



*City Council and
HEDRA Memorandum*

To: Mayor Fasbender, City Councilmembers, and HEDRA Commissioners
From: John Hinzman, Community Development Director
Date: August 19, 2019
**Item: Authorize Signature: 3rd Amendment to Purchase and Development Agreement –
Confluence Development**

Action Requested:

Authorize Signature of the attached 3rd Amendment to the Purchase and Development Agreement for the redevelopment of the former Hudson Manufacturing Building located at 200 West 2nd Street. Approval requires a simple majority of City Council and HEDRA Commissioners.

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. The City and Confluence 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 and development of the project experienced impediments. The current PDA requires substantial completion of the project by December 15, 2019, which will not occur. Delays in the project have led to a loss of anticipated TIF revenue which the City may have used to pay off the bond expense created when the City purchased the property.

On May 9, 2019 the City Council and HEDRA held a joint meeting with Confluence Development to review the status of the project. Items discussed included implications of not completing work to allow for full use of grant funding, the ability of Confluence to begin work prior to closing of a construction loan, timing of the agreements versus starting the project, and future consideration of an amendment to the Purchase and Development Agreement to extend the substantial completion date.

Delays in this project have created additional financial risks for the City. If the grants received for environmental remediation are not expended by December 31, 2019 the City is obligated to pay for this work to be done. The City and Confluence have established strict timelines for completion of work by both parties to ensure the grant funds can be expended timely.

City and HEDRA Environmental Obligations

As previously agreed, the City and HEDRA have committed to completing certain environmental remediation of the site after the transfer of the property. Grant funds cover a substantial portion of the project, however HEDRA funds would be used to fill gaps.

- **Vapor Intrusion Mitigation System (VIMS)** - A system to actively vent soil vapor. Floors of the building would be sealed and connected with pipes and blowers to vent off soil vapor. Includes Supplemental VIMS Work for the removal of floor trusses and additional rock to provide a level floor in crawl space areas.
- **Wood Sealing and Encapsulation** - Environmentally contaminated wood floors and trusses would be cleaned and sealed with a specialized paint or gypcrete.

	Total Estimated Cost	Available Grant Funding	Net City Cost
VIMS	*\$813,714	\$500,000	*\$313,714
Wood Sealing	\$150,460	\$78,000	\$72,460
TOTAL Cost	\$964,174	\$578,000	\$386,174

* Represents a cost increase of \$21,114 over 2017 estimate

Key Items

- **Parking Ramp** – Ramp open. Signage needed to better indicate parking is public.
- **Park and Landscape Improvements** – Civil and Landscape Plans approved by City Preconstruction meeting held August 7th. Construction scheduled to begin August 20th. All grant funded activities to be complete by end of 2019.
- **VIMS Environmental** - HEDRA to approve contract for installation on August 19th. Work to begin in September to ensure full use of grant funding.
- **Wood Sealing and Encapsulation** –HEDRA to approve contract for installation on August 19th. Bids due September 25th. Work completed by December 31st.
- **Building Plans** – The complete set of building plans has been reviewed by the City. A permit should be issued shortly.
- **Construction Financing** – Construction financing expected to be secured during early September to allow for work to begin within the building. Confluence has committed to pursuing and early start waiver if there is any delay in securing financing so that work can begin in September.
- **Purchase and Development Agreement Amendment** – Will memorial obligations. HEDRA and City Council scheduled to take action on August 19th.

Proposed Amendment:

Pages 1-6 of the proposed 3rd amendment contain recitals pertaining to past actions and agreements. The proposed amendment language begins after the “Now Therefore” clause on Page 6, with changes subdivided into various sections.

Changes include:

- More specific timing requirements for the redeveloper's obligations to complete preparation work and authorize the city to proceed with its work in the building.
- Better definition for completion of substantial requirements to require that all of the work in the building permit application are completed by December 15, 2020.
- A requirement for proof of financing and the City holding the notice of proceed for start of the main project until that proof of financing is received.
- Additional progress reporting requirements.
- Better defined process for payments related to grant funding.
- Ability for the redeveloper to start the trail and park improvements immediately upon approval.
- Relief provisions allowing for the city to be relieved of its obligations to pay for unreimbursed costs of the VIMS and wood sealing work if the redeveloper does not complete its preparation work and give the city permission to proceed by the specified dates. These relief provisions are specifically and narrowly drafted so they need to be reviewed carefully.
- Shortened notice of default time (30 days down to 7 days) which would allow the city to take legal action much faster than before.

