

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: February 27, 2018 (COW)(B of T) March 1, 2018

TITLE: A Resolution consenting to the addition of Mid-America Hotel Partners, L.L.C. and Subordinated Securities, L.L.C. to the Released Parties and Releasing Parties under the Lombard Public Facilities Corporation's Chapter 11 Bankruptcy Plan of Reorganization, and consenting to certain revisions to the Release provisions of said Plan of Reorganization.

SUBMITTED BY: Scott Niehaus, Village Manager
Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

Attached is a Resolution adding parties to to the Release provisions of the Plan or Reorganization relative to restructuring the debt for the hotel and convention center that was approved by the Village Board on July 28, 2017. In addition, there are several minor revisions to the Release provisions of the Plan of Reorganization that have been approved by Special Counsel.

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

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.

RESOLUTION NO. _____

**A RESOLUTION CONSENTING TO
ADDITIONAL RELEASED PARTIES AND RELEASING PARTIES RELATIVE
TO THE LOMBARD PUBLIC FACILITIES CORPORATION'S PLAN OF
REORGANIZATION, CONSENTING TO CERTAIN REVISIONS TO
THE DEFINITION AND RELEASE PROVISIONS OF SAID PLAN OF
REORGANIZATION AND AUTHORIZING THE EXECUTION OF RELEASES
IN RELATION TO SAID PLAN OF REORGANIZATION**

WHEREAS, on July 25, 2017, the President and Board of Trustees (the "Corporate Authorities") of the Village of Lombard (the "Village") approved "A Resolution approving a Restructuring Support Agreement by and among the Village of Lombard, the Lombard Public Facilities Corporation, ACA Financial Guaranty Corporation, Nuveen Asset Management, LLC and Oppenheimer Rochester High Yield Municipal Fund relative to the restructuring of the Conference Center and Hotel Revenue Bonds issued by the Lombard Public Facilities Corporation, and authorizing the Village Manager to sign said Restructuring Support Agreement on behalf of the Village, and to execute any and all documents, on behalf of the Village, in furtherance of said Restructuring Support Agreement and the terms thereof"; and

WHEREAS, on July 28, 2017, the Lombard Public Facilities Corporation ("LPFC") commenced a voluntary filing under Chapter 11 of the United States Bankruptcy Code, as amended, to refinance and restructure its outstanding debt; and

WHEREAS, on January 4, 2018, the LPFC filed its plan of reorganization with the Bankruptcy Court (the "Plan of Reorganization"); and

WHEREAS, on February 20, 2018, the Bankruptcy Court entered an order approving the LPFC's settlement with Mid-America Hotel Partners, L.L.C. ("MAHP") and Subordinated Securities, L.L.C. ("SSLLC") (collectively, the "Claimants"), and certain

nonmaterial modifications to the Plan of Reorganization in relation thereto; and

WHEREAS, pursuant to said February 20, 2018 Order of the Bankruptcy Court, the Claimants were added as Released Parties and Releasing Parties under the Plan of Reorganization; and

WHEREAS, in order to address certain concerns of the United States Trustee in the LPFC's Bankruptcy proceeding, certain amendments to the Plan of Reorganization have been proposed in regard to the Definitions within, and the Release provisions of Sections 11.01 and 11.02 of, the Plan of Reorganization; said amendments being shown as deletions (line outs) and additions (underlined) on Exhibit 1 attached hereto and made part hereof (the "Plan Release Revisions"); and

WHEREAS, it is necessary that the Village consent to adding the Claimants as Released Parties and Releasing Parties under the Plan of Reorganization, as amended by the Bankruptcy Court's Order of February 20, 2018; and

WHEREAS, it is necessary that the Village consent to the Plan Release Revisions; and

WHEREAS, it is in the best interests of the Village to take the actions as referenced above;

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

- A. That the recitals as set forth above are hereby incorporated into this Resolution as if set forth herein.
- B. That the Corporate Authorities hereby consent to the amending of the Plan of Reorganization to include the Claimants as Released Parties and Releasing

Parties under the Plan of Reorganization, in accordance with Section 3.a.iv. of the Bankruptcy Court's Order of February 20, 2018, which reads as follows:

"iv. On the Effective Date, the Claimants, on the one hand, and the Debtor, the Plan Support Parties, the Hotel Manager, and the Restaurant Manager, on the other hand, shall exchange mutual general releases by (A) adding MAHP and SLLC to the definition of Released Parties solely for purposes of the Debtor Release and the Mutual RSA Parties Release Sections 11.01(a) and (b) of the Plan, and (B) adding MAHP and SLLC as a Releasing Party for purposes of the Third Party Release Section 11.01(c) of the Plan."

