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PROOF OF STORAGE AGREEMENT

THIS PROOF OF STORAGE AGREEMENT ("Agreement") is made this _____ day of _____, 2022 ("Effective Date"), by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and BCS4 Multifamily, LLC, a Delaware limited liability company whose principal office is located at 2737 Fairview Avenue North, St. Paul, Minnesota 55113 ("Owner").

RECITALS

Owner is the owner of certain real property located at 8100 31st Avenue South in the City of Bloomington, Hennepin County, Minnesota (the "Property") and legally described as:

Lot 1, Block 1, BLOOMINGTON CENTRAL STATION 7TH ADDITION

Hennepin County, Minnesota

Bloomington Central Station, LLC, a Delaware limited liability company, whose principal office is located at 2737 Fairview Avenue North, St. Paul, Minnesota, 55113 ("Applicant") filed a development application (Case #PL202100057) for the City's approval of a Major Revision to the Preliminary Development Plan, Final Development Plans, and Preliminary and Final Plat for the Property. The application included the requested approvals:

- 1. A Major Revision to the Preliminary Development Plan for Bloomington Central Station ("BCS") to replace three proposed office towers and associated detached parking structures with three multiple-family residential apartment buildings and other phased site improvements within the northwest portion of the planned development; and
- 2. Final Development Plans for a six-story, 402-unit apartment building with approximately 14,500 square foot grocery store within the BCS planned development; and
- 3. Preliminary and Final Plat of BLOOMINGTON CENTRAL STATION 7TH ADDITION.

The City Council of the City of Bloomington, Minnesota, at its regular meeting of May 3, 2021, approved the above-referenced Plans (the "Council Approval") subject to, and contingent

When Recorded Return To CADE First American Title Insurance Company National Commercial Services 121 South 8th Street, Suite 1250 Minneapolis, MN 55402 File No: NCS 049376-1 upon, the satisfaction of certain conditions relating to the Property, and made subject to those conditions, as well as all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval). Those conditions are memorialized in the May 4, 2021 decision notice attached herein as **Exhibit A**.

Condition #18 of the Decision Notice requires Owner to provide a minimum of 102 residential storage spaces outside of the dwelling units, consistent with the requirements of City Code, along with proof of storage in the amount of 101 additional storage spaces (the "Proof of Storage Units"). Condition #18 requires Owner to enter into this Agreement regarding proof of additional storage.

NOW, THEREFORE, in consideration of the recitals stated above and the mutual covenants below, the parties agree as follows:

- 1. **Recitals.** The foregoing recitals are correct and are incorporated herein.
- 2. <u>Execution and Recording.</u> Owner shall execute and file this Agreement with the office of the Hennepin County Recorder and/or Registrar of Titles, as applicable, and provide the City with proof of the recording of the Agreement.
- 3. Notice from the City. Owner shall report on the total number of storage units constructed and number of total storage units occupied at the same time as its annual report to the City's Director of Community Development pursuant to City Code Section 9.37(b) in the City's Opportunity Housing Ordinance. If ninety (90) percent or more of the total constructed storage units are occupied at the time Owner submits its annual report to the City, the City may provide Owner a notice requiring Owner to construct at least fifty (50) percent of the Proof of Storage Units. If, in subsequent years, Owner reports that at least ninety (90) percent of the total constructed storage units are occupied, the City may provide Owner a notice requiring Owner to construct the remainder of the Proof of Storage Units.
- 4. <u>Construction of Proof of Storage Units.</u> Owner shall, at its sole expense, construct the Proof of Storage Units as required under Section 3 above upon receipt of a notice from the City as provided in Section 3, and shall do so within one (1) year from the date of receipt of the notice. The Proof of Storage Units shall be constructed in accordance with the conditions of approval and relevant ordinance requirements in City Code Section 21.302.09(d)(7).
- 5. <u>Default by Owner.</u> Failure by Owner to construct complying Proof of Storage Units in a timely manner shall be considered a default. In the event of a default, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance of this Agreement, including but not limited to the revocation of City approvals. Owner shall be liable to the City for the costs and expenses of such enforcement actions and proceedings, including reasonable attorney's fees.
- 6. <u>Notices and Demands.</u> Notices, demands, or other communications to a party under this Agreement shall be sufficiently given if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed to the party as follows:

If to the City: If to Owner:

City of Bloomington BCS4 Multifamily, LLC ATTN: Director of Community Development ATTN: Mark Fabel

