

**THE TOWN OF UPPER MARLBORO AND
THE CONVENTION OF THE PROTESTANT EPISCOPAL CHURCH
OF THE DIOCESE OF WASHINGTON
(ON BEHALF OF TRINITY EPISCOPAL CHURCH)
PARKING LOT IMPROVEMENTS AND
SHARED USE AGREEMENT**

This Parking Lot Improvements and Shared Use Agreement (“Agreement”) is made by and between the THE CONVENTION OF THE PROTESTANT EPISCOPAL CHURCH OF THE DIOCESE OF WASHINGTON (“Trinity Episcopal Church,” or sometimes referred to as the “Church” or the “Property Owner”) and the TOWN OF UPPER MARLBORO, acting by and through its Town Board of Commissioners (the “Town”) (Each a “Party” and together the “Parties”), for the shared use and improvements of the parking lot area of Trinity Episcopal Church (hereinafter, the “Parking Premises”), located at 14515 CHURCH STREET, UPPER MARLBORO, MD 20772, as follows:**WHEREAS**, the Town maintains a total of 123 on-street single-space parking meters along Main Street, Pratt Street, Water Street, and Elm Street, in the downtown area near the Courthouse with an hourly rate to park at these on-street meters; however, on Sundays, street parking is free; and

WHEREAS, the Town also maintains a downtown parking lot at 14525 Church Street (behind building currently occupied by the Bank of America) within walking distance of the Prince George’s County Courthouse (the “Courthouse”) open Monday-Friday, 8 a.m.-6 p.m. where credit cards and coins are accepted with a parking rate of \$0.50 an hour, and for a maximum of 10 hours, and parking passes are available for \$40.00 per month, or, \$12 per week, and Prince George’s County also maintains meters at the Courthouse Parking Lot on Water Street, with parking enforced by the County Revenue Authority; and

WHEREAS, as of Jan. 9, 2023, the hourly rate to park at on-street meters was lowered from \$2.50 an hour to just \$1.00 per hour outside of courthouse operating hours, and after 10 p.m. Monday-Saturday and all-day Sundays, street parking is free; and

WHEREAS, the Town has also partnered with ParkMobile, a virtual parking application for day-to-day needs, where visitors can quickly pay for on-street parking and get alerts when their parking session is about to expire so they can easily extend time right from their phone and with over 50 million users, the ParkMobile application allows an alternative way to park and reserve parking ahead of time, and easily pay for street, lot, or garage parking right from your mobile device and a user can also reserve parking ahead of time near venues, or arenas; and

WHEREAS, when using driving navigation in Google Maps, a driver will see a “pay for parking” button in areas where ParkMobile is available and when they tap that button, it will take them to Google Pay, where they can make a ParkMobile payment and ParkMobile further offers an automated phone-based system where you can call a number posted on the signs around the parking space and make a payment; and

WHEREAS, the Town of Upper Marlboro (the “Town”) has negotiated with certain private property owners around the downtown area regarding partnering with the Town to offer paid public

parking, which the Town would primarily administer and regulate, and the parking would be paid for by users through the Town’s licensed ParkMobile Application; therefore, there is no need for physical parking equipment or meters to be installed; and

WHEREAS, pursuant § 82-16(2) of the Town Charter, the Town Board of Commissioners has the power to pass ordinances not contrary to the laws and Constitution of this State, for the following specific purposes: (pp) (*Parking Facilities*) to license and regulate and to establish, acquire by purchase, lease or other transfer, own, construct, operate, and maintain parking lots and other facilities for off street parking, and (qq) (*Parking Meters*) to install parking meters on the streets and public places of the Town in such places as by ordinance may be determined, and by ordinance prescribe rates and provisions for the use thereof, except that the installation of parking meters on any street or road maintained by the State Roads Commission of Maryland must first be approved by the Commission; and

