



*HEDRA Memorandum*  
**REVISED**

**To: HEDRA Commissioners**  
**From: John Hinzman, Community Development Director**  
**Date: December 21, 2017**  
**Item: Great Rivers Landing Approvals – Former Hudson Manufacturing Building (200 West 2<sup>nd</sup> Street)**

**Action Requested:**

Hold a public hearing and adopt the attached resolution authorizing the following actions related to the sale and development of the Hudson Manufacturing Building located at 200 West 2<sup>nd</sup> Street:

- Authorize Signature of the First Amendment to the Purchase and Development Agreement
- Authorize Signature of First Amendment to the Public Use Agreement
- Authorize Signature of the Parking Use and Maintenance Agreement
- Execute closing documents and disburse funds

Confluence Development proposes to create Great River Landing, a renovation of the existing 100,000 s.f. building into a hotel, apartments, and 20,000 s.f. of retail and events space. The site is currently owned by the Hastings Economic Development and Redevelopment Authority (HEDRA).

The City Council reviewed the request on December 18, 2017, tabling action until the January 2, 2018 meeting. Final documents were not presented to the Council until hours before the meeting.

**Given the timing of document receipt, HEDRA may also opt to delay action. Upon tabling of the request, we would likely schedule a special meeting on January 4, 2018 to take final action.**

**Background Information:**

On November 12, 2015, the HEDRA authorized signature of the Purchase and Development Agreement, Public Use Agreement, and sale of the property. The City and Confluence encountered delays in transfer of the property. Upon execution of the agreements all parties are confident that transfer and development of the property can occur shortly.

## First Amendment to Purchase and Development Agreement

The Purchase and Development Agreement establishes obligations for transfer of the property. Changes incorporated into the First Amendment include:

### Commencement and Completion Dates

Closing Date	January 22, 2018
Submittal of Plans for Building Permit	August 1, 2018
Start of Construction	30 days from issuance of Building Permit
Substantial Completion	December 15, 2019

The August 1, 2018 date for submittal of plans for building permit is later than originally comprehended. The date recognizes Confluence's need to obtain historic tax credit Part 2 approval prior to finalizing construction documents and submitting for a building permit. Confluence agrees to use reasonable efforts to complete a substantial portion of improvements by December 15, 2018. Given the potential for construction not to begin until as late as September 2018, it is unclear how much construction will take place in 2018. **The date makes it less likely there will be significant value attributed to the partially completed improvements with the assessor valuation prior to 1/2/19 resulting in some TIF proceeds starting in 2020. This could result in the City paying a substantial portion of an additional year's worth of bond payment, estimated at \$228,681 annually.**

**Environmental Obligations** – Requirements to fulfill certain environmental cleanup prior to transfer of the property have been postponed. The City will be obligated to perform the following actions as part of the agreement:

<b>Vapor Intrusion Mitigation System (VIMS) Installation</b> – Provides for active venting of existing soil vapor. To be constructed as part of the flooring and HVAC installation	\$792,690
<b>Sealing of PCB Contaminated Wood Joists and Ceilings</b> – To be completed as part of building renovation	\$150,460

The City's cost for VIMS installation includes the "Option B" scenario discussed at the November 20<sup>th</sup> Workshop providing for removal of the existing floor and floor trusses.

**Pre-Closing Obligations** – Confluence has agreed to eliminate the following conditions prior to sale; with obligations to be completed after transfer:

- Approval of State Historic Preservation Office (SHPO) and National Park Service related to construction of improvements and historic tax credits.
- Approval of Construction plans and permits by the City.
- Removal of certain environmental approvals including VIMS installation and internal wood surface PCB encapsulation.

The contingencies referenced above are being waived to allow the conveyance of the property to occur; however they are not waived as a contingency for the redeveloper's obligations for initiation of construction. **The result is the redeveloper could still exercise a contingency and effectively cancel the deal after closing but before the initiation of construction if any of the conditions are not met.**

**Mortgage and Liens** – The amendment contemplates a longer duration between transfer of the property and construction. This creates some additional risk to the City of having the property returned in a case of default with liens or mortgages against a portion of the property. To reduce this risk Section 9 prohibits the redeveloper from allowing any mortgages or liens against the property after closing but before the building permit is issued and any contingencies for commencement of construction are waived or satisfied.

**Parking Ramp Structure Grant** – The agreement authorizes use of an existing \$1,485,000 Metropolitan Council LCDA grant for construction of a 119 stall parking ramp on the First National Bank Building site.

### **First Amendment to Public Use Agreement**

The Public Use Agreement establishes public use of privately owned open space located between the Hudson Building and the Mississippi River. Changes incorporated into the First Amendment include:

- Revision to the site plan and legal description.

### **Parking Use and Maintenance Agreement – Former 1<sup>st</sup> National Bank Property**

Confluence has purchased the former 1<sup>st</sup> National Bank property located at 119 West 2<sup>nd</sup> Street and seeks to construct a 119 stall parking structure on the property. The Parking Use and Maintenance Agreement establishes use and obligations including:

- Granting of an easement to allow for public parking within the entire private structure.
- Developer will undertake maintenance of the structure.
- City will participate in funding routine maintenance costs for the 83 upper level stalls (70%). The potential annual cost based on \$100 a stall would be \$8,330.
- City will maintain general liability insurance for the structure.
- Developer may close parking during specified times on the 36 stalls on the lower level of the structure for not more than 30 days per year and 5 days per month. The upper level of the structure will not subject to closure restrictions.

## Post Transfer Approvals

After transfer of the property Confluence would need the following approvals prior to construction:

- Parking Structure – Site Plan Approval
- Hudson Building – Landscape and Grading Approval
- Hudson Building—Construction Plans

## Financial Analysis

### Financial Capacity

The Environmental remediation is anticipated to cost a total of \$2.7 million when finished. To-date we have received many grants to fulfill our clean-up needs.

<b>Environmental Remediation funding</b>	<b>Amount</b>
Grants awarded to date	\$ 829,559
HEDRA payments	\$ 596,085
Grants in process	\$ 898,995
Total funding to date	\$2,324,639
Additional monies	<b>\$ 391,803</b>
Total project cost to City	<b>\$2,716,442</b>

Additional monies include RAM in the amount of \$158,373, and the Clean Vapor Option B request for an additional \$233,430.00 above the \$125,360.00 cost of additional work.

HEDRA currently has a cash balance of around \$1.1 million, with much of the \$596,085 being covered in prior years or already in 2017. HEDRA will fund the additional \$391,803. We conservatively project the HEDRA cash balance to be in the \$600,000 range at the conclusion of this project, if we receive the additional grant monies we have applied for. The City has applied for a \$222,374.04 grant from MN DEED and will apply for a \$250,000 grant to Dakota CDA in January. A recent \$233,039 grant request from Metropolitan Council was denied.

### Opportunity Cost

Currently the City is levying \$228,681 each year to make the bond payments on the building. Once the building is developed, the City will be able to reduce the levied amount as the value of the property increases and increment starts coming in. We can expect a two year delay on increment from the time development starts.

Carrying costs on the building are primarily reflected in heating, electric and staff time. Over the last 6 years we have averaged around \$21,000 per year on the utility cost of the building. For every month we keep the facility we are paying an average of \$1,700 a month. Staff time is around \$6,000 a month with around 80 hours being put in between Administration, HEDRA, and Finance.

**Grant Funding**

The City has received 19 grants totaling \$4.6 million in grant funding from a variety of entities including Dakota County CDA, Metropolitan Council, US EPA, and MN DEED. Grant funding has been used to assist with acquisition, demolition, environmental cleanup, and site amenities.

**Attachments:**

- Resolution
- Location Map
- Concept Plan
- First Amendment to Purchase and Development Agreement
- First Amendment to Public Use Agreement
- Parking Use and Maintenance Agreement

**HASTINGS ECONOMIC DEVELOPMENT  
AND REDEVELOPMENT AUTHORITY**

**RESOLUTION NO. 2017-08**

**A RESOLUTION AUTHORIZING CERTAIN ACTIONS RELATED TO THE  
REAUTHORIZATION OF SALE OF THE FORMER H.D. HUDSON  
MANUFACTURING PROPERTY TO CONFLUENCE DEVELOPMENT**

Commissioner \_\_\_\_\_ introduced the following Resolution and moved its adoption:

**WHEREAS**, the City of Hastings (“City”) and Hastings Economic Development and Redevelopment Authority (“Authority”) have received a proposal from Confluence Development LLC (the “Developer”) pursuant to which the Authority would convey to the Developer certain real property owned by the Authority known as the Hudson Manufacturing Site, generally located at 200 West 2<sup>nd</sup> Street, containing +/-3.8 acres in order to allow the Developer to renovate the existing building on the property into a commercial and housing development (the “Improvements”); and

**WHEREAS**, the Authority has determined that construction of the Improvements is in the best interests of the Authority and the City and that it will result in the renovation of a blighted property; and

**WHEREAS**, On November 12, 2015 the Authority adopted Resolution No. 2015-13 Authorizing Sale of the Hudson Manufacturing Site to the Developer subject to final execution of the Purchase and Development Agreement; and

**WHEREAS**, On January 18, 2016 the Purchase and Development Agreement was executed by all parties; and

**WHEREAS**, The City, Authority, and Developer encountered delays in transferring the property per the terms of the Purchase and Development Agreement; and

**WHEREAS**, A First Amendment to the Purchase and Development Agreement has been drafted amending the terms for transfer of the Hudson Manufacturing Site.

**WHEREAS**, A First Amendment to the Public Use Agreement has been drafted amending the terms for public use of the private open space; and

**WHEREAS**, A Parking Use and Maintenance Agreement has been drafted establishing obligations for construction of a parking structure to be located on property owned by Confluence generally located at 119 West 2<sup>nd</sup> Street.

**WHEREAS**, The City Council has adopted Resolution No. \_\_\_\_\_ authorizing signature of the First Amendment to the Purchase and Development Agreement, First

Amendment to the Public Use Agreement, and Parking Use and Maintenance Agreement and reauthorizing sale of the Hudson Manufacturing Site to the Developer; and

**WHEREAS**, A public hearing to consider a Business Subsidy for the sale of the property to the Developer as required by Minnesota Statutes, Section 469.105, and 116J.993 through 116J.995 in connection with Tax Increment Financing District No. 7 has been conducted by the Authority with notice of the hearing published per Minnesota State Statutes; and

**NOW THEREFORE BE IT RESOLVED BY HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY AS FOLLOWS:**

The Authority does hereby authorize execution of the First Amendment to the Purchase and Development Agreement reauthorizing sale of the property and further authorizes the President, Executive Director, and Secretary to execute documents related to sale of the property per the terms of the First Amendment to the Purchase and Development Agreement including specifically the Parking Use and Maintenance agreement and the Public Use Agreement, and to disburse funds as the City is obligated to do for the closing under the Purchase and Development Agreement and the First Amendment and required deeds, affidavits, settlement statements, certificates of real estate value, compliance documents, bills of sale.

Commissioner \_\_\_\_\_ moved a second to this resolution and upon being put to a vote it was adopted by all Commissioners present.

Adopted by the Hastings Economic Development and Redevelopment Authority on December 21, 2017, by the following vote:

Ayes:  
Nays:  
Absent:

ATTEST:

\_\_\_\_\_  
Dennis Peine, President

\_\_\_\_\_  
Morgan Hill  
Secretary

This instrument drafted by:  
City of Hastings (JH)  
101 4th St. E.  
Hastings, MN 55033

LOCATION MAP







## FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

**THIS FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT (the "Amendment")**, is made on or as of the \_\_\_\_ day of December, 2017, by and among the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic (hereinafter referred to as the "**Authority**"), having its principal office at 101 Fourth Street East, Hastings, Minnesota 55033, the City of Hastings, a home rule charter city under the laws of the State of Minnesota (hereinafter referred to as the "**City**"), having its principal office at 101 Fourth Street East, Hastings, Minnesota 55033, and Confluence Development LLC, a Minnesota limited liability company (hereinafter referred to as the "**Redeveloper**"), having its principal office at 101 East 10<sup>th</sup> Street, Suite 300, Hastings, Minnesota 55033.

