

PARKING LOT USE AGREEMENT

This Parking Lot Use Agreement ("**Agreement**") is made as of the ____ day of _____, 2023 ("**Effective Date**"), between the **VILLAGE OF ARLINGTON HEIGHTS**, an Illinois home rule municipal corporation ("**Village**"), and **44 VAIL, LLC**, an Illinois limited liability company ("**44 Vail**") (collectively, 44 Vail and the Village are the "**Parties**").

IN CONSIDERATION OF, and in reliance upon, the recitals and the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 44 Vail and the Village mutually agree as follows:

SECTION 1. RECITALS.

A. The Village is the record owner of the property located at 22 South Vail Avenue, in Arlington Heights, Illinois ("**Village Property**") improved with a parking garage ("**Garage**"), as depicted and legally described on **Exhibit A** of this Agreement.

B. 44 Vail is the record owner of the property located at 44 South Vail Avenue, in Arlington Heights, Illinois ("**44 Vail**"), which property is improved with a multi-story office building ("**Office Building**") and surface parking lots on the west side ("**West Parking Lot**") and on the north side ("**North Parking Lot**", and together with the West Parking Lot, the "**Parking Lots**") of the Garage Property, all as depicted and legally described on **Exhibit A** of this Agreement.

C. 44 Vail desires to use up to 101 parking spaces on parking levels 3, 4 and 5 (each a "**Level**" and collectively, the "**Levels**") in the Garage for the purpose of providing daytime office parking for tenants, agents, employees, and licensees of the Office Building.

D. 44 Vail has also agreed to make certain portions of the Parking Lots available for Special Event Parking, all as set forth in Section 6, below.

E. The Parties desire to enter into this Agreement in order to memorialize the Parties' respective rights and responsibilities with regard to the Garage and the Special Event Parking.

SECTION 2. USE OF THE GARAGE.

A. Permits Allocated for Use of the Garage. The Village will make available for issuance to 44 Vail a maximum of 101 parking permits for parking on Levels 3, 4 and 5 of the Garage (the "**Permits**"), in accordance with the following:

1. Prior to July 1, 2026, 44 Vail may purchase up to 101 Permits, but shall have no obligation to purchase all 101 Permits pursuant to this Agreement.

2. Between July 1, 2023 and June 30, 2024, 44 Vail shall purchase no fewer than 25 Permits for parking to be located on Levels 3 and/or 4 of the Garage.

3. Between July 1, 2024 and June 30, 2025, 44 Vail must purchase no fewer than 51 total Permits for parking (not less than 25 Permits for Levels 3 & 4 and not less than 26 Permits for Level 5).

4. Beginning July 1, 2026, 44 Vail must purchase 101 Permits. The Parties agree that the Village will not be required to issue more than 26 Permits for Level 5 of the Garage

(“**Level 5 Permits**”), nor more than 75 Permits for Levels 3 and 4 (collectively) of the Garage (“**Level 3 & 4 Permits**”), unless the Village decides, at any time and for any reason, in its sole and absolute discretion, to reallocate the location of the parking spaces available for vehicles displaying Permits.

5. 44 Vail may not, under any circumstances, issue or sell any Permit to any person other than tenants, agents, employees, and licensees, of the Office Building. 44 Vail shall not sell Permits for an amount higher than the amount paid by 44 Vail to the Village pursuant to Section 4.A of this Agreement.

B. Temporary Closure of Garage. The Village retains the right to temporarily close all or a portion of the Garage for necessary maintenance or repair activities. The Village must provide no less than 30 days advance written notice of temporary closure to 44 Vail, except in the case of an emergency, and except when the Village will provide alternate parking spaces elsewhere in the Garage, in which cases the Village will give written notice to 44 Vail to the greatest extent practicable. 44 Vail may reduce the amount to be paid to the Village pursuant to Section 4.A of this Agreement in proportion to the length of any temporary closure, but only if the Village does not make alternate parking available elsewhere in the Garage or other location to the extent of any temporary closure of Levels 3, 4, or 5. In the event of a partial non-emergency closure of a portion of the Garage in which the Permit parking spaces are located, the Village agrees to temporarily relocate the Permit parking spaces elsewhere in the Garage or other location until such repairs and maintenance is completed, so as to continue to provide 44 Vail with the same number of parking spaces as it currently leases at the time of such repair and maintenance.

