



City Council Memorandum

To: Mayor Fasbender and City Councilmembers
From: John Hinzman, Community Development Director
Date: October 17, 2022
Item: The Confluence - Authorize Signature of Amended Purchase and Development Agreement and Minimum Assessment Agreement

Action Requested:

Authorize signature of the following items related to The Confluence:

- 1) 5th Amendment to Purchase and Development Agreement
- 2) Minimum Assessment Agreement

The actions extend the substantial completion date from October 31, 2022 to May 31, 2023 and obligates Confluence to execute a Minimum Assessment Agreement for payment of taxes by Confluence based upon a valuation of \$5,733,294. The Minimum Assessment Agreement would be effective January 1, 2023 regardless of the status of completion of Minimum Improvements. Approval would be subject to minor modifications as approved by the City attorney. Approval requires a simple majority of City Council.

Background:

In 2016 the City, HEDRA, and Confluence Development executed a Purchase and Development Agreement (PDA) for Great River Landing (now The Confluence) a historic rehabilitation of the former Hudson Manufacturing Building located at 200 2nd Street W. The PDA set parameters and obligations for the transfer of the building to Confluence for development of a hotel, apartments, banquet facility, and commercial space.

All parties have subsequently executed amendments to the original PDA to reflect changes and delays with the project. The property was transferred to Confluence in March, 2018. In August 2019 a third amendment to the agreement was executed to address environmental remediation, remaining grant payments, and completion dates. The fourth amendment was executed in August 2021 to update commencement of the project and completion of items and obligated the developer to enter into a Minimum Assessment Agreement if substantial completion was not achieved by October 31, 2022.

Status of Construction:

Confluence has completed most of the exterior improvements. Within the building windows, HVAC, electrical and plumbing work is well underway. Framing of the apartments and commercial spaces is taking shape.

HEDRA Action:

HEDRA will consider similar action at its October 13th meeting.

Attachments:

- 5th Amendment to Purchase and Development Agreement
- Minimum Assessment Agreement

FIFTH AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT (“Fifth Amendment”) is made this _____ day of _____, 2022 (“Effective Date”), by and between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic (“Authority”), 101 Fourth Street East, Hastings, Minnesota 55033; the City of Hastings, a home rule charter city under the laws of the State of Minnesota (“City”), 101 Fourth Street East, Hastings, Minnesota 55033; Confluence Development LLC, a Minnesota limited liability company (“Redeveloper”), 101 East 10th Street, Suite 300, Hastings, Minnesota 55033; and Confluence Park LLC, a Minnesota limited liability company (“Park LLC”), 101 East 10th Street, Suite 300, Hastings, Minnesota 55033 (Redeveloper and Park LLC are collectively known as “Redeveloper”).

RECITALS

WHEREAS, the Authority, the City and Redeveloper entered into that certain Purchase and Development Agreement dated January 18, 2016 (the “Original Agreement”) as amended by the First Amendment to Purchase and Development Agreement dated January 2, 2018 (the “First Amendment”), further amended by the Second Amendment to Purchase and Development Agreement dated July 23, 2018, further amended by the Third Amendment to Purchase and Development Agreement dated August 19, 2019, which added Park LLC as a party thereto (the “Third Amendment”) and Fourth Amendment dated August 6, 2021 (collectively, the Original Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment shall be called the “Agreement”), in which the Authority agreed to sell certain real property to the Redeveloper (“Redevelopment Property”) for the purpose of rehabilitating the building located on a portion of the Redevelopment Property (the “Building”) and performing certain other improvements to the Redevelopment Property as required in the Agreement; and

WHEREAS, the Authority conveyed the Redevelopment Property to the Redeveloper on or about March 5, 2018; and

WHEREAS, on or about March of 2020, the COVID-19 pandemic shut down all activities related to fulfilling the obligations under the Agreement and caused major stoppages and disruptions in the production, supply chains and workers such that it made compliance with completion dates in the Agreement impossible, resulting in a new completion date of October 31, 2022; and

WHEREAS, since that time supply chain issues related to the pandemic involving, among other things, windows, doors, electrical switchgear, multiple HVAC system components, as well as labor shortages, have further contributed to the inability to meet the new completion date; and

WHEREAS, the Fourth Amendment required that in the event the Redeveloper is not able to complete construction by October 31, 2022, a Minimum Assessment Agreement would be executed.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Section 4.3 (a)(v) of the Agreement is hereby deleted in its entirety and replaced as follows:

- v. Redeveloper shall substantially complete construction of the Preliminary Improvements, the Main Project, the Development Work and the Minimum Improvements by May 31, 2023. “Substantially complete construction” shall mean that the Redeveloper has completed all of the Developer’s construction obligations pursuant to this Agreement so that a Certificate of Occupancy can be issued for final occupancy of the entire Building.

Section 2. Section 9.2 (c) of the Agreement is hereby deleted in its entirety and replaced as follows:

- (c) Simultaneous with the execution of this Fifth Amendment, the Redeveloper shall execute a Minimum Assessment Agreement for the estimated market value of \$5,733,294, which shall be the minimum assessed value for the Redevelopment Property effective January 1, 2023, regardless of the status of the completion of the Minimum Improvements.