WHEREAS, pursuant to Ord. No. 2016-02 (7-12-2016) and Ord. No. 2019-07 (10-8-2019) the Board of Commissioners may establish and regulate parking zones, restricted parking zones, and permit parking zones by resolution, as long as it is advertised in a newspaper of general circulation no less than 15 days prior to the town meeting in which it is to be voted upon.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and undertakings herein set forth, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Agreement shall commence on the ___ day of _____, 2023 and continue through [Date in 2024]. At the end of the initial term, the Lease will automatically be renewed for successive one (1) year terms for a total of five (5) years. Either Party may terminate this Agreement, at any time for any reason, by giving the other Party thirty (30) days advance written notice. If the Town terminates this Agreement, the Town forfeits the cost of any Improvements to the Parking Premises made by the Town. If Trinity Episcopal Church terminates this Agreement, Trinity Episcopal Church shall pay to the Town the unamortized cost of any improvements made to the Parking Premises by the Town. The cost of improvements will be valued with a straight line 10-year amortization schedule.

2. **OWNERSHIP.** The Parking Lot and Parking Premises owned by the Property Owner are more particularly described as:

Tax Account No: District – 03, Account Number – 0246918;
Map 0101, Grid F2, Parcel 209;
Property Land Area: 37,026 SF;
Description: CHURCH LOT;
Street Address: 14515 CHURCH ST.;
Owner of Record: VESTRY OF TRINITY CHURCH.

3. **LICENSE NOT A LEASE.** The relationship between the Church and the Town is not one of landlord and tenant, but rather one of licensor and licensee. The Church’s grant hereunder

shall in no way operate to confer upon the Town any other interest, status, or estate of any kind other than a temporary license. The parties expressly agree that there exists no landlord and tenant relationship between the Church and the Town under this Agreement. The Town has no interest of any kind in the Parking Lot and Parking Premises except as may be set forth in this Agreement.

4. OWNER'S RESPONSIBILITIES.

- a. The Property Owner will keep the parking lot open Monday-Friday from 8 a.m.- 6 p.m. for public use (closed on observed holidays),
- b. The Property Owner will maintain the lot (remove litter, and maintain asphalt, stripping, grass cutting, vegetation trimming, etc.) and agrees to keep it in good repair.
- c. The parking payment revenue will be split between the Parties at 40%-Town, 60%-Land owner,
- d. With no financial obligation on the part of Trinity, the Property Owner will assist in advertising the public parking site,
- e.
- f. The Property Owner agrees to open the lot for parking as free parking for large Town special events (i.e., Marlboro Day, Trunk or Treat, etc.) for which the Town will clean the lot after the Town special event,
- g. The Property Owner may call Town Hall during office hours to request parking enforcement to visit the site for a particular issue or violation, and
- h. The Property Owner agrees to terminate or modify any existing tow companies that have a contract on the site to prevent any conflict with public parking and Town enforcement measures.

5. TOWN'S RESPONSIBILITIES.

- a. The Town will entirely collect and retain all parking citation fees, and handle all administration of fee collection and citations, as well as all related issues,
- b. The Town will maintain accurate public parking signage that is approved by the Church for use at the Parking Premises,
- c. Revenue generated from pay-for-parking fees is to be split 40%-Town, 60%-Property Owner,
- d. The Town will ~~assist in~~ advertising the public parking site,
- e. The Town sets the parking rates with consent of the Church, which shall not be unreasonably withheld, and is the primary contact for Park Mobile,
- f. No later than ten (10) days after the end of each quarter of a calendar year, the Town shall pay to the Church sixty percent (60%) of the gross revenues received by the Town in the immediately preceding quarter in connection with the Town's use of the Parking Premises. The Town will make such quarterly payments to ~~the Property Owner~~ Trinity Episcopal Church by check and provide a breakdown of transactions made for that quarter,

