

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 12/07/2009
Item No.: 12.B

Department Approval



City Manager Approval



Item Description: Extend Memorandum of Understanding for LCDA and TBRA Grants and Approve A Mortgage and Subordination and Disbursement Agreements for Sienna Green Phase 1 LCDA/TBRA Loan

BACKGROUND

A. Memorandum of Understanding

In 2007, the Metropolitan Council awarded the City of Roseville two grants on behalf of Aeon's Sienna Green Phase 1—a \$305,000 Livable Communities Demonstration Account (LCDA) grant for stormwater management and other on-site improvements and a \$121,500 Tax Base Revitalization Account (TBRA) grant to undertake asbestos abatement within the existing structures.

In April 2008, the City and Aeon executed a Memorandum of Understanding (MOU) that outlined the responsibilities for each party in relationship to the awarded grants. (Attachment A is a copy of this MOU.)

In July 2009, in accordance with the MOU, Aeon requested an extension for both the LCDA and TBRA grants as they were set to expire on December 31, 2009, and they did not anticipate completing the work prior to the expiration of the funding. Staff worked with Aeon and the Metropolitan Council on this request, and in August 2009, the Metropolitan Council approved an extension, which extended the grants until December 31, 2010.

Item D. 4. of the MOU sunsets this agreement on December 31, 2009, unless an extension is agreed to by both parties. With the City receiving an extension for the grant funds, the MOU should be extended in order to carry forward this agreement until the expiration of the grants. (See Attachment B to review the language of the proposed extension.)

B. Mortgage, Master Subordination Agreement, and Master Disbursement Agreement

Sienna Green 1 Limited Partnership, which will be Aeon's ownership entity for the Phase 1 project, is planning to close on its financing on December 18, 2009. In order to maximize the tax credits available to this project, the developer has requested that the City and the limited partnership enter into a mortgage agreement with them for the \$426,500 in grant funds described above. If grant dollars are received, the IRS will lower the amount of tax credits received, thus creating a new gap. In addition, the developer's tax-credit investor views grants as a project negative as they are considered income into the project.

27 The Note that the Sienna Green 1 would give the City is for the \$426,500 with an estimated 1- to 3-
28 percent annual interest rate. The final interest rate will be determined closer to the closing of the full
29 financing package. Principal and interest would be paid off at the end of a 30-year term. See
30 Attachment C to review the Note.

31 The Mortgage describes the terms and conditions the City is placing on this loan. To review the loan
32 agreement, see Attachment D.

33 Aeon has requested that the City agree to take a subordinate position on this loan. See Attachment E to
34 review the Master Subordination Agreement.

35 Finally, Aeon has requested that the City enter into a Master Disbursement Agreement. See Attachment
36 F to review the Master Disbursement Agreement. This agreement refers to the fund drawdown schedule
37 agreed to in the Mortgage, which states that Aeon can only access funds on as a cost reimbursement
38 (Mortgage Item 17(c)).

39 These documents have been reviewed by Stephen Buhul, the RHRA's attorney. The City attorney is
40 also aware of what is being proposed.

41 **POLICY OBJECTIVE**

42 Partnering with Aeon is consistent with the housing goals and policies in the City's 2030
43 Comprehensive Plan, specifically partnering with government agencies and developers to provide
44 affordable housing (Ch. 6, Policy 1.5).

45 **FINANCIAL IMPACTS**

46 A. Memorandum of Understanding

47 Extending the MOU does not impact the City's budget.

48 B. Mortgage, Master Subordination Agreement, and Master Disbursement Agreement

49 Taking a subordinate position on the loan to Aeon does not impact the City's budget as the funds to be
50 loaned are grant funds that the City is passing through to Aeon. The City will not be upfront any of
51 its funds as part of this loan.

52 **STAFF RECOMMENDATION**

53 A. Memorandum of Understanding

54 The City Council should extend the MOU between Aeon and the City until December 31, 2010. This
55 document details the roles and responsibilities for both parties related to the pass-through and
56 implementation of the LCDA and TBRA grants awarded to the City on behalf of Sienna Green Phase 1.
57 Extending the agreement through 2010 will keep it in place until the grants are ex

58 B. Mortgage, Master Subordination Agreement, and Master Disbursement Agreement

59 Staff recommends entering into a mortgage agreement with Sienna Green 1 Limited Partnership. In
60 affordable housing projects that are utilizing tax credits, it is a standard practice for cities to enter into
61 mortgage agreements with the developer. As described in a previous section, loaning the pass-through
62 grant funds to the developer will eliminate the gap that is created by IRS regulations if the grants are
63 converted to loans.

64 Staff also recommends approval of the Master Subordination Agreement with Sienna Green 1 Limited
65 Partnership. The City bears no risk with this loan as the monies described in the documents are grant

66 funds the City is passing through to the limited partnership from another agency and not City funds.
67 The grant funds are not at risk as these funds are only accessible to the developer on a reimbursement
68 basis—the developer must incur the costs before the City will can seek reimbursement from the agency.
69 Finally, staff recommends approval of the Master Disbursement Agreement. The parameters for
70 disbursement identified in the mortgage are consistent with the terms agreed upon in the MOU.

71 **REQUESTED COUNCIL ACTION**

72 By motion, extend the Memorandum of Understanding for the LCDA and TBRA grants until December
73 31, 2010.

74 By motion, approve the Mortgage, the Master Subordination Agreement, and the Master Disbursement
75 Agreement in substantially the form on file, subject to modification approved by the City Manager and
76 the City’s legal counsel.

77

78

Prepared by: Jamie Radel, Economic Development Associate

Attachments: A: Memorandum of Understanding
B. Draft MOU Addendum
C. Draft Note given by Sienna Green 1 Limited Partnership to the City
D. Draft Mortgage between the City and Sienna Green 1 Limited Partnership
E. Draft Master Subordination Agreement
F. Draft Master Disbursement Agreement

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF ROSEVILLE, MINNESOTA
AND AEON

This MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the City of Roseville, "the City," and Aeon.

A. PURPOSE

1. The purpose of this MOU is to articulate the responsibilities of the City and Aeon in regards to the implementation grants awarded to the City by the Metropolitan Council through the Livable Communities Program for the Har Mar Apartment project. Nothing in this agreement shall be construed as altering the terms and conditions of the grants.

B. THE CITY OF ROSEVILLE SHALL:

1. Pass through grant funding awarded to the City from the Metropolitan Council's Livable Communities Demonstration Account (LCDA) in the amount of \$305,000 to Aeon pursuant to the terms of the grant.
2. Pass through grant funding awarded to the City from the Metropolitan Council's Livable Communities Tax Base Revitalization Account (TBRA) in the amount of \$121,500 to Aeon pursuant to the terms of the grant.

C. AEON SHALL:

1. Undertake the scopes of work identified in the LCDA Grant Agreement (Exhibit A) and TBRA Grant Agreement (Exhibit B).
2. Be responsible to provide required project matching funds for the LCDA and TBRA grants.
3. Comply with all applicable state and federal laws and the agreement entered into by the City of Roseville and the Metropolitan Council specific to the LCDA and TBRA grants.
4. Require contractors and subcontractors performing work covered by the LCDA and TBRA grants obtain all required permits, licenses and certifications, and comply with all state and federal Occupational Safety and Health Act regulations, especially the federal Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, title 29, sections 1910.120 and 1926.65.
5. Prepare payment request forms and provide all back up documentation as required by the Metropolitan Council for submittal by the City.
6. Prepare required LCDA and TBRA grant annual report, final report, and certificate of expenditures, pursuant to Metropolitan Council requirements for submittal by the City.
7. Prepare required asbestos and lead abatement final reports as identified in Exhibit B and provide a copy of these reports to the City.

8. Provide copies of documents and reports created or obtained in the course of undertaking the work set forth in the grants, upon request from the City.
9. Submit a written explanation to the City if either LCDA or TBRA grant funds cannot be expended within the timeframe of the grant agreements.

D. BOTH PARTIES SHALL:

1. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.
2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Aeon from participating in similar activities with other public or private agencies, organizations, and individuals.
3. TERMINATION. Any of the parties, in writing, may terminate the instrument at any time before the date of expiration.
4. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of last signature and is effective through December 31, 2009, at which time it will expire unless extended.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

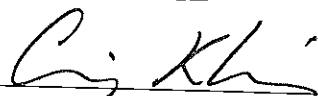
Aeon

By: 

Title: President

Date: 7-21-08

CITY OF ROSEVILLE

By: 

Title: Mayor

Date: 7/31/08

**DEMONSTRATION ACCOUNT
DEVELOPMENT GRANT PROGRAM**

Exhibit A

GRANTEE: City of Roseville		GRANT NO. SG007-121
PROJECT: Har Mar Apartments		
GRANT AMOUNT: \$305,000.00		FUNDING CYCLE: Fall 2007
COUNCIL ACTION: December 12, 2007		EXPIRATION DATE: December 31, 2009

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT ("Agreement") is made and entered into by the Metropolitan Council ("Council") and the Municipality, County or Development Authority identified above as "Grantee."

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act ("LCA") and the policies of the Council's Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.253 establish within the Metropolitan Livable Communities Fund a Livable Communities Demonstration Account and require the Council to use the funds in the account to make grants or loans to municipalities participating in the Local Housing Incentives Program under Minnesota Statutes section 473.254 or to Counties or Development Authorities to fund the initiatives specified in Minnesota Statutes section 473.25(b) in Participating Municipalities; and

WHEREAS, the Grantee is a Municipality participating in the Local Housing Incentives Account program under Minnesota Statutes section 473.254, a County or a Development Authority; and

WHEREAS, the Grantee seeks funding in connection with an application for Livable Communities Demonstration Account grant program funds submitted in response to the Council's notice of availability of grant funds for the "Funding Cycle" identified above and will use the grant funds made available under this Agreement to help fund the "Project" identified in the application; and

WHEREAS, the Council awarded Livable Communities Demonstration Account grant program funds to the Grantee subject to the Council's eminent domain policy and any terms, conditions and clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner and all grant funds will be expended prior to the "Expiration Date" identified above.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

I. DEFINITIONS

1.01 Definition of Terms. The terms defined in this paragraph have the meanings given them in this paragraph unless otherwise provided or indicated by the context.

- (a) **Council Action.** "Council Action" means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Livable Communities Demonstration Account funds.
- (b) **County.** "County" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties.
- (c) **Development Authority.** "Development Authority" means a statutory or home rule charter city, a housing and redevelopment authority, an economic development authority, or a port authority in the Metropolitan Area.
- (d) **Metropolitan Area.** "Metropolitan Area" means the seven-county metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (e) **Municipality.** "Municipality" means a statutory or home rule charter city or town participating in the Local Housing Incentives Account Program under Minnesota Statutes section 473.254.
- (f) **Participating Municipality.** "Participating Municipality" means a statutory or home rule charter city or town which has elected to participate in the Local Housing Incentive Account program and negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.
- (g) **Project.** Unless clearly indicated otherwise by the context of a specific provision in this Agreement, "Project" means the development or redevelopment project identified in the application for Demonstration Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.