- C. That the Corporate Authorities hereby consent to the Plan Release Revisions, as attached hereto as Exhibit 1 and made part hereof.
- D. That the Village President, Village Clerk and/or Village Manager are hereby authorized to execute any Release required to be executed by the Village pursuant to the Plan of Reorganization, upon the Effective Date of the Plan of Reorganization.
- E. That capitalized terms not otherwise defined in this Resolution shall have the meanings ascribed to such terms under the Plan of Reorganization.

ADOPTED this 1st day of March, 2018, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this 1st day of March, 2018.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Exhibit 1

Plan Release Revisions

(attached)

DEFINITIONS:

“Asset Manager” means Mid-America Hotel Partners L.L.C., Subordinated Securities, L.L.C. and any of ~~its Affiliates~~ their respective current and former Affiliates, officers, directors, shareholders, members, managers, employees, financial advisors, attorneys, accountants, investment bankers, successors and assignees.

“Bond Documents” means the Indenture, the Existing Hotel Management Agreement, the Existing Restaurant Management Agreement, the Existing Tax Rebate Agreement, the Asset Management Agreement, the Bond Insurance Policy (subject to Section 11.01(e) of the Plan), the Surety Bond and any other agreements or documents relating to the Series 2005 Bonds, including, without limitation, that certain Master Development Agreement between Mid-America Hotel Partners L.L.C. and the Debtor dated as of August 1, 2005 and that certain Letter of Credit Agreement by and among the Debtor, the Village and Mid-America Hotel Partners L.L.C. dated as of April 1, 2005.

“Master Development Agreement” means that certain Master Development Agreement between Mid-America Hotel Partners L.L.C. and the Debtor dated as of August 1, 2005.

“Released Parties” means (a) the Debtor; (b) the Bond Insurer, (c) the Controlling Party, (d) the Indenture Trustee, (e) the Village, (f) Nuveen and Nuveen Asset Management, LLC, (g) Oppenheimer, (h) the Hotel Manager, (i) the Restaurant Manager and (j) with respect to each of the foregoing Persons or Entities, their respective current and former Affiliates, officers, directors, shareholders, members, managers, ~~principals~~, employees, ~~agents~~, financial advisors, attorneys, accountants, investment bankers, ~~consultants, representatives, agents~~, successors and assignees; ~~provided, however, that the term “Released Parties” shall not include the Debtor solely for purposes of Section 11.01(b) of the Plan.~~

“Releasing Parties” means Creditors entitled to vote to accept or reject the Plan that do not affirmatively opt out of the releases provided by Article XI hereof pursuant to a duly executed Ballot by the Voting Deadline.

RELEASES:

Section 11.01. Releases and Related Matters

(a) Releases by Debtor.

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE DEBTOR, ON BEHALF OF ITSELF AND ITS ESTATE, FOR ~~THE~~ GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES AND THE ASSET MANAGER, SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES AND THE ASSET MANAGER (AND EACH SUCH RELEASED PARTY AND THE ASSET MANAGER SHALL BE DEEMED RELEASED BY THE DEBTOR AND ITS ESTATE) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION, CLAIMS, DEBTS,

OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, DIRECT CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR UNLIQUIDATED, FORESEEN OR UNFORESEEN, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, THE PLAN BOND DOCUMENTS, THE GLOBAL RSA, THE HOTEL RSA, THE RESTAURANT RSA, THE DISCLOSURE STATEMENT, THE PLAN, THE PLAN DOCUMENTS OR THIS CHAPTER 11 CASE, INCLUDING THOSE THAT THE DEBTOR WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTOR OR ITS ESTATE AND SPECIFICALLY INCLUDING CLAIMS OR CAUSES OF ACTION AGAINST THE ASSET MANAGER RELATING, IN ANY WAY, TO THE MASTER DEVELOPMENT AGREEMENT; *PROVIDED, HOWEVER,* THAT THE FOREGOING “DEBTOR RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE (1) ANY CLAIMS OR CAUSES OF ACTION OF THE DEBTOR OR ITS ESTATE AGAINST A RELEASED PARTY OR THE ASSET MANAGER ARISING UNDER ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTOR THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, (2) ANY CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY OR THE ASSET MANAGER BASED UPON FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; ~~AND~~ (3) THE RIGHTS OF THE DEBTOR, THE REORGANIZED DEBTOR OR ANY CREDITOR HOLDING AN ALLOWED CLAIM, IF APPLICABLE, TO ENFORCE THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THE PLAN OR ASSUMED PURSUANT TO THE PLAN OR ASSUMED PURSUANT TO A FINAL ORDER, (4) ANY CLAIMS OR CAUSES OF ACTION THAT THE DEBTOR OR ITS ESTATE MAY HAVE AGAINST ANY PERSON, OTHER THAN THE RELEASED PARTIES AND THE ASSET MANAGER, RELATING, IN ANY WAY, TO THE MASTER DEVELOPMENT AGREEMENT OR (5) THE CONSTRUCTION CLAIMS AGAINST ANY PERSON, OTHER THAN THE ASSET MANAGER AND THE RELEASED PARTIES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL AND FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES AND THE ASSET MANAGER UNDER THE PLAN AND RELATED DOCUMENTS; (2) IN THE BEST INTERESTS OF THE DEBTOR’S ESTATE AND ALL HOLDERS OF CLAIMS; (3) FAIR, EQUITABLE, AND REASONABLE; (4) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (5) A BAR OF THE DEBTOR’S ESTATE FROM ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

(b) Mutual Release Between and Among Released Parties and the Asset Manager.

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASED PARTIES AND THE ASSET MANAGER SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES, THE ASSET MANAGER AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION, CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, DIRECT CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR UNLIQUIDATED, FORESEEN OR UNFORESEEN, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTOR, ~~THE PLAN, BOND DOCUMENTS, THE GLOBAL RSA, THE HOTEL RSA, THE RESTAURANT RSA, THE DISCLOSURE STATEMENT, THE PLAN, THE PLAN DOCUMENTS, THE CONSTRUCTION CLAIMS~~ OR THIS CHAPTER 11 CASE, INCLUDING THOSE THAT ANY RELEASED PARTY OR THE ASSET MANAGER WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT AGAINST ANOTHER RELEASED PARTY OR THE ASSET MANAGER AND SPECIFICALLY INCLUDING ANY CLAIMS OR CAUSES OF ACTION AGAINST THE ASSET MANAGER RELATING, IN ANY WAY, TO THE MASTER DEVELOPMENT AGREEMENT, PROVIDED, HOWEVER, THAT, THE FOREGOING “MUTUAL ~~RSA~~ PARTIES RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE (1) ANY CLAIMS OR CAUSES OF ACTION OF THE RELEASED PARTIES OR THE ASSET MANAGER AGAINST A RELEASED PARTY OR THE ASSET MANAGER ARISING UNDER ANY CONTRACTUAL OBLIGATION THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN (2) ANY CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY OR THE ASSET MANAGER BASED UPON FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; ~~AND~~ (3) THE RIGHTS OF ANY RELEASED PARTY OR THE ASSET MANAGER TO ENFORCE THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THE PLAN OR ASSUMED PURSUANT TO THE PLAN OR ASSUMED PURSUANT TO A FINAL ORDER, (4) ANY CLAIMS OR CAUSES OF ACTION AGAINST ANY PERSON, OTHER THAN THE RELEASED PARTIES AND THE ASSET MANAGER, RELATING, IN ANY WAY, TO THE MASTER DEVELOPMENT AGREEMENT OR (5) THE CONSTRUCTION CLAIMS AGAINST ANY PERSON, OTHER THAN THE ASSET MANAGER AND THE RELEASED PARTIES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL OF THE MUTUAL ~~RSA~~ PARTIES RELEASE, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE MUTUAL ~~RSA~~ PARTIES RELEASE IS: (1) IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES AND

