

SHARED PARKING LICENSE AGREEMENT

This Shared Parking License Agreement (this “**Agreement**”) dated and entered into as of _____, 2023 (the “**Effective Date**”) is made by and between BPOZ Columbia Heights, LLC, a limited liability company under the laws of Delaware (“**BPOZ**”), and the City of Columbia Heights, a municipality under the laws of Minnesota (“**City**”).

RECITALS

- A. The parties hereto constitute the owners of all of the units in Common Interest Community No. 342, a Condominium, The Heights, Anoka County, Minnesota (the “**Condominium**”) created by that certain Declaration, dated _____, 2023, to be recorded with the Registrar of Titles in and for Anoka County, Minnesota (the “**Declaration**”), and located at 909 Gould Avenue NE, in Columbia Heights, Minnesota 55421.
- B. The Condominium building is six (6) stories in height and includes a two (2)-story parking garage designed to accommodate parking for approximately 332 motor vehicles (the “**Garage**”).
- C. The City owns Unit 1, in the Condominium (the “**Commercial Unit**” as defined in the Declaration), which the City utilizes as its city hall.
- D. BPOZ owns Unit 2, in the Condominium (the “**Multifamily Unit**” as defined in the Declaration), which BPOZ utilizes as a multifamily rental apartment project, a retail space and related amenities.
- E. The first floor of the Garage is physically divided into a westerly section and an easterly section by a chain link fence and a vertical electronic garage door, the westerly section of the first floor being a limited common element allocated to the Commercial Unit (the “**Commercial Garage**”) and the easterly section of the first floor and the entire lower floor (the “**Multifamily Garage**”) being part of the Multifamily Unit, all as shown on the common interest community plat filed of record with the Declaration.
- F. Pursuant to Section 4.5 of the Declaration, BPOZ has the right to lease or license Garage parking stalls within any portion of the Multifamily Garage.
- G. The City desires, and BPOZ is willing to grant, certain parking rights within the Multifamily Garage on the terms and conditions contained herein, subject at all times to the Declaration and the rules and regulations (the “**Rules**”) adopted pursuant thereto by The Heights Owners Association, a Minnesota nonprofit corporation formed to govern and administer the Condominium (the “**Association**”).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and BPOZ, for themselves and their successors and permitted assigns, agree as follows:

1. Grant of Licenses. BPOZ grants to the City, for itself, its employees and agents,
 - a) an exclusive right and license to use thirty-eight (38) motor vehicle parking stalls on the first floor of the Multifamily Garage located to the extent practicable along the northerly side of, and adjacent to, the Commercial Garage (the "**Licensed Spaces**") for parking, by employees and agents of the City, but only during the hours of 7:30 a.m. to 5:00 p.m. on Business Days (the "**Permitted Hours**"). As used herein, "**Business Days**" shall mean Monday through Friday, inclusive, except holidays for which the City's offices are officially closed; and
 - b) a non-exclusive right and license to use the most easterly Garage entrance on the northerly side of the Garage and, as necessary, the drive aisles as may exist from time to time in the Multifamily Garage (the "**Access Area**") for access between and among the Licensed Spaces, the common elements of the Condominium and adjacent public streets.

In no event shall the City, its employees or agents have the right to utilize more than thirty-eight (38) stalls on the first floor and associated drive aisles, park in the Licensed Spaces outside of the Permitted Hours or park in any stalls on the lower floor of the Garage. The foregoing rights and licenses are subject to the other terms of this Agreement and are referred to collectively as the "**License,**" and the Licensed Spaces and the Access Area are referred to collectively as the "**Licensed Areas**".

2. Sublicenses. The City shall limit usage of the Licensed Spaces to those employees and agents who have received from the City parking tags or other entry permits and visibly display them on their vehicles or dashboards and in its use the City shall be bound by this License, the Condominium Documents, the Rules and all Applicable Laws.

3. Term. The term of this License (the "**Term**") shall commence as of the date hereof (the "**Commencement Date**"), and continue until:

- a) the City transfers ownership or possession of the Commercial Unit to a person or entity other than a governmental entity or quasi-governmental entity affiliated with the City (such as an economic development authority or housing and redevelopment authority) (collectively, a "**Permitted Affiliate**"); or
- b) The City voluntarily terminates this Agreement.

Notwithstanding the foregoing, the City may, at its option, release Licensed Spaces from this Agreement at any time, upon sixty (60) day's prior written notice to BPOZ. Any Licensed Spaces so released from this Agreement shall be permanently released, BPOZ shall thereafter be free to

lease or license those spaces so released to third parties, and the City shall thereafter have no further right, title or interest in such released spaces.