- g. The Town will enact necessary ordinances and resolutions to designate and regulate the use of public parking spaces located on the Parking Premises,
 - h. The Town will provide daily and routine parking enforcement and issue tickets to vehicles that have not paid to park,
 - i. The Town will handle all court requests regarding parking citations issued on the Parking Premises,
 - j. The Town will be the only parking enforcement entity during the Town's regular parking hours, and
 - k. The Church may employ towing services to be used for junked/abandoned vehicles, or vehicles parking after the Town's regular hours.
 - l. The Town hereby expressly acknowledges that this Agreement is an occupancy agreement, not a lease, and expressly waives any notice to quit, notice to vacate, notice of intent, or similar notices which may otherwise be required by law. The Town acknowledges also that this Agreement conveys no interest of any kind whatsoever in or to the Parking Lot and Parking Premises or any other property owned by the Church, other than a mere license to use and occupy the Parking Lot and Parking Premises during the term of this Agreement. The Town understands that it shall be liable for substantial damages, including consequential damages, if it does not timely vacate the Parking Lot and Parking Premises as provided under this Agreement
6. IMPROVEMENTS. The Town, upon obtaining written consent from Trinity Episcopal Church, which consent shall not be unreasonably withheld, may facilitate changes, enhancements and/or improvements to the Parking Premises. The Town shall incur the capital expense of any such changes, enhancements and/or improvements. The cost of improvements will be valued with a straight line 10-year amortization schedule.
7. WARRANTY. The Town warrants that any changes, enhancements and/or improvements to the Parking Premises furnished by the Town under this Agreement shall be performed in good and workmanlike manner. The Town further warrants that any improvements furnished by the Town, or a contractor engaged by the Town, shall be free of any defect in equipment, material, or design, or workmanship. Upon receipt of notice from Trinity Episcopal Church, and following a reasonable investigation as to causation, the Town agrees to remedy any failure to conform, or any defect caused by the negligence of the Town or a contractor engaged by the Town.
8. SHARED USE, LICENSE AND SCHEDULING. Trinity Episcopal Church shall request parking permits for the exclusive use of Trinity Episcopal Church at all times. These permits shall not exceed _15% of the available parking spaces in the lot. Trinity Episcopal Church shall have exclusive use of the Parking Premises each Sunday from 6 a.m. to ~~noon~~ 6 p.m. The Parties will coordinate scheduling of parking for all other Permitted Uses, including, but not limited to identifying primary and secondary scheduling contacts and the implementation of a shared use calendar. Flexibility shall be allowed for events that cannot be planned ahead, such as funerals. This Agreement shall be considered to be a revocable license agreement, provided that 30 days' notice is given prior to revocation of the license.

9. FEES. The Town may charge, collect and retain all revenues from regular, daily or special event parking for the Town or public use of Parking Premises.
10. SUPERVISION & ENFORCEMENT. With the exception of scheduled, reserved and permitted Trinity Episcopal Church events, including funerals, the Town shall be responsible for supervision and enforcement of parking on the Parking Premises. The Town shall respond promptly to requests by the Church for additional security and enforcement as circumstances may require.
11. SECURITY. With the exception of scheduled, reserved and permitted Trinity Episcopal Church events, the Town shall be responsible for security of the public parking at the Parking Premises consistent with the level of security provided at other Town venues, spaces, operations and events.
12. MAINTENANCE. Trinity Episcopal Church shall be responsible for the on-going and annual maintenance of the Parking Premises and for the ongoing maintenance of lighting and associated utility costs; however, the Town shall be responsible for any damage caused by the negligent or intentional acts of drivers of vehicles owned by the Town or other vehicles operated by agents of the Town. With the exception of permitted and scheduled Trinity Episcopal Church events, the Trinity Episcopal Church shall be responsible for trash removal from the Parking Premises.
13. SNOW REMOVAL. Trinity Episcopal Church shall take all reasonable steps ~~be responsible~~ for snow removal from the Parking Premises, alleys and public sidewalks immediately surrounding the Parking Premises by 8:30 AM every morning if possible. Snow removal procedures shall include installation of reflective markers to surrounding Parking Premises landscaping and infrastructure. Trinity Episcopal Church shall be responsible for snow removal from other areas of church property.
14. RESTITUTION AND REPAIR. Trinity Episcopal Church shall be responsible for any Parking Premises damage caused at or during permitted, reserved, and scheduled church events. The Town shall be responsible for any Parking Premises damage caused at or during all other times.
15. INSURANCE. The Town maintains blanket insurance coverage over real and personal property, and is covered by its insurance carrier, the Local Government Insurance Trust. The Town shall maintain insurance coverage throughout the term of this Agreement. Trinity Episcopal Church shall maintain a commercial general liability insurance policy with limits in the following amounts: Each Occurrence Limit: \$2,000,000 General Aggregate Limit: \$4,000,000. Trinity Episcopal Church shall maintain commercial general liability coverage throughout the term of this Agreement, and upon request, agrees to provide the Town with a Certificate of Insurance.