II. GRANT FUNDS

2.01 Total Grant Amount. The Council will grant to the Grantee the "Grant Amount" identified at Page 1 of this Agreement which shall be funds from the Livable Communities Demonstration Account of the Metropolitan Livable Communities Fund. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Livable Communities Demonstration Account grant funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

2.02 Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for the purposes and activities described in the application for Livable Communities Demonstration Account grant funds. A Project summary that describes eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Grant funds must be used to fund the initiatives specified in Minnesota Statutes

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

section 473.25(b), in a Participating Municipality. Grant funds must be used for costs directly associated with the specific proposed Project activities and shall not be used for "soft costs" such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing other grant proposals; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the grant award. Grant funds also shall not be used by the Grantee or others to supplant or replace grant or loan funds obtained for the Project from other sources. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any "business subsidy" requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee's expenditures or uses of the grant funds.

2.03 Project Changes. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described in Attachment A. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee's eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described in Attachment A.

2.04 Budget Variance. A variance of twenty percent (20%) in the budget amounts for grant-funded activities identified in Attachment A shall be considered acceptable without Council approval, provided no budget amount for any individual grant-funded activity may be increased or decreased by more than twenty percent (20%) from the budget amount identified in Attachment A. The Grantee must inform the Council of any budget variances. Budget variances for any individual grant-funded activity identified in Attachment A exceeding twenty percent (20%) will require approval of the governing body of the Metropolitan Council. Notwithstanding the aggregate or net effect of any variances, the Council's obligation to provide grant funds under this Agreement shall not exceed the Grant Amount identified at Page 1 of this Agreement.

2.05 Eminent Domain Restrictions. On January 25, 2006 the Council adopted a policy that restricted the use of LCA grant funds on projects when eminent domain authority was used to acquire private property for "economic development" purposes in connection with the projects. The Council's policy defined the term "economic development" for LCA program purposes and covers the time period from January 25, 2006 to June 28, 2006. On June 28, 2006 the Council adopted a revised eminent domain policy that is consistent with the statutory definitions and restrictions contained in Minnesota Statutes chapter 117 as amended (effective May 20, 2006) during the 2006 legislative session. The revised policy applies to LCA grant awards and grant agreements made on or after June 28, 2006. The Council's January 25, 2006 and June 28, 2006 eminent domain policies are available online at: <http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>.

- (a) If a notice of petition was served between January 25, 2006 and May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project: (1) would have been eligible under the Council's January 25, 2006 policy; or (2) qualifies for an exemption

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).

- (b) If a notice of petition was served on or after May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).

2.06 Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Paragraph 2.08 that are not used for the purposes of implementing the Project activities described in Attachment A. For the purposes of this Agreement, grant funds are "expended" prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council's Livable Communities Demonstration Account for distribution through application processes in future Funding Cycles.

2.07 Payment Request Forms and Disbursements. The Council will disburse grant funds in response to written payment requests submitted by the Grantee and reviewed and approved by the Council's authorized agent. Written payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms are available online at: <http://www.metrocouncil.org/services/livcomm/LCAresources.htm>. The Council will disburse grant funds on a reimbursement basis or a "cost incurred" basis. The Grantee must provide with its written payment requests documentation that shows grant-funded Project activities actually have been completed. Disbursements prior to the performance of a grant-funded Project activity will be subject to terms and conditions mutually agreed to by the Council's authorized agent and the Grantee. Subject to verification of each payment request form (and its documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed payment request form.

2.08 Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described in Attachment A.

2.09 Effect of Grant. Issuance of this grant neither implies any Council responsibility for contamination, if any, at the Project site nor imposes any obligation on the Council to participate in any pollution cleanup of the Project site if such cleanup is undertaken or required.

III. ACCOUNTING, AUDIT AND REPORT REQUIREMENTS

3.01 Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

from the Council. Notwithstanding the expiration and termination provisions of Paragraphs 4.01 and 4.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described in Attachment A or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02 Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03 Report Requirements. The Grantee will report to the Council on the status of the Project activities described in Attachment A and the expenditures of the grant funds. Submission of properly completed payment request forms (with proper documentation) required under Paragraph 2.07 will constitute periodic status reports. The Grantee also must complete and submit to the Council a grant activity closeout report. The closeout report form must be submitted with the final payment request form or within 120 days after the expiration or termination of this Agreement, whichever occurs earlier. Within 120 days after the Expiration Date, the Grantee must complete and submit to the Council a certification of expenditures of funds form signed by the Grantee's chief financial officer or finance director. The form and content of the closeout report and the certification form will be determined by the Council. These reporting requirements shall survive the expiration or termination of this Agreement.

3.04 Environmental Site Assessment. The Grantee represents that a Phase I Environmental Site Assessment or other environmental review has been or will be carried out, if such environmental assessment or review is appropriate for the scope and nature of the Project activities funded by this grant, and that any environmental issues have been or will be adequately addressed.

IV. AGREEMENT TERM

4.01 Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Paragraph 4.02, this Agreement expires on the "Expiration Date" identified at Page 1 of this Agreement and **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

4.02 Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described in Attachment A that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

4.03 Amendments and Extensions. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or extensions of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. The Expiration Date may be extended beyond the original Expiration Date identified at Page 1 of this Agreement if, **AT LEAST THIRTY (30) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, the Grantee's authorized representative submits a written extension request that: (a) states the reason for the extension request; (b) identifies a new completion date, which shall not exceed one year beyond the original Expiration Date; and (c) describes in reasonable detail any proposed changes to the Project activities and budget. **THE EXPIRATION DATE MAY BE EXTENDED ONLY ONCE. THE PERIOD OF THE ONE-TIME EXTENSION SHALL NOT EXCEED ONE (1) YEAR BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.** Any additional extension requests from the Grantee must be approved by the governing body of the Metropolitan Council.

V. GENERAL PROVISIONS

5.01 Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

5.02 Conflict of Interest. The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

5.03 Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this paragraph shall

DEMONSTRATION ACCOUNT DEVELOPMENT GRANT PROGRAM

survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

5.04 Acknowledgments. The Grantee shall acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project activities described in Attachment A that are funded in whole or in part with the grant funds. The acknowledgment should contain the following language:

*Financing for this project was provided by the Metropolitan
Council Metropolitan Livable Communities Fund.*

Until the Project activities funded by this Agreement are completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project.

5.05 Permits, Bonds and Approvals. The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations or approvals necessary to perform or complete the Project activities described in Attachment A.

5.06 Subgrantees, Contractors and Subcontractors. The Grantee shall include in any subgrant, contract or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant comply with all applicable state and federal Occupational Safety and Health Act regulations.

5.07 Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2030 Water Resources Management Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

5.08 Authorized Agent. Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

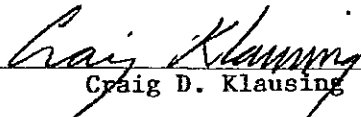
Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

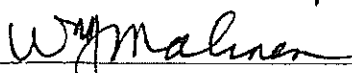
- DEMONSTRATION ACCOUNT
DEVELOPMENT GRANT PROGRAM

5.09 Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding and enforceable agreements.

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

GRANTEE

By 
Craig D. Klausing
Title Mayor
Date 4/14/08

By 
William J. Malinen
Title City Manager
Date 4/14/08

METROPOLITAN COUNCIL

By 
Guy Peterson, Director
Community Development Division
Date 4-23-08

DT

**DEMONSTRATION ACCOUNT
DEVELOPMENT GRANT PROGRAM**

ATTACHMENT A

APPLICATION FOR LIVABLE COMMUNITIES DEMONSTRATION ACCOUNT FUNDS

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Livable Communities Demonstration Account grant funds submitted in response to the Council's notice of availability of Demonstration Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision of the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project summary; and (4) the grant application.

Applicant: Roseville
Project Name: Har Mar Apartments
Southwest corner of Snelling Avenue North and Highway 36

Recommended Funding Amount: \$305,000
SG007-121

Project Description:

Har Mar Apartments is an existing 120-unit apartment building complex built in 1965. Situated on a 5.4-acre site, the development contains five buildings of 21 to 26 one-bedroom units per building, the majority having a significant amount of deferred maintenance and in need of major repair. There is also an approximate 25 percent vacancy rate currently at the buildings due to unrentable units. Central Community Housing Trust (CCHT), with the support of the City of Roseville, proposes to rehabilitate the existing property into 103 one and two bedroom apartments. The rehabilitation plans will diversify the unit type to provide increased housing choices for low and moderate-income workers, as well as some market-rate apartments. Affordable rents will be targeted to residents at 30, 50 and 60 percent of area median income. CCHT will also make considerable improvements to the building exteriors, add landscaping and recreation areas, including a tot lot for children. Stormwater improvements proposed at the property will help alleviate stormwater capacity issues that have been occurring in the area during heavy rain events. The site improvements will help make possible a future phase to construct a new building on the site that would include 50 two- and three-bedroom affordable apartments, in a location that is currently surface parking.

Funding Requested/Funding Recommended:**Total Requested: \$305,000****Total Recommended: \$305,000**

Amount Requested	Amount Recommended	Use of Funds
\$127,000	\$127,000	Removal of obsolete infrastructures – timber and brick retaining walls, bituminous pavement, concrete curb and pavement, wooden sheds, pool
\$138,000	\$138,000	Stormwater management – rain gardens, soil amendment, storm sewer, inlet structures, native vegetation
\$45,100	\$45,100	Design and engineering for site demo, grading drainage, and stormwater management plan
\$24,000	\$24,000	Site grading for directing water away from buildings

Previous LCDA Grants Received For This Or Related Project:

None.

Development Timeline:

Task	Start Date	End Date
Removal of obsolete infrastructures – timber and brick retaining walls, bituminous pavement, concrete curb and pavement, wooden sheds, pool	June 2008	September 2008
Stormwater management – rain gardens, soil amendment, storm sewer, inlet structures, native vegetation	June 2008	June 2009
Design and engineering for site demo, grading drainage, and stormwater management plan	October 2007	May 2008
Site grading for directing water away from buildings	June 2008	June 2009

OT

TAX BASE REVITALIZATION ACCOUNT**Exhibit B**

GRANTEE: City of Roseville		GRANT NO. SG007-143
PROJECT: Har Mar Apartments		
GRANT AMOUNT: \$121,500.00	FUNDING CYCLE: Fall 2007	
COUNCIL ACTION: January 9, 2008	EXPIRATION DATE: December 31, 2009	

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT ("Agreement") is made and entered into by the Metropolitan Council ("Council") and the Municipality or Development Authority identified above as "Grantee."

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act ("LCA") and the policies of the Council's Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.252 establish within the Metropolitan Livable Communities Fund a Tax Base Revitalization Account and require the Council to use the funds in the account to make grants to Municipalities or Development Authorities for the cleanup of polluted land in the seven-county metropolitan area; and

WHEREAS, the Grantee is a Municipality or a Development Authority as defined in Minnesota Statutes section 473.252, subdivisions 1 and 1a; and

WHEREAS, the Grantee seeks funding in connection with an application for Tax Base Revitalization Account funds submitted in response to the Council's notice of availability of grant funds for the "Funding Cycle" identified above and will use the grant funds made available under this Agreement to help fund the "Project" identified in the application; and

WHEREAS, the Council awarded Tax Base Revitalization Account grant funds to the Grantee subject to the Council's eminent domain policy and any terms, conditions or clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner and all grant funds will be expended prior to the "Expiration Date" identified above.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

I. DEFINITIONS

1.01 Definition of Terms. The terms defined in this paragraph have the meanings given them in this paragraph unless otherwise provided or indicated by the context.

