



## *HEDRA Memorandum*

**To:** HEDRA Commissioners  
**From:** John Hinzman, Community Development Director  
**Date:** September 24, 2020  
**Subject:** Authorize Signature of Preliminary Development Agreement - Spades SBC - Block 1

### **Requested Action**

Authorize signature of the attached Preliminary Development Agreement with Spades SBC and direct staff to work with Mint Development to find an alternative site.

### **History**

- **August 27<sup>th</sup> HEDRA Workshop** - Discussion of both the Mint Development housing proposal and Spades office proposal. Commissioners were generally supportive of executing a one year Preliminary Development Agreement with Spades with the addition of certain target dates for completion of activities.
- **July 9<sup>th</sup> HEDRA Meeting** - Presentation by Mint Development for development of a residential site. Discussion of development options for Block 1. No action taken.
- **June 11<sup>th</sup> HEDRA Meeting** - Presentation by Spades SBC for development of a 200 employee office building. Staff directed to prepare a Preliminary Development Agreement with Spades and to schedule a presentation of the Mint Development proposal of July and discuss options at that time.

### **Preliminary Development Agreement**

The attached Preliminary Development Agreement has been amended to allow exclusive rights for a one year period ending on September 20, 2021 with the addition of various target dates for completion of activities by Spades.

### **Subject Property**

The subject property referred to as Block 1 comprises two parcels totaling 1.49 acres and generally located between the Mississippi River and Artspace Hastings Lofts. The Site has been owned by HEDRA and the former Hastings HRA for over 30 years and was formerly contained industrial uses. Site development is challenged by Mississippi River setbacks and the presence of overhead electrical powerlines that bifurcate the site. A Purchase and Development Agreement between HEDRA and Panache\Rungoli expired earlier this year.

### **Attachments**

- Preliminary Development Agreement

## **PRELIMINARY DEVELOPMENT AGREEMENT**

**THIS AGREEMENT**, is made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Hastings Economic Development and Redevelopment Authority in and for the City of Hastings, a public body corporate and politic under the laws of the State of Minnesota, (hereinafter referred to as "HEDRA"), having its principal office at 101 4th Street East, Hastings, Minnesota 55033-1955, and Spades, SBC, a Minnesota specific benefits corporation (hereinafter referred to as the "Developer"), having its principal office at 906 East 1st Street, Hastings, MN 55033.

### **RECITALS**

**WHEREAS**, HEDRA is an economic development and redevelopment authority and is the owner of certain real property located within the City of Hastings legally described as Outlot A and Outlot B, Riverfront Addition, Dakota County, Minnesota except that portion thereof platted as Riverfront Second Addition, Dakota County, Minnesota, represented by Dakota County PIN 19-63950-00-021 and 19-63950-00-010 (which real property is referred to herein as the "Property"); and

**WHEREAS**, HEDRA has identified as one of its objectives the encouraging of economic development and job growth within the City of Hastings by inducing and assisting new businesses and organizations to locate in the City for the purposes of creating, fostering, and preserving affordable new jobs and a diverse visitor destination with a strong focus on the Mississippi riverfront near the eastern end of downtown Hastings; and

**WHEREAS**, the Developer is a Minnesota specific benefits corporation committed to cultivating sustainable climate change mitigation by gently engaging human, environmental and economic structures to repeatedly plant billions of trees; and

**WHEREAS**, the Developer wants to evaluate the feasibility of constructing an office building on the Property that would serve as the headquarters for its global operations (hereinafter referred to as the “Project”); and

**WHEREAS**, the Developer must satisfy certain other conditions before it would be in a position to purchase the Property and HEDRA is willing to grant to the Developer an option to purchase the Property, for a limited time period and upon certain conditions, to allow the Developer to proceed with its preliminary development plans and applications while having the assurance from HEDRA that the Property will be available for purchase by the Developer, should the Developer elect to proceed with its development plans and purchase of the Property after satisfying any and all conditions HEDRA may impose on the development plans and purchase of the Property; and

**WHEREAS**, HEDRA is willing to grant an option to the Developer to purchase the Property, but only if the parties are able to agree on the price by which the Property would be sold to the Developer, and if Developer complies with the construction, employment and other covenants established by HEDRA; and

**WHEREAS**, HEDRA may consider providing business subsidy benefits to the Developer if Developer exercises its option to purchase granted hereunder but cannot grant or commit to granting such business subsidies unless and until Developer exercises its option to purchase the Property; and