Attachments:

- Site Map
- 3rd Amendment to Purchase and Development Agreement

SITE MAP



THIRD AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT (the “Amendment”), is made on or as of the ___ day of August, 2019, 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; Confluence Development LLC, a Minnesota limited liability company (hereinafter referred to as the "**Redeveloper**"), having its principal office at 101 East 10th Street, Suite 300, Hastings, Minnesota 55033; and Confluence Park, LLC, a Minnesota limited liability company (hereinafter referred to as the "**Park LLC**"), having its principal office at 101 East 10th Street, Suite 300, Hastings, Minnesota 55033. The foregoing are sometimes referred to collectively as the "**Parties**".

RECITALS:

WHEREAS, the Authority, the City and the Redeveloper have entered into that certain Purchase and Development Agreement dated January 18, 2016 (the "**Original Agreement**"), as amended by that certain First Amendment to Purchase and Development Agreement dated January 2, 2018 (the "**First Amendment**") and that certain Second Amendment to Purchase and Development Agreement dated July 23, 2018 (the "**Second Amendment**" and, collectively with the Original Agreement and the First Amendment, the "**Agreement**") pursuant to which the Authority agreed to sell certain real property to the Redeveloper (as defined in the Agreement, the "**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 specified in the Agreement.

WHEREAS, pursuant to the First Amendment, the Authority conveyed the Redevelopment Property to the Redeveloper on or about March 5, 2018.

WHEREAS, the Agreement provides dates by which the Redeveloper must commence and complete construction of the Minimum Improvements contemplated by the Agreement, and the First Amendment provided specifically as follows (italics added for clarity):

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.

WHEREAS, the City has applied for and received approval for two Dakota County CDA Redevelopment Incentive Grants (RIG) in the amount of \$250,000 each (the “**Dakota County CDA Grants**”) to be used to offset a portion of the cost of the Vapor Mitigation Work. To receive all grant funds available under both of the Dakota County CDA Grants, a sufficient amount of the Vapor Mitigation Work must be completed and the required invoices and other submissions requesting disbursement of the full amount of the Dakota County CDA Grant funds must be submitted by the City on or before December 31, 2019.

WHEREAS, the City has applied for and received approval for a Metropolitan Council Tax Based Revitalization Account (TBRA) grant in the amount of \$78,000 (the “**TBRA Grant**” and collectively with the Dakota County CDA Grants, the “**Environmental Grants**”) to be used to offset the cost of the Wood Sealing Work. To receive the grant funds available under the TBRA Grant, the Wood Sealing Work must be completed and the required invoices and other submissions requesting disbursement of the grant funds must be submitted by December 31, 2019.

WHEREAS, the Agreement provides generally that the Authority is responsible for performing and paying for all costs of fully implementing the RAP and performing any and all environmental remediation and reporting work that is necessary to obtain the MPCA Certificate of Completion, including, without limitation, (i) the costs of the Wood Sealing Work; (ii) the costs of the Vapor Mitigation Work; (iii) the costs of preparing and submitting the final RAP Implementation Report; (iv) the costs of any testing required to confirm compliance with the RAP; and (v) 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 (the foregoing, subject to the limitations provided above, is referred to collectively for convenience as the “**Authority’s Environmental Work**”). The First Amendment provided specifically as follows (*italics added for clarity*):

*(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. 2nd Street Hastings, Minnesota submitted by Clean Vapor LLC dated July 27, 2017 (“**Clean Vapor Base VIMS Contract**”), which is*

*attached hereto as First Amendment-Schedule I, including any associated change orders or cost adjustments thereto. The Authority shall also be responsible for all costs up to but not exceeding \$358,790.00 (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**”). The amount of the Supplemental VIMS Cap shall be automatically increased on a dollar-for-dollar basis to the extent (i) the Authority or City receives deductions from or credits against the projected costs of the Clean Vapor Base VIMS Contract and (ii) such deductions or credits are the result of or reflect changes to the Clean Vapor Base VIMS Contract that are available as a result of the Supplemental VIMS Construction Work. Subject to the provisions of the previous sentence, 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.

WHEREAS, the Redeveloper, the City, and the Authority have determined that most of the Supplemental VIMS Construction Work will be performed by the Redeveloper’s contractors in order to facilitate the efficient and timely commencement and completion of such work. As a result, it is necessary to provide a process whereby the Redeveloper may submit pay reimbursement requests for the Supplemental VIMS Construction Work to the Authority and City (the “**Supplemental VIMS Pay Applications**”).