TAX BASE REVITALIZATION ACCOUNT

- (a) **Cleanup Costs or Costs.** "Cleanup Costs" or "Costs" means:
- (1) For hazardous waste or substance contamination, the cost of implementing a voluntary response action plan approved by the Minnesota Pollution Control Agency under Minnesota Statutes section 115B.175, subdivision 3.
 - (2) For asbestos contamination, the cost of implementing a project-specific asbestos project plan for the Site and performing asbestos-related work which is carried out by contractors or subcontractors licensed or certified by the Commissioner of Health under the Minnesota Asbestos Abatement Act, Minnesota Statutes sections 326.70 to 326.81, in accordance with rules prescribed by the Commissioner of Health related to asbestos abatement and asbestos management activity, and meeting the federal Asbestos Hazard Emergency Response Act ("AHERA") standards for asbestos.
 - (3) For petroleum contamination, the cost of implementing a corrective action plan for the Site approved by the Minnesota Pollution Control Agency under Minnesota Statutes chapter 115C.
 - (4) For lead abatement, the cost of lead abatement work performed by certified contractors consistent with all applicable federal and state laws, rules and standards governing lead abatement or regulated lead work on residential or commercial properties.
- (b) **Council Action.** "Council Action" means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Tax Base Revitalization Account grant funds.
- (c) **Development Authority.** "Development Authority" means a statutory or home rule charter city, a housing and redevelopment authority, an economic development authority, or a port authority in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (d) **Municipality.** "Municipality" means a statutory or home rule charter city or town participating in the Local Housing Incentives Program under Minnesota Statutes section 473.254, or a county in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (e) **Participating Municipality.** "Participating Municipality" means a statutory or home rule charter city or town that has elected to participate in the Local Housing Incentive Account program and negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.
- (f) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, "Project" means the development or redevelopment project identified in the application for Tax Base Revitalization Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.
- (g) **Project Costs.** "Project Costs" means all costs as defined in Minnesota Statutes section 116J.552, subdivision 7.
- (h) **Site.** "Site" means the polluted land proposed by the Grantee to be cleaned up and located both within the metropolitan area and within a Participating Municipality.



TAX BASE REVITALIZATION ACCOUNT

II. GRANT FUNDS

2.01 Total Grant Amount. The Council will grant to the Grantee the "Grant Amount" identified at Page 1 of this Agreement which shall be funds from the Tax Base Revitalization Account of the Metropolitan Livable Communities Fund. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Tax Base Revitalization Account funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

2.02 Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for Cleanup Costs for the cleanup of the Site described in the application for Tax Base Revitalization Account funds. A Project summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Grant funds must be used for cleanup of the Site which must be located in a Participating Municipality. If consistent with the application and subject to the limitations in Minnesota Statutes section 116J.556, the Grantee may use the grant funds to provide a portion of the local match requirement for Project Costs that qualify for a grant under Minnesota Statutes sections 116J.551 to 116J.557. Grant funds must be used for costs directly associated with the specific proposed Project activities for which the grant funds were awarded and shall not be used for "soft costs" such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing grant proposals or applications; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the grant award, unless the pre-award costs were for:

- (a) Site investigation work that occurred within 180 days of the Funding Cycle application due date and is identified as a grant-funded activity in Attachment A; or
- (b) Project cleanup activities that occurred within 180 days of the Funding Cycle application due date that were expressly approved by the Council Action and are identified in Attachment A.

Grant funds also shall not be used by the Grantee or others to supplant or replace grant or loan funds obtained for the Project from other sources. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any "business subsidy" requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee's expenditures or uses of the grant funds.

2.03 Project Changes. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to grant-funded activities described in Attachment A. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee's eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described in Attachment A.

2.04 Eminent Domain Restrictions. On January 25, 2006 the Council adopted a policy that restricted the use of LCA grant funds on projects when eminent domain authority was used to acquire private property for "economic development" purposes in connection with the projects. The

TAX BASE REVITALIZATION ACCOUNT

Council's policy defined the term "economic development" for LCA program purposes and covers the time period from January 25, 2006 to June 28, 2006. On June 28, 2006 the Council adopted a revised eminent domain policy that is consistent with the statutory definitions and restrictions contained in Minnesota Statutes chapter 117 as amended (effective May 20, 2006) during the 2006 legislative session. The revised policy applies to LCA grant awards and grant agreements made on or after June 28, 2006. The Council's January 25, 2006 and June 28, 2006 eminent domain policies are available online at: <http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>.

- (a) If a notice of petition was served between January 25, 2006 and May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project: (1) would have been eligible under the Council's January 25, 2006 policy; or (2) qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).
- (b) If a notice of petition was served on or after May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).

2.05 Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Paragraph 2.07 that are not used for the purposes of implementing the Project activities described in Attachment A. For the purposes of this Agreement, grant funds are "expended" prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council's Tax Base Revitalization Account for distribution through application processes in future Funding Cycles.

2.06 Payment Request Forms and Disbursements. The Council will disburse grant funds in response to written payment requests submitted by the Grantee and reviewed and approved by the Council's authorized agent. Written payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms are available online at: <http://www.metrocouncil.org/services/livcomm/LCAresources.htm>. The Council will disburse grant funds on a reimbursement basis or a "cost incurred" basis. The Grantee must provide with its written payment requests documentation that shows grant-funded Project activities actually have been completed. Disbursements prior to the performance of a grant-funded Project activity will be subject to terms and conditions mutually agreed to by the Council's authorized agent and the Grantee. Subject to verification of each payment request form (and its documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed payment request form.

2.07 Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described in Attachment A.

TAX BASE REVITALIZATION ACCOUNT

2.08 Effect of Grant. Issuance of this grant neither implies any Council responsibility for the contamination at the Site nor imposes any obligation on the Council to participate in the cleanup of the Site contamination or in the Cleanup Costs beyond the Grant Amount of this Agreement.

III. ACCOUNTING, AUDIT AND REPORT REQUIREMENTS

3.01 Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Paragraphs 5.01 and 5.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described in Attachment A or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02 Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03 Report Requirements. The Grantee will report to the Council on the status of the Project activities described in Attachment A and the expenditures of the grant funds. Submission of properly completed payment request forms (with proper documentation) required under Paragraph 2.06 will constitute periodic status reports. The Grantee also must complete and submit to the Council a grant activity closeout report. The closeout report form must be submitted with the final payment request form or within 120 days after the expiration or termination of this Agreement, whichever occurs earlier. Within 120 days after the Expiration Date, the Grantee must complete and submit to the Council a certification of expenditures of funds form signed by the Grantee's chief financial officer or finance director. The form and content of the closeout report and certification form will be determined by the Council. In addition to the periodic status reports, the grant activity closeout report, and the certification form, the Grantee must submit to the Council by April 1 of the year following the expiration of this Agreement and by April 1 of each of the succeeding three (3) years, an annual written report that includes information about redevelopment activities, net tax capacity of the Site, and jobs resulting from Site cleanup. The form and content of the annual written report will be determined by the Council. The reporting requirements of Paragraphs 3.03 and 3.04 shall survive the expiration or termination of this Agreement.

3.04 Certificate of Completion. Upon completion of the Site cleanup, the Grantee will provide to the Council:

- (a) For hazardous waste or substance contamination, a copy of a certificate of completion for the Site issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes section 115B.175, or a letter from the Agency indicating that the approved voluntary response action plan for the Site has been implemented to the satisfaction of the Agency and that the Agency is

TAX BASE REVITALIZATION ACCOUNT

issuing a determination that no further action is required under Minnesota Statutes sections 115B.01 to 115B.08 to address the identified release; or

- (b) For asbestos contamination, either (i) a copy of a statement from the Grantee's licensed asbestos abatement contractor that the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health, or (ii) a final asbestos abatement implementation report that shows the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or
- (c) For petroleum contamination, a copy of a site closure letter issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes chapter 115C; or
- (d) For lead abatement or regulated lead work, a copy of a statement or other documentation from the certified contractor that the lead abatement or regulated lead work at the Site has been completed in accordance with applicable federal and state laws, rules and standards governing lead abatement.

IV. RECOVERY AND REPAYMENT

4.01 Recovery of Funds. If the Grantee recovers funds pursuant to an action under Minnesota Statutes section 115B.04, or other law, to recover the reasonable and necessary Project Costs incurred to cleanup the Site, the Grantee shall repay to the Council that portion of the grant as provided in Paragraph 4.04.

4.02 Assignment of Rights. Upon request of the Council, the Grantee shall assign to the Council the Grantee's right to recover the funds described in Paragraph 4.01, shall prepare and submit a certification of the Project Costs incurred, and shall cooperate in any cost recovery action brought by the Council.

4.03 Expenses of Recovery. The reasonable litigation expenses or other costs of legal or technical assistance incurred by the Grantee, the Council, or both, may be deducted from recovery obtained in accordance with Paragraphs 4.01 or 4.02 and reimbursed to the entity incurring such costs before proceeds of the recovery are distributed in accordance with Paragraph 4.04.

4.04 Reimbursement. Subject to the deduction provided in Paragraph 4.03, amounts recovered either by the Grantee or the Council from responsible persons and all other amounts otherwise received by the Grantee or the Council for cleanup of the Site shall be used to reimburse the Grantee, the Council, or any other nonresponsible party who contributed funds for cleanup of the Site in proportion to their respective payments for response costs.

4.05 Survival of Recovery and Repayment Provisions. The provisions of Paragraphs 4.01 through 4.04 shall survive the expiration or termination of this Agreement.

V. AGREEMENT TERM

5.01 Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Paragraph 5.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement and **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

TAX BASE REVITALIZATION ACCOUNT

5.02 Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described in Attachment A that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

5.03 Amendments and Extensions. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or extensions of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. The Expiration Date may be extended beyond the original Expiration Date identified at Page 1 of this Agreement if, **AT LEAST THIRTY (30) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, the Grantee's authorized representative submits a written extension request that: (a) states the reason for the extension request; (b) identifies a new completion date, which shall not exceed one year beyond the original Expiration Date; and (c) describes in reasonable detail any proposed changes to the Project activities and budget. **THE EXPIRATION DATE MAY BE EXTENDED ONLY ONCE. THE PERIOD OF THE ONE-TIME EXTENSION SHALL NOT EXCEED ONE (1) YEAR BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.** Any additional extension requests from the Grantee must be approved by the governing body of the Metropolitan Council.

VI. GENERAL PROVISIONS

6.01 Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

6.02 Conflict of Interest. The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

6.03 Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976

TAX BASE REVITALIZATION ACCOUNT

(RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this paragraph shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466 or other applicable state or federal law.

6.04 Acknowledgments. The Grantee shall acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project activities described in Attachment A which are funded in whole or in part with the grant funds. The acknowledgment should contain the following language:

*Financing for this project was provided by the Metropolitan
Council Metropolitan Livable Communities Fund.*

Until the Project activities funded by this Agreement are completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project.

6.05 Permits, Bonds and Approvals. The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations or approvals necessary to perform or complete the Project activities described in Attachment A.

6.06 Subgrantees, Contractors and Subcontractors. The Grantee shall include in any subgrant, contract or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant obtain all required permits, licenses and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations, especially the federal Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, title 29, sections 1910.120 and 1926.65.

6.07 Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2030 Water Resources Management Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

6.08 Authorized Agent. Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

6.09 Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding and enforceable agreements.