**WITNESSETH:**

### General Background

**WHEREAS**, the Authority, the City and the Redeveloper have entered into that certain Purchase and Development Agreement dated January 18, 2016 (the "**Agreement**") pursuant to which the Authority agreed to sell certain real property to the Redeveloper, for the purpose of rehabilitating the building located on such property. Words and terms used herein and not otherwise defined shall have the meanings assigned to them in the Agreement.

**WHEREAS**, subsequent to the execution of the Agreement, the Redeveloper has proposed modifications to the Project, the Construction Plans, the Site Plan, the Private Park Improvements and the Minimum Improvements, as those terms are each defined in the Agreement.

**WHEREAS**, the Redeveloper's revised plans include rehabilitation of the existing structure on the Redevelopment Property into a mixed use development including an approximately 67-room hotel, approximately 22 apartments or short-term rental units, a banquet facility, a restaurant, and other miscellaneous commercial uses, all as set forth in more detail on the site plan and associated documents attached hereto as First Amendment-Schedule A (the "**Revised Project Scope**").

### Environmental Matters

**WHEREAS**, there are several recognized environmental conditions (RECs) associated with the Redevelopment Property, and the Redevelopment Property has been entered into the Minnesota Pollution Control Agency's Voluntary Investigation and Cleanup (VIC) Program.

**WHEREAS**, in connection with the above-referenced RECs and enrollment of the Redevelopment Property into the VIC program, under the Agreement, the Authority agreed to fully implement a response action plan (RAP) approved by the State with regard to the

Redevelopment Property and to fully resolve any violations of Environmental Laws or Regulations to the reasonable satisfaction of the Redeveloper.

**WHEREAS**, the original RAP—dated October 2013 and approved by the Minnesota Pollution Control Agency via letter to Mr. John Hinzman, Executive Director of the Authority, from Shanna Schmitt, P.G., Project Manager/Hydrogeologist dated November 1, 2013 (the “**Original RAP**”)—has, subsequent to execution of the Agreement, been modified and supplemented by certain additional documents, specifications, and plans related to the environmental remediation of the Redevelopment Property, including (1) a July 2016 Flooring Management and Abatement Work Plan, attached hereto as First Amendment-Schedule B (the “**Initial Flooring Management Plan**”); (2) a March 2017 Flooring Management and Abatement Work Plan Addendum attached hereto as First Amendment-Schedule C (the “**Flooring Management Addendum**” and collectively with the Initial Flooring Management Plan, the “**Flooring Management Plan**”); (3) a Vapor Intrusion Mitigation Plan Design prepared by Clean Vapor, LLC for the Former H.D. Hudson Manufacturing Facility dated September 2, 2016 and revised March 20, 2017 and attached hereto as First Amendment-Schedule D (the “**Original VIMS Design**”); and (4) that certain letter from Thomas E. Hatton, Project Director, of Clean Vapor LLC to John Hinzman, Community Development Director of the City of Hastings, dated October 27, 2017 and supplemented by the letter between the same parties dated December \_\_, 2017 [I would rather include only the second letter but will need to see the form of this letter to reach a conclusion] (the “**VIMS Addendum**” and collectively with the Original VIMS Design, the “**VIMS Plan**”) each of which the parties have agreed are incorporated into and shall become part of the RAP as defined in Section 3.6(a) of the Agreement. The Flooring Management Plan and the VIMS Plan shall be collectively referred to herein as the “**RAP Amendments**”.

**WHEREAS**, the Agreement provides that (1) the RAP shall be fully implemented; (2) all violations of Environmental Laws or Regulations shall be fully resolved; and (3) the Environmental Letters shall have been obtained prior to conveyance of the Redevelopment Property to the Redeveloper, unless the Authority, the City, and the Redeveloper mutually determine and agree that certain environmental remediation actions required to fully implement the RAP, fully resolve violations of Environmental Laws or Regulations, and obtain the Environmental Letters shall occur subsequent to conveyance of the Redevelopment Property to the Redeveloper.

**WHEREAS**, subject to the terms and conditions set forth herein, the Authority, the City, and the Redeveloper have agreed to terms upon which the Redevelopment Property shall be conveyed to the Redeveloper prior to full implementation of the RAP, as is set forth herein.

**WHEREAS**, even after full implementation of the RAP, there will remain certain residual contamination on the Redevelopment Property, as is described in the [Draft RAP Implementation Report? Attached hereto as First Amendment-Schedule E]. Additionally, the sub-slab vapor intrusion mitigation system installed in accordance with the VIMS Plan will be required to remain operational after implementation of the RAP.

**WHEREAS**, as a result of the foregoing, the MPCA has determined that an environmental covenant and easement (the “**Environmental Covenant**”) is required for the Redevelopment Property.

**WHEREAS**, the Redeveloper has agreed to enter into an Environmental Covenant, the form of which shall be negotiated between the Redeveloper, the Authority, and the State and shall be reasonably acceptable to the Redeveloper, the Authority, and the State prior to conveyance of the Redevelopment Property to the Redeveloper.

### **Plat and Survey Matters**

**WHEREAS**, a survey of the Redevelopment Property has identified certain minor encroachments by the buildings on the Redevelopment Property onto the northerly land owned by the Authority and onto the public right of way for Second Street, and additional minor encroachments of existing public improvements upon the Redevelopment Property (referred to collectively as the “**Encroachments**”), as more fully described and depicted on the attached First Amendment-Schedule F (the “**Survey**”), and the parties desire to execute and deliver documents as necessary to address these Encroachments to the reasonable satisfaction of the Authority, the City, and the Developer.

**WHEREAS**, in connection with resolving the encroachment of the existing building onto northerly land owned by the Authority and to more clearly delineate the Riverfront Trail from the Private Park Improvements, the Authority, the City, the County, and the Redeveloper have approved a final plat for the Redevelopment Property substantially in the form attached hereto as First Amendment Schedule G (the “**Revised Final Plat**”).

**WHEREAS**, in connection with the Revised Final Plat, the Authority and the City have agreed to convey to the Redeveloper certain real property located north of the northerly boundary line of the Redevelopment Property, as such term was defined and described in the original Agreement. The additional property to be conveyed to the Redeveloper constitutes the northerly portion of Lots 3 and 4, Great Rivers Landing, on the Revised Final Plat and is legally described on the attached First Amendment-Schedule H (the “**Additional Property**”).

### **LCDA Matters**

**WHEREAS**, a Metropolitan Council LCDA Grant in the amount of \$980,000.00 was awarded to the City via action by the Metropolitan Council on or about January 14, 2015 to be used for construction of the Riverfront Trail and the Private Park Improvements (the “**LCDA Park Grant**”), as is described in the Agreement.

**WHEREAS**, the LCDA Park Grant has an original expiration date of December 31, 2017, but the City has obtained—or will obtain prior to conveyance of the Redevelopment Property—the final written consent of the Metropolitan Council to extension of the expiration date of the LCDA Park Grant until December 31, 2018.

**WHEREAS**, in addition to the LCDA Park Grant, the City, with the assistance of the Redeveloper, applied for and—after execution of the Agreement—received the LCDA Parking Grant in the amount of \$1,485,000.00 via action by the Metropolitan Council on or about December 9, 2015, as is described in the Metropolitan Livable Communities Act Grant Agreement dated December 9, 2015 (the “**LCDA Parking Grant Agreement**”).

**WHEREAS**, under the Agreement, subject to receipt of the LCDA Parking Grant, the Redeveloper agreed to construct structured parking on the Redevelopment Property, including at least 99 parking spaces dedicated for use by the general public at no cost to the general public (the “**Parking Ramp**”).

**WHEREAS**, the Redeveloper has revised its plans with regard to construction of the Parking Ramp and has determined (i) to dedicate the entire Parking Ramp for use by the general public (subject to the restrictions and limitations described in the Parking Use Agreement, as hereinafter defined) and (ii) to construct the Parking Ramp on adjacent property now owned by the Redeveloper and legally described as Lots 2, 3 and 4, Block 12, Town of Hastings, Dakota County, Minnesota (the “**FNB Property**”) rather than on the Redevelopment Property.

**WHEREAS**, subject to the terms and conditions set forth herein and in the Parking Use Agreement, the City and Authority have agreed to the foregoing changes, and the Metropolitan Council has consented to the relocation of the Parking Ramp and the terms of the Parking Use Agreement related to limited private use of the lower portion of the Parking Ramp.

#### **Timing and Other Matters**

**WHEREAS**, the Agreement provides dates by which the Redevelopment Property shall be conveyed to the Redeveloper, by which construction of the Minimum Improvements shall be commenced and completed, and by which various contingencies set forth in the Agreement must be satisfied or waived.

**WHEREAS**, the Authority, the City and the Redeveloper have agreed to extend the date by which the conditions precedent set forth in the Agreement must be satisfied, to extend the dates by which construction of the Minimum Improvements shall be commenced and completed, and to waive certain conditions to closing on conveyance of the Redevelopment Property, all as set forth in more detail herein.

**WHEREAS**, the City, the Authority, and the Redeveloper desire to enter into this Amendment to set forth their respective agreements with respect to the foregoing.

**NOW, THEREFORE**, the parties do hereby agree as follows:

**Section 1.** All capitalized terms used in this Amendment shall have the meanings assigned to such terms in the Agreement. The foregoing Recitals are incorporated herein by reference to the same extent as if they were repeated here.

**Section 2.**

(A) Definitions.

The phrase “**Development Work**” is hereby added as a new defined term to refer collectively to the design and construction of the Minimum Improvements, the Private Park Improvements, and the Parking Ramp. Additionally, the definition of Permitted Encumbrances in Section 1.1 of the Agreement is hereby amended to include as Permitted Encumbrances Encroachments 3, 4 and 5 on the Survey, and upon the conveyance of the Redevelopment Property from the Authority to the Redeveloper, the Redeveloper agrees to take title subject to Encroachments 3, 4 and 5 on the Survey, *provided that* the Redeveloper shall have the right to modify the curb marked as Encroachment 5 on the Survey, as is generally depicted on the Site Plan attached as part of First Amendment-Schedule A. The definitions of the Project, the Construction Plans, the Site Plan, the Private Park Improvements and the Minimum Improvements in Section 1.1 of the Agreement are hereby amended to be consistent with the Revised Project Scope. The definition of Redevelopment Property in Section 1.1 of the Agreement is hereby amended to include the property legally described on Schedule H hereto. The definition of RAP in Section 3.6 is hereby amended to mean the Original RAP, as supplemented and revised by the RAP Amendments.

(B) Additional Representations and Warranties.

There is hereby added as Section 2.1(g) the following additional representation of the Authority:

(g) The Minnesota Pollution Control Agency and any other agency or department of the State with jurisdiction over environmental matters has, or will have as of the date of Closing, approved in writing, without conditions other than implementation of the plans as presented, the Original RAP, the Flooring Management Plan, and the VIMS Plan. Except for the Flooring Management Plan and the VIMS Plan, there are no other changes to the Original RAP, and the Original RAP, as amended by the RAP Amendments, constitutes a voluntary response action plan that remedies all releases or threatened releases with regard to the Redevelopment Property as provided under Minnesota Statutes Section 115B.175.