WHEREAS, The City and Authority intend to use a portion of the funding available under the Dakota County CDA Grants to offset a portion of their obligation to pay for the Supplemental VIMS Construction Work up to the Supplemental VIMS Cap. As a result, it is necessary for the Redeveloper to submit to the City and Authority one or more Supplemental VIMS Pay Applications prior to expiration of the Dakota County CDA Grants.

WHEREAS, before the Authority’s contractors can proceed with the work to be performed under the Clean Vapor Base VIMS Contract (the “**Base VIMS Work**”) and the Wood Sealing Work, the Redeveloper’s contractors must complete certain work that is required to be completed prior to commencement of portions of the Base VIMS Work and portions of the Wood Sealing Work. Specifically, (i) prior to commencement of the Base VIMS Work within the crawlspace

areas of the Building identified on the attached Third Amendment Schedule A (the “**Crawlspace Areas**”), the Supplemental VIMS Construction Work described in the VIMS Addendum as Option B—excluding the pouring of new concrete slabs, which will occur after the Base VIMS Work—must occur and the Redeveloper must install certain plumbing and HVAC components within the Crawlspace Areas (collectively, the “**Crawlspace Areas VIMS Preparation Work**”); (ii) prior to commencement of the Base VIMS Work within the areas of the Building that do not have Crawlspace Areas (the “**Non-Crawlspace Areas**”), the Redeveloper’s contractors must sawcut or otherwise dig trenches in the existing Building foundation to allow for the installation of piping, as part of the Base VIMS Work, below the slab in the Non-Crawlspace Areas (the “**Non-Crawlspace Areas VIMS Preparation Work**” and collectively with the Crawlspace Areas VIMS Preparation Work, the “**VIMS Preparation Work**”); and (iii) prior to commencement of the Wood Sealing Work, the Redeveloper’s contractors must remove certain unused utilities—including specifically unused electrical, plumbing, and other piping but excluding the Building’s existing fire sprinkler system—from within the Building’s ceiling trusses (the “**Wood Sealing Preparation Work**”) in order to facilitate the application of an epoxy sealant paint as part of the City and Authority’s Wood Sealing Work. The Wood Sealing Preparation Work and the VIMS Preparation Work are referred to collectively in this Amendment as the “**VIMS and Sealing Preparation Work**”.

WHEREAS, in addition, once the Base VIMS Work is commenced by the Authority’s contractor, there will be times the Authority’s contractors and the Redeveloper’s contractors will need to be working within the same space concurrently to install the components each need to install, in a specified sequence, within that space.

WHEREAS, the Agreement provides the terms by which the right of reverter contained in the Deed will be released by the Authority, and the First Amendment provided specifically as follows (*italics added for clarity*):

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.

WHEREAS, the Authority acquired the Redevelopment Property with funds generated by the sale in 2010 of Limited Tax Obligations Bonds issued by the Authority. Those bonds were refinanced by the City in 2015 with General Obligation Tax Increment Bonds for which the City expends approximately \$203,334 annually as debt service on those bonds. A Tax Increment District has been created as a “redevelopment district” as defined in Minnesota Statutes, Section 469.174, Subdivision 10 and the tax increment generated from the Tax Increment District will be used to repay the City and Authority for costs they have incurred and will incur in acquiring and preparing the Redevelopment Property for redevelopment. The extension of the date contained in the Original Agreement by which the Redeveloper was required to substantially complete the

Minimum Improvements from December 31, 2016 (for the residential portion of the Minimum Improvements) and from December 31, 2017 (for the commercial portion of the Minimum Improvements) to December 15, 2019 (for all portions of the Minimum Improvements) as contained in the First Amendment prevented any current tax increment from being generated from the Tax Increment District for use by the Authority and City to repay their costs incurred in acquiring and preparing the Redevelopment Property for redevelopment. Any further extension of the date by which the Redeveloper is required to substantially complete the Minimum Improvements will further prevent and delay any tax increment from being generated from the Tax Increment District for use by the Authority and City to repay their costs incurred in acquiring and preparing the Redevelopment Property for redevelopment.

WHEREAS, as a result of delays experienced in preparing for the redevelopment of the Redevelopment Property after execution of the First Amendment, the Authority, City and Redeveloper agreed in the Second Amendment that the date by which the Redeveloper had to deliver to the City and the Authority the Construction Plans, the Site Plan, and any other documentation required by the City or State for issuance of a building permit was extended from August 1, 2018 to December 1, 2018.

