

**FIRST AMENDMENT TO THE REDEVELOPMENT AGREEMENT  
FOR THE HOTEL AND CONFERENCE CENTER  
COMPRISING A PART OF THE BUTTERFIELD-YORKTOWN  
TIF DISTRICT OF THE VILLAGE OF LOMBARD, ILLINOIS**

This First Amendment to Redevelopment Agreement (the "First Amendment") is made and entered into as of the 3rd day of September, 2020 by and between the Village of Lombard, Illinois, an Illinois non-home rule municipal corporation (the "Village") and the Lombard Public Facilities Corporation, an Illinois not-for-profit corporation (the "Developer"). (The Village and the Developer are sometimes referred to herein collectively as the "Parties.")

**WITNESSETH**

**WHEREAS**, pursuant to Ordinance No. 7710, adopted September 5, 2019, the Village approved a "Redevelopment Agreement for the Hotel and Conference Center Comprising a Part of the Butterfield-Yorktown TIF District of the Village of Lombard, Illinois," dated September 5, 2019, with the Developer, relative to the property legally described in Exhibit A attached hereto and made part hereof (the "Redevelopment Agreement"); and

**WHEREAS**, the Village and the Developer desire to amend certain provisions of the Redevelopment Agreement in regard to the reimbursement of the Developer, by the Village, for TIF Eligible Redevelopment Costs (as defined in the Redevelopment Agreement) incurred by the Developer, relative to the Project (as defined in the Redevelopment Agreement), the amount of said reimbursements, and the timing of said reimbursements, and to make certain technical revisions to other provisions of the Redevelopment Agreement as a result thereof; and

**WHEREAS**, in accordance with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, it is in the best interests of the Village and the Developer to enter into this First Amendment;

**NOW, THEREFORE**, in consideration of the foregoing, other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, and the mutual covenants and agreements hereinafter contained, the Parties hereto agree as follows:

1. That Section I.D. of the Redevelopment Agreement is amended to read in its entirety as follows:

“D. Pursuant to Ordinance Numbers 7437, 7438 and 7439, adopted November 2, 2017, as amended by Ordinance Number 7451, adopted December 7, 2017, Ordinance Number 7705, adopted September 5, 2019, and Ordinance Number 7758, adopted December 5, 2019, the Village approved a tax increment redevelopment plan and project (the "TIF Plan"), designated the tax increment redevelopment project area (the "Redevelopment Project Area"), and adopted tax increment financing relative to the Village's Butterfield-Yorktown tax increment financing district (the "TIF District"); said TIF District being legally described and depicted as set forth in EXHIBIT A-1 and EXHIBIT A-2 attached hereto and made part hereof.”

2. That Section I.M. of the Redevelopment Agreement is amended to read in its entirety as follows:

“M. Pursuant to the Loan Agreement and the New Indenture, all of the Developer's right, title and interest in and to this Agreement has been and shall be assigned and pledged to the Authority and to the New Indenture Trustee.”

3. That Section II.A. of the Redevelopment Agreement is amended by revising the opening paragraph thereof, prior to the beginning of subsection (1), to read in its entirety as follows:

“A. **“Change in Law”** means the occurrence, after the Effective Date, of an event described below in this definition, provided such event materially changes the costs or ability of the Party relying thereon to carry out its obligations under this Agreement (or to satisfy conditions precedent to

receiving payments hereunder) and such event is not caused by the Party relying thereon:"

4. That Section II.E. of the Redevelopment Agreement is amended to read in its entirety as follows:

"E. **"Developer TIF Increment Funds"** means twenty-five percent (25%) of the TIF Increment Funds received by the Village, in excess of Eight Million and No/100 Dollars (\$8,000,000.00), between September 30, 2020 and September 30, 2025. For the avoidance of doubt, Developer TIF Increment Funds shall not include any Tax Revenue (as that term is defined in the Tax Rebate Agreement). In calculating whether Eight Million and No/100 Dollars (\$8,000,000.00) in TIF Increment Funds have been received by the Village between September 30, 2020 and September 30, 2025, any TIF Increment Funds received after September 30, 2020, and used to pay the Current Increment Reimbursement (as defined in Section VI.B.2. below), shall be included in the calculation."

