

## Amended Parking License Agreement

This Amended Parking License Agreement (this “**Agreement**”) is made as of \_\_\_\_\_, 2017, by and between Vogue Condominiums Owners Association, Inc., Missouri not-for-profit corporation (“**Owner**”), and **The City of Lee’s Summit**, Missouri, a political subdivision of the State of Missouri (“**City**”).

### RECITALS:

A. Owner owns the two level parking garage located on the property described on Exhibit A attached hereto and incorporated herein by reference in downtown Lee’s Summit, Missouri (the “**Parking Garage**”).

B. City desires to have the irrevocable right to use certain parking spaces in the Parking Garage for public parking, and Owner is willing to grant such right, upon and subject to the terms and provisions hereinafter set forth, as provided for in the certain Development Agreement between the City and CML-MO HAF, LLC, dated January 23, 2015 (the “**Development Agreement**”). Unless the context clearly provides otherwise, all undefined terms used in the Agreement shall have the meaning provided for in the Development Agreement.

NOW, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and City hereby agree as follows:

**1. License.** Subject to the terms and provisions of this Agreement, Owner grants to City the irrevocable right, during the term of this Agreement, to use 24 parking spaces within the Parking Garage, in such locations as provided below in Section 4, for the parking of passenger automobiles and non-commercial light-duty trucks by the City and members of the general public (“**Permitted Users**”) and for no other use or purpose.

**2. Term.** The term of this Agreement shall commence on \_\_\_\_\_ (the “**Effective Date**”) and expire on the date that is eighteen (18 ) years after the Effective Date. Upon the expiration or termination of the Agreement, City shall surrender the Parking Spaces.

**3. License Fee.**

3.1 At the time of this Amended License Agreement, City shall have the right to use 24 parking spaces, which number may be changed with the mutual consent of the City as approved by the City Manager and the Owner. City shall, during the term of this Agreement and subject to annual appropriation by the City Council, pay to Owner for the use of the parking spaces a monthly fee (“**License Fee**”) currently comprised of (i) \$720 (approximately \$30.00 a month for each of the 24 parking spaces) (the “**Parking Fee**”) plus (ii) the “**Additional Fee**” (as calculated and defined in Section 3.3 below). The License Fee shall be payable on the first day of each calendar month in advance without demand, set-off or deduction. If the number of parking spaces is increased or decreased, the License Fee shall be adjusted on a pro rata basis. If the Effective Date of this Agreement is not the first day of a calendar month, the License Fee for the fractional calendar month in which the Effective Date occurs shall be prorated on a per diem basis, and the License Fee for such fractional calendar month shall be payable by City to Owner within ten business days of the Effective Date. City shall deliver the License

Fee to Owner at Vogue Condominiums Owners Association, Inc. c/o Sara Baughter, Treasurer, 319 SE Doulgas Street, Unit 102 Lee's Summit, MO 64063 or to such other address as Owner shall designate to City in writing. Other than the License Fee being charged to City, Owner agrees that during the term of this Agreement, Owner shall not charge the members of the general public using the 24, or such number as agreed to, parking spaces in the Parking Garage a separate fee or charge for the use of such parking spaces.

3.2 On the first anniversary of the Effective Date and as of each anniversary thereafter during the term of this Agreement, (each such date being referred to as an **Adjustment Date**), the Parking Fee shall be adjusted by multiplying the same by a fraction, the numerator of which is the CPI as of the Adjustment Date, and the denominator of which is the CPI as of the Effective Date; however, in no event shall the Parking Fee ever decrease below the amount of the License Fee payable for the period immediately prior to the Adjustment Date, notwithstanding a decrease in the CPI. The "**CPI**" shall mean the Consumer Price Index for all Urban Consumers (U.S. city average; base 1982-84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor. If at any time during the term, the "CPI" shall be discontinued or published less frequently, (i) Owner shall substitute an official index published by the Bureau of Labor Statistics, or a successor or comparable governmental agency, which reasonably reflects and monitors consumer prices, or (ii) the base year (1982-84 = 100) or other base year used in computing the CPI is changed, the figures used in making the foregoing adjustments shall accordingly be changed so that all changes in the CPI are taken into account notwithstanding any change in the base year.

3.3 In addition to the License Fee, City shall, subject to annual appropriation by the City Council, pay Owner an additional fee ("**Additional Fee**") equal to the "City's Proportionate Share" (as defined below) of the amount of real estate taxes Owner pays each year that are attributable to the Parking Garage. The "City's Proportionate Share" shall mean the sum obtained by dividing the total number of parking spaces in the Parking Garage by the total number of parking spaces in the Parking Garage that the City has the right to use. The City's Proportionate Share is estimated to be .50 (24/48) based upon the City using 24 parking spaces of the estimated 48 parking spaces in the Parking Garage. The Additional Fee shall be paid in monthly installments at the same time the Parking Fee is paid and shall be based on one twelfth (1/12) of Owner's reasonable estimate of the amount of real estate taxes attributable to the Parking Garage for the calendar year in which the Additional Fee is being paid (and Owner agrees that this estimate will be based on the real estate taxes attributable to the Parking Garage in the preceding calendar year if available). Owner shall provide City with such reasonable documentation as the City may require to evidence Owner's estimated calculation of the Additional Fee and the parties shall make an annual adjustment to the Additional Fee once the Owner receives the actual real state tax bill and can calculate the real estate taxes attributable to the Parking Garage for the calendar year in which the Additional Fee is being paid. Once the year end adjustment of the Additional Fee has been determined, (i) Owner will refund any overpayment of the Additional Fee to City within 30 days thereafter or (ii) the City will make an additional payment associated with the Additional Payment to Owner within 30 days thereafter.