WHEREAS, as a result of further delays in preparing for the redevelopment of the Redevelopment Property, the Redeveloper cannot practically satisfy the substantial completion date for the Minimum Improvements of December 15, 2019 as contained in the First Amendment. The Redeveloper has therefore requested a further extension of the date by which the Redeveloper is required to substantially complete the Minimum Improvements from December 15, 2019 to December 15, 2020.

WHEREAS, the City and the Authority have identified various financial risks that may result from an extension of the date by which the Redeveloper is required to substantially complete the Minimum Improvements. These include but are not limited to: (i) the possibility the Authority will be unable to complete the Base VIMS Work, the Wood Sealing Work, or both, prior to the expiration dates of the Environmental Grants such that the Authority would be obligated to complete and pay for the Base VIMS Work and the Wood Sealing Work but would be unable to receive otherwise available grant funds needed to pay for that work; (ii) the possibility the Redeveloper does not complete the Riverfront Trail and Private Park Improvements prior to the current December 31, 2019 expiration date of the LCDA Park Grant such that the Redeveloper would be obligated to complete and pay for the Riverfront Trail and Private Park Improvements but would be unable to receive reimbursement for those expenses from the grant funds intended to pay for that work, potentially resulting in a lack of funding for those improvements; (iii) the possibility the Redeveloper may not sufficiently complete the Minimum Improvements by December 15, 2020 such that the value of the improvements existing on the Redevelopment Property at that time will not generate the anticipated tax increment from the Tax Increment District for use by the Authority and the City to repay their costs incurred in acquiring and preparing the Redevelopment Property for redevelopment; and (iv) the possibility of a default by the Redeveloper after construction on the Redevelopment Property has commenced and after the Authority has released the right of reverter in the Deed and Redeveloper's lenders have been granted mortgages encumbering the Redevelopment Property, making the Authority's remedy of revesting title to the Redevelopment Property in the Authority an ineffective remedy.

WHEREAS, in an effort to reduce some of the risk identified above, the Redeveloper has requested and anticipates receiving approval and an early start waiver from its title company that will allow it to begin work on the Riverfront Trail and the Private Park Improvements before the closing on its construction loan for the Minimum Improvements on the Redevelopment Property.

WHEREAS, the City and the Authority are desirous of granting the Redeveloper's request to further extend the time by which the Redeveloper is required to substantially complete the Minimum Improvements subject to: (i) the Redeveloper providing assurances and documentation demonstrating it has secured a binding commitment for financing before the Redeveloper actually commences any work to construct Minimum Improvements other than the Riverfront Trail, the Private Park Improvements or the VIMS and Sealing Preparation Work (such work is hereinafter referred to collectively as the "**Preliminary Improvements**") on the Redevelopment Property; (ii) the Redeveloper confirming it is obligated to pay for the costs of the Riverfront Trail and Private Park improvements from private funds if such costs are not submitted to the City for reimbursement through the LCDA Park Grant on or before December 20, 2019 or if such costs exceed the amount of the LCDA Park Grant; and (iii) the Redeveloper committing to a construction schedule that will allow the Authority and its contractors sufficient and certain time and access to the Redevelopment Property to complete the Base VIMS Work and Wood Sealing Work so that the funds from the Environmental Grants will be available and received to pay for a portion of that work.

WHEREAS, the Parties have agreed, subject to the terms and provisions set forth herein, to extend and modify such dates and obligations and desire to enter into this Amendment to set forth their respective agreements.

NOW, THEREFORE, the Parties hereby agree as follows:

Section 1. Words and terms used herein and not otherwise defined shall have the meanings assigned to them in the Agreement. The foregoing Recitals are incorporated herein by reference to the same extent as if they were repeated here. As used herein and in the Agreement, the phrase "business day" shall mean a date that is not a Saturday, Sunday, or federal holiday.

Section 2. Section 4.3 of the Original Agreement, as previously amended, is hereby deleted in its entirety and replaced with the following:

Section 4.3 (a) Commencement and Completion of Construction. Subject to the requirements of Section 4.3(b) and Section 4.4(c), as amended, the Redeveloper: (i) shall commence construction of the Riverfront Trail and Private Park Improvements on or before September 16, 2019 and shall complete such portion of the Riverfront Trail and Private Park Improvements as are funded by the LCDA Park Grant to allow submission of a final Park Grant Pay Application (as hereinafter defined) for all available LCDA Park Grant funds to the City on or before December 20, 2019; (ii) shall complete the Non-Crawlspace Areas VIMS Preparation Work and authorize the City and Authority to commence the Base VIMS Work within the Non-Crawlspace Areas on before September 30, 2019; (iii) shall complete the Crawlspace Areas VIMS Preparation Work and authorize the City and Authority to commence the remaining portion of the

