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April 11, 2018

**VIA HAND DELIVERY AND OVERNIGHT MAIL**

Board of Zoning Appeals  
Attn: Jim Eichmann, Chairman  
8540 Kenwood Road  
Sycamore Township, Ohio 45236

**Re: Notice of Appeal to the Sycamore Township (the “Township”) Board of Zoning Appeals (the “BZA”) in connection with Case No. SYCC170408 (the “Case”)—Regus Office Center, Towers of Kenwood, 8044 Montgomery Road #700, Cincinnati, Ohio 45236—Hamilton County Auditor’s Parcel ID: 060000800772 (the “Office Center”)**

Dear Mr. Chairman, Members of the Board of Zoning Appeals:

Pursuant to Section 22-4.1 of the Sycamore Township Zoning Resolution (the “Zoning Resolution”), I am writing on behalf of Regus Management Group (“Regus”) to give notice of appeal in connection with the Notice of Violation dated March 22, 2018 (“Notice of Violation”) (a true and accurate copy is attached hereto as Exhibit “A”). Regus is, and has been, in compliance with the Zoning Resolution. As such, the BZA must reverse the Notice of Violation, and Regus must be permitted to operate the Office Center without any further action on its part or on the part of its clients as it has done for the approximately 30 years. The grounds for this appeal are more fully set forth below.

**FACTS AND BACKGROUND**

Regus operates the largest network of office centers worldwide, which includes approximately 3,000 centers in over 1,000 cities and 115 countries. The Regus office center model promotes the growth of local economies by providing an alternative method for companies to operate their business in the flexibility needed in today’s business environment. Regus provides a variety of business options for small and large companies, including office, virtual office and mailbox products along with services such as reception, meeting rooms, secretarial services, word processing, telephone answering services and videoconferencing. Any of these products and/or Service can be combined in an unlimited number of ways that allows a company to custom fit its Regus experience to the particular needs of its business at any given time.

For example, an out-of-town company could use a room for a few hours to interview potential employees. A law firm could arrange to use a meeting room for one morning for a teleconference. For highly mobile workers, Regus allows clients limited use at one of its 3,000 Regus facilities worldwide. A company may have an immediate but temporary need to house a disaster recovery team to maintain interim operations while fire or floor damage to its business is being repaired. Regus also offers products that provide workspace for individuals who require space on a limited basis to prepare periodic paperwork, set up business calls, and receive mail; he/she may not even come into the office on a daily or weekly basis.

Regus typically leases large spaces (often times an entire floor) within existing office buildings, with that space then being built-out in similar fashion to any traditional office. These spaces have a reception area, back office space (copy machine, printer, etc.), a range of meeting and conference rooms, a coffee area, and individual and group work spaces which range in sizes and locations. A zoning certificate and certificate of occupancy, as required by local code requirements, is obtained whenever Regus leases and builds out its space, prior to use by any Regus clients. Since Regus is the only tenant (or one with legal possessory rights or real property interest), our position is that once a zoning certificate and/or certificate of occupancy is issued to Regus, Regus office users are not required to obtain individual zoning certificates or certificates of occupancy.

Upon information and belief, Regus (as successor to HQ Global Workplaces, successor to OfficePlus Corporation, successor to OfficePlus Corporation of Cincinnati) has operated the Office Center within the Towers of Kenwood office building (the "Office Building") since the Office Building opened in 1987. The Office Center comprises approximately 20,395 square feet of the Office Building. Upon information and belief, when Regus established the Office Center in the Office Building it constructed the Office Center to meet the specifications that would be responsive to the needs of its clientele and would have obtained a zoning certificate and a certificate of occupancy to operate the Office Center as a permitted "office" use.

For approximately 30 years, Regus has operated the Office Center pursuant to the applicable local regulations and best practices that have made Regus a worldwide leader in the office center industry. Such best practices include use of an Office Service Agreement currently in the form attached hereto and incorporated by reference herein as Exhibit "B" (the "Office Service Agreement"). As discussed in detail below, the Office Service Agreement grants a non-exclusive right to use a portion of the Office Center for a limited period of time, most often ranging from several hours to several months.

While communications from the Zoning Inspector regarding concerns with Regus' operation of the Office Center commenced in or around November of 2016, it was not until Regus received the Notice of Violation, more than one year later, that the Zoning Inspector provided formal written notice citing a specific regulatory provision to allege a zoning violation. The Notice of Violation cites Section 20-1 of the Zoning Resolution, which requires entities and individuals to obtain zoning certificates when certain circumstances are applicable to an individual property.

