F7

ITEM TO INCLUDE ON AGENDA

CITY OF HIAWATHA, IOWA
December 20, 2017
5:30 P.M.

Hiawatha Urban Renewal Plan

- Resolution approving and authorizing execution of an Assignment to provide the consent of the City.

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.

December 20, 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 AN ASSIGNMENT OF THE LONGFELLOW SQUARE, L.C., AGREEMENT FOR PRIVATE DEVELOPMENT TO INDABA PROPERTIES, LLC", 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 _____.

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 AN ASSIGNMENT OF THE LONGFELLOW SQUARE, L.C., AGREEMENT FOR PRIVATE DEVELOPMENT TO INDABA PROPERTIES, LLC

WHEREAS, on the 20th day of August, 2014, the City of Hiawatha, Iowa (the "City") and Longfellow Square, L.C. ("Assignor") entered into an Agreement for Private Development, as amended, ("Agreement") pursuant to which the Assignor agreed to undertake certain commercial development activities, including the Minimum Improvements (as that term is defined in the Agreement), and the City agreed to make certain Economic Development Grants (as defined in the Agreement); and

WHEREAS, the City has received a proposal from the Assignor, in the form of a proposed Assignment (the "Assignment") by and between the Assignor and Indaba Properties, LLC, an Illinois limited liability company, ("Assignee"), pursuant to which, among other things, the Assignor agrees to assign all of its right, title, and interest in and to the Agreement, including the Economic Development Grants, to the Assignee, and the Assignee agrees to assume all obligations of the Assignor under the Agreement, which include the obligations with respect to the Minimum Improvements and the timely payment of all property taxes as they come due throughout the term of the Agreement; and

WHEREAS, the Agreement requires an assignment of the Agreement by the Assignor to be consented to by the City.

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

Section 1. That the form and content of the Assignment, 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 Assignment 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 Assignment, 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 Assignment as executed.

PASSED AND APPROVED this 20th day of December, 2017.

_____
Mayor

ATTEST:

_____
City Clerk

CERTIFICATE

STATE OF IOWA)
) SS
COUNTY OF LINN)

I, the undersigned City Clerk of the City of Hiawatha, Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of said Municipality showing proceedings of the Council, and the same is a true and complete copy of the action taken by said Council with respect to said 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 said 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 said 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 said 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 said Municipality hereto affixed this _____ day of _____, 2017.

_____
City Clerk, City of Hiawatha, State of Iowa

SEAL

01423950-1\10575-121

ASSIGNMENT AND ASSUMPTION
OF
AGREEMENT FOR PRIVATE DEVELOPMENT

THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR PRIVATE DEVELOPMENT (this "Assignment") is made as of _____, 2017 (the "Effective Date") by and between Longfellow Square, L.C., an Iowa limited liability company ("Assignor") and Indaba Properties, LLC, an Illinois limited liability company ("Assignee").

RECITALS

WHEREAS, Assignor and the City of Hiawatha, a municipality in Linn County, Iowa ("City"), are parties to that certain Agreement for Private Development, dated as of August 20, 2014, and prepared pursuant to Chapters 15A and 403 of the Code of Iowa, 2013, as amended ("Urban Renewal Act") carrying out urban renewal project activities in an area known as the Hiawatha Urban Renewal Area, as amended, which is described in the Urban Renewal Plan approved for such area by Resolution No. 91-68 on June 19, 1991, and amended 12 times, most recently on April 19, 2017; and pursuant to Resolution No. 14-164, approving and authorizing execution of a Development Agreement by and between the City of Hiawatha and Longfellow Square, L.C. (the "Agreement for Private Development"), concerning that certain real property legally known as:

Lot 1 of Longfellow Square 9th Addition, City of Hiawatha, Linn County, Iowa

A part of the NW 1/4 NE 1/4 of Section 32, Township 84 North, Range 7 West of the 5th Principal Meridian, City of Hiawatha, Linn County, Iowa described as follows:

Commencing as a point of reference at the N 1/4 corner of said Section 32;
thence N88° 56' 03"E along the north line of said NW 1/4 NE 1/4, 663.45 feet to the east line of the NW 1/4 of said NW 1/4 NE 1/4 and the Point of Beginning;
thence continuing N88° 56' 03"E along said north line, 418.53 feet;
thence S01° 04' 06"E, 203.00 feet;
thence S88° 55' 54"W, 96.91 feet;
thence S51° 15' 13"W, 120.88 feet to the north right of way line of Longfellow Drive;
thence NW-ly along said north right of way line on an arc of 95.52 feet of a 330.00-foot radius curve to the left, having a chord length of 95.19 feet bearing N64° 46' 59"W ;
thence N73° 04' 31"W along said north right of way line, 114.18 feet to the east right of way line of Stamy Road;
thence S-ly along said east right of way line on an arc of 99.78 feet of a 435.00-foot radius curve to the right, having a chord length of 99.56 feet bearing S19° 18' 34"W to said east line;
thence N00° 32' 49"W along said east line, 292.81 feet to the Point of Beginning, containing 2.21 acres which includes 0.24 acres of road right of way.