Base VIMS Work within the Crawlspace Areas on or before October 28, 2019; (iv) shall complete the Wood Sealing Preparation Work within the Non-Crawlspace Areas and authorize the City and Authority to commence the Wood Sealing Work within the Non-Crawlspace Areas on or before September 30, 2019; (v) shall complete the Wood Sealing Preparation Work within the Crawlspace Areas and authorize the City and Authority to commence the Wood Sealing Work within the Crawlspace Areas on or before the date that is ten (10) business days after completion of all Base VIMS Work within the Crawlspace Areas that is required to be completed before the Redeveloper's contractor can pour a new concrete slab within the Crawlspace Areas; (vi) shall cooperate with the City and Authority and take all reasonable action to enable the Base VIMS Work and Wood Sealing Work to be completed on or before December 20, 2019; (vii) shall commence construction on the Main Project (as hereinafter defined) by no later than October 31, 2019; and (viii) shall substantially complete construction of the Minimum Improvements by December 15, 2020. For purposes of the foregoing sentence, "substantial completion" shall mean that the Redeveloper has completed the scope of work outlined in the building permit application originally submitted by the Redeveloper's general contractor to the City on or about June 17, 2019 as previously supplemented and subject to such minor modifications as are made to the Redeveloper's plans for the Building as part of the construction process ("**Permit Application**"), to such degree that the City has, acting in accordance with its normal procedures, issued a full certificate of occupancy with regard to the portions of the Building designated for final occupancy under the Permit Application.

(b) City Notice to Proceed. Prior to the Redeveloper actually commencing any construction of the remaining Minimum Improvements other than the Preliminary Improvements on the Redevelopment Property (such remaining work hereinafter referred to as the "**Main Project**"), the Redeveloper shall provide the City and Authority with a written financing commitment from a qualified lender for the construction loan that will fund the construction of the Main Project, including a description of all qualifications to this commitment (the "**Financing Commitment**"). Upon receipt of the Financing Commitment, the City and Authority shall immediately but in no event later than three (3) business days following receipt of the Financing Commitment notify the Redeveloper of any reasonable objections to the content of the Financing Commitment and of additional information the City and the Authority may reasonably require to accept the assurances that the Redeveloper has secured sufficient financing to complete the construction of the Minimum Improvements. Upon receipt of such additional information if requested, or if the City and the Authority have no objections to the content of the Financing Commitment, the City and Authority, as soon as reasonably possible but no later than three (3) business days following receipt of the initial Financing Commitment or supplemental information, shall provide the Redeveloper with a written notice to proceed with construction of the Main Project on the Redevelopment Property. Under no circumstance shall the Redeveloper proceed with construction of the Main Project unless and until a building permit is issued by the City and a notice to proceed is issued to the Redeveloper by the City and the Authority. Neither the building permit nor the notice to proceed shall be unreasonably withheld, conditioned or delayed. Failure by the City or Authority to provide written objections to the Financing Commitment or a written notice to proceed within the three (3) business day period outlined above shall constitute approval of the Financing Commitment and shall be deemed delivery of a notice to proceed.

(c) Progress Reports. Subject to subsection (b) of this Section 4.3, the Redeveloper agrees that it shall promptly begin and diligently prosecute to completion construction of Minimum Improvements within the periods specified in this Section 4.3 of this Agreement. Until construction of the Minimum Improvements has been completed, the Redeveloper shall make construction progress reports, at such times as may reasonably be requested by the Authority and City as to the actual progress of the Redeveloper with respect to such construction.

(d) Certificate of Completion. Promptly after completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Redeveloper to construct the Minimum Improvements, and upon request by the Redeveloper, the Authority will furnish the Redeveloper with a certificate of completion for the Minimum Improvements in a form acceptable for recording in the County Recorder's Office or the Office of the County Registrar of Titles (the "**Certificate of Completion**"). The Certificate of Completion shall be furnished to the Redeveloper within ten (10) business day after request by the Redeveloper and shall conclusively satisfy and terminate the agreements and covenants in this Agreement and in the Deed of the Redeveloper, and its successors and assigns, to construct the Minimum Improvements. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Redeveloper to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned for construction of the Minimum Improvements, or any part thereof. If the Authority shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.3 of this Agreement, the Authority shall, within ten (10) business days after written request by the Redeveloper for the Certificate of Completion, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement and what measures or acts will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain the Certificate of Completion. Redeveloper shall have the right to seek specific performance of the Authority's covenant to issue a Certificate of Completion.

