

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 09/28/2009
Item No.: 12.e

Department Approval

City Manager Approval



Item Description: Approve a Memorandum of Understanding between the City and Aeon Pertaining to Tax Increment Financing and Sienna Green Phase II

1 **BACKGROUND**

2 On July 13, 2009, the City Council approved the creation of Tax Increment Financing (TIF) No. 18,
3 which encompasses the Sienna Green (formerly Har Mar Apartments) parcel. Aeon, the owner of Sienna
4 Green, requested the creation of this district to provide a gap financing mechanism for the second phase
5 of its project. As planned, Sienna Green Phase II includes the construction of a new, 50-unit apartment
6 building. These new apartments are intended to provide affordable two-and-three bedroom apartments to
7 complement the existing one-bedroom units Aeon is renovating as part of the first phase of their project.

8 Aeon is preparing an application to the Minnesota Housing Finance Authority (MHFA) for affordable
9 housing tax credits and requested that the City and Aeon work together to draft a development
10 agreement to set forward the level and extent of increment to be provide to the project in order to bolster
11 their application. However, it is premature for the City to negotiate and enter into a development
12 agreement with Aeon as the actual financial gap has yet to be established. In lieu of a development
13 agreement, staff recommended that a Memorandum of Understanding (MOU) between the City and
14 Aeon detailing the future steps toward a development agreement would be an appropriate action and
15 could demonstrate to the agency the City's commitment to this project without obligating the City or
16 Aeon to specific dollar amounts or project requirements.

17 Staff has worked with the City's development attorney with Briggs and Morgan, Jennifer Boulton, to
18 prepare a draft MOU. To review the MOU, please see Attachment A. Aeon has reviewed the document
19 and feels that the language within the document provides them with the assurances that the Minnesota
20 Housing Finance Authority is looking for as part of tax credit application process. This agreement
21 outlines the project, discusses the TIF district and the City's willingness to allocate increment to this
22 project with terms and conditions to be set forward in a future development agreement, identifies the
23 requirements to negotiate a development agreement, establishes fees and expenses and termination and
24 approval processes. The MOU does not commit the City to allocate any specific dollar amount for the
25 project. The total amount and terms of assistance will be negotiated and approved by the City Council at
26 a later date.

27 **POLICY OBJECTIVE**

28 By approving the MOU, the City Council is advancing the potential availability of affordable housing as
29 advocated for through the goals and policies of the preliminarily approved 2030 Comprehensive Plan. In
30 addition, development of new affordable rental housing will help the City meet its affordable housing
31 goal, which is set by the Metropolitan Council.

32 **BUDGET IMPLICATIONS**

33 Approving this MOU does not impact the City’s budget. The TIF contribution to this project is outside
34 of the City’s general levy and will be negotiated through a future development agreement.

35 **STAFF RECOMMENDATION**

36 Staff recommends the approval of the MOU between the City and Aeon. This MOU identifies the City’s
37 willingness to provide tax increment to the Sienna Green Phase II project and sets the protocol for the
38 negotiation of a future development agreement. By creating the TIF district the City created a funding
39 source by which to provide funding to this specific project. The MOU only makes a logical connection
40 between the creation of the district and the willingness to provide the funding to this project. The MOU
41 does not identify how much funding the project will receive, but clearly states that it will be gap
42 funding. By committing to fund the project on a conceptual level, the City will be working with the
43 developer to strengthen their tax credit application.

44 **REQUESTED COUNCIL ACTION**

45 Approve a Memorandum of Understanding with Aeon pertaining to the use of tax increment financing
46 and the negotiation of a future development agreement for the Sienna Green Phase II project.

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Prepared by: Jamie Radel, Economic Development Associate
Attachments: A: Memorandum of Understanding
B:
C:

MEMORANDUM OF UNDERSTANDING

SIENNA GREEN PHASE II PROJECT

This Memorandum of Understanding is dated as of this ____ day of _____, 2009 (the "Memorandum") and is entered into by and between the City of Roseville, Minnesota (the "City") and Aeon, a non-profit housing developer (the "Developer").

This Memorandum relates to a development more particularly described in Article 1 hereof (the "Project") to be constructed on the real property currently identified as the south 7 acres of the NE Quarter of the SE Quarter of the SE Quarter, Section 9, Township 29, Range 23, according to the Government Survey thereof and as parcel identification number 09-29-23-44-0247 (the "Development Property"). It is the intent of the City and Developer (collectively, the "Parties") that this Memorandum will outline the general understanding of the Parties with respect to the acquisition, construction and financing of the Project, and will provide a framework for and will be superseded in its entirety by a final development agreement (the "Development Agreement") to be entered into by the Parties at a later date as contemplated in Article 3 hereof.

Now therefore, the Parties hereby agree that the following sets forth an outline of their general understanding of the general plan for the development of the Project and a framework of the matters to be covered in the Development Agreement.

ARTICLE 1. DESCRIPTION OF THE PROJECT

1.01 Sienna Green Phase II (the "Project") will consist of the new construction of approximately 50 units of affordable rental housing. The approved site plan for the Project is attached hereto as **Exhibit A**.

1.02 The Developer expects that the construction of the Project will commence in May, 2010, and will be substantially completed by April, 2011.

