

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

X Resolution or Ordinance (Blue) ___ Waiver of First Requested
___ Recommendations of Boards, Commissions & Committees (Green)
___ Other Business (Pink)

TO : PRESIDENT AND BOARD OF TRUSTEES

FROM : Scott Niehaus, Village Manager

DATE : August 13, 2020 (BOT) **Date:** August 20, 2020

SUBJECT : 101-109 S. Main (Holladay Properties' Lilac Station) – Assignment
And Assumption Resolution

SUBMITTED BY: Bill Heniff, director of Community Development

BACKGROUND/POLICY IMPLICATIONS:

Holladay Property Services Midwest, LLC. established a separate LLC (HP Lilac Station, LLC) associated with the sale and redevelopment of the 101-109 S. Main Street properties. The RDA provides for the assignment of the project to another entity and perfection of this matter is being submitted to the Village for approval. Attached is a Resolution for approval of an Assignment and Assumption Agreement prepared by Village Counsel.


Fiscal Impact/Funding Source: TBD

Review (as necessary):
Finance Director _____ Date _____
Village Manager Scott Niehaus _____ Date 8/13/20

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the agenda distribution.

MEMORANDUM

TO: Scott R. Niehaus, Village Manager

FROM: William J. Heniff, AICP, Director of Community Development 

MEETING DATE: August 20, 2020

RE: **101-109 S. Main Street: Assignment and Assumption Agreement – Holladay Properties' Lilac Station**

In 2019 and 2020, the Village Board approved a Redevelopment Agreement (RDA) and three companion amendments to the RDA, all associated with the sale and redevelopment of the 101-109 S. Main Street properties by Holladay Property Services Midwest, LLC. To effectuate the property closing and development activities, Holladay Properties has established a separate LLC (HP Lilac Station, LLC) for the project.

Section XX (R) of the RDA provides for the assignment of the project to another entity and perfection of this matter is being submitted to the Village for approval. Attached is a Resolution prepared by Village Counsel for Village Board consideration. As the RDA also provides for a companion economic incentive, the new entity has also provided a correspondence to staff (attached) attesting to their ability to meet the requisite provisions as set forth within State Statute 65 ILCS 5/8-11-20(6)(C).

RECOMMENDATION

Staff is placing this item on the August 20, 2020 Village Board Meeting Agenda for consideration and approval of a Resolution approving an Assignment and Assumption Agreement associated with the sale and redevelopment of the property at 101-109 S. Main Street.

RESOLUTION NO. _____

RESOLUTION APPROVING THE ASSIGNMENT OF THE REDEVELOPMENT AGREEMENT FOR THE HOLLADAY NORTH DEVELOPMENT AND THE HOLLADAY SOUTH DEVELOPMENT COMPRISING A PART OF THE DOWNTOWN TIF DISTRICT OF THE VILLAGE OF LOMBARD, ILLINOIS, AS AMENDED

WHEREAS, the Village of Lombard (“Village”) is a non-home rule municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois; and

WHEREAS, pursuant to Ordinance No. 7648, adopted April 18, 2019, the Village approved a Redevelopment Agreement for the Holladay North Development and the Holladay South Development Comprising a Part of the Downtown TIF District of the Village of Lombard, Illinois (the “Agreement”) with Holladay Property Services Midwest, Inc., a Delaware corporation licensed to do business in Illinois (“Holladay”), as amended pursuant to Ordinance No. 7777, adopted February 6, 2020, approving a First Amendment to the Agreement, (the “First Amendment”), and as further amended pursuant to Ordinance No. 7808, adopted April 16, 2020 by the Village, approving a Second Amendment to the Agreement (the “Second Amendment”), and as further amended pursuant to Ordinance No. 7812, adopted May 21, 2020 by the Village, approving a Third Amendment to the Agreement (the “Third Amendment”) (the Agreement, the First Amendment, the Second Amendment and the Third Amendment shall be collectively referred to herein as the “Redevelopment Agreement”); and

WHEREAS, Holladay desires to assign all of its rights, title, interests, duties and obligations under the Redevelopment Agreement to HP Lilac Station LLC, an Indiana limited liability company licensed to conduct business in Illinois (“Lilac Station”), and Lilac Station desires to accept the assignment pursuant to the terms and conditions of the Assignment and Assumption of Redevelopment Agreement (the “Assignment Agreement”), a copy of which is attached hereto as **Exhibit A** and made a part hereof; and

WHEREAS, the Village finds that Lilac Station meets the criteria set forth in 65 ILCS 5/8-11-20(6)(C), as Lilac Station has committed to equity finance at least 10% of the total cost of the

projects subject to the Redevelopment Agreement and has provided the Village with specific evidence of 10% equity financing for the projects; and

WHEREAS, pursuant to Section XX.R. of the Redevelopment Agreement, the President and Board of Trustees of the Village desire to approve and consent to the assignment of Holladay's rights and obligations under the Redevelopment Agreement, pursuant to the terms and conditions of the Assignment Agreement, as the assignment will promote public health, safety and welfare; and

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the recitals set forth above are hereby incorporated herein by reference and made a part hereof.

