to and referenced in the Co-op’s Memorandum of Law in support of its factual claims, are true and accurate copies of records held in the ordinary course of Co-op business.
4. Attachments 1 and 2, photographs of the Sycamore Lot stairs and platform, and photographs of the Takoma Junction Parking Lot loading and delivery zone, are true and accurate representations of these locations. These photographs were taken on May 6, 2021 by me.

**My Qualifications**

5. I graduated from the University of Missouri Agriculture School in 2008 and my educational training includes large facility management.
6. Over the past 12 years, I have worked in the natural food business overseeing the daily operations of three separate grocery stores. I managed a store in a highly urban setting in downtown Brooklyn, NY and observed first-hand delivery practices under those tight urban conditions. I managed Dawson’s Market in Rockville, Maryland, which had a dedicated loading dock, and observed first-hand delivery practices under those conditions. And now, as General Manager of the Co-op, I supervise the Co-op’s daily operations, including the receipt of deliveries to the Co-op’s loading dock on the City-owned Parking Lot located on the east side of our store building.

**Cooperation Agreement**

7. In 2018, I participated in a mediation process between the Neighborhood Development Company LLC and NDC Takoma Junction LLC (together NDC) and the Co-op. The mediation process was initiated by the City of Takoma Park for the purpose of ensuring that the Co-op could have continued access to the Parking Lot for its deliveries while NDC was pursuing its Development Plans for the Parking Lot – including the review process, construction of a new development, and operation of the new development. The mediation process resulted in the Sub-Lease by which the Co-op uses the Takoma Junction Parking Lot for its deliveries. The mediation also resulted in a Cooperation Agreement between NDC and the Co-op. These legal documents are accurately described in the attached Memorandum.

8. The Co-op entered into the 2018 Cooperation Agreement NDC for the principal reason that the agreement guaranteed the Co-op continuity of operations with respect to its deliveries, through all phases of NDC's development project. The Co-op depended on the provisions of the Cooperation Agreement that ensured the Co-op would always either have access to the City-owned parking lot or a lay-by lane that NDC proposed to build as part of a new development, to take in deliveries.
9. I advocated strongly to enter into the Cooperation Agreement, because my twelve years running grocery stores have taught me how important it is for a grocery business to have consistent, reliable and easy deliveries are for the sales, customers and operations of a grocery store.
10. As required by the Cooperation Agreement, the Co-op was required to provide NDC a summary of all deliveries to the Co-op for the two-week period between September 17, 2018 and September 30, 2018, including: "(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 ("Delivery Data")." Exhibit 10 p. 2 ¶ 4. The Co-op provided this Delivery Data to NDC and to the City in October of 2018 and concurrently posted it on the Co-op's website.

### **Sub-Lease**

11. The 2018 mediation also resulted in the parties' agreement to a Sub-Lease, by which NDC Takoma Junction, L.L.C. (NDC Landlord) rents the entire parking lot to the Co-op. The purpose of the Sub-Lease was to allow the Co-op to continue to use the Takoma Parking lot until NDC began construction of a new development on the Parking Lot.
12. As of the date of filing of the Co-op's Motion, it is current with its rental payment obligations to NDC Landlord. As required by the Sub-Lease, the Co-op is also current with payments on its insurance premium. A current certificate of insurance is attached to the Motion as Exhibit 11.
13. In negotiating the Sub-Lease, NDC Landlord and the Co-op agreed upon a month-to-month term because it was unclear as to when the Development Plans and subsequent Project-related building permits would be approved. The provision for a month's notice thus gave NDC the flexibility to terminate the Sub-Lease based on the actual progress of its development-related entitlements and construction of the lay-by.
14. I advocated strongly to enter into the Sub-Lease in conjunction with the Cooperation Agreement, because my training followed by twelve years of experience in running grocery stores have confirmed how essential it is to have consistent, reliable and easy deliveries to maintain sales, customers and the efficient operation of a grocery store.