4. Fees. The City shall pay to BPOZ a license fee (the “**License Fee**”) initially in the amount of \$60.00 per month for each Licensed Stall, but increasing by one percent (1%) on the first anniversary of the Commencement Date and each anniversary thereafter (each a “**License Year**”), which License Fee shall be due and payable in advance on the first day of each calendar month during the Term. If the License is terminated in accordance with Section 3(a) above, the City shall receive a prorata refund of the License Fee for such period based on the actual number of days elapsed in the calendar month in which such termination occurs. A failure to pay the License Fee within ten (10) days of the date due shall entitle BPOZ to collect a late fee of five percent (5%) of the amount due.

5. Use. The City covenants and agrees, as of the commencement of the Term, to:

a) accept the Licensed Areas “AS IS,” “WITH ALL FAULTS,” in its existing condition without any warranties or representations whatsoever with respect to the Licensed Areas or any improvements or conditions thereon, except that BPOZ will deliver the Licensed Areas in the condition depicted and described on the final construction plans and specifications of the Condominium;

b) assume all responsibility for the protection of City and its employees, agents, guests and invitees and the property of City and its employees, agents, guests and invitees against the acts of third parties, other than BPOZ as specified herein, while using the Licensed Areas;

c) comply with all applicable laws, ordinances, regulations, permits (including zoning permits) and orders of any governmental authority, court, board of fire underwriters or quasi-governmental authority having jurisdiction over City’s use of the Licensed Areas, including, but not limited to, those applicable to noise, nuisance, environmental protection, public safety and land use (collectively, the “**Applicable Laws**”),

d) comply with all obligations and provisions of the Declaration and the Rules, insofar as the same relate to the Licensed Areas;

e) surrender the Licensed Spaces to BPOZ at the termination of this Agreement in substantially the condition they exist as of the date hereof, ordinary wear and tear excepted, and free of all vehicles and other personal property.

6. BPOZ’s Obligations. BPOZ shall:

a) repair and maintain, at BPOZ’s sole cost and expense, the easterly exterior garage door any other parking technology allowing entry or exit from the Multifamily Garage and perform day to day maintenance such as striping, sweeping, cleaning, oil spill clean-up, litter pick-up, garbage removal;

b) issue parking fobs, permits and/or parking tags (and instructions on their visible display) allowing ingress and egress to and from the Multifamily Garage, for

distribution by the City; provided that BPOZ shall be entitled to charge a reasonable fee for the same and any replacements thereof;

c) install reasonably acceptable signage in prominent locations on the first floor of the Multifamily Garage at BPOZ's sole expense, regarding use of the Licensed Spaces, the Permitted Hours, as well as directional signage in the Multifamily Garage and post any reasonable rules of BPOZ as to the use of the Multifamily Garage not inconsistent with this License; and

d) regulate use of the Licensed Areas, including towing vehicles parked in violation of the Declaration, the Rules, this License, and/or Applicable Laws;

e) comply with all requirements of any mortgage encumbering the Multifamily Unit to prevent foreclosure of any such mortgage and termination by operation of law of this Agreement; and

f) assign this Agreement to any purchaser of the Multifamily Unit, inform such purchaser of this Agreement and provide a copy to such purchaser to provide such purchaser with actual notice of this Agreement, prior to conveying the Multifamily Unit.

7. Temporary Closures. The City, for itself, its employees, agents and invitees, shall reasonably cooperate with the maintenance and repair of the Multifamily Garage and agrees that the Multifamily Garage or portions of it may be temporarily closed from time to time where necessary to complete periodic repairs and maintenance. Such temporary closures shall not be considered a default by BPOZ hereunder provided that the same are temporary, commercially reasonable efforts are made to minimize parking disruptions and such repair and/or maintenance work proceeds in a reasonably diligent manner.

8. Hazardous Materials. The City shall not cause, permit or allow any hazardous material, substance, waste, contaminant, or pollutant regulated by any governmental entity or agency (collectively, "Hazardous Materials") to be placed, stored, dumped, dispensed, released, discharged, used, transported, or located on or within any portion of the Licensed Areas. The City agrees to give BPOZ prompt written notice of any discovery, discharge, release or threatened discharge or threatened release of any Hazardous Materials on or about the Licensed Areas and agrees to promptly and fully clean-up, remediate and dispose of at its sole expense and in accordance with all Applicable Laws any Hazardous Materials that are introduced to the Licensed Areas during the Term by the City, or any of its employees, agents, guests or invitees, in coordination with BPOZ and any applicable governmental entity or agency.

