


REQUEST FOR COUNCIL ACTION

Date: June 20, 2011
Item No.: 12.d

Department Approval



City Manager Approval



Item Description: Consider Approval of Development Agreement between the City of Roseville and Sienna Green II Limited Partnership

BACKGROUND

AEON has previously received approval from the City to construct a new 50-unit apartment building consisting of a combination of affordable two- and three-bedroom units. In late 2010, AEON secured tax credit financing from Minnesota Housing Financing Agency to assist in their project. As part of their funding needs for Sienna Green Phase II, AEON is requesting tax increment financing.

Based on that need, on July 13, 2009, the Roseville City Council established TIF District #18 to assist the project. On June 13, 2011, the City Council approved amendments to the TIF District 18 Financing Plan in order to add additional land into the district, include updated property value information in the financing plan, and adjust the budget.

In order for AEON to actually receive any TIF assistance, they need to enter into an agreement with the City regarding the amount and terms of assistance the City will provide. The details of the development agreement can be summarized as follows:

- The agreement is between the City of Roseville and Sienna Green II Limited Partnership.
- Tax increment revenues based on incremental values of both phases of AEON's project (Sienna Green I and Sienna Green II)
- The City will retain 5% of the tax increments for administrative purposes.
- Sienna Green II will receive reimbursement of up to \$935,005, plus interest at a rate of 4.25%, for construction costs within the project on a pay-as-you-go basis.
- The termination date will be the earlier of February 1, 2039 (the expiration of the district) or the date when Sienna Green II receives the full amount of \$935,005.
- The agreement will contain language that will require Sienna Green II to provide certification of actual costs to determine the actual gap in funding for the project. If the actual gap is less than the \$935,005 amount, the amount of tax increment given to Sienna Green II will be reduced accordingly. If the gap is determined to be larger, no additional tax increment will be given.

POLICY OBJECTIVE

By approving a TIF Development Agreement, the City will assist an affordable housing project being developed that otherwise could not be built.

30 **BUDGET IMPLICATIONS**

31 All staff and consultant costs will be recovered from the increment as part of the administrative
32 retainage. The amount of assistance that Sienna Green will receive will be only the incremental
33 portion of the property taxes that they will pay for their development. The taxes paid on the base
34 value of the property when the TIF District was originally created will continue to be applied to
35 the general fund.

36 **STAFF RECOMMENDATION**

37 Staff recommends that the City Council authorize the City Manager and Mayor to enter into a
38 development agreement with Sienna Green II Limited Partnership.

39 **REQUESTED COUNCIL ACTION**

40 Motion to ADOPT a resolution to approve the development agreement between the City of
41 Roseville and Sienna Green II Limited Partnership dedicating tax increment from TIF District
42 No. 18.

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: Draft Development Agreement between the City of Roseville and Sienna Green II Limited
Partnership
B: Resolution approving Development Agreement

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF ROSEVILLE, MINNESOTA

AND

AEON

This document drafted by:

BRIGGS AND MORGAN
Professional Association
2200 First National Bank Building
St. Paul, Minnesota 55101

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DEVELOPMENT AGREEMENT

64 THIS AGREEMENT, made as of the 1st day of June, 2011, by and between the City of
65 Roseville, Minnesota (the "City"), a municipal corporation organized and existing under the laws
66 of the State of Minnesota and Aeon, a Minnesota non-profit corporation (the "Developer"),

67 WITNESSETH:

68 WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.134, the City
69 has formed Development District No. 1 (the "Development District") and has adopted a
70 development program therefor (the "Development Program"); and

71 WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through
72 469.1799, as amended, (hereinafter the "Tax Increment Act"), the City has created, within the
73 Development District, Tax Increment Financing District No. 18 (the "Tax Increment District")
74 and adopted a tax increment financing plan therefor, dated July 13, 2009, and amended on June
75 13, 2011 (the "Tax Increment Plan") which provides for the use of tax increment financing in
76 connection with certain development within the Development District; and

77 WHEREAS, in order to achieve the objectives of the Development Program and
78 particularly to make the land in the Development District available for development by private
79 enterprise in conformance with the Development Program, the City has determined to assist the
80 Developer with the financing of certain costs of a Project (as hereinafter defined) to be
81 constructed within the Tax Increment District as more particularly set forth in this Agreement;
82 and

83 WHEREAS, the City believes that the development and construction of the Project, and
84 fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety,
85 morals and welfare of residents of the City, and in accordance with the public purpose and
86 provisions of the applicable state and local laws and requirements under which the Project has
87 been undertaken and is being assisted.