(the "Property").

WHEREAS, Assignor has conveyed fee simple title to the Property to Assignee as of the Effective Date.

WHEREAS, Assignor desires to assign, transfer, and convey to Assignee all of Assignor's right, title, and interest in, to, and under the Agreement for Private Development.

WHEREAS, Assignee desires to accept all of Assignor's right, title, and interest in, to, and under the Agreement for Private Development.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms, provisions, agreements, and covenants contained in this Assignment and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto and intending to be legally bound hereby, the parties agree as follows:

1. Assignment. Assignor has assigned, transferred, sold, and conveyed and by these presents does hereby assign, transfer, sell, and convey unto Assignee all of Assignor's right, title, and interest in, to, and under the Agreement for Private Development including, but not limited to, the right to receive economic development grants and all obligations thereunder, together with all applicable documents and agreements attached as exhibits thereto, and all amendments, addenda, and modifications thereof. Assignee hereby assumes all of Assignor's duties and obligations under the Agreement for Private Development including, but not limited to, the right to receive economic development grants and all obligations thereunder, together with all applicable documents and agreements attached as exhibits thereto, and all amendments, addenda, and modifications thereof.

2. Force and Effect. Except as modified and amended herein, all other terms and conditions of the Agreement for Private Development shall remain unchanged and in full force and effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3. Counterparts; Exchange by Electronic Transmission. This Assignment may be executed in two (2) or more counterparts, and by electronic transmission, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

4. Notice. For the purpose of serving notice on Assignee pursuant to Section 12.2 of the Agreement for Private Development, such contact information is as follows:

a. In the case of Developer (Assignee), is addressed or delivered personally to Indaba Properties, LLC, 601 Farnsworth Ave, Aurora, IL 60505, Attn: Jeff Cherif, Owner.

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

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the Effective Date.

ASSIGNOR:

LONGFELLOW SQUARE, L.C.,
An Iowa limited liability company

By: _____
Jon Dusek, President

ATTEST:

By: _____
Ace Aossey, Vice President

STATE OF IOWA)
) ss
COUNTY OF LINN)

On this 8th day of December, 2017, before me a Notary Public in and for said State, personally appeared Jon Dusek and Ace Aossey to me personally known, who being duly sworn, did say that they are the President and Vice President, respectively, of Longfellow Square, L.C., an Iowa limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company; and that the said Jon Dusek and Ace Aossey as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

NOTARIAL SEAL IOWA
LISA M. JOHNSON
Commission Number 804217
My Commission Expires
May 5, 2020

_____
Notary Public in and for the State of Iowa

ASSIGNEE:

INDABA PROPERTIES, LLC,
an Illinois limited liability company

By: _____

Name: Jeff Cherif

Title: Owner

ATTEST:

By: _____

Name: MICHAEL LIROT

Title: CONTROLLER

STATE OF ILLINOIS)
) ss
COUNTY OF KANE)

On this 7TH day of DECEMBER, 2017, before me a Notary Public in and for said State, personally appeared JEFF CHERIF and MICHAEL LIROT to me personally known, who being duly sworn, did say that they are the OWNER and CONTROLLER, respectively, of Indaba Properties, LLC, an Illinois limited liability company, and that said instrument was signed and sealed on behalf of said limited liability company; and that the said JEFF CHERIF and MICHAEL LIROT as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said limited liability company, by them voluntarily executed.

KARIE S COLBORN
Official Seal
Notary Public – State of Illinois
My Commission Expires Feb 28, 2021

_____
Notary Public in and for said State

Ahlers Cooney (11/20/17)

CONSENT OF THE CITY OF HIAWATHA, IOWA

The City of Hiawatha, Iowa does hereby, in accordance with Section 7.1 of the Agreement for Private Development dated August 20, 2014, by and between the City of Hiawatha, Iowa and Longfellow Square, L.C. consent to the foregoing Assignment and Assumption of Agreement for Private Development by and between Longfellow Square, L.C. and Indaba Properties, LLC under the terms and conditions in such Assignment.

(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 Interim City Administrator, 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

01424034-1\10575-121