F3

ITEM TO INCLUDE ON AGENDA

CITY OF HIAWATHA, IOWA
September 6, 2017
5:30 P.M.

Hiawatha Urban Renewal Plan

- Resolution approving and authorizing execution of a First Amendment to the Agreement for Private Development by and among the City of Hiawatha, Edge Holdings, LLC and The Dancer's Edge 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.

September 6, 2017

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: _____

Whereupon, Council Member _____ introduced and delivered to the Clerk the Resolution hereinafter set out entitled "RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO THE AGREEMENT FOR PRIVATE DEVELOPMENT BY AND AMONG THE CITY OF HIAWATHA, EDGE HOLDINGS, LLC AND THE DANCER'S EDGE 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 _____, 2017, at this place.

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 APPROVING AND AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO THE AGREEMENT FOR PRIVATE DEVELOPMENT BY AND AMONG THE CITY OF HIAWATHA, EDGE HOLDINGS, LLC AND THE DANCER'S EDGE L.L.C.

WHEREAS, by Resolution No. 91-68, adopted June 19, 1991, and which has been amended 12 times, lastly by Amendment No. 12 as approved by Resolution No. 17-068 on April 19, 2017, 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 "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, the City of Hiawatha, Iowa ("City"), Edge Holdings, LLC ("Developer") and The Dancer's Edge L.L.C. ("Tenant") entered into an Agreement for Private Development on July 5, 2017 pursuant to Resolution No. 17-129 ("Agreement"); and

WHEREAS, the parties previously executed the Original Agreement in which Developer is obligated to cause certain Minimum Improvements to the Existing Facility, and in consideration of Developer's obligations, the City agrees to provide certain incentives to Developer; and

WHEREAS, the parties have now agreed to amend the Original Agreement to update the legal description of the Development Property; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to make loans and 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 Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Amendment 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 Amendment 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

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

Section 1. That the performance by the City of its obligations under the First Amendment 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 First Amendment 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 2. That the form and content of the First Amendment, 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 City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the First Amendment 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 First Amendment, the Mayor and the 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 First Amendment as executed.

PASSED AND APPROVED this 6th day of September, 2017.

_____
Mayor

ATTEST:

_____
City Clerk

CERTIFICATE

STATE OF IOWA)
) SS
COUNTY OF LINN)

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

WITNESS my hand and the seal of the City hereto affixed this _____ day of _____, 2017.

_____
City Clerk, City of Hiawatha, State of Iowa

(SEAL)

01394180-1\10575-149

FIRST AMENDMENT TO THE AGREEMENT FOR PRIVATE DEVELOPMENT BY AND AMONG THE CITY OF HIAWATHA, IOWA, EDGE HOLDINGS, LLC AND THE DANCER'S EDGE L.L.C.

THIS FIRST AMENDMENT ("First Amendment" or "Amendment") to that certain Agreement for Private Development by and among the City of Hiawatha, Iowa, Edge Holdings, LLC, and The Dancer's Edge L.L.C. dated July 5, 2017 (the "Original Agreement"), is made as of the _____ day of _____, 2017, by and among the City of Hiawatha, Iowa ("City"), Edge Holdings, LLC ("Developer") and The Dancer's Edge L.L.C. ("Tenant") (City, Developer and Tenant are collectively herein referred to as the "parties").

WHEREAS, the parties previously executed the Original Agreement in which Developer is obligated to cause construction of certain Minimum Improvements to the Existing Facility, and in consideration of Developer's obligations, the City agrees to provide certain incentives to Developer; and

WHEREAS, the legal description of the Development Property used in the Original Agreement is as follows:

> Lot 1, Tower Commerce Center Second Addition to Hiawatha, Iowa and Lot 1, Tower Commerce Center Sixth Addition to Hiawatha, Iowa. Subject to covenants, easements, restrictions and conditions of record.

(hereinafter the "Original Legal Description"); and

WHEREAS, it has now been determined that prior to execution of the Original Agreement, Developer caused a Plat of Survey No. 2128 to be completed as recorded in Book 9761 Page 338 of the records of the Linn County, Iowa Recorder which Plat of Survey changed the Original Legal Description of the Development Property to:

> PARCEL A, PLAT OF SURVEY NO. 2128 AS RECORDED IN BOOK 9761 PAGE 338 OF THE RECORDS OF THE LINN COUNTY, IOWA RECORDER ON FEBRUARY 3, 2017, BEING LOT 1, TOWER COMMERCE CENTER SECOND ADDITION TO HIAWATHA, IOWA AND LOT 1, TOWER COMMERCE CENTER SIXTH ADDITION TO HIAWATHA, IOWA

(hereinafter the "New Legal Description"); and

WHEREAS, the parties have now agreed to amend the Original Agreement such that the New Legal Description is substituted in lieu of the Original Legal Description wherever the Original Legal Description appears in the Original Agreement and all exhibits thereto; and

NOW, THEREFORE, it is agreed by the parties as follows:

1. All capitalized words used herein and not specifically defined shall have the same definitions as in the Original Agreement.

2. The New Legal Description is substituted in lieu of the Original Legal Description wherever the Original Legal Description appeared in the Original Agreement and all exhibits thereto.

3. Except as amended and/or modified by this First Amendment, the Original Agreement is hereby ratified and confirmed and all other terms of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this First Amendment 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, Developer has caused this Agreement to be duly executed in its name and behalf by its authorized representative, all on or as of the day first above written.

[Remainder of page intentionally left blank; signature pages follow]

(SEAL)

CITY OF HIAWATHA, IOWA

By: _____
Bill Bennett, Mayor

ATTEST:

By: _____
Kelly Kornegor, City Clerk

STATE OF IOWA)
) SS
COUNTY OF LINN)

On this _____ day of _____, 2017, before me a Notary Public in and for said State, personally appeared Bill Bennett and Kelly Kornegor, 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 pages to First Amendment to Agreement for Private Development – City of Hiawatha]

Developer:
EDGE HOLDINGS, LLC, an
Iowa limited liability company

By: _____
Charles Vogl, Member/Manager

ATTEST:

By: _____
Stephanie Vogl, Member/Manager

STATE OF IOWA)
) SS
COUNTY OF LINN)

On this _____ day of _____, 2017, before me the undersigned, a Notary Public in and for said State, personally appeared Charles Vogl and Stephanie Vogl, to me personally known, who, being by me duly sworn, did say that they are all of the Members/Managers of Edge Holdings, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said Charles Vogl and Stephanie Vogl as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to First Amendment to Agreement for Private Development – Edge Holdings, LLC]

Tenant:
THE DANCER'S EDGE L.L.C., an
Iowa limited liability company

By: _____
Charles Vogl, Member/Manager

ATTEST:

By: _____
Stephanie Vogl, Member/Manager

STATE OF IOWA)
) SS
COUNTY OF LINN)

On this _____ day of _____, 2017, before me the undersigned, a Notary Public in and for said State, personally appeared Charles Vogl and Stephanie Vogl, to me personally known, who, being by me duly sworn, did say that they are all of the Members/Managers of The Dancer's Edge L.L.C., and that said instrument was signed on behalf of said limited liability company; and that the said Charles Vogl and Stephanie Vogl as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

_____
Notary Public in and for the State of Iowa

[Signature page to First Amendment to Agreement for Private Development – The Dancer's Edge L.L.C.]

01393966-1\10575-149