88 NOW, THEREFORE, in consideration of the premises and the mutual obligations of the
89 parties hereto, each of them does hereby covenant and agree with the other as follows:

90

91 **ARTICLE I**

92 **DEFINITIONS**

93
94 Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein
95 shall have the following meanings unless a different meaning clearly appears from the context:

96 Agreement means this Agreement, as the same may be from time to time modified,
97 amended or supplemented;

98 Business Day means any day except a Saturday, Sunday or a legal holiday or a day on
99 which banking institutions in the City are authorized by law or executive order to close;

100 City means the City of Roseville, Minnesota;

101 Compliance Certificate means the Compliance Certificate in substantially the form
102 attached hereto as Exhibit C;

103 County means Ramsey County, Minnesota;

104 Developer means Aeon, its successors and assigns;

105 Development District means Development District No. 1, including the real property
106 described in the Development Program;

107 Development Program means the development program approved in connection with the
108 Development District;

109 Development Property means the real property described in Exhibit A attached to this
110 Agreement;

111 Event of Default means any of the events described in Section 4.1 hereof;

112 Legal and Administrative Expenses means the fees or expenses incurred by the City in
113 connection with the preparation of this Agreement, the establishment of the Tax Increment
114 District and the administration of the Tax Increment District;

115 Note Payment Date means August 1, 2013, and each August 1 and February 1 of each
116 year thereafter to and including February 1, 2039; provided, that if any such Note Payment Date
117 should not be a Business Day, the Note Payment Date shall be the next succeeding Business
118 Day;

119 Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank
120 National Association in Minneapolis, Minnesota, as its "reference rate" or any successor rate,
121 which rate shall change as and when that prime rate or successor rate changes;

122 Project means an approximately 50-unit multifamily rental housing facility consisting of
123 two and three bedroom units in one building to be located on the Development Property;

124 State means the State of Minnesota;

125 Tax Increments means 95% of the tax increments derived from the Development
126 Property which have been received and retained by the City in accordance with the provisions of
127 Minnesota Statutes, Section 469.177;

128 Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1799, as
129 amended;

130 Tax Increment District means Tax Increment Financing District No. 18 located within the
131 Development District, a description of which is set forth in the Tax Increment Financing Plan,
132 which was qualified as a housing district under the Tax Increment Act;

133 Tax Increment Financing Plan means the tax increment financing plan approved for the
134 Tax Increment District by the City Council on July 13, 2009, and amended on June 13, 2011;

135 Termination Date means the earlier of (i) February 1, 2039, (ii) the date the TIF Note is
136 paid in full, (iii) the date on which the Tax Increment District expires or is otherwise terminated,
137 or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

138 TIF Note means the Tax Increment Revenue Note (Aeon Housing Project) to be executed
139 by the City and delivered to the Developer pursuant to Article III hereof, a copy of which is
140 attached hereto as Exhibit B.

141 Unavoidable Delays means delays, outside the control of the party claiming its
142 occurrence, which are the direct result of strikes, other labor troubles, unusually severe or
143 prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced
144 by third parties which, by injunction or other similar judicial action or by the exercise of
145 reasonable discretion, directly results in delays, or acts of any federal, state or local
146 governmental unit (other than the City) which directly result in delays.

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148 **ARTICLE II**

149 **REPRESENTATIONS AND WARRANTIES**

150
151 Section 2.1 Representations and Warranties of the City. The City makes the following
152 representations and warranties:

153 (1) The City is a municipal corporation and has the power to enter into this
154 Agreement and carry out its obligations hereunder.

155 (2) Based on the representation of the Developer set forth in Section 3.3 below, the
156 Tax Increment District is a "housing district" within the meaning of Minnesota Statutes, Section
157 469.174, Subdivision 11, and was created, adopted and approved in accordance with the terms of
158 the Tax Increment Act.