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

1. **OBLIGATIONS OF HEDRA.** HEDRA will perform the following tasks to assist the Developer in determining the feasibility of the Project:

- a. Prepare ALTA Survey of the Property and provide results of the Survey to the Developer.
- b. Provide the Developer with information on all known regulations that affect use of the Property including parking, building height and flood plain.
- c. Perform cleanup of contamination on the Property pursuant to the terms of the Grant Agreement with the Metropolitan Council.
- d. Provide Developer with a written statement describing the post-cleanup condition of the Property and a description of all considerations for site development, such as the need for a vapor intrusion mitigation system.
- e. Assist Developer in identifying options for providing adequate parking for the Project.
- f. Assist the Developer in identifying options for interim office space if needed prior to availability of the Project.
- g. Work with Developer to create options to mitigate barriers to the Project.

- h. Identify sources and uses of non-local financial assistance.
- i. Investigate issues related to green cities including what it means to become a green city, what actions would the City take over the next ten years, what is the estimated cost of these actions, what benefits would be realized.
- j. Work with Developer to identify alternative sites within Hastings if the Property is deemed unsuitable.

2. OBLIGATIONS OF DEVELOPER. Prior to exercising the option to purchase the property described herein, the Developer shall undertake the following:

- a. No later than January 31, 2020
  - i. Retain qualified architectural and engineering consultants to provide technical assistance in evaluating the ability of the Property to meet company needs.
- b. No later than March 31, 2021
  - i. Identify ways to improve the site by mitigating the impact of rail noise, power lines or other issues that may be identified.
- c. No later than June 30, 2021
  - i. Prepare detailed cost estimate for the Project.
  - ii. Provide HEDRA with a table containing the sources and uses of funds for the Project.
  - iii. Work with HEDRA to create options to mitigate barriers to the Project.
  - iv. Provide HEDRA with timeline illustrating the construction process and the phasing of additional jobs at the Project.
- d. No later than September 30, 2021
  - i. Submit a site plan for review and approval by the City.

3. GRANT OF OPTION. For good and valuable consideration, including the option payment of one thousand and no/100 dollars (\$1,000.00) paid by Developer to HEDRA upon execution of this Agreement HEDRA hereby grants to the Developer a right and option upon the terms and conditions hereinafter set forth, to purchase the Property. The option granted herein is conditioned upon the Developer entering into a comprehensive purchase and development agreement with HEDRA by which the Developer would agree to construct the Project.

4. OPTION TERM. The term of the option to purchase the Property shall commence from the date of this Agreement and shall terminate on September 30, 2021, unless extended by mutual written agreement of both parties. The Developer may terminate the Agreement prior to this date if it determines that the Project is not feasible.

5. OPTION PRICE.

a. If the Developer elects to exercise the option within the option term, as set forth in Paragraph 2 herein, the purchase price for the Property shall be \$470,700.00 (the “Base Price”).

b. HEDRA may consider a reduction in the Base Price to account for one or more of the following conditions:

1. HEDRA determines that certain parts are unusable due to regulatory encumbrances or environmental condition; or

2. The Developer determines that a specified lower price is needed to make the project financially feasible; or

3. HEDRA determines that it is necessary and appropriate to reduce the Base Price as an incentive for the Developer to undertake the Project.

c. In the event the Developer desires to seek a reduction in the Base Price, the Developer shall notify HEDRA in writing of the Developer’s proposed reduction in the Base Price and the basis for the reduction. Such notice shall be deemed to have been duly given if delivered in person or deposited in the United States Mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, to HEDRA at the address set forth in the initial paragraph of this Agreement. Upon receipt of such notice, the parties shall negotiate in good faith to agree on the purchase price for the Property. If the parties do not agree in writing on the purchase price of the Property within 60 days after receipt of such notice, Developer may terminate the Agreement. If HEDRA agrees to any reduction of the Base Price, such reduction would be conditioned upon the Developer entering into a comprehensive purchase and development agreement with HEDRA by which the Developer would agree to construct the Project and establishing additional conditions which may include job creation and other requirements to further the goals and objectives of HEDRA.

