

*(reserved for recording information)*

## **DEVELOPMENT AGREEMENT**

**CITY OF EDINA**  
**DORAN - KM2 EDINA , LLC**

**AGREEMENT** dated September 6, 2017, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and **DORAN – KM2 EDINA, LLC**, a Minnesota limited liability company ("Developer").

### **1. BACKGROUND.**

A. Developer has applied to develop property in the City of Edina, Minnesota, legally described as Lot 1, Block 1, Southdale-York Addition and Lot 1, Block 1, York Terrace, Hennepin County, Minnesota (hereinafter referred to as the "Subject Property").

B. Developer, on behalf of the property owners, has submitted an application to rezone the Subject Property to Planned Unit Development for construction of a multifamily building with up to 200 units.

**2. CONDITION OF APPROVAL.** This Agreement is a condition of the City's rezoning the Subject Property to Planned Unit Development and will be recorded against the Subject Property.

**3. RIGHT TO PROCEED.** On the Subject Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct public or private improvements, or any buildings until all the

following conditions have been satisfied: 1) this agreement has been fully executed by both parties and filed with both the City Clerk and the Hennepin County Recorder's office, 2) the necessary security (described in paragraph 13 below) has been received by the City, and 3) the necessary insurance (described in paragraph 17.G. and 17.H. below) for the Developer and its construction contractors has been received by the City.

**4. PLANS.** The Subject Property shall be developed in accordance with the following plans, which are on file with the City. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans ("Plans") are:

Plan A – Final Development Plan, stamped Nov. 4, 2016 prepared by Doran

Plan B – Landscape Plan, stamped Nov. 4, 2016 prepared by Doran

Plan C – Site Plan, stamped June 15, 2017 prepared by WSB

Plan D – Grading Plan, stamped June 15, 2017 prepared by WSB

Plan E – Erosion Control Plan, stamped June 15, 2017 prepared by WSB

Plan F – Public Improvements Plans, stamped June 15, 2017 prepared by WSB

Plan G – Utility Plan, stamped June 15, 2017 prepared by WSB

Developer may request changes to the Plans. For Plan changes deemed minor, pursuant to City ordinances, changes can be reviewed and approved by City staff and those approved changes shall control over the terms of this Agreement. All other Plan changes shall require approval by the City Council and this Agreement shall be amended accordingly.

**5. EROSION CONTROL.** Prior to initiating construction, the Erosion Control Plan, Plan E, shall be implemented by the Developer and inspected and approved by the City. The City may impose additional erosion control obligations if, in the City's reasonable discretion, they would be beneficial in controlling erosion. All areas disturbed by the grading operations shall be stabilized per the Minnesota Pollution Control Agency ("MPCA") Stormwater Permit for Construction Activity. Seed shall be in accordance with the City's current seeding specification, which may include temporary seed to provide ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored as

necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the MPCA Stormwater Permit for Construction Activity or with the Erosion Control Plan, Plan E, or any schedule of supplementary instructions received from the City, the City may, take such action as it deems appropriate to comply with the MPCA Stormwater Permit for Construction Activity or with the Erosion Control Plan, Plan E, or any schedule of supplementary instructions received from the City. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days of receipt of notice thereof, the City may draw on the letter of credit to pay any costs reasonably associated with such work. No development or utility construction will be allowed and no building permits will be issued unless the Subject Property is in full compliance with the approved Erosion Control Plan.

6. **LICENSE.** Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Subject Property to perform all work and inspections deemed appropriate by the City in conjunction with site development, which license shall expire automatically and without further action by the parties to this Agreement upon the issuance of a Certificate of Occupancy for the Project.

7. **CONSTRUCTION ACCESS.** Construction traffic access and egress must be in accordance with the Construction Management Plan.