5. That Section II.O. of the Redevelopment Agreement is amended to read in its entirety as follows:

"O. **"TIF Increment Funds"** means the *ad valorem* real estate taxes, if any, arising from the taxes levied upon the property within the TIF District, which taxes are actually collected and paid to the Village, and which are attributable to the increase in the equalized assessed valuation ("EAV") of the property within the TIF District over and above the EAV of the property within the TIF District at the time of the formation of the TIF District, all as determined by the County Clerk of the County of DuPage, Illinois, pursuant to and in accordance with the TIF Act, the TIF Ordinances and this Agreement, and which have been received by the Village on and after the establishment of the TIF District by the Village, after the payment of the new student reimbursements to the elementary and high school districts impacted by the TIF District, as provided for in 65 ILCS 5/11-74.4-3(q)(7.5) and after payment of the new patrons reimbursement to the library district impacted by the TIF District, as provided for in 65 ILCS 5/11-74.4-3(q)(7.7). For the avoidance of doubt, TIF Increment Funds shall not include any Tax Revenue (as that term is defined in the Tax Rebate Agreement)."

6. That Section VI. of the Redevelopment Agreement is amended to read in its entirety as follows:

#### **"VI. UNDERTAKINGS ON THE PART OF THE VILLAGE**

A. **Village Cooperation.** The Village agrees to cooperate with the Developer in the Developer's attempts to obtain all necessary approvals from any

governmental or quasi-governmental entity (including the Village) and, upon request of Developer, will promptly execute any applications or other documents (upon their approval by the Village) which the Developer intends to file with such other governmental or quasi-governmental entities in regard to the Project.

B. **Initial TIF Incentive.** As of September 3, 2020, the Developer has documented, and the Village has approved for reimbursement to the Developer, Two Million Eight Hundred Three Thousand Eight Hundred Twenty-Five and 87/100 Dollars (\$2,803,825.87) in TIF Eligible Redevelopment Costs incurred by the Developer (the "Approved Expenses"). In regard to the Approved Expenses:

1. The Village has reimbursed the Developer, from TIF Increment Funds received by the Village, in the amount of Fifty Thousand Nine Hundred Forty-Eight and 90/100 Dollars (\$50,948.90) (the "Prior Reimbursement"), relative to the Approved Expenses.
2. The Village shall pay, to the Developer, forty percent (40%) of the actual amount of the TIF Increment Funds received by the Village from 2019 real estate taxes, as well as, if necessary, forty percent (40%) of the actual amount of TIF Increment Funds received by the Village from subsequent years' real estate taxes, until the total amount of One Hundred Forty-Nine Thousand Three Hundred Fifteen and 98/100 Dollars (\$149,315.98) has been paid to the Developer, as a partial reimbursement relative to the Approved Expenses (the "Current Increment Reimbursement").
3. On September 4, 2020, the Village shall pay the Developer Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) as reimbursement for a portion of the Approved Expenses, with the Village reimbursing itself, from TIF Increment Funds previously received, and to be received during the life of the TIF District, relative to said payment (the "Initial TIF Payment").

C. **Subsequent TIF Incentive and Conditions.**

1. Subject to the terms and conditions of this Agreement, in the event that the Village receives TIF Incentive Funds in excess of Eight Million and No/100 Dollars (\$8,000,000.00), between September 30, 2020 and September 30, 2025 (the "TIF Payment Threshold"), the Village shall reimburse Developer for TIF Eligible Redevelopment Costs, in relation to the Project, that have not previously been reimbursed pursuant to Subsection VI.B. above, from Developer TIF Increment Funds on deposit in the Incentive Account, as follows:

- a. In relation to any Village-approved Developer-incurred TIF Eligible Redevelopment Costs up to Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00), inclusive of the Approved Expenses, the Village shall reimburse Developer, from Developer TIF Increment Funds on deposit in the Incentive Account, in an amount not to exceed Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00) minus the sum of the Prior Reimbursement, the Current Increment Reimbursement and the Initial TIF Payment (the "Secondary Reimbursement" – For the sake of clarity, the sum of the Secondary Reimbursement, the Prior Reimbursement, the Current Increment Reimbursement and the Initial TIF Payment shall not exceed Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00));
  - b. The Developer shall not receive any reimbursement from Developer TIF Increment Funds for any Village-approved Developer-incurred TIF Eligible Redevelopment Costs in excess of Three Million Seven Hundred Thousand and No/100 Dollars (\$3,700,000.00), but less than Six Million Seven Hundred Thousand and 01/100 Dollars (\$6,700,000.01).
  - c. In order to receive any further reimbursement beyond the Secondary Reimbursement, Developer must first incur Village-approved Developer-incurred TIF Eligible Redevelopment Costs equal to Six Million Seven Hundred Thousand and No/100 Dollars (\$6,700,000.00), inclusive of the Approved Expenses and Village-approved Developer-incurred TIF Eligible Redevelopment Costs used to support the Secondary Reimbursement. After meeting this threshold, the Village shall reimburse the Developer for all Village-approved Developer-incurred TIF Eligible Redevelopment Costs in excess of Six Million Seven Hundred Thousand and No/100 Dollars (\$6,700,000.00) from Developer TIF Increment Funds on deposit in the Incentive Account (the "Further Reimbursement").
2. The total amount paid by the Village to the Developer from the Incentive Account shall not exceed the amount of TIF Eligible Redevelopment Costs proved up by the Developer.
  3. The Village shall track and account for the generation of the Developer TIF Increment Funds through the Incentive Account.