6. BUSINESS SUBSIDY COMPLIANCE. The Developer acknowledges and agrees that if the Developer elects to exercise the option hereunder, the conveyance and sale of the Property to the Developer may be subject to the requirements of Minn. Stat. §§ 116J.993 – 116J.995 (the “Business Subsidy Act”). Developer agrees and acknowledges that neither HEDRA nor the City of Hastings can commit to advancing any business subsidies unless and until Developer exercises its option to purchase the Property and upon that occurrence the final decision whether to grant, or not grant, business subsidies to the Developer will be within the sole and absolute discretion of the then governing bodies of HEDRA and the City of Hastings, and will be subject to all laws and regulations governing business subsidies in effect at that time.

7. PERMITTED ENCUMBRANCES. In the event the Developer exercises the option contained herein, the conveyance by HEDRA of the Property shall be subject to the following permitted encumbrances: the obligations and restrictions contained in the Development Agreement and any agreement required under the Business Subsidy Act; reservations of minerals or mineral rights to the State of Minnesota; public utility, roadway and other easements which will not adversely affect the development and use of the Property pursuant to the Developer’s construction plans; environmental covenants which may be imposed as a result of environmental remediation

on the Property; easements for overhead powerlines currently in place on the Property; building laws, regulations and ordinances consistent with the proposed improvements; real estate taxes that the Developer agrees to pay or assume pursuant to the Development Agreement; restrictions, covenants and easements of record that do not materially adversely affect the development and use of the proposed improvements; and exceptions to title to the Property which are not objected to by the Developer upon examination of the title evidence to be delivered to the Developer pursuant to the Development Agreement.

8. TAXES AND ASSESSMENTS. HEDRA shall pay at closing all real estate taxes and installments of special assessments due in all years prior to the year of closing. Real estate taxes and special assessments due in the year of closing shall be prorated between the parties. The Developer shall pay all real estate taxes and installments of special assessments due and payable in the year following the year of closing and subsequent years.

9. TITLE AND REMEDIES. HEDRA shall within a reasonable time after notification by the Developer of the exercise of the option provide for the Developer's inspection an Abstract of Title certified to date, or at HEDRA's option, a commitment for an owner's policy of title insurance, including proper searches covering bankruptcies, state and federal judgments and liens. The Developer shall be allowed 10 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made the Developer shall be allowed to rescind the transaction in which event HEDRA shall refund to the Developer any payments made pursuant to the terms of this Agreement, or if HEDRA elects to remedy said title objections, HEDRA shall be allowed 60 days to make such title marketable. Pending correction of the title the date of closing shall be postponed but upon correction of the title and within 30 days after written notice to the Developer the closing shall occur. If said title is not marketable and is not so made within 60 days from the date of the written objections thereto as above provided, this Agreement shall be null and void at the option of the Developer and HEDRA shall refund to the Developer any of the payments made pursuant to the terms of this Agreement and neither party shall be liable for damages to the other party.

10. EXERCISE OF OPTION AND CLOSING. In the event the Developer desires to exercise the option herein granted, the Developer shall notify HEDRA in writing of the Developer's intent to do so and such notice shall be deemed to have been duly given if delivered in person or deposited in the United States Mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, to HEDRA at the address set forth in the initial paragraph of this Agreement.

11. NO PARTNERSHIP OR JOINT VENTURE CREATED HEREBY. Nothing contained in this Agreement shall be interpreted as creating a partnership or joint venture between the Developer and HEDRA relative to the Property.

12. ASSIGNMENT. The Developer may not assign its interest in this Agreement without the prior written consent of HEDRA, which consent may be granted or withheld in the sole and absolute discretion of HEDRA. An unconsented assignment by the Developer shall be void, and at the option of HEDRA, shall be grounds for the termination of this Agreement.

13. AMENDMENT, MODIFICATION, OR WAIVER. No amendment, modification, or waiver of any condition, provision, or term shall be valid or of any effect unless made in writing,

signed by the party or parties to be bound or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties hereto under and pursuant to this Agreement.

14. SEVERABLE PROVISIONS. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

15. CAPTIONS, HEADINGS, OR TITLES. All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement as a limitation of the scope of the particular paragraphs or sections to which the apply.

16. MINNESOTA LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota and any dispute shall be venued in the Dakota County District Court.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the \_\_\_\_day of \_\_\_\_\_, 2020.

Dated: \_\_\_\_\_, 2020

**SPADES, SBC**  
A Minnesota special benefits corporation

\_\_\_\_\_  
By: Raymond Menard  
Its: Chief Executive Officer

**ACKNOWLEDGMENT**

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

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2020, by Raymond Menard, the Chief Executive Officer\_of Spades SBC, a Minnesota special benefits corporation.

Notary Public