Section 3. Section 4.4 of the Agreement, as previously amended, is hereby stricken in its entirety and replaced with the following revised Section 4.4:

Section 4.4. Riverfront Trail; Private Park Improvements. (a) Prior to or contemporaneous with construction of the Minimum Improvements the Redeveloper will also construct a riverfront trail and trail lighting (the "**Riverfront Trail**") and certain park and open space improvements and park lighting (the "**Private Park Improvements**") on the Redevelopment Property substantially in accordance with the plans and specifications attached hereto as Third Amendment Schedule B. The City has applied for and received approval for a Metropolitan Council LCDA Grant in the amount of \$980,000 to be used for construction of the Riverfront Trail and the Private Park Improvements (the "**LCDA Park Grant**"). The City will use the grant funds allocated for such purpose to reimburse the Redeveloper for its costs incurred in the design and construction of the Riverfront Trail and the grant funds allocated for such purpose to reimburse the Redeveloper for its costs incurred in the design and construction of the Private Park Improvements. The Redeveloper will comply with all requirements of the LCDA Park Grant.

(b) Public Use Agreement. The Redeveloper, City, and Authority have executed that certain Public Use and Easement Agreement dated March 5, 2018 and recorded with the Office of the County Recorder, Dakota County, Minnesota as Document No. 3245540 on April 12, 2018 (the “**Public Use Agreement**”). In the event of conflict or disagreement in terms, the terms of the final executed and recorded Public Use Agreement shall control over any conflicting terms in this Agreement.

(c) Costs of Riverfront Trail and Private Park Improvements. The Redeveloper shall construct the Riverfront Trail and Private Park Improvements and shall be obligated to pay for the costs of the Riverfront Trail and the Private Park Improvements subject to reimbursement from the LCDA Park Grant. The Redeveloper shall comply with applicable public bidding requirements with regard to any work performed on the Riverfront Trail. The Redeveloper further acknowledges it will be obligated to pay for any unreimbursed costs of the Riverfront Trail and Private Park Improvements unless the Redeveloper submits, in complete and proper form, a final Park Grant Pay Application to the City requesting payment in full of the LCDA Park Grant by December 20, 2019 *and* the lack of reimbursement results, in whole or in part, from the City’s failure to submit the final Park Grant Pay Application to the Metropolitan Council requesting payment in full of the LCDA Park Grant in a timely manner. If the Redeveloper completes the Riverfront Trail and Private Park Improvements in accordance with the plans and specifications attached hereto as Third Amendment Schedule B and submits, in complete and proper form, a final Park Grant Pay Application to the City requesting payment in full of the LCDA Park Grant on or before December 20, 2019 and funding that is available under the LCDA Park Grant is not obtained due to the City’s failure to submit the final Park Grant Pay Application to the Metropolitan Council requesting payment in full of the LCDA Park Grant in a timely manner, then the City and Authority shall be responsible for funding the portion of the Park Grant Pay Application that would have been eligible for reimbursement under the LCDA Park Grant but for the timing of the submittal of the final Park Grant Pay Application to the Metropolitan Council.

(d) Timing and Process for Payments under LCDA Park Grant. The Redeveloper’s contractor, in coordination with the Redeveloper, shall submit applications for payment under the LCDA Park Grant to the City and Authority promptly following completion of portions of the work involved in constructing the Riverfront Trail and Private Park Improvements (the “**Park Grant Pay Application(s)**”). Park Grant Pay Applications shall conform to the requirements of the LCDA Park Grant and shall be accompanied by invoices from subcontractors, copies of contracts and subcontracts, and such other materials as shall reasonably allow the City and Authority to confirm that the expenses for which payment is requested represent actual costs incurred in constructing the Riverfront Trail and Private Park Improvements and that such costs should qualify for reimbursement under the LCDA Park Grant. Upon receipt of the applicable LCDA Park Grant disbursements, the City and Authority shall make payment of those disbursed funds to the Redeveloper’s contractor promptly upon receipt and in no event later than thirty (30) calendar days following receipt of each Park Grant Pay Application. The City and Authority shall provide written explanations with regard to any amounts set forth on a Park Grant Pay Application that are not paid to the Redeveloper’s contractor. The City and Authority agree to use their best efforts to cause the Metropolitan Council to make payments under the LCDA Park Grant within the two (2) week period following submittal of a Park Grant Pay Application pursuant to the terms of Section 2.11 of the Metropolitan Livable Communities Act Grant Agreement signed on

February 15, 2015 and March 23, 2015, as amended, and further agree to consult with the Redeveloper and the Redeveloper's contractor regarding the form and contents of Park Grant Pay Applications in order to facilitate prompt payment in connection with all Park Grant Pay Applications. Costs of the Riverfront Trail and Private Park Improvements that are not reimbursed under the LCDA Park Grant shall be the responsibility of the Party responsible for such costs under subsection (c) above.