SECTION 3. TERM.

This Agreement is valid for an initial term of 10 years, beginning August 8, 2023 (“**Initial Term**”). The Agreement may be renewed for two additional consecutive five-year terms (“**Renewal Terms**”), upon written agreement of the Parties no less than 30 days prior to the expiration of the previous term. Either Party may terminate this Agreement, with 30 days’ advance written notice to the other Party, upon the demolition of the Office Building or upon the re-use of the building with a principal use other than office uses.

SECTION 4. PERMIT FEE PAYMENT.

A. Payment. In consideration of the covenants made by the Village, 44 Vail covenants and agrees to pay the Village a fee for the Permits at the rate of \$30 per month for each Level 3 and Level 4 Permit, and the rate of \$15 per month for each Level 5 Permit (each a “**Permit Fee**”, and collectively, the “**Permit Fees**”), which Permit Fees may be adjusted by the Village in accordance with adjustments to rates for other daytime parking permits issued by the Village. 44 Vail must pay the Permit Fees on a quarterly basis for the next quarter, on or before the last day of the months of March, June, September, and December. Once a quarterly Permit Fee is paid, the Village cannot retroactively raise the Permit Fee for such quarter. If the Village re-allocates permits between Levels, as contemplated in Section 2.A of this Agreement, the appropriate Permit Fees will be adjusted accordingly.

B. Usage Review. Upon written request submitted by 44 Vail to the Village after July 1, 2026, the Village and 44 Vail will meet to review 44 Vail’s records of actual usage of the Garage, and to negotiate in good faith a one-time downward adjustment to the number of parking permits issued by the Village to 44 Vail in accordance with this Agreement. In support of any requested

downward adjustment, 44 Vail must provide supporting data and information, such as office building tenants, employees and customer parking demand.

SECTION 5. USE OF GARAGE.

A. Uses. It is understood and agreed that: (i) so long as a valid Permit is displayed in a vehicle, the Garage may be used for vehicle parking for tenants, agents, employees, and licensees of the Office Building, and (ii) 44 Vail's right to use the Permit Parking includes the non-exclusive right of 44 Vail to use the entrances within the Garage to and from the Permit Parking levels for the purpose of pedestrian and vehicular ingress to, and egress from, the Garage.

B. Times and Days. 44 Vail shall use the Garage Permit Parking only between the hours of 6:00 a.m. and 6:00 p.m., Mondays through Fridays.

C. Garage Rules and Regulations. 44 Vail and its tenants, agents, employees, and licensees, must follow all published garage rules and regulations issued by the Village. From time to time the Village may amend and apply reasonable rules and regulations for all users of the Garage, including but not limited to requiring license plate information of permit holders, issuance of new technology such as virtual permits, and other regulations as deemed necessary by the Village. Any and all rules and regulations referenced in this Section 5.C. shall be uniformly applied and enforced.

SECTION 6. SPECIAL EVENT PARKING.

44 Vail agrees to allow the use by the public of portions of the Parking Lots for temporary public parking for special events ("***Special Event Parking***"), in accordance with the following terms:

A. Not more than 22 parking spaces in the North Parking Lot, and not more than 15 parking spaces in the West Parking Lot, may be used for Special Event Parking. The parking spaces within the area outlined in red on Exhibit B, attached hereto and made a part hereof, are *not* included as part of the Special Event Parking; *provided, however*, 44 Vail reserves the right to modify the location (but not the number) of the Special Event Parking in the West Parking Lot in order to accommodate the needs of the Office Building.