#### **4. Locations of Parking Spaces and Towing of Illegally Parked Vehicles.**

4.1. City acknowledges and agrees that the residents of the Vogue Condominiums have the right to use 24, or such number as mutually agreed to, reserved parking spaces (the "**Unit Owner Parking Spaces**") in the Parking Garage. The Unit Owner Parking Spaces shall be 24 of the parking

spaces on the western portion of the upper and lower decks of the parking garage. The Unit Owner Parking Spaces will be clearly designated or marked by Owner as "Reserved" for use by the residents of the Vogue Condominiums only.

4.2 The 24, or such number as mutually agreed to, parking spaces assigned for use by the City shall be the 22 parking spaces situated on the eastern portion of the upper and lower decks of the parking garage and two conforming parking spaces located on the western portion of the parking garage. At all times the City shall have the right to use 24 parking spaces in the Parking Garage.

4.3. City acknowledges and agrees that the City and its Permitted Users shall only be permitted to park their vehicles in those parking spaces located on the eastern portion of the upper and lower decks of the parking garage as assigned to City by Owner. City may use signage to identify the City's spaces. If any vehicles of City or City's Permitted Users are parked in the Unit Owner Parking Spaces or in any other portion of the Parking Garage other than the 24 spaces assigned for use by the City, or if City or any of its Permitted Users are otherwise in violation of any rules or regulations promulgated by Owner hereunder, then in addition to Owner's other rights and remedies, Owner may, at its option, tow any impermissibly parked vehicles or cause them to be towed at the expense of the owner of the vehicle that is impermissibly parked.

4.4 City agrees that the storage of vehicles and the extended parking of vehicles (more than 2 consecutive days) in the Parking Garage is strictly prohibited. If the City or Permitted Users violate this provision, Owner may, at its option, tow any vehicle in violation of this provision at the expense of the owner of the vehicle.

4.5 Owner maintains its right to enforce restrictions within the Parking Garage including the towing of any illegally parked vehicles when Owner deems it proper as provided by law. However, the Owner may consent to the City towing a vehicle that is illegally parked in a designated public space upon a written request by the City to tow such vehicle or request the City to tow a vehicle that is illegally parked in a designated public space. The City shall have total discretion to decide whether or not to tow any illegally parked vehicle from a designated public space.

**5. Maintenance of Parking Garage.** Owner shall, at its sole cost and expense, maintain the Parking Garage in good condition and repair in accordance with all applicable laws, ordinances and regulations of governmental authorities having jurisdiction over the Parking Garage.

**6. Rules and Regulations; Compliance with Laws.** City shall comply and shall cause all of its Permitted Users to comply with (a) all rules and regulations from time to time reasonably promulgated by Owner with respect to the operation and use of the Parking Garage so long as the rules apply to all users of the Parking Garage and are uniformly enforced by Owner, and (b) all applicable laws, ordinances and regulations of all governmental authorities having jurisdiction over the Property with respect to the use of the Parking Garage.

**7. Default.** If the License Fee or any other charge payable hereunder shall be unpaid on the date payment is required by the terms of this Agreement, and such failure is not remedied within 15 days after Owner has given written notice thereof to City, then City shall be in default under this Agreement and Owner shall have the right, in addition to any other rights and remedies Owner may have at law or in equity, to immediately terminate this Agreement by giving written notice thereof to City. If Owner so elects to terminate this Agreement and all rights of City hereunder shall terminate as

of the date of such notice. If City fails to perform or comply with any other term or provision of this Agreement, and such failure shall not be remedied within 30 days after Owner has given written notice thereof to City, then City shall be in default under this Agreement and Owner shall have the right to seek enforcement of any rights and remedies Owner may have at law and in equity.

**8. Liability.**

8.1. City accepts the parking spaces therein assigned to City from time to time in their as-is condition. City and its Permitted Users shall use the Parking Garage at their own risk. Owner and its agents and employees shall not be liable for any injury, death, property damage, theft or disappearance occurring in, on or about the Parking Garage to City, any Permitted User of City or their respective vehicles or the contents thereof, or to anyone else claiming by, through or under any of them, except to the extent caused by the negligence or willful misconduct of Owner. Owner shall not be required to provide any security service for the Parking Garage and Owner shall not be liable in any manner whatsoever to City, any Permitted User or any third party by reason of Owner's failure to act in providing security for the Parking Garage. City hereby waives, and releases and discharges Owner from, any and all claims, demands, actions and causes of action it may have for any and all loss, cost, expense, damage or injury to persons or property of City or its Permitted Users by or from any cause whatsoever, except to the extent caused solely and directly by the gross negligence or willful misconduct of Owner.

