

DEVELOPMENT AGREEMENT RIDER

This Development Agreement Rider (“**Rider**”) is attached to and made a part of that certain Development Agreement dated _____, 2017 (“**Development Agreement**”) by and between **Doran-KM2 Edina, LLC**, a Minnesota limited liability company (“**Developer**”) and the **City of Edina**, a Minnesota municipal corporation (“**City**”).

The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement the Development Agreement. In the event of any conflict between any provision contained elsewhere in the Development Agreement and any provision contained in this Rider, the provisions contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

1. Section 1 of the Development Agreement is hereby revised to provide that the legal description of the “Subject Property” is “Lot 1, Block 1, Doran KM2 Southdale Addition, Hennepin County, Minnesota”.

2. The following provisions are hereby inserted at the end of Section 15 of the Development Agreement:

Definitions.

The following defined terms used herein shall have the meanings specified below:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Developer and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Jones Lang LaSalle Multifamily, LLC, a Delaware limited liability company, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Developer pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

“Restrictive Covenants” means the covenants set forth in Section 15A of the Development Agreement.

"Security Instrument" means the mortgage or deed of trust from Developer in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

Recitals.

Developer has obtained financing from Lender (the “Loan”) for the benefit of the project known as ENVI Apartments ("Project"), which Loan is secured by the Security Instrument recorded in the Registrar of Title’s Office in and for Hennepin County, Minnesota ("Records") and is insured by HUD;

HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

City has agreed to subordinate the Restrictive Covenants to the lien of the Security Instrument and the terms of the “HUD Requirements” (as defined below) in accordance with the terms of this Section.

Agreements.

a) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Developer covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the City's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Developer represents and warrants that to the best of Developer's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

b) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure by Lender and the expiration of any applicable redemption period (or deed in lieu of foreclosure given to Lender), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, to the extent applicable, or as otherwise approved by HUD.

c) Developer and the City acknowledge that Developer's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

d) In enforcing the Restrictive Covenants, the City will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against available Surplus Cash.

e) For so long as the Mortgage Loan is outstanding, Developer and City shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

f) Subject to the HUD Regulatory Agreement, the City may require the Developer to indemnify and hold the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against City relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Developer's obligation to indemnify and hold the City harmless shall be limited to available Surplus Cash and/or Residual Receipts of the Developer.

3. The following provision is hereby inserted at the end of Section 16.B. of the Development Agreement:

Notwithstanding anything in this Section 16.B. or elsewhere in this Agreement to the contrary, any obligation of Developer to hold the City and its officers, employees and/or agents harmless from claims or to indemnify the City and its officers, employees and/or agents shall not apply to HUD in the event HUD comes into possession or ownership of the Project.

[SIGNATURE PAGES TO FOLLOW]

In witness whereof, the undersigned have caused this Rider to be effective as of the date first above written.

Developer:

DORAN-KM2 EDINA, LLC,
a Minnesota limited liability company

By: Doran Southdale, LLC,
a Minnesota limited liability company
Its: Manager Member

By: _____
Kelly J. Doran
Its: CHIEF MANAGER

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing was acknowledged before me this ____ day of _____, 2017 by Kelly J. Doran, the Chief Manager of Doran Southdale, LLC, a Minnesota limited liability company, on behalf of the company.

NOTARY PUBLIC