9. Insurance and Indemnity.

a) The City and BPOZ shall, at its own expense, each obtain and during the Term maintain (i) commercial general liability insurance with a single limit of One Million and No/100 Dollars (\$1,000,000.00) and umbrella liability coverage in the amount of at least Two Million and No/100 Dollars (\$2,000,000.00), and (ii) workers' compensation insurance if, and to the extent, required by applicable law.

b) Each general liability insurance policy issued to the City shall name BPOZ, its Mortgagee(s) and its designated property manager(s) as additional insureds, and a certificate of insurance or a true copy of the insurance policies shall be furnished to BPOZ prior to the commencement of the Term.

c) If at the time of any loss arising from the use of the Licensed Area by the City or its agents, guests, invitees, tenants or employees, except as it may relate to an obligation of BPOZ under paragraph/section 6 hereof under such policy issued to the City there is other insurance on the Licensed Areas in the name of BPOZ, the City's policy is primary. If at the time of any loss arising from the use of the Licensed Area by BPOZ or its agents, guests, invitees, tenants or employees or related to a failure to maintain the Licensed Area as specified herein under such policy issued to BPOZ there is other insurance on the Licensed Areas in the name of the City, BPOZ's policy is primary.

d) The City and BPOZ each hereby waives any and all rights of recovery, claim, action, or cause of action, against the other party and its respective agents, officers, directors, shareholders, partners, members, managers and employees, for any loss or damage to the Licensed Areas or any property of the waiving party located on the Licensed Areas, by reason of fire, the elements, or any other causes to the extent such loss or damage is insured under the applicable terms of the insurance maintained (or required to be maintained) by the waiving party, regardless of cause or origin; but specifically excluding from such waiver any and all rights of recovery, claims, actions, or causes of action held by the waiving party arising out of the gross negligence or willful misconduct of the other party or any of its agents, officers, directors, shareholders, partners, members, managers and employees. All liability insurance obtained by the City or BPOZ shall contain a waiver by the insurer of any rights of subrogation or indemnity to which the insurer might otherwise be entitled, and permit and recognize the mutual waiver of subrogation set forth above and the indemnity provided below.

e) To the fullest extent permitted by applicable law subject to any statutory limitations on liability applicable to the City, but specifically excluding any and all rights of recovery, claims, actions, or causes of action arising out of (i) any failure of BPOZ, its agents, officers, directors, affiliates, managers and employees to perform any of its obligations under this Agreement as and when required, and (ii) the negligence or willful misconduct of BPOZ or its agents, officers, directors, affiliates, managers and employees, City shall defend, indemnify and hold harmless BPOZ and its agents, officers, directors, affiliates, managers, employees, and lenders from and against any claim, loss, cost, damage, liability and expense, including attorneys' fees, arising directly or indirectly from City's and its employees, agents, guests and invitees use of the Licensed Areas.

10. Enforcement of Rules. While this License is between BPOZ and the City, the parties recognize that the City will sub-license the right to park in the Licensed Spaces to various employees of the City who shall prominently display a parking permit on their vehicles. The City agrees to maintain a list of the persons to whom it assigns a Licensed Space and a description of their respective vehicles, including make, model and license plate number. If there is a material or repeated breach of this Agreement or the rules reasonably imposed by BPOZ governing use of the Garage, which rules will be generally applicable to all users of the Garage, then, upon being

notified thereof, the City agrees to take reasonable steps to address such violations promptly, including without limitation, revoking a right of such assignee to park in the Licensed Spaces. Failure to address such violations, after reasonable written notice to the City of such violations, will entitle BPOZ to take appropriate actions, including without limitation, the imposition of reasonable fines or revocation of a sublicensee's right to park (without revocation of this Agreement). Notwithstanding any provision to the contrary, appropriate actions do not include revocation of this License or prohibition of use of the Licensed Areas by the City. In addition, if the Licensed Spaces are utilized by the City, or any employees to whom the City has sublicensed its right to park, outside of the dates and times allowed in Section 1.a above, three (3) or more times in a calendar month, upon written notice to the City of the time, date, license plate number of the violating vehicle and Parking Stalls involved in such violations and amount owed pursuant to this section, and so long as the City is not disputing any claimed violation, the City shall pay or cause to be paid to BPOZ with the following month's License Fee, an amount equal to the monthly rate charged by BPOZ to residents using Licensed Spaces for one Licensed Space in the Multifamily Garage. Notwithstanding the grace periods set forth herein, any sublicensee who parks his or her vehicle outside of the Licensed Spaces, in the Licensed Spaces but outside of the authorized dates and times, or otherwise parks in such a way as to materially obstruct drive aisles or prevent or materially impair use of an adjacent stall is subject to having his or her vehicle towed without notice. A copy of the rules in effect as of the date hereof governing use of the Multifamily Garage is attached hereto as Exhibit A, subject to reasonable amendment from time to time, and subject to the limitation that no rule may directly and materially impair the right to utilize the Licensed Areas for the purposes and during the times specified herein (noting that the current rules attached hereto or similar rules shall not be construed to materially impair the right to utilize the Licensed Areas for the purposes or during the times specified herein), violate or contradict any provisions of this Agreement or create or increase any fines or other penalties required hereunder, beyond those customarily charged in commercial suburban parking ramps or garages in first-ring suburbs of Minneapolis and Saint Paul. Any amendment to the rules that sets or increases fees relating to electrical vehicle charging stations, lost fobs, and permits shall bear a reasonable nexus to the increased costs incurred by BPOZ.