THE ASSET MANAGER UNDER THE PLAN; (2) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS; (3) FAIR, EQUITABLE, AND REASONABLE; (4) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (5) A BAR TO ANY OF THE RELEASED PARTIES AND THE ASSET MANAGER ASSERTING ANY CLAIM RELEASED PURSUANT TO THE MUTUAL ~~RSA~~ PARTIES RELEASE.

(c) Consensual Third Party Releases.

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES AND ANY UNIMPAIRED PARTY UNDER THE PLAN SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION, CLAIMS, DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, DIRECT CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, LIQUIDATED OR UNLIQUIDATED, FORESEEN OR UNFORESEEN, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE ~~DEBTOR, THE PLAN, OR~~ NEGOTIATION, EXECUTION, FILING OR IMPLEMENTATION OF, OR ACTIONS TAKEN OR NOT TAKEN IN CONNECTION WITH, (I) THE BOND DOCUMENTS, THE GLOBAL RSA, THE HOTEL RSA, THE RESTAURANT RSA, THE DISCLOSURE STATEMENT, THE PLAN OR THE PLAN DOCUMENTS, OR (II) ANY MOTIONS, APPLICATIONS, ORDERS OR OTHER PLEADINGS FILED OR ENTERED IN THIS CHAPTER 11 CASE, INCLUDING THOSE THAT THE DEBTOR WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST THE DEBTOR OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY, ON BEHALF OF THE DEBTOR OR ITS ESTATE OR DIRECTLY AGAINST A RELEASED PARTY, *PROVIDED, HOWEVER*, THAT, THE FOREGOING "THIRD PARTY RELEASE" SHALL NOT OPERATE TO WAIVE OR RELEASE (1) ANY CLAIMS OR CAUSES OF ACTION OF THE RELEASED PARTIES AGAINST A RELEASED PARTY ARISING UNDER ANY CONTRACTUAL OBLIGATION THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN (2) ANY CLAIMS OR CAUSES OF ACTION AGAINST A RELEASED PARTY BASED UPON FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; ~~AND~~ (3) THE RIGHTS OF ANY RELEASING PARTY TO ENFORCE THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THE PLAN OR ASSUMED PURSUANT TO THE PLAN OR ASSUMED PURSUANT TO A FINAL ORDER OR (4) ANY CLAIM OR CAUSE OF ACTION ARISING IN THE ORDINARY COURSE OF BUSINESS THAT RELATES, IN ANY WAY, TO THE DEBTOR ONLY TO THE EXTENT THAT SUCH CLAIM OR CAUSE OF ACTION IS COVERED BY INSURANCE AND WITH ANY RECOVERIES ON ACCOUNT OF SUCH CLAIM OR CAUSE OF ACTION LIMITED TO THE PROCEEDS OF SUCH INSURANCE.

PROVIDED THAT THE EXCEPTION TO THE THIRD PARTY RELEASE SET FORTH IN THIS SECTION (4) SHALL NOT APPLY TO THE VILLAGE.

IF A HOLDER OF A CLAIM, WHO IS ENTITLED TO VOTE ON THE PLAN, VOTES TO ACCEPT THE PLAN, SUCH HOLDER SHALL BE BOUND BY THE THIRD PARTY RELEASE AND SHALL NOT BE ABLE TO OPT OUT OF THE THIRD PARTY RELEASE.

