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Hennepin County, Minnesota  
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Deputy 120	Pkg ID 2028354E
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## SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 10<sup>th</sup> day of July, 2020, by and between the **CITY OF BLOOMINGTON**, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and **AEON VP BLOOMINGTON 172 LIMITED PARTNERSHIP**, a Minnesota limited partnership whose address is 901 North Third Street, Suite 150, Minneapolis, Minnesota 55401 ("Applicant").

### RECITALS

The City Council of the City of Bloomington, Minnesota, at its regular meeting of May 18, 2020, approved the rezoning of 1900 East 86<sup>th</sup> Street from R-4 to RM-24(PD), Preliminary Development Plans and Final Development Plans to construct 172 residential units in two four-story multi-family residential apartment buildings at a site legally described as set forth in **Exhibit A** ("Property"). Approval of the Preliminary Development Plans and Final Development Plans are subject to, and contingent upon, the Applicant's satisfaction of certain conditions relating to the Property, as well as all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval).

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property. It is intended to address the parties' compliance with the conditions the City Council placed on its May 18, 2020 approval. This Agreement does not address other issues relating to public improvements, assessments, storm water charges, or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference.

**NOW THEREFORE**, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows:

1. **Recitals.** The foregoing recitals are correct and are incorporated herein.
2. **Obligations of the Applicant.**

(a) **Compliance with Conditions of Approval.** The Applicant agrees that development of the Property shall be in strict conformance with all conditions set forth in the decision notice dated May 19, 2020 which is attached hereto and incorporated herein by reference as **Exhibit B.**

(b) **Conformance with Approved Plans.** The Applicant agrees that development of the Property shall also be in strict conformance with the Preliminary Development and Final Development Plans (Plans) as approved on May 18, 2020 by the City Council, all applicable code provisions, including but not limited to City Code, building code and fire code, and all applicable state and federal laws. In the event that there is a conflict between the Plans approved by the City Council and the regulatory terms of this Agreement, the more restrictive standard shall apply. It shall be the obligation of the Applicant to provide advance written notice

to the City of any aspect of the development that varies to any degree from the Plans approved by the City Council. The Applicant also agrees that any change to the Plans as approved by the City Council must be approved to the extent required in City Code Section 21.501.03, subdivisions (c) and (d).

(c) Compliance with Zoning Regulations. The Applicant agrees that any change to a use of the Property that is prohibited under the City's zoning regulations will require City Council approval of a revision of the zoning code and approval of a revision to the Plans.

3. **Obligations of the City.**

(a) Issuance of Permits. The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in the attached **Exhibit B**, and compliance with all applicable code provisions.

4. **Event of Default.**

(a) The term "event of default" shall mean, whenever it is used in this Agreement (unless the context provides otherwise), any of the following events:

(i) The failure of the Applicant to perform the obligations set forth in paragraph 2 ("Obligations of the Applicant") of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the Applicant of written notice of such default by the City.

(ii) The failure of the City to perform the obligations set forth in paragraph 3 ("Obligations of the City") of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the City of written notice of such default by the Applicant.

5. **Remedies of the City.**

(a) Whenever any event of default of the Applicant occurs, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance and observance of this Agreement.

(b) A Major Change in the Plans by the Applicant shall require City Council approval in accordance with Bloomington City Code Section 21.501.03(c), and the City reserves the right to initiate such proceedings. In addition, the City reserves its right to initiate rezoning of the Property if the Applicant changes the Property to a use prohibited in the approved zoning district. A Major Change is a change if:

(i) There is a change in the number of dwelling units;

(ii) There is a proposed increase in the floor area of structures that exceeds the lesser of 5% or 10,000 square feet;

- (iii) The change does not comply with City Code requirements;
- (iv) The change involves an alteration of a condition of approval previously attached by the City Council;
- (v) There is an alteration to a plan modification previously required by the City Council;
- (vi) There is a material change in exterior materials;
- (vii) The change would require any new traffic, environmental, storm water management, wetland, or utility studies.

6. **Remedies of the Applicant.** Whenever any event of default by the City occurs, the Applicant may take whatever action at law or in equity may appear necessary or desirable to the Applicant to enforce performance or observance of this Agreement.

7. **Notices and Demands.**

(a) A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party at the addresses listed below with receipt thereof presumed on the third business day thereafter. Either party may designate another address, or attorney for receipt of notices pursuant to this Agreement by designating in writing and forwarding such writing to the other party as provided in this section.

