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ORIGINAL

**ITEMS TO INCLUDE ON AGENDA**

**CITY OF HIAWATHA, IOWA**
March 6, 2019
5:30 P.M.

Hiawatha Urban Renewal Plan

- Public hearing on the proposal to enter into a Purchase, Sale, and Development Agreement with Side by Side Own, L.L.C. and Side by Side Develop, L.L.C., which includes the potential sale of the City's interest in real property.

- Resolution making final determination on potential sale of interest in real property and approving and authorizing execution of a 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.

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.

March 6, 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: _____

* * * * * * *

The Mayor announced that this was the time and place for the public hearing and meeting on the matter of the proposal to approve and authorize execution of a 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., which Agreement includes the potential sale of the City's interest in real property, and that notice of the proposed action by the Council to enter into said Agreement and potentially sell real property thereunder had been published pursuant to the provisions of Section 364.6, 364.7, and 403.8 of the Code of Iowa.

The Mayor then asked the Deputy City Clerk whether any written objections had been filed by any City resident or property owner to the proposed action. The Deputy City Clerk advised the Mayor and the Council that _____ written objections had been filed. The Mayor then called for oral objections and _____ were made. Whereupon, the Mayor declared the time for receiving oral and written objections to be closed.

**(Attach here a summary of objections received or made, if any)**

The Council then considered the proposed action and the extent of objections thereto.

Whereupon, Council Member _____ introduced and delivered to the Deputy City Clerk the Resolution hereinafter set out entitled "RESOLUTION MAKING FINAL DETERMINATION ON POTENTIAL SALE OF INTEREST IN REAL PROPERTY AND APPROVING AND AUTHORIZING EXECUTION OF A 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.", 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 MAKING FINAL DETERMINATION ON POTENTIAL SALE OF INTEREST IN REAL PROPERTY AND APPROVING AND AUTHORIZING EXECUTION OF A 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.

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, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, such Plan provides for, among other things, the disposition of property for private development as a proposed renewal action; and

WHEREAS, the City has received a proposal from Side by Side Own, L.L.C. (the "Owner") and Side by Side Develop, L.L.C. (the "Developer"), in the form of a proposed Purchase, Sale, and Development Agreement (the "Agreement") by and among the City, the Owner and the Developer, pursuant to which, among other things, (i) the Owner would purchase the Development Property from the City, and (ii) the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) together with all related site improvements on real property located within the Urban Renewal Area (the "Development Property"); and

WHEREAS, the Agreement further proposes that the City will (i) sell the Development Property to Owner; (ii) provide Phase I Economic Development Grants (as defined in the Agreement) to the Developer (as defined in the Agreement) in an amount not to exceed $605,000; and (iii) provide Phase IV Economic Development Grants (as defined in the Agreement) to the Developer (as defined in the Agreement) an amount not to exceed $285,000; and (iv) construct certain Public Improvements (as defined in the Agreement) under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, Iowa Code Chapters 15A and 403 (the "Urban Renewal Law") authorize cities to make grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapter, and to levy taxes and assessments for such purposes; and

WHEREAS, the terms of the Agreement satisfy the "fair market value" and "competitive bidding" requirements of Iowa Code Section 403.8; and

WHEREAS, in compliance with Sections 403.8, 364.6, and 364.7 of the Code of Iowa, the Council has set forth its proposal to dispose of interests in the Development Property, by publishing notice of a thirty day competitive bidding period followed by publication of notice of a public hearing on the Agreement and has held said hearing; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code taking into account any or all of the factors set forth in Chapter 15A, to wit:

a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.

b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.

c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.

d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement, which includes the potential sale of the Development Property (as defined in the Agreement), and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

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

Section 1. The Council finds that disposal of interests in the Development Property to the Owner as set forth in the Agreement will benefit the health, safety and welfare of, and is in the best interests of the residents of the City. The Council further finds that transfer of the Development Property will promote economic development in the City and that these benefits, together with the other consideration provided for in the Agreement, constitute fair consideration for the disposal of interests in the Development Property under Section 403.8, Code of Iowa.

Section 2. The proposal to sell the Development Property to the Owner pursuant to the terms of the proposed Agreement is hereby approved.

Section 3. That the performance by the City of its obligations under the Agreement, including but not limited to selling the Development Property to the Owner in connection with the redevelopment of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 4. That the form and content of the 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 deliver the 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 Agreement, 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 Agreement as executed.

PASSED AND APPROVED this 6th day of March, 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 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 public hearing 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 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 Council hereto affixed this _____ day of _____, 2019.

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

(SEAL)

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# PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

BY AND AMONG

CITY OF HIAWATHA, IOWA

AND

SIDE BY SIDE OWN, L.L.C.

AND

SIDE BY SIDE DEVELOP, L.L.C.

_____ 2019

*Execution Version*

PURCHASE, SALE, AND
DEVELOPMENT AGREEMENT

THIS PURCHASE, SALE, AND DEVELOPMENT AGREEMENT (the "Agreement") is made on or as of the ____ day of _____, 2019, by and among the CITY OF HIAWATHA, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2017, as amended, SIDE BY SIDE OWN, L.L.C., an Iowa limited liability company, having offices for the transaction of business at 2053 26th Street NW, Cedar Rapids, Iowa (the "Owner"), and SIDE BY SIDE DEVELOP, L.L.C., an Iowa limited liability company, having offices for the transaction of business at 2053 26th Street NW, Cedar Rapids, Iowa (the "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Hiawatha Urban Renewal Area (the "Urban Renewal Area"), which is described in the Urban Renewal Plan approved for such area by Resolution No. 91-68 on June 19, 1991 and which has been amended multiple times, lastly by Amendment No. 14 as approved by Resolution No. 18-123 on July 18, 2018 (the "Urban Renewal Plan"); and

WHEREAS, the City is the owner of certain real property located in the Urban Renewal Area as more particularly described in Exhibit A attached hereto and made a part hereof (collectively the "Development Property"); and

WHEREAS, the City desires to sell the Development Property to allow for the development of private commercial and industrial enterprise; and

WHEREAS, the Owner desires to purchase the Development Property from the City and the Developer intends to develop it in several phases for both commercial and residential uses; and

WHEREAS, the City is willing to sell the Development Property to Owner and to provide certain incentives to Developer for the completion of Owner's and Developer's obligations under this Agreement; and

WHEREAS, Developer proposes to construct certain commercial-use structures and related site improvements (the "Minimum Improvements") on the Development Property in Phase I and Phase IV of development, which will create new retail and office space in the City and generate new employment opportunities (the "Project"); and

WHEREAS, Developer also proposes to construct residential and multiresidential structures in Phase II and Phase III of development, for which application may be made for tax abatement under the City's Urban Revitalization Plan and therefore will not be considered part of this Agreement or the Project for which Economic Development Grants may be paid under this Agreement; and

WHEREAS, the City anticipates constructing certain public improvements to assist in the development of the Minimum Improvements (see definition of Public Improvements); and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

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

## ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Purchase, Sale, and Development Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Annual Certification means the certifications that the Owner and Developer must complete and submit to the City each year as described in Section 6.7 of this Agreement and attached as Exhibit E.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit D and hereby made a part of this Agreement.

City means the City of Hiawatha, Iowa, or any successor to its functions.

City Right-of-Way means that portion of the Hiawatha Urban Renewal Area legally described in Exhibit I on which the Public Improvements shall be constructed.

Closing means the closing of the real estate transfer of the Development Property to the Owner as further defined in Article III of this Agreement.

Closing Date means the date on which the closing shall occur as further described in Article III of this Agreement.

Code means the Code of Iowa, 2017, as amended.

County means Linn County, Iowa.

Commencement Date means the date of this Agreement.

Construction Plans means the plans, specifications, drawings, and related documents reflecting the construction work to be performed by the Developer on the Development Property; the Construction Plans shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the building inspector of the City as required by applicable City codes.

Deed means the Special Warranty Deed given by the City to Owner for the Development Property in the form attached hereto as Exhibit F.

Developer means Side by Side Develop, L.L.C., an Iowa limited liability company, and each assignee that assumes in writing all of the obligations of the Developer under this Agreement with the written consent of the City as provided in Section 7.1 of this Agreement.

Development Property means that portion of the Hiawatha Urban Renewal Area described in the preambles hereof, legally described in Exhibit A including the Phase I Property and the Phase VI Property, and excluding the City Right-of-Way.

Economic Development Grants means the payments to be made by the City to Developer under Article VIII of this Agreement, including the Phase I Economic Development Grants and the Phase IV Economic Development Grants.

Event of Default means any of the events described in Section 10.1 of this Agreement that have continued beyond applicable notice and cure periods.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Owner or Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements.

Hiawatha Urban Renewal Tax Increment Revenue Fund means the special fund of the City created under the authority of Section 403.19(2) of the Code and the Ordinance, which fund will be created in order to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed, or otherwise, including bonds or other obligations issued under the authority of Chapters 15A, 403, or 384 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

Land Assessment Category is used for taxing purposes and defines the primary use and physical improvements upon each parcel of real property on an assessment roll.

Minimum Improvements means commercial improvements to be constructed on the Development Property, as more particularly described and depicted in Exhibit B to this Agreement, which include the Phase I Improvements and Phase IV Improvements.

Mortgage means any mortgage or security agreement in which the Owner or Developer has granted a mortgage or other security interest in the Development Property, or any portion or

parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Owner or Developer under a policy or policies of insurance required to be provided and maintained by Owner or Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means the ordinance of the City, as may be amended and enacted from time to time, under which the taxes levied on taxable property in the Urban Renewal Area shall be divided and a portion paid into the Hiawatha Urban Renewal Tax Increment Revenue Fund.

Phase I Economic Development Grants means the payments to be made by the City to Owner under Section 8.1(a) of Article VIII of this Agreement.

Phase I Improvements means that portion of the Minimum Improvements to be completed on the Phase I Property as part of the Project, more particularly described in Exhibit B.

Phase I Property means that portion of the Hiawatha Urban Renewal Area legally described in Exhibit A as the Phase I Property.

Phase I Tax Increments means the property tax revenues on the Phase I Improvements and the parcels of the Development Property on which the Phase I Improvements are located that are divided and made available to the City for deposit in the Side by Side TIF Account of the Hiawatha Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Phase IV Economic Development Grants means the payments to be made by the City to Owner under Section 8.1(b) of Article VIII of this Agreement.

Phase IV Improvements means that portion of the Minimum Improvements to be completed on the Phase IV Property as part of the Project, more particularly described in Exhibit B.

Phase IV Property means that portion of the Hiawatha Urban Renewal Area legally described in Exhibit A as the Phase IV Property.

Phase IV Tax Increments means the property tax revenues on the Phase IV Improvements and the parcels of the Development Property on which the Phase IV Improvements are located that are divided and made available to the City for deposit in the Side by Side TIF Account of the Hiawatha Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Project means the construction and operation of the Minimum Improvements on the Development Property and the creation and retention of jobs, as described in this Agreement.

