

Item #5:

Resolution Approving Transferee Assumption Agreement, HRA

VILLAGE OF LONG GROVE

RESOLUTION NO. 2016-R-__

**A RESOLUTION APPROVING THE EXECUTION OF A TRANSFEEE ASSUMPTION
AGREEMENT WITH HARBOR RETIREMENT ASSOCIATES, LLC AND
BFG LONG GROVE PROPCO, LLC**

WHEREAS, Long Grove Associates, LLC was the owner ("**Owner**") of the real property located on the south side of Illinois Route 53 between Mardan Drive and Long Grove Road, which property consists of approximately 9.7 acres of land (the "**Property**"), commonly known as 1190 Old McHenry Road, Long Grove, Illinois;

WHEREAS, the development and use of the Property is subject to that certain "Ordinance No. 2014-O-27 Granting a Special Use Permit between the Village of Long Grove and Owner, as Petitioner" dated November 11, 2014, as well as all permits and approvals granted as a result thereof (collectively, the "**SUP**"); and

WHEREAS, Harbor Retirement Development, LLC ("**Harbor**"), an affiliate of Harbor Retirement Associates, LLC ("**HRA**"), was under contract to purchase of the Property pursuant to that certain Agreement of Purchase and Sale dated October 1, 2013, as amended, between Owner and Harbor (the "**Purchase Agreement**"). However, pursuant to that certain Assignment and Assumption of Agreement of Purchase and Sale dated November 12, 2015, Harbor assigned to BFG Long Grove Propco, LLC ("**Transferee**") all of its right, title and interest in and to the Purchase Agreement.

WHEREAS, Transferee is the legal owner of the Property pursuant to that certain Special Warranty Deed from Owner to Transferee dated November 16, 2015, and recorded with the Lake County, Illinois Recorder at File Number 7250181; and

WHEREAS, Transferee has represented and warranted to the Village that Harbor is the manager of the Property; and

WHEREAS, Harbor is an affiliate of HRA; and

WHEREAS, in order to assure that the obligations set forth in the SUP are satisfied notwithstanding the transfer of the Property, the SUP provides that the HRA remains bound to satisfy the obligations of the SUP, unless and to the extent that the Transferee becomes bound pursuant to a transferee assumption agreement; and

WHEREAS, Transferee has agreed to comply with the terms, requirements, and obligations of the SUP under a transferee assumption agreement; and

WHEREAS, the President and Board of Trustees of the Village have determined it is in the best interests of the Village and its residents to approve a transferee assumption agreement between the Village, Owner, and Transferee;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION ONE: **Recitals.** The Village President and Board of Trustees hereby adopt the foregoing recitals as its findings.

SECTION TWO: **Approval.** The Transferee Assumption Agreement between the Village, Owner, and Transferee is hereby approved in substantially the form attached to this Resolution as Exhibit A.

SECTION THREE: **Authorization.** The Village President and Village Clerk are hereby authorized and directed to execute and attest the Transferee Assumption Agreement on behalf of the Village; provided, however, that the President and Clerk shall not execute or attest such agreement unless and until it has been fully executed by HRA and Transferee.

SECTION FOUR: **Effective Date.** This Resolution shall be in full force and effect upon its passage and approval in the manner provided by law.

PASSED THIS 9TH DAY OF FEBRUARY, 2016.

AYES: () Trustees:

NAYS: ()

ABSENT: ()

APPROVED THIS 9TH DAY OF FEBRUARY, 2016.

Angela Underwood, Village President

ATTEST:

Heidi Locker-Scheer, Village Clerk

EXHIBIT A

Transferee Assumption Agreement

DRAFT

This document was prepared by,
and following recording should
be returned to:

Village of Long Grove
3110 RFD
Long Grove IL 60047
Attn: Village Manager

TRANSFeree ASSUMPTION AGREEMENT

THIS AGREEMENT, made as of this _____ day of _____, 2016, by, between and among **HARBOR RETIREMENT ASSOCIATES LLC**, an Illinois limited liability company ("**HRA**"), **BFG LONG GROVE PROPCO, LLC**, an Illinois limited liability company ("**Transferee**") and the **VILLAGE OF LONG GROVE**, Illinois, an Illinois municipal corporation ("**Village**"),

WITNESSETH:

WHEREAS, pursuant to that certain Special Warranty Deed from Long Grove Associates, LLC to Transferee dated November 16, 2015, and recorded with the Lake County, Illinois Recorder at File Number 7250181, Transferee is the owner of real property situated in Lake County, Illinois and legally described in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof ("**Property**"); and