159 (3) The development contemplated by this Agreement is in conformance with the
160 development objectives set forth in the Development Program.

161 (4) To finance certain costs within the Tax Increment District, the City proposes,
162 subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the
163 Developer for a portion of the costs of the construction of the Project as further provided in this
164 Agreement.

165 (5) The City is entering into this Agreement to provide assistance to a housing
166 project; consequently, the business subsidy provisions of Minnesota Statutes, Section 116J.993
167 to 116J.995 do not apply.

168 (6) The City makes no representation or warranty, either expressed or implied, as to
169 the Development Property or its condition or the soil conditions thereon, or that the Development
170 Property shall be suitable for the Developer' purposes or needs.

171 Section 2.2 Representations and Warranties of the Developer. The Developer makes
172 the following representations and warranties:

173 (1) The Developer is a Minnesota non-profit corporation, has power to enter into this
174 Agreement and to perform its obligations hereunder and, by doing so, is not in violation of any
175 provisions of its articles or bylaws or the laws of the State.

176 (2) The Developer shall cause the Project to be installed in accordance with the terms
177 of this Agreement, the Development Program, and all applicable local, state and federal laws and
178 regulations (including, but not limited to, environmental, zoning, energy conservation, building
179 code and public health laws and regulations).

180 (3) The construction of the Project would not be undertaken by the Developer, and in
181 the opinion of the Developer would not have been or be economically feasible within the
182 reasonably foreseeable future, without the assistance and benefit to the Developer provided for in
183 this Agreement.

184 (4) The Developer will use its commercially reasonable efforts to obtain, or cause to
185 be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a
186 timely manner, all requirements of all applicable local, state, and federal laws and regulations
187 which must be obtained or met before the balance of the Project may be lawfully constructed.

188 (5) Neither the execution and delivery of this Agreement, the consummation of the
189 transactions contemplated hereby, nor the fulfillment of or compliance with the terms and
190 conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of,
191 the terms, conditions or provision of any contractual restriction, evidence of indebtedness,
192 agreement or instrument of whatever nature to which the Developer is now a party or by which it
193 is bound, or constitutes a default under any of the foregoing.

194 (6) The Developer will cooperate fully with the City with respect to any litigation
195 commenced by a third party with respect to the Project.

196 (7) The Developer will cooperate fully with the City in resolution of any traffic,
197 parking, trash removal or public safety problems which may arise in connection with the
198 construction and operation of the Project.

199 (8) The construction of the Project shall commence no later than November 1, 2011
200 and barring Unavoidable Delays, the Project will be substantially completed by December 31,
201 2012.

202 (9) The Developer will not seek a reduction in the market value as determined by the
203 Ramsey County Assessor of the Project or other facilities that it constructs on the Development
204 Property, pursuant to the provisions of this Agreement, for so long as the TIF Note remains
205 outstanding.

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207 **ARTICLE III**

208 **UNDERTAKINGS BY DEVELOPER AND CITY**

209 **Section 3.1 Costs of the Project and Legal and Administrative Expenses.**

210
211 (1) The costs of the Project shall be paid by the Developer. The City shall reimburse
212 the Developer for \$935,005 (as may be adjusted in the last sentence of this subparagraph, the
213 "Reimbursement Amount") of the costs of constructing the Project actually incurred and paid by
214 the Developer, as further provided in Section 3.2 hereof. The parties currently expect the
215 Developer to monetize the TIF Note by pledging it to the first-mortgage lender for the Project for
216 the purpose of increasing the principal amount of the first-mortgage loan. To the extent
217 necessary at the time of closing the construction loan, the Developer will defer a portion of its
218 developer fee to monetize any portion of the TIF Note not monetized by the first-mortgage
219 lender. If there are sufficient sources of funds such that it is not necessary for the Developer to
220 defer any of its developer fee at the time of closing the permanent loan, the Reimbursement
221 Amount will be reduced to the level needed to fully fund the Project but in no event below the
222 amount monetized by the first-mortgage lender.