Based upon the above background, the language of the Zoning Resolution and Ohio law, Regus contends that the Notice of Violation is in error and must be reversed on the following grounds:

(1) The introduction of a new Regus client to the Office Center does not constitute a “change of use” within the meaning of the Zoning Resolution and, therefore, it is contrary to the law to require each Regus client to obtain a zoning certificate.

(2) The Zoning Inspector exceeded his authority and abused his discretion under the Zoning Resolution by imposing a requirement for Regus’ clients to obtain a zoning certificate where there is no such requirement under the language of the Zoning Resolution, and where the proposed method of compliance requires engagement in processes that are beyond the scope of the Zoning Inspector’s authority.

### THE NOTICE OF VIOLATION

In the Notice of Violation, the Sycamore Township Zoning Inspector (the “Zoning Inspector”) proffers that Regus is in violation of Section 20-1 of the Zoning Resolution because it requires each Regus client to obtain a zoning certificate prior to occupying the Office Center. The Notice of Violation states that to comply with the Zoning Resolution Regus must have “[e]ach tenant...apply for a tenant change and to provide the required documents for zoning and tax information for the JDEZ.”

Describing the circumstances under which an individual or an entity must obtain a zoning certificate, Section 20-1 of the Zoning Resolution provides in relevant part:

[n]o change of use shall be made in any building or part thereof, now or hereafter located, constructed, reconstructed, enlarged or structurally altered without a Zoning Certificate issued by the Zoning Inspector. No Zoning Certificate shall be issued to make a change unless the changes are determined by the Zoning Inspector to be in conformity with the provisions of this Resolution.

To establish a violation under Section 20-1, the BZA must find that the introduction of a new Regus client to the Office Center constitutes a “change of use.” If the BZA cannot make this finding based upon the facts presented, then the Notice of Violation must be reversed and Regus must be permitted to operate the Office Center as it has for the last three decades.

**GROUND FOR APPEAL #1: THE INTRODUCTION OF A NEW REGUS CLIENT TO THE OFFICE CENTER DOES NOT CONSTITUTE A “CHANGE OF USE” WITHIN THE MEANING OF THE ZONING RESOLUTION BECAUSE EACH REGUS CLIENT OCCUPIES THE OFFICE CENTER IN A MANNER THAT IS CONSISTENT WITH AND DOES NOT REDESIGN OR REARRANGE, THE PERMITTED OFFICE USE.**

Section 2-3 of the Zoning Resolution defines “[u]se” as “[t]he purpose or activity for which land, or any structure thereon, is designed, arranged, or intended, or for which it is occupied or maintained.” The use for the Office Center is an “office use” to be conducted within the Office Building. As such, Regus, as lessee, has designed and arranged the Office Center for its clients to occupy and maintain without altering their respective portion of the Office Center. To this end, Section 4.1 of the Office Service Agreement provides “[t]he Client must not alter any part of its accommodation and must take good care of all parts of the center, its equipment, fixtures, fittings

and furnishings which the Client uses.” Additionally, Section 5.1 of the Office Service Agreement provides that “[t]he [c]lient must only use the accommodations for ‘office purposes.’”

Together, Sections 4.1 and 5.1 of the Office Service Agreement confirm that the introduction of a new Regus client to the Office Center does not constitute a “change of use” under the Zoning Resolution. Instead, these sections establish that when a new Regus client executes an Office Service Agreement, the client agrees to *refrain* from redesigning, rearranging, or otherwise taking any action that would transform the permitted use for which the Office Center. Based on the above facts, it would be contrary to the language of the Zoning Resolution for the BZA to find that the Zoning Inspector has established a violation under Section 20-1 of the Zoning Resolution.

Finally, Section 1.1 of the Office Service Agreement further establishes that the introduction of a new Regus client to the Office Center does not constitute a “change of use” requiring the issuance of a zoning certificate. In relevant part, Section 1.1 provides “[t]his agreement is the commercial equivalent of an agreement for accommodations in a hotel.” The analogy between the Office Center and a hotel is highly instructive, as if hotels were required to comply with the Zoning Inspector’s interpretation of Section 20-1, then every hotel guest would be required to obtain a zoning certificate upon checking-in to their accommodations. Not only would such a requirement defy commonsense and impede the ability of hotels, or any temporary licensure of property, to operate within the Township, it would also transform the meaning of “change of use” under Section 20-1 the Zoning Resolution.

The parallels between the Office Center and a hotel are numerous and significant in evaluating this Case - both businesses design and arrange their premises to accommodate clients and guests; both business grant temporary licenses to such clients and guests to use a portion of the premises for specific time periods; and both businesses require guests or clients to agree that they will utilize, but not alter, their respective portions of the premises. If the BZA agrees that Section 20-1 cannot be interpreted to require each hotel guest to obtain a zoning certificate, then it should also agree that Regus and its clients are not in violation of Section 20-1 and that the Notice of Violation should be reversed.