There is hereby added as Section 2.1(f) the following additional representation of the Authority:

(f) To the best of the Authority’s knowledge, upon completion of the Vapor Mitigation Work and the Wood Sealing Work (as hereinafter defined), submission of a Response Action Implementation Report (the “**RAP Implementation Report**”), and execution and recordation of the Environmental Covenant in the Office of the County Recorder, Dakota County, Minnesota, the Commissioner of the Minnesota Pollution Control Agency will issue a certificate of completion under Minnesota Statutes Section 115B.175 with regard to the Redevelopment Property (the “**MPCA Certificate of Completion**”) which shall certify that the RAP has been approved and implemented and that the Authority, the Redeveloper, and their respective lenders, successors, and assigns shall be protected from liability under Minnesota Statutes Section 115B.01 to 115B.20, the "Environmental Response and Liability Act."

There is hereby added as Section 2.2(c) the following additional representation of the City:

(g) The Metropolitan Council has approved in writing the extension of the expiration date of the LCDA Park Grant until December 31, 2018 and the relocation of the Parking Ramp to the FNB Property. To the best of the City's knowledge and subject to the limitations on use of LCDA grant funding set forth on the attached First Amendment-Schedule I, the LCDA Parking Grant may be used to reimburse the Redeveloper for all costs related to the design and construction of the Parking Ramp, up to the full amount of the LCDA Parking Grant, provided that the Redeveloper shall remain responsible for any and all costs associated with the design and construction of the Parking Ramp in excess of the LCDA Parking Grant amount.

**Section 3.** Sections 3.3 and 3.4 (as applicable) of the Agreement are hereby amended as follows:

(A) The Authority, the City, and the Redeveloper waive the conditions precedent to conveyance of the Redevelopment Property contained in Section 3(a), provided that such conditions shall remain part of the Agreement as conditions precedent to commencement of construction of the Minimum Improvements, as provided in Section 4.1.

(B) The Authority, the City, and the Redeveloper waive the conditions precedent to conveyance of the Redevelopment Property contained in Section 3(b), provided that such conditions shall remain part of the Agreement as conditions precedent to commencement of construction of the Minimum Improvements, as provided in Section 4.1.

(C) The Authority, the City, and the Redeveloper waive the conditions precedent to conveyance of the Redevelopment Property contained in Section 3(c), provided that such conditions shall remain part of the Agreement as conditions precedent to commencement of construction of the Minimum Improvements, as provided in Section 4.1.

(D) Section 3.3(d) and Section 3.4 are amended to provide that the Authority will furnish to the Redeveloper within five (5) days after execution of this Amendment an updated commitment from Commercial Partners Title for an Owner's Policy of Title Insurance committing the insurer thereof to insure title to the Redevelopment Property (as such term is expanded and revised by this Amendment to include the Additional Property) and thereafter the Redeveloper shall be allowed ten (10) days after receipt of the commitment for examination of title and the making of any objections thereto. All other provisions of Section 3.3(d) and Section 3.4 shall remain unmodified by this Amendment.

(E) Section 3.3(g) is deleted in its entirety and replaced with the following: The Authority having fully implemented and completed the RAP (as such term is hereinafter defined) with the exceptions of: (1) the required soil vapor intrusion mitigation work, to be performed in accordance with the VIMS Plan (the "**Vapor Mitigation Work**") and (2) the required internal wood surface PCB encapsulation of both the top sides of the flooring and the undersides of the flooring/joists, to be performed in accordance with the Flooring Management Plan (the "**Wood Sealing Work**") and obtained from the State a "Status of Certificate of Completion Letter" confirming the Authority has fully implemented and completed the RAP (with only the exceptions of the Vapor Mitigation Work and the Wood Sealing Work), and a "No Association

Letter” for the Redeveloper, both in form and substance reasonably acceptable to the Redeveloper (collectively the “**Environmental Letters**”). The respective obligations of the Authority and the Redeveloper to implement and complete the Vapor Mitigation Work and Wood Sealing Work shall be as provided in Section 3.6 of this Agreement.

(F) Section 3.3(h) is deleted in its entirety and replaced with the following: The Authority, the City, the MPCA, and the Redeveloper having agreed upon the form of the Environmental Covenant.

(G) The last paragraph of Section 3.3 is deleted and replaced with the following: In the event that all of the above conditions precedent have not been satisfied or waived in writing by the Authority, the City and the Redeveloper by January 22, 2018 (the “**Contingency Date**”), the Authority, the City or the Redeveloper may terminate this Agreement by giving written notice of termination to the other parties, whereupon this Agreement shall be null and void and the Redeveloper, the City and the Authority shall execute an instrument in recordable form canceling this Agreement. Notwithstanding the foregoing, if the reason the condition precedent set forth in Section 3.3(g) has not been satisfied prior to the Contingency Date is that the MPCA has not delivered the Environmental Letters, in form and substance reasonably satisfactory to the Authority and the Redeveloper, then the Contingency Date will be extended for a period of no more than thirty (30) days until such time as the Environmental Letters are received. Approval by the Authority or City of any documents submitted by the Redeveloper to satisfy the conditions precedent stated in this Agreement and the determination to proceed with the conveyance of the Redevelopment Property shall be in the sole discretion of the City and the Authority, respectively; provided that, notwithstanding anything herein to the contrary, if any documents submitted to the Authority or City are rejected the Redeveloper shall be given a reasonable amount of time to cure the basis for the rejection and resubmit the documents.

**Section 4.** Section 3.5 of the Agreement is hereby amended as follows:

(A) Section 3.5(b) is deleted in its entirety and replaced with the following: At Closing on conveyance of the Redevelopment Property, the Authority shall deliver to the Redeveloper: (i) the Deed duly executed and acknowledged, in recordable form, conveying to the Redeveloper marketable title to the Redevelopment Property except the Additional Property, subject only to Permitted Encumbrances; (ii) a quit claim deed duly executed and acknowledged, in recordable form, conveying to the Redeveloper any and all title the Authority may have in the Additional Property, subject to all easements, restrictions, and reservations of record; and (iii) a Seller’s Affidavit, in customary form, relative to judgments, federal tax liens, mechanic’s liens and outstanding interests in the Redevelopment Property. At Closing on conveyance of the Redevelopment Property, the City shall deliver to the Redeveloper: (i) a quit claim deed duly executed and acknowledged, in recordable form, conveying to the Redeveloper any and all title the City may have in the Additional Property, subject to all easements, restrictions, and reservations of record; and (ii) a Seller’s Affidavit, in customary form, relative to judgments, federal tax liens, mechanic’s liens and outstanding interests in the Redevelopment Property.

(B) Section 3.5(d) is added as follows: At Closing on conveyance of the Redevelopment Property, Redeveloper shall deliver to the City easements duly executed and



acknowledged, in recordable form, conveying all sidewalk, drainage and utility easement rights reasonably necessary to allow the Encroachments 3, 4 and 5 on the Survey to continue and be used in perpetuity by the public in the same manner and to the same extent as they are currently used, in substantially the form of the easements attached hereto as First Amendment-Schedule J, *provided that* the Redeveloper shall have the right to modify the curb marked as Encroachment 5 on the Survey, as is generally depicted on the Site Plan attached as First Amendment-Schedule A.

**Section 5.** Section 3.6 of the Agreement is hereby amended as follows:

Section 3.6(b) is deleted in its entirety and replaced with the following:

(b) The Authority will continue to implement and shall complete the implementation of the actions described in the RAP and will undertake all reasonable efforts to obtain the Environmental Letters from the State. Notwithstanding the foregoing, the Authority and the Redeveloper agree to proceed with the Closing on the conveyance of the Redevelopment Property before completion of the Vapor Mitigation Work and the Wood Sealing Work, subject to the issuance of the Environmental Letters prior to Closing. To the extent necessary to continue environmental remediation actions after the date of Closing, the Redeveloper hereby grants to the Authority, its agents and contractors the right to enter upon the Redevelopment Property after the Closing for the purpose of completing the actions described in the RAP, provided that such entry shall be coordinated with the Redeveloper and the Redeveloper's general contractor for the Development Work. The Authority shall be responsible for payment of all costs for the Wood Sealing Work. In addition, the Authority shall be responsible for all costs of that portion of the Vapor Mitigation Work described in the Vapor Intrusion Mitigation Installation Proposal for the Former H.D. Hudson Manufacturing Facility at 200 W. 2<sup>nd</sup> Street Hastings, Minnesota submitted by Clean Vapor LLC dated July 2017 ("**Clean Vapor Base VIMS Contract**"), which is attached hereto as First Amendment-Schedule K, including any associated change orders or cost adjustments thereto. The Authority shall also be responsible for all costs up to but not exceeding \$\_\_\_\_\_ (the "**Supplemental VIMS Cap**") to undertake and complete the scope of work to cure problems associated with the uneven surfaces within the crawlspaces deemed necessary to implement the Clean Vapor Base VIMS Contract as described in the VIMS Addendum (the "**Supplemental VIMS Construction Work**"). Any costs associated with the Supplemental VIMS Construction Work in excess of the Supplemental VIMS Cap—and any costs associated with structural integrity studies, plans and work made necessary by the removal of floor joists as part of the Supplemental VIMS Construction Work (the "**VIMS Structural Work**")—shall be the responsibility of the Redeveloper.

The Authority shall not be obligated to escrow funds at Closing to provide for payment of the Vapor Mitigation Work or the Wood Sealing Work. However, (i) the City and the Authority shall be obligated to commit all grant funds received by either of them and earmarked for the Vapor Mitigation Work or the Wood Sealing Work in satisfaction of those costs and (ii) whether or not grant funds are available, the City and the Authority shall be jointly and severally liable to pay for all costs of fully implementing the RAP and performing post-Closing environmental remediation and reporting work, including the costs of preparing and submitting the final RAP Implementation Report, the costs of any testing required to confirm compliance with the RAP,

and the costs of any submittals required to obtain the MPCA Certificate of Completion but excluding the costs of (a) VIMS Structural Work and (b) Supplemental VIMS Construction Work in excess of the Supplemental VIMS Cap.

**Section 6.**

(A) Section 4.2(a) and (b) of the Agreement are hereby amended to provide that the Redeveloper shall deliver the Construction Plans, the Site Plan, and any other documentation required by the City or State for issuance of a building permit to the City and the Authority by no later than August 1, 2018. Except for the foregoing, the provisions of Sections 4.2 (a) and (b) shall remain in full force and effect.

(B) Section 4.2(c) of the Agreement is hereby amended to provide that the Revised Final Plat has been reviewed and approved by the City, the Authority, the County, any other municipal bodies required to consent to or approve the Revised Final Plat, and their respective land surveyors and legal counsel. Upon conveyance of the Redevelopment Authority to the Redeveloper, the Revised Final Plat shall be recorded in the Office of the County Recorder, Dakota County, Minnesota.

**Section 7.** The first paragraph of Section 4.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

Commencement and Completion of Construction. Subject to Unavoidable Delays and as is hereafter described, the Redeveloper shall promptly commence construction of the Minimum Improvements, the Private Park Improvements, and the Parking Ramp upon satisfaction or waiver of all conditions precedent set forth in Section 3.3(a), (b), (c), and (d) of this Agreement, provided that (i) the Redeveloper shall be permitted to perform the Development Work in stages, as reasonably determined by the Redeveloper; (ii) the Redeveloper shall commence construction of the Minimum Improvements by no later than the date that is thirty (30) calendar days after the date a building permit for the Minimum Improvements is issued to the Redeveloper; and (iii) the Redeveloper shall substantially complete construction of the Minimum Improvements by December 15, 2019. For purposes of the foregoing sentence, “substantial completion” shall mean that a certificate of occupancy has been issued with regard to the majority of the space constituting the Minimum Improvements. Notwithstanding the foregoing, the Redeveloper agrees to use reasonable efforts to complete a substantial portion of the construction of the Minimum Improvements on or before December 15, 2018.