(e) Commencement of Park and Trail Improvements. By execution of this Amendment, the City agrees that the Redeveloper has satisfied all administrative and engineering conditions and requirements related to construction of the Riverfront Trail and Private Park Improvements, and the Redeveloper is hereby authorized to commence construction of the Riverfront Trail and Private Park Improvements.

Section 4. Section 3.6 of the Agreement, as previously amended, is hereby further amended to insert the following new subsections (d) and (e) to Section 3.6:

(d) The City and Authority shall be partially relieved of their joint and several obligations to perform and pay for the Authority's Environmental Work if all of the following three conditions are met: (1) the Redeveloper fails to complete either the VIMS Preparation Work or the Wood Sealing Preparation Work *or* to authorize the City and Authority to commence the Base VIMS Work or Wood Sealing Work on or before the dates set forth in in Section 4.3(a) of the Agreement, as amended hereby, *or* the Redeveloper fails to submit Supplemental VIMS Pay Applications (as hereinafter defined) requesting payment to the Redeveloper's contractor(s) of expenses incurred in connection with Supplemental VIMS Construction Work that equal or exceed \$100,000.00 on or before December 20, 2019; *and* (2) as the result of the Redeveloper's failure or failures, the City and Authority are unable to receive the full anticipated disbursements from one or more of the Environmental Grants to cover the costs of a portion of the Authority's Environmental Work; *and* (3) the negligence or intentional misconduct of the City or Authority or their respective contractors has not caused the delays that prevented the City and Authority from receiving the full anticipated disbursements from the respective Environmental Grant (collectively, the "**Authority Relief Conditions**"). In the event the Authority Relief Conditions are all met, then, upon receipt of written notice from the City and Authority, the Redeveloper shall promptly reimburse the City or Authority for the portion of the Authority's Environmental Work that would have been eligible for reimbursement under the Environmental Grants had the work been completed in a timely fashion but for which reimbursement was not actually received as a result of the occurrence of the Authority Relief Conditions. The Redeveloper's liability to the City and Authority shall be subject to the terms and conditions set forth in this subsection (d), and the Redeveloper shall only be obligated to reimburse the City and Authority for actual costs incurred that would have been eligible for reimbursement through the Environmental Grants but for the occurrence of the Authority Relief Conditions. By way of example, if the Authority Relief Conditions are established, the actual cost of the Vapor Mitigation Work is \$700,000.00, the actual cost of the Wood Sealing Work is \$150,000.00, and the Authority or City obtain reimbursement of \$500,000.00 through the Dakota County CDA Grants and \$40,000 through the TBRA Grant but are unable to receive reimbursement of the remaining \$38,000.00 available under the TBRA Grant as a result of the Redeveloper's failure to complete the Wood Sealing Preparation Work within the time periods required under Section 4.3(a), as amended, then the Redeveloper would reimburse

the City and Authority for \$38,000.00, which would represent the difference between the amount of funding actually received through the TBRA Grant and the maximum amount of funding that would have been available under the TBRA Grant but for the Redeveloper's failure to complete the Wood Sealing Preparation Work within the time periods required hereunder. The Redeveloper shall indemnify, hold harmless and defend the City and the Authority from any claims resulting from nonpayment to the City's or Authority's contractors or material suppliers of amounts the Redeveloper is obligated to pay under this Section.

(e) The Redeveloper's general contractor shall submit Supplemental VIMS Pay Applications to the City and Authority in connection with performance of the Supplemental VIMS Construction Work. Supplemental VIMS Pay Applications shall be accompanied by invoices from subcontractors, copies of contracts and subcontracts, and such other materials as shall reasonably allow the City and Authority to confirm that the expenses for which payment is requested represent actual costs of Supplemental VIMS Construction Work. The City and Authority shall make payment to the Redeveloper's contractor promptly upon receipt and in no event later than thirty (30) calendar days following receipt of each Supplemental VIMS Pay Application. Except as expressly provided in subsection (d) above, the City and Authority shall be and remain fully responsible for all costs incurred in connection with the Supplemental VIMS Construction Work except (i) costs in excess of the Supplemental VIMS Cap and (ii) VIMS Structural Work, notwithstanding any restrictions on uses of funds under the Environmental Grants.