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

GRANTEE

By Craig D. Klausung
Craig D. Klausung

Title Mayor

Date April 14, 2008

By William J. Malinen
William J. Malinen

Title City Manager

Date 4/14/08

METROPOLITAN COUNCIL

By Guy Peterson
Guy Peterson, Director
Community Development Division

Date 4-27-08

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TAX BASE REVITALIZATION ACCOUNT

ATTACHMENT A

APPLICATION FOR TAX BASE REVITALIZATION ACCOUNT FUNDS

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Tax Base Revitalization Account grant funds submitted in response to the Council's notice of availability of Tax Base Revitalization Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project summary; and (4) the grant application.



Location:	2225, 2235, 2245, 2255, 2265 Snelling Avenue North, Roseville, MN 55113-4230
Council District:	10 – Kris Sanda
Acres:	5.4 acres
Estimated Cleanup Cost:	\$174,506 for asbestos and lead-based paint abatement. Upon review, \$121,534 of the costs was determined to be eligible.
Funding request:	\$174,506 in TBRA funds for asbestos and lead-based paint abatement. Upon review, \$121,534 of the costs was determined to be eligible.
Private Investment:	\$4,078,680
Increase in Net Tax Capacity:	\$12,438
Jobs:	2 FTE (both are new living wage jobs)
Affordable Housing Units:	103 affordable rental units
Project Summary	The applicant is requesting \$174,506 in TBRA funds for asbestos and lead-based paint abatement of a 5-building, 120-unit apartment complex on a 5.4-acre site. The expected benefits include the rehabilitation of the residential complex into 73 1-bedroom and 30 2-bedroom units for a total of 103 affordable rental units with a projected increase of \$12,438 in net tax capacity and \$4M of private investment. The TBRA recommendation is \$121,500, to fully fund the eligible costs requested. Funds are to be used for asbestos and lead-based paint abatement. (Note, abatement of other hazardous materials is not eligible for grant funding.)

DT

**MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF ROSEVILLE, MINNESOTA
AND AEON**

Addendum 1

The end date of the Memorandum of Understanding between the City of Roseville, Minnesota and Aeon, which was executed July 31, 2008, shall be modified to December 31, 2010. This modification shall become effective as of the date of last signature of this addendum.

IN WITNESS WHEREOF, the parties hereto have executed this addendum as of the last written date below.

Aeon

City of Roseville

By:_____

By:_____

Title: _____

Title: _____

Date: _____

Date: _____

\$426,500
PROMISSORY NOTE
given by

**SIENNA GREEN I LIMITED PARTNERSHIP,
a Minnesota limited partnership**

to

**THE CITY OF ROSEVILLE
a Minnesota municipal corporation**

Dated: December ____, 2009

At: Minneapolis, Minnesota

FOR VALUE RECEIVED, the undersigned, **SIENNA GREEN I LIMITED PARTNERSHIP**, a Minnesota limited partnership (the “Borrower”), hereby promises to pay to the order of **THE CITY OF ROSEVILLE**, a Minnesota municipal corporation (“Holder”) or at such other place as the Holder may, from time to time, designate in writing, the principal sum of Four Hundred Twenty-Six Thousand, Five Hundred and No/100 Dollars (\$426,500.00) incurring simple interest at the annual rate of ____ percent (____%) (the “Loan”). The entire principal balance of and accrued interest on this Note are due and payable on December 31, 2039.

This Note is secured by, among other things, a Mortgage dated the date hereof from Borrower, as Borrower, to the Holder, as Holder (the “Mortgage”), on property owned by Borrower (the “Project”). This Note is issued pursuant to that certain LCDA Grant Agreement and that certain TBRA Grant Agreement, both between the Metropolitan Council and Holder and defined in the Mortgage. All of the agreements, conditions, covenants, provisions and stipulations contained in the Mortgage are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. Time is of the essence hereof. In the event of any default in the payment of any principal of other indebtedness due hereunder, the Holder may, at its right and option, declare immediately due and payable the principal balance of this Note, together with any attorneys fees incurred by the Holder in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided in any document securing this Note, including any Mortgage. The Holder may extend the time of payment of principal of this Note without notice to or consent of any party liable hereon and without releasing such party.

The Borrower and any guarantor, surety or endorser hereby waives demand, presentment, notice of nonpayment, protest, notice of protest, notice of dishonor and diligence in collection and agree that without any notice the Holder hereof may take and/or release additional security herefor or the Holder hereof may, from time to time, release any part or parts of security interests from Borrower in favor of Holder with or without

consideration and that in any such case the Borrower and any guarantor, surety or endorser shall remain liable to pay the unpaid balance of the indebtedness evidenced hereby as so additionally secured, extended, renewed or modified and notwithstanding any such release.

The remedies of the Holder, as provided herein and in any document securing this Note shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefor shall occur. The Holder may, in its discretion, waive any default hereunder and its consequences and rescind any declaration of acceleration of principal; provided, however, that no action or inaction by the Holder shall be deemed a waiver of any of the Holder's rights or remedies unless the Holder specifically agrees in writing that such action or inaction shall constitute a waiver of its rights or remedies. Any waiver shall only apply to the particular instance for which it was agreed. No delay in exercising and no failure in exercising any right or remedy hereunder or afforded by law shall be a waiver of or preclude the exercise of any right or remedy hereunder or provided by law, whether on such occasion or any future occasion, nor shall such delay be construed as a waiver of any default or acquiescence therein. The exercise or the beginning of the exercise of one right or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

In the event of any default hereunder the Borrower agrees to pay the costs of collection including reasonable attorneys' fees.

This Note may be prepaid in whole or in part without penalty.

If the Minnesota Housing Finance Agency ("MHFA") holds a mortgage on the Project, prepayments may be made only with the prior consent of MHFA and any unauthorized prepayments shall be held in trust for the Project and shall, upon MHFA's request, be deposited with MHFA or its designee.

The Holder shall not foreclose on the Mortgage securing this Note without the prior written approval of the MHFA if there is a mortgage held by MHFA on the Project.

No payments may be made under this Note so long as any of the loans senior to the Mortgage securing this note remain outstanding.

The Loan is a non-recourse obligation of the Borrower. Neither the Borrower nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Holder for repayment of the Loan shall be the exercise of its rights against the Project and related security thereunder.

This Note may not be sold, transferred, assigned or pledged without the prior written approval of MHFA if there is a mortgage held by MHFA on the Project.

This Note may not be amended without the express written consent of MHFA or any successor holder of the MHFA mortgage on the Project if there is a mortgage held by the MHFA or the successor holder of the MHFA mortgage on the Project.

This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, to happen and to be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due form as required by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by its authorized representative, all on the date and year first above written.

BORROWER:

SIENNA GREEN I LIMITED PARTNERSHIP

By: Aeon, a Minnesota non-profit corporation
A General Partner

Alan Arthur, President

MORTGAGE

(\$426,500.00 LCDA/TBRA Loan)

THIS MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRATION TAX PURSUANT TO MINN STAT SECTION 287.04 (f) BECAUSE THIS MORTGAGE WAS MADE UNDER THE MORTGAGEE'S LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM THAT PROVIDES FOR LOANS THAT MEET THE INCOME LIMITS AND SALES PRICE LIMITS AS DETERMINED UNDER FEDERAL AND STATE LAW.

THIS MORTGAGE is made this ____ day of December, 2009 by and between **SIENNA GREEN I LIMITED PARTNERSHIP**, a Minnesota limited partnership ("Mortgagor") in favor of **THE CITY OF ROSEVILLE**, a Minnesota municipal corporation ("Mortgagee").

WHEREAS, Mortgagor and Mortgagee entered into that certain Note dated as of the same date as this Mortgage (the "Note"), pursuant to which Mortgagee has granted, or committed to grant, Mortgagor a loan in the amount of Four Hundred Twenty-Six Thousand Five Hundred and No/100 Dollars (\$426,500.00) (the "Loan"); and

WHEREAS, pursuant to the Note, the entire indebtedness of Mortgagor to Mortgagee of the Loan is due and payable in full on December 31, 2039; and

WHEREAS, this Mortgage is given to secure repayment of all amounts due by Mortgagor to Mortgagee under the Note, as well as other amounts due by Mortgagor to Mortgagee under the terms of this Mortgage.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee the following real property in Ramsey County, Minnesota (the "Premises") legally described on Exhibit A attached hereto and incorporated herein to have and to hold the same, together with all the hereditaments and appurtenances thereto belonging or in anywhere appertaining, forever.

PROVIDED NEVERTHELESS that if Mortgagor, or Mortgagor's successors or permitted assigns, shall (i) pay, or cause to be paid, to Mortgagee the principal amount of the

Loan heretofore and hereafter advanced by Mortgagee to Mortgagor under the Note; (ii) pay all taxes and special assessments that are now or may be hereafter levied and assessed on and against the Premises as they shall be due and before they become delinquent; (iii) keep the improvements on the Premises continuously insured as hereinafter provided; (iv) pay the principal and interest installments on any prior mortgage or mortgages as the same or any part thereof become due; and (v) keep and perform each and every covenant herein, then this Mortgage shall be null and void; otherwise it shall be and remain in full force and effect.

MORTGAGOR WARRANTS AND COVENANTS to and with Mortgagee as follows:

1. Mortgagor is lawfully seized in fee simple of the Premises and has good right to sell and convey the same. The Premises are free from all liens and encumbrances, except any prior mortgage or mortgages of record and other matters listed in the Mortgagor's title policy. Mortgagor shall warrant and defend the title of the Premises against all lawful claims except such prior mortgage or mortgages of record. The foregoing covenants and warranties shall survive foreclosure of this Mortgage and shall run with the land.
2. Mortgagor shall pay the principal and interest (if any) as the same become due on any prior mortgage or mortgages on the Premises.
3. Mortgagor shall procure at Mortgagor's own expense fire and extended coverage insurance on the improvements on the Premises, payable in case of loss to Mortgagee, its successors and assigns, as its interest may appear, such insurance to be written by a reliable insurance company approved by Mortgagee in an amount at least equal to the full insurable value of such improvements.
4. Mortgagor shall pay all taxes and special assessments now and hereafter levied and assessed on the Premises before the same become delinquent.
5. Mortgagor shall keep the Premises in good repair, shall not remove the improvements from the Premises, and shall not commit waste or permit impairment or deterioration of the Premises.
6. Mortgagor shall comply with the terms of the Note.
7. In the case of failure of Mortgagor to pay such taxes or to keep said improvements insured as provided herein, or to pay the principal or interest (if any) on the prior mortgage or mortgages on the Premises, Mortgagee may at its option pay and discharge such taxes, effect such insurance on said improvements and pay the premiums thereon and pay the principal and interest (if any) that become due and remain unpaid on the prior mortgage or mortgages on the Premises, and the sum or sums that may be so paid by Mortgagee shall bear interest from the time of such payment at the rate of 8% per annum or the highest rate allowed by law, whichever is lower, and shall be deemed and is hereby declared to be an additional lien upon the Premises in the amount that shall be so paid, with interest thereon, as aforesaid, and shall be added to and be collectable as part of and in the same manner as the original debt which this Mortgage is given to secure.
8. The following shall be Events of Default by Mortgagor:

- a) The failure to pay the indebtedness hereby secured or the interest (if any) thereon, as it becomes due;
- b) The failure to pay any installment of the principal or interest (if any) on any prior mortgage or mortgages on the Premises, as the same becomes due;
- c) The failure to pay, when due, the taxes or special assessments on the Premises;
- d) The failure to keep the improvements on the Premises insured as herein provided;
- e) The failure to keep and perform any of the covenants and agreements herein contained to be kept and performed by Mortgagor; or
- f) The sale, assignment, conveyance or other transfer (whether by deed, contract for deed, lease or otherwise) of the Premises, except for transfer of limited partnership interests in the Mortgagor and otherwise provided for in the Mortgage Loan Rider attached hereto as Exhibit B and incorporated herein.