B. Special Event Parking is only available in connection with the following Village-sponsored special events (the "***Special Events***"): (1) the Arlington Alfresco program; (2) Sounds of Summer concerts; and (3) Harmony Fest, featuring the Taste of Arlington Heights.

C. Notwithstanding the time and days on which the Special Events occur, Special Event Parking is only available on Fridays, between 6:00 p.m. and 11:59 p.m., and on Saturdays and Sundays between 6:00 a.m. and 11:59 p.m. No overnight parking will be permitted.

D. The Village agrees to indemnify and hold the Owner harmless from any and all claims for loss, liability, damage, expense, cause of action, suits, claims, or judgments that may arise out of, or be caused in any way by, the use of the Parking Lots for Special Event Parking.

E. At the Village's sole cost and expense, the Village must provide, and maintain at all times under this Agreement, general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000.00 combined coverage for bodily injury, personal injury, and property damage in connection with the use by the Village of the Parking Lots for Special Event Parking

F. On or before January 15, 2024 and on or before every January 15th of each calendar year thereafter during the Initial Term and any Renewal Term of this Agreement, the Village will issue a \$3,240.00 credit to the Owner as compensation for the Special Event Parking, to be applied against the next payments due pursuant to Section 4.A of this Agreement

G. At the Village's sole cost and expense, the Village will temporarily erect and display appropriate sandwich-board signage and such other signage as is necessary to alert the public to the availability and limitations of Special Event Parking within the Parking Lots. 44 Vail will have the right to approve the final signage.

H. The Village agrees that during Special Event Parking, the Village will cause the Parking Lots to be periodically patrolled at no cost to 44 Vail as part of normal patrol detail by the Village Police Department,

I. The Village agrees to provide periodic inspection of the Special Event Parking Lots during special events, and, if necessary, remove rubbish on the surface of the Special Event Parking Lots that may be left by the public using the Parking Lots for Special Event Parking at the end of the special event. Except for the foregoing, the Owner remains responsible for maintaining the Parking Lots in a safe and proper condition and in a condition of good repair.

SECTION 7. SURRENDER OF GARAGE.

Upon the expiration or termination of this Agreement, 44 Vail must, at its sole cost and expense cause the removal from the Garage of all vehicles and other materials belonging to the owners, tenants, employees and occupants of the Office Building.

SECTION 8. INDEMNITY.

A. Indemnification. 44 Vail will indemnify and save the Village harmless from any and all claims for loss, liability, damage, expense, cause of action, suits, claims, or judgments that may arise out of, or be caused in any way by 44 Vail's use of the Garage. The Village agrees that in the event any claim is asserted, or any action brought to recover any such damage, the Village will give immediate notice thereof in writing to 44 Vail and will cooperate in every way in the investigation and defense of any such claim or action, and that the handling and settlement of any such action will be performed and concluded by the Village.

B. Defense. The Village will have the sole and exclusive right to retain counsel of its choice, to determine all litigation issues including, without limitation, trial strategy, trial preparation, discovery techniques and strategy, right of appeal, and settlement decisions all at the Village's expense. In the event of an adverse judgment against the Village on such claims, the judgment having become final, and the time for all appeals having expired, the Village agrees to cause such judgment to be satisfied within thirty (30) days, and agrees to indemnify and hold 44 Vail harmless from and against any and all losses, costs, expenses, damages, liabilities, or attorney's fees that arise if such judgment is not so satisfied.

SECTION 9. 44 VAIL'S REPRESENTATIONS.

44 Vail hereby represents to the Village, to its knowledge and information as of the date of this Agreement, as follows:

A. This Agreement constitutes the legal, valid, and binding obligation of 44 Vail, enforceable against 44 Vail in accordance with its terms.

B. 44 Vail has obtained a letter from Illinois Bell Telephone Company (d/b/a "**AT&T**"), confirming AT&T's desire to terminate any and all agreements between AT&T and the Village for use of the Garage.