(b) Notices, demands, or other communications to a party under this Agreement shall be sufficiently given if sent by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party as follows:

*If to the City:*

City of Bloomington  
Attn: Director of Community Development  
1800 West Old Shakopee Road  
Bloomington, Minnesota 55431

*If to the Applicant:*

Aeon VP Bloomington 172 Limited  
Partnership  
Attn: Asset Management  
c/o Aeon  
901 North Third Street, Suite 150  
Minneapolis, MN 55401

8. **Amendment/Additional Documents.** This Agreement may be amended, in writing, as the parties may mutually agree. The plans, standards, stipulations, and other information constituting the development plan and the conditions placed on the approval of the plans as detailed in **Exhibit B** may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.03. Once approved by the City Council, subsequent development plans and conditions shall become part of this Agreement and shall be fully binding upon the parties as if set forth herein. All such additional documents affecting the development and use of this property shall be kept on file as a public record by the City of Bloomington, Director of Community Development.

9. **Application of City Code Provisions, Rules, Regulations and Policies.** This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new City Code provisions, rules, regulations or policies (provided that new provisions shall not require changes in the Plans after a building permit is issued). This Agreement shall not prevent the City from denying or conditionally approving any subsequent development application on the basis of such existing or new City Code provisions, rules, regulations or policies. No rights shall be deemed to vest in the Applicant or any other person, under any site development agreement, except as expressly set forth therein.

10. **Relationship of the Parties.** No partnership or joint venture is established between the parties hereto by or under this Agreement or any agreement referenced herein.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present Applicants, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Applicant which relate to such portions of the Property and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Agreement relating to the transferred portion of the Property.

12. **Recording of Document.** This Agreement shall run with the Property and shall be recorded in the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, by the Applicant with proof thereof shown to the City prior to its issuance of any permits hereunder. This Agreement shall terminate the issuance of final certificates of completion for the building constructed on the Property. In such event, the City agrees to execute a recordable transfer.

13. **Governing Law.** The City and Applicant agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

14. **Entire Agreement.** This Agreement and the Plans represent the entire Agreement between the Applicant and the City. All previous agreements, whether written or oral, are superseded by and merged into this Agreement. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto.

15. **Severability.** If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be

unreasonable for either party. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.

16. **Signatures/Execution.** Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City and the County require execution of multiple originals of this Agreement: one (1) original for City records; one (1) original for Applicant's records; one (1) original for recording.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

*[left blank intentionally; signature pages follow]*

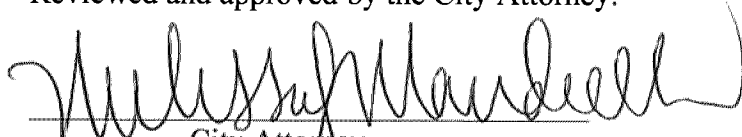
Signature Page for the City of Bloomington, Minnesota

CITY OF BLOOMINGTON

DATED: 7/6/20


By:   
James D. Verbrugge  
City Manager

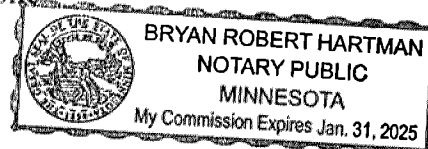
Reviewed and approved by the City Attorney.

  
City Attorney

STATE OF MINNESOTA                    )  
  ) SS.  
COUNTY OF HENNEPIN                )

This instrument was acknowledged before me on this 6<sup>th</sup> day of July, 2020,  
by James D. Verbrugge, the City Manager of the City of Bloomington, under the laws of the State  
of Minnesota, on behalf of the City of Bloomington.

  
Notary Public



Signature Page for APPLICANT

APPLICANT

AEON VP BLOOMINGTON 172 LIMITED  
PARTNERSHIP

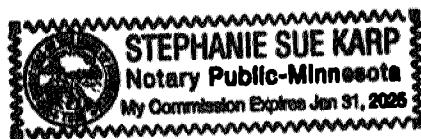
By: Aeon VP Bloomington I LLC  
Managing General Partner

DATED: July 10, 2020

By: Caroline Horton  
Caroline Horton, Vice President/Treasurer

STATE OF MINNESOTA )  
COUNTY OF Hennepin ) ss.

This instrument was acknowledged before me this 10<sup>th</sup> day of July, 2020, by Caroline Horton, the Vice President/Treasurer of Aeon VP Bloomington I LLC, a Minnesota limited liability company, the Managing General Partner of Aeon VP Bloomington 172 Limited Partnership, a Minnesota limited partnership, on behalf of the limited liability company and limited partnership.