Public Improvements means the design and construction by the City of water utility

system improvements, wastewater utility system improvements, storm sewer utility system improvements, and road improvements within the City Right-of-Way as more particularly described in Article XI and Exhibit I to this Agreement.

Purchase Price means the sale price of the Development Property as provided in Section 3.2 of this Agreement.

Side By Side TIF Account means a separate account within the Hiawatha Urban Renewal Tax Increment Revenue Fund of the City in which Tax Increments received by the City with respect to the Minimum Improvements and the Development Property shall be deposited.

State means the State of Iowa.

Tax Increments means the property tax revenues on the Minimum Improvements divided and made available to the City for deposit in the Side by Side TIF Account of the Hiawatha Urban Renewal Tax Increment Revenue Fund under the provisions of Section 403.19 of the Code, as amended, and the Ordinance.

Termination Date means the date of termination of this Agreement, as established in Section 12.9 of this Agreement.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions, or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts, or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State, or local governmental unit (other than acts of the City, with respect to a City-claimed delay).

Urban Renewal Area means the area known as the Hiawatha Urban Renewal Area.

Urban Renewal Plan means the Hiawatha Urban Renewal Plan, approved with respect to the Hiawatha Urban Renewal Area, described in the preambles hereof.

Zoning Classification is used for the development or redevelopment and defines the allowed primary use(s) and physical improvement(s) upon each parcel of real property.

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions, or provisions of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

c. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant, or employee of the City in the individual capacity thereof.

Section 2.2. Representations and Warranties of Owner. Owner makes the following representations and warranties:

a. Side by Side Own, L.L.C., is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Owner and, assuming due authorization, execution, and delivery by the City and Developer, is in full force and effect and is a valid and legally binding instrument of Owner enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights generally. Owner's attorney has provided an enforceability opinion as of the Commencement Date in the form attached hereto as Exhibit G.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions, or provisions of the governing documents of Owner or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which Owner is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits, or proceedings pending or threatened against or affecting Owner in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Owner or which in any manner raises any questions affecting the validity of the Agreement or Owner's ability to perform its obligations under this Agreement.

e. Owner has not received any notice from any local, State, or federal official that the activities of Owner with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously

been notified in writing). Owner is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Owner is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. Owner shall cooperate with the City in its responsibility for resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

g. Owner has firm commitments for acquisition and permanent financing for the Development Property in an amount sufficient, together with equity commitments, to successfully complete the Closing in accordance with this Agreement.

h. Owner would not undertake its obligations under this Agreement without the payment by the City of the Economic Development Grants being made to Developer pursuant to this Agreement.

i. Unless Owner has received prior written approval from the City Council, it will not seek to change the current Land Assessment Category or the Zoning Classification of the Development Property and Minimum Improvements during the term of this Agreement.

j. Owner shall not unreasonably hinder the City's completion of the Public Improvements.

Section 2.3. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Side by Side Develop, L.L.C., is an Iowa limited liability company, duly organized and validly existing under the laws of the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed, and delivered by Developer and, assuming due authorization, execution, and delivery by the City and Owner, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws relating to or affecting creditors' rights generally. Developer's attorney has provided an enforceability opinion as of the Commencement Date in the form attached hereto as Exhibit H.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions, or provisions of the governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement, or instrument of

whatever nature to which Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits, or proceedings pending or threatened against or affecting Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State, or federal official that the activities of Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State, or federal environmental law, regulation, or review procedure applicable to the Development Property, and Developer is not currently aware of any violation of any local, State, or federal environmental law, regulation, or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

f. Developer shall cooperate with the City in its responsibility for resolution of any traffic, parking, trash removal, or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

g. Developer shall cause the Minimum Improvements to be constructed, subject in all respects to Unavoidable Delays, in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws, ordinances, and regulations.

h. Developer shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

i. Developer anticipates construction of the Minimum Improvements will require an improved value of not less than $5,872,000.00 in Phase I an $2,722,000.00 in Phase IV.

j. Developer has firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in this Agreement.

k. Developer shall use commercially reasonable efforts to cause the Minimum Improvements to be occupied by businesses that employ employees until at least the Termination Date.

l. Developer would not undertake its obligations under this Agreement without the

payment by the City of the Economic Development Grants being made to Developer pursuant to this Agreement.

m. Unless Developer has received prior written approval from the City Council, it will not seek to change the current Land Assessment Category or the Zoning Classification of the Development Property and Minimum Improvements during the term of this Agreement.

## ARTICLE III. PURCHASE AND SALE OF DEVELOPMENT PROPERTY

Section 3.1. Conditions Precedent to Transfer. The City's obligation to transfer title and possession of the Development Property to Owner at Closing, and Owner's obligation to pay the Purchase Price, shall be subject to satisfaction of the following conditions precedent:

a. The Owner and Developer are in material compliance with all of the terms of this Agreement;

b. The City is in receipt of enforceability opinions in the form of Exhibits G and H provided by Owner's and Developer's attorney(s); and

c. There has not been a substantial change for the worse in the financial resources and ability of the Owner or Developer, or a substantial decrease in the financing commitments secured by the Owner or Developer for acquisition or construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Owner or Developer will be unable to fulfill their covenants and obligations under this Agreement.

Section 3.2. Transfer of Development Property. For the purchase price of One Million Seven Hundred Fifteen Thousand Two Hundred Twenty-Three Dollars ($1,715,223.00) (the "Purchase Price") and other consideration, including the obligations being assumed by the Owner and Developer under this Agreement, the City agrees to sell, and the Owner agrees to purchase, the Development Property, subject to easements and appurtenant servient estates and any zoning and other ordinances. Such transfer shall occur under the terms and conditions of this Agreement and following all process required by the City pursuant to Section 403.8 of the Iowa Code.

Section 3.3. Closing. The City's obligation to transfer title of the Development Property to Owner, and Owner's obligation to pay the Purchase Price to the City, upon the obligations of both parties hereunder being met, including the execution of all documents required hereunder, shall occur on or before April 22, 2019 or another date as mutually agreed to by both parties (the "Closing Date"). Owner shall pay the Purchase Price to the City by check or wire transfer at the Closing (subject to prorations, reductions, and credits as provided below). The transfer shall be considered closed upon the delivery to Owner of a duly executed special warranty deed for the Development Property in the form attached hereto as Exhibit F, the filing of all title transfer documents, and the City's receipt of all funds due at the Closing Date from Owner under this Agreement ("Closing"). All parties and individual signatories hereto further agree to make, execute and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 3.4. Real Estate Taxes and Special Assessments.

a. The Development Property is currently tax-exempt while owned by the City. Owner shall be responsible for all taxes post-Closing, if any; and

b. All special assessments, if any, assessed post-Closing shall be paid by Owner.

Section 3.5. Condition of Property; Care and Maintenance. The Owner agrees to take the Development Property "As Is," including with respect to environmental matters. At Closing, the City will file with the County Recorder's Office a properly executed Groundwater Hazard Statement as required by law. Except as specifically set forth in this Agreement, the City makes no warranties or representations as to the condition of the Development Property. Notwithstanding anything herein to the contrary, Owner and Developer hereby waive all claims against the City as to the condition of the Development Property. Owner and Developer agree to indemnify, release, defend, and hold harmless the City for all claims, damages, or costs relating to the Development Property that arise after the date of Closing.

Section 3.6. Abstract and Title. The City shall provide an abstract of title for the Development Property, continued through a date no more than Forty-Five (45) days prior to Closing, and deliver it to Owner for examination, which shall become the property of Owner upon Closing. Such abstract of title shall show merchantable title in the City in conformity with this Agreement, the land title laws of the State of Iowa, and the Iowa Title Standards of the Iowa State Bar Association. Owner may, at its sole cost and expense, obtain title insurance on the Development Property for itself and/or its lenders.

Section 3.7. Survey and Platting. City shall be responsible for any survey or platting work necessary to perfect a title defect or convey the Development Property to Owner. Owner shall be responsible for all other survey and platting of the Development Property, if any. The City authorizes Owner and/or its agents and contractors reasonable access to the Development Property for survey and platting purposes prior to Closing.

Section 3.8. Certification. Owner and City each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other parties from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

Section 3.9. Restriction. Owner and Developer acknowledge and agree that until the Termination Date, the Development Property shall be used solely and exclusively for the purposes described in this Agreement.

## ARTICLE IV. CONSTRUCTION OF MINIMUM IMPROVEMENTS; TAXES

Section 4.1. Construction of Minimum Improvements.

a. The Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City pursuant to Section 4.2. The Developer agrees that the scope and scale of the Minimum Improvements as constructed shall not be significantly less than the scope and scale as detailed and outlined in the Construction Plans and shall require an improved value of not less than $$5,872,000.00 in Phase I an $2,722,000.00 in Phase IV.

b. Upon reasonable notice to the Owner or Developer (which does not have to be written), designated representatives of the City shall be permitted to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

c. All work with respect to the Minimum Improvements to be constructed or provided by the Developer shall be in conformity with the Construction Plans and other plans approved by the building official or any amendments thereto as may be approved by the building official.

d. Subject to Unavoidable Delays, the Developer shall cause construction of each phase of the Minimum Improvements to be started by and undertaken and completed by the respective dates set forth in the schedule below or such other dates as the parties shall mutually agree upon in writing; time lost as a result of Unavoidable Delays shall be added to extend these dates by a number of days equal to the number of days lost as a result of Unavoidable Delays:

| Phase | Start Date | Completion Date |
|---|---|---|
| Phase I Improvements | October 1, 2019 | October 1, 2021 |
| Phase IV Improvements | August 1, 2021 | December 31, 2022 |

Section 4.2. Construction Plans.

a. The Developer shall cause Construction Plans to be provided for the Minimum Improvements which shall be subject to approval by the City as provided in this Section 4.2. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable federal, State, and local laws and regulations.

b. The City shall approve the Construction Plans in writing if: (a) the Construction Plans conform to the terms and conditions of this Agreement; (b) the Construction Plans conform to the terms and conditions of the Urban Renewal Plan; (c) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules, and regulations and City permit requirements; (d) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (e) no Event of Default under the terms of this Agreement has occurred.

c. Notwithstanding the forgoing, any such approval of the Construction Plans pursuant to this Section 4.2 shall constitute approval for the purposes of this Agreement only and shall not: (a) be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning, or other ordinances or regulations of the City, or with respect to any other City purpose; (b) be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit; (c) relieve the Owner or Developer of any obligation to comply with the terms and provisions of this Agreement, or any provision of applicable federal, State, and local laws, ordinances, and regulations; (d) be deemed to constitute a waiver of any Event of Default; or (e) subject the City to any liability for the Minimum Improvements as constructed.

Section 4.3. Certificate of Completion. Upon written request of Developer after issuance of a certificate of completion from the Community Development Department for the Minimum Improvements, the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit D attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 4.3, the City shall, within twenty (20) days after written request by Developer provide a written statement indicating in adequate detail in what respects Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for Developer to take or perform in order for Developer to obtain such Certificate of Completion.