223 (2) The Developer has deposited with the City the sum of \$5,000 to reimburse the
224 City for its actual out of pocket Legal and Administrative Expenses and any excess will be
225 returned to the Developer. The Legal and Administrative Expenses shall be paid by the City
226 from said Developer's deposit. If the City determines said deposit to be inadequate, the
227 Developer shall provide additional funds to be escrowed or to pay Legal and Administrative
228 expenses when due.

229 **Section 3.2 Reimbursement: TIF Note.** The City shall pay the Reimbursement
230 Amount through the issuance of the City's TIF Note in substantially the form attached to this
231 Agreement as Exhibit B, subject to the following conditions:

232 (1) The TIF Note shall be dated, issued and delivered when the Developer shall have
233 demonstrated in writing to the reasonable satisfaction of the City that the construction of the
234 Project has been completed and that the Developer has incurred and paid the costs of the
235 construction of the Project, as described in and limited by Section 3.1 and shall have submitted
236 paid invoices for the costs of construction of the Project in an amount not less than the
237 Reimbursement Amount.

238 (2) The unpaid principal amount of the TIF Note shall bear simple, non-compounding
239 interest from the date of issuance of the TIF Note, at 4.25% per annum. Interest shall be
240 computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

241 (3) The principal amount of the TIF Note and the interest thereon shall be payable
242 solely from the Tax Increments.

243 (4) The payment dates of the TIF Note shall be the Note Payment Dates. On each
244 Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the
245 principal and interest outstanding on the TIF Note, the Tax Increments received by the City

246 during the preceding six months. All such payments shall be applied first to accrued interest and
247 then to reduce the principal of the TIF Note.

248 (5) The TIF Note shall be a special and limited obligation of the City and not a
249 general obligation of the City, and only Tax Increments shall be used to pay the principal of and
250 interest on the TIF Note. If, on any Note Payment Date, the Tax Increments for the payment of
251 the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference
252 shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent
253 that on a future Note Payment Date there are Tax Increments in excess of the amounts needed to
254 pay the accrued interest then due on the TIF Note

255 (6) The City's obligation to make payments on the TIF Note on any Note Payment
256 Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at
257 that time be an Event of Default that has occurred and is continuing under this Agreement and
258 (B) this Agreement shall not have been rescinded pursuant to Section 4.2(2).

259 (7) The TIF Note shall be governed by and payable pursuant to the additional terms
260 thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note
261 and the terms of this Section 3.2, the terms of the TIF Note shall govern. The issuance of the
262 TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such
263 additional actions as bond counsel for the TIF Note may require in connection therewith, are
264 hereby authorized and approved by the City.

265 Section 3.3 Compliance with Low and Moderate Income Requirements.

266 (1) The City and the Developer understand and agree that the Tax Increment District
267 will constitute a "housing district" under Section 469.174, Subd. 11 of the Tax Increment Act.
268 Accordingly, in compliance with Section 469.1761, Subd. 3 of the Tax Increment Act, the
269 Developer agrees that the Project must satisfy, or be treated as satisfying, the income
270 requirements for a qualified residential rental project as defined in Section 142(d) of the Internal
271 Revenue Code. The parties further agree that no more than 20% of the square footage of the
272 Project (which is the only building receiving assistance from Tax Increments) may consist of
273 commercial, retail, or other nonresidential uses. The Developer must meet the above
274 requirements as follows:

275 (A) At least 40% of the residential units in the Project must be occupied or
276 available for occupancy by persons whose incomes do not exceed 60% of the County
277 median income; and

278 (B) The limits described in clause (A) must be satisfied through the
279 Termination Date. Income for occupants of units described in clause (A) shall be
280 adjusted for family size in accordance with Section 142(d) of the Internal Revenue Code
281 and related regulations.