Upon the occurrence of any Event of Default, Mortgagor hereby authorizes and empowers Mortgagee to declare the entire indebtedness hereby secured to be immediately due and payable, at Mortgagee's option, and to enforce the payment thereof and to foreclose this Mortgage by sale of the Premises at public auction and convey the same to the purchaser in fee simple, pursuant to the statutes of the State of Minnesota, and out of the monies arising from said sale to retain (i) the principal which shall then be due on the indebtedness secured hereby, and interest, if any, accrued thereon, (ii) an amount equal to all taxes and special assessments paid by Mortgagee upon the Premises, or then levied and unpaid, (iii) any sum paid by Mortgagee for principal or interest on any prior mortgage or mortgages on the Premises, and (iv) costs and disbursements of such foreclosure, including statutory attorney's fees; and to pay the surplus, if any, to Mortgagor. In the event of any default hereunder the Mortgagor agrees to pay the costs of collection including reasonable attorneys' fees.

- 9. So long as this Mortgage and the Note evidencing the indebtedness secured hereby are held by Mortgagee, Mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Premises on the basis of race, color, religion, or sex.
- 10. No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singularly or serially (in any order) or concurrently, and as often as the occasion therefore arises.
- 11. Mortgagee may at any time and from time to time, without notice, release any person liable for the payment of any indebtedness under the Note, extend the time or agree to alter the terms of payment of any indebtedness, release any property securing any indebtedness, consent to the creation of any easement on the Premises, or agree to alter or amend the terms of this Mortgage in any way, all without in any way affecting the

liability of any person (other than the person so released, if any) or the validity or priority of this Mortgage (except as it covers property so released, if any).

12. The covenants and agreements contained in this Mortgage shall bind, and the rights conferred hereby shall inure to, the respective, legal representatives, successors and assigns of Mortgagor and Mortgagee. Wherever used, the singular number shall include the plural, and the plural the singular. All covenants and agreements of Mortgagor shall be joint and several.
13. Mortgagee shall furnish to Mortgagor a conformed and fully completed copy of the Note and this Mortgage at the time that this Mortgage is executed or at a reasonable time after this Mortgage is recorded.
14. The Mortgagee, for itself and its successors and assigns, covenants and agrees that it will not commence procedures to foreclose on this Mortgage without the prior written consent of the Minnesota Housing Finance Agency, or its successors and assigns ("MHFA") if there is a mortgage held by MHFA on the Project

So long as MHFA is the holder of a mortgage on the Project:

- (a) This Mortgage may not be amended without the prior written consent of MHFA; and
 - (b) This Mortgage may not be sold, transferred, assigned, or pledged without the prior written consent of MHFA.
15. The Loan is a non-recourse obligation of the Mortgagor. Neither Mortgagor nor any of its general or limited partners, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Mortgagee for repayment of the Loan shall be the exercise of its rights against the Project and related security thereunder.
16. Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Mortgage or the Note, the Mortgagor agrees to protect and defend the Mortgagee and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Mortgage, the Note, or the transactions contemplated hereby or the acquisition, construction, improvement, ownership, and operation of the Premises.
17. Mortgagee has been awarded a \$121,500 TBRA grant and a \$305,000 LCDA grant from the Metropolitan Council pursuant to a certain TBRA Grant Agreement between Mortgagee and the Metropolitan Council dated April 23, 2008 (the "TBRA Grant Agreement") and a certain LCDA Grant Agreement between Mortgagee and the Metropolitan Council dated April 27, 2008 (the "LCDA Grant Agreement"), and has agreed to loan such funds to finance certain costs of the Mortgagor's development of the Premises. Mortgagee will loan the funds,

totaling \$426,500 (the "LCDA/TBRA Loan"), to Mortgagor pursuant to this Mortgage and the Note subject to the following conditions:

- (a) The LCDA funds can be used to finance only the removal of obsolete infrastructures (\$127,000); stormwater management (\$138,000); design and engineering for site demolition, grading drainage, and stormwater management plan (\$45,100); and site grading for directing water away from buildings (\$24,000), as provided in the LCDA Grant Agreement;
 - (b) The TBRA funds can be used to finance only Clean-up Costs, as that term is defined in the TBRA Grant Agreement.
 - (c) LCDA/TBRA Loan funds may only be drawn down upon the Mortgagee's receipt of documentation demonstrating that the work for which the funds are being requested has been completed and paid for;
 - (d) The work financed by the LCDA/TBRA Loan must be completed by December 31, 2010, or all or a portion of the LCDA/TBRA Loan could be required to be repaid to the Mortgagee; and
 - (e) The Mortgagor shall comply with all requirements of the LCDA/TBRA grant program and if it fails to do so and the Mortgagee is obligated to repay all or any portion of the LCDA/TBRA grant to the Metropolitan Council the Mortgagor shall be liable to and shall pay to the Mortgagee the amount required to be repaid.
18. Mortgagor will permit Mortgagee and its agents to enter and to authorize others to enter upon any or all of the Premises, or Mortgagor's records regarding the Premises at reasonable times to inspect the same, to perform or observe any covenants, conditions, or terms which Mortgagor shall fail to perform, meet or comply with and which Mortgagee is authorized to perform under the terms of this Mortgage, or for any other purpose in connection with the protection or preservation of Mortgagee's security, without thereby becoming liable to Mortgagor or any person in possession under Mortgagor.

[Signature page follows]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

MORTGAGOR

SIENNA GREEN I LIMITED PARTNERSHIP

By: **Aeon**, a Minnesota non-profit corporation
A General Partner

By: _____
Alan Arthur, President

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of December, 2009 by Alan Arthur, the President of Aeon, a Minnesota non-profit corporation, a General Partner of Sienna Green I Limited Partnership, a Minnesota limited partnership on behalf of the limited partnership.

SIGNATURE OF PERSON TAKING ACKNOWLEDGEMENT (TITLE OR RANK)

THIS INSTRUMENT WAS DRAFTED BY:

Faegre & Benson LLP (LALD)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000

EXHIBIT A

LEGAL DESCRIPTION

SIENNA GREEN I LIMITED PARTNERSHIP

Lot 1, Block 1 Sienna Green Addition, Ramsey County, Minnesota

EXHIBIT B TO MORTGAGE MORTGAGE LOAN RIDER

THIS RIDER is attached to and made a part of the promissory note and the mortgage or other document(s) evidencing, securing and governing a loan in the amount of Four Hundred Twenty-Six Thousand Five Hundred and No/100 Dollars (\$426,500.00) (the “Loan”) made by **THE CITY OF ROSEVILLE**, a Minnesota municipal corporation (“**Mortgagee**”) to **SIENNA GREEN I LIMITED PARTNERSHIP** (“Mortgagor”) for certain costs involved in the construction of one hundred twenty (120) units of affordable housing for families to be located in Roseville, Minnesota (the “Project”). The form of this Rider has been designed for use whether Mortgagor is a limited partnership, a land trust of which a limited partnership is the beneficiary, or otherwise. Accordingly, the Mortgagor, whether or not identified as Mortgagor, is sometimes referred to herein as the “Partnership”. The Amended and Restated Limited Partnership Agreement continuing the Partnership is referred to herein as the “Partnership Agreement”.

The parties hereto agree that the following covenants, terms and conditions shall be part of and shall modify or supplement each of the documents evidencing, securing, or governing the disbursement of the Loan (the “Loan Documents”), and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Loan Documents and this Rider, the following covenants, terms and conditions shall control and prevail:

1. **Partner Change.** Any assignment of either the limited partner’s or a general partner’s interest in the Partnership shall not constitute a default under any of the Loan Documents, nor require the consent of the Mortgagee.
2. **Monetary Default.** If a monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, Mortgagee shall give Mortgagor written notice of such default at the address provided by the Mortgagor as indicated in the Loan Documents. Mortgagor shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by Mortgagee under the Loan Documents, or such longer period of time as may be specified in the Loan Documents.
3. **Non-Monetary Default.** If a non-monetary event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder Mortgagee shall give Mortgagor written notice of such default at the address provided by the Mortgagor as indicated in the Loan Documents. If the default is reasonably capable of being cured within thirty (30) days, Mortgagor shall have such period to effect a cure prior to exercise of remedies by Mortgagee under the Loan Documents, or such longer period of time as may be specified in the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if Mortgagor (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Mortgagor shall have such additional time as is agreed to in writing by the Mortgagee

and Mortgagor to cure the default prior to exercise of any remedies by the Mortgagee. If Mortgagor fails to take corrective action or to cure the default within a time agreed to in writing by the Mortgagee and the Mortgagor, Mortgagee shall give Mortgagor and each of the general and limited partners of the Partnership written notice thereof. In no event shall Mortgagee be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the first notice of default is given, or such longer period of time as may be specified in the Loan Documents.

4. **Casualty, Condemnation, Etc.** In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part thereof, Mortgagor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefore, provided that (a) such proceeds are sufficient to keep the Loan in balance and rebuild the Project in a manner that provides adequate security to Mortgagee for repayment of the Loan or if such proceeds are insufficient then Mortgagor shall have funded any deficiency, (b) Mortgagee shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement, and (c) no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Mortgagee for repayment of the remaining balance of the Loan.
5. **Force Majeure.** There shall be no default for construction delays beyond the reasonable control of Mortgagor, provided that such delays do not exceed one hundred eighty (180) days, or such longer period of time as may be specified in the Loan Documents.
6. **Purchase Rights.** The execution and delivery of the purchase option and right of first refusal agreement described in the Partnership Agreement, if any, shall not constitute a default under the Loan Documents or accelerate the maturity of the Loan thereunder. Any requisite consent of the Mortgagee to (a) the exercise of said purchase option and right of first refusal agreement by the project sponsor identified therein, and to (b) the assumption without penalty of Loan obligations by the project sponsor and the release of Mortgagor from such obligations, shall not be unreasonably withheld. Subject to any such consent requirement, the exercise of rights under such agreement shall not constitute a default or accelerate maturity of the Loan.
7. **Loan Assumption.** If the purchase option and right of first refusal agreement described in the Partnership Agreement, if any, is not exercised and the Project is sold subject to low-income housing use restrictions similar to those contained in the Declaration of Restrictive Covenants dated December 27, 2007 and recorded on December 28, 2007 as Document Number 4072216, any requisite consent of Mortgagee to said sale, and to the assumption without penalty of loan obligations by the purchaser and the release of

Mortgagor from such obligations, shall not be unreasonably withheld.

8. **Lender Approvals, Etc.** In any approval, consent, or other determination by the Mortgagee required under any of the Loan Documents, Mortgagee shall act reasonably and in good faith.
9. **Subordination.** The Mortgagee acknowledges that Mortgagor intends to enter into, or concurrently with the execution and delivery of the Loan Documents are entering into, an extended use agreement, which constitutes the extended low-income housing commitment described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended. The Mortgagee agrees to subordinate the Loan and Mortgagee's rights under the Loan Documents executed in conjunction therewith to the relevant provisions of said extended use agreement. This subordination is being made in consideration of the allocation of tax credits to the Project, absent which the development of the Project would not occur, and this mortgage loan would not be made.
10. **Prohibition of Sale.** The Mortgagee shall not (a) sell, assign, transfer, or convey any such indebtedness (or any interest therein) to Federal National Mortgage Association ("Fannie Mae"), or (b) include such indebtedness (or any interest therein) in a pool of loans to be sold, assigned, transferred, or conveyed to Fannie Mae, without the Mortgagor's prior written consent.

