

CITY OF SALINA

REQUEST FOR CITY COMMISSION ACTION

DATE
11/05/18

TIME
4:00 P.M.

AGENDA SECTION NO: 7	ORIGINATING DEPARTMENT: City Manager's Office	FISCAL APPROVAL: BY: <i>CSB</i>
ITEM NO: 6 Page 1	BY: Mike Schrage	FINAL APPROVAL: BY: <i>MDS</i>

ITEM: Resolution No. 18-7624 authorizing the Mayor to execute a first amendment to the Lighthouse Properties III, Inc. transferee agreement.

BACKGROUND:

The City of Salina has previously entered in to a Development Agreement as well as a Supplemental Agreement with Salina 2020, Inc. as the Master Developer of Downtown STAR Bond Redevelopment Project. Those agreements anticipate that certain rights and responsibilities agreed to between the parties may be transferred to individual project developers which are referred to as transferees.

To date, transferee agreements have been executed for the following projects:

- Homewood Suites Hotel – Lighthouse Properties
- The Alley – FIB, LLC
- Old Chicago Restaurant – Samys OC, LLC

Additionally, transferee agreements are anticipated for the following projects:

- Stiefel Theatre renovations
- Car Museum construction
- Salina Downtown Inc programming and maintenance
- Barolo Grille Restaurant

Each transferee agreement includes provisions regarding the agreed upon commencement and completion dates of each project. Additionally, the Development Agreement includes the following overarching provision regarding "Extension of Times of Performance".

Section 8.09 Enforced Delay; Extension of Times of Performance.

A. In addition to specific provisions of this Agreement, performance by a party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to delay or default of another party to this Agreement, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, market conditions, quarantine restrictions, freight embargoes, lack of transportation, or unusually severe weather, or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

B. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Master Developer.

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The Homewood Suites Hotel project has been delayed due to the timing of relocation of multiple utilities from the vacated alley easement that bisected the site. Staff agrees that the nature of the delays were beyond the control and without the fault of the Lighthouse Properties. Specifically, the City attempted to facilitate phased permit issuance to allow for commencement of footings & foundations including drilling and installation of pier footings, but that still precluded working above the alley easement thru the center of the site. Additionally, relocation and/or alteration of gas and electric utilities were also delayed at no fault of the Lighthouse Properties.

The Development Agreement specifically provides that "Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and the Master Developer" which seems to presume that in addition to an extension of completion dates by right, the parties could agree to a separate and distinct extension if the conditions of 8.09A are not met. It is the opinion of staff and legal counsel that section 8.09A of the Development Agreement combined with the specific fact pattern for this Homewood Suites Hotel Project could be interpreted to authorize an extension of time to perform without the need for a formal amendment to the Transferee Agreement.

The attached amendment has been recommended as a means to err on the side of caution in terms of formalizing the extension of the time to complete. By formally adopting the attached amendment the revised completion date is agreed upon without the need for further interpretation or agreement as much as 13 months for this date when project completion is now anticipated.

Since the revised STAR Bond Revenue Study as well as the bond sizing take in to account the revised completion date, and the City is not required to back any of the bonds (senior or subordinate), the alteration of the project completion date does not represent a change in financial cost or risk to the City of Salina.

CONFORMANCE WITH THE STRATEGIC PLAN:

The proposed action is consistent with the following components of the City's shared vision statement:

- Salina will be a city that is exciting to live in and thriving both economically and socially.
- The city will be clean, attractive and inviting.
- Salina will be a place with a quality of life that not only appeals to residents, but also to visitors.
- The city of Salina will be attractive and well maintained. It will be evident that good housekeeping and high community standards are valued.
- The City Commission of Salina will have committed to providing the highest quality City services possible within available resources. The City Commission recognizes their role and responsibility to provide the needed policy direction and resources to its administration. At the same time, the City's administrative personnel are committed daily to transforming this direction

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and resources into the highest possible quality of municipal services, consistent with the expectations of both the City Commission and the citizens of Salina.

- Downtown Salina will be a thriving and vibrant place. It will include an artistic flair that complements diverse and successful business development, including: entertainment, professional services, restaurants and retail development. In addition, the downtown will include residential uses consistent with the desired, mixed-use activity.
- Salina will be supportive of life-long learning through all forms of education, including elementary and secondary education, higher education and vocational/technical training.
- Salina will be a town that is respectful of its heritage. Throughout Salina the adaptive re-use of historic and architecturally significant buildings will be encouraged.
- Salina will encourage and be supportive of industrial development, economic expansion, market-driven tax base growth, and home grown entrepreneurialism.

The proposed action is also consistent with the following goals contained in the City's strategic plan:

Goal #1: The city will create a community of mixed-use, quality development and redevelopment.

Goal #3: The city will provide the highest quality of services, consistent with governing body direction, available resources and staff commitment to quality.

Goal #5: The city will maintain a commitment to making downtown Salina a thriving and vibrant center of the community.

Goal #6: The city will work to make Salina a city that has connectivity physically and socially.

FISCAL NOTE:

Since the revised STAR Bond Revenue Study as well as the bond sizing take in to account the revised completion date, and the City is not required to back any of the bonds (senior or subordinate), the alteration of the project completion date does not represent a change in financial cost or risk to the City of Salina.

