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PROOF OF STORAGE AGREEMENT

THIS PROOF OF STORAGE AGREEMENT ("Agreement") is made this 21 day of April, 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

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. **Execution and Recording.** 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. **Construction of Proof of Storage Units.** 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. **Default by Owner.** 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. **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 Owner:

BCS4 Multifamily, LLC
ATTN: Mark Fabel
2737 Fairview Avenue North, St. Paul,
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. **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 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. **Entire Agreement.** 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. **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.

12. **Signature/Execution of Multiple Originals.** 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: [Signature]
James D. Verbrugge
Its: City Manager

Reviewed and approved by the City Attorney.

[Signature]
City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 22nd day of March, 2022, 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.

[Signature]
Notary Public



Signature Page for BCS4 Multifamily, LLC

BCS4 Multifamily, LLC,
a Delaware limited liability company

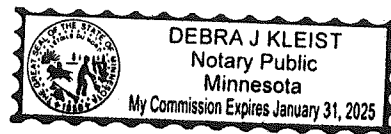
By: **McGough Development, LLC**
Its: Manager

DATED: April 21, 2022 By: Thomas J. McGough, Jr.
Thomas J. McGough, Jr.
Its: President

STATE OF Minnesota)
) SS.
COUNTY OF Hennepin)

This instrument was acknowledged before me on this 21st 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.

Debra J. Kleist
Notary Public



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 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.

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 Pollution 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).
11. 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.

19. Prior to Permit All trash and recyclable materials must be stored inside the principal building (Sec. 21.301.17).
20. Prior to Permit The properties must be platted per Chapter 22 of the City Code and the approved final plat must be filed with Hennepin County prior to the issuance of any permits (22.03(a)(2)).
21. Prior to Permit An Airport Zoning Permit must be approved by the Community Development Director for any crane or structure on site that exceeds 80 feet in height above existing grade (MSP Airport Zoning Ordinance).
22. Prior to C/O The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy.
23. Prior to C/O An external grease interceptor must be provided if the proposed tenant will have food preparation and service that will produce fats, oils, grease or wax in excess of 100 mg/L. The external grease interceptor design must be approved by the Utilities Engineer. A grease interceptor maintenance agreement must be filed with the Utilities Division, if an external grease interceptor is installed.
24. Prior to C/O A revised Tier 1 Transportation Demand Management Plan for BCS must be submitted for review and approval by the City Engineer (Sec. 21.301.09(b)(2)). An updated financial guarantee, if necessary, must be submitted prior to occupancy.
25. Prior to C/O Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
26. Prior to C/O Building must be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
27. Prior to C/O Buildings shall meet the requirements of the Minnesota State Fire Code Appendix L (Emergency Responder Radio Coverage) adopted through City Ordinance to have approved radio coverage for emergency responders based upon the existing coverage levels of the public safety communication systems.
28. Prior to C/O Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
29. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
30. Prior to C/O All rooftop equipment must be fully screened (Sec. 19.52.01).
31. Ongoing In accordance with Chapter 9 of the City Code and to ensure continued public benefit, the residential development must include 36 units affordable to households with incomes at or below 60% AMI as approved in the Affordable Housing Agreement with the Bloomington HRA.
32. Ongoing All loading and unloading must occur on site and off public streets.
33. Ongoing Development must comply with the Minnesota State Accessibility Code.
34. Ongoing Alterations to utilities must be at the developer's expense.
35. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code. A Uniform Sign Design (USD) must be submitted for review and approval prior to the issuance of sign permits for the development.

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

C: Schane Rudlang, Bloomington Port Authority