SECTION 2: That the President and Board of Trustees of the Village, pursuant to Section XX.R. of the Redevelopment Agreement, hereby consent in writing to, and approve of the assignment of Holladay's rights and obligations under the Redevelopment Agreement to Lilac Station, pursuant to the terms and conditions of the Assignment Agreement, a copy of which is attached hereto as **Exhibit A**. The Village's consent to and approval of the assignment of Holladay's rights and obligations under the Redevelopment Agreement to Lilac Station are expressly contingent upon execution of the Assignment Agreement, in substantially the same form as **Exhibit A** hereto, by the duly authorized representatives of Holladay and Lilac Station.

SECTION 3: That all resolutions, motions or parts thereof in conflict with this Resolution shall be and the same are hereby repealed.

SECTION 4: That this Resolution shall be in full force and effect upon its adoption and approval as provided by law.

ADOPTED this 20th day of August, 2020, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this 20th day of August, 2020.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

(attached)

**ASSIGNMENT AND ASSUMPTION OF
REDEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT AGREEMENT (this "Assignment") is made as of _____, 2020 (the "Effective Date") by and between Holladay Property Services Midwest, Inc., a Delaware corporation licensed to do business in Illinois ("Assignor") and HP Lilac Station, LLC, an Indiana limited liability company licensed to do business in Illinois ("Assignee").

RECITALS:

WHEREAS, Village of Lombard, Illinois, an Illinois non-home rule municipal corporation (the "Village") and Assignor are parties to a certain Redevelopment Agreement, as defined below, pursuant to which the Village has agreed to sell to Assignor and Assignor has agreed to acquire from the Village certain real property commonly known as 101 and 109 South Main Street Lombard, Illinois and more particularly described in the Redevelopment Agreement (the "Subject Property"); and

WHEREAS, pursuant to the consent of the Village, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest, in and to that certain Redevelopment Agreement dated as of April 24, 2019 as the same was amended by that certain First Amendment to Redevelopment Agreement having an effective date of February 6, 2020, that certain Second Amendment to Redevelopment Agreement having an effective date of April 16, 2020 and that certain Third Amendment to Redevelopment Agreement having an effective date of May 21, 2020 (collectively the "Redevelopment Agreement") by and between Assignor and the Village, a copy of which is attached hereto as Exhibit A, and Assignee has agreed to assume and be bound by all of the terms, conditions and provisions of the Redevelopment Agreement including, but not limited to, the Village's default remedies..

NOW, THEREFORE, in consideration of the terms and conditions of this Assignment and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

SECTION 1. DEFINITIONS

Each capitalized term used as a defined term in this Assignment but not otherwise defined herein shall have the same meaning as is ascribed to such capitalized term in the Redevelopment Agreement or the Purchase Agreement as applicable.

SECTION 2. RECITALS

The above recitals are incorporated herein by reference as if specifically stated herein.

**SECTION 3. ASSIGNMENT OF REDEVELOPMENT AGREEMENT;
CONTINUING LIABILITY**

Subject to the terms of this Section 3, effective as of the Effective Date, Assignor transfers, assigns, sets over and conveys to Assignee, all of the right, title and interest of Assignor in and to the Redevelopment Agreement including, without limitation, the Village's default remedies, all payments of the Available Developer Tax Increment as further described in Section VII of the Redevelopment Agreement. Assignor and Assignee acknowledge and agree that, pursuant to Section XX of the Redevelopment Agreement, this Assignment shall not release or discharge Assignor of any liability or obligation under the Redevelopment Agreement which accrued prior to the Effective Date. Assignor shall therefore continue to remain liable for the performance of all covenants, obligations, representations and warranties under the terms of the Redevelopment Agreement that accrued prior to the Effective Date, whether known or unknown.

SECTION 4. ACCEPTANCE OF ASSIGNMENT AND ASSUMPTION

Assignee accepts the assignment made in Section 3 herein, and, effective as of the Effective Date, assumes the Redevelopment Agreement and agrees to be liable and bound to the terms, conditions, provisions, representations and warranties of the Redevelopment Agreement, including, but not limited to, the Village's default remedies.

Assignee acknowledges and agrees that it will comply with the Rebate Statute as set forth in 65 ILCS 5/8-11-20(6)(C) by providing equity financing for not less than 10% of the total Project costs.

SECTION 5. ELIGIBLE REDEVELOPMENT PROJECT COSTS EVIDENCE

Assignor will comply with the obligations of Developer under Section VII of the Redevelopment Agreement to submit to the Village (with copies to Assignee) reasonable evidence that those of Developer's Eligible Redevelopment Project Costs incurred by Assignor, for which reimbursement is requested, have been incurred and paid for by Developer. Should the Village require additional documentation to establish justification for reimbursement for Eligible Redevelopment Project Costs incurred or accrued prior to the Effective Date, Assignor agrees to reasonably cooperate with Assignee in order to proffer such additional documentation that the Village may require under Section VII of the Redevelopment Agreement.