8. **PUBLIC IMPROVEMENTS.** Public Improvements shall be installed in accordance with City standard specifications and ordinances and Developer is hereby granted a license to access all areas necessary to complete the Public Improvements. Grading, construction activity, and the use of power equipment is prohibited between the hours of 9 o'clock p.m. and 7 o'clock a.m. All Public Improvement Plans shall be prepared by a competent registered professional engineer and submitted to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition

of City acceptance. In addition, the City may, at the City's reasonable discretion and at a reasonable cost to the Developer, have one or more City inspectors and a soil engineer inspect the work on a part-time basis. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for approving design changes to the Public Improvements and contract administration for same between the Developer and the Developer's contractor. The Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City with all parties concerned, including the City staff, to review the program for the construction work. Within thirty (30) days after the completion of the Public Improvements and before the security is released, the Developer shall supply the City with a complete set of reproducible "as constructed" plans and an electronic file of the "as constructed" plans in an AutoCAD .DWG file or a .DXF file, all prepared in accordance with City standards.

**9. TIME OF PERFORMANCE.** The Developer shall install all required Public Improvements by November 30, 2018.

**10. CLEAN UP.** The Developer shall clean dirt and debris from streets that has resulted from construction work by the Developer, subcontractors, their agents or assigns. Prior to any construction in the Subject Property, the Developer shall identify in writing a responsible party and schedule for erosion control, street cleaning, and street sweeping.

**11. OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement and final acceptance by the City, the Public Improvements identified in the Plans lying within public easements shall become City property without further notice or action.

**12. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.** The Developer shall pay a cash fee of \$5,000.00 for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and its engineer on status or problems regarding the Project, coordination for final inspection and acceptance, Project monitoring during the warranty period, and processing of requests for reduction in Security. Fees for this service shall not exceed \$5,000.00, assuming normal construction and project scheduling, which

includes construction observation performed by the City's in-house engineering staff or consulting engineer.

**13. SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement and all of the Plans, payment of the costs of all Public Improvements, and construction of all Public Improvements, the Developer shall furnish the City with a letter of credit in the form attached hereto, from a bank ("Security") for \$50,000. This breakdown is for historical reference; it is not a restriction on the use of the Security. The bank shall be subject to the approval of the City Manager. The City may draw down the Security, on five (5) business days written notice to the Developer, for any violation of the terms of this Agreement or without notice if the Security is allowed to lapse prior to the end of the required term. If the required Public Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw it down without notice. If the Security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City that the Project has been substantially completed in accordance with the Plans and, with City approval, the Security may be reduced from time to time by ninety percent (90%) of the Developer's financial obligations to the City that have been satisfied. Ten percent (10%) of the Security shall be retained until all Project Improvements have been completed, all financial obligations to the City satisfied, the required "as constructed" plans have been received by the City, the warranty period in Section 14 has expired or the maintenance bonds are furnished to the City as set forth in Section 14 (whichever first occurs), and the Public Improvements are accepted by the City Council. The City's standard specifications for utility and street construction outline procedures for Security reductions.

**14. WARRANTY.** The Developer warrants all Public Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for all Public Improvements is one year and shall commence following completion and acceptance by City

Council. The Developer shall post maintenance bonds in the amount of twenty-five percent (25%) of final certified construction costs of the Public Improvements to Secure the warranties. The City shall retain ten percent (10%) of the Security posted by the Developer as detailed in Section 13 until the maintenance bonds are furnished to the City or until the warranty period expires, whichever first occurs. The retainage may be used to pay for warranty work. The City's standard specifications for utility construction identify the procedures for final acceptance of utilities.

**15. SPECIAL PROVISIONS.**

- A. Affordable Housing. Five percent (5%) of the apartment units shall be reserved for occupancy by residents whose median family income is equal to or less than sixty percent (60%) of the median family income for the Minneapolis, St. Paul statistical area, and limited to the maximum rental rates established and reported by the Minnesota Housing Finance Agency. The income and rental limits in effect for 2016 are as follows:

Gross Incomes		Gross Rents	
1 Person	\$36,060	Studio	\$901
2 Persons	\$41,220	1 Bedroom	\$1,030
3 Persons	\$46,380	2 Bedroom	\$1,160
4 Persons	\$51,480	3 Bedroom	\$1,290

Upon reasonable request, from time to time, the City shall evaluate and confirm Developer's satisfaction of this requirement. This requirement to provide affordable housing units shall expire fifteen (15) years after the issuance of a Certificate of Occupancy for the Project.