DRAFT 12/2/09

FOR USE BY FILING OFFICER ONLY

**MASTER SUBORDINATION AGREEMENT
AND
ESTOPPEL CERTIFICATE**

THIS AGREEMENT shall have an effective date of December __, 2009, and is made and entered into by and among **SIENNA GREEN I LIMITED PARTNERSHIP**, a Minnesota limited partnership, with offices located at 1625 Park Avenue, Minneapolis, Minnesota 55404 (“**Borrower**”), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, with its offices located at 2690 Snelling Avenue North, Suite 220, Roseville, Minnesota 55113 (“**U.S. Bank**”), the **MINNESOTA HOUSING FINANCE AGENCY**, a Minnesota public body corporate and politic, with its offices located at 400 Sibley Street, Suite 300, St. Paul, Minnesota 55401 (“**MHFA**”), the **FAMILY HOUSING FUND**, a Minnesota non-profit corporation, with its offices located at 801 Nicollet Mall, Suite 1650, Minneapolis, Minnesota, 55402 (“**FHF**”), the **CITY OF ROSEVILLE**, a Minnesota municipal corporation, with an office located at 2660 Civic Center Drive, Roseville, Minnesota 55113 (“**City**”), the **RAMSEY COUNTY HOUSING AND REDEVELOPMENT AUTHORITY**, a Minnesota political subdivision, with its offices located at 250 Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102 (“**County HRA**”), the **CITY OF ROSEVILLE HOUSING AND REDEVELOPMENT AUTHORITY**, a Minnesota political subdivision, with its offices located at 2660 Civic Center Drive, Roseville, Minnesota 55113 (“**City HRA**”); and **AEON**, a Minnesota non-profit corporation, with offices located at 1625 Park Avenue, Minneapolis, Minnesota 55404 (“**AEON**”).

WITNESSETH:

WHEREAS, the Borrower has applied to and obtained certain loans from the other parties hereto and will use the proceeds of such loans and additional equity to fund the

construction and rehabilitation of a family rental housing development identified as Sienna Green (the “**Development**”), which will be situated on real property located in the City of Roseville, County of Ramsey, State of Minnesota, and legally described in **Exhibit A** attached hereto (the “**Property**”);

WHEREAS, the following is a listing and description of the loans that the Borrower has obtained from the other parties hereto (collectively, the “**Loans**”), which will be used to fund the construction and rehabilitation of the Development and the repayment of which will be secured by liens on the Property, and a listing of the documents that evidence and secure the repayment of such loans (collectively, the “**Loan Documents**”):

<u>Description of Loan</u>	<u>Amount of Loan</u>	<u>Loan Documents Evidencing and Securing Repayment</u>
A loan from U.S. Bank (“ U.S. Bank Loan ”)	[_\$9,500,000.00_]	Those documents listed on Exhibit B attached hereto.
A loan from MHFA (“ End Loan ”)	\$2,800,000.00 (deferred)	Those documents set forth on Exhibit C attached hereto.
A loan from MHFA (“ TCAP Loan ”)	\$3,676,500.00	Those documents listed on Exhibit D attached hereto.
A loan from the County HRA (“ County HRA Loan ”)	\$550,000.00	Those documents listed on Exhibit E attached hereto.
A loan from the City HRA (“ First City HRA Loan ”)	[_a portion of \$350,000.00_]	Those documents listed on Exhibit F attached hereto.
A loan from the City HRA (“ Second City HRA Loan ”)	[_a portion of \$350,000.00_]	Those documents set forth on Exhibit G attached hereto;
A loan from FHF (“ FHF Loan ”)	\$173,500.00	Those documents set forth on Exhibit H attached hereto.
A loan from the City (the “ LCDA/TBRA Loan ”)	\$426,500	Those documents set forth on Exhibit I attached hereto.
A loan from Aeon (“ GP Loan ”)	\$97,000	Those documents set forth on Exhibit J attached hereto.

WHEREAS, it is intended that the Loans, the corresponding Loan Documents, and other documents referred to herein and the liens created thereby shall have a certain order of priority; and

WHEREAS, it is further intended that the parties hereto wish to specify how the terms and conditions contained in the Loan Documents shall be interpreted in the event of a conflict or inconsistency therein.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, and in further consideration of the parties hereto making and entering into the Loans, the parties hereto agree as follows:

1. **Definitions.** For the purposes of this Agreement, the definitions set forth above shall be incorporated into this Section 1 by reference. The following terms shall have the meanings set out respectively after each such term, and such meaning shall be equally applicable to both the singular and plural forms of the term defined:

(a) **“County HRA Loan Documents”** – Those documents listed on **Exhibit E** attached hereto and incorporated herein by reference, which evidence and secure repayment of the County HRA Loan.

(b) **“End Loan Documents”** – Those documents listed on **Exhibit C** attached hereto and incorporated herein by reference, which evidence and serve repayment of the End Loan.

(c) **“Event of Default”** – A default or event of default as defined in the Subordinate Lender Documents or the U.S. Bank Loan Documents, as the context herein requires.

(d) **“FHF Loan Documents”** – Those documents listed on **Exhibit H** attached hereto and incorporated herein by reference, which evidence and serve repayment of the FHF Loan.

(e) **“First City HRA Loan Documents”** – Those documents listed on **Exhibit F** attached hereto and incorporated herein by reference, which evidence and secure repayment of the First City HRA Loan.

(f) **“GP Loan Documents”** – Those documents listed on **Exhibit J** attached hereto and incorporated herein by reference, which evidence and serve repayment of the GP Loan.

(g) **“LCDA/TBRA Loan Documents”** – Those documents listed on **Exhibit I** attached hereto and incorporated herein by reference, which evidence and serve repayment of the LCDA/TBRA Loan.

(h) **“Second City HRA Loan Documents”** – Those documents listed on **Exhibit G** attached hereto, which evidence and secure repayment of the Second City HRA Loan.

(i) **“Subordinate Lender Documents”** – The End Loan Documents, the TCAP Loan Documents, the County HRA Loan Documents, First City HRA Loan Documents, the Second City HRA Loan Documents, the FHF Loan Documents, the LCDA/TBRA Loan Documents, and the GP Loan Documents.

(j) **“Subordinate Lender Loans”** – The End Loan, the TCAP Loan, the County HRA Loan, First City HRA Loan, the Second City HRA Loan, the FHF Loan, the LCDA/TBRA Loan, and the GP Loan.

(k) **“Subordinate Lenders”** – MHFA, the County HRA, the City HRA, FHF, the City and Aeon.

(l) **“TCAP Loan Documents”** – Those documents listed on **Exhibit D** attached hereto and incorporated herein by reference, which evidence and secure repayment of the TCAP Loan.

(m) **“U.S. Bank Loan Documents”** – Those documents listed on **Exhibit B** attached hereto and incorporated herein by reference, which evidence and secure repayment of the U.S. Bank Loan.

2. **Consent to Loans, Liens and Encumbrances.** The parties hereto consent and agree to all of the Loans and further agree that all of the liens and/or encumbrances created by the Loan Documents shall be deemed to be permitted encumbrances under their respective Loan Documents, subject to the terms of this Agreement. The parties hereto further agree to execute any and all documents that any party hereto may reasonably request in order to document that such liens and/or encumbrances are permitted encumbrances under their respective Loan Documents, subject to the terms of this Agreement.

3. **Use of Documents.** The parties hereto agree and consent to the use of the Loan Documents set forth in the Exhibits attached hereto in conjunction with the Loan referenced in each Exhibit.

In addition, each party hereto, as to the Loan Documents that correspond to one of its Loans, does hereby covenant, warrant, consent and agree that (i) the described Loan Documents are all of the documents that the party has entered into regarding the corresponding Loan, (ii) there are no documents relating to such Loan other than the described Loan Documents for such

Loan, (iii) it will not enter into any other document for such Loan that would adversely impact any other party or parties hereto without the prior written consent of such party or parties, (iv) any existing document or documents that may come into existence in the future to which a party hereto is or becomes a party or from which a party hereto obtains a benefit that is different from the benefits that the other parties hereto have received or will receive, and that is not listed in the Loan Documents set forth herein for such Loan, shall be of no force or effect until approved and consented to in writing by all of the parties hereto upon which such document has, or will have, an adverse effect, and upon such written approval, such document(s) shall be automatically considered to be included in the Exhibit hereto setting forth the Loan Documents for such Loan. The other parties hereto shall execute any document that may reasonably be requested in order to include such document in such Exhibit. Notwithstanding the foregoing provisions of this Section 3, the U.S. Bank Loan Documents may be amended by the Borrower and U.S. Bank without the prior written consent of any of the Subordinate Lenders if the proposed amendments would not have a material adverse impact on the Subordinate Lenders, provided the Borrower shall deliver copies of all amendments of the amended U.S. Bank Loan Documents to the Subordinate Lenders.

4. **Subordination of Loans and Loan Documents.** Except as specifically provided below, each party hereto agrees to the following priority for the provisions contained in the Loan Documents and any and all liens and/or encumbrances created thereby and subordinates its respective Loan Documents and liens and/or encumbrances created thereby to those Loan Documents and liens and/or encumbrances that are listed as having a priority over its Loan Documents and liens and/or encumbrances created thereby:

<u>Loan Documents and Liens and/or Encumbrances Created Thereby</u>	<u>Party to the Loan Documents and Holder of Liens and/or Encumbrances Created Thereby</u>	<u>Order of Priority</u>
U.S. Bank Loan Documents	U.S. Bank	First
End Loan Documents	MHFA	Second
TCAP Loan Documents	MHFA	Third
County HRA Loan Documents	County HRA	Fourth
First City HRA Loan Documents	City HRA	Fifth
Second City HRA Loan Documents	City HRA	Sixth
FHF Loan Documents	FHF	Seventh
LCDA/TBRA Loan Documents	City	Eighth

The parties hereto acknowledge that the Development is intended to receive the benefits of Low Income Housing Tax Credits (the “**Credits**”) pursuant to Section 42 of the Internal Revenue Code (“**Section 42**”) and that it is a condition of the receipt of the Credits that the Borrower file a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits (the “**Declaration**”) substantially in the form attached hereto as **Exhibit K**. U.S. Bank, MHFA, the County HRA, the City HRA, FHF, the City and Aeon hereby consent to the terms of the Declaration as required by Section 2(c) of the Declaration and further agree that the Declaration is subordinate to the U.S. Bank Loan and U.S. Bank Loan Documents, the Subordinate Lender Loans and the Subordinate Lender Loan Documents, except to the extent required by the Declaration.