**Section 8.** Section 4.9 of the Agreement is hereby deleted in its entirety and replaced with the following:

Future Parking Construction. The City has applied for and received approval for a Metropolitan Council LCDA grant in the amount of \$1,485,000 (the “**LCDA Parking Grant**”) to be used to offset a portion of the cost of constructing structured parking in connection with the Development Work. The Redeveloper agrees to construct an approximately 119 stall parking ramp on the FNB Property. The LCDA Parking Grant will be used by the City to reimburse the Redeveloper for a portion of the cost of the design and construction of the Parking Ramp up to the

amount of the LCDA Parking Grant, and the Redeveloper will be responsible for any costs in excess of the amount of the grant. The Parking Ramp shall consist of a two story structure (as viewed from Second Street) with no fewer than 83 stalls on the upper level and approximately 36 stalls on the lower level. All parking stalls will be dedicated for use by the general public at no cost to the general public except that the City shall be responsible for costs associated with: (1) providing general municipal liability insurance coverage for claims resulting from the use of the parking ramp by the general public commensurate with coverage maintained with the City for other municipal parking facilities, and (2) providing non-structural maintenance of the upper level of the parking ramp, and further provided that the Redeveloper may restrict public use of the lower portion of the Ramp on no more than thirty (30) days within any calendar year and no more than five (5) days within any calendar month, all as more fully described in the easement and public use and maintenance agreement attached hereto as First Amendment-Schedule L (the "**Parking Use Agreement**"). At Closing, the Authority, the City and the Redeveloper shall execute and deliver for recording the Parking Use Agreement memorializing such dedication of public spaces and the relative responsibilities of the parties for maintenance of the Parking Ramp and public spaces. The Redeveloper will comply with all requirements of the LCDA Parking Grant relating to the construction and use of the Parking Ramp that are set forth in the LCDA Parking Grant Agreement or that have otherwise been provided to the Redeveloper in writing prior to the date of Closing.

**Section 9.** Section 7.2 of the Agreement is hereby revised to provide that the Redeveloper may mortgage or pledge the Redevelopment Property in connection with obtaining funds to perform the Development Work but only after satisfaction or waiver of all conditions precedent in Sections 3.3 and 3.4 of the Agreement and issuance of a building permit as provided for in Section 6(A) of this Amendment. The Redeveloper shall cause no mortgages or liens to encumber the Redevelopment Property, and shall cause no improvements to be made to the Redevelopment Property that may result in any lien encumbering the Redevelopment Property, prior to satisfaction or waiver of all conditions precedent in Sections 3.3 and 3.4 of the Agreement and issuance of a building permit as provided for in Section 6(A) of this Amendment unless specifically agreed to in writing by the City and Authority.

**Section 10.** Section 7.3 of the Agreement is hereby deleted in its entirety and replaced with the following: In order to facilitate the Redeveloper's efforts to obtain financing for acquisition of the Redevelopment Property and performance of the Development Work, the Authority agrees that the Authority's rights to revest title to the Redevelopment Property in the Authority pursuant to Section 9.3 of this Agreement and the Deed from Authority to Redeveloper is, shall, and at all times will be, subordinate to the lien of the lender providing financing for the Development Work. The Authority will also agree to reasonable requests from Redeveloper's lender to provide a recordable written agreement further evidencing the subordination to the lien of the lender's Mortgage to the Authority's rights to revest title to the Redevelopment Property in the Authority pursuant to Section 9.3 of this Agreement and the Deed from Authority to Redeveloper.

**Section 11.** The last sentence in Section 9.3 of the Agreement is hereby deleted in its entirety and replaced with the following: The Authority agrees that at the time that the Redeveloper receives a building permit from the City for commencement of construction of the Minimum Improvements and actually commences physical construction of the Minimum

Improvements, the Authority will execute and deliver to the Redeveloper a certificate, in recordable form, certifying that commencement of construction of the Minimum Improvements has occurred within the time period required under the Deed and the Agreement and that the right of reverter contained in Section 2 of the Deed is irrevocably terminated.

**Section 12.** Section 10.10 of the Agreement is modified to add the following at the end of Section 10.10: The Redeveloper shall provide the Authority with information about the Minimum Improvements as requested by the Authority so that the Authority can satisfy the DEED reporting requirements of Minnesota Statutes, Section 116J.994, subd. 8.

**Section 13.** Schedule C of the Agreement containing the site plan referred to in Section 4.2 (a) of this Agreement shall be deleted in its entirety and replaced with the site plan attached hereto in First Amendment-Schedule A. In addition, Exhibit A and Exhibit B attached to Schedule D (Public Use Agreement) of the Agreement shall likewise be deleted and replaced, respectively, with a legal description of the Redevelopment Property, as now defined herein, and with the site plan attached hereto in First Amendment-Schedule A.

**Section 14.** All other terms of the Agreement shall remain in full force and effect.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Authority, the City and the Redeveloper have caused this Amendment to be duly executed in their names and on their behalf on or as of the date first above written.

**HASTINGS ECONOMIC  
DEVELOPMENT AND  
REDEVELOPMENT AUTHORITY**

By \_\_\_\_\_  
Pamela Denning, Vice President

By \_\_\_\_\_  
John Hinzman, Executive Director

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF DAKOTA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Pamela Denning and John Hinzman the Vice President and the Executive Director of the Hastings Economic Development and Redevelopment Authority, a public body politic and corporate under the laws of the State of Minnesota.