- B. 66<sup>th</sup> and York Intersection Improvements. The City shall cooperate with Hennepin County to abandon the right turn lane adjoining the Project, and Developer shall pay for \$40,000.00 of the City's costs for abandonment by Hennepin County of the right turn lane; provided, however, that the Developer shall be relieved of the obligation to pay any costs under this provision if the abandonment of the right turn lane has not taken place within three (3) years of the date of this Agreement.

- C. Sustainable Design. The building shall be designed to be fifteen percent (15%) more energy efficient than the state energy code guidelines in effect as of the date of this Agreement. A plan of how these standards are intended to be met must be submitted prior to issuance of a building permit.
- D. Trash removal and all deliveries to the Subject Property must take place only off the Southdale Circle entrance to the Subject Property.
- E. Developer shall comply with the requirements in the Director of Engineering's memoranda dated November 3, 2015, and November 21, 2016 which are on file with the City.
- F. The Developer will reasonably cooperate and partner with the City to secure future funding sources for public roadway improvements and pedestrian crossings, serving the Project, but without creating additional financial obligations for Developer.

**16. RESPONSIBILITY FOR COSTS.**

A. The Developer shall pay all reasonable costs incurred by it or the City in conjunction with the development of the site and installation of Public Improvements, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and development of the Subject Property, the preparation of this Agreement, and review of any other plans and documents.

B. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from Developer's development of the site and installation of Public Improvements. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

C. In the event the City is successful in litigation to enforce the terms of this Agreement, the Developer shall reimburse the City for costs incurred in litigation and subsequent enforcement of this Agreement, including reasonable engineering and attorneys' fees.

D. The Developer shall pay in full all bills submitted to it by the City for undisputed obligations incurred in connection with Section 16(A) above within thirty (30) days after receipt. If the

undisputed bills are not paid on time, the City may halt site development and construction until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of eight percent (8%) per year.

**17. MISCELLANEOUS.**

A. Third parties shall have no recourse against the City or the Developer under this Agreement.

B. A material breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits, including lots sold to third parties.

C. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.

D. If building permits are issued prior to the acceptance of Public Improvements, the Developer assumes all liability and costs resulting in delays in completion of Public Improvements and damage to Public Improvements caused by the City, Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties. No sewer and water connections or inspections may be conducted and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

E. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

F. This Agreement shall run with the land and may be recorded against the title to the Subject Property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Subject Property or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the



property; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

G. The Developer and any general contractor or subcontractor performing work on the Public Improvements shall acquire general liability and automobile insurance covering personal injury, including death, and claims for property damage which may arise out of such work. Limits for bodily injury and death shall be not less than \$100,000 for one person and \$1,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy on a primary and noncontributory basis, and the Developer, and any applicable general contractor or subcontractor, shall file with the City a certificate evidencing coverage. To the extent reasonably commercially available, the certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance. The Developer and contractors must provide a Certificate of Insurance which meets the following requirements:

1. The Description section of the Accord form needs to read, in substantially the following form: "City of Edina is named as Additional Insured with respect to the General Liability and Auto Liability policies on a Primary and Non-Contributory Basis."
2. Certificate Holder must be City of Edina.
3. Provide copy of policy endorsement showing City of Edina named as Additional Insured on a Primary and Non-Contributory Basis.

H. The Developer and its general contractor shall obtain Workmen's Compensation Insurance in accordance with the laws of the State of Minnesota, including Employer's Liability Insurance, to the limit of \$100,000.00 each accident.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

J. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Subject Property, or any part of it.

K. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits and certificates of occupancy, and the halting of all work on the property; provided, however, that the City shall first provide notice of a breach and a reasonable opportunity to cure before halting of all work on the property.