C. The execution of this Agreement will not constitute a violation of, nor be in conflict with, nor constitute a default under, any term or provision of any agreement or instrument to which 44 Vail is a party or by which the 44 Vail Property is bound.

D. 44 Vail is not barred from entering into this Agreement as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Illinois Criminal Code of 2012, 720 ILCS 5/33E-1 *et seq.*

SECTION 10. ENFORCEMENT.

A. General. The Parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, enforce this Agreement.

B. Prevailing Party. In the event of a judicial proceeding brought by one or more Parties against the other Party, the prevailing Party in such judicial proceeding will be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

C. No Personal Liability. 44 Vail acknowledges and agrees that no elected or appointed official, agent, representative, employee or attorney of the Village will be personally liable, in law or in contract, to 44 Vail as the result of the execution of this Agreement.

SECTION 11. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement must be given by the Parties by (i) personal delivery, (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon, or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 11. The address of any Party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit. Notices and communications to the Parties will be addressed to, and delivered at, the following addresses:

If to 44 Vail:	44 Vail, LLC 44 S. Vail Avenue, Suite #200 Arlington Heights, IL 60005 Attention: Kyle Schuhmacher
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With a copy to: Firsel Ross & Weis LLC
10 Parkway North Boulevard, Suite 110
Deerfield, IL 60015
Attention: Michael D. Firsel, Esq.

If to the Village: Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, Illinois 60005
Attention: Village Manager

With a copy to: Elrod Friedman LLP
325 N. LaSalle Street, Suite 450
Chicago, IL 60654
Attention: Hart M. Passman, Village Attorney

B. Relationship of the Parties. Nothing in, nor done pursuant to, this Agreement will be construed to create the relationship of principal and agent, employer and employee, partners, or joint ventures between 44 Vail and the Village. The Village will have the sole and exclusive right to select and (subject to the terms of this Agreement) to direct its employees and to determine the terms and conditions of their employment.

C. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

D. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement will be cumulative and will not be exclusive of any other rights, remedies, and benefits allowed by law.

E. Assignment. 44 Vail may assign this Agreement to any successor-in-interest to legal title to the Office Building for continued office use upon written notice to the Village. Except for the foregoing, neither 44 Vail nor the Village may assign this Agreement, in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written approval of the other party, which approval may be withheld in the sole and unfettered discretion of the other party.

F. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any Party, or of any duly authorized officer, employee, agent, or representative of any Party, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent must be in writing.

G. Governing Law. This Agreement will be governed by, construed, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

H. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property will not be impaired thereby, but the remaining provisions will be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

I. **Entire Agreement.** This Agreement and the Exhibit thereto constitute the entire agreement of the Parties relative to the subject matter of this Agreement, expressly superseding all prior agreements and negotiations between and among the Parties, whether written or oral, relating to the subject matter of this Agreement.

J. **Interpretation.** This Agreement will be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement will be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party will not be applicable to this Agreement.

K. **Exhibits. Exhibit A** attached to this Agreement is, by this reference, incorporated into, and made a part of, this Agreement.

L. **Amendments and Modifications.** No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by the Village and 44 Vail in accordance with all applicable statutory procedures.

M. **Changes in Laws.** Unless otherwise provided in this Agreement, any reference to existing law will be deemed to include any modifications of, or amendments to, existing law that may occur in the future.

N. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation will be made, or be valid, against 44 Vail or the Village.

O. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders, and the plural includes the singular and vice versa.

P. **Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

Q. **Calendar Days.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" will mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

R. **Counterpart Signatures.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument.

(Signature page attached)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

44 VAIL, LLC,
an Illinois limited liability company

By: _____
Name: Kyle Schuhmacher
Title: Manager

ATTEST:

VILLAGE OF ARLINGTON HEIGHTS

By: _____
Rebecca Hume, Village Clerk

By: _____
Randall Recklaus, Village Manager

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

 This instrument was acknowledged before me on _____, 2023, by Kyle Schuhmacher, the Manager of 44 VAIL, LLC, an Illinois limited liability company.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

 This instrument was acknowledged before me on _____, 2023, by Randall Recklaus and Rebecca Hume, the Village Manager and Village Clerk, respectively, of the VILLAGE OF ARLINGTON HEIGHTS, an Illinois home rule municipal corporation.