Issuance by the City of the Certificate of Completion pursuant to this Section 4.3 is solely for the purposes of this Agreement, and shall not constitute approval for any other City purpose, nor shall it subject the City to any liability for the Development Property or the Minimum Improvements as constructed.

Section 4.4. Real Property Taxes. Owner, Developer, or their successors shall pay or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property acquired and owned by them and pursuant to the provisions of this Agreement. Until the obligations in this Agreement have been assumed by any other person or legal title to the property is vested in another person, all pursuant to the provisions of this Agreement, Owner, Developer, or their successors shall be solely responsible for all assessments and taxes.

Owner, Developer and their successors agree that following the Commencement Date and prior to the Termination Date:

a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property within the Minimum Improvements determined by any tax official to be applicable to the Development Property and Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

b. They will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal, or local law with respect to taxation of real property contained on the Development Property. Notwithstanding the foregoing, the City acknowledges that Owner and/or Developer may seek tax exemption deferral or abatement for residential and/or multiresidential development on the Development Property.

## ARTICLE V. INSURANCE

Section 5.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of the City, furnish the City with proof of payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk–Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least $1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Developer, their directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than $50,000 or self-insurance up to not more than $1,000,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer and approved by the City.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of $1,000,000.

iii. Such other insurance, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article V to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby. Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to the Developer and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, the Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event the Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. Developer agrees to notify the City within 30 days in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer, and Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to

the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer will apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof.

e. Only prior to the signing and sealing of the Certificate of Completion (Exhibit D), shall the Developer complete or cause to be completed the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

## ARTICLE VI. FURTHER COVENANTS OF OWNER AND DEVELOPER

Section 6.1. Maintenance of Properties. Owner and Developer will maintain, preserve, and keep their properties within the City (whether owned in fee or a leasehold interest), including but not limited to the Development Property and Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Section 6.2. Maintenance of Records. Owner and Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to their business and affairs relating to this Project in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and Owner and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 6.3. Compliance with Laws. Owner and Developer will comply with all State, federal and local laws, rules and regulations relating to the Development Property and the Minimum Improvements.

Section 6.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Owner and Developer shall not discriminate against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, sexual orientation, or familial status. Owner and Developer shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, sexual orientation, or familial status.

Section 6.5. Available Information. Upon request, Owner and Developer shall promptly provide the City with copies of information requested by City that are related to this Agreement so that City can determine compliance with this Agreement.

Section 6.6. Employment. Developer agrees that the Minimum Improvements are expected to create usable commercial space for business tenants. Developer agrees to use commercially reasonable efforts to sell or lease the Development Property to purchasers or tenants that create and retain employment in the community. Developer shall provide information as requested by the City to determine compliance with the foregoing employment obligations.

Section 6.7. Annual Certification. To assist the City in monitoring the Agreement and performance of Owner and Developer hereunder, a duly authorized officer of Owner and Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property and Minimum Improvements have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) the date of the first full assessment of each phase of the Minimum Improvements; (iii) certification that no tenants have relocated to the City from another part of Linn County (except from Marion or Cedar Rapids) or a contiguous county in violation of Iowa law and Section 6.10 of this Agreement, and the names of all current tenants, if any; and (iv) certification that such officers have re-examined the terms and provisions of this Agreement and that at the date of such certificate, and during the preceding twelve (12) months, Owner and Developer are not, or were not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto. Such statement, proof and certificate shall be provided not later than October 15 of each year, commencing October 15, 2019 and ending on October 15, 2029, both dates inclusive. Owner and Developer shall provide supporting information for the Annual Certification upon request of the City. See Exhibit E for form required for the Annual Certification.

Section 6.8. Reserved.

Section 6.9. Developer Completion Guarantee. By signing this Agreement, Owner and Developer hereby guarantee to the City performance by Owner and Developer of all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Owner and Developer guarantee that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in accordance with the Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

Section 6.10. Relocation. Owner and Developer agree and covenant not to lease, assign, or sublease the Minimum Improvements to any entity that is relocating to the City from another part of Linn County or a contiguous county under the term of this Agreement; provided, however, that they may lease the Minimum Improvements to any entity relocating from the City of Cedar Rapids or the City of Marion since there is a fair play agreement in place. In general, use of urban renewal incentives cannot be used for projects that involve a relocating entity unless there is a written agreement regarding the use of economic incentives from the city where the business is currently located and the city to which the business is relocating, either specific to this Project or in general (a fair play or neutrality agreement), or if the City finds the use of tax increment in connection with the relocation is in the public interest, which means that the business has provided a written affirmation that it is considering moving part or all of its operations out of state and such relocation would result in either significant employment or wage loss in the State. Owner and

Developer understand and agree that if they lease all or a portion of the Minimum Improvements to a relocating entity, as determined by the City in its sole discretion, the Developer is not eligible to receive all or a pro rata portion of the Economic Development Grants under this Agreement and will be responsible for paying back previously received Economic Development Grants, if applicable.

## ARTICLE VII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 7.1. Status of Owner and Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Owner and Developer under this Agreement, Owner and Developer represent and agree that, prior to the Termination Date, Owner and Developer will maintain their respective existence as a company and will not wind up or otherwise dispose of all or substantially all of their assets or transfer, convey, or assign their interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the obligations of Owner or Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or any other provisions of this Agreement, the Owner may sell the Development Property to the Developer and Developer may pledge the Development Property as security for any financing of the Minimum Improvements. Nothing in this Agreement shall prohibit Developer from selling or leasing lots within the Development Property on which Minimum Improvements have been constructed in the ordinary course of business and such a sale or lease shall not transfer or convey to the grantee or lessee any liabilities or obligations whatsoever under this Agreement.

In the event that Owner or Developer wishes to assign this Agreement, including their rights and duties hereunder, Owner, Developer and transferee individual or entity shall request that the City, Owner and Developer consent to an amendment or assignment of this Agreement to accommodate the transfer and to provide for the assumption of all Owner or Developer obligations under this Agreement. Such transfer shall not be effective unless and until the City, Owner and Developer consent in writing to an amendment or assignment of this Agreement authorizing the transfer.

Section 7.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Owner and Developer, and their successors or assigns agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would fully exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

## ARTICLE VIII. ECONOMIC DEVELOPMENT GRANTS

Section 8.1. Economic Development Grants. For and in consideration of the obligations being assumed by Owner and Developer hereunder, and in furtherance of the goals and objectives of the Urban Renewal Plan for the Urban Renewal Area and the Urban Renewal Act, the City agrees, subject to Owner and Developer being and remaining in compliance with the terms of this Agreement, to make annual payments of Economic Development Grants to Developer under the following terms.

a. Phase I Economic Development Grants. For and in consideration of Developer's completion of the Phase I Improvements in accordance with this Agreement, including the schedule in Section 4.1(d), the City agrees to make up to five (5) years of consecutive annual payments of Phase I Economic Development Grants to Developer up to a total amount not to exceed Six Hundred and Five Thousand Dollars ($605,000) in the aggregate, under the following formula and schedule:

Assuming completion of the Phase I Improvements by October 1, 2021 and full assessment of the Phase I Improvements on January 1, 2022, and debt certification by the City to the Auditor prior to December 1, 2022, the Phase I Economic Development Grants shall commence on June 1, 2024 and end on June 1, 2028 pursuant to Section 403.19 of the Urban Renewal Act in the following amounts:

| Date | Amount of Phase I Economic Development Grants |
|---|---|
| June 1, 2024 | 75% of Phase I Tax Increments for Fiscal Year 2023-2024, not to exceed $121,000 |
| June 1, 2025 | 75% of Phase I Tax Increments for Fiscal Year 2024-2025, not to exceed $121,000 |
| June 1, 2026 | 75% of Phase I Tax Increments for Fiscal Year 2025-2026, not to exceed $121,000 |
| June 1, 2027 | 75% of Phase I Tax Increments for Fiscal Year 2026-2027, not to exceed $121,000 |
| June 1, 2028 | 75% of Phase I Tax Increments for Fiscal Year 2027-2028, not to exceed $121,000 |

Each annual payment of Phase I Economic Development Grants shall be equal in amount to the above percentages of the Phase I Tax Increments, not to exceed $121,000, collected by the City with respect to the Phase I Improvements on the Phase I Property under the terms of the Ordinance and deposited into the Side by Side TIF Account (without regard to any averaging that may otherwise by utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the Phase

I Improvements, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the "Phase I Economic Development Grants").

b. Phase IV Economic Development Grants. For and in consideration of Developer's completion of the Phase IV Improvements in accordance with this Agreement, including the schedule in Section 4.1(d), the City agrees to make up to five (5) years of consecutive annual payments of Phase IV Economic Development Grants to Developer up to a total amount not to exceed Two Hundred and Eighty-Five Thousand Dollars ($285,000) in the aggregate, under the following formula and schedule:

Assuming completion of the Phase IV Improvements by December 31, 2022 and full assessment of the Phase IV Improvements on January 1, 2023, and debt certification by the City to the Auditor prior to December 1, 2023, the Phase IV Economic Development Grants shall commence on June 1, 2025 and end on June 1, 2029 pursuant to Section 403.19 of the Urban Renewal Act in the following amounts:

| Date | Amount of Phase IV Economic Development Grants |
|---|---|
| June 1, 2025 | 75% of Phase IV Tax Increments for Fiscal Year 2024-2025, not to exceed $57,000 |
| June 1, 2026 | 75% of Phase IV Tax Increments for Fiscal Year 2025-2026, not to exceed $57,000 |
| June 1, 2027 | 75% of Phase IV Tax Increments for Fiscal Year 2026-2027, not to exceed $57,000 |
| June 1, 2028 | 75% of Phase IV Tax Increments for Fiscal Year 2027-2028, not to exceed $57,000 |
| June 1, 2029 | 75% of Phase IV Tax Increments for Fiscal Year 2028-2029, not to exceed $57,000 |

Each annual payment of Phase IV Economic Development Grants shall be equal in amount to the above percentages of the Phase IV Tax Increments, not to exceed $57,000, collected by the City with respect to the Phase IV Improvements on the Phase IV Property under the terms of the Ordinance and deposited into the Side by Side TIF Account (without regard to any averaging that may otherwise by utilized under Section 403.19 and excluding any interest that may accrue thereon prior to payment to Developer) during the preceding twelve-month period in respect of the Phase IV Improvements, but subject to limitation and adjustment as provided in this Article (such payments being referred to collectively as the "Phase IV Economic Development Grants").