[Signature]  
Notary Public

This instrument was drafted by:  
Legal Dept. – City of Bloomington  
1800 W. Old Shakopee Rd.  
Bloomington, MN 55431  
(952) 563-8753



**EXHIBIT A**  
**TO SITE DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF BLOOMINGTON & APPLICANT**

Unit 1 and Unit 2, Common Interest Community No. 2125, Aeon VP  
Condominium, Hennepin County, Minnesota.

**EXHIBIT B**



May 19, 2020

Aeon  
ATTN: Leslie Roering  
901 North 3rd Street, Suite #150  
Minneapolis, MN 55401

RE: Case # PL202000069 – Rezoning from R-4 to RM-24(PD), Preliminary and Final Development Plans for two four-story apartment buildings with 172 total units  
1900 East 86th Street

Ms. Roering:

At its regular meeting of May 18, 2020, the City Council approved the Rezoning of 1900 East 86th Street from R-4 to RM-24(PD), Preliminary Development Plans, and Final Development Plans to construct 172 new residential units in two four-story multi-family residential apartment buildings at an existing multi-family residential site (Case # PL202000069).

The approval of the Preliminary and Final Development Plans is subject to conditions that must be satisfied prior to the issuance of a Grading, Footing, Foundation or Building Permit. While the conditions list includes selected City Code requirements of particular interest, the development must comply with all applicable local, state and federal codes.

1. Prior to Permit A Site Development Agreement, including all conditions of approval, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
2. Prior to Permit A building permit for all required changes to accommodate the proposed use be obtained.
3. Prior to Permit A Construction Management Plan must be submitted for review and approval by the City.
4. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
5. Prior to Permit Access, circulation and parking plans must include modifications discussed in the staff report and must be approved by the City Engineer.
6. Prior to Permit Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
7. Prior to Permit Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
8. Prior to Permit Storm Water Management Plan must be provided that demonstrates compliance with the City's Comprehensive Surface Water Management Plan. A maintenance plan must be signed by the property owners and must be filed of record with Hennepin County.

PLANNING DIVISION  
1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027  
PH 952-563-8920 FAX 952-563-8949 MN Relay 711

AN AFFIRMATIVE ACTION/EQUAL  
OPPORTUNITIES EMPLOYER

9. Prior to Permit A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided if greater than one acre is disturbed (State of MN and Federal regulation).
10. Prior to Permit An erosion control surety must be provided (16.08(b)).
11. Prior to Permit Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Minnesota State Fire Code Sec. 508).
12. Prior to Permit A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the City (State of MN).
13. Prior to Permit A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
14. Prior to Permit Landscape plan, including tree inventory for trees to remain and modifications discussed in the staff report, must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
15. Prior to Permit Parking lot and site security lighting plans must be revised to satisfy the requirements of Section 21.301.07 of the City Code.
16. Prior to Permit All trash and recycling storage facilities for the new residential buildings must comply with City Code (Sec. 21.301.17). Trash and recycling storage enclosures for the existing apartments must be fully enclosed in locations approved in the Final Development Plans.
17. Prior to Permit A FAA No Hazard Determination (Form 7460-1) must be submitted to the Community Development Director for any crane or structure on site that exceeds 60 feet in height above existing grade (MSP Airport Zoning Ordinance Section VIII (A)).
18. Prior to C/O Buildings shall meet the requirements of the Minnesota State Fire Code Appendix L (Emergency Responder Radio Coverage) adopted through City Ordinance to have approved radio coverage for emergency responders based upon the existing coverage levels of the public safety communication systems.
19. Prior to C/O Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
20. Prior to C/O Building must be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
21. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
22. Prior to C/O The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy.
23. Ongoing Development must comply with the Minnesota State Accessibility Code.
24. Ongoing Opportunity housing units may not be charged fees for access to parking on-site.
25. Ongoing An easement encroachment agreement must be completed for the existing freestanding sign along East 86th Street. All other signage must be in

- compliance with the requirements of Chapter 19, Article X of the City Code.
- 26. Ongoing All rooftop equipment must be fully screened (Sec. 19.52.01).
  - 27. Ongoing Three foot high parking lot screening must be provided along East Service Road as approved by the Planning Manager (Sec. 19.52).
  - 28. Ongoing All construction related loading, unloading, pick-up, drop-off, staging, stockpiling or parking must occur on site and off public streets.
  - 29. Ongoing All existing nonconforming sidewalks and parking islands on-site approved to remain in the Final Development Plans must be brought into conformance with width and design requirements should they be replaced in the future (Sec. 21.301.04 and Sec. 21.301.06).

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP  
Planning Manager

C: David Haaland, Urbanworks Architecture LLC