282 (2) On or before each January 1 and July 1, commencing on January 1, 2013, the
283 Developer or an agent of the Developer must deliver or cause to be delivered to the City a
284 Compliance Certificate executed by the Developer covering the preceding six months together

285 with written evidence satisfactory to the City of compliance with the covenants in this Section.
286 This evidence must include a statement of the household income of each qualifying renter, a
287 written determination that each qualifying renter's household income falls within the qualifying
288 limits of this Section (and Section 142(d) of the Internal Revenue Code), and certification that
289 the income documentation is correct and accurate (and that the determination of qualification
290 was made in compliance with Section 142(d) of the Internal Revenue Code). The City may
291 review, upon request, all documentation supporting the Developer submissions and statements.
292 In determining compliance with this Section, the Developer must use the County median
293 incomes for the year in which the payment is due on the TIF Note, as promulgated by the
294 Minnesota Housing Finance Agency based on the area median incomes established by the United
295 States Department of Housing and Urban Development.

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ARTICLE IV

EVENTS OF DEFAULT

300 Section 4.1 Events of Default Defined. The following shall be "Events of Default"
301 under this Agreement and the term "Event of Default" shall mean whenever it is used in this
302 Agreement any one or more of the following events:

303 (1) Failure by the Developer to timely pay any *ad valorem* real property taxes
304 assessed with respect to the Development Property.

305 (2) Failure of the Developer to observe or perform any covenant, condition,
306 obligation or agreement on its part to be observed or performed under this Agreement.

307 (3) The holder of any mortgage on the Development Property or any improvements
308 thereon, or any portion thereof, commences foreclosure proceedings as a result of any default
309 under the applicable mortgage documents.

310 (4) If the Developer shall:

311 (A) file any petition in bankruptcy or for any reorganization, arrangement,
312 composition, readjustment, liquidation, dissolution, or similar relief under the United
313 States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

314 (B) make an assignment for the benefit of its creditors; or

315 (C) admit in writing its inability to pay its debts generally as they become due;
316 or

317 (D) be adjudicated as bankrupt or insolvent; or if a petition or answer
318 proposing the adjudication of the Developer as bankrupt or its reorganization under any
319 present or future federal bankruptcy act or any similar federal or state law shall be filed in
320 any court and such petition or answer shall not be discharged or denied within sixty (60)
321 days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the
322 Project, or part thereof, shall be appointed in any proceeding brought against the
323 Developer, and shall not be discharged within sixty (60) days after such appointment, or
324 if the Developer, shall consent to or acquiesce in such appointment.

325 Section 4.2 Remedies on Default. Whenever any Event of Default referred to in
326 Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of
327 the following actions after the giving of thirty (30) days' written notice to the Developer, but only
328 if the Event of Default has not been cured within said thirty (30) days:

329 (1) The City may suspend its performance under this Agreement and the TIF Note
330 until it receives assurances from the Developer, deemed adequate by the City, that the Developer
331 will cure its default and continue its performance under this Agreement.

332 (2) The City may cancel and rescind the Agreement and the TIF Note.

333 (3) The City may take any action, including legal or administrative action, in law or
334 equity, which may appear necessary or desirable to enforce performance and observance of any
335 obligation, agreement, or covenant of the Developer under this Agreement.

336 Section 4.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to
337 the City is intended to be exclusive of any other available remedy or remedies, but each and
338 every such remedy shall be cumulative and shall be in addition to every other remedy given
339 under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or
340 omission to exercise any right or power accruing upon any default shall impair any such right or
341 power or shall be construed to be a waiver thereof, but any such right and power may be
342 exercised from time to time and as often as may be deemed expedient.

343 Section 4.4 No Implied Waiver. In the event any agreement contained in this
344 Agreement should be breached by any party and thereafter waived by any other party, such
345 waiver shall be limited to the particular breach so waived and shall not be deemed to waive any
346 other concurrent, previous or subsequent breach hereunder.

347 Section 4.5 Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of
348 Default occurs and the City shall employ attorneys or incur other expenses for the collection of
349 payments due or to become due or for the enforcement or performance or observance of any
350 obligation or agreement on the part of the Developer herein contained, the Developer agrees that
351 it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other
352 expenses so incurred by the City.

353 Section 4.6 Indemnification of City.

354 (1) The Developer releases from and covenants and agrees that the City, its governing
355 body members, officers, agents, including the independent contractors, consultants and legal
356 counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively
357 the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the
358 Indemnified Parties against any loss or damage to property or any injury to or death of any
359 person occurring at or about or resulting from any defect in the Project, provided that the
360 foregoing indemnification shall not be effective for any actions of the Indemnified Parties that
361 are not contemplated by this Agreement.