Section 8.2. Payment Schedule. After either phase of the Minimum Improvements are first fully assessed and if in compliance with this Agreement, if the Annual Certification is timely filed and contains the information required under Section 6.7 and the Council approves of the same, the City shall certify to the County prior to December 1 of that year its request for the

available Tax Increments resulting from the assessments imposed by the County as of January 1 of that year, with respect to the completed phase's improvements, to be collected by the County and paid to the City as taxes are paid during the following fiscal year and which shall thereafter by disbursed to Developer on the following June 1. (Example: assuming completion of the Phase I Improvements by August 1, 2021 and first full assessment on January 1, 2022, if Owner and Developer certify in October 2022 and the City certifies to the County by December 1, 2022, the first Phase I Economic Development Grants would be paid to Developer on June 1, 2024 (for 80% of the Phase I Tax Increment for fiscal year 2023-2024)). The schedules of the payments for Economic Development Grants set forth in Section 8.1 are based on the first full assessment of the Phase I Improvements being January 1, 2022 and the first full assessment of the Phase IV Improvements being January 1, 2023. If the completion of either phase of the Minimum Improvements is delayed so that the particular phase's improvements are not fully assessed as of January 1, 2022 or January 1, 2023, respectively, then the first Phase I Economic Development Grant and/or first Phase IV Economic Development Grant, respectively, will not begin as scheduled, but will be delayed one year. However, in no event shall the schedule of Economic Development Grants be delayed more than one year, meaning that the latest potential date for Developer's first Phase I Economic Development Grant, if eligible, is June 1, 2025 and the latest potential date for Developer's first Phase IV Economic Development Grant, if eligible, is June 1, 2026.

Section 8.3. Maximum Amount of Grants.

a. Maximum for Phase I Economic Development Grants. The aggregate amount of the Phase I Economic Development Grants that may be paid to Developer under this Agreement shall be equal to the sum of the total amount of the applicable percentage of Phase I Tax Increments collected in respect of the assessments imposed on the Phase I Improvements over the specified time period, but in no event shall exceed One Hundred and Twenty-One Thousand Dollars ($121,000) annually, or Six Hundred and Five Thousand Dollars ($605,000) over five (5) years.

b. Maximum for Phase IV Economic Development Grants. The aggregate amount of the Phase IV Economic Development Grants that may be paid to Developer under this Agreement shall be equal to the sum of the total amount of the applicable percentage of Phase IV Tax Increments collected in respect of the assessments imposed on the Phase IV Improvements over the specified time period, but in no event shall exceed Fifty-Seven Thousand Dollars ($57,000) annually, or Two Hundred and Eighty-Five Thousand Dollars ($285,000) over five (5) years.

Section 8.4. Limitations. The Economic Development Grants are only for the Minimum Improvements described in this Agreement (building/improvement increase value only) and not any future expansions or phases which, to be eligible for Economic Development Grants, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

Section 8.5. Conditions Precedent. Notwithstanding the provisions of Section 8.1 above, the obligation of the City to make an Economic Development Grant in any year shall be subject to and conditioned upon the following:

a. Owner's and Developer's compliance with the terms of this Agreement, including,

but not limited to, the payment of property taxes;

b. timely filing of the Annual Certifications required under Section 6.7 hereof and the Council's approval thereof; and

c. no Event of Default shall have occurred and be continuing.

In the event that an Event of Default occurs or any certification filed by Owner and Developer under Section 6.7 (or other information) discloses the existence or prior occurrence of an Event of Default that was not cured or cannot reasonably be cured, the City shall have no obligation thereafter to make any payments to Developer in respect of the Economic Development Grants and the provisions of this Article shall terminate and be of no further force or effect.

Each Annual Certification filed under Section 6.7 hereof shall be considered separately in determining whether the City shall make any of the Economic Development Grant payments available to Developer under this Section. Under no circumstances shall the failure by Owner or Developer to qualify Developer for an Economic Development Grant in any year serve to extend the term of this Agreement beyond the Termination Date or the years during which Economic Development Grants may be awarded to Developer or the total amount thereof, it being the intent of the parties hereto to provide Developer with an opportunity to receive Economic Development Grants only if Owner and Developer fully comply with the provisions hereof and Developer becomes entitled thereto, up to the maximum aggregate amount set forth in Sections 8.1 and 8.3.

Section 8.6. Source of Grant Funds Limited.

a. The Economic Development Grants shall be payable from and secured solely and only by amounts deposited and held in the Side by Side TIF Account of the Hiawatha Urban Renewal Tax Increment Revenue Fund of the City. The City hereby covenants and agrees to maintain the Ordinance in force during the term hereof and to apply the appropriate percentage of Tax Increments collected in respect of the Development Property and the applicable fully-assessed Minimum Improvements, and allocated to the Side By Side TIF Account to pay the Economic Development Grants, as and to the extent set forth in this Article. The Economic Development Grants shall not be payable in any manner by other tax increment revenues or by general taxation or from any other City funds. Any commercial and industrial property tax replacement monies that may be received under chapter 441.21A shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible, and any monies received back under chapter 426C relating to the Business Property Tax Credit shall not be included in the calculation to determine the amount of Economic Development Grants for which Developer is eligible.

b. Each Economic Development Grant is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments to Developer as contemplated under this Agreement until the City Council annually appropriates the funds necessary to make such payments. The right of non-appropriation reserved to the City in this Section is intended by the parties, and shall be construed at all times, so as to ensure that the City's obligation to make future Economic Development Grants shall not constitute a legal indebtedness

of the City within the meaning of any applicable constitutional or statutory debt limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction or by the City's bond counsel to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

c. Notwithstanding the provisions of Section 8.1 hereof, the City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, due to its legal counsel providing an opinion to the City to the effect that the use of Tax Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer, as contemplated under said Section 8.1, is not authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof. Upon receipt of any such legal opinion or non-appropriation, the City shall promptly forward notice of the same to Owner and Developer. If the non-appropriation or circumstances or legal constraints giving rise to the decision continue for a period during which one (1) annual Economic Development Grant would otherwise have been paid to Developer under the terms of Section 8.1, the City, Owner or Developer may terminate this Agreement, without penalty or other liability to the City, by written notice to the other parties.

Section 8.7. Use of Other Tax Increments. The City shall be free to use any and all Tax Increments above and beyond the percentages to be given to Developer in this Agreement, or any available Tax Increments resulting from the suspension or termination of the Economic Development Grants, for any purpose for which the Tax Increments may lawfully be used pursuant to the provisions of the Urban Renewal Act (including an allocation of all or any portion thereof to the reduction of any eligible City costs), and the City shall have no obligations to Owner or Developer with respect to the use thereof.

## ARTICLE IX. INDEMNIFICATION

Section 9.1. Release and Indemnification Covenants.

a. Owner and Developer release the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article IX, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agree to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about, or resulting from any defect in, the Minimum Improvements or Development Property.

b. Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Owner and Developer agree to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by the Owner or Developer against the City to enforce its rights under this Agreement), (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements, or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Owner, Developer or their officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person, other than any act of negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

d. All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City only, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

e. All covenants, stipulations, promises, agreements and obligations of the Owner and Developer contained in this Article IX shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Owner and Developer only, and not of any governing body member, officer, agent, servant or employee of the Owner or Developer in the individual capacity thereof.

f. The provisions of this Article IX shall survive the termination of this Agreement.

## ARTICLE X. DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events during the term of this Agreement:

a. Failure by Owner or Developer to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement, including the completion of each phase of the Minimum Improvements by the deadlines set forth in Section 4.1(d);

b. Transfer of Owner's interest or Developer's interest in the Development Property, Minimum Improvements, or this Agreement or the assets of Owner or Developer in violation of the provisions of this Agreement;

c. Failure by Owner or Developer to timely pay or cause to be paid ad valorem taxes on the Development Property and Minimum Improvements;

d. Failure by City, Owner or Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, including but not limited to Sections 6.6, 6.7, and 6.9 of this Agreement;

e. The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable Mortgage documents;

f. Owner or Developer:

i. files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

ii. makes an assignment for the benefit of its creditors; or

iii. admits in writing its inability to pay its debts generally as they become due; or

iv. is adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Owner or Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Owner or Developer or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Owner or Developer, and shall not be discharged within ninety (90) days after such appointment, or if Owner or Developer shall consent to or acquiesce in such appointment; or

g. Any representation or warranty made by City, Owner, or Developer in this Agreement or in any written statement or certificate furnished by City, Owner, or Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City, Owner, or Developer may take any one or more of the following actions after giving thirty (30) days' written notice to City, Owner, or Developer and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured to the satisfaction of the party providing written notice within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the party in default does not provide

assurances reasonably satisfactory to the party providing written notice that the Event of Default will be cured as soon as reasonably possible:

a. The party that provided notice may suspend its performance under this Agreement until it receives assurances from the party in default, deemed adequate by the party that provided notice, that the party in default will cure the default and continue their performance under this Agreement;

b. The party that provided notice may terminate this Agreement;

c. The City may withhold the Certificate of Completion;

d. The party that provided notice may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the party in default, under this Agreement; or

e. The City shall have no obligation to make payment of Economic Development Grants to Developer subsequent to an Event of Default and shall be entitled to recover from the Developer, and the Developer shall repay to the City, an amount equal to the full amount of the Economic Development Grants previously made to Developer under Article VIII hereof, with interest thereon at the highest rate permitted by State law. The City may take any action, including any legal action it deems necessary, to recover such amount from Developer. The City may demand such payment at any time following its determination that Owner or Developer is in default under this Agreement.

Section 10.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Owner, Developer, and the City shall each pay for its own attorney's fees associated with this Agreement.

b. Whenever any Event of Default occurs and the City employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or

performance or observance of any obligation or agreement on the part of Owner or Developer herein contained, Owner and Developer agree that they shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

## ARTICLE XI. PUBLIC IMPROVEMENTS

Section 11.1. Conditions Precedent to Construction of the Public Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings. Specifically, all obligations of the City to design and construct the Public Improvements are subject to each of the following Conditions Precedent:

a. The completion and satisfaction of certain separate City Council actions and all required legal proceedings to bid and finance the Public Improvements (in the judgment of bond counsel for the City);

b. The Owner and Developer are in material compliance with all of the terms of this Agreement at the time the City initiates the Public Improvement construction process;

c. There has not been a substantial change for the worse in the financial resources and ability of the Owner or Developer, or a substantial decrease in the financing commitments secured by the Owner or Developer for acquisition and construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Owner or Developer will be unable to fulfill their covenants and obligations under this Agreement;

d. The City shall have completed all applicable public bidding requirements for the Public Improvements and shall have awarded a contract for the Public Improvements acceptable to the City in its sole discretion.

Section 11.2. Construction of the Public Improvements. Contingent on the Owner's and Developer's compliance with the terms of this Agreement, the City intends to design and then construct, the Public Improvements. The City's obligation to design and construct the Public Improvements as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by Chapters 26, 384 and 403 of the Code, including the holding of all required public hearings relating to the same.

Section 11.3. Completion of the Public Improvements. Subject to Unavoidable Delays, the City shall cause construction of the Public Improvements to be undertaken and completed by no later than June 1, 2020. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. Construction of the Public Improvements shall not materially interfere with or delay Developer in the construction of the Minimum Improvements. Construction of the Minimum Improvements on

the Development Property shall not materially interfere with or delay City in the construction of the Public Improvements.