5. **U.S. Bank Priority.** In the event of the bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of the Borrower, or in the event the Borrower shall become the subject of any proceeding of any character under any federal or state bankruptcy or insolvency act or law, all moneys and other property allocated or allocable to the Subordinate Lender Loans and which would be payable or deliverable to any of the Subordinate Lenders in the absence of the provisions of this Agreement shall be paid and delivered directly to U.S. Bank for application by U.S. Bank to the U.S. Bank Loan until full payment of the U.S. Bank Loan with the excess, if any, to be paid to the Subordinate Lenders, in the order of priority as set forth herein, regardless of whether any of the Subordinate Lenders or U.S. Bank or both file a claim on behalf of the Subordinate Lenders in any such proceeding. U.S. Bank is hereby irrevocably appointed attorney in fact for the Subordinate Lenders with full power to act in the place and stead of the Subordinate Lenders in all matters relating to or affecting the Subordinate Lender Loans, including the right to make, present, file and vote such proofs of claim against the Borrower on account of all or any part of said Subordinate Lender Loans, as U.S. Bank may deem advisable and to receive and collect any and all dividends or other payments (“**Dividends**”) made thereon and to apply the same on account of the U.S. Bank Loan. The Subordinate Lenders will execute and deliver to U.S. Bank such instruments as may be required by U.S. Bank to enforce the Subordinate Loans, to effectuate the aforesaid power of attorney and to effect collection of any and all Dividends which may be made at any time on account thereof. As collateral securing payment of the U.S. Bank Loan, the Subordinate Lenders hereby transfer and assign to U.S. Bank all collateral security therefor to which the Subordinate Lenders may be entitled, provided that such transfer and assignment shall be effective (i) only in

the event of a bankruptcy of, or the appointment of a trustee, receiver or other representative or liquidator for any of the property of the Borrower, (ii) in the order of priority set forth herein, and (iii) only in the amount necessary for the full payment of the U.S. Bank Loan. U.S. Bank may file one or more financing statements concerning any security interest hereby created without the signature of any of the Subordinate Lenders.

6. **Limitations on Payment.** None of the Subordinate Lenders will receive, nor take action to collect or enforce, payment from the Borrower, and the Borrower will not make payment to any of the Subordinate Lenders, of any amounts outstanding under the Subordinate Lender Documents or any part thereof; except that the Borrower may pay regularly scheduled installments of principal and accrued interest under the Subordinate Lender Documents as long as, but only in the event that, no Event of Default then exists with respect to the U.S. Bank Loan Documents or the Subordinate Lender Documents, and any such regularly scheduled installments of principal and accrued interest may be retained by such Subordinate Lenders. Upon the occurrence of an Event of Default, each of the Subordinate Lenders agrees that it will not, without the prior written consent of U.S. Bank, receive or take any action to collect or enforce, payment of any of the Subordinate Lender Documents or any part thereof from any trustee in bankruptcy, receiver, or other liquidator of any part of the Borrower's property, or from any other person. Until payment in full of the U.S. Bank Loan, any payment received by any of the Subordinate Lenders pursuant to the immediately preceding sentence shall promptly be delivered to U.S. Bank for application to U.S. Bank Loan. The Subordinate Lenders and U.S. Bank agree to notify the other at the addresses set forth on page 1 hereto, within a reasonable time period, of their knowledge of an Event of Default under their respective loan documents with the Borrower.

7. **Pay Over of Monies.** In the event that any of the Subordinate Lenders receive any payment of the Subordinate Loans in violation of the terms of this Agreement, such payments shall be held in trust by the Subordinate Lender and the Subordinate Lender will forthwith pay over or deliver the same to U.S. Bank to be held by U.S. Bank as cash collateral securing the U.S. Bank Loan.

8. **Interpretation.** The parties hereto are entering into and executing this Agreement in order to establish the subordination and priority of the Loan Documents and any liens and/or encumbrances created thereby, and, accordingly, such parties hereby agree, understand, and acknowledge that the enforceability of this Agreement is not, and shall not be, restricted, limited, or impaired by the fact that not all of the parties hereto are signatories to each or any of the Loan Documents.

9. **Control by Most Stringent Requirements.** Notwithstanding the order of priority and subordinations granted herein or any provisions to the contrary contained herein, the parties hereto agree that if there are any inconsistencies contained herein or in the Loan Documents, the most stringent provision shall control.

10. **Absence of Events of Default and Compliance with Closing Requirements.** Each party hereto states, represents, and warrants that as to each of its individual Loans, (i) such Loans have been duly closed, (ii) there are no Events of Default, or events that with the passage of time could constitute an Event of Default, currently existing with respect to any of its Loans, and (iii) all of its Loans are in good standing.

11. **Use of Insurance and Condemnation Proceeds.** Notwithstanding any provisions to the contrary contained herein or in any of the Loan Documents, the parties hereto agree that any and all insurance and/or condemnation proceeds will be used first to repair or reinstate the Development. If there are any remaining proceeds, or if such amounts are insufficient to repair or reinstate the Development (as determined by Borrower and the holder of the U.S. Bank Loan), or if the Development cannot be repaired or reinstated (as determined by Borrower and the holder of the U.S. Bank Loan), then such proceeds shall be used to pay off the Loans in order of the priority of the Documents specified herein.

12. **Tax and Insurance Escrow.** Notwithstanding any provision contained in any of the Subordinate Lender Documents, the U.S. Bank Loan Documents shall supersede and govern all agreements of Borrower relating to escrowing of tax and insurance payments.

13. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Master Subordination Agreement and Estoppel Certificate on the date indicated immediately below their signatures.

BORROWER:

SIENNA GREEN I LIMITED PARTNERSHIP

By: **Aeon**, a Minnesota non-profit corporation
A General Partner

By: _____
Alan Arthur, President

Executed on the ____ day of _____, 2009.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2009 by Alan Arthur, the President of Aeon, a Minnesota non-profit corporation, a General Partner of Sienna Green I Limited Partnership, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

U.S. BANK:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2009 by _____ the _____, of U.S. Bank National Association, a national banking association, on behalf of the banking association.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

MHFA:

MINNESOTA HOUSING FINANCE AGENCY

By: _____
Robert L. Odman, Assistant Commissioner,
Multifamily

Executed on the _____ day of December, 2009.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of December, 2009, by, Robert L. Odman, Assistant Commissioner, Multifamily of the Minnesota Housing Finance Agency, on behalf of the Agency.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

COUNTY HRA:

**RAMSEY COUNTY HOUSING &
REDEVELOPMENT AUTHORITY**

By: _____
David Twa
Ramsey County Manager

Executed on the ____ day of _____, 2009.

RECOMMENDED FOR APPROVAL:

Community & Economic Development Department

Funds Available: _____
Fund No. _____

Budgeting & Accounting

APPROVED AS TO FORM AND INSURANCE:

Harry D. McPeak
Assistant Ramsey County Attorney

[Signature page to Master Subordination Agreement and Estoppel Certificate]

[illegible]

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by David Twa, the County Manager of Ramsey County Housing and Redevelopment Authority, a public body corporate and politic of the State of Minnesota, on behalf of such public body.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, the _____ of Ramsey County Housing and Redevelopment Authority, a public body corporate and politic of the State of Minnesota, on behalf of such public body.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by Harry D. McPeak, the Assistant County Attorney for Ramsey County, a public body corporate and politic of the State of Minnesota, on behalf of such public body.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

FHF:

FAMILY HOUSING FUND, a Minnesota
nonprofit corporation

By: _____
Its: _____

Executed on the ____ day of _____, 2009.

STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____,
2009, by _____, the _____ of Family
Housing Fund, a Minnesota nonprofit corporation, on behalf of said corporation.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

CITY HRA:

**CITY OF ROSEVILLE HOUSING &
REDEVELOPMENT AUTHORITY**

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

APPROVED AS TO FORM:

Name: _____
Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, the _____ of the City of Roseville Housing and Redevelopment Authority, a public body corporate and politic of the State of Minnesota, on behalf of such public body.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of December, 2009, by _____, the _____ of the City of Roseville Housing and Redevelopment Authority, a public body corporate and politic of the State of Minnesota, on behalf of such public body.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

CITY:

CITY OF ROSEVILLE, a Minnesota municipal corporation

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

APPROVED AS TO FORM:

Name: _____
Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, the _____ of City of Roseville, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, the _____ of City of Roseville, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

[Signature page to Master Subordination Agreement and Estoppel Certificate]

AEON:

AEON, a Minnesota non-profit corporation

By: _____
Alan Arthur, President

Executed on the ____ day of _____, 2009.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of
December, 2009 by Alan Arthur, the President of Aeon, a Minnesota non-profit corporation, on
behalf of the non-profit corporation.

Notary Public

This instrument was prepared by:
Faegre & Benson LLP (LALD)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

[Signature page to Master Subordination Agreement and Estoppel Certificate]

EXHIBIT A

LEGAL DESCRIPTION

The real property located in Ramsey County, Minnesota, and legally described as:

Lot 1, Block 1, Sienna Green Addition, according to the recorded plat thereof.

EXHIBIT B

U.S. BANK LOAN DOCUMENTS

The following documents each dated as _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT C

END LOAN DOCUMENTS

The following documents each dated as _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT D
TCAP LOAN DOCUMENTS

The following documents each dated as _____, 2009:

1. Loan Agreement between MHFA and the Borrower.
2. Promissory Note in the original principal amount of \$3,676,500 from the Borrower to MHFA.
3. Combination Mortgage, Security Agreement and Fixture Financing Statement from the Borrower to MHFA.
4. Assignment of Rents and Leases by Borrower in favor of MHFA.
5. Declaration of Land Use Restrictive Covenants by Borrower in favor of MHFA.
6. Regulatory Agreement between Borrower and MHFA.
7. Rent-Up Escrow Account Agreement between Borrower and MHFA.
8. Working Capital Reserve and Escrow Account Agreement between Borrower and MHFA.
9. UCC-1 Financing Statement from Borrower to MHFA for filing with the Minnesota Secretary of State pertaining to the TCAP Loan.
10. UCC-1 Financing Statement (all assets), filed with the Minnesota Secretary of State.
11. Guaranty by [_____] in favor of MHFA.
12. Disbursement Agreement between MHFA and Commonwealth Land Title Insurance Company.

[_LIST SUBJECT TO CHANGE_]

EXHIBIT E
COUNTY HRA LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT F

FIRST CITY HRA LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT G

SECOND CITY HRA LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT H

FHF LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

[_INSERT LOAN DOCUMENTS_]

EXHIBIT I

LCDA/TBRA LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

1. Promissory Note in the original principal amount of \$426,500 from the Borrower to the City.
2. Mortgage from the Borrower in favor of the City.

EXHIBIT J

GP LOAN DOCUMENTS

The following documents each dated as of _____, 2009:

1. Promissory Note from the Borrower in favor of Aeon.
2. Mortgage from the Borrower in favor of Aeon.

EXHIBIT K

FORM OF DECLARATION OF LAND USE RESTRICTIVE COVENANTS

DRAFT 12/2/2009

SIENNA GREEN
MASTER DISBURSEMENT AGREEMENT

THIS MASTER DISBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the first day of December, 2009 among **SIENNA GREEN I LIMITED PARTNERSHIP**, a Minnesota limited partnership, with offices located at 1625 Park Avenue, Minneapolis, Minnesota 55404 (“**Borrower**”), **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, with its offices located at 2690 Snelling Avenue North, Suite 220, Roseville, Minnesota 55113 (“**U.S. Bank**”), the **MINNESOTA HOUSING FINANCE AGENCY**, a Minnesota public body corporate and politic, with its offices located at 400 Sibley Street, Suite 300, St. Paul, Minnesota 55401 (“**MHFA**”), the **FAMILY HOUSING FUND**, a Minnesota non-profit corporation, with its offices located at 801 Nicollet Mall, Suite 1650, Minneapolis, Minnesota, 55402 (“**FHF**”), the **CITY OF ROSEVILLE**, a Minnesota municipal corporation, with an office located at 2660 Civic Center Drive, Roseville, Minnesota 55113 (“**City**”), the **RAMSEY COUNTY HOUSING AND REDEVELOPMENT AUTHORITY**, a Minnesota political subdivision, with its offices located at 250 Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102 (“**County HRA**”), the **CITY OF ROSEVILLE HOUSING AND REDEVELOPMENT AUTHORITY**, a Minnesota political subdivision, with its offices located at 2660 Civic Center Drive, Roseville, Minnesota 55113 (“**City HRA**”), **AEON**, a Minnesota non-profit corporation with offices located at 1625 Park Avenue, Minneapolis, Minnesota 55404 (“**AEON**”), and **COMMONWEALTH LAND TITLE INSURANCE COMPANY**, with its offices located at 222 South 9th Street, Suite 3060, Minneapolis, Minnesota 55402 (the “**Title Company**”).

