

CONTINGENT TIF PAYMENT AGREEMENT

This Contingent TIF Payment Agreement (the “Agreement”) is entered into as of March 15, 2018 by and between the Village of Lombard (the “Village”) and the Lombard Public Facilities Corporation, an Illinois not-for-profit corporation (the “LPFC”). Any defined terms used herein but not otherwise defined shall have those meanings set forth in the Master Glossary of Terms for Public Finance Authority Conference Center Hotel Revenue Bonds (Lombard Public Facilities Corporation Project) Series 2018 Transaction dated as of March 1, 2018. The Village and the LPFC are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, on July 28, 2017, the LPFC commenced a Chapter 11 Bankruptcy Case in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”); and

WHEREAS, on March 6, 2018, the Bankruptcy Court entered an order confirming the *Plan of Reorganization of Lombard Public Facilities Corporation under Chapter 11 of the Bankruptcy Code* (as amended, modified and supplemented, the “Plan”); and

WHEREAS, the Plan was consummated and became effective as of March 6, 2018 (the “Effective Date”); and

WHEREAS, in accordance with the Plan, on or before the TIF Compliance Date, the Village agreed to make reasonable efforts to (a) form a TIF District, pursuant to the requirements of the Illinois TIF Act (65 ILCS 5/11-74.4-1, *et seq.* – the “TIF Act”), with a redevelopment project area that includes the real property on which the Project is located, *provided that* the proposed TIF District redevelopment project area meets the statutory eligibility criteria for the establishment of a TIF District, and (b) enter into a TIF Redevelopment Agreement with the LPFC, *provided that* the TIF District is created and the LPFC agrees to the terms of the TIF Redevelopment Agreement, in a form reasonably acceptable to the LPFC, ACA Financial and certain funds managed by Nuveen Asset Management LLC, which provides for the payment of \$3,700,000 in TIF incremental revenues to the LPFC for TIF-eligible redevelopment project costs incurred by the LPFC relative to the Project, with a TIF Note to be issued in relation thereto; and

WHEREAS, the TIF District was formed, pursuant to Ordinance Nos. 7437, 7438 and 7439, approved by the President and Board of Trustees of the Village on November 2, 2017, and filed with the DuPage County Clerk’s Office on November 8, 2017, as amended by Ordinance No. 7451, approved by the President and Board of Trustees of the Village on December 7, 2017, and filed with the DuPage County Clerk’s Office on December 15, 2017, but the TIF Redevelopment Agreement is not yet executed;

NOW, THEREFORE, in consideration of the provisions contained herein, the Parties hereby agree as follows:

1. Recitals. The Recitals, as set forth above, are incorporated herein by reference.
2. Contingent Payment.

(a) If the TIF Redevelopment Agreement is not entered into on or before the TIF Compliance Date, or if the creation of the TIF District is the subject of litigation as of the TIF Compliance Date, the Village shall pay ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00) (the "Contingent Payment Amount") to the LPFC within thirty (30) days of the TIF Compliance Date (the "Payment Date"). If the Contingent Payment Amount is paid to the LPFC pursuant to the terms of this Agreement, the Village shall not be obligated to make any of the further payments to the LPFC as referenced in Section 5.12(d)(iii)-(vi) of the Plan or any further payments pursuant to the Plan, other than pursuant to the Amended Tax Rebate Agreement.

(b) If the TIF Redevelopment Agreement is entered into with the LPFC on or before the TIF Compliance Date, and provided there is no litigation pending as of the TIF Compliance Date challenging the creation of the TIF District, then the Contingent Payment Amount shall not be due and this Agreement shall be null and void and of no further force or effect.

3. Grant of Lien, Default and Remedies. Contemporaneously with the execution of this Agreement, the LPFC will transfer in trust, grant a lien on and security interest in and assign to the Trustee, all of the LPFC's right, title and interest under this Agreement, and the Trustee will, therefore, be entitled to enforce the rights, remedies and obligations of the LPFC hereunder. The Contingent Payment Amount is pledged by the LPFC to the Trustee as additional collateral to secure repayment of the First Tier Bonds and, on a subordinate basis, the Second Tier Bonds; *provided* that the Trustee holds all of the rights, remedies and obligations of the LPFC with respect to such Contingent Payment Amount; and further provided that such Contingent Payment Amount shall be used by the LPFC for Capital Expenses incurred in relation to the Project that would otherwise be TIF-eligible redevelopment project costs under the TIF Act. If the Contingent Payment Amount is due and owing and the Village fails to timely make pay the Contingent Payment Amount, the Trustee shall be entitled to enforce the Village's contractual obligation hereunder to pay the LPFC by exercising any rights and remedies under applicable law, including, without limitation, suing the Village for such payments.