362 (2) Except for any willful misrepresentation or any willful or wanton misconduct of
363 the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now
364 and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit,
365 action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly
366 arising from the actions or inactions of the Developer (or other persons acting on its behalf or
367 under its direction or control) under this Agreement, or the transactions contemplated hereby or
368 the acquisition, construction, installation, ownership, and operation of the Project; provided, that
369 this indemnification shall not apply to the warranties made or obligations undertaken by the City
370 in this Agreement or to any actions undertaken by the City which are not contemplated by this

371 Agreement but shall, in any event and without regard to any fault on the part of the City, apply to
372 any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or
373 penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Developer
374 operating the Project so that the Tax Increment District does not qualify or ceases to qualify as a
375 "housing district" under Section 469.174, Subdivision 11, of the Act or to violate limitations as
376 to the use of Tax Increments as set forth in Section 469.176, Subdivision 4d.

377 (3) All covenants, stipulations, promises, agreements and obligations of the City
378 contained herein shall be deemed to be the covenants, stipulations, promises, agreements and
379 obligations of the City and not of any governing body member, officer, agent, servant or
380 employee of the City, as the case may be.

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ARTICLE V

ADDITIONAL PROVISIONS

385 Section 5.1 Restrictions on Use. The Developer agrees for itself, its successors and
386 assigns and every successor in interest to the Development Property, or any part thereof, that
387 during the term of this Agreement the Developer and such successors and assigns shall operate,
388 or cause to be operated, the Project as a multifamily rental housing facility and shall devote the
389 Development Property to, and in accordance with, the uses specified in this Agreement.

390 Section 5.2 Conflicts of Interest. No member of the governing body or other official
391 of the City shall have any financial interest, direct or indirect, in this Agreement, the
392 Development Property or the Project, or any contract, agreement or other transaction
393 contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such
394 member of the governing body or other official participate in any decision relating to the
395 Agreement which affects his or her personal interests or the interests of any corporation,
396 partnership or association in which he or she is directly or indirectly interested. No member,
397 official or employee of the City shall be personally liable to the City in the event of any default
398 or breach by the Developer or successor or on any obligations under the terms of this Agreement.

399 Section 5.3 Titles of Articles and Sections. Any titles of the several parts, articles and
400 sections of the Agreement are inserted for convenience of reference only and shall be
401 disregarded in construing or interpreting any of its provisions.

402 Section 5.4 Notices and Demands. Except as otherwise expressly provided in this
403 Agreement, a notice, demand or other communication under this Agreement by any party to any
404 other shall be sufficiently given or delivered if it is dispatched by registered or certified mail,
405 postage prepaid, return receipt requested, or delivered personally, and

406 (1) in the case of the Developer is addressed to or delivered personally to:

407 Aeon
408 822 South 3rd Street, Suite 300
409 Minneapolis, MN 55415
410

411 (2) in the case of the City is addressed to or delivered personally to the City at:

412 City of Roseville, Minnesota
413 2660 Civic Center Drive
414 Roseville, MN 55113

415 or at such other address with respect to any such party as that party may, from time to time,
416 designate in writing and forward to the other, as provided in this Section.

417 Section 5.5 Counterparts. This Agreement may be executed in any number of
418 counterparts, each of which shall constitute one and the same instrument.

419 Section 5.6 Law Governing. This Agreement will be governed and construed in
420 accordance with the laws of the State.

421 Section 5.7 Expiration. This Agreement shall expire on the Termination Date.

422 Section 5.8 Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall
423 survive any rescission, termination or expiration of this Agreement with respect to or arising out
424 of any event, occurrence or circumstance existing prior to the date thereof.

425 Section 5.9 Assignability of Agreement. This Agreement may be assigned only with
426 the consent of the City. The City acknowledges that the Developer intends to finance the Project
427 with federal housing tax credits, and accordingly expects to transfer the Project before
428 construction to a partnership of which it or a subsidiary will be the general partner. The City
429 hereby consents to the assignment of this Agreement in connection with any such transfer. The
430 TIF Note may only be assigned pursuant to the terms of the TIF Note. The parties currently
431 expect the TIF Note to be pledged to the first-mortgage lender for the Project.