1800 West Old Shakopee Road 2737 Fairview Avenue North, St. Paul,

Bloomington, Minnesota 55431 Minnesota 55113

- 7. Relationship of the Parties. No partnership or joint venture is established between the parties hereto by or under this Agreement or any agreement referenced herein.
- 8. <u>Successors and Assigns.</u> This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present owners, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of Owner which relate to such portions of the Property and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Agreement relating to the transferred portion of the Property.
- 9. Governing Law. The City and Owner agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.
- 10. <u>Entire Agreement.</u> This Agreement and the city approvals related to the Property represent the entire agreement Owner and the City related to proof of storage. All previous agreements, whether written or oral, are superseded by and merged into this Agreement. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto.
- 11. <u>Severability.</u> If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.
- 12. <u>Signature/Execution of Multiple Originals.</u> Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. The City requires two (2) originals of this

Agreement for City records; Hennepin County will require one (1) original for the Recorder for recording.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[left blank intentionally; signature pages follow]

Signature Page for the City of Bloomington

CITY OF BLOOMINGTON

DATED: 3 22 2022	By: James D. Verbrugge Its: City Manager
Reviewed and approved by the City Attorney. City Attorney	
STATE OF MINNESOTA)) SS.	
COUNTY OF HENNEPIN)	
	day of <u>Morch</u> , 2022, by James D. Verbrugge, the City te State of Minnesota, on behalf of the City of Bloomington.
1) 1 . A.	

KRISTIN M. GRAVES
Notary Public-Minnesota
My Commission Expires Jan 31, 2023

Signature Page for BCS4 Multifamily, LLC

BCS4 Multifamily, LLC, a Delaware limited liability company

By: McGough Development, LLC

Its: Manager

DATED: April 21, 2022 By: Monas J. McGough, Jr.

Its: President

STATE OF Minnesota) SS. COUNTY OF Hennepin)

This instrument was acknowledged before me on this 215 day of April , 2022 by Thomas J. McGough, Jr., President of McGough Development, LLC, a Delaware limited liability company, which is the Manager of BCS4 Multifamily, LLC, a Delaware limited liability company, on behalf of the company.

Ilbu J. Kleit Notary Public

> DEBRA J KLEIST Notary Public Minnesota My Commission Expires January 31, 2025

This instrument was drafted by: Legal Dept. – City of Bloomington 1800 W. Old Shakopee Rd. Bloomington, MN 55431 952-563-8753

EXHIBIT A DECISION NOTICE CASE FILE #PL202100057



May 04, 2021

Bloomington Central Station LLC c/o McGough Development ATTN: David Higgins 2737 Fairview Avenue North St. Paul, MN 55113

RE: Case # PL202100057 - Major Revision to BCS Preliminary Development Plan, Final Development Plan for BCS Phase 4, Preliminary and Final Plat of Bloomington Central Station 7th Addition 3001, 3097 and 3107 American Boulevard East 8100 31st Avenue South

Mr. Higgins:

At its regular meeting of May 3, 2021, the City Council approved a Major Revision to the Preliminary Development Plan for Bloomington Central Station (BCS) to replace three proposed office towers and associated detached parking structures with three multiple-family residential apartment buildings and other phased site improvements within the northwest portion of the planned development; Final Development Plans for a six-story, 405-unit apartment building with an approximately 15,000 square-foot grocery space and other associated site improvements located at 8100 31st Avenue South; and Preliminary and Final Plat (Type III) of Bloomington Central Station 7th Addition (Case #PL202100057).

The following conditions of approval are arranged according to when they must be satisfied. In addition to conditions of approval, the use and improvements must also comply with all applicable local, state, and federal codes. Codes to which the applicant should pay particular attention are included below.

Approval of a Major Revision to the Preliminary Development Plan (PDP) of Bloomington Central Station (BCS) is subject to the following conditions of approval:

1. Ongoing As part of the consideration of Final Development Plans for Bloomington

Control Station (BCS) Places 5 and 6, overall development, earlying supply

Central Station (BCS) Phases 5 and 6, overall development parking supply must be reviewed, and a study may be required depending on parking

quantities proposed.

2. Ongoing Temporary surface parking proposed on Outlot Q of Bloomington Central

Station 2nd Addition (3107 American Boulevard East) will only be permitted as a temporary phase of development as shown in the revised

Preliminary Development Plan in Case #PL2021-57.