## **Co-op Deliveries**

15. The Co-op Store is open 7 days a week (excluding holidays), with an online shopping option added during the Covid-19 pandemic.
16. The Co-op grosses \$10 million/year in sales, and orders \$200k worth of product weekly.
17. More than 140 companies deliver products to the Co-op, each making deliveries anywhere between one to seven days per week ("Vendors"), and we receive up to 100 deliveries per week.
18. 204 of the individual product lines are headquartered within 100 miles of the store, consistent with our customers' desire for locally sourced products.
19. Each Vendor has a minimum cost that must be met before it will deliver products to the Co-op.
20. These Vendors not only make deliveries to the Co-op, but also deliver to multiple other locations.
21. It is an industry practice for Vendors to build into their delivery service an estimated amount of time necessary to unload products at each delivery stop, time that is additional to the time needed to drive from one delivery location to another.
22. Delivery drivers must unload goods from the truck, deliver them inside the store, wait for store personnel to check the goods delivered against the invoice, and the delivery is complete when the Co-op staff receiving the goods signs the delivery invoice.
23. The west side receiving dock, *i.e.*, the loading dock fronting on the Takoma Junction Parking Lot, is configured to facilitate simple loading operations and is close to where the delivery trucks park.
24. The Co-op has three Vendors that supply a disproportionate volume of products, and only utilize semi-trucks in their fleet.
25. The first two Vendors are Four Seasons and Albert's, which deliver fresh produce and refrigerated product up to 6 times per week.
26. The Co-op relies on Four Seasons and Alberts to deliver organic produce that meets Co-op standards, and unlike other vendors these two have the resources to provide year-round variety required to meet customer expectations.
27. The third, UNFI, delivers 4 times per week and provides the majority of the Grocery, Wellness, Frozen and Refrigerated products sold at the Co-op.
28. UNFI products account for over 60% of Co-op sales.

29. The Co-op has an agreement with National Cooperative Grocers which mandates that we purchase from UNFI in order to receive volume discount pricing, critical in order to stay competitive in a difficult market with very narrow margins.
30. If the Co-op cannot use the Takoma Junction Parking Lot for deliveries pending construction of the lay-by, deliveries become much more complicated, because alternative delivery locations are more distant from the store and cannot be wheeled directly into the store.
31. More complex delivery operations (e.g., longer distance traveled between the truck and the store, uneven grades because of curbs or stairs, and even breaking down pre-packed pallets in order to wheel the delivery into the store one handtruck at a time) will greatly increase the loading time for each delivery.
32. A UNFI delivery pallet contains multiple product boxes and can weigh up to 2,000 pounds. If breaking down those pre-packed pallets to deliver smaller loads is necessary, a second employee (additional to the driver) likely will be needed, which will lead UNIFI to increase its delivery order minimums.
33. Higher delivery minimums mean TPSS will not be able to order as frequently and will therefore have certain products customers have come to expect unavailable or infrequently available.
34. Reduced delivery frequency will fall disproportionately on smaller and local vendors. TPSS competes in a difficult grocery marketplace by offering unique and local products.
35. Our reputation and goodwill are built on supporting these smaller vendors.