Section 11.4. Authority to Design, Engineer and Construct. The City shall design, engineer and construct the Public Improvements in accordance with current City standards and design guidelines, other applicable design standards, the terms of this Agreement, and in accordance with the provisions of the Code. At the request of the Developer, the City shall provide a copy of the construction plans for the Public Improvements for review and comment, but Developer shall have no approval authority over said construction plans.

Section 11.5. Reimbursement for Design Costs. In the event that Owner fails to timely close the purchase and sale of the Development Property on or before the Closing Date as set in Section 3.3, Developer agrees to reimburse the City for all costs and expenses related to the design of the Public Improvements incurred prior to the Closing Date. Developer shall pay such costs and expenses within thirty (30) days of receiving written notice from the City of the amount of such costs and expenses.

## ARTICLE XII. MISCELLANEOUS

Section 12.1. Conflict of Interest. The Owner and Developer represent and warrant that, to their best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 12.2. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of the Owner, is addressed or delivered personally to Side by Side Own, L.L.C. at 2035 26th Street, Cedar Rapids, IA 52405; Attn: Keith Billick, Managing Partner; and

b. In the case of the Developer, is addressed or delivered personally to Side by Side Develop, L.L.C. at 2035 26th Street, Cedar Rapids, IA 52405; Attn: Keith Billick, Managing Partner; and

c. In the case of the City, is addressed to or delivered personally to the City of Hiawatha at 101 Emmons Street, Hiawatha, IA 52233, Attn: Cindy Kudrna, Finance Director;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 12.3. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement, in substantially the form attached as Exhibit C, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for the costs of recording.

Section 12.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 12.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.6. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 12.7. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 12.8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 12.9. Termination Date. This Agreement shall terminate and be of no further force or effect on and after June 1, 2029, unless the Agreement is terminated earlier by the other terms of this Agreement.

Section 12.10. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, homebuyer, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Owner and the Developer each have caused this Agreement to be duly executed in its name and behalf all on or as of the day first above written.

*[Rest of page intentionally left blank; signature pages to follow]*

(SEAL)

CITY OF HIAWATHA, IOWA

By: _____
Bill Bennett, Mayor

ATTEST:

By: _____
Kari Graber, Deputy City Clerk

STATE OF IOWA )
) SS
COUNTY OF LINN )

On this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared Bill Bennett and Kari Graber, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Hiawatha, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

*[Signature page to Purchase, Sale, and Development Agreement – City of Hiawatha]*

SIDE BY SIDE OWN, L.L.C.,
an Iowa limited liability company

By: _____
Keith Billick, Its Managing Partner

STATE OF IOWA )
) SS
COUNTY OF Linn )

On this 5th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Keith Billick to me personally known, who, being by me duly sworn, did say that he is the Managing Partner of Side by Side Own, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said officers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

NOTARIAL SEAL IOWA
CINDY KUDRNA
Commission Number 719775
My Commission Expires
12-2-20

Cindy Kudrna
Notary Public in and for the State of Iowa

*[Signature page to Purchase, Sale, and Development Agreement – Side by Side Own, L.L.C.]*

SIDE BY SIDE DEVELOP, L.L.C.,
an Iowa limited liability company

By: _____
Keith Billick, Its Managing Partner

STATE OF IOWA )
) SS
COUNTY OF Linn )

On this 5th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Keith Billick to me personally known, who, being by me duly sworn, did say that he is the Managing Partner of Side by Side Develop, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said officers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

NOTARIAL SEAL IOWA
CINDY KUDRNA
Commission Number 719775
My Commission Expires
12-2-20

Cindy Kudrna
Notary Public in and for the State of Iowa

*[Signature page to Purchase, Sale, and Development Agreement – Side by Side Develop, L.L.C.]*

EXHIBIT A
DEVELOPMENT PROPERTY

The Development Property is made up of the Phase I Property and the Phase IV Property and is legally described as:

**Phase I Property**

A PORTION OF THE SOUTH 16 RODS OF THE NORTH 24 RODS OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PARCEL "A" AND PARCEL "B" OF PLAT OF SURVEY NO. 2262 AS RECORDED IN PLAT BOOK 10156 AT PAGE 473 OF THE LINN COUNTY RECORDER'S OFFICE

AND

LOTS 1, 2, AND 6 OF AUDITOR'S PLAT NO. 396 AS RECORDED IN PLAT BOOK 9 AT PAGE 114 OF THE LINN COUNTY RECORDER'S OFFICE

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Southernmost Corner of The Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office; Thence N41°53'07"W, 182.22 feet; Thence N41°12'08"W, 46.32 feet; Thence N48°51'15"E, 42.26 feet; Thence N40°54'28"W, 45.00 feet; Thence N48°51'16"E, 49.14 feet; Thence Northeasterly 223.18 feet along a 340.00 foot radius curve, concave Northwesterly, whose 219.20 foot chord bears N30°03'06"E to a point on the East Right of Way line of Robins Road; Thence N00°19'54"W, a distance of 91.01 feet along said East line; Thence N89°20'51"E, a distance of 634.31 feet to a point on the East line of the Northwest Quarter of the Southeast Quarter of the Southwest Quarter of said Section 33; Thence S00°08'08"E, a distance of 203.49 feet along said East line to the Northeast Corner of Auditor's Plat No. 396 in accordance with the plat thereof recorded in Plat Book 9, at Page 114 in the records of the Linn County Recorder's Office; Thence continuing S00°08'08"E along the East Line of said Auditor's Plat No. 396, a distance of 112.01 feet to the Southeast Corner of Lot 6 of said Auditor's Plat No. 396; Thence S89°17'45"W, along the South line of said Lot 6, a distance of 181.81 feet to the Southwest corner of of said Lot 6; Thence N00°02'21"E, along the West line of said Lot 6, a distance of 112.01 feet to the Northwest corner of said Lot 6; Thence S89°17'45"W, along the North line of Lots 5, 4, and 3 of said Auditor's Parcel No. 396, a distance of 272.20 feet to the Northeast corner of Lot 2 of said Auditor's Parcel No. 396; Thence S00°18'05"W, along the East line of Lot 2 of said Auditor's Parcel No. 396, a distance of 112.02 feet to the Southeast corner of said Lot 2; Thence S89°17'45"W, along the South line of Lots 2 and 1 of said Auditor's Parcel No. 396, a distance of 178.54 feet to the Southwest corner of Lot

1 of said Auditor's Parcel No. 396; Thence S00°23'28"E, along the East line of Parcel 'B' of Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office, a distance of 229.36 feet to the POINT OF BEGINNING. Said Parcel "A" contains 202,864 square feet (4.66 acres), and is subject to easements and restrictions of record.

AND

A PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

WEST 100' OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Northwest Corner of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N00°22'27"W, along the West Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.66 feet; Thence N89°21'03"E, along the North Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 332.82 feet; Thence S00°21'10"E, along the East Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.47 feet to the Northeast Corner of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence S00°18'03"E, along the Ease line of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.58 feet to the Northwest Corner of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N88°45'55"E, along the North line of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 99.96 feet to the Northeast Corner of said West 100.00 feet; Thence S00°17'44"E, along the East

line of the said West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 330.44 feet to a point on the North line of Hartl's First Addition in accordance with the plat thereof recorded in Plat Book 5, at page 302 in the records of the Linn County Recorder's Office; Thence S89°16'55"W, along the North Line of said Hartl's First Addition, a distance of 367.39 feet; Thence N00°08'08"W, 527.19 feet; Thence S89°20'51"W, a distance of 67.03 to the Northeast corner of the Plat of Survey as recorded in Plat Book 1961 at Page 208 in the records of the Linn County Recorder's Office, Thence N00°10'53"W, along the East line of said Plat of Survey, a distance of 132.09 feet to the POINT OF BEGINNING. Said Parcel "B" contains 327,189 square feet (7.51 acres), and is subject to easements and restrictions of record.

(The exact legal description of the Phase I Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

**Phase IV Property**

Part of Lot 1, Auditor's Plat No. 322, Linn County, Iowa, described as follows:

Beginning at the Northwest corner of Lot 1, Auditor's Plat No. 322, Linn County, Iowa; Thence N88°49'37"E along the North line of said Lot 1 a distance of 29.42 feet; Thence S41°22'50"E a distance of 107.85 feet; Thence S48°32'21"W a distance of 44.98 feet; Thence S41°36'29"E a distance of 44.79 feet; Thence Southwesterly 172.68 feet along the arc of a 260.00 foot radius curve concaved Northerly (chord bears S69°51'24"W a distance of 169.52 feet); Thence S88°52'59"W to a West line of said Lot 1 a distance of 83.94 feet; Thence N03°52'31"W along said West line to the Southwest corner of Lot 9 of said Auditor's Plat a distance of 80.52 feet; Thence N88°50'03"E along the South line of said Lot 9 and South line of Lot 10 of said Auditor's Plat to the Southeast Corner of said Lot 10 a distance of 158.89 feet; Thence N03°22'36"W along a West line of said Lot 1 to said Northwest corner and the Point of Beginning a distance of 120.25 feet. Said parcel contains 0.57 acres and is subject to easements and restrictions of record.

(The exact legal description of the Phase IV Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

EXHIBIT B
MINIMUM IMPROVEMENTS

Minimum Improvements means construction of buildings containing commercial space to be constructed on the Development Property by the Developer in Phase I and Phase IV of development. The Minimum Improvements will contain approximately 26,000 square feet of commercial space in Phase I and approximately 12,000 square feet of commercial space in Phase IV.

Phase I Improvements means commercial-use improvements including new retail and office space aimed at generating new employment opportunities within the City.

Phase IV Improvements means commercial-use improvements including new retail and office space aimed at generating new employment opportunities within the City.

