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SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 21 day of April, 2022, 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 ("Applicant").

RECITALS

The 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 of 8100 31st Avenue South in the City of Bloomington, Hennepin County, Minnesota, and legally described as set forth in **Exhibit A** which is attached hereto and incorporated herein by reference ("Property"). The application included the following 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- 405-unit apartment building with an approximately 15,000 square foot grocery store within the BCS planned development (collectively, the "Plans"); 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 items, including the Plans (the "Council Approval") subject to, and contingent upon, the Applicant's 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).

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property. It is intended to address the parties' compliance with the conditions the City Council placed in the Council Approval. This Agreement does not address other issues relating to public improvements, assessments, storm water charges, or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference.

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

1. **Recitals.** The foregoing recitals are correct and are incorporated herein.

When Recorded Return To (CASE)
 First American Title Insurance Company
 National Commercial Services
 121 South 8th Street, Suite 1250
 Minneapolis, MN 55402
 File No: NCS 1049376-1

2. **Obligations of the Applicant.**

(a) **Compliance with Conditions of Approval.** The Applicant agrees that development of the Property shall be in strict conformance with all conditions set forth in the decision notice dated May 4, 2021, which is attached hereto and incorporated herein by reference as **Exhibit B** (collectively, the “Conditions of Approval”).

(b) **Conformance with Approved Plans.** The Applicant agrees that development of the Property shall also be in strict conformance with the Plans as approved as part of the Council Approval, all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval and decision notice), and all applicable state and federal laws. In the event that there is a conflict between the Plans as approved by the City Council and the regulatory terms of this Agreement, the more restrictive standard shall apply. It shall be the obligation of the Applicant to provide advance written notice to the City of any aspect of the development that varies to any degree from the Plans approved as part of the Council Approval. The Applicant also agrees that any major or minor change to the Plans as approved by the City Council must be approved by the City as provided in City Code Section 21.501.03, subdivisions (c) and (d).

(c) **Compliance with Zoning Regulations.** The Applicant agrees that any change to a use of the Property that is prohibited under the City’s zoning regulations will require City Council approval of a revision of the zoning code and approval of a revision to the Plans.

(d) **Additional Terms Related to Conditions of Approval.** Notwithstanding anything in this Agreement to the contrary, City and Applicant agree that the following additional terms shall apply with respect to the Conditions of Approval:

(if) For Condition No. 16 of the Conditions of Approval, alternative glass was utilized in combination with transparent glass to satisfy the ground level transparent window requirement for the development.

3. **Obligations of the City.**

(a) **Issuance of Permits.** The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in the attached **Exhibit B**, and compliance with all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval or decision notice). No permits will be issued until the Applicant has submitted all appropriate permit applications, which are subject to City review and approval.

4. **Event of Default.**

(a) The term “event of default” shall mean, whenever it is used in this Agreement (unless the context provides otherwise), any of the following events:

(i) The failure of the Applicant to perform the obligations set forth in paragraph 2 (“Obligations of the Applicant”) of this Agreement and to commence corrective

measures to perform the obligations within sixty (60) days after receipt by the Applicant of written notice of such default by the City.

(i) The failure of the City to perform the obligations set forth in paragraph 3 (“Obligations of the City”) of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the City of written notice of such default by the Applicant.

5. **Remedies of the City.**

(a) Whenever any event of default of the Applicant occurs and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance and observance of this Agreement.

(b) A major change in the Plans by the Applicant shall require City Council approval in accordance with Bloomington City Code Section 21.501.03(c), and the City reserves the right to initiate such proceedings. In addition, the City reserves its right to initiate rezoning of the Property if the Applicant changes the Property to a use prohibited in the approved zoning district.

6. **Remedies of the Applicant.** Whenever any event of default by the City occurs and is continuing, the Applicant may take whatever action at law or in equity may appear necessary or desirable to the Applicant to enforce performance or observance of this Agreement.

7. **Notices and Demands.**

(a) A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party at the addresses listed below with receipt thereof presumed on the third business day thereafter. Either party may designate another address, or attorney for receipt of notices pursuant to this Agreement by designating in writing and forwarding such writing to the other party as provided in this section.

(b) 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 the Applicant:

BCS4 Multifamily, LLC
c/o McGough Development, LLC
ATTN: Johnny Meeker, Development Associate
2737 Fairview Avenue North, St. Paul, MN 55113

8. **Amendment/Additional Documents.** This Agreement may be amended, in writing, as the parties may mutually agree. The plans, standards, stipulations, and other information constituting the development plan and the conditions placed on the approval of the plans as detailed in **Exhibit B** may also be amended upon application by the Applicant and

approval of the City pursuant to Bloomington City Code Section 21.501.03. Once approved by the City Council, subsequent development plans and conditions shall become part of this Agreement and shall be fully binding upon the parties as if set forth herein. All such additional documents affecting the development and use of this property shall be kept on file as a public record by the City of Bloomington, Director of Community Development.

9. **Application of City Code Provisions, Rules, Regulations and Policies.** This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new City Code provisions, rules, regulations or policies, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development application on the basis of such existing or new City Code provisions, rules, regulations or policies. No rights shall be deemed to vest in the Applicant or any other person, under any site development agreement, except as expressly set forth therein.

10. **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.

11. **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 Applicants, 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 the Applicant 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. Notwithstanding anything herein to the contrary, the Applicant may assign its rights under this Agreement, without the City's prior consent, to any third-party that owns fee title to the Property.

12. **Recording of Document.** This Agreement shall run with the Property and shall be recorded in the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, by the Applicant with proof thereof shown to the City prior to its issuance of any permits hereunder.

13. **Governing Law.** The City and Applicant 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.

14. **Entire Agreement.** This Agreement and the Plans represent the entire Agreement between the Applicant and the City relating to the subject matter hereof. All previous agreements, whether written or oral, related to the subject matter hereof, are superseded by and merged into this Agreement. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto.

15. **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, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. 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.

16. **Signatures/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. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City requires execution of multiple originals of this Agreement: three (3) originals for City records; and one (1) original for recording with the Office of the County Recorder.

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, Minnesota

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 APPLICANT

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)
COUNTY OF Hennepin) SS.

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
TO SITE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

LEGAL DESCRIPTION OF THE PROPERTY
LOCATED IN HENNEPIN COUNTY, MINNESOTA:

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

Abstract

EXHIBIT B
TO SITE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

CONDITIONS OF APPROVAL



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.

PLANNING DIVISION

1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027
 PH 952-563-8920 FAX 952-563-8949 MN Relay 711

AN AFFIRMATIVE ACTION/EQUAL
 OPPORTUNITIES EMPLOYER

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