11. Notice. Whenever under this Agreement a provision calls for notice of any kind, such notice shall be given in writing, and it shall be deemed sufficient notice if the notice is delivered to the other party at the address set forth below. Each notice or other communication shall be deemed given if sent by prepaid overnight delivery service or by certified mail, return receipt requested, postage prepaid or in any other manner, with delivery in any case evidenced by a receipt, and shall be deemed to have been given on the day of actual delivery to the intended recipient or on the business day delivery is refused. Either party may designate a new address for notice by giving written notice to the other party of such new address.

BPOZ's Notice Address:

BPOZ COLUMBIA HEIGHTS, LLC
800 Nicollet Mall, Suite 2850
Minneapolis, MN 55402
Attention: Robert Lux
Email: rclux@alatusllc.com

With a copy to:

WINTHROP & WEINSTINE, P.A.
225 South Sixth Street
Suite 3500
Minneapolis, MN 55402
Attention: John Stern
Email: jstern@winthrop.com

City's Notice Address:

CITY OF COLUMBIA HEIGHTS
590 40th Avenue NE
Columbia Heights, MN 55421
Attn: City Manager
Email: _____

With a copy to:

BARNA, GUZY & STEFFEN, LTD.
200 Coon Rapids Boulevard NW, #400
Coon Rapids, MN 55433
Attn: Timothy Erb
Email: terb@bgs.com

12. Assignment. This Agreement and the License granted hereby are personal to the City, do not run with the land and may not be assigned by the City (nor by any of its successors or assigns) except to another governmental entity or a Permitted Affiliate. Any such assignee shall step into the shoes of and be bound as the City under this Agreement as of the date of such assignment. A true, correct and complete copy of any assignment to a governmental entity or a Permitted Affiliate shall be delivered promptly to BPOZ. Any attempted assignment by the City in violation of this Agreement shall be void unless specially consented to in writing by BPOZ. This Agreement shall be assigned by BPOZ to any purchaser of the Multifamily Unit and BPOZ shall inform such Purchaser of this Agreement and provide a copy to such Purchaser to provide such Purchaser with actual notice of this Agreement prior to conveying the Multifamily Unit.

13. Entire Agreement. This Agreement contains the entire understanding and agreement of the parties with respect to the matters set forth herein and may not be amended or otherwise modified except by written instrument signed by both BPOZ and City. Time is of the essence of each and every provision of this Agreement, but either party's failure to enforce or exercise its rights under any term, condition or covenant of this Agreement shall not be construed as a waiver of such rights or such term, covenant or condition. All recitals and exhibits referred to in this Agreement are incorporated herein by such reference and made a part of this Agreement for all purposes as if they had been set forth in the body of this Agreement.

14. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected terms or provisions at any other time or in any other jurisdiction.

15. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any litigation or other court proceeding with respect to any matter arising from or in connection with this Agreement shall be conducted in the courts of the State of Minnesota, Anoka County, or the United States District Court for the District of Minnesota, and BPOZ and City each hereby submits to jurisdiction and consent to venue in such courts.

16. Estoppel Certificates. Both parties agree that they will, from time to time upon reasonable prior written request by the other party, execute and deliver to such party and such other parties as the requesting party may reasonably designate, within ten (10) business days following the request therefor, written certification, if true, that: (i) this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified), (ii) that to the knowledge of the party proving the estoppel certificate there are no defaults under this Agreement (or specifying any claimed defaults), or (iii) certifying as to payments of fees being current (or specifying any claimed deficiency).

17. Prevailing Party. If any litigation or other court action, arbitration or similar adjudicatory proceeding is sought, taken, instituted or brought by BPOZ or City to enforce its rights under this Agreement, the prevailing party will be entitled to recover its fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs. For purposes of this Agreement, a prevailing party is a party who receives substantially the relief sought whether by judgment, summary judgment, dismissal, or otherwise.