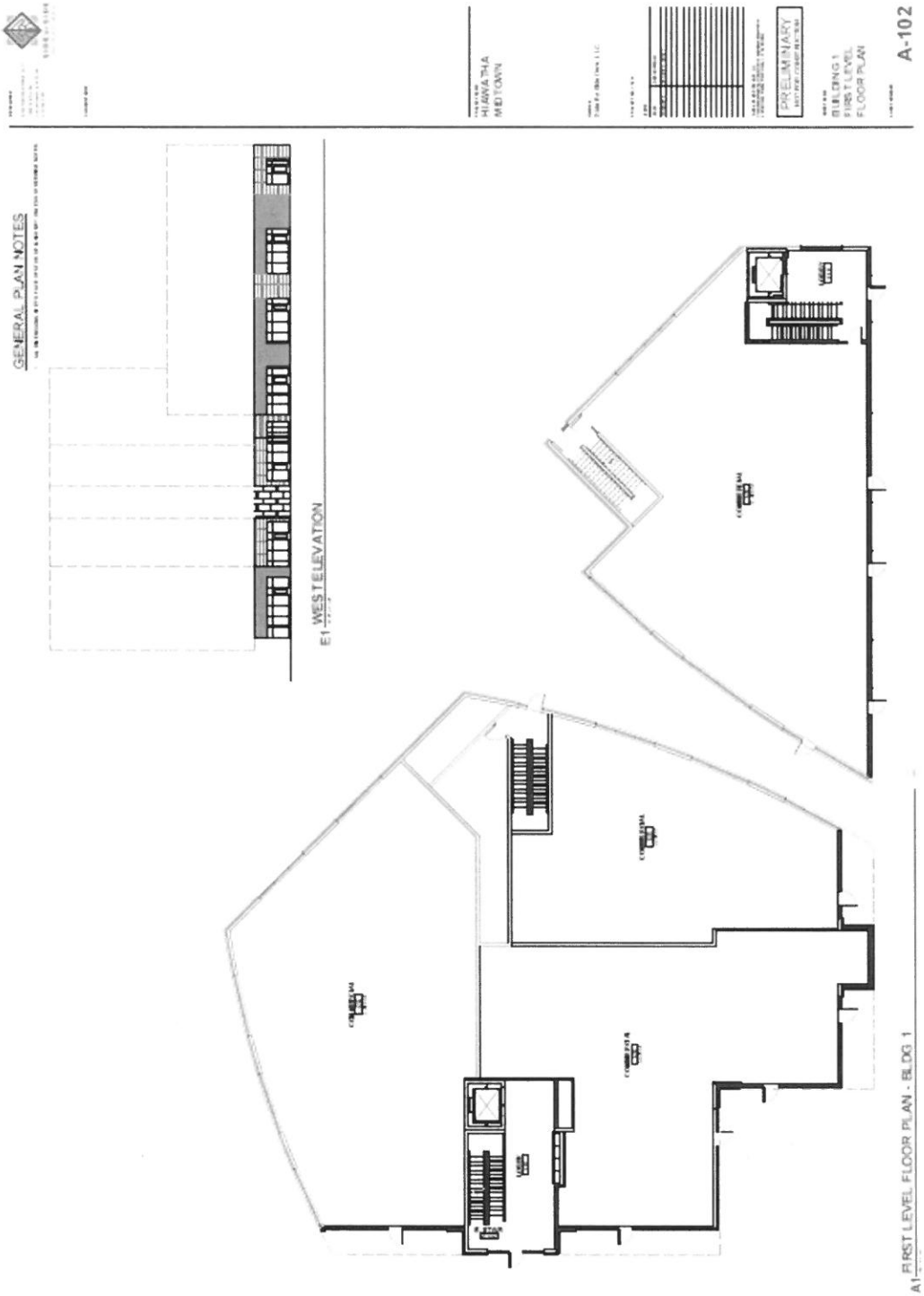
The following pages show a preliminary site plan and other drawings for the Minimum Improvements, which also shows proposed future improvements. The incentives offered under this Agreement by the City are only for the Minimum Improvements as defined herein.

EXHIBIT B (continued)

MINIMUM IMPROVEMENTS

(Representative only; see Construction Plans for specifics)

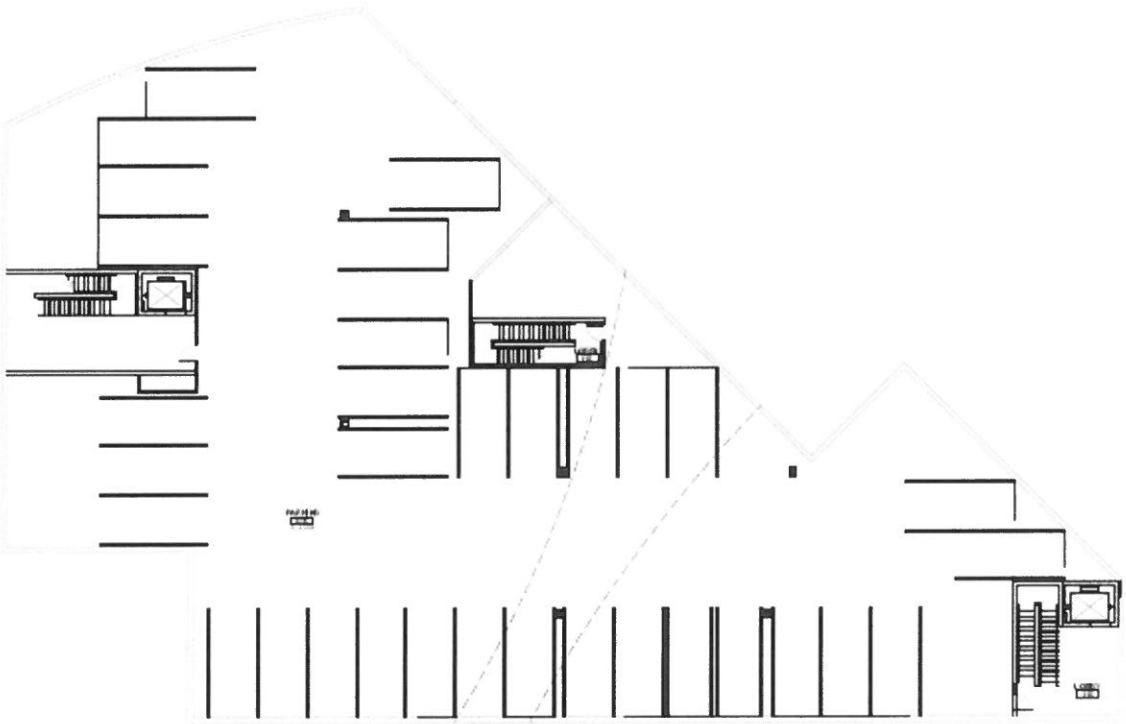
*Execution Version*






*Execution Version*

GENERAL PLAN NOTES



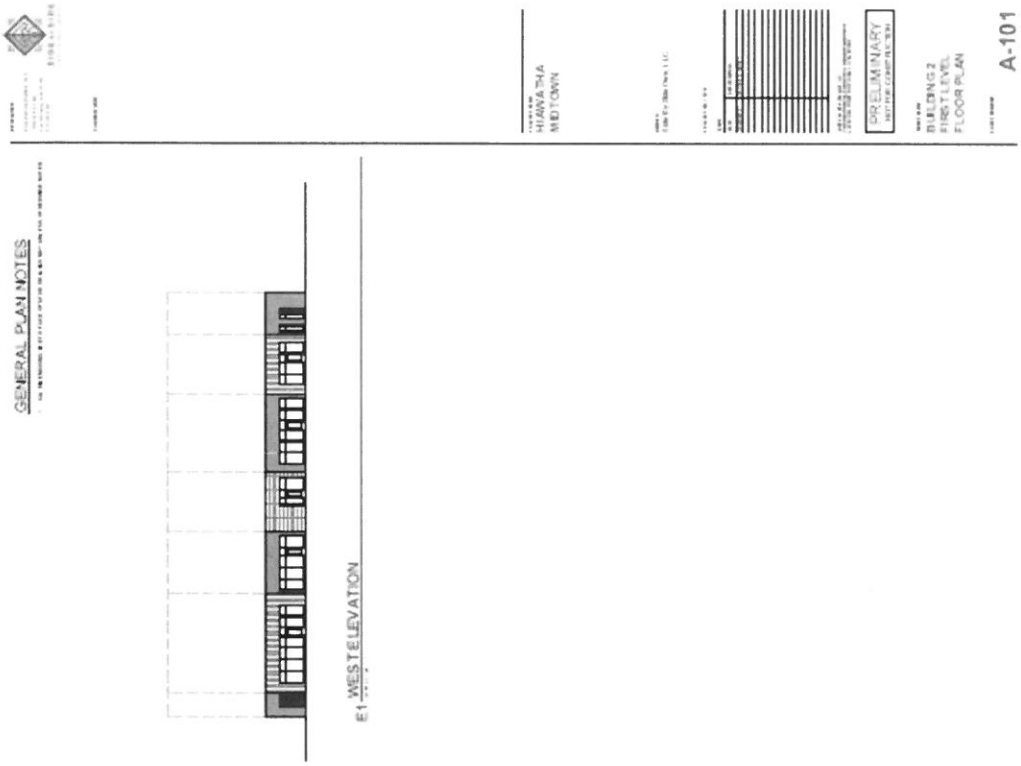
A1 LOWER LEVEL FLOOR PLAN - BLDG 1

HIAWATHA
MIDTOWN

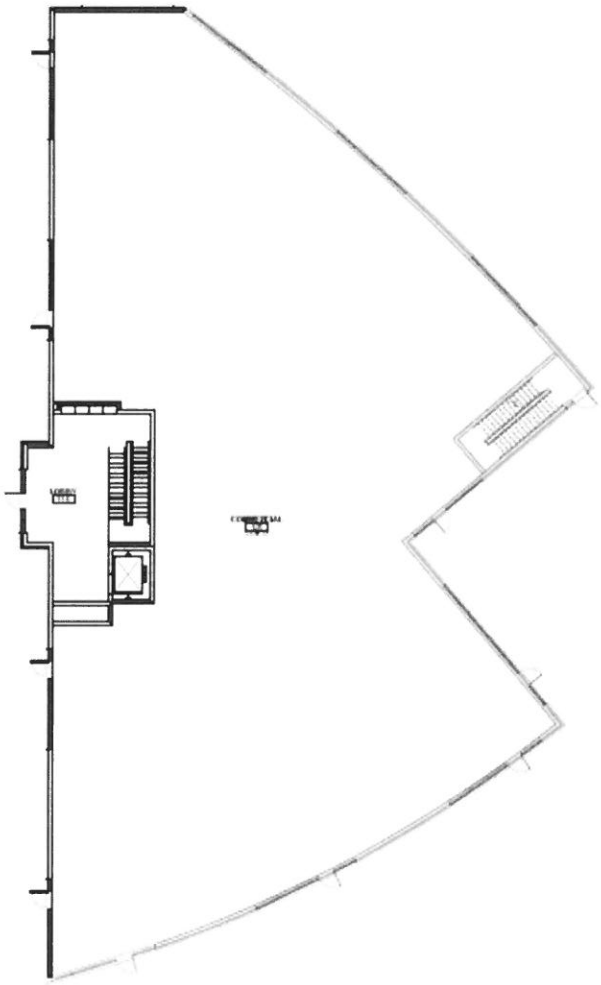
PRELIMINARY

BUILDING 1
LOWER LEVEL
FLOOR PLAN

A-101



*Execution Version*



A1 FIRST LEVEL FLOOR PLAN - BLDG 4

GENERAL PLAN NOTES

E1 WEST ELEVATION

HIAWATHA
MIDTOWN

PRELIMINARY

BUILDING 4
FIRST LEVEL
FLOOR PLAN

A-101

EXHIBIT C
MEMORANDUM OF AGREEMENT

WHEREAS, the CITY OF HIAWATHA, IOWA (the "City"), SIDE BY SIDE OWN, L.L.C., an Iowa limited liability company ("Owner"), and SIDE BY SIDE DEVELOP, L.L.C., an Iowa limited liability company ("Developer") did on or about the _____ day of _____, 2019, make, execute, and deliver a Purchase, Sale, and Development Agreement (the "Agreement"), wherein and whereby Owner and Developer agreed, in accordance with the terms of the Agreement and the Hiawatha Urban Renewal Plan (the "Plan"), to acquire, develop, and operate certain real property located within the City and within the Hiawatha Urban Renewal Area.