432 IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its
433 name and on its behalf and its seal to be hereunto duly affixed, and the Developer has caused this
434 Agreement to be duly executed on its behalf, on or as of the date first above written.

435 CITY OF ROSEVILLE, MINNESOTA

436 By _____
437 Its Mayor

438 By _____
439 Its City Manager

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467 This is a signature page to the Development Agreement by and between the City of Roseville
468 and Aeon.
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470

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AEON

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By _____

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Its _____

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504 This is a signature page to the Development Agreement by and between the City of Roseville
505 and Aeon.

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EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Property located in the City of Roseville, Ramsey County, Minnesota with the following legal description:

513

Lot 1 Block 1, Sienna Green Addition

514

Lot 1 Block 1 Sienna Green 2nd Addition

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EXHIBIT B
FORM OF TIF NOTE

520 No. R-1 \$ _____

521 UNITED STATES OF AMERICA
522 STATE OF MINNESOTA
523 COUNTY OF RAMSEY
524 CITY OF ROSEVILLE

525 TAX INCREMENT REVENUE NOTE
526 (AEON HOUSING PROJECT)

527 The City of Roseville, Minnesota (the "City"), hereby acknowledges itself to be indebted
528 and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment
529 Amounts") to Aeon, or its registered assigns (the "Registered Owner"), but only in the manner, at
530 the times, from the sources of revenue, and to the extent hereinafter provided.

531 The principal amount of this Note shall equal from time to time the principal amount
532 stated above, as reduced to the extent that such principal installments shall have been paid in
533 whole or in part pursuant to the terms hereof; provided that the sum of the principal amount
534 listed above shall in no event exceed \$935,005 as provided in that certain Development
535 Agreement, dated as of June __, 2011, as the same may be amended from time to time (the
536 "Development Agreement"), by and between the City and Aeon. The unpaid principal amount
537 hereof shall bear interest from the date of this Note at the simple, non-compounding interest at a
538 rate of four and twenty-five hundredths percent (4.25%) per annum. Interest shall be computed
539 on the basis of a 360 day year consisting of twelve (12) 30-day months.

540 The amounts due under this Note shall be payable on August 1, 2013, and on each
541 August 1 and February 1 thereafter to and including February 1, 2039, or, if the first should not
542 be a Business Day (as defined in the Development Agreement) the next succeeding Business
543 Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed
544 to the person that was the Registered Owner of this Note at the close of the last business day of
545 the City preceding such Payment Date an amount equal to the Tax Increments (hereinafter
546 defined) received by the City during the six month period preceding such Payment Date. All
547 payments made by the City under this Note shall first be applied to accrued interest and then to
548 principal. This Note is prepayable by the City, in whole or in part, on any date.

549 The Payment Amounts due hereon shall be payable solely from 95% of the tax
550 increments (the "Tax Increments") from the Development Property (as defined in the
551 Development Agreement) within the City's Tax Increment Financing District Tax Increment
552 Financing District No. 18 (the "Tax Increment District") within its Development District No. 1
553 which are paid to the City and which the City is entitled to retain pursuant to the provisions of
554 Minnesota Statutes, Sections 469.174 through 469.1799, as the same may be amended or
555 supplemented from time to time (the "Tax Increment Act"). This Note shall terminate and be of

556 no further force and effect following the termination of the Tax Increment District, on any date
557 upon which the City shall have terminated the Development Agreement under Section 4.2(2)
558 thereof or on the date that all principal and interest payable hereunder shall have been paid in
559 full, whichever occurs earliest.

560 The City makes no representation or covenant, expressed or implied, that the Tax
561 Increments will be sufficient to pay, in whole or in part, the amounts which are or may become
562 due and payable hereunder.

