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ITEM TO INCLUDE ON AGENDA

CITY OF HIAWATHA, IOWA
July 3, 2019
5:30 P.M.

Hiawatha Urban Renewal Plan

- Resolution declaring the Purchase, Sale and Development Agreement by and among the City of Hiawatha and Side by Side Own, L.L.C., and Side by Side Develop, L.L.C. terminated in its entirety and approving and authorizing execution and recording of the Termination Agreement

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 3, 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 PURCHASE, SALE AND DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF HIAWATHA, SIDE BY SIDE OWN, L.L.C., AND SIDE BY SIDE DEVELOP, L.L.C. TERMINATED IN ITS ENTIRETY AND APPROVING AND AUTHORIZING EXECUTION AND RECORDING OF THE TERMINATION AGREEMENT", 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 PURCHASE, SALE AND DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF HIAWATHA, SIDE BY SIDE OWN, L.L.C., AND SIDE BY SIDE DEVELOP, L.L.C. TERMINATED IN ITS ENTIRETY AND APPROVING AND AUTHORIZING EXECUTION AND RECORDING OF THE TERMINATION AGREEMENT

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"), Side by Side Own, L.L.C. (the "Owner"), and Side by Side Develop, L.L.C. (the "Developer") entered into a Purchase, Sale and Development Agreement dated March 6, 2019, approved pursuant to Resolution No. 19-037 (the "Agreement"), which Agreement was subsequently amended by the parties by a First Amendment to the Agreement dated April 17, 2019, approved pursuant to Resolution No. 19-068; and

WHEREAS, the Agreement, as amended, requires the Owner to purchase the Development Property from the City, which purchase and sale was to close on April 22, 2019, or such other date as agreed by the parties; and

WHEREAS, Owner was not prepared to close on April 22, 2019, and has represented to the City that Owner continues to be unable to perform the Closing of the purchase of the Development Property; and

WHEREAS, the City and Owner have not agreed upon another date for Closing, and Owner's failure to perform its Closing obligations is an Event of Default under the Agreement; and

WHEREAS, on June 24, 2019, the City sent the Owner and Developer a Notice of Default and Termination Agreement (the "Notice of Default and Termination Agreement"), which provided notice of the Event of Default as required by the terms of the Agreement; and

WHEREAS, per the terms of the Agreement, the Owner had 30 days after receipt of the Notice of Default and Termination Agreement to cure its default, but per the terms of the Termination Agreement, the Owner and Developer could agree to terminate the Agreement instead of curing the Event of Default; and

WHEREAS, the Owner and Developer have executed the Notice of Default and Termination Agreement for the purpose of terminating the Agreement instead of curing the Event of Default; and

WHEREAS, the City now desires to terminate the Agreement, as amended, pursuant to the terms of the Notice of Default and Termination Agreement.

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

Section 1. That the form and content of the Notice of Default and Termination Agreement, 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, and record the Notice of Default and Termination Agreement 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 Default and 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 Default and Termination Agreement as executed.

Section 2. That, following execution of the Notice of Default and Termination Agreement, the Agreement, as amended, is terminated in its entirety.

PASSED AND APPROVED this 3rd 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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