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PROOF OF PARKING AGREEMENT

THIS PROOF OF PARKING AGREEMENT ("Agreement") is made this 3rd day of March 2017, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and PHD Properties LLC, d/b/a Palacio Del Sol, a Minnesota limited liability company, P.O. Box 5093, Hopkins, Minnesota 55343 ("PHD").

RECITALS

PHD is the fee owner of certain real property located at 9101 Old Cedar Avenue South, Bloomington, Hennepin County, Minnesota, and legally described as "Lot 1, Block 1, OREST 2ND ADDITION" (the "Property").

The Property is presently developed with a 47-unit apartment building, together with 91 on-site parking stalls. PHD recently applied for approvals from the City of Bloomington for Final Site and Building Plans to add a four-story, 32-unit apartment building (the "New Building") with a 31-stall underground parking garage; 27 surface parking stalls; a drive lane around the property; an improved courtyard and swimming area; and landscaping and lighting improvements (collectively, the "Plans") (Case PL2016-196). The Plans were approved by the City Council for the City of Bloomington on January 23, 2017. After the construction of new apartment building and other improvements, the Property will contain 150 parking stalls; the City Code requires 156 parking stalls for the entire Property.

With its approval of the Plans, the City Council approved seven additional parking stalls on a proof-of-parking basis and allowed for the construction of those stalls (the "Proof of Parking Stalls") to be deferred until such time as they are needed. The Proof of Parking Stalls are

comprised of seven surface parking stalls that would be located on the north and northeast portions of the Property, as depicted on Exhibit A, which is attached hereto and incorporated herein by reference.

The approval of the Proof of Parking by the City Council requires that PHD enter into this Agreement regarding proof of parking. Pursuant to Section 21.301.06(e) of the Bloomington City Code, the approved Proof of Parking Stalls must be memorialized and placed of record with title to the Property.

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. Execution and Recording. PHD 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. No permits shall be issued by the City in connection with the Plans until such proof of recording has been provided.
3. Notice from the City. The City may direct the construction of the Proof of Parking Stalls at such time as the City, in its sole discretion and based upon an observed lack of available parking on the Property, determines that there is a need for the parking stalls thereon. This direction shall be given in writing and shall be mailed or delivered in accordance with the notice provisions described herein (the "Notice"). The Notice shall specify the number of Proof of Parking Stalls that shall be constructed (provided that the maximum number of stalls that the City may require is 7), and it shall state the time frame within which they shall be constructed. The time frame set by the City for the construction of the Proof of Parking Stalls shall take into account the work to be

done and seasonal construction limitations and considerations, and it shall be a minimum of ninety (90) days from the date of the Notice. Notwithstanding the foregoing, the City may not require that the Proof of Parking Stalls be constructed until such time as the City issues the certificate of occupancy for the New Building.

4. Construction of the Proof of Parking Stalls. PHD shall, at its sole expense, construct the Proof of Parking Stalls upon the direction of the City to do so, and shall do so within the time frame specified in the Notice. The Proof of Parking Stalls shall be constructed in accordance with the Plans (as depicted on Exhibit A), all conditions of approval, and relevant ordinance requirements. All appropriate permits for the construction shall be obtained by PHD.

5. Default by PHD. Failure by PHD to construct complying Proof of Parking Stalls as is required by this Agreement shall be considered a default by PHD. In the event PHD has defaulted under this Agreement, and the City has given PHD notice of such default and an additional thirty (30) days to cure such 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. PHD shall be liable to the City for the costs and expenses of such enforcement actions and proceedings, including attorney's fees.

6. Notices and Demands. Notices, demands, or other communications to a party under this Agreement shall be sufficiently given if sent by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party as follows:

If to the City:

City of Bloomington
ATTN: Director of Community Development
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

If to PHD:

PHD Properties LLC
d/b/a, Palacio Del Sol
ATTN: Helen Klug, President
P.O. Box 5093
Hopkins, Minnesota 55343

With copy to:

Christopher Huntley
Mulligan & Bjornnes PLLP
401 Groveland Avenue
Minneapolis, Minnesota 55403

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. Successors and Assigns. 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 PHD 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 PHD 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. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. 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. Severability. 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.

11. Signature/Execution. 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.

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: 3/3/17

By: James D. Verbrugge
James D. Verbrugge
Its City Manager

Reviewed and approved by the City Attorney.

Melissa J. Mandelke
City Attorney

[illegible]

This instrument was acknowledged before me on this 3rd day of March 2017, by James D. Verbrugge, the City Manager of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the City of Bloomington.

Quentin M. Davies
Notary Public