RECITALS:

A. Borrower has applied to and obtained certain loans from the parties hereto and will use the proceeds of such loans and additional equity to acquire and fund the rehabilitation of a rental housing development identified as Sienna Green Apartments (the “**Development**”), situated on real property located in the City of Roseville, County of Ramsey, State of Minnesota, and legally described in Exhibit A attached hereto; and

B. The following is a listing and description of the loans, grants and other funds that Borrower has obtained or will obtain from the parties hereto (collectively, the “**Loans**”), which Borrower will use to fund the acquisition and renovation of the Development:

<u>Description of Funds</u>	<u>Amount of Funds</u>
1. U.S. Bank Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement.	[_ \$ 9,500,000.00 _]
2. End Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement.	\$ 2,800,000.00 (deferred)
3. County HRA Loan (as defined herein), none of	\$ 550,000.00

which has been disbursed prior to the effective date of this Agreement.

- | | | |
|-----|--|--------------------------------|
| 4. | First City HRA Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | [_a portion of \$ 350,000.00_] |
| 5. | Second City HRA Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | [_a portion of \$ 350,000.00_] |
| 6. | FHF Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | \$ 173,500.00 |
| 7. | LCDA/TBRA Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | \$ 426,500.00 |
| 8. | GP Loan (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | \$ 97,000.00 |
| 9. | LIHTC Equity (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | \$ 886,663.00 |
| 10. | Remaining Tax Credit Equity (as defined herein), none of which has been disbursed prior to the effective date of this Agreement. | \$ 7,979,971.00 (deferred) |

C. Borrower has entered into agreements with each of U.S. Bank, MHFA, FHF, City, County HRA, City HRA and Aeon (the “**Lenders**”) regarding disbursement of proceeds of the respective Loans; and

D. The parties hereto wish to establish how the Loans are to be disbursed and the order of priority for the disbursement thereof.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Definitions.** For the purposes of this Master Disbursement Agreement, the recitals and definitions set forth above shall be incorporated into this Section 1 by reference. In addition, the following terms shall have the meanings set out respectively after each such term, and such meaning shall be equally applicable to both the singular and plural forms of the term defined:

(a) **“City HRA Loan Disbursement Agreement”** – That agreement, whether verbal or written, between City HRA, Borrower and, if applicable, the Title Company which provides for disbursement of the First City HRA Loan and Second City HRA Loan.

(b) **“County HRA Loan”** – A loan from County HRA in the original principal amount of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00).

(c) **“County HRA Loan Disbursement Agreement”** – That agreement, whether verbal or written, between County HRA, Borrower and, if applicable, the Title Company which provides for disbursement of the County HRA Loan.

(d) **“End Loan”** – A loan to be funded by MHFA pursuant to the End Loan Commitment in the original principal amount of Two Million Eight Hundred Thousand and No/100 Dollars (\$2,800,000.00).

(e) **“End Loan Commitment”** – That certain Loan Commitment dated as of [____], 2009. Pursuant to the End Loan Commitment, MHFA will disburse the End Loan funds upon satisfaction of the conditions contained in the End Loan Commitment. Upon funding of the End Loan after satisfaction of all conditions to such funding in the End Loan Commitment, and pursuant to this Agreement, MHFA will deposit with the Title Company the End Loan funds from time to time.

(f) **“End Loan Disbursement Agreement”** – That agreement, whether verbal or written, between MHFA, Borrower and, if applicable, the Title Company which provides for disbursement of the End Loan.

(g) **“FHF Loan”** – A loan from FHF in an original principal amount of One Hundred Seventy-Three Thousand Five Hundred and No/100 Dollars (\$173,500.00).

(h) **“FHF Loan Disbursement Agreement”** – That agreement, whether verbal or written, between FHF, Borrower and, if applicable, the Title Company which provides for disbursement of the FHF Loan.

(i) **“First City HRA Loan”** – A loan from City HRA in the original principal amount of [a portion of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00)].

(j) **“GP Loan”** – A loan from Aeon in an original principal amount of Ninety Seventy Thousand and No/100 Dollars (\$97,000.00).

(k) **“GP Loan Disbursement Agreement”** – That agreement, whether verbal or written, between Aeon, Borrower and, if applicable, the Title Company which provides for disbursement of the GP Loan.

(l) **“LCDA/TBRA Loan”** – A loan from City under the LCDA and TBRA Loan Programs in the original principal amount of Four Hundred Twenty Six Thousand Five Hundred and No/100 Dollars (\$426,500.00).

(m) **“LCDA/TBRA Loan Disbursement Agreement”** – That agreement, whether verbal or written, between City, Borrower and, if applicable, the Title Company which provides for disbursement of the LCDA/TBRA Loan.

(n) **“LIHTC Equity Funds”** – The portion of the Tax Credit Equity Borrower is depositing with the Title Company as of the date hereof, totaling Eight Hundred Eighty-Six Thousand Six Hundred Sixty-Three and No/100 Dollars (\$886,663).

(o) **“Remaining Tax Credit Equity”** – The Tax Credit Equity minus the LIHTC Equity Funds, which will not be deposited with the Title Company but will be used by Borrower for deferred projects and costs.

(p) **“Second City HRA Loan”** – A loan from City HRA in the original principal amount of [a portion of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00)].

(q) **“Tax Credit Equity”** – A total of Eight Million Eight Hundred Sixty-Six Thousand Six Hundred Thirty-Four and No/100 Dollars (\$8,866,634.00) of low income housing tax credits funds.

(r) **“TCAP Loan”** – A loan from the TCAP Program in the original principal amount of Three Million Six Hundred Seventy-Six Thousand Five Hundred and No/100 Dollars (\$3,676,500.00).

(s) **“TCAP Loan Disbursement Agreement”** – That agreement, whether verbal or written, between MHFA, Borrower and, if applicable, the Title Company which provides for disbursement of the TCAP Loan.

(t) **“U.S. Bank Loan”** – A loan from U.S. Bank in an original principal amount of [Nine Million and No/100 Dollars (\$9,500,000.00)].

(u) **“U.S. Bank Loan Disbursement Agreement”** – That agreement, whether verbal or written, between U.S. Bank, Borrower and, if applicable, the Title Company which provides for disbursement of the U.S. Bank Loan.

2. **MHFA End Loan.** The parties hereto acknowledge that MHFA has only entered into the End Loan Commitment and that the loan documents to be executed and delivered in connection therewith have not been executed or delivered and that the conditions of the End Loan Commitment to disbursement of the End Loan funds have not yet been satisfied. The parties hereto understand and agree that the End Loan funds shall not be disbursed until all of the terms and conditions of the End Loan Commitment which are conditions precedent to disbursement of the End Loan Loan have been fully satisfied. Borrower and MHFA have requested the Title Company to supervise the disbursement of the End Loan funds hereunder, which are to be used to repay the U.S. Bank Loan.

3. **Order of Priority for Disbursement.** The Title Company has been, or will be from time to time, supplied with the proceeds of the Loans, and shall disburse such funds in the following order of priority:

Source of Funds

Order of Disbursement

First
Second
Third
Fourth
Fifth
Sixth
Seventh
Eighth
Ninth
Tenth

The parties hereto agree that the proceeds of the above-listed sources of funds shall be disbursed in the order indicated and that none of the proceeds of a source of funds shall be disbursed until all of the proceeds of funds that are to be disbursed prior thereto have been disbursed. The parties hereto further direct the Title Company to disburse the proceeds of the above-listed sources of funds in the order indicated, and the Title Company agrees to comply with such direction.

4. Disbursement of Additional Funds and Individual Loan Proceeds. When Borrower desires the disbursement of any or all of the proceeds of any of the sources of funds referred to herein, it will submit a draw request to the Lender supplying such funds. If the draw request meets the provisions contained in the applicable document that Borrower has entered into with the Lender supplying such funds and all other requirements imposed by such document have been satisfied, then such entity shall approve the draw request.

The Title Company shall not disburse any monies without first receiving a draw request approved by the Lender whose monies are to be disbursed, and upon receipt of an approved draw request the Title Company shall disburse the applicable monies in accordance with the provisions contained in the following documents:

<u>Source of Funds</u>	<u>Entity Supplying Funds</u>	<u>Disbursement Document</u>
U.S. Bank Loan	U.S. Bank	U.S. Bank Loan Disbursement Agreement
End Loan	MHFA	End Loan Disbursement Agreement
TCAP Loan	MHFA	TCAP Loan Disbursement Agreement
County HRA Loan	County HRA	County HRA Loan Disbursement Agreement

First City HRA Loan	City HRA	City HRA Loan Disbursement Agreement
Second City HRA Loan	City HRA	City HRA Loan Disbursement Agreement
FHF Loan	FHF	FHF Loan Disbursement Agreement
LCDA/TBRA Loan	City	LCDA/TBRA Loan Disbursement Agreement
GP Loan	Aeon	GP Disbursement Agreement

5. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Master Disbursement Agreement on the date indicated immediately below their signatures.

(Signature pages follow)

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

SIENNA GREEN I LIMITED PARTNERSHIP,
a Minnesota limited partnership

By: Aeon, a Minnesota non-profit corporation
Its: General Partner

By: _____
Alan Arthur, President

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

U.S. BANK NATIONAL ASSOCIATION, a
national banking association

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

MINNESOTA HOUSING FINANCE AGENCY, a
Minnesota public body corporate and politic

By: _____
Name: _____
Title: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

FAMILY HOUSING FUND,
a Minnesota non-profit corporation

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

CITY OF ROSEVILLE, a Minnesota municipal
corporation

By: _____
Name: _____
Title: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

RAMSEY COUNTY HOUSING AND
REDEVELOPMENT AUTHORITY, Minnesota
political subdivision

By: _____
Name: _____
Title: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

CITY OF ROSEVILLE HOUSING AND
REDEVELOPMENT AUTHORITY, Minnesota
political subdivision

By: _____
Name: _____
Title: _____

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

AEON, a Minnesota non-profit corporation

By: _____
Alan Arthur, President

Executed on the ____ day of _____, 2009.

**SIGNATURE PAGE
TO MASTER DISBURSEMENT AGREEMENT**

COMMONWEALTH LAND TITLE INSURANCE
COMPANY

By: _____
Name: _____
Its: _____

Executed on the ____ day of _____, 2009.

EXHIBIT A

LEGAL DESCRIPTION

The real property located in Ramsey County, Minnesota, and legally described as:

Lot 1, Block 1, Sienna Green Addition, according to the recorded plat thereof.