The Village shall provide the Developer with an accounting of the Developer TIF Incentive Funds on deposit in the Incentive Fund on the last day of February, July and October, commencing on February 28, 2021, and continuing through the end of the Term of this Agreement. The Village shall pledge and rely solely upon the Developer TIF Increment Funds for the Secondary Reimbursement and the Further Reimbursement to the Developer for TIF Eligible Redevelopment Costs.

4. The Village's obligation to reimburse the Developer in relation to the Project from the Incentive Account is subject to the condition, in addition to those conditions set forth elsewhere in this Agreement, that the Incentive Account has adequate Developer TIF Increment Funds to pay the amounts requested for reimbursement by the Developer.
5. Provided the TIF Payment Threshold has been reached, the Village shall reimburse Developer from the Developer TIF Increment Funds deposited into the Incentive Account for the Developer's actual expenditures of TIF Eligible Redevelopment Costs relative to the Project, in excess of the Approved Expenses, that have not previously been reimbursed, and, subject to the limitations as set forth in Section VI.C.1. above, (the "TIF Incentive Rebate"), whether expended prior to the Effective Date, but after the TIF District was established, or after the Effective Date. Said TIF Incentive Rebate shall be paid to the Developer as follows:
  - a. The Village shall pay the Developer TIF Increment Funds from the Incentive Account to the Developer, or as directed by the Developer, on the last day of each February, July and October after the TIF Payment Threshold has been reached, with a final payment date of October 31, 2025, (each a "Payment Date"), during the Term (as defined in Section XV.P. below) of this Agreement, provided the Village is in receipt of Developer's request for reimbursement of TIF Eligible Redevelopment Costs documented by the Developer to have been incurred by the Developer in relation to the Project (which documentation shall accompany each such request for reimbursement). In relation to said payments, the Developer hereby directs that said payments (and any other payments under this Agreement) be made to the New Indenture Trustee under the New Indenture, to be deposited and credited to the Hotel Capital Expenditure Reserve Fund as provided for under the New Indenture. Requests for reimbursement of TIF Eligible Redevelopment Costs, paid by the Developer, shall be forwarded to the Village's Finance

Director, accompanied by a copy of the paid receipt therefor, and any other information reasonably requested by the Village. Unless the Village has good cause to believe that the Developer's request for reimbursement seeks reimbursement for non-TIF Eligible Redevelopment Costs, or the documentation submitted by the Developer does not support the amount requested for reimbursement, the Village's Finance Director shall, on behalf of the Village, promptly (and in any event no later than forty-five (45) days following such submission by the Developer) approve the same for reimbursement, and the Village shall pay such request for reimbursement on the next Payment Date following said approval, provided there are sufficient Developer TIF Increment Funds within the Incentive Account to do so. If the Village elects to withhold or deny such payment, the Village's Finance Director shall, on behalf of the Village, promptly (and in any event not later than forty-five (45) days following such submission by the Developer) advise the Developer in writing as to the specific basis for the Village's position. If the Village fails to either approve a request for reimbursement as aforesaid or to advise the Developer in writing as to the specific basis for the Village's position as aforesaid within the aforementioned time periods, such request for reimbursement shall be deemed approved by the Village's Finance Director on behalf of the Village, unless said request for reimbursement relates to non-TIF Eligible Redevelopment Costs.

- b. If the Developer requests reimbursement from Developer TIF Increment Funds from the Incentive Account, and if the Village authorizes the distribution of such funds in an amount greater than the then-existing balance of Developer TIF Increment Funds in the Incentive Account, the Village shall distribute any approved but undistributed TIF Incentive Rebate to Developer on the next Payment Date, or a Payment Date thereafter, provided that the Village has received and deposited additional Developer TIF Increment Funds into the Incentive Account, in an amount sufficient to cover all or a part of said authorized but undistributed TIF Incentive Rebate.
- c. The TIF Incentive Rebate paid to the Developer shall only be paid from Developer TIF Increment Funds actually received by the Village.