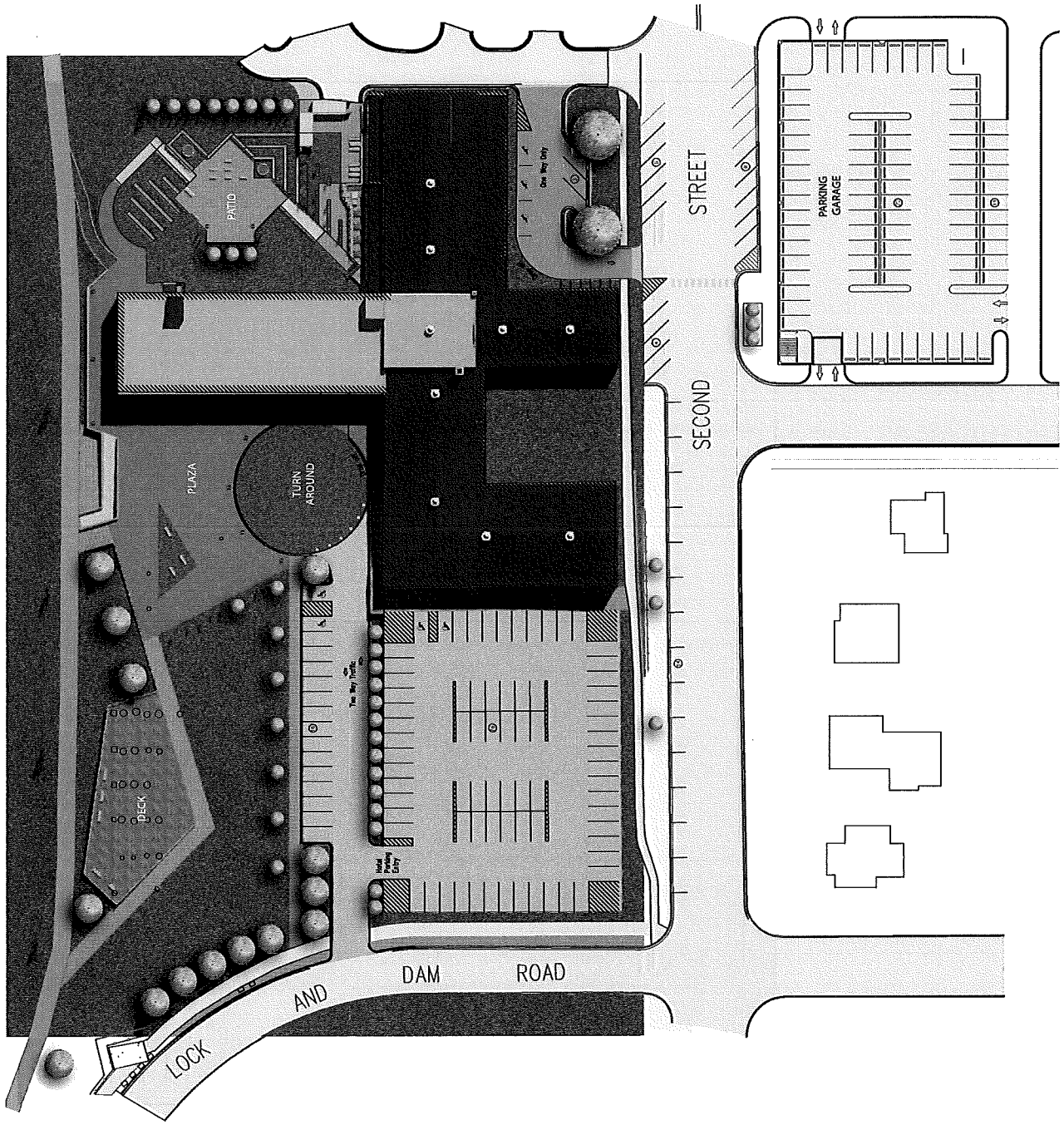
\_\_\_\_\_  
Notary Public





**FIRST AMENDMENT-SCHEDULE A**  
**Site Plan**





**FIRST AMENDMENT-SCHEDULE B  
Flooring Management Plan**

**FIRST AMENDMENT-SCHEDULE C  
Flooring Management Addendum**

**FIRST AMENDMENT-SCHEDULE D**  
**Original Vapor Intrusion Mitigation Plan Design**

**FIRST AMENDMENT-SCHEDULE E  
Draft RAP Implementation Report**

**FIRST AMENDMENT-SCHEDULE F**  
**Survey**

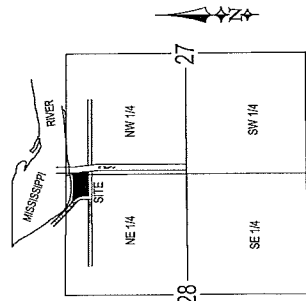


**FIRST AMENDMENT-SCHEDULE G**  
**Revised Final Plat**





# GREAT RIVERS LANDING



**Site Location Map**  
 Section 27 and 28, T18N, R17W  
 Dakota County, Minnesota  
 (NOT TO SCALE)



ORIGINAL SCALE  
 1 INCH = 30 FEET  
 SCALE IN FEET

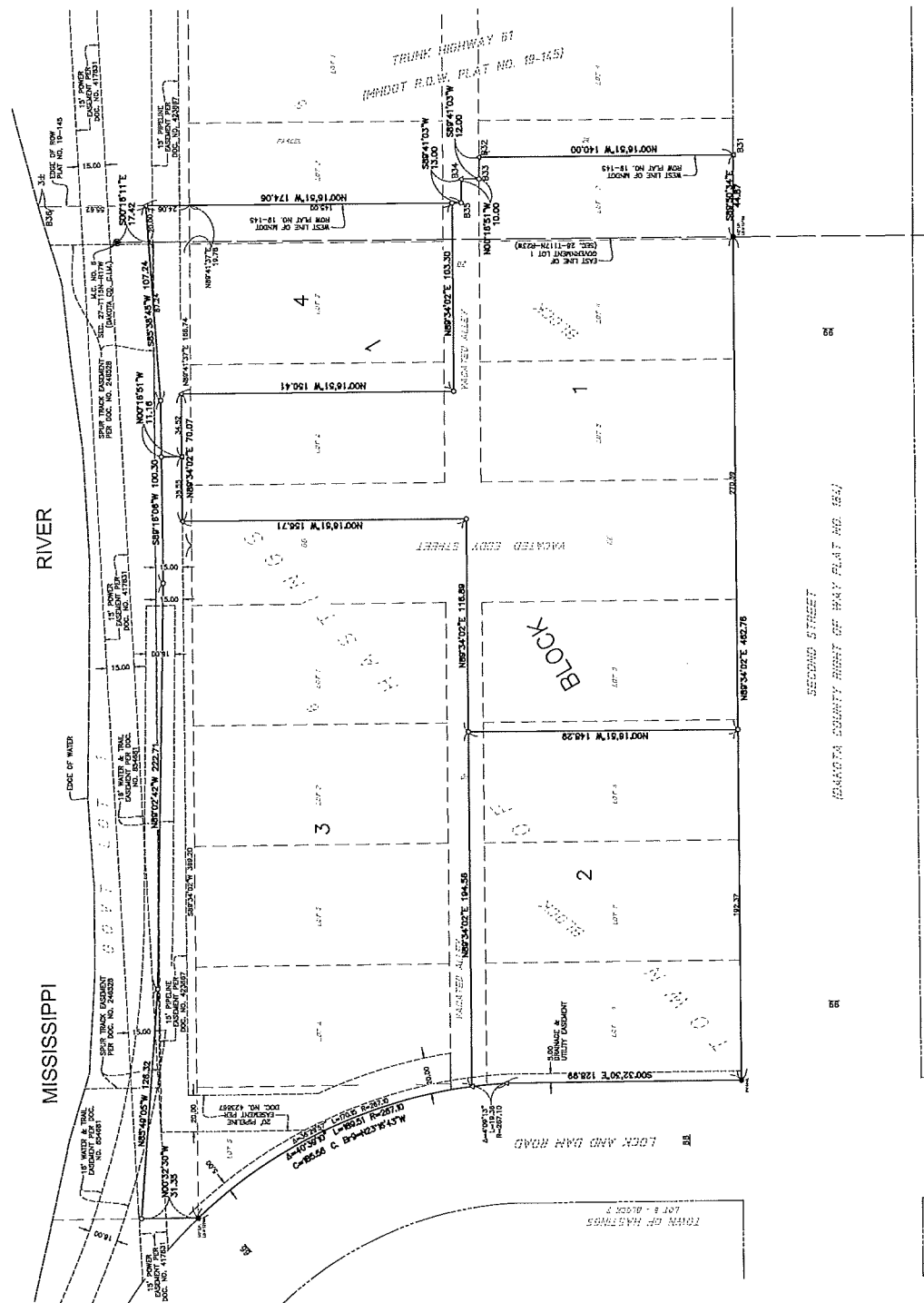
- LEGEND**
- CIRCLES 4" x 1/4" IRON REBAR SET & MARKED BY LICENSE NO. 22148
  - △ CIRCLES 1/4" x 1/4" IRON REBAR SET & MARKED WITH STAINLESS STEEL WASHERS STAMPED BY LICENSE NO. 22148
  - CIRCLES FOUND MOVEMENT AS MARKED
  - ⊙ CIRCLES BAKOTA COUNTY CAST IRON MONUMENT

BEARING BASE  
 THE COUNTY, TOWN OF  
 HASTINGS, IS ASSUMED TO BE  
 MERIDIAN

DRAINAGE AND UTILITY EASEMENTS ARE SHOWN THUS:



BEING 5 FEET IN WIDTH ADJOINING LOCK AND DAM ROAD AS SHOWN ON PLAT, UNLESS OTHERWISE SHOWN.



## FIRST AMENDMENT-SCHEDULE H Legal Description of Additional Property

That part of Government Lot 1, Section 27 and that part of Government Lot 1, Section 28, all in Township 115 North, Range 17 West, Dakota County, Minnesota and that part of First Street and the Levees, if any, lying north of Blocks 5 & 6, as designated in the plat of HASTINGS, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Dakota County, Minnesota described as follows:

Commencing at the southeast corner of the Northeast Quarter of said Section 28; thence North 00 degrees 15 minutes 48 seconds West, oriented with the Dakota County Coordinate System, N.A.D. 83, 1996 adjustment (HARN), along the east line of said Northeast Quarter, a distance of 2475.80 feet to the north line of Block 5 of said plat of Hastings, also being the point of beginning of the land to be described; thence South 89 degrees 41 minutes 37 seconds West, along said north line and its westerly extension, a distance of 166.74 feet to the centerline of Eddy Street; thence South 89 degrees 34 minutes 02 seconds West, along the north line of said Block 6 and its easterly extension, a distance of 369.20 feet to the northeasterly right of way line of Lock and Dam Road; thence North 00 degrees 32 minutes 30 seconds West, a distance of 31.35 feet; thence South 85 degrees 49 minutes 05 seconds East, a distance of 126.32 feet; thence South 89 degrees 02 minutes 42 seconds East, a distance of 222.71 feet; thence North 89 degrees 16 minutes 06 seconds East a distance of 100.30 feet; thence North 85 degrees 38 minutes 45 seconds East to the west right of way boundary line of State Highway Number 61, as designated on MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 19-145, according to the recorded plat thereof, filed in the Dakota County Recorder's office; thence South 00 degrees 16 minutes 51 seconds East, along said west right of way boundary line, a distance of 24.06 feet to the north line of said Block 5; thence South 89 degrees 41 minutes 37 seconds West, along the north line of said Block 5, a distance of 19.78 feet to the point of beginning.

Dakota County, Minnesota  
Abstract Property

**FIRST AMENDMENT-SCHEDULE I**  
**List of Eligible and Ineligible LCDA Grant Fund Uses**

**FIRST AMENDMENT-SCHEDULE J  
Form of Encroachment Easements**

## EASEMENT AGREEMENT

**This Easement Agreement** (this "Agreement") is entered into this \_\_\_\_\_ day of January, 2018, by and between CONFLUENCE DEVELOPMENT, LLC, a Minnesota limited liability company ("Grantor"), and CITY OF HASTINGS, a Minnesota municipal corporation, its successors and assigns ("Grantee" or "City").

### **Recitals:**

A. Grantor owns the real property described on **Exhibit A** attached hereto and incorporated herein by this reference ("Grantor's Property").

B. Grantee conveyed Grantor's Property to Grantor pursuant to that certain Purchase and Development Agreement dated January 18, 2016 as amended by the First Amendment to Purchase and Development Agreement dated December \_\_\_\_, 2017 (collectively the "Purchase Agreement") which provided that Grantor would take title to Grantor's Property subject to certain existing public improvements, including specifically public sidewalk and utility facilities (collectively "Sidewalk and Utility Facilities") within that portion of Grantor's Property legally described and depicted on **Exhibit B** attached hereto and incorporated herein by reference (the "Easement Area") and that Grantor would deliver to the City, for the benefit of the public, easements duly executed and acknowledged, in recordable form, conveying all sidewalk and utility easement rights reasonably necessary to allow the Sidewalk and Utility Facilities to continue and be used in perpetuity by the public in the same manner and to the same extent as they are currently used.

C. In satisfaction of its obligations under the Purchase Agreement, Grantor desires to and is willing to convey to the City, for the benefit of the public, a sidewalk and utility easement over, under and across the Easement Area, in accordance with the terms and conditions of this Agreement.

### **AGREEMENT**

**Now, Therefore,** in consideration of good and valuable consideration including the mutual performance of the parties under the Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged by Grantor, the parties agree as follows:

1. **Sidewalk and Utility Easement.** Grantor hereby grants to Grantee, for the benefit of the public, a permanent sidewalk and utility easement (the "Easement") over, under and across the Easement Area. The Easement is granted for the purposes of location, reconstruction, installation and maintenance of the Sidewalk and Utility Facilities over, under and across the Easement Area. Within the Easement Area, Grantee shall have the right to reconstruct, maintain, locate and operate the Sidewalk and Utility Facilities; to acquire and remove all dirt, vegetation, structures, trees, shrubs, grass and herbage, if any located thereon; to slope and fill the same, to maintain the slope of same, to prevent the filling and grading of the slope; and to do all additional things incident and necessary to allow the aforementioned location, reconstruction, installation and maintenance and to keep and have control thereof, provided that Grantor, Grantor's successors and assigns may make use of the Easement Area to the extent not inconsistent herewith and Grantee's use of the Easement Area shall not unreasonably interfere with Grantor's intended uses of Grantor's Property.

2. **Maintenance.** Subject to the terms and conditions contained herein, Grantee, its successors and assigns, shall have the obligation to maintain, repair, replace and inspect the Sidewalk and

Utility Facilities in the Easement Area. Grantor shall not directly or indirectly cause any interference or impediment to Grantee's maintenance of the Sidewalk and Utility Facilities within the Easement Area.

3. **Limitation of Use.** Grantor reserves the right to use the Easement Area for all purposes which are not inconsistent with the rights herein conveyed, or which would interfere with the use of the Easement by Grantee for the purposes contained herein; provided, however, that Grantor shall not erect any permanent structure within the Easement Area without the prior written approval of Grantee.

4. **Ownership of Improvements.** The Sidewalk and Utility Facilities within the Easement Area shall be and remain the sole property of Grantee, its successors and assigns.

5. **Notices.** All communications given pursuant to this Agreement shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to Grantor:

Confluence Development, LLC  
101 East 10<sup>th</sup> Street, Suite 300  
Hastings, Minnesota 55033

(b) If to Grantee:

City of Hastings  
101 4th Street East  
Hastings, Minnesota 55033  
Attention: City Administrator

Either party may change the name of the person or address to which communications are to be given by so notifying the other party in writing in accordance with this paragraph.

6. **Indemnification.** Grantee hereby agrees to indemnify, hold harmless and defend Grantor and Grantor's shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "First Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be imposed upon or incurred by any of the First Indemnified Parties and which arise from or are related to the exercise by Grantee of its rights under the Easement granted hereunder or Grantee's failure to comply with the terms and provisions of this Agreement. Grantor hereby agrees to indemnify, hold harmless and defend Grantee and Grantee's governing body members, shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "Second Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be imposed upon or incurred by any of the Second Indemnified Parties and which arise from or are related to the exercise by Grantor of its rights to the Easement Area, or Grantor's failure to comply with the terms and provisions of this Agreement.

7. **Severability.** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid or illegal, but rather the unenforceable, invalid or illegal provision(s) of this Agreement shall be deemed severed from

this Agreement and this Agreement shall continue in full force and effect to the greatest extent permitted by applicable law.

8. **Easement to Benefit Public.** The Easement shall benefit Grantee and the public and shall burden Grantor's Property, and accordingly shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. At such time as any grantor conveys its interest in the burdened property, the conveying party shall have no liability for obligations accruing under this Agreement with respect to such property after the date of such conveyance, and that party's transferee shall be deemed to have assumed all such obligations thereafter accruing with respect to the burdened property. The grant of rights set forth herein are subject to all liens, encumbrances, easements, restrictions, reservations and rights-of-way of record burdening the Grantor's Property.

9. **Compliance with Laws.** All activities carried on by Grantee on or about the Easement Area shall be conducted in accordance with all applicable laws. All work performed by Grantee within the Easement Area shall be done in a manner and with such safeguards as are reasonably necessary to avoid any personal injury or property damage.

10. **Headings and Recitals.** The captions and headings of any sections herein are not part of and in no manner or way define, limit, amplify, change or alter any term, covenant or condition of this Agreement. For purposes of this Agreement, any singular number includes the plural and the word "person" includes corporations, partnerships, firms, associations or other entities, as applicable, when the context so requires. All of the above Recitals are incorporated here by reference to the same extent as if they were repeated here.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

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

13. **Recordation.** This Agreement shall be recorded in the real property records of the recorder of the County of Dakota, State of Minnesota.

14. **No Oral Amendments or Modifications.** No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing and executed by the party to be bound thereby.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

*[The remainder of this page was intentionally left blank. The next page is the signature page.]*



In Witness Whereof, the undersigned have executed this Agreement as of the day and year first written above.