ARTICLE 2. TAX INCREMENT FINANCING

2.01 On July 13, 2009, the City acted to create Tax Increment Financing District No. 18 (the "District"), which includes the parcel upon which the Project will be developed in accordance with Minnesota Statutes Section 469.174 through 469.1799. The City has submitted the required documentation to Ramsey County requesting certification of the district and to the Minnesota Department of Revenue and Office of the State Auditor.

2.02 Based on the assumptions detailed in the adopted Tax Increment Finance Plan, the District is expected to generate approximately \$2,194,515 of tax increment over the maximum term of 26 years, which translates into a present value of approximately \$934,481 using the September 2009 semi-annual long term Applicable Federal Rate (AFR) as the discount rate. The TIF Financing Plan set forward a budget not to exceed \$913,610 for land/building acquisition.

2.03 The City will provide the Developer with tax increment financing assistance for the Project, payable solely from tax increments derived from the Development Property in the form of pay-as-you-go tax increment assistance that may be evidenced by a tax increment revenue note (the “Note”) in accordance with the terms and conditions of the Development Agreement. The amount, interest rate and payment terms of the Note and the administrative fee of the City will be negotiated subsequent to the execution of this Memorandum and prior to the execution of the Development Agreement.

2.04 The Developer acknowledges that the City will not initiate preparation of the final Development Agreement referred to in Article 3 hereof until the Developer has provided the City with sufficient detail about the Project to enable the City to accurately estimate the level of tax increment financing required by the Project to make it economically feasible. The principal amount of the Note will take into account, among other things, the need for “gap financing”, the amount of public benefit from the Project, the design of the Project, and the costs of the Project which are eligible to be reimbursed from tax increments.

ARTICLE 3. DEVELOPMENT AGREEMENT

3.01 The Developer and City will exercise their best efforts to negotiate and enter into a binding Development Agreement, the provisions of which will supersede, but be consistent with the terms of this Memorandum. The Development Agreement will contain such other terms and conditions as are customary in the industry and are otherwise agreed to by Developer and City.

3.02 Prior to preparation of the Development Agreement, the Developer acknowledges that it will be required to provide the City with all documentation deemed necessary by the City to evaluate the Project, including but not limited to the following: (a) a timetable, acceptable to the City, for the construction of the Project; (b) letters of intent, commitment proposals or other evidence reasonably satisfactory to the City, from financial institutions, subject to customary contingencies, to provide financing for the Project; (c) Site plan and project design documents prepared by an architect, in form and substance acceptable to the City; and (d) a pro forma budget for the Project, showing all Project costs and sources of funds, including a separate break out of costs eligible to be financed under the Tax Increment Act; and

ARTICLE 4. FEES AND EXPENSES

4.01 The Developer agrees that it is responsible, whether or not the Development Agreement is executed, to pay the reasonable fees and expenses incurred by the City to the following: (a) the fees and expenses of the law firm of Briggs and Morgan, Professional Association, for the preparation of this Memorandum and the Development Agreement, the creation of the Tax Increment Financing District, (b) fees and expenses of the firm of Springsted for the financial analysis required for the creation of the Tax Increment Financing District, and (d) the fees and expenses of any other consultants retained by the City. The City will notify the Developer prior to retaining any additional consultants for the Project, which notification will include an estimate of the consultant’s fees and expenses. The Developer acknowledges that the City will retain 10% of the Tax Increment to pay “Administrative Expenses” of the City incurred

with respect to the Tax Increment District, and therefore Tax Increments will not be available to reimburse the Developer for any of the costs paid by the Developer set forth above.

4.02 The Developer shall be responsible for its own legal fees, costs and expenses in connection with the Project.

4.03 The Developer has previously deposited \$5,000 with the City. The City shall be entitled to use the Deposit to pay costs set forth in Section 4.01 hereof, whether or not the Development Agreement is executed. If at any time prior to the execution of the Development Agreement, the City estimates that the costs and expenses set forth in Section 4.01 hereof will exceed the Deposit, the City will notify the Developer of any additional sum necessary to be deposited with the City to cover the remaining costs.

ARTICLE 5. TERMINATION

5.01 The City shall have the right to terminate this Memorandum by giving written notice to the Developer upon the occurrence of any of the following:

(a) the Developer fails to provide the City with the information required by Section 3.02 hereof by June 30, 2012; or

(b) the final Development Agreement contemplated by Article 3 hereof is not executed by the Developer and the City by December 31, 2012;

(c) if within 10 days of written notice from the City, the Developer does not make any additional deposit requested by the City pursuant to Section 4.03 hereof.

ARTICLE 6. APPROVALS

6.01 This Memorandum and the final Development Agreement will be subject to approval by the City Council of the City of Roseville.

6.02 The Developer represents that the execution and delivery of this Memorandum has been duly authorized by all necessary action on the part of the Developer.

6.03 The Developer releases from and covenants and agrees that the City, its governing body, officers, agents, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify, defend and hold harmless the Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Memorandum.

6.04 The City and Developer each agree to proceed diligently and in good faith toward the execution of a legally binding Development Agreement, but neither shall be liable to the other by reason of any actual or alleged breach of this Memorandum.

In Witness whereof the Parties have signed their names as of the date first written above.

CITY OF ROSEVILLE, MINNESOTA

By _____

Its _____

AEON

By _____

Its _____

Signature Page of Memorandum of Understanding by and between City of Roseville, Minnesota and Aeon.

Exhibit A: Sienna Green Site Plan (as approved in Final PUD)