- d. In the event that the Village ceases to receive Developer TIF Increment Funds, as a result of a Change in Law, and no alternate source of revenue is enacted to replace the Developer TIF Increment Funds, the Village shall not be obligated to make any further TIF Incentive Rebate payments hereunder.
- e. The TIF Incentive Rebate by the Village shall cease upon the expiration of the Term (as defined in Section XV.P. below) of this Agreement.
- f. Subject to Uncontrollable Circumstances, if at any time the Hotel and Conference Center ceases to operate during the term of this Agreement, other than for a temporary period of time to facilitate maintenance of, or repairs to, the Hotel and Conference Center (a "Temporary Closure"), the payment of Developer TIF Increment Funds to the Developer shall be suspended for the duration of such closure. In the event of a Temporary Closure, the Developer shall provide at least thirty (30) days prior written notice to the Village relative thereto, with said notice to set forth the reason for the Temporary Closure, and the time frame within which operations will resume. In the event of an emergency requiring an immediate Temporary Closure, notice thereof, as required by this subsection, shall be provided to the Village as soon as practical thereafter."

7. That Section VII.A. of the Redevelopment Agreement is amended to read in its entirety as follows:

- "A. **Use of Funds.** The Developer shall use the Prior Reimbursement, the Current Increment Reimbursement, the Initial TIF Payment and the Developer TIF Increment Funds solely for reimbursement for TIF Eligible Redevelopment Costs incurred by the Developer."

8. That Section VII.C. of the Redevelopment Agreement is amended to read in its entirety as follows:

- "C. **Developer's Expenditures Requirement.** The Developer's expenditure of an amount equal to the sum of the Prior Reimbursement, the Current Increment Reimbursement, the Initial TIF Payment and the Secondary Reimbursement, on TIF Eligible Redevelopment Costs relative to the Project, may occur prior to the Developer's expenditure of the Three Million and No/100 Dollars (\$3,000,000.00) Village Effective Date Contribution, as defined in and provided for in the RSA and the Plan, on capital expenditures in relation to the Project; however, the capital



expenditures made by the Developer with the Village Effective Date Contribution shall be in relation to capital expenditure items other than those capital expenditure items covered by the TIF Eligible Redevelopment Costs approved for reimbursement under this Agreement. The intent being that Six Million Seven Hundred Thousand and No/100 Dollars (\$6,700,000.00) in capital expenditures relative to the Project shall be made by the Developer as a result of the Village Effective Date Contribution and the TIF Eligible Redevelopment Costs approved for reimbursement, and reimbursed, under this Agreement by the Prior Reimbursement, the Current Increment Reimbursement, the Initial TIF Payment and the Secondary Reimbursement. For clarity, the Village's obligation to reimburse TIF Eligible Redevelopment Costs relative to the Project in the amount of the Prior Reimbursement, the Current Increment Reimbursement, the Initial TIF Payment and the Secondary Reimbursement shall, except as otherwise provided in this Agreement, in no way be limited by the Developer's expenditure of the Village Effective Date Contribution on capital expenditures in relation to the Project."

9. That Section X.E of the Redevelopment Agreement is amended to read in its entirety as follows:

"E. **Annual Audit.** The Developer, under the Loan Agreement, is required to have an audit performed and delivered within one hundred fifty (150) days of the close of its fiscal year ending on December 31<sup>st</sup>, and, but for audits of calendar year 2019 and 2020, shall during the term of this Agreement, file a copy of same with the Village, within thirty (30) days of the receipt thereof by the Developer.

10. That Section XIII.C.3. of the Redevelopment Agreement is amended to read in its entirety as follows:

"3. In the case of an Event of Default by the Developer that has not been cured, in addition to any other remedies at law or in equity, the Village may suspend its obligation to pay Developer TIF Increment Funds to the Developer, until such Event of Default has been cured; provided, however, the Village shall continue to be obligated to review and approve requests by the Developer for reimbursement of TIF Eligible Redevelopment Costs in accordance with Section VI.C.5.a. (but shall not be obligated to pay such approved costs pursuant to Section VI.C.5.a.)."

11. That Section XV.P. of the Redevelopment Agreement is amended to read in its entirety as follows:

"P. **Term.** This Agreement shall remain in full force and effect until November 1, 2025, or until the October 31, 2025 payment, as referenced in Section VI.C.5.a., is paid, if any such payment is due."