WHEREAS, the HRA and Transferee represent and warrant that Harbor Retirement Development, LLC, is the manager of the Property; and

WHEREAS, Harbor is an affiliate of HRA; and

WHEREAS, as a condition to the conveyance of the Property the Village requires that the Transferee agree to comply with all the terms, requirements, and obligations relating to the Property as set forth in that certain "Ordinance No. 2014-O-27 granting a Special Use Permit between the Village of Long Grove and HRA, as Petitioner" dated November 11, 2014, as well as all permits and approvals granted as a result thereof (collectively, the "**SUP**"). **NOW, THEREFORE**, in consideration of the Village to accept the transfer of obligations as provided herein and to grant the releases granted herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by, between, and among the Village, HRA, and the Transferee as follows:

1. **Recitals.** The foregoing recitals are by this reference incorporated herein and made a part hereof as substantive provisions of this Agreement.

2. **Assumption of Obligations.** The Transferee, on its behalf and on behalf of its successors, assigns, heirs and executors, hereby agrees, at its sole cost and expense, to comply with all of the terms, requirements, and obligations of the SUP, including all exhibits and attachments thereto, with respect to the Property.

3. **Assurances of Financial Ability.** In light of the representation and warranty of HRA and Transferee regarding their controlling interests, the Village shall not require evidence of financial ability as a precondition of the execution of this Agreement.

4. **Payment of Village Fees and Costs.** In addition to any other costs, payments, fees, charges, contributions, or dedications required by this Agreement, the SUP or by applicable Village codes, ordinances, resolutions, rules, or regulations, the Transferee shall pay to the Village on or before the date due therefor, all legal, engineering, and other consulting or administrative fees, costs and expenses incurred in connection with the negotiation, preparation, consideration, and review of this Agreement.

5. **Acknowledgment and Release of Transferor.** The Village hereby acknowledges its agreement to the Transferee's assumption of the obligation to comply with the terms, requirements and obligations of the SUP, including all exhibits and attachments thereto, with respect to the Property. In addition, the Village hereby releases HRA from any personal liability for failure to comply with the terms, requirements, obligations, and provisions of the SUP pertaining to the Property. Nothing in this Agreement shall alter or otherwise amend the terms, requirements, obligations, and provisions of the SUP.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

ATTEST:

THE VILLAGE OF LONG GROVE

Village Clerk

By: _____
Village President

ATTEST:

HARBOR RETIRMENT ASSOCIATES, LLC
an Illinois limited liability company

By: _____ (_____) , as its sole Managing Member

By: _____, as one of its Co-Managing Members

THIS AGREEMENT, made as of this _____ day of _____, 2016, by, between and among **HARBOR RETIREMENT ASSOCIATES LLC**, an Illinois limited liability company ("**HRA**"), **BFG LONG GROVE PROPCO, LLC**, an Delaware limited liability company ("**Transferee**") and the **VILLAGE OF LONG GROVE**, Illinois, an Illinois municipal corporation ("**Village**"),

By: _____

Name: _____

Title: _____

ATTEST:

BFG LONG GROVE PROPCO, LLC

By: _____,
Robert A. Bourne, Authorized Signatory

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 2016, by _____, the Village President of **THE VILLAGE OF LONG GROVE**, an Illinois municipal corporation, and by _____, the Village Clerk of said municipal corporation.

Signature of Notary

SEAL

My Commission expires:

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 201____, by _____, the _____ of **HARBOR RETIREMENT DEVELOPMENT, LLC**

Signature of Notary

SEAL

My Commission expires:

STATE OF _____)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 201____, by _____, the Authorized Signatory of **BFG LONG GROVE PROPCO, LLC.**

Signature of Notary

SEAL

My Commission expires:

EXHIBIT A TO TRANSFEREE ASSUMPTION AGREEMENT

**LEGAL DESCRIPTION FOR
1190 OLD MCHENRY ROAD
LONG GROVE, ILLINOIS**

LEGAL DESCRIPTION

LOT 17 IN FAIRFIELD VILLAGE (EXCEPT THOSE PARTS TAKEN FOR ROAD BY INSTRUMENT RECORDED AS DOCUMENT 3186932), BEING A SUBDIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 4, 1980 AS DOCUMENT 2042549 AND CORRECTED BY CERTIFICATE OF CORRECTION RECORDED APRIL 7, 1980 AS DOCUMENT 2055570, IN LAKE COUNTY, ILLINOIS.