The Development Property is described as follows:

**Phase I Property**

A PORTION OF THE SOUTH 16 RODS OF THE NORTH 24 RODS OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PARCEL "A" AND PARCEL "B" OF PLAT OF SURVEY NO. 2262 AS RECORDED IN PLAT BOOK 10156 AT PAGE 473 OF THE LINN COUNTY RECORDER'S OFFICE

AND

LOTS 1, 2, AND 6 OF AUDITOR'S PLAT NO. 396 AS RECORDED IN PLAT BOOK 9 AT PAGE 114 OF THE LINN COUNTY RECORDER'S OFFICE

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Southernmost Corner of The Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office; Thence N41°53'07"W, 182.22 feet; Thence N41°12'08"W, 46.32 feet; Thence N48°51'15"E, 42.26 feet; Thence N40°54'28"W, 45.00 feet; Thence N48°51'16"E, 49.14 feet; Thence Northeasterly 223.18 feet along a 340.00 foot radius curve, concave Northwesterly, whose 219.20 foot chord bears N30°03'06"E to a point on the East Right of Way line of Robins Road; Thence N00°19'54"W, a distance of 91.01 feet along said East line; Thence N89°20'51"E, a distance of 634.31 feet to a point on the East line of the Northwest Quarter of the Southeast Quarter of the Southwest Quarter of said Section 33; Thence S00°08'08"E, a distance of 203.49 feet along said East line to the Northeast Corner of Auditor's Plat No. 396 in accordance with the plat thereof recorded in Plat Book 9, at Page 114 in the records of the Linn County Recorder's Office; Thence continuing S00°08'08"E along the East Line of said Auditor's Plat No. 396, a distance of 112.01 feet to the Southeast Corner of Lot 6 of said Auditor's Plat No. 396; Thence S89°17'45"W, along the South line of said Lot 6, a distance of 181.81 feet to the Southwest corner of of said Lot 6; Thence N00°02'21"E, along the West line of said Lot 6, a distance

of 112.01 feet to the Northwest corner of said Lot 6; Thence S89°17'45"W, along the North line of Lots 5, 4, and 3 of said Auditor's Parcel No. 396, a distance of 272.20 feet to the Northeast corner of Lot 2 of said Auditor's Parcel No. 396; Thence S00°18'05"W, along the East line of Lot 2 of said Auditor's Parcel No. 396, a distance of 112.02 feet to the Southeast corner of said Lot 2; Thence S89°17'45"W, along the South line of Lots 2 and 1 of said Auditor's Parcel No. 396, a distance of 178.54 feet to the Southwest corner of Lot 1 of said Auditor's Parcel No. 396; Thence S00°23'28"E, along the East line of Parcel 'B' of Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office, a distance of 229.36 feet to the POINT OF BEGINNING. Said Parcel "A" contains 202,864 square feet (4.66 acres), and is subject to easements and restrictions of record.

AND

A PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

WEST 100' OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Northwest Corner of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N00°22'27"W, along the West Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.66 feet; Thence N89°21'03"E, along the North Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 332.82 feet; Thence S00°21'10"E, along the East Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.47 feet to the Northeast Corner of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence S00°18'03"E, along the Ease line of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.58 feet to the Northwest

Corner of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N88°45'55"E, along the North line of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 99.96 feet to the Northeast Corner of said West 100.00 feet; Thence S00°17'44"E, along the East line of the said West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 330.44 feet to a point on the North line of Hartl's First Addition in accordance with the plat thereof recorded in Plat Book 5, at page 302 in the records of the Linn County Recorder's Office; Thence S89°16'55"W, along the North Line of said Hartl's First Addition, a distance of 367.39 feet; Thence N00°08'08"W, 527.19 feet; Thence S89°20'51"W, a distance of 67.03 to the Northeast corner of the Plat of Survey as recorded in Plat Book 1961 at Page 208 in the records of the Linn County Recorder's Office, Thence N00°10'53"W, along the East line of said Plat of Survey, a distance of 132.09 feet to the POINT OF BEGINNING. Said Parcel "B" contains 327,189 square feet (7.51 acres), and is subject to easements and restrictions of record.

(The exact legal description of the Phase I Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

**Phase IV Property**

Part of Lot 1, Auditor's Plat No. 322, Linn County, Iowa, described as follows:

Beginning at the Northwest corner of Lot 1, Auditor's Plat No. 322, Linn County, Iowa; Thence N88°49'37"E along the North line of said Lot 1 a distance of 29.42 feet; Thence S41°22'50"E a distance of 107.85 feet; Thence S48°32'21"W a distance of 44.98 feet; Thence S41°36'29"E a distance of 44.79 feet; Thence Southwesterly 172.68 feet along the arc of a 260.00 foot radius curve concaved Northerly (chord bears S69°51'24"W a distance of 169.52 feet); Thence S88°52'59"W to a West line of said Lot 1 a distance of 83.94 feet; Thence N03°52'31"W along said West line to the Southwest corner of Lot 9 of said Auditor's Plat a distance of 80.52 feet; Thence N88°50'03"E along the South line of said Lot 9 and South line of Lot 10 of said Auditor's Plat to the Southeast Corner of said Lot 10 a distance of 158.89 feet; Thence N03°22'36"W along a West line of said Lot 1 to said Northwest corner and the Point of Beginning a distance of 120.25 feet. Said parcel contains 0.57 acres and is subject to easements and restrictions of record.

(The exact legal description of the Phase IV Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

(the Phase I Property and the Phase IV Property are collectively known as the "Development Property"); and

WHEREAS, the term of the Agreement commences on the ____ day of _____, 2019, and terminates on June 1, 2029, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City, Owner, and Developer desire to record a Memorandum of the Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, Hiawatha, Iowa.

IN WITNESS WHEREOF, the City, Owner, and Developer have executed this Memorandum of Agreement on the _____ day of _____, 2019.

*[Rest of page intentionally left blank; signature pages to follow]*

(SEAL)

CITY OF HIAWATHA, IOWA

By: _____
Bill Bennett, Mayor

ATTEST:

By: _____
Kari Graber, Deputy City Clerk

STATE OF IOWA )
) SS
COUNTY OF LINN )

On this _____ day of _____, 2019, before me a Notary Public in and for said State, personally appeared Bill Bennett and Kari Graber, to me personally known, who being duly sworn, did say that they are the Mayor and Deputy City Clerk, respectively, of the City of Hiawatha, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and Deputy City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

*[Signature page to Memorandum of Agreement – City of Hiawatha]*

SIDE BY SIDE OWN, L.L.C.,
an Iowa limited liability company

By: _____
Keith Billick, Its Managing Partner

STATE OF IOWA )
) SS
COUNTY OF Linn )

On this 5th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Keith Billick to me personally known, who, being by me duly sworn, did say that he is the Managing Partner of Side by Side Own, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said officers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

NOTARIAL SEAL IOWA
CINDY KUDRNA
Commission Number 719775
My Commission Expires
12-2-20

Cindy Kudrna
Notary Public in and for the State of Iowa

*[Signature page to Memorandum of Agreement – Side by Side Own, L.L.C.]*

SIDE BY SIDE DEVELOP, L.L.C.,
an Iowa limited liability company

By: _____
Keith Billick, Its Managing Partner

STATE OF IOWA )
) SS
COUNTY OF Linn )

On this 5th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Keith Billick to me personally known, who, being by me duly sworn, did say that he is the Managing Partner of Side by Side Develop, L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said officers acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him voluntarily executed.

NOTARIAL SEAL IOWA
CINDY KUDRNA
Commission Number 719775
My Commission Expires
12-2-20

Cindy Kudrna
Notary Public in and for the State of Iowa

*[Signature page to Memorandum of Agreement – Side by Side Develop, L.L.C.]*

EXHIBIT D
CERTIFICATE OF COMPLETION

WHEREAS, the CITY OF HIAWATHA, IOWA ("City"), SIDE BY SIDE OWN, L.L.C. ("Owner"), and SIDE BY SIDE DEVELOP, L.L.C. ("Developer") did on or about the _____ day of _____, 2019, make, execute, and deliver a Purchase, Sale, and Development Agreement (the "Agreement"), wherein and whereby the Owner and Developer agreed, in accordance with the terms of the Agreement, to acquire, develop, and maintain certain real property located within the City and as more particularly described as follows:

**Phase I Property**

A PORTION OF THE SOUTH 16 RODS OF THE NORTH 24 RODS OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PARCEL "A" AND PARCEL "B" OF PLAT OF SURVEY NO. 2262 AS RECORDED IN PLAT BOOK 10156 AT PAGE 473 OF THE LINN COUNTY RECORDER'S OFFICE

AND

LOTS 1, 2, AND 6 OF AUDITOR'S PLAT NO. 396 AS RECORDED IN PLAT BOOK 9 AT PAGE 114 OF THE LINN COUNTY RECORDER'S OFFICE

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Southernmost Corner of The Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office; Thence N41°53'07"W, 182.22 feet; Thence N41°12'08"W, 46.32 feet; Thence N48°51'15"E, 42.26 feet; Thence N40°54'28"W, 45.00 feet; Thence N48°51'16"E, 49.14 feet; Thence Northeasterly 223.18 feet along a 340.00 foot radius curve, concave Northwesterly, whose 219.20 foot chord bears N30°03'06"E to a point on the East Right of Way line of Robins Road; Thence N00°19'54"W, a distance of 91.01 feet along said East line; Thence N89°20'51"E, a distance of 634.31 feet to a point on the East line of the Northwest Quarter of the Southeast Quarter of the Southwest Quarter of said Section 33; Thence S00°08'08"E, a distance of 203.49 feet along said East line to the Northeast Corner of Auditor's Plat No. 396 in accordance with the plat thereof recorded in Plat Book 9, at Page 114 in the records of the Linn County Recorder's Office; Thence continuing S00°08'08"E along the East Line of said Auditor's Plat No. 396, a distance of 112.01 feet to the Southeast Corner of Lot 6 of said Auditor's Plat No. 396; Thence S89°17'45"W, along the South line of said Lot 6, a distance of 181.81 feet to the Southwest corner of of said Lot 6; Thence N00°02'21"E, along the West line of said Lot 6, a distance of 112.01 feet to the Northwest corner of said Lot 6; Thence S89°17'45"W, along the North

line of Lots 5, 4, and 3 of said Auditor's Parcel No. 396, a distance of 272.20 feet to the Northeast corner of Lot 2 of said Auditor's Parcel No. 396; Thence S00°18'05"W, along the East line of Lot 2 of said Auditor's Parcel No. 396, a distance of 112.02 feet to the Southeast corner of said Lot 2; Thence S89°17'45"W, along the South line of Lots 2 and 1 of said Auditor's Parcel No. 396, a distance of 178.54 feet to the Southwest corner of Lot 1 of said Auditor's Parcel No. 396; Thence S00°23'28"E, along the East line of Parcel 'B' of Plat of Survey No. 2262 in accordance with the plat thereof recorded in Plat Book 10156, at page 473 in the records of the Linn County Recorder's Office, a distance of 229.36 feet to the POINT OF BEGINNING. Said Parcel "A" contains 202,864 square feet (4.66 acres), and is subject to easements and restrictions of record.