12. That Section XV.R. of the Redevelopment Agreement is amended to read in its entirety as follows:

"R. **Assignment.** The Developer shall have the right to assign its interests in this Agreement, and its rights and obligations hereunder, subject to the consent in writing of the Village, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Developer shall be entitled to transfer in trust, grant a lien on and security interest in and assign to the Indenture Trustee, under the New Trust Indenture provided for in the Plan, all of the Developer's right, title and interest in (x) this Agreement and (y) any amounts at any time due or paid under this Agreement, and the New Indenture Trustee shall be entitled to enforce the rights, remedies and obligations of the Developer under this Agreement."

13. That Section XV.S. of the Redevelopment Agreement is amended to read in its entirety as follows:

"S. **Payments Hereunder.** The payments by the Village to the Developer referenced herein shall be a contractual obligation pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, which authorizes the Village to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance, 65 ILCS 5/8-1-2.5, 65 ILCS 5/11-65-1, *et seq.*, and 65 ILCS 5/11-74.4-1 *et seq.* If the payments by the Village to the Developer hereunder are due and owing and the Village fails to timely make any one or more of such payments, the Developer, or its assignee (including the New Indenture Trustee), shall be entitled to enforce the Village's contractual obligation to pay the Developer by exercising any rights and remedies under applicable law, including, without limitation, suing the Village for such payments."

14. That Exhibit D to the Redevelopment Agreement is hereby deleted.

15. That Exhibit E to the Redevelopment Agreement is hereby deleted.

16. That all portions of the Redevelopment Agreement, not amended hereby, shall remain in full force and effect.

17. The Village acknowledges that the Developer intends to, post a copy of this First Amendment (including all Exhibits hereto) on the Electronic Municipal Market Access system operated by the Municipal Securities Rulemaking Board ("EMMA").

18. This First Amendment shall be executed simultaneously in two (2) counterparts, each of which shall be deemed an original, but both of which shall constitute one and the same First Amendment.

19. The Parties agree to record this First Amendment with the DuPage County Recorder's Office, with the Village and the Developer equally sharing the cost of the recording charges.

20. This First Amendment shall be deemed dated and become effective on the day on which this First Amendment is executed by the last of the signatories, as set forth below, with said date appearing on page 1 hereof.

**IN WITNESS WHEREOF**, the Parties hereto have caused this First Amendment to be executed on or as of the day and year first above written.

**VILLAGE OF LOMBARD,**  
an Illinois non-home rule municipal corporation

**ATTEST:**

By:   
Keith Giagnorio, Village President

By:   
Sharon Kuderna, Village Clerk


Date: September 3, 2020

Date: September 3, 2020

**LOMBARD PUBLIC FACILITIES CORPORATION,**  
an Illinois not-for-profit corporation

**ATTEST:**

By:   
Paul J. Powers, President

By:   
Joseph Biewer, Secretary

Date: SEPTEMBER 1, 2020

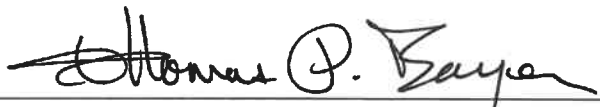
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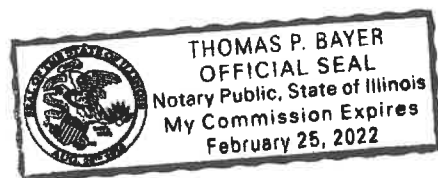
## ACKNOWLEDGMENT

State of Illinois       )  
                                  ) SS  
County of DuPage     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio and Sharon Kuderna, personally known to me to be the President and Village Clerk of the Village of Lombard, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that, as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Village Council of said Illinois corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 3rd day of September, 2020.

  
\_\_\_\_\_  
Notary Public



## ACKNOWLEDGMENT

State of Illinois        )  
                                  ) SS  
County of DuPage     )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Paul J. Powers and Joseph Biewer, personally known to me to be the President and Secretary of the Lombard Public Facilities Corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the board of directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 1st day of September, 2020.



E. Kenneth Friker  
Notary Public

## **Exhibit A**

### **Legal Description of the Property Covered by the Redevelopment Agreement**

**Legal Description:** Lot 1 in Plat of Resubdivision of Lombard Westin Hotel and Convention Center, being a Resubdivision of Lot 2 in Yorktown Peripheral/Target Subdivision per document no. R95-162762, and part of Lot 1 in the Resubdivision of Northern Baptist Theological Seminary Subdivision per document no. R83-71622, all in Section 29, Township 39 North, Range 11, East of the Third Principal Meridian, in Lombard, DuPage County, Illinois, according to the plat thereof recorded April 17, 2009 as document no. R2009-057156.

**PIN:** 06-29-200-057

**Common Address:** 70 Yorktown Center, Lombard, Illinois