### **Simultaneous Deliveries**

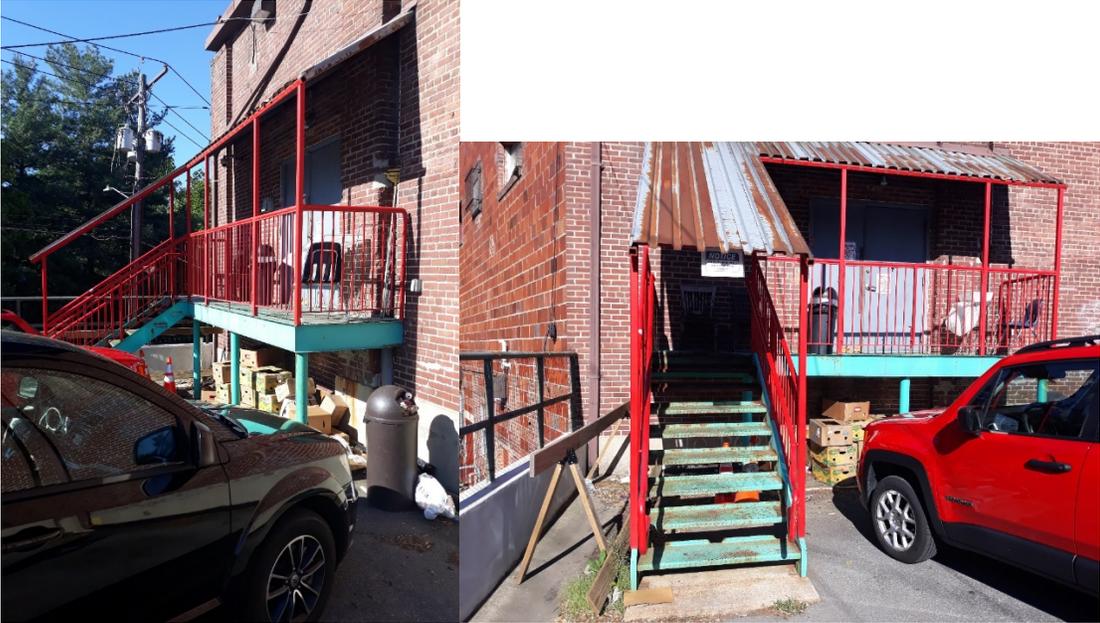
36. Longer more complex deliveries mean a much greater likelihood multiple Vendors will be making deliveries at the same time.
37. Use of the Takoma Junction Parking Lot both minimizes the likelihood of multiple simultaneous deliveries because they occur efficiently under the current layout, and it is not a complication because there is ample space to accommodate multiple vendors.
38. Loss of the Parking Lot would require vendors choose between waiting to unload and risk being later to their next stop, or to skip the Co-op delivery altogether TPSS.
39. A vendor such as Montgomery County Alcohol Beverage Service which delivers all Beer and Wine for county license holders and only comes once a week could choose to skip the delivery and leave the Co-op with no new product delivered in one of our 5 sales departments for a week. Beer and wine sales accounts for roughly 12% of overall store sales.

## Inadequacy of Alternative Delivery Locations

40. The physical location of the store includes the City-owned 56 spot parking lot to the West, a state highway to the North, a small 17 spot parking lot to the East and a neighborhood street at a steep grade to the South.
41. The reality of the area means there is no secondary area to receive trucks and deliveries that would be safe, physically possible or sustainable.
42. Trucks stopping and unloading for up to 90 minutes in an active lane of the state highway at any time of day would not be safe or sustainable.
43. The narrow two-lane neighborhood street to the south has a steep grade that makes unsafe to deliver pallets or carts of product weighing anywhere from several hundred to several thousand pounds.
44. The small parking lot to the East, referred to as the Sycamore lot because it runs parallel to Sycamore Avenue, is not equipped in any way for the Co-op's deliveries.
45. Circulation studies done on various vehicle types that would deliver to the store found to be either impossible in certain cases, and dangerous in others: Some trucks would not fit at all through the narrow lot; other trucks would require vehicle maneuvers to settle in front of the staircase that would involve leaving the lot and backing in the exit. [WB50 Turning Radius Sycamore](#)
46. The circulation studies showed 30-foot box trucks or larger could not utilize the Sycamore parking lot for delivery activities. This alone prohibits 66 of 207 deliveries from a two-week [delivery survey](#) in Sept 2018. These larger vendors with bigger vehicles represent an outsized portion of Co-op sales.
47. Beyond vehicular challenges, the Sycamore lot, staircase and internal layout on the East side are not equipped for the weight and movements required to get pallets or even handtrucks and carts of product inside the store.
48. To make a delivery from any truck parked in the Sycamore lot a driver would have to take the goods one handtruck at a time up a steep grade, against the one-way traffic entering the parking lot, then enter/exit the main customer entrance to the store.
49. The impracticality and unsafe practices this would entail would leave private third-party companies to decide whether it was worth it to subject their employees to these conditions to continue deliveries at all.
50. Based on my training and experience, use of the narrow, steeply graded one-way Sycamore Lot for deliveries would pose significant safety concerns with respect to customer/delivery truck conflicts in this parking lot; conflicts between customers with shopping carts maneuvering alongside delivery pallets and handcarts; and using a