COMMISSION ACTION OR RECOMMENDED ACTION:

Staff has identified the following options for the City Commission's consideration:

- 1.) Approve Resolution No. **18-7624**
- 2.) Postpone consideration of Resolution No. **18-7624** to a specified date and time and provide staff direction regarding additional information or amendments the City Commission would like to request for their further consideration.

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3.) Vote to deny Resolution No. **18-7624** likely resulting in Section 8.09A interpretive issues about whether formal approval is necessary in order for the time of completion to be extended.

Staff recommends Option #1.

FIRST AMENDMENT TO TRANSFEREE AGREEMENT

THIS FIRST AMENDMENT TO TRANSFEREE AGREEMENT (this “**Amendment**”) is effective as of November ___, 2018 (the “**Effective Date**”), between and among the City of Salina, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”), and Lighthouse Properties III, Inc., a Kansas corporation (“**Transferee**”).

WHEREAS, City and Transferee entered into that certain Transferee Agreement effective as of January 12, 2018 (the “**Original Agreement**”), whereby City and Transferee agreed to certain rights and obligations related to the Homewood Suites project as more particularly described in the Original Agreement; and

~~WHEREAS, pursuant to the Original Agreement, City and Transferee agreed that Transferee shall complete construction of the Homewood Suites project by July 1, 2019, subject to the terms of Section 8.09 of the Development Agreement with regard to any enforced delays which may extend time for performance of completion; and pursuant to the Original Agreement, City and Transferee agreed that Transferee shall complete construction of the Homewood Suites project by July 1, 2019; and~~

WHEREAS, due to delays in the construction project arising from the relocation and reestablishment of utilities by third parties, City and Transferee desire to modify and amend certain terms and conditions set forth in the Original Agreement so as to extend the construction completion deadline, as described below.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements set forth herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, City and Transferee agree as follows:

1. Incorporation and Definitions. This Amendment incorporates all of the terms and conditions from the Original Agreement to the extent they are not amended, modified, or superseded by this Amendment. Capitalized terms in this Amendment shall have the meanings ascribed to those terms in the Original Agreement unless otherwise defined herein or the context otherwise dictates.

2. Performance Milestones: Completion of the Transferee Project. Subsection 5(d) is hereby deleted in its entirety and replaced with the following:

“(d) Completion of the Transferee Project. The Transferee shall cause the Transferee Project to be completed with due diligence. Transferee shall complete construction of the Transferee Project by November 1, 2019. The terms of Section 8.09 of the Development Agreement shall apply with regard to any enforced delays which may extend time for performance of completion of the Transferee Project. Completion of the Transferee Project shall mean receipt of a Certificate of Completion as defined in

Section 3.07 of the Development Agreement. Notwithstanding the foregoing, in the event commencement of the Transferee Project is delayed as a result of the conditions described in Section 5(a) above, the deadline for completion of the Transferee Project described in this section shall be extended by a period of days equal to the period of days corresponding to the delay caused by conditions described in Section 5(a) above.”

3. Ratification. Except as modified by this Amendment, and notwithstanding anything to the contrary in the Original Agreement, the parties ratify all the terms and conditions set forth in the Original Agreement and acknowledge that the Original Agreement is in full force and effect, there are no existing defaults thereunder, and the Original Agreement is binding on the parties thereto.

No further text; signature page follows

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment as of the Effective Date.

CITY OF SALINA, KANSAS

Mayor

[SEAL]

ATTEST:

Shandi Wicks, CMC
City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF KANSAS)
) ss.
COUNTY OF SALINE)

On this ____ day of _____, 201_, _____, personally known to me and after first being sworn did state that he/she is the Mayor of the City of Salina, State of Kansas, and that the seal affixed to the foregoing instrument is the official Seal of the City of Salina, and that said instrument was signed and sealed on behalf of the City, and that the matters set forth herein are true and correct to the best of his/her and the City's knowledge, information and belief, and acknowledge that he executed the same on behalf of the City as its free act and deed.

Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment as of the Effective Date.

LIGHTHOUSE PROPERTIES III, INC.

Trace E. Walker
President
Date:

STATE OF KANSAS)
) ss.
COUNTY OF SALINE)

On this ____ day of _____, 201_, before me personally appeared Trace E. Walker, to me personally known, who being by me duly sworn did say that he is the President of Lighthouse Properties III, Inc., a Kansas Corporation, and that said instrument was signed and delivered on behalf of said corporation and acknowledged to me that he executed the same as the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public
Printed Name: _____

My Commission Expires:

RESOLUTION NUMBER 18-7624

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A FIRST AMENDMENT TO TRANSFEREE AGREEMENT WITH LIGHTHOUSE PROPERTIES III, INC.

BE IT RESOLVED by the Governing Body of the City of Salina, Kansas:

Section 1. The Mayor is authorized to execute the attached First Amendment to Transferee Agreement with Lighthouse Properties, Inc., subject to the terms and conditions of the agreement.

Section 2. The City Clerk is directed to file the original agreement and retain according to the City of Salina Records Management Policy.

Section 3. This resolution shall be in full force and effect from and after its adoption.

Adopted by the Board of Commissioners and signed by the Mayor this 5th day of November, 2018.

Karl F. Ryan, Mayor

(SEAL)

ATTEST:

Shandi Wicks, CMC, City Clerk