AND

A PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

AND

WEST 100' OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4

ALL LOCATED IN SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING at the Northwest Corner of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N00°22'27"W, along the West Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.66 feet; Thence N89°21'03"E, along the North Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 332.82 feet; Thence S00°21'10"E, along the East Line of the Southwest 1/4 of the Southeast 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.47 feet to the Northeast Corner of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence S00°18'03"E, along the Ease line of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 329.58 feet to the Northwest Corner of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast

1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N88°45'55"E, along the North line of the West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 99.96 feet to the Northeast Corner of said West 100.00 feet; Thence S00°17'44"E, along the East line of the said West 100.00 feet of the Southeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian, a distance of 330.44 feet to a point on the North line of Hartl's First Addition in accordance with the plat thereof recorded in Plat Book 5, at page 302 in the records of the Linn County Recorder's Office; Thence S89°16'55"W, along the North Line of said Hartl's First Addition, a distance of 367.39 feet; Thence N00°08'08"W, 527.19 feet; Thence S89°20'51"W, a distance of 67.03 to the Northeast corner of the Plat of Survey as recorded in Plat Book 1961 at Page 208 in the records of the Linn County Recorder's Office, Thence N00°10'53"W, along the East line of said Plat of Survey, a distance of 132.09 feet to the POINT OF BEGINNING. Said Parcel "B" contains 327,189 square feet (7.51 acres), and is subject to easements and restrictions of record.

(The exact legal description of the Phase I Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

**Phase IV Property**

Part of Lot 1, Auditor's Plat No. 322, Linn County, Iowa, described as follows:

Beginning at the Northwest corner of Lot 1, Auditor's Plat No. 322, Linn County, Iowa; Thence N88°49'37"E along the North line of said Lot 1 a distance of 29.42 feet; Thence S41°22'50"E a distance of 107.85 feet; Thence S48°32'21"W a distance of 44.98 feet; Thence S41°36'29"E a distance of 44.79 feet; Thence Southwesterly 172.68 feet along the arc of a 260.00 foot radius curve concaved Northerly (chord bears S69°51'24"W a distance of 169.52 feet); Thence S88°52'59"W to a West line of said Lot 1 a distance of 83.94 feet; Thence N03°52'31"W along said West line to the Southwest corner of Lot 9 of said Auditor's Plat a distance of 80.52 feet; Thence N88°50'03"E along the South line of said Lot 9 and South line of Lot 10 of said Auditor's Plat to the Southeast Corner of said Lot 10 a distance of 158.89 feet; Thence N03°22'36"W along a West line of said Lot 1 to said Northwest corner and the Point of Beginning a distance of 120.25 feet. Said parcel contains 0.57 acres and is subject to easements and restrictions of record.

(The exact legal description of the Phase IV Property will be determined when the abstract is updated, but it is expected to be substantially similar to the description above.)

(the Phase I Property and the Phase IV Property are collectively known as the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated the Developer to construct certain Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Owner and Developer have to the present date performed said covenants and conditions insofar as they relate to the construction of said Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Owner, Developer and their successors and assigns, to construct the Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The county recorder is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

*[Rest of page intentionally left blank; signature page to follow]*

SEAL)

CITY OF HIAWATHA, IOWA

By: _____
_____, Mayor

ATTEST:

By: _____
_____, City Clerk

STATE OF IOWA )
) SS
COUNTY OF LINN )

On this _____ day of _____, 20___, before me a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Hiawatha, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

*[Signature page to Certificate of Completion – City of Hiawatha]*

EXHIBIT E

ANNUAL CERTIFICATION

(due by October 15th as required under terms of Development Agreement)

The Owner and Developer certify the following:

During the time period covered by this Certification, the Owner and Developer are and were in compliance with Section 6.7 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property then owned by the Owner in the Urban Renewal Area have been timely paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The Phase I Improvements (building only) were first fully assessed on January 1, 20___, at a full assessment value of $_____;

The Phase IV Improvements (building only) were first fully assessed on January 1, 20___, at a full assessment value of $_____;

(iii) No tenants occupying the Minimum Improvements have relocated to the City from another part of Linn County (except from Marion or Cedar Rapids) or a contiguous county in violation of Iowa law and Section 6.10 of this Agreement, and the names of all current tenants at the Minimum Improvements are as follows (use additional pages if necessary):

_____

_____

_____

(iv) the undersigned officers of Owner and Developer have re-examined the terms and provisions of the Agreement and certify that at the date of such certificate, and during the preceding twelve (12) months, the Owner and Developer are not, or were not, in default in the fulfillment of any of the terms and conditions of the Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this _____ day of _____, 20___.

| **SIDE BY SIDE OWN, L.L.C.** | **SIDE BY SIDE DEVELOP, L.L.C.** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

Attachments: Proof of payment of taxes

EXHIBIT F

FORM OF SPECIAL WARRANTY DEED

See following pages.

EXHIBIT G

FORM OF OWNER ENFORCEABILITY OPINION [ON FIRM LETTERHEAD]

City of Hiawatha
Hiawatha, Iowa

Re: Purchase, Sale and Development Agreement between the City of Hiawatha, Iowa, ("City"), Side by Side Own, L.L.C., an Iowa limited liability company ("Owner"), and Side by Side Develop, L.L.C., an Iowa limited liability company ("Developer")

As counsel for Owner in connection with the execution and delivery of a certain Purchase, Sale, and Development Agreement (the "Agreement") by and between the City, Owner, and Developer dated as of _____, 2019 and referenced above, we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following: (a) the governing documents of Owner; (b) resolution(s) of Owner at which action was taken with respect to the transactions covered by this opinion; (c) the Agreement and all exhibits thereto; and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. Owner is a duly organized and validly existing limited liability company under the laws of the State of Iowa. Owner has full power and authority to execute, deliver and perform the Agreement and all attachments thereto; and the Agreement and all attachments thereto have been duly and validly authorized, executed and delivered by Owner and, assuming due authorization, execution and delivery by the City and the Developer, the Agreement is a legally-binding instrument enforceable against Owner, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transaction contemplated by the Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under the governing documents of Owner, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Owner is a party or by which it or its property is bound or subject.

Very truly yours,

EXHIBIT H

FORM OF DEVELOPER ENFORCEABILITY OPINION [ON FIRM LETTERHEAD]

City of Hiawatha
Hiawatha, Iowa

Re: Purchase, Sale and Development Agreement between the City of Hiawatha, Iowa, ("City"), Side by Side Own, L.L.C., an Iowa limited liability company ("Owner"), and Side by Side Develop, L.L.C., an Iowa limited liability company ("Developer")

As counsel for Developer in connection with the execution and delivery of a certain Purchase, Sale, and Development Agreement (the "Agreement") by and between the City, Owner, and Developer dated as of _____, 2019 and referenced above, we hereby render the following opinion:

We have examined the original certified copy, or copies otherwise identified to our satisfaction as being true copies, of the following: (a) the governing documents of Developer; (b) resolution(s) of Developer at which action was taken with respect to the transactions covered by this opinion; (c) the Agreement and all exhibits thereto; and such other documents and records as we have deemed relevant and necessary as a basis for the opinion set forth herein.

Based on the pertinent law, the foregoing examination and such other inquiries as we have deemed appropriate, we are of the opinion that:

1. Developer is a duly organized and validly existing limited liability company under the laws of the State of Iowa. Developer has full power and authority to execute, deliver and perform the Agreement and all attachments thereto; and the Agreement and all attachments thereto have been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City and the Owner, the Agreement is a legally-binding instrument enforceable against Developer, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

2. The consummation of the transaction contemplated by the Agreement and the carrying out of the terms thereof, will not result in violation of any provision of, or in default under the governing documents of Developer, or any indenture, mortgage, deed of trust, indebtedness, agreement, judgment, decree, order, statute, rule, regulation or restriction to which Developer is a party or by which it or its property is bound or subject.

Very truly yours,

EXHIBIT I

CITY RIGHT-OF-WAY AND PUBLIC IMPROVEMENTS

The City Right-of-Way is legally described as:

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 84 NORTH, RANGE 7 WEST, OF THE FIFTH PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING at the Northwest Corner of the Northeast Quarter of the Southeast Quarter of the Southwest Quarter of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence S00°10'53"E, along the East line of the Plat of Survey as recorded in Plat Book 1961, at page 208 in the records of the Linn County Recorder's Office, a distance of 132.09 to the Southeast corner thereof and the POINT OF BEGINNING; Thence N89°20'51"E, 67.03 feet; Thence S00°08'08"E, a distance of 527.19 feet to a point on the North line of Hartl's First Addition, in accordance with the Plat thereof, as recorded in Plat Book 5, at Page 302 in the records of the Linn County Recorder's Office; Thence S89°16'55"W, along said North line to the Southeast Corner of Auditor's Plat No. 396, in accordance with Plat thereof, as recorded in Plat Book 9, at Page 114 in the records of the Linn County Recorder's Office, a distance of 66.00 feet; Thence N00°08'08"W, along the East line of said Auditor's Plat, a distance of 263.78 feet to the Southeast Corner of the South 16 rods of the North 24 rods of the Northwest Quarter of the Southeast Quarter of the Southwest Quarter of Section 33, Township 84 North, Range 7 West, of the Fifth Principal Meridian; Thence N00°08'08"W, along the East Line of said South 16 rods, a distance of 203.49 feet; Thence S89°20'51"W, a distance of 634.31 feet to a point on the East Right-Of-Way line of Robins Road; Thence N00°19'54"W, along said East Right-Of-Way line, a distance of 60.00 feet; Thence N89°20'51"E, along the South line of a Plat of Survey Recorded in Survey Book 1961 at Page 208 in the records of the Linn County Recorder's Office, a distance of 633.49 feet to the POINT OF BEGINNING. Said Parcel "A" contains 72,862 square feet (1.67 acres), and is subject to easements and restrictions of record.

*[Remainder of page intentionally left blank; list of Public Improvements follows on next page]*

The Public Improvements consist of:

The extension of the existing "A" Avenue approximately 300 feet to the north, and then a new public street extension west back to Robins Road for approximately 650 feet.

The proposed design and construction for these two new public street extensions will include, but is not limited to, approximately the following:

- 950 feet of 26 foot wide concrete street with curb and gutter
- 1100 feet watermain and required valves and hydrants
- 800 feet of sanitary sewer and required manholes
- 800 feet of storm sewer and intakes
- Various municipal utility service connections to future lots
- 600 feet of 10 foot wide concrete recreational trail
- Miscellaneous construction to meet current design standards

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