Signature of Notary

SEAL

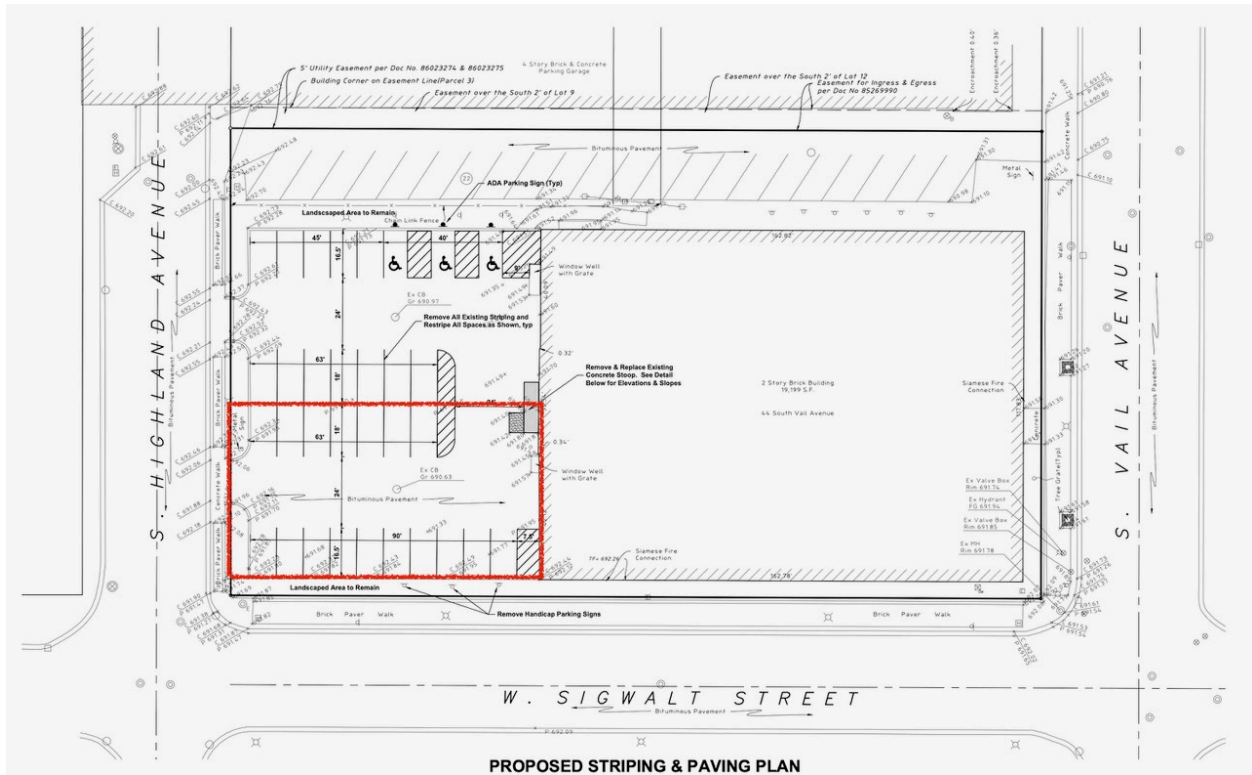
My Commission expires: _____

Exhibit A

Depiction and Legal Description of the Garage

Exhibit B

West Parking Lot Parking Spaces Excluded From Special Event Parking**



**44 Vail reserves the right to modify the location (but not the number) of the parking spaces not included in Special Event Parking in order to accommodate the needs of the Office Building.