**Grantor:**  
CONFLUENCE DEVELOPMENT, LLC,  
a Minnesota limited liability company

By \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**Grantee:**  
CITY OF HASTINGS,  
a Minnesota municipal corporation

By \_\_\_\_\_  
Paul J. Hicks, Its Mayor

By \_\_\_\_\_  
Julie Flaten, Its City Clerk

**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me, a notary public, this \_\_\_\_ day of January, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Confluence Development, LLC, a Minnesota limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF DAKOTA     )

This instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of January, 2018, by Paul J. Hicks and Julie Flaten, the Mayor and City Clerk of the City of Hastings, a Minnesota Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

**FLUEGEL LAW FIRM P.A.**  
999 Westview Drive, Suite 1  
Hastings, MN 55033  
Telephone Number: 651-438-9777

**EXHIBIT A**

**Legal Description-Grantor's Property**

Lot 2, Block 1, Great Rivers Landing, Dakota County, Minnesota.

**EXHIBIT B**

**Legal Description and Depiction-Easement Area**

**SEE ATTACHED SURVEY**

**EASEMENT AGREEMENT**

**This Easement Agreement** (this "Agreement") is entered into this \_\_\_\_\_ day of January, 2018, by and between CONFLUENCE DEVELOPMENT, LLC, a Minnesota limited liability company ("Grantor"), and CITY OF HASTINGS, a Minnesota municipal corporation, its successors and assigns ("Grantee" or "City").

**Recitals:**

A. Grantor owns the real property described on **Exhibit A** attached hereto and incorporated herein by this reference ("Grantor's Property").

B. Grantee conveyed Grantor's Property to Grantor pursuant to that certain Purchase and Development Agreement dated January 18, 2016 as amended by the First Amendment to Purchase and Development Agreement dated December \_\_, 2017 (collectively the "Purchase Agreement") which provided that Grantor would take title to Grantor's Property subject to certain existing public improvements, including specifically a retaining wall associated with a scenic overlook platform ("Retaining Wall Facilities") within that portion of Grantor's Property legally described and depicted on **Exhibit B** attached hereto and incorporated herein by reference (the "Easement Area") and that Grantor would deliver to the City, for the benefit of the public, easements duly executed and acknowledged, in recordable form, conveying all easement rights reasonably necessary to allow the Retaining Wall Facilities to continue and be used in perpetuity by the public in the same manner and to the same extent as they are currently used.

C. In satisfaction of its obligations under the Purchase Agreement, Grantor desires to and is willing to convey to the City, for the benefit of the public, an easement over, under and across the Easement Area to allow the Retaining Wall Facilities to be continued and maintained, in accordance with the terms and conditions of this Agreement.

**AGREEMENT**

**Now, Therefore,** in consideration of good and valuable consideration including the mutual performance of the parties under the Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged by Grantor, the parties agree as follows:

1. **Easement for Retaining Wall.** Grantor hereby grants to Grantee, for the benefit of the public, a permanent easement to continue and maintain the Retaining Wall Facilities (the "Easement") over, under and across the Easement Area. The Easement is granted for the purposes of location, reconstruction, installation and maintenance of the Retaining Wall Facilities over, under and across the Easement Area. Within the Easement Area, Grantee shall have the right to reconstruct, maintain, locate and operate the Retaining Wall Facilities; to acquire and remove all dirt, vegetation, structures, trees, shrubs, grass and herbage, if any located thereon; to slope and fill the same, to maintain the slope of same, to prevent the filling and grading of the slope; and to do all additional things incident and necessary to allow the aforementioned location, reconstruction, installation and maintenance and to keep and have control thereof, provided that Grantor, Grantor's successors and assigns may make use of the Easement Area to the extent not inconsistent herewith and Grantee's use of the Easement Area shall not unreasonably interfere with Grantor's intended uses of Grantor's Property.

2. **Maintenance.** Subject to the terms and conditions contained herein, Grantee, its successors and assigns, shall have the obligation to maintain, repair, replace and inspect the Retaining Wall Facilities in the Easement Area. Grantor shall not directly or indirectly cause any interference or impediment to Grantee's maintenance of the Retaining Wall Facilities within the Easement Area.

3. **Limitation of Use.** Grantor reserves the right to use the Easement Area for all purposes which are not inconsistent with the rights herein conveyed, or which would interfere with the use of the Easement by Grantee for the purposes contained herein; provided, however, that Grantor shall not erect any permanent structure within the Easement Area without the prior written approval of Grantee.

4. **Ownership of Improvements.** The Retaining Wall Facilities within the Easement Area shall be and remain the sole property of Grantee, its successors and assigns.

5. **Notices.** All communications given pursuant to this Agreement shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to Grantor:

Confluence Development, LLC  
101 East 10<sup>th</sup> Street, Suite 300  
Hastings, Minnesota 55033

(b) If to Grantee:

City of Hastings  
101 4th Street East  
Hastings, Minnesota 55033  
Attention: City Administrator

Either party may change the name of the person or address to which communications are to be given by so notifying the other party in writing in accordance with this paragraph.

6. **Indemnification.** Grantee hereby agrees to indemnify, hold harmless and defend Grantor and Grantor's shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "First Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be imposed upon or incurred by any of the First Indemnified Parties and which arise from or are related to the exercise by Grantee of its rights under the Easement granted hereunder or Grantee's failure to comply with the terms and provisions of this Agreement. Grantor hereby agrees to indemnify, hold harmless and defend Grantee and Grantee's governing body members, shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "Second Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be imposed upon or incurred by any of the Second Indemnified Parties and which arise from or are related to the exercise by Grantor of its rights to the Easement Area, or Grantor's failure to comply with the terms and provisions of this Agreement.

7. **Severability.** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid or illegal, but

rather the unenforceable, invalid or illegal provision(s) of this Agreement shall be deemed severed from this Agreement and this Agreement shall continue in full force and effect to the greatest extent permitted by applicable law.

8. **Easement to Benefit Public.** The Easement shall benefit Grantee and the public and shall burden Grantor's Property, and accordingly shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. At such time as any grantor conveys its interest in the burdened property, the conveying party shall have no liability for obligations accruing under this Agreement with respect to such property after the date of such conveyance, and that party's transferee shall be deemed to have assumed all such obligations thereafter accruing with respect to the burdened property. The grant of rights set forth herein are subject to all liens, encumbrances, easements, restrictions, reservations and rights-of-way of record burdening the Grantor's Property.

9. **Compliance with Laws.** All activities carried on by Grantee on or about the Easement Area shall be conducted in accordance with all applicable laws. All work performed by Grantee within the Easement Area shall be done in a manner and with such safeguards as are reasonably necessary to avoid any personal injury or property damage.

10. **Headings and Recitals.** The captions and headings of any sections herein are not part of and in no manner or way define, limit, amplify, change or alter any term, covenant or condition of this Agreement. For purposes of this Agreement, any singular number includes the plural and the word "person" includes corporations, partnerships, firms, associations or other entities, as applicable, when the context so requires. All of the above Recitals are incorporated here by reference to the same extent as if they were repeated here.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

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

13. **Recordation.** This Agreement shall be recorded in the real property records of the recorder of the County of Dakota, State of Minnesota.

14. **No Oral Amendments or Modifications.** No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing and executed by the party to be bound thereby.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

*[The remainder of this page was intentionally left blank. The next page is the signature page.]*

**In Witness Whereof**, the undersigned have executed this Agreement as of the day and year first written above.

**Grantor:**  
CONFLUENCE DEVELOPMENT, LLC,  
a Minnesota limited liability company

By \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**Grantee:**  
CITY OF HASTINGS,  
a Minnesota municipal corporation

By \_\_\_\_\_  
Paul J. Hicks, Its Mayor

By \_\_\_\_\_  
Julie Flaten, Its City Clerk

**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me, a notary public, this \_\_\_\_ day of January, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Confluence Development, LLC, a Minnesota limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public



**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF DAKOTA     )

This instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of January, 2018, by Paul J. Hicks and Julie Flaten, the Mayor and City Clerk of the City of Hastings, a Minnesota Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

**FLUEGEL LAW FIRM P.A.**  
999 Westview Drive, Suite 1  
Hastings, MN 55033  
Telephone Number: 651-438-9777

**EXHIBIT A**

**Legal Description-Grantor's Property**

Lot 3, Block 1, Great Rivers Landing, Dakota County, Minnesota.

**EXHIBIT B**

**Legal Description and Depiction-Easement Area**

**SEE ATTACHED SURVEY**

## EASEMENT AGREEMENT

**This Easement Agreement** (this "Agreement") is entered into this \_\_\_\_\_ day of January, 2018, by and between CONFLUENCE DEVELOPMENT, LLC, a Minnesota limited liability company ("Grantor"), and CITY OF HASTINGS, a Minnesota municipal corporation, its successors and assigns ("Grantee" or "City").

### **Recitals:**

A. Grantor owns the real property described on **Exhibit A** attached hereto and incorporated herein by this reference ("Grantor's Property").

B. Grantee conveyed Grantor's Property to Grantor pursuant to that certain Purchase and Development Agreement dated January 18, 2016 as amended by the First Amendment to Purchase and Development Agreement dated December \_\_\_, 2017 (collectively the "Purchase Agreement") which provided that Grantor would take title to Grantor's Property subject to certain existing public improvements, including specifically curb, gutter and driveway improvements associated with a public parking lot ("Driveway Facilities") within that portion of Grantor's Property legally described and depicted on **Exhibit B** attached hereto and incorporated herein by reference (the "Easement Area") and that Grantor would deliver to the City, for the benefit of the public, easements duly executed and acknowledged, in recordable form, conveying all easement rights reasonably necessary to allow the Driveway Facilities to continue and be used in perpetuity by the public in the same manner and to the same extent as they are currently used, provided that Grantor shall be allowed to modify the curb, gutter and driveway surface to accommodate installation of a driveway providing access to Grantor's Property (the "Driveway Modifications"), as generally depicted on the Site Plan on **Exhibit C** attached hereto and incorporated herein by reference (the "Site Plan").

C. In satisfaction of its obligations under the Purchase Agreement, Grantor desires to and is willing to convey to the City, for the benefit of the public, an easement over, under and across the Easement Area to allow the Driveway Facilities to be continued and maintained, in accordance with the terms and conditions of this Agreement.

### **AGREEMENT**

**Now, Therefore,** in consideration of good and valuable consideration including the mutual performance of the parties under the Purchase Agreement, the receipt and sufficiency of which is hereby acknowledged by Grantor, the parties agree as follows:

1. **Easement for Driveway.** Grantor hereby grants to Grantee, for the benefit of the public, a permanent non-exclusive easement for ingress and egress and to continue and maintain the Driveway Facilities (the "Easement") over, under and across the Easement Area. The Easement is granted for the purposes of ingress and egress and for the location, reconstruction, installation and maintenance of the Driveway Facilities over, under and across the Easement Area. Within the Easement Area, Grantee shall have the right to reconstruct, maintain, locate and operate the Driveway Facilities; to acquire and remove all dirt, vegetation, structures, trees, shrubs, grass and herbage, if any located thereon; to slope and fill the same, to maintain the slope of same, to prevent the filling and grading of the slope; and to do all additional things incident and necessary to allow the aforementioned location, reconstruction, installation and maintenance and to keep and have control thereof, provided that Grantor, Grantor's successors and assigns may undertake the Driveway Modifications and may make use of the Easement Area to the extent

not inconsistent herewith and Grantee's use of the Easement Area shall not unreasonably interfere with Grantor's intended uses of Grantor's Property.

2. **Maintenance.** Subject to the terms and conditions contained herein, Grantee, its successors and assigns, shall have the obligation to maintain, repair, replace and inspect the Driveway Facilities in the Easement Area. Except for reasonable and temporary closures of the Driveway Facilities as necessary during construction of the Driveway Modifications, Grantor shall not directly or indirectly cause any interference or impediment to Grantee's maintenance of the Driveway Facilities within the Easement Area.