18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument, but all of which shall constitute one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, BPOZ and the City have executed this Agreement as of the Effective Date first above written.

OWNER:

BPOZ Columbia Heights, LLC,
a Delaware limited liability company

By: _____

Name:

Its:

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of BPOZ Columbia Heights, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

LICENSEE:

City of Columbia Heights,
a Minnesota municipality

By: _____

Name:

Its: Mayor

By: _____

Name:

Its: City Manager

STATE OF MINNESOTA)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the Mayor of the City of Columbia Heights, a municipality under the laws of Minnesota, for and on behalf of the municipality.

Notary Public

STATE OF MINNESOTA)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the City Manager of the City of Columbia Heights, a municipality under the laws of Minnesota, for and on behalf of the municipality.

Notary Public

EXHIBIT A

Rules Governing Use of Multifamily Garage

1. Thirty-eight (38) designated parking stalls on the street level of the Multifamily Garage are reserved for City employees between the hours of 7:30 a.m. and 5:00 p.m. Tenants of the apartment project utilizing such spaces during those hours may be towed.
2. Between the hours of 5:01 p.m. and 7:29 a.m. those same thirty-eight (38) stalls on the street level of the Multifamily Garage are reserved for residents of the apartment project. City employees or others utilizing such stalls during those hours may be towed.
3. Trash and recycling must be disposed of in containers in the Multifamily Garage marked therefor.
4. Motorists must exercise caution when operating motor vehicles in, and upon entering and leaving, the Multifamily Garage. Vehicles should be driven with the lights on and at a reasonable speed commensurate with apparent hazards and the prevailing conditions. A maximum speed of 10 miles per hour is considered reasonable.
5. Horns may not be sounded except as necessary for safe operation.
6. Parking Stalls are designed and intended for use by standard size automobiles only. Parking of oversized vehicles, such as trucks, large sport utility vehicles or the like, may be restricted, prohibited or unavailable. All vehicles shall be parked within the boundaries of striped parking stalls and not needlessly close to adjacent parking stalls. Vehicles may not be parked in such a manner as to interfere with the driving lanes or the ability of others to park or open their vehicle doors.
7. Personal property, including but not limited to, trailers, boats, recreational equipment or "auxiliary" transportation devices, may not be parked or stored in the Multifamily Garage.
8. Access to the Multifamily Garage is via a common garage door utilizing a remote access system. Motorists are asked to take particular care when entering or leaving the Multifamily Garage area, for security reasons.
9. Except for emergency repairs, no mechanical work of any kind may be done in the Multifamily Garage to a motor vehicle. Motorists are responsible for the prompt clean up and removal of any oil, grease, or other fluids spilled or leaked on the garage floor. The cost of any specialized cleaning required will be assessed to the responsible tenant or licensee.
10. Inoperative or unlicensed vehicles or recreational equipment may not be left anywhere in the Multifamily Garage. In the event a vehicle should suddenly become inoperable and be unable to vacate a space shared between the City and the multifamily apartment project, motorists should contact the management agent named below who will allow a reasonable time for the vehicle to be safely towed for service or otherwise repaired.

11. Parking in the Garage may be limited during maintenance or repair of the Garage. Motorists are responsible for moving vehicles and any personal items on a temporary basis for Garage maintenance as requested by the owner of the Multifamily Garage or its management agent.
12. All vehicles must be licensed or registered, must have current registration and license tags, as applicable.
13. Violators' motor vehicles (or other personal property) are subject to towing or removal by the management agent without notice to the owner of the vehicle or personal property. Neither the owner of the Multifamily Garage nor its management agent will be responsible for any cost or damage caused to any vehicle or personal property due to towing or removal.
14. In the event that a fob or permit is lost or stolen, the vehicle's owner must contact management immediately so the fob or permit can be deactivated. A new replacement fob or permit can be replaced for a fee of \$25.
15. Electric Vehicle Charging Stations.
 - a. A motorist who owns a hybrid or electric vehicle that requires charging must connect to the electrical service panel specifically installed for electric vehicles. See the management agent for the electric vehicle policy for procedures and costs for installation and use.
 - b. To use electrical service, outlets, or other fixtures in a Multifamily Garage stall, motorists must obtain prior written approval from the management agent. All costs related to the use of electrical service, outlets, and fixtures are the responsibility of the vehicle's owner.
16. The management agent can be contacted at:

First Service Residential
(952) 277-2700
(Telephones Answered 24 Hours a Day)