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July 11, 2019

Letter, agenda item and resolution sent via e-mail; letter and enclosures sent via overnight mail

Cindy Kudrna, Finance Director
City of Hiawatha
City Hall
101 Emmons Street
Hiawatha, IA 52233-1697

RE: City of Hiawatha – Notice of Termination of the Development Agreement with Towers Edge, LLC (July 17, 2019)

Dear Cindy:

Enclosed please find suggested proceedings to be acted upon by the City Council to terminate the Development Agreement with Towers Edge, LLC, and execute, deliver and record the Notice of Termination ("Notice of Termination").

Please note the following:

- Once the Resolution has been adopted and Notice of Termination has been fully executed you should record a copy of the Notice of Termination with the Linn County Recorder.

- Please be sure to send us a signed copy of the Notice of Termination for our file.

If you have any questions, please do not hesitate to contact our office.

Ahlers & Cooney, P.C.

Sincerely,

By: Jason L. Comisky

JLC: mp

cc: Amy Scheer, Deputy City Clerk (w/ stamped and clean copies)

Enclosures: Authorizing Resolution (starts on page 1); Notice of Termination; County Recorder's Certificate; County Recorder's Cover Sheet

01601542-1\10575-130

NOTICE OF TERMINATION

TO: Towers Edge, LLC
Attn: Joe Ahmann, President
1641 Boyson Square Drive, #100
Hiawatha, IA 52233

Dear Mr. Ahmann:

This Notice of Termination constitutes written notice of termination of the Agreement for Private Development dated August 3, 2016, by and between the City of Hiawatha, Iowa and Towers Edge, LLC (the "Agreement"). The Agreement was further memorialized by that certain Memorandum of Agreement for Private Development recorded on August 11, 2016, at Book 9616 Page 540 in the records of the Linn County Recorder.

The City sent a Notice of Default, dated June 11, 2019, to Towers Edge, LLC by certified mail, return receipt requested, on June 12, 2019, which was delivered on June 13, 2019. A copy of the Notice of Default is attached.

More than 30 days have passed since the delivery of the Notice of Default, and the failure to complete the construction of the Minimum Improvements that constituted the Event of Default has not been cured to the satisfaction of the City, nor has Towers Edge, LLC provided reasonably satisfactory assurances to the City that the Event of Default will be cured.

Accordingly, the City hereby exercises its rights pursuant to the Agreement as follows:

1. **Pursuant to Article X, Section 10.2 of the Agreement, the City hereby declares the Agreement terminated in its entirety.**

2. **The City reserves any and all other remedies available to it.**

Dated this _____ day of July, 2019.

CITY OF HIAWATHA IOWA

By: _____
Cindy Kudrna, Finance Director

Exhibit A
Notice of Default

01608452-1\10575-130

ORIGINAL

ITEM TO INCLUDE ON AGENDA

CITY OF HIAWATHA, IOWA
July 17, 2019
5:30 P.M.

Hiawatha Urban Renewal Plan

- Resolution declaring the Development Agreement by and between the City of Hiawatha and Towers Edge, LLC terminated in its entirety and approving and authorizing execution, delivery, and recording of the Notice of Termination

IMPORTANT INFORMATION

1. The above agenda items should be included, along with any other agenda items, in the meeting agenda. The agenda should be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If no such office exists, the notice must be posted at the building in which the meeting is to be held.

2. If you do not now have a bulletin board designated as above mentioned, designate one and establish a uniform policy of posting your notices of meeting and tentative agenda.

3. Notice and tentative agenda must be posted at least 24 hours prior to the commencement of the meeting.

NOTICE MUST BE GIVEN PURSUANT TO IOWA CODE CHAPTER 21 AND THE LOCAL RULES OF THE CITY.

July 17, 2019

The City Council of the City of Hiawatha in the State of Iowa, met in _____ session, in the Council Chambers, City Hall, 101 Emmons Street, Hiawatha, Iowa, at 5:30 P.M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

_____

_____

Absent: _____

Vacant: _____

* * * * * * *

Council Member _____ introduced and delivered to the Clerk the Resolution hereinafter set out entitled "RESOLUTION DECLARING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HIAWATHA AND TOWERS EDGE, LLC TERMINATED IN ITS ENTIRETY AND APPROVING AND AUTHORIZING EXECUTION, DELIVERY, AND RECORDING OF THE NOTICE OF TERMINATION", and moved:

☐ that the Resolution be adopted.

☐ to defer action on the Resolution and the proposal to the meeting to be held at _____ _____.M. on the _____ day of _____, 2019, at _____.

Council Member _____ seconded the motion. The roll was called and the vote was,

AYES: _____

_____

NAYS: _____

Whereupon, the Mayor declared the measure duly adopted.

RESOLUTION NO. _____

RESOLUTION DECLARING THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HIAWATHA AND TOWERS EDGE, LLC TERMINATED IN ITS ENTIRETY AND APPROVING AND AUTHORIZING EXECUTION, DELIVERY, AND RECORDING OF THE NOTICE OF TERMINATION

WHEREAS, by Resolution No. 91-68, adopted June 19, 1991, which has been amended 14 times, lastly by Amendment No. 14 as approved by Resolution No. 18-123 on July 18, 2018, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Hiawatha Urban Renewal Plan (the "Urban Renewal Plan" or "Plan") for the Hiawatha Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan as amended, is on file in the office of the Recorder of Linn County; and

WHEREAS, the City of Hiawatha, Iowa ("City") and Towers Edge, LLC (the "Developer") entered into a Development Agreement on August 3, 2016 approved by the City pursuant to Resolution No. 16-161 (the "Agreement"); and

WHEREAS, the Agreement requires the Developer to construct certain Minimum Improvements, under the terms and conditions of the Agreement, and by no later than December 31, 2018; and

WHEREAS, the Developer has failed to cause the construction of the Minimum Improvements according to the terms of the Agreement, which consequently is an Event of Default under the Agreement; and

WHEREAS, on June 12, 2019, the City sent the Developer a Notice of Default as required by the terms of the Agreement; and

WHEREAS, the Developer had 30 days after the Notice of Default to cure its default per the terms of the Agreement; and

WHEREAS, the Developer has not cured its default; and

WHEREAS, City staff has caused a Notice of Termination to be prepared to document termination of the Agreement; and

WHEREAS, the City now desires to terminate the Agreement and to authorize City staff to take additional action with respect to the terminated Agreement, including but not limited to action related to additional remedies under the Agreement including all documents attached thereto and recouping the City's previously expended costs due to the Agreement including all documents attached thereto.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HIAWATHA IN THE STATE OF IOWA:

Section 1. That the Agreement is hereby terminated in its entirety.

Section 2. That the form and content of the Notice of Termination, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the Deputy City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal, deliver, and record the Notice of Termination for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Notice of Termination, the Mayor and the Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Notice of Termination as executed.

PASSED AND APPROVED this 17th day of July, 2019.

_____

Mayor

ATTEST:

_____

Deputy City Clerk

CERTIFICATE

STATE OF IOWA)
) SS
COUNTY OF LINN)

I, the undersigned Deputy City Clerk of the City of Hiawatha, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the City showing proceedings of the City Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective City offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the City hereto affixed this _____ day of _____, 2019.

_____
Deputy City Clerk, City of Hiawatha, State of Iowa

(SEAL)

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