metal staired platform that was not designed or built to receive deliveries as the staging area for unloading goods off of heavy handtrucks and pallets.

51. The following three photographs, which I personally took on May 6, 2021, provide an accurate depiction of the only access into the Co-op directly from the Sycamore Lot and reflect some of the unsafe delivery conditions described herein.



52. The following three photographs, which I took on May 6, 2021, provide an accurate depiction of the and the loading area the Co-op built (as described in Paragraph 12) within the Takoma Junction Parking Lot and described more fully in the Declaration of Adam Frank, and shows the ease of truck access, level ground to move wheeled pallets and handcarts, and the superior safe conditions provided for deliveries at this location.



## **Other Co-op Uses on the Takoma Junction Park Lot Authorized By The Sub-Lease**

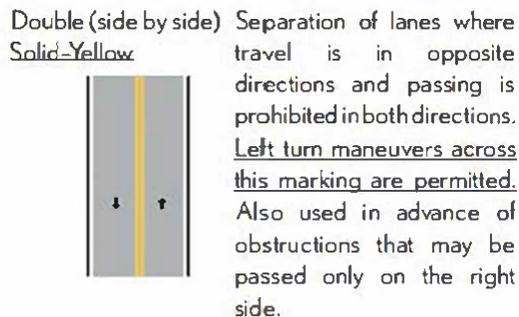
53. The Co-op utilizes two four-yard dumpsters and one two-yard dumpster that collectively cover a roughly 16 feet by 8 feet footprint.
54. The loss of the City-owned lot for trash and recycling containers means those containers must be moved to the Sycamore lot. These dumpsters permanently stored in the Sycamore lot make it even more impractical any delivery operations could take place in that lot.

## **Delivery Safety Record in Takoma Junction Parking Lot**

55. During my tenure as General Manager there has not been one reported delivery-related accident involving another vehicle or pedestrian. My review of Co-op records since the Co-op started to use the Restricted Area in 1998 indicates that no delivery-related accident has occurred on the Parking Lot since that time.

I learned of the City Report after it was posted on March 10, 2021, through references on social media and by listening to a recording of a March 10 briefing to the City Council by Suzanne Ludlow, the City Manager.

56. The City's allegation that left-hand turns are illegal is incorrect, as shown on p. 17 of the Maryland Driver's Manual.



57. City statements (made informally) that it is unsafe to have a truck swing into the oncoming lane is also incorrect, as the Maryland's 2017 Maryland Commercial Driver's License Manual expressly allows this turning movement under the following parameters:
  - If you are driving a truck or bus that cannot make the right turn without swinging into another lane, turn wide as you complete the turn. Keep the rear of your vehicle close to the curb. This will stop other drivers from passing you on the right.
  - Don't turn wide to the left as you start the turn. A following driver may think you are turning left and try to pass you on the right. You may crash into the other vehicle as you complete your turn.

- If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. Give them room to go by or to stop. However, don't back up for them, because you might hit someone behind you.
58. Despite repeated requests that the City verify the illegal and unsafe delivery allegations in the City Report, none were forthcoming and through my own due diligence I was able to establish that they were unfounded.
59. It was only after NDC issued its Notice to Quit that the City retracted the City Report, stating the Report "is hereby retracted in full and is without effect."