16. TAXES. As applicable depending on the tax exempt status of the Property Owner, the Town shall pay annually an amount equal to any real estate taxes levied by the Town, if any, directly attributable to any improvement or public use of the Parking Premises and the Town will pay a pro rata share for the percentage of spaces allocated for public parking versus those reserved or retained by the Property Owner for the annual period. If such tax is paid by the Property Owner, the Town shall reimburse the property Owner for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Town's pro-rata share; such documentation shall be deemed sufficient only if it definitively evidences that portion of the tax increase arising directly out of the improvement such as, by way of example, the relevant tax assessor's designation of the value of such improvement. Upon written request by the Town, the Property Owners shall furnish evidence of payment of all pertinent taxes.
17. INDEMNIFICATION. Each Party agrees to defend, indemnify, and save harmless the other Party from and against any and all claims, losses, actions, damages, liability and expenses (including reasonable fees and expenses of legal counsel) arising out its breach of this Agreement, and/or negligence or willful misconduct.
18. GOVERNING LAW. This Agreement is governed by and construed according to the laws of the State of Maryland. Any action to enforce the terms of this Agreement or to construe the terms of this Agreement must be filed in the State Courts of Maryland. Due to the complexity, high cost and time involved in commercial litigation before a jury, the parties knowingly, voluntarily, and irrevocably waive any and all rights to trial by jury of any dispute to enforce the terms of or to construe the terms of this Agreement.
19. NOTICES. Any notice required or permitted to be given under the terms of this Agreement shall be deemed given when reduced to writing and placed in the United States Mail, with first-class and certified mail, return receipt requested, postage fully prepaid, and addressed to the other Party at the address shown, as follows:
- A. ~~VESTRY OF~~ TRINITY EPISCOPAL CHURCH, 14515 Church St, Upper Marlboro, MD 20772, Attn: Senior ~~Warden~~ Moderator.
- B. THE TOWN OF UPPER MARLBORO, 14211 School Lane, Upper Marlboro, MD 20772, Attn: Town Administrator.
20. AUTHORITY. The Parties warrant that each has approved the terms of this Agreement and the person signing on behalf of each Party is duly authorized to execute this Agreement.
21. ENTIRE AGREEMENT. This Agreement sets forth all the covenants, provisions, agreements, conditions and understandings between the Parties concerning the matters contained herein and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

22. INTERPRETATION AND SURVIVAL. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. It is agreed that, without limiting any other provision, all obligations of the Parties to indemnify, hold harmless, and/or defend the other shall survive the termination or cancellation of this Agreement.

23. SEVERABILITY. The invalidity of any provision, clause, or phrase will not serve to render the balance of this Agreement ineffective or void.

24. COUNTERPARTS AND EXECUTION. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Parties to this Agreement acknowledge that they are relying upon the advice of counsel and enter into this Agreement pursuant to their own free will.

IN WITNESS WHEREOF, this Agreement has been executed as of the day, month and year as set forth below.

Dated this ____ day of _____, 2023.

**THE CONVENTION OF THE
PROTESTANT EPISCOPAL CHURCH
OF THE DIOCESE OF WASHINGTON
(on behalf of Trinity Episcopal Church)**

~~VESTRY OF TRINITY CHURCH~~

THE TOWN OF UPPER MARLBORO

By: _____
Name:
Title:

By: _____
Sarah Franklin
Mayor