IF A HOLDER OF A CLAIM, WHO IS ENTITLED TO VOTE ON THE PLAN, VOTES TO REJECT THE PLAN OR ABSTAINS FROM VOTING ON THE PLAN, SUCH HOLDER MAY OPT OUT OF THE THIRD PARTY RELEASE BY CHECKING THE APPROPRIATE BOX ON THE BALLOT AND TIMELY RETURNING SUCH ORIGINAL SIGNED, PROPERLY COMPLETED BALLOT TO THE VOTING AGENT IN WHICH CASE SUCH HOLDER WILL NOT BE BOUND BY THE THIRD PARTY RELEASE. IF A HOLDER OF A CLAIM, WHO REJECTS THE PLAN OR ABSTAINS FROM VOTING ON THE PLAN, FAILS TO AFFIRMATIVELY OPT OUT OF THE THIRD PARTY RELEASE AND/OR FAILS TO TIMELY RETURN AN ~~ORIGINAL~~ORIGINAL SIGNED, PROPERLY COMPLETED BALLOT TO THE VOTING AGENT, SUCH HOLDER SHALL BE BOUND TO THE THIRD PARTY RELEASE.

ANY ~~RELEASING~~ PARTY WHO IS UNIMPAIRED UNDER THE PLAN AND THEREFORE NOT ENTITLED TO VOTE SHALL BE DEEMED BOUND TO THE THIRD PARTY RELEASE, INCLUDING, WITHOUT LIMITATION, ALL HOLDERS OF ~~ADMINISTRATIVE~~ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, OTHER PRIORITY CLAIMS AND OTHER SECURED CLAIMS.

THE ASSET MANAGER AND ALL PARTIES TO THE GLOBAL RSA, HOTEL RSA AND RESTAURANT RSA SHALL BE BOUND TO THIS THIRD PARTY RELEASE AND SHALL NOT BE ENTITLED TO OPT OUT OF THE THIRD PARTY RELEASE.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE THIRD PARTY RELEASE, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES UNDER THE PLAN; (2) IN THE BEST INTERESTS OF THE DEBTOR AND ALL HOLDERS OF CLAIMS; (3) FAIR, EQUITABLE, AND REASONABLE; (4) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (5) A BAR TO ANY OF THE RELEASING PARTIES, OR ANY UNIMPAIRED PARTY UNDER THE PLAN, ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

(d) Releases in Favor of the Village.

The foregoing releases set forth in Sections 11.01(a), 11.01(b) and 11.01(c) of the Plan expressly include releases in favor of the Village and its current and former elected officials, appointed officials, officers, directors, shareholders, members, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, agents, successors and assignees from all Claims and Causes of Action arising out of or related to the Series 2005 Bonds or the provisions of the Existing Tax Rebate Agreement that exist as of the Effective Date, including, without limitation, any liability for declining to appropriate under Sections V.D and V.E of the Existing Tax Rebate Agreement. Notwithstanding the foregoing or anything contained herein to the contrary, the foregoing releases shall not release the Village from its obligations under the Plan or the Amended Tax Rebate Agreement, including its obligation under the Existing Tax Rebate Agreement or the Amended Tax Rebate Agreement to collect and remit to the Reorganized Debtor the Tax Revenues (as defined in the Existing Tax Rebate Agreement) and the Additional Places for Eating Tax prior to, on and after the Effective Date.

(e) Releases in Favor of the Bond Insurer.

For the avoidance of doubt, the foregoing releases set forth in Sections 11.01(a), 11.01(b) and 11.01(c) of the Plan shall not release the Bond Insurer from any of its obligations to the Non-Commuting Series A-2 Bondholders under the Bond Insurance Policy.

Section 11.02 Exculpation and Limitation of Liability

The Released Parties shall neither have, nor incur any liability that arose on or after the Petition Date and to and including the Effective Date to any Entity for any post-petition act taken or omitted in connection with the Chapter 11 Case, the Disclosure Statement, the Global RSA, the Hotel RSA, the Restaurant RSA, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, ~~the Disclosure Statement,~~ or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, including the Plan Documents, or any other ~~prepetition or~~ post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring ~~or liquidation~~ of the Debtor, except for acts or omissions that are the result of fraud, gross negligence, or willful misconduct. Without limiting the foregoing “Exculpation” provided under this Section 11.02, the rights of any Holder of a Claim to enforce rights arising under this Plan shall be preserved, including the right to compel payment of Distributions in accordance with the Plan.