### **Product Availability and Impact On Consumer Shopping**

60. [Studies](#) show that 96% of customers have left stores empty handed at one time or another, with most study participants indicating this occurred when they could not find the product they were looking for.
61. A study from [2017](#) shows 76% of grocery customers shop at multiple stores each week for food, and confirm that if customers cannot find a desired product they will go elsewhere to make their full purchase.
62. A decrease in the availability of products that shoppers at the Co-op have come to expect means sales lost to other retailers or online shopping.
63. Our Feb 2020 shopper survey of 1060 customers showed 58% of respondents chose where to shop based on "Quality/freshness" of product. Customers finding a decrease in fresh product due to less frequent deliveries or not finding the products they have come to expect to find will begin to shop elsewhere.
64. Product quality is frequently cited in [negative Yelp reviews](#) of grocery stores which can turn customers away from even coming to a store. This leads to a vicious cycle of fewer customers, less sales, and even more infrequent deliveries.

### **Co-op Employees**

65. Less sales volume also means fewer jobs.
66. Currently the Co-op employs 50 people who earn more than Montgomery County's minimum wage starting rates, and enjoy a [strong benefits package](#) compared to many other grocers.
67. Labor in grocery runs as a percentage of sales, so fewer sales will result in fewer hours or fewer jobs.

68. The grocery industry runs on [slim profit margins](#), typically 1-2%, so controlling labor is always required when sales decrease as there is not sufficient buffer to schedule the same number of hours.
69. Fewer employees will cause customer service issues like fewer employees to answer customer questions, or less labor to stock the sales floor at all times of day. This in turn leads to the same vicious cycle of customers unable to find the products they want and turning elsewhere for their grocery needs.

**Injury to Co-op If Deliveries Are Termination On The Parking Lot Before the Lay-by Is Built**

70. The Co-op will suffer significant and irreparable injury should the Court not grant injunctive relief in its favor in a number of ways including: (1) The potential loss of customers if they cannot purchase the products they expect at the Co-op Store; (2) The potential loss of vendors willing to deliver products, if they cannot safely, reliably and efficiently deliver products; (3) Loss of reputation and goodwill if smaller local vendors are unable to deliver products to the Co-op Store; and (4) If the Co-op goes between three and five days of without deliveries, that delay would be sufficient to deplete the store of most goods, cause a severe drop in daily sales revenue, and the store would soon close if it had no products to sell.

**Co-op's Community Involvement and Contributions.**

71. I hold a leadership position on the Montgomery Food Council, a nonprofit organization that serves as the primary connection point for businesses, nonprofits, government agencies, and residents around food system issues in Montgomery County. The Co-op funds a program to “double up” the value of SNAP fresh produce purchases. Through the Co-op's *Feed a Neighbor Fund*, member-owners and shoppers can contribute to local organizations addressing food insecurity, such as Small Things Matter and Sanctuary DMV. Throughout the Covid-19 pandemic, the Co-op has provided space on both of its parking lots to both of these organizations for collection and distribution of food and grocery donations to thousands of food-insecure families. And in March of 2021, the Co-op became the first Maryland business to sponsor the Fair Food Program, a worker-driven human rights initiative ensuring basic protections for tens of thousands of farmworkers along the East Coast. In 2015, the Co-op General Manager's public service was recognized by a Takoma Foundation Azalea Award as one of the Takoma Park community's “biggest decision-makers.” (<https://www.takomafoundation.org/awards/azalea/15th-annual-azalea-awards.html>). The Co-op has won gold-level certification from Green America and was the first grocery store to be admitted to the Montgomery County Green Business Program

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.



Mike Houston, General Manager  
Takoma Park-Silver Spring Cooperative, Inc.

Date: 5/6/21