SECTION 6. BINDING EFFECT/RATIFICATION

This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective permitted successors and assigns, executors, administrators and legal representatives and all other persons or entities claiming under or through them, or either of them. The Redevelopment Agreement shall continue in full force and effect, subject to the terms and provisions thereof and hereof, the same being hereby ratified and confirmed.

This Assignment is expressly contingent upon approval of the Assignment by the corporate authorities of the Village of Lombard.

SECTION 7. SEVERABILITY

If any provision of this Assignment or the application thereof to any circumstances shall be held invalid or unenforceable, the remainder of this Assignment and the application thereof to other circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

SECTION 8. MODIFICATIONS

Neither this Assignment nor any term hereof may be released, changed, waived, discharged, or terminated orally or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge, or termination is sought.

SECTION 9. ENTIRE AGREEMENT

This Assignment (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to this Assignment.

SECTION 10. COUNTERPARTS

This Assignment may be executed in multiple counterparts, and may be transmitted by facsimile or electronic means, each of which shall be deemed an original and all of which when taken together shall constitute one and the same agreement.

SECTION 12. CHOICE OF LAW

This Assignment shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to its conflicts of law principles.

SECTION 13. ATTORNEY FEES

In the event of any litigation between the parties with respect to this Assignment, the non-prevailing party in such action will pay the reasonable attorneys' fees, paralegals' fees and court costs of the prevailing party.

SECTION 14. INDEMNITY

Assignor indemnifies, defends and holds harmless Assignee and Assignee's employees, partners, directors, officers, affiliates, subsidiaries, shareholders, agents and representatives from any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) sustained by Assignee to the extent caused by any default in Assignor's performance of the obligations of the Developer under the Redevelopment Agreement with respect to any fact, event or circumstance that first occurs prior to the Effective Date.

Assignee indemnifies, defends and holds harmless Assignor and Assignor's employees, partners, directors, officers, affiliates, subsidiaries, shareholders, agents and representatives from any and all liabilities, claims, damages, costs or expenses (including reasonable attorneys' fees) sustained by Assignor to the extent caused by any default in Assignee's performance of the obligations of the Developer under the Redevelopment Agreement with respect to any fact, event or circumstance that first occurs from and after the Effective Date.

SECTION 15. LIMITATION ON ASSIGNOR LIABILITY

Assignor's liability under this Assignment is subject to the terms and conditions of the Redevelopment Agreement.

(signature pages to follow)

IN WITNESS WHEREOF, this Assignment is executed as of the date and year first above written.

ASSIGNOR:

Holladay Property Services Midwest, Inc.,
a Delaware corporation

By: _____
Name:
Title:

ASSIGNEE:

HP Lilac Station, LLC,
an Indiana limited liability company

By: _____
Name:
Title:

EXHIBIT A
REDEVELOPMENT AGREEMENT



HP Lilac Station, LLC | 3454 Douglas Rd., Ste. 250 | South Bend, Indiana 46635

William J. Heniff, AICP
Director of Community Development
Village of Lombard
255 E. Wilson Ave. Lombard, IL 60148

Re: Assignment- Redevelopment Agreement

Mr. Heniff

Please be advised that the undersigned is the Manager of HP Lilac Station, LLC, a duly organized Indiana limited liability company registered and authorized to conduct business in the State of Illinois. In the event that the Village of Lombard approves the assignment to HP Lilac Station, LLC of the Redevelopment Agreement between the Village of Lombard ("Village") and Holladay Property Services Midwest, Inc., dated April 24, 2019, as amended by that certain First Amendment to Redevelopment Agreement having an effective date of February 6, 2020, that certain Second Amendment to Redevelopment Agreement having an effective date of April 16, 2020 and that certain Third Amendment to Redevelopment Agreement having an effective date of May 21, 2020, HP Lilac Station, LLC hereby commits to provide equity financing for not less than 10% of the total Project costs.

Previously, Holladay Property Services Midwest, Inc. proposed equity financing for 24% of the total Project costs, as indicated in the Kane, McKenna and Associates memorandum to the Village dated November 7, 2018 and the related pro forma. Based on this proposal, the Village found that Holladay Property Services Midwest, Inc. met the high standards of creditworthiness and financial strength to be eligible for a sales tax rebate agreement pursuant to 65 ILCS 5/8-11-20(6)(C). Similarly, HP Lilac Station, LLC meets the high standards of creditworthiness based on its commitment, as evidenced by this letter, to provide equity financing for not less than 10% of the total Project costs.

Sincerely,

A handwritten signature in black ink that reads "Timothy E. Healy". The signature is written in a cursive style with a large, sweeping "H" and "A".

Timothy E. Healy
574-532-0985