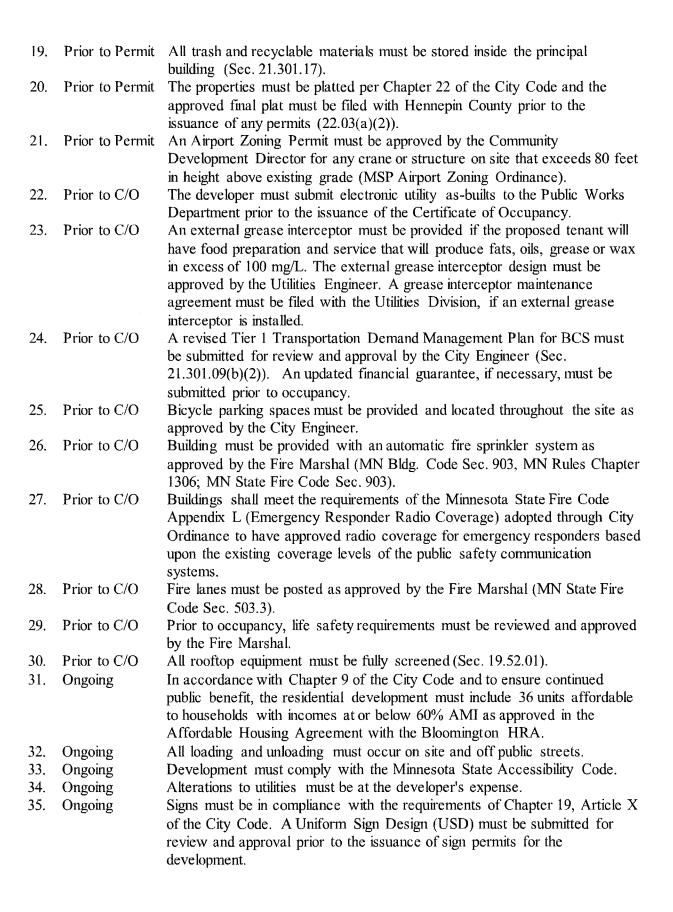
PLANNING DIVISION
1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN \$5431-3027
PH 952-563-8920 FAX 952-563-8949 MN Relay 711

AN AFFIRMATIVE ACTION/EQUAL OPPORTUNITIES EMPLOYER

Page 2 BCS GD WEST LLC May 04, 2021

Approval of the Final Development Plans for a six-story, 405-unit apartment building with approximately 15,000 square foot grocery store within the Bloomington Central Station (BCS) planned development is subject to the following conditions of approval:

-	-	
3.	Prior to Permit	A Site Development Agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
4.	Prior to Permit	A building permit for all required changes to accommodate the proposed use be obtained.
5.	Prior to Permit	Sewer Availability Charges (SAC) must be satisfied.
6.	Prior to Permit	Access, circulation and parking plans must be approved by the City Engineer.
7.	Prior to Permit	Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
8.	Prior to Permit	An erosion control surety must be provided (16.08(b)).
9.	Prior to Permit	A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided if greater than one acre is disturbed (State of MN and Federal regulation).
10.	Prior to Permit	A Minnesota Pollation Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
S BENGE	Prior to Permit	A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the City (State of MN).
12.	Prior to Permit	Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Minnesota State Fire Code Sec. 508).
13.	Prior to Permit	Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
14.	Prior to Permit	Parking lot and site security lighting plans must be revised to satisfy the requirements of City Code Section 21.301.07.
15.	Prior to Permit	Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
16.	Prior to Permit	The grocery space must provide alternative glass and permanent art on the northern and eastern building elevations to satisfy the minimum ground level transparent window requirement for nonresidential uses in Section 19.29(j)(2)(B) of the City Code.
17.	Prior to Permit	Plans submitted for building permits must include documentation that construction will provide noise mitigation consistent with the requirements of Section 21.301.12 of the City Code.
18.	Prior to Permit	A minimum of 102 residential storage spaces located outside of the unit consistent with the design specifications of Section 21.302.09(d)(7) of the City Code must be provided, and proof of storage in the amount of 101 additional storage spaces must be provided.



Approval of the Preliminary and Final Plat of BLOOMINGTON CENTRAL STATION 7TH ADDITION is subject to the following conditions:

36.	Prior to Recording	A title opinion or title commitment that accurately reflects the state of
		title of the property being platted, dated within 6 months of
		requesting City signatures, must be provided.
37.	Prior to Recording	A consent to plat form from any mortgage company with property
		interest must be provided.
38.	Prior to Recording	Right-of-way on 30th Avenue South must be dedicated to the public
		as approved by the City Engineer.
39.	Prior to Recording	Public drainage and utility easements must be provided as approved
		by the City Engineer.
40.	Prior to Recording	Public sidewalk and bikeway easements must be provided along
		street frontages as approved by the City Engineer.
41.	Prior to Recording	Park dedication must be satisfied.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,

Glen Markegard, AICP Planning Manager

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C: Schane Rudlang, Bloomington Port Authority