Section 5. Section 9.2 of the Original Agreement, as previously amended, is hereby deleted in its entirety and replaced with the following:

Section 9.2 Remedies on Default. Whenever any Event of Default occurs, the non-defaulting party to this Agreement may immediately suspend its performance under this Agreement and may take any one or more of the following actions after providing seven (7) days written notice to the other party of the Event of Default, but only if the Event of Default has not been cured within said seven (7) days or, if the Event of Default is by its nature incurable within said seven (7) days, the defaulting party has not provided reasonable assurances to the non-defaulting party that the Event of Default will be cured and that it will be cured as soon as reasonably possible:

- (a) Terminate this Agreement.
- (b) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement or covenant under this Agreement.

Section 6. Section 9.3 of the Original Agreement, as previously amended, is hereby stricken in its entirety and replaced with the following revised Section 9.3:

Section 9.3. Revesting of Title in Authority. If the Redeveloper fails to commence construction of Minimum Improvements within the periods specified in Section 4.3 of this Agreement, as amended, then subject to the provisions set forth in the last sentence of this Section

9.3, the Authority shall have the right, in addition to any other rights under this Agreement or at law or in equity, to cancel the sale of the Redevelopment Property to the Redeveloper, whereupon title to the Redevelopment Property shall revert to the Authority. Upon revesting title to the Redevelopment Property in the Authority, the Authority will use its best efforts to resell the Redevelopment Property for redevelopment and shall use the proceeds of such a resale to first, reimburse itself for all of its costs incurred in enforcing its rights under this Agreement, in clearing title to the Redevelopment Property, in paying holding costs related to the Redevelopment Property, and in reselling the Redevelopment Property, and second, to reimburse the Redeveloper for the purchase price actually paid by the Redeveloper and any and all costs incurred by the Redeveloper prior to the reconveyance of the Redevelopment Property to the Authority to construct the Minimum Improvements completed prior to such reconveyance. The deed from the Authority to the Redeveloper shall convey title to the Redevelopment Property subject to a right of reversion reserved to the Authority as described in this Section. Notwithstanding anything to the contrary in this Section 9.3, 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 Main Project, 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 periods required under the Deed and the Agreement and that the right of reverter contained in Section 2 of the Deed is irrevocably terminated.

Section 7. Section 4.8 of the Original Agreement, as previously amended, is hereby modified to provide that the Redeveloper Maintenance Obligations thereunder shall include, in addition to the obligations contained therein, the obligation to fulfill all periodic inspection and maintenance requirements of the Storm Water Best Management Practice Operations and Maintenance Plan attached hereto as Third Amendment-Schedule C.

Section 8. The date December 31, 2018 in Section 2.2(c) of the Agreement, as inserted under the First Amendment, is hereby replaced with the date December 31, 2019.

Section 9. All other terms of the Agreement shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Authority, the City, the Redeveloper, and Park LLC 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 _____
Martha Sullivan, Vice President

By _____
John Hinzman, Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Martha Sullivan 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

CITY OF HASTINGS, MINNESOTA

By _____
Mary Hoffman Fasbender, Mayor

By _____
Julie Flaten, City Clerk

STATE OF MINNESOTA)
) SS.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Mary Hoffman Fasbender and Julie Flaten, the Mayor and the City Clerk of the City of Hastings, Minnesota, a statutory city under the laws of the State of Minnesota.

Notary Public

CONFLUENCE DEVELOPMENT, LLC

By _____

Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Confluence Development LLC, a Minnesota limited liability company.

Notary Public

CONFLUENCE PARK LLC

By _____

Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, the _____ of Confluence Park LLC, a Minnesota limited liability company.

Notary Public

This document was drafted by:

Daniel J. Fluegel
FLUEGEL LAW FIRM P.A.
999 Westview Drive, Suite 1
Hastings, MN 55033
Phone: 651-438-9777
dan@fluegel.com

THIRD AMENDMENT-SCHEDULE A

Depictions of Crawlspace Areas

THIRD AMENDMENT-SCHEDULE B

Park Plans and Specifications

THIRD AMENDMENT-SCHEDULE C

Stormwater Best Management Practice Operations and Maintenance Plan