**GROUND FOR APPEAL #2: THE NOTICE OF VIOLATION MUST BE REVERSED BECAUSE REGUS CLIENTS ARE NOT TENANTS UNDER THE TERMS OF THE OFFICE SERVICE AGREEMENT.**

The “recommended actions for compliance” set forth in the Notice of Violation propose that Regus’s clients are obligated to apply for a ‘tenant change’ to bring the Office Center into compliance with the Zoning Resolution. This proposal is contrary both to the terms and conditions of the Office Service Agreement as well as the Zoning Resolution.

Section 1.1 of the Office Service Agreement provides in relevant part:

“THE CLIENT ACCEPTS THAT THIS AGREEMENT CREATES NO TENANCY INTEREST, LEASEHOLD INTEREST, LEASEHOLD ESTATE OR OTHER REAL PROPERTY INTEREST IN THE CLIENT’S FAVOUR WITH RESPECT TO THE ACCOMMODATION(S) . . . . The Provider is giving the

Client the right to share with the Provider the use of the Centre on these terms and conditions, as supplemented by the House Rules.

As provided above, under the terms of the Office Service Agreement, Regus's clients are expressly *not* tenants. Instead, Regus is the only party within the Office Center that holds a leasehold interest and as such would be the only party subject to a "tenant change" process; however, not only are Regus's clients expressly not tenants, there is no "tenant change" process codified within the Zoning Resolution. Accordingly, the alleged failure of Regus or its clients to comply with such a non-existent process cannot serve as the basis of or the remedy for a violation under the Zoning Resolution. As explained in detail above, the only circumstances that require the issuance of a zoning certificate are those circumstances constituting a "change of use" within the meaning of Section 20-1 of the Zoning Resolution. Therefore, because Regus's clients are expressly *not* tenants and because there is no provision under the Zoning Resolution requiring a "tenant change," the Notice of Violation should be reversed.

**GROUND FOR APPEAL #3: THE NOTICE OF VIOLATION MUST BE REVERSED BECAUSE THE ZONING INSPECTOR EXCEEDED HIS AUTHORITY AND ABUSED HIS DISCRETION UNDER THE ZONING RESOLUTION.**

In *Lamar Adver. v. City of Dayton Board of Zoning Appeals*, a zoning inspector issued a notice of violation that required the appellant to obtain a certificate of appropriateness within a time frame designated by the zoning inspector for compliance where no such requirement existed in the zoning ordinance. 2002 Ohio App. Lexis 3199 at 2. Finding that under the Dayton zoning ordinance the zoning inspector did not have the authority to establish time limits for procedures of another city agency, including certificates of appropriateness, the Ohio Second District Court of Appeals found that the zoning inspector exceeded his authority and abused his discretion. As a result, that Court reversed the underlying notice of violation. 2002 Ohio App. Lexis 3199 at 13.

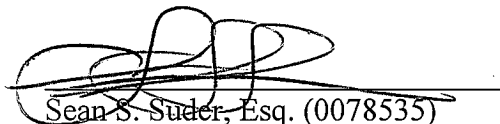
As in *Lamar*, the Zoning Inspector's "recommended actions for compliance" set forth in the Notice of Violation, namely that Regus and its clients obtain a zoning certificate for a change of use, is an abuse of his power and discretion because, as is set forth above, there is no such requirement for a change of use in the Zoning Resolution. Therefore, the Zoning Inspector's remedy effectively rewrites the text of the Zoning Resolution without the authority to do so. Furthermore, the Zoning Inspector's proposed method of compliance also exceeds his authority to administer the Zoning Resolution because it imposes compliance requirements that pertain to tax regulations and business regulations neither of which are incorporated in the Zoning Ordinance and as a result are beyond the scope of the Zoning Inspector's authority.

Additionally, issuing the Notice of Violation after Regus and its predecessors have been using the Office Building in this manner, and while other Township properties, such as hotels, are permitted to be used in this manner, evidence that the Notice of Violation is arbitrary, capricious and unreasonable and must be overruled.

**CONCLUSION**

For the aforementioned reasons, the Notice of Violation is in error, illegal, arbitrary, capricious and unreasonable, and must be reversed. Neither Regus nor its predecessors have changed the use of its space for offices since it opened for business in the Office Building in 1987. Therefore, Regus should be permitted to continue to operate and manage the Office Center as an office tenant of the Office Building in the manner that it has done so for the past 30 years.

Respectfully submitted,



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