3. **Limitation of Use.** Grantor reserves the right to undertake the Driveway Modifications and to use the Easement Area for all purposes which are not inconsistent with the rights herein conveyed, or which would interfere with the use of the Easement by Grantee for the purposes contained herein; provided, however, that except for the Driveway Modifications, Grantor shall not erect any permanent structure within the Easement Area without the prior written approval of Grantee.

4. **Ownership of Improvements.** The Driveway Facilities within the Easement Area shall be and remain the sole property of Grantee, its successors and assigns.

5. **Notices.** All communications given pursuant to this Agreement shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:

(a) If to Grantor:

Confluence Development, LLC  
101 East 10<sup>th</sup> Street, Suite 300  
Hastings, Minnesota 55033

(b) If to Grantee:

City of Hastings  
101 4th Street East  
Hastings, Minnesota 55033  
Attention: City Administrator

Either party may change the name of the person or address to which communications are to be given by so notifying the other party in writing in accordance with this paragraph.

6. **Indemnification.** Grantee hereby agrees to indemnify, hold harmless and defend Grantor and Grantor's shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "First Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be imposed upon or incurred by any of the First Indemnified Parties and which arise from or are related to the exercise by Grantee of its rights under the Easement granted hereunder or Grantee's failure to comply with the terms and provisions of this Agreement. Grantor hereby agrees to indemnify, hold harmless and defend Grantee and Grantee's governing body members, shareholders, partners, directors, officers, members, agents, employees, successors and assigns (collectively, the "Second Indemnified Parties"), from and against any and all claim, liability, loss, damage, cost or expense, including reasonable attorneys' fees, which may be

imposed upon or incurred by any of the Second Indemnified Parties and which arise from or are related to the exercise by Grantor of its rights to the Easement Area, or Grantor's failure to comply with the terms and provisions of this Agreement.

7. **Severability.** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions of this Agreement unenforceable, invalid or illegal, but rather the unenforceable, invalid or illegal provision(s) of this Agreement shall be deemed severed from this Agreement and this Agreement shall continue in full force and effect to the greatest extent permitted by applicable law.

8. **Easement to Benefit Public.** The Easement shall benefit Grantee and the public and shall burden Grantor's Property, and accordingly shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. At such time as any grantor conveys its interest in the burdened property, the conveying party shall have no liability for obligations accruing under this Agreement with respect to such property after the date of such conveyance, and that party's transferee shall be deemed to have assumed all such obligations thereafter accruing with respect to the burdened property. The grant of rights set forth herein are subject to all liens, encumbrances, easements, restrictions, reservations and rights-of-way of record burdening the Grantor's Property.

9. **Compliance with Laws.** All activities carried on by Grantee on or about the Easement Area shall be conducted in accordance with all applicable laws. All work performed by Grantor and Grantee within the Easement Area shall be done in a manner and with such safeguards as are reasonably necessary to avoid any personal injury or property damage.

10. **Headings and Recitals.** The captions and headings of any sections herein are not part of and in no manner or way define, limit, amplify, change or alter any term, covenant or condition of this Agreement. For purposes of this Agreement, any singular number includes the plural and the word "person" includes corporations, partnerships, firms, associations or other entities, as applicable, when the context so requires. All of the above Recitals are incorporated here by reference to the same extent as if they were repeated here.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

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

13. **Recordation.** This Agreement shall be recorded in the real property records of the recorder of the County of Dakota, State of Minnesota.

14. **No Oral Amendments or Modifications.** No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing and executed by the party to be bound thereby.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

*[The remainder of this page was intentionally left blank. The next page is the signature page.]*

**In Witness Whereof**, the undersigned have executed this Agreement as of the day and year first written above.

**Grantor:**  
CONFLUENCE DEVELOPMENT, LLC,  
a Minnesota limited liability company

By \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**Grantee:**  
CITY OF HASTINGS,  
a Minnesota municipal corporation

By \_\_\_\_\_  
Paul J. Hicks, Its Mayor

By \_\_\_\_\_  
Julie Flaten, Its City Clerk

**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of January, 2018,  
by \_\_\_\_\_, the \_\_\_\_\_ of Confluence  
Development, LLC, a Minnesota limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

STATE OF MINNESOTA     )  
  ): ss  
COUNTY OF DAKOTA     )

This instrument was acknowledged before me, a notary public, this \_\_\_\_\_ day of January, 2018, by Paul J. Hicks and Julie Flaten, the Mayor and City Clerk of the City of Hastings, a Minnesota Municipal Corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public

This Instrument Drafted By:

**FLUEGEL LAW FIRM P.A.**  
999 Westview Drive, Suite 1  
Hastings, MN 55033  
Telephone Number: 651-438-9777



**EXHIBIT A**

**Legal Description-Grantor's Property**

Lot 1, Block 1, Great Rivers Landing, Dakota County, Minnesota.

**EXHIBIT B**

**Legal Description and Depiction-Easement Area**

**SEE ATTACHED SURVEY**

**EXHIBIT C**

**Site Plan-Driveway Modifications**

**SEE ATTACHED SITE PLAN**

**FIRST AMENDMENT-SCHEDULE K  
Clean Vapor Base VIMS Contract**

**FIRST AMENDMENT-SCHEDULE L**  
**Parking Use Agreement**

## PARKING USE AND MAINTENANCE AGREEMENT

1. **Parties.** Parties to this Parking Use and Maintenance Agreement (this “**Agreement**”) are the City of Hastings, a Minnesota municipal corporation (the “**City**”), the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic (the “**Authority**”) and Confluence Development LLC, a Minnesota limited liability company (the “**Redeveloper**” and collectively with the City and the Authority, the “**Parties**”). This Agreement is executed on the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “**Execution Date**”)
2. **Effective Date.** This Agreement shall be effective as of the Construction Commencement Date (as hereafter defined), provided that the Public Use Easements declared hereby shall not be effective until the Opening Date (as hereafter defined).
3. **Recitals.** The following recitals are incorporated as part of this Agreement:
  - a. As of the Execution Date, the Redeveloper owns the real property legally described on Exhibit A and all improvements located thereon (the “**Parking Ramp Parcel**”) and the real property legally described on Exhibit B and all improvements thereon (the “**Main Development Parcel**”).
  - b. The City, the Authority and the Redeveloper entered into that certain Purchase and Development Agreement (the “**Purchase and Development Agreement**”) dated January 18, 2016 by which the Authority agreed to sell to the Redeveloper the Main Development Parcel subject to certain terms and conditions contained therein, including that the Redeveloper would redevelop the Main Development Parcel in a manner that provides specified public benefits. For purposes of this Agreement, the Purchase and Development Agreement shall include all subsequent amendments thereto.
  - c. The Purchase and Development Agreement obligated the Redeveloper to construct specified minimum improvements on the Main Development Parcel together with, subject to conditions described in the Purchase and Development Agreement, a parking ramp including no fewer than 99 spaces dedicated for use by the general public (the “**Parking Ramp**”).

- d. The Purchase and Development Agreement provided that an easement or public use agreement memorializing such dedication of parking spaces will be negotiated and executed by the City, the Authority, and the Redeveloper prior to commencement of construction of the Parking Ramp.
  - e. As of the Execution Date, the Parties have agreed that—in full satisfaction of the Redeveloper’s obligation to construct the Parking Ramp pursuant to the Purchase and Development Agreement and subject to the terms and conditions set forth herein—the Redeveloper shall construct a 119-stall parking ramp on the Parking Ramp Parcel based on the plans and specifications described and depicted on Exhibit C and shall dedicate the entire Parking Ramp to the general public, for use by the general public as described herein, for a term commencing on the Opening Date and terminating on the Termination Date, each as hereafter defined.
  - f. As is depicted on Exhibit C, the Parking Ramp shall be composed of a two-story structure with the upper-level containing approximately eighty-three (83) uncovered spaces (the “**Upper Spaces**”) and the lower level containing approximately thirty-six (36) covered spaces (the “**Lower Spaces**”) and collectively with the Upper Spaces, the “**Public Parking Spaces**”). Subject to the terms and conditions of this Agreement, the owner of the Parking Ramp Parcel shall have a limited right to restrict or prohibit usage by the general public of the Lower Spaces pursuant to the Restriction Right described herein.
  - g. The Parties desire to reduce to writing their agreements by which the Redeveloper will dedicate the Parking Ramp to the public and their respective responsibilities and financial obligations for maintenance within the Parking Ramp, all in satisfaction of their obligations under the Purchase and Development Agreement.
4. **Declaration and Grant of Easements.** The Redeveloper hereby declares, grants and dedicates to the public non-exclusive rent-free easements in favor of the City, the Authority and the general public to use—on a first-come, first-serve basis, in common with other members of the public and subject to the restriction rights described herein with regard to the Lower Spaces—the Public Parking Spaces in the Parking Ramp and further to use the driveways and pedestrian elevators, stairways, sidewalks and walkways that are a part of the Parking Ramp (the “**Public Use Easements**”). The Public Use Easements are to permit the parking of vehicles of a size not to exceed the design parameters of the Parking Ramp and for pedestrian access to and from such vehicles. The Public Use Easements do not give the benefited parties a right to use any specific, designated spaces and do not give the benefited parties any priority over other members of the public or other benefited parties with respect to the use of the Public Parking Spaces.
5. **Operation of the Parking Ramp.** Subject to the Authority’s payment of its Pro Rata Share (as hereafter defined) of the Ongoing Maintenance Expenses (as hereafter defined) with regard to the Parking Ramp, the Redeveloper and its successors or assigns as to the Parking Ramp Parcel will operate the Parking Ramp as a public parking facility. The Public Parking Spaces will be available to beneficiaries of the easement described in Section 4 on a first-come, first-serve basis subject to the following:

- a. The Redeveloper will establish and maintain handicapped parking stalls within the Parking Garage, as required by applicable law.
  - b. The Redeveloper may designate, with appropriate signage, parking stalls within the Parking Garage that may only be used for a specified period of time (for example, without limitation, "One Hour Parking," "Overnight Parking," and "No Overnight Parking").
  - c. Subject to the Restriction Right with regard to the Lower Spaces and subject to the Authority's obligation to pay its Pro Rata Share of Ongoing Maintenance Expenses, the general public shall be allowed to use the Parking Spaces at no cost, and no person or entity may charge any fee for access to the Parking Ramp necessary to reasonably use the Parking Spaces.
  - d. Redeveloper may, from time to time, temporarily limit or deny access to certain of the Public Parking Spaces when reasonably necessary for maintenance purposes or to ensure the safety of the users or general public. The Redeveloper must use all commercially reasonable efforts to minimize such interference with the use of the Public Parking Spaces.
6. **Maintenance, Repair and Replacement of the Parking Ramp.** Subject to receipt of the Authority's Pro Rata Share of all Ongoing Maintenance Costs, the Redeveloper will maintain, repair and replace all areas and components of the Parking Ramp in a good and first-class manner consistent with other similar parking facilities in the greater Minneapolis-St. Paul, Minnesota metropolitan area.
7. **Ongoing Maintenance Costs.** For purposes of this Agreement, the term "**Ongoing Maintenance Costs**" means all costs and expenses that the Redeveloper incurs to operate, maintain, repair and replace all areas and elements of the Parking Ramp, including, but not limited to, costs associated with snow removal, security, elevator maintenance and repair (if any), stairway maintenance and repair, resurfacing, restriping, lighting, landscaping, signage, and parking control facilities but excluding Structural Maintenance (as hereafter defined) and the costs of insuring the Parking Ramp. Ongoing Maintenance Costs include both amounts the Redeveloper pays to third parties to perform the foregoing services and the fair market value of any services provided by Redeveloper employees in connection with the operating, repair or replacement of all areas and elements of the Parking Ramp or the administration of this Agreement. Commencing on the Opening Date, the Authority shall pay to the Redeveloper or its successors or assigns, upon receipt of an invoice, which shall be delivered on a monthly or quarterly basis, determined in the Redeveloper's discretion, an amount equal to 70% of the total Ongoing Maintenance Costs with regard to the Parking Ramp during the preceding period (referred to as the Authority's "**Pro Rata Share**").
8. **Capital Maintenance Costs.** The Redeveloper and future owners of the Parking Ramp Parcel shall be and remain liable for maintaining all structural elements of the Parking Ramp ("**Structural Maintenance**"). Structural Maintenance shall specifically mean and refer to repair and replacement of load-bearing walls, columns, foundations or pile caps, and the



structural elements of the second-floor parking deck. Structural Maintenance shall not include ongoing preventative maintenance designed to avoid or delay the need for Structural Maintenance. In connection with its obligation to perform Structural Maintenance, the owner of the Parking Ramp Parcel agrees to provide to the City annual financial statements demonstrating the maintenance of sufficient reserves for performing Structural Maintenance. The sufficiency of reserves shall be determined in the reasonable discretion of the Redeveloper and its successors and assigns.