8.2. City agrees that City shall look solely to the estate of Owner in the Parking Garage for the collection of any judgment (or other judicial process) requiring the payment of money by Owner upon any default by Owner under this Agreement, subject, however, to the prior rights of the holder of any mortgage encumbering the Parking Garage or any part thereof, and no other assets of Owner shall be subject to levy, execution or other judicial process for the satisfaction of any such claim, and Owner shall not be liable for any such default except to the extent of Owner's estate in the Parking Garage.

**9. Casualty Damage.** If the Parking Garage is damaged by a casualty in a manner or to an extent which prevents the use of some or all of City's assigned parking spaces, and Owner fails to promptly assign substitute parking spaces to City within the Parking Garage, then the License Fee payable hereunder shall be equitably abated in accordance with the nature and duration of the interference caused by such casualty.

**10. No Assignment.** The license herein granted is personal to the City named herein and is not assignable. City shall not assign this Agreement or any of its rights hereunder, nor shall City permit any person or party other than City's Permitted Users to use the parking spaces assigned to City hereunder.

**11. Notices.** Notices to Owner and City under this Agreement will be addressed to and mailed or delivered to the address set forth below. Notices will be personally delivered or given by registered or certified mail, return receipt requested. Notices delivered personally will be deemed to have been given as of the date of delivery and notices given by mail will be deemed to have been given forty-eight (48) hours after the time said properly addressed notice is placed in the mail. Each party may change its address from time to time by written notice given to the other as specified above.

To Owner: Vogue Condominiums Owners Association, Inc.  
c/o Dawnetta Dugan, President  
319 SE Douglas Street, Unit 106  
Lee's Summit, MO 64063

To City: City of Lee's Summit, Missouri  
City Hall  
220 SE Green Street  
Lee's Summit, Missouri 64063  
Attention: City Manager  
Telephone No. 816.969.1010  
Facsimile No. \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**12. Indemnity.** To the extent allowed by law, including, without limitation, the Missouri Constitution, City agrees to hold Owner, and its agents, servants and employees, harmless and to indemnify each of them from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising out of City's negligent acts or omissions in the performance of its obligations or rights under this Agreement, or relating to City's breach or default under this Agreement, or City's use or occupancy of the Parking Garage y, unless caused by the gross negligence or willful misconduct of Owner. Owner agrees to hold City, and its agents, servants, elected and appointed officials, now or formerly holding office, officers and employees, harmless and to indemnify each of them from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising out of Owner's negligent acts or omissions, or relating to Owner's breach or default under this Agreement, or Owner's use or occupancy of the Parking Garage or caused by Owner, unless caused by the gross negligence or willful misconduct of City. This indemnity provision shall survive termination or expiration of this Agreement.

**13. No Estate in Land; Covenants Running with the Property.** It is expressly agreed that under this Agreement, City is only granted an irrevocable license to use the parking spaces as permitted hereunder, and not a leasehold or other estate in land or any other possessory interest in the parking spaces, and that City's interest hereunder is not subject to levy, execution and sale and is not assignable. The parties acknowledge and agree that no provision of this Agreement shall in any way be construed as creating: (a) any joint venture between Owner and City, or (b) any agency relationship between Owner and City (the parties acknowledge that each party is an independent contractor of the other and shall in no way be responsible for any acts or omissions of the other or its agents, employees or contractors). This Agreement shall bind and inure to the benefit of the parties and their respective heirs, legal representatives, successors, successors-in-interest and assigns. The City shall record a copy of this Agreement, or a memorandum of this Agreement, in the office of the Recorder of Deeds for Jackson County, Missouri.

**14. Sale.** In the event of a sale or conveyance by Owner of its interests in the Parking Garage, this Agreement shall remain in full force and effect and the same shall operate to release Owner from any future liability (but not from any liability on account of matters prior to the date of such sale)

upon any covenants or conditions, express or implied, herein contained in favor of City, and in such event City agrees to look solely to the responsibility of the successor in interest of Owner. City agrees to attorn to the purchaser and assignee.

**15. General Provisions.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. If suit is brought because of a default under this Agreement by either party and a default is established, the prevailing party shall be entitled to recover all expenses incurred in connection with such default and such suit, including, without limitation, attorneys' fees and court costs. This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof, and no change may be made hereto unless made in writing and signed by both parties.

The remainder of this page is intentionally blank.  
The parties' signatures are on the next page.

IN WITNESS WHEREOF, Owner and City have executed this Parking License Agreement to be effective as of the date first set forth above.

**OWNER:**

**VOGUE CONDOMINIUM OWNERS ASSOCIATION, INC.**

A Missouri not-for-profit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

**CITY OF LEE'S SUMMIT,**  
a political subdivision of the State of Missouri

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**