L. The Developer represents to the City that the development complies with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the development does not comply, the City may, at its option, refuse to allow construction or development work in the development until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

M. From time to time, when requested by Developer, the City shall execute and deliver a recordable certificate confirming the satisfaction or completion of certain requirements contained in this Agreement.

**18. DEVELOPER'S DEFAULT.** In the event of default by the Developer as to any of the work to be performed by it, the City shall provide notice to the Developer of such default. If, after ten (10) days following such notice, the Developer has not cured, or commenced to cure such default, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City; provided, however, that in the event of an emergency, as reasonably determined by the City, the City may perform such work if the Developer has not cured or commenced to cure the default within twenty-four (24) hours of receiving notice thereof. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part.

**19. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 7803 Glenroy Rd., Suite 200, Bloomington, MN 55439. Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by certified mail in care of the City Manager at the following address: Edina City Hall, 4801 W. 50<sup>th</sup> Street, Edina, Minnesota 55424-1330.

**20. ESTOPPEL.** Upon request, the City will provide an estoppel letter on behalf of the Developer in a form and under conditions acceptable to the City.

**21. NO PARK DEDICATION FEES.** The City has agreed, and hereby affirms, that no park dedication fees shall be assessed in connection with the development of the Subject Property.

**22. AUTOMATIC TERMINATION OF PROVISIONS.** All provisions in this Agreement which will expire upon the occurrence of specified conditions precedent shall automatically terminate and be deemed stricken from this Agreement without further action by the City or the Developer.

*[The remainder of this page has been intentionally left blank.  
Signature pages follow.]*

**CITY OF EDINA**

BY: \_\_\_\_\_  
James Hovland, Mayor

AND \_\_\_\_\_  
Scott Neal, City Manager

STATE OF MINNESOTA     )  
                                      )ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by James Hovland and by Scott Neal, respectively the Mayor and City Manager of the City of Edina, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

**DEVELOPER:**  
**DORAN - KM2 EDINA, LLC**

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MINNESOTA     )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of DORAN - KM2 EDINA, LLC, a Minnesota limited liability company, on its behalf.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
CAMPBELL, KNUTSON  
*Professional Association*  
860 Blue Gentian Road, Suite 290  
Eagan, MN 55121  
Telephone: 651-452-5000  
[RNK]

009410/920903/2362164\_2

**FEE OWNER CONSENT  
TO  
DEVELOPMENT AGREEMENT**

\_\_\_\_\_, fee owners of all or part of the Subject Property, the development of which is governed by the foregoing Development Agreement, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the Subject Property owned by them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017,  
by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
CAMPBELL KNUTSON  
*Professional Association*  
Grand Oak Office Center I  
860 Blue Gentian Road, Suite 290  
Eagan, Minnesota 55121  
(651) 452-5000  
RNK

**MORTGAGE CONSENT  
TO  
DEVELOPMENT AGREEMENT**

\_\_\_\_\_, which holds a mortgage on the Subject Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
CAMPBELL KNUTSON  
*Professional Association*  
Grand Oak Office Center I  
860 Blue Gentian Road, Suite 290  
Eagan, Minnesota 55121  
(651) 452-5000  
RNK

## IRREVOCABLE LETTER OF CREDIT

No. \_\_\_\_\_

Date: \_\_\_\_\_

TO: City of Edina  
4801 W. 50<sup>th</sup> Street  
Edina, Minnesota 55424-1330

Dear Sir or Madam:

We hereby issue, for the account of \_\_\_\_\_ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$\_\_\_\_\_, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

a) Bear the clause, "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 2\_\_\_\_\_, of \_\_\_\_\_ (Name of Bank)";

b) Be signed by the City Manager or Finance Director of the City of Edina; and

c) Be presented for payment at \_\_\_\_\_ (Address of Bank), on or before 4:00 p.m. on November 30, 2\_\_\_\_\_.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Edina Finance Director that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: Edina City Manager, Edina City Hall, 4801 W. 50<sup>th</sup> Street Edina, MN 55424-1330, and is actually received by the City Manager at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: \_\_\_\_\_

Its \_\_\_\_\_