9. **Damage or Destruction, Insurance and Waivers of Claims.** If any areas or elements of the Parking Ramp are damaged or destroyed, the Redeveloper will repair such damage or destruction or, if the Redeveloper determines that it is in the Redeveloper's best interest to replace the damaged areas or elements of the Parking Ramp, the Redeveloper will replace the damaged or destroyed areas or elements of the Parking Ramp. The Redeveloper must commence such repair or replacement within six months of the date of the damage or destruction and must complete such repair or replacement within twelve months of the date of such damage or destruction, subject to delays which are the direct result of acts of God, unforeseen adverse weather conditions, strikes, other labor troubles, fire or other casualty to the Parking Ramp during reconstruction, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority or City in enforcing its rights under this Agreement) which directly result in delays. The Redeveloper shall pay such repair or replacement costs and must use insurance proceeds and reserve funds, to the extent available, to finance such repair or replacement. The Redeveloper must obtain and maintain casualty insurance insuring all areas and elements of the Parking Ramp. The Redeveloper must maintain insurance for the full replacement cost of all insurable improvements that constitute a part of the Parking Ramp, subject to a deductible in an amount the Redeveloper reasonably determines, provided the amount of the deductible may not exceed five percent (5.00%) of the replacement cost of all insurable improvements that constitute a part of the Parking Ramp as reasonably estimated by the Redeveloper from time-to-time.

The City shall maintain general municipal liability insurance coverage through the League of Minnesota Cities Insurance Trust or from an insurance company that is licensed in the State of Minnesota, as available, providing coverage for claims resulting from the use of the Parking Ramp by the general public commensurate with coverage maintained with the City for other municipal parking facilities. Such policy or policies of insurance shall name the owner of the Parking Ramp Parcel as an additional insured, shall be in an amount or amounts as are usually carried by entities operating similar properties in the same general locality, and shall be primary and noncontributory with regard to any policies of liability insurance maintained by the owner of the Parking Ramp Parcel.

10. **Restriction of Use.** Throughout the term of this Agreement, the owner of the Parking Ramp Parcel shall have the right to restrict public use of the Lower Spaces—including the right to charge for the use of the Lower Spaces and/or the right to use the area in which the Lower Spaces are located for a non-parking purpose—on no more than thirty (30) days within any calendar year and no more than five (5) days within any calendar month (the “**Restriction Right**”). The Restriction Right shall be exercised by written notice to the Authority and the City describing the

planned restriction, which notice may be delivered by email to the City's and Authority's authorized representatives listed in Paragraph 15, below.

11. **Subject to LCDA Grant Funding.** The Redeveloper's obligation to construct the Parking Ramp is subject to the Redeveloper's ability to utilize the LCDA Parking Grant to partially or fully offset the costs of construction of the Parking Ramp, as is described in more detail in the Purchase and Assumption Agreement. In the event the LCDA Parking Grant funding ceases to be available prior to commencement of construction of the Parking Ramp, the Redeveloper's obligation to construct the Parking Ramp shall terminate, the Parties shall execute and record with the County Recorder for Dakota County a certificate terminating this Agreement, and each of the Parties shall thereafter be released from all liabilities, obligations, and restrictions under this Agreement.
12. **Amendments.** This Agreement may be amended, at any time, upon written agreement of the City, the Authority, the record owner of the Parking Ramp Parcel, and the record owner of the Main Development Parcel. To be effective any amendment must be executed and acknowledged by the foregoing parties and recorded in the Office of the County Recorder or Registrar of Titles, Dakota County, Minnesota.
13. **Commencement and Termination.** Upon issuance and receipt of a building permit for the construction of the Parking Garage, the Redeveloper and the Authority will jointly execute and deliver for recording with the Office of the County Recorder or Registrar of Titles, Dakota County, Minnesota a certificate in recordable form stating that, as of the date of issuance of the building permit (the "**Construction Commencement Date**") construction of the Parking Ramp has commenced. Upon completion of construction and issuance of a certificate of occupancy with regard to the Parking Ramp, the Redeveloper and the Authority will jointly execute and deliver for recording with the Office of the County Recorder or Registrar of Titles, Dakota County, Minnesota a certificate in recordable form stating the date on which the certificate of occupancy was issued (the "**Opening Date**").
14. **Term.** This Agreement, the Public Use Easements, and all rights, obligations, and restrictions described herein shall automatically terminate on the date that is thirty-nine (39) years after the Opening Date (the "**Termination Date**").
15. **Notices.** All communications given pursuant to this Agreement shall be in writing and shall be deemed properly served when delivered if delivered in person to the party to whom it is addressed, on the next business day if delivered by a nationally recognized overnight delivery service, or two (2) business days after deposit in the U.S. mail if sent postage prepaid by United States registered or certified mail, return receipt requested, addressed as follows:
  - (a) If to Redeveloper:  
  
Confluence Development, LLC  
Attn: Legal Counsel  
101 East 10<sup>th</sup> Street, Suite 300  
Hastings, Minnesota 55033

(b) If to City:

City of Hastings  
101 4th Street East  
Hastings, Minnesota 55033  
Attention: City Administrator  
Email: [mmesko\\_lee@hastingsmn.gov](mailto:mmesko_lee@hastingsmn.gov)

(c) If to Authority:

Hastings Economic Development and Redevelopment Authority  
101 4th Street East  
Hastings, Minnesota 55033  
Attention: Director  
Email: [JHinzman@hastingsmn.gov](mailto:JHinzman@hastingsmn.gov)

Either party may change the name of the person or address to which communications are to be given by so notifying the other party in writing in accordance with this paragraph.

16. **Additional Improvements.** The Public Use Easements declared in this Agreement shall not prevent the Redeveloper or its successors or assigns from constructing additional parking or additional non-parking improvements (collectively, the “**Additional Improvements**”) on the Parking Ramp Parcel above, below, or adjacent to the Parking Ramp during the term of this Agreement, provided that (i) the Redeveloper shall provide the City and Authority with no less than one-hundred (100) days’ written notice prior to commencing construction of any Additional Improvements; (ii) Additional Improvements shall be subject to applicable land use regulations and zoning laws; (iii) the Redeveloper shall use its best efforts to minimize any closures or unavailability of the Public Parking Spaces during such construction process; (iv) the construction of Additional Improvements shall not materially increase the Authority’s share of the Ongoing Maintenance Costs and the Parties agree to reasonably adjust the Authority’s Pro Rate Share of Ongoing Maintenance Costs if required to avoid such an increase; and (v) the construction of Additional Improvements shall not permanently decrease the number of Public Parking Spaces available in the Parking Ramp.
17. **Transfers.** Whenever a transfer occurs in the ownership of the Parking Ramp Parcel, the transferor shall be released from all liability for any obligations accruing under this Agreement after the date of the instrument of transfer but shall remain liable for all obligations accruing under this Agreement prior to the date of such transfer, and the transferee shall assume responsibility and liability for all obligations accruing under this Agreement after the date of the instrument of transfer but shall be free from liability for obligations accruing under this Agreement prior to the date of such transfer.
18. **Estoppel Certificates.** Upon the written request of the Redeveloper or a subsequent owner of the Parking Ramp Parcel, the City and the Authority will provide the owner and any prospective purchaser of or lender to the Parking Ramp Parcel with an estoppel certificate stating, to the best of the City’s and Authority’s actual knowledge, that this Agreement is in

full force and effect that this Agreement has not been modified or amended except as described in the estoppel certificate and that the Parking Ramp Parcel owner requesting the certificate is not in default in the payment of any amounts due under this Agreement or the performance of any obligations accruing under this Agreement or if such a default exists, the amount in default with regard to monetary defaults and the nature of such default with regard to non-monetary defaults.

19. **Easements and Covenants to Run With Title.** The benefits and the burdens of the Public Use Easements declared in this Agreement run with title to the Parking Ramp Parcel and the Parking Ramp and inure to the benefit of the City, the Authority and the public and are binding on all successor owners of the Parking Ramp Parcel and their respective heirs, personal representatives and successors in title until the Termination Date.
  
20. **Miscellaneous.** The following shall apply to this Agreement:
  - a. Redeveloper must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the Redeveloper in accordance with this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Redeveloper in accordance with this Agreement. The civil remedies of Minnesota Statute § 13.08 apply to the release of the data referred to in this section by the Redeveloper, the City or the Authority. In the event the Redeveloper receives a request to release the data referred to in this section, the Redeveloper must promptly notify the City. The City will give the Redeveloper instructions concerning the release of the data to the requesting party before the data is released, and the City will be responsible for any determination regarding the release of such data and shall defend, indemnify, and hold the Redeveloper harmless from any losses, costs, liabilities, or expenses incurred by the Redeveloper in connection with the Redeveloper's compliance with instructions provided by the City.
  - b. Under Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices relevant to the construction and operation of the Parking Ramp may be subject to examination by the State of Minnesota and/or the Minnesota State Auditor or Legislative Auditor, as appropriate for a total of six years.
  - c. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any action to enforce or interpret this Agreement shall be venued in the Dakota County District Court in Minnesota. If any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.
  - d. Redeveloper shall, at its cost, record a copy of this Agreement and the certificates referenced in Paragraph 13 hereof in the public land records in and for Dakota County, Minnesota.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the first stated above.

**CITY OF HASTINGS**

By: \_\_\_\_\_  
Paul Hicks, Its Mayor

By: \_\_\_\_\_  
Julie Flaten, City Clerk

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Paul Hicks and Julie Flaten, the Mayor and City Clerk of the City of Hastings, a Minnesota municipal corporation and charter on behalf of the City.

\_\_\_\_\_  
Notary Public

**HASTINGS ECONOMIC DEVELOPMENT  
AND REDEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Dennis Peine, Its President

STATE OF MINNESOTA )  
 )ss.  
COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by Dennis Peine, the President of the Hastings Economic Development and Redevelopment Authority, a public body politic and corporate, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

**CONFLUENCE DEVELOPMENT LLC**

By: \_\_\_\_\_  
Patrick O. Regan, Its Vice President

STATE OF MINNESOTA )

)ss.

COUNTY OF DAKOTA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_, 2017 by Patrick O. Regan, the Vice President of Confluence Development LLC, a  
Minnesota limited liability company.

\_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION PARKING LOT PARCEL

EXHIBIT B

LEGAL DESCRIPTION MAIN DEVELOPMENT PARCEL



EXHIBIT C

DEPICTION AND LEGAL DESCRIPTION OF PARKING RAMP