4. Use of Contingent Payment Amount. If the Contingent Payment Amount is paid to the LPFC by the Village, the LPFC shall provide the Village with documentation evidencing the use of said Contingent Payment Amount for Capital Expenses, which are TIF-eligible redevelopment project costs under the TIF Act, incurred in relation to the Project.

5. Village Representation. The Village represents that it is authorized to enter into the transactions contemplated by this Agreement and it is authorized to undertake all obligations contemplated by this Agreement.

6. Payments. All payments to be made to LPFC hereunder shall be made in the lawful money of the United States of America, as directed, by the LPFC. If any payment falls on a Saturday, Sunday or public holiday, it shall be payable on the next succeeding business day.

7. Contractual Obligations. This Agreement and the Contingent Payment Amount are contractual obligations of the Village 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.*

8. Prior Appropriation. The Contingent Payment Amount shall be subject to prior appropriations to the extent such prior appropriations are, under Illinois law, a required prerequisite to the Village making such Contingent Payment Amount, and the Village acknowledges that its failure or refusal to appropriate for and pay the Contingent Payment Amount shall give rise to an action for breach of contract against the Village; *provided, however*, the Village retains all defenses to such action other than the defense of prior appropriation.

9. Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Agreement operate or prospectively operate to invalidate this Agreement, then and in all such events the provision(s) only shall be deemed null and void and shall not affect any other provisions of this Agreement, and the remaining provisions of this Agreement shall remain operative and in full force and effect and in no way shall be affected, prejudiced or disturbed thereby.

10. Notice. Any notice or other communication required or permitted under this Agreement shall be in writing, and any written notice shall be deemed to have been duly given: (a) if by personal service, on the date of personal service of the Party; (b) if by registered or certified mail, return receipt requested and postage prepaid, on the third business day after mailing; or (c) if by overnight courier or messenger, one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier. Any such notice shall be delivered or addressed as follows (or to such other address as any Party shall have specified by notice given to the other Party in the manner specified herein):

If to the Village:

Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Scott Niehaus, Village Manager

With a copy (which shall
not constitute notice) to:

Michael L. Gesas
Hal R. Morris
Saul Ewing Arnstein & Lehr
161 North Clark Street, Suite 4200
Chicago, Illinois 60606

and

Thomas P. Bayer
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606

If to LPFC:

Lombard Public Facilities Corporation
c/o Donald E. Renner
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606

Failure to conform to the requirements of this Section shall not defeat the effectiveness of notice actually received by the addressee.

11. Headings. The headings and captions used herein are for convenience of reference only and do not constitute a substantive part of this Agreement.

12. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic exchange bearing the copies of a Party's signature shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies shall constitute enforceable original documents.

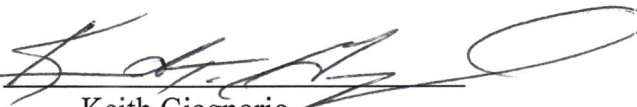
13. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the domestic laws of the State of Illinois, without giving effect to any choice of law or conflict of law provisions or rules. Venue for any actions against or involving the Village or relating to the Village's obligations hereunder shall be in either the Circuit Court of DuPage County, Illinois or in the United States District Court for the Northern District of Illinois, Eastern Division, to the extent that the United States Bankruptcy Court for the Northern District of Illinois does not have venue and does not retain jurisdiction over any such actions.


14. As the Effective Date will be unknown as of the date of the approval of this Agreement, the Parties agree that, once the Effective Date is known, said date shall be inserted in the third "Whereas Clause" set forth above.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed by their respective authorized representatives.

VILLAGE OF LOMBARD

By: 
Keith Giagnorio
Village President

Attest: 
Sharon Kuderna
Village Clerk

**LOMBARD PUBLIC
FACILITIES CORPORATION**

By: _____
Paul J. Powers
President

Attest: _____
Tod Altenburg
Secretary