Section 3. All other terms of the Agreement shall remain unchanged.

[remainder of page intentionally blank]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**HEDRA:
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**

By _____
Bruce Goblirsch
Its President

By _____
Eric Maass
Its Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Bruce Goblirsch and Eric Maass, the President and Secretary respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ___ day of _____, 2022, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

CONFLUENCE DEVELOPMENT LLC

By: _____
Patrick O. Regan
Its President and Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Patrick O. Regan, the President and Chief Manager of Confluence Development LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

CONFLUENCE PARK LLC

By: _____
Patrick O. Regan
Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Patrick O. Regan, the President of Confluence Park LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

This document drafted by:
Korine Land (#0262432)
LeVander, Gillen, & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
(651) 451-1831

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT (the “Minimum Assessment Agreement”), dated as of this ____ day of _____, 2022, is between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic (the “HEDRA”), the City of Hastings (“City”) and Confluence Development LLC, a Minnesota limited liability company and Confluence Park LLC, a Minnesota limited liability company (collectively, the “Developer”).

WITNESSETH

WHEREAS, on or before the date hereof the HEDRA, the City and Developer have entered into a Purchase and Development Agreement dated January 18, 2016 (the “Original Agreement”) as amended by the First Amendment to Purchase and Development Agreement dated January 2, 2018 (the “First Amendment”), further amended by the Second Amendment to Purchase and Development Agreement dated July 23, 2018, further amended by the Third Amendment to Purchase and Development Agreement dated August 19, 2019, which added Park LLC as a party thereto (the “Third Amendment”) and Fourth Amendment dated August 21, 2022, (collectively “Development Agreement”) regarding certain real property located in the City of Hastings, Minnesota (the “City”) the description of which is attached hereto as **Exhibit A** (the “Development Property”); and

WHEREAS, it is contemplated that pursuant to the Development Agreement, the Developer will undertake the rehabilitation and conversion of an existing historic building located on the Development Property into a hotel, market-rate apartments, a restaurant and retail or commercial uses, as well as underground and surface parking, greenspace and related amenities in the City (the “Project”), in accordance with plans and specifications approved by the HEDRA; and

WHEREAS, the HEDRA, the City and Developer desire to establish a minimum market value for the Development Property and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177; and

WHEREAS, the Developer has acquired the Development Property; and

WHEREAS, the HEDRA, the City and the County Assessor of Dakota County have reviewed plans and specifications for the Project; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. As of January 2, 2023, the minimum market value, which shall be assessed for the Development Property for taxes payable 2024 and in each year thereafter, shall not be less than \$5,733,294.

2. The minimum market values herein established shall be of no further force and effect after assessment on or before December 31, 2042, for taxes payable in 2043 provided, however, this Minimum Assessment Agreement shall terminate on such date as the TIF District (as defined in the TIF Assistance Agreement) is decertified (the "Termination Date"). If the Termination Date is earlier than December 31, 2042 for taxes payable in 2043, HEDRA shall duly execute and record a release of this Agreement upon the written request and sole expense of the then holder of fee title to the Development Property.

3. This Minimum Assessment Agreement shall be recorded by HEDRA with the County Recorder of Dakota County, Minnesota. The Developer shall pay all costs of recording.

4. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall they be construed as, modifying the terms of the Development Agreement between the HEDRA, the City and the Developer.

5. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties, shall be governed by and interpreted pursuant to Minnesota law, and may be executed in counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same instrument.

[remainder of page left intentionally blank]

**HEDRA:
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**

By _____
Bruce Goblirsch
Its President

By _____
Eric Maass
Its Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Bruce Goblirsch and Eric Maass, the President and Secretary respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

**CITY:
CITY OF HASTINGS**

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this ____ day of _____, 2022, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

CONFLUENCE DEVELOPMENT LLC

By: _____
Patrick O. Regan
Its President and Chief Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022 by Patrick O. Regan, the President and Chief Manager of Confluence Development LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

CONFLUENCE PARK LLC

By: _____
Patrick O. Regan
Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Patrick O. Regan, the President of Confluence Park LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed the Minimum Assessment Agreement dated as of _____, 2022 by and Hastings Economic Development Authority, City and Confluence Development LLC, and Confluence Park LLC, the plans and specifications for the Project, as defined in the foregoing Minimum Assessment Agreement, and the market value currently assigned to land upon which the improvements are to be constructed and being of the opinion that the minimum market value contained in the Minimum Assessment Agreement appears reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the below-described property, hereby certifies that the minimum market value of \$5,733,294 commencing as of January 2, 2023, assigned to such land and improvements is reasonable.

County Assessor for Dakota County

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

This instrument was acknowledged before me on _____, 2022, by _____, the County Assessor of Dakota County.

Notary Public

This Instrument Drafted By:
Korine L. Land (#0262432)
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Lots 1, 2, 3 and 4, Block 1, Great Rivers Landing, Dakota County, Minnesota.

PIDs 19-30090-01-010, 19-30090-01-020, 19-30090-01-030, and 19-30090-01-040
Abstract Property

AND

Lots 2, 3 and 4, Block 12, Town of Hastings, Dakota County, Minnesota.

PID 19-32150-12-042
Abstract Property