563 The City's payment obligations hereunder shall be further conditioned on the fact that no
564 Event of Default under the Development Agreement shall have occurred and be continuing at the
565 time payment is otherwise due hereunder, but such unpaid amounts shall become payable,
566 without interest accruing thereon in the meantime, if said Event of Default shall thereafter have
567 been cured; and, further, if pursuant to the occurrence of an Event of Default under the
568 Development Agreement the City elects to cancel and rescind the Development Agreement, the
569 City shall have no further debt or obligation under this Note whatsoever. Reference is hereby
570 made to all of the provisions of the Development Agreement, including without limitation
571 Section 3.2 thereof, for a fuller statement of the rights and obligations of the City to pay the
572 principal of this Note, and said provisions are hereby incorporated into this Note as though set
573 out in full herein.

574 This Note is a special, limited revenue obligation and not a general obligation of the City
575 and is payable by the City only from the sources and subject to the qualifications stated or
576 referenced herein. This Note is not a general obligation of the City of Roseville, Minnesota, and
577 neither the full faith and credit nor the taxing powers of the City are pledged to the payment of
578 the principal of this Note and no property or other asset of the City, save and except the above-
579 referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

580 This Note is issued by the City in aid of financing a project pursuant to and in full
581 conformity with the Constitution and laws of the State of Minnesota, including the Tax
582 Increment Act.

583 This Note may be assigned only with the consent of the City. In order to assign the Note,
584 the assignee shall surrender the same to the City either in exchange for a new fully registered
585 note or for transfer of this Note on the registration records for the Note maintained by the City.
586 Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all
587 provisions stated or referenced herein.

588 IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things
589 required by the Constitution and laws of the State of Minnesota to be done, to have happened,
590 and to be performed precedent to and in the issuance of this Note have been done, have
591 happened, and have been performed in regular and due form, time, and manner as required by
592 law; and that this Note, together with all other indebtedness of the City outstanding on the date
593 hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the
594 City to exceed any constitutional, statutory or charter limitation thereon.

595 IN WITNESS WHEREOF, City of Roseville, Minnesota, by its City Council, has caused
596 this Note to be executed by the manual signatures of its Mayor and City Manager and has caused
597 this Note to be issued on and dated _____, 201_.

598 _____
599 City Manager
600

Mayor

601

CERTIFICATION OF REGISTRATION

602 It is hereby certified that the foregoing Note, as originally issued on _____,
603 2011, was on said date registered in the name of Aeon, and that, at the request of the Registered
604 Owner of this Note, the undersigned has this day registered the Note in the name of such
605 Registered Owner, as indicated in the registration blank below, on the books kept by the
606 undersigned for such purposes.

NAME AND ADDRESS OF
REGISTERED OWNERS

DATE OF
REGISTRATION

SIGNATURE OF
CITY MANAGER

Aeon
822 South 3rd Street, Suite 300
Minneapolis, MN 55415

_____, 201____

1 **EXHIBIT C**

2
3 **COMPLIANCE CERTIFICATE**

4 The undersigned Aeon, does hereby certify that as of the date of this Certificate not less
5 than 40% of the residential units in the Aeon Housing Project located at
6 _____ in Roseville, Minnesota (the "Project") are occupied by
7 individuals whose income is 60% or less of the Ramsey County median income.

8 Dated this ____ day of _____, 201__.

9
10 AEON

11 By _____

12
13 Its _____

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35 The motion for adoption of the foregoing resolution was duly seconded by member
36 _____ and, after full discussion thereof, and upon a vote being taken thereof, the
37 following voted in favor thereof:

38 and the following voted against same:

39
40

41 Adopted this 20th day of June, 2011.

42
43

Mayor

44 Attest: _____
45 City Manager

46

47 STATE OF MINNESOTA
48 COUNTY OF RAMSEY
49 CITY OF ROSEVILLE

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51

52 I, the undersigned, being the duly qualified and acting Manager of the City of Roseville,
53 Minnesota, DO HEREBY CERTIFY that I have carefully compared the attached and foregoing
54 extract of minutes with the original minutes of a meeting of the City Council of the City held on
55 the date therein indicated, which are on file and of record in my office, and the same is a full,
56 true and complete transcript therefrom insofar as the same relates to a Resolution Authorizing
57 Execution of a Development Agreement.

58 WITNESS my hand as such Manager of the City Council of the City of Roseville,
59 Minnesota this _____ day of June, 2011.

60
61

City Manager