

RESOLUTION NO. _____

**A RESOLUTION APPROVING A TAX REBATE AGREEMENT AND A
LETTER OF CREDIT AGREEMENT IN REGARD TO THE
DEVELOPMENT OF A CONVENTION HALL AND HOTEL IN THE
VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS**

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

SECTION 1: The President and Board of Trustees of the Village of Lombard, DuPage
County, Illinois (hereinafter referred to as the “VILLAGE”) hereby find as follows:

- A. The VILLAGE is an Illinois municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois of 1970.
- B. The Lombard Public Facilities Corporation (hereinafter referred to as the “LPFC”) is an Illinois not-for-profit corporation formed by the VILLAGE.
- C. Within the corporate limits of the VILLAGE, is an approximately 6.69 acre parcel of real estate generally located at the Northeast corner of the Yorktown Shopping Center and legally described in EXHIBIT A (hereinafter referred to as the "SUBJECT PROPERTY") attached to the “Tax Rebate Agreement Between the Lombard Public Facilities Corporation and the Village of Lombard, DuPage County, Illinois, in Regard to the Development of a Convention Hall and Hotel in the Village of Lombard” attached hereto as EXHIBIT 1 and made a part hereof (the “Tax Rebate Agreement”).
- D. The LPFC, in the very near future, will be the fee simple owner of the SUBJECT PROPERTY.
- E. The VILLAGE has long desired to encourage the development of a hotel and convention hall with associated banquet facilities, restaurants and other facilities (the “Hotel and Convention Hall”) as a means of promoting tourism and other business activity within the VILLAGE.
- F. The VILLAGE has determined that the optimal financial structure for the financing of a Hotel and Convention Hall development will include, among other things, the issuance of tax exempt revenue bonds through the LPFC, coupled with the rebate by the VILLAGE of all hotel/motel taxes, all retailers’ occupation taxes, all service occupation taxes and all places of eating taxes generated by the Hotel and Convention Hall or the operation thereof as security for a portion of said bonds.

- G. The LPFC has indicated its desire to issue exempt revenue bonds (the “Bond Financing”), develop a Hotel and Convention Hall on the SUBJECT PROPERTY (collectively the “Project”), all as described in EXHIBIT B attached to EXHIBIT 1 hereto (the “Project Description”), and otherwise construct the Project in accordance with VILLAGE Ordinance Nos. 5396 and 5397, adopted on November 20, 2003.
- H. In regard to the aforementioned rebate of taxes to the LPFC for the Project, Harp Lombard, LLC, an Illinois limited liability company, (hereinafter referred to as “HARP”) has agreed to provide the VILLAGE with a letter of credit backing, in the form of the “Letter of Credit Agreement” attached hereto as EXHIBIT 2 and made part hereof, in further satisfaction of HARP’S obligations to the VILLAGE as more fully set forth in the agreement between HARP and the VILLAGE dated December 1, 2003, and approved pursuant to Resolution No. R-64-04, adopted November 20, 2003.
- I. In connection with the Project, the VILLAGE and the LPFC, with the assistance of consultants and advisors, have prepared a proforma showing the sources and uses of funds and a projected cash flow summary through the year 2035 for the Project (the “Project Proforma”) and a project budget estimating and itemizing costs and expenses relating to the Project (the “Project Budget”), copies of which Project Proforma and Project Budget are attached to EXHIBIT 1 hereto as EXHIBIT C and EXHIBIT D, respectively.
- J. The Bond Financing requires the LPFC to issue senior lien tax exempt revenue bonds and subordinate lien tax exempt revenue bonds in a sufficient amount to provide funds to construct the Hotel and Convention Hall, establish various reserves and pay the costs of issuance and otherwise complete the Project, all as generally described in the Project Description.
- K. In regard to the SUBJECT PROPERTY, the VILLAGE has determined as follows:
1. The SUBJECT PROPERTY is vacant and has remained vacant for at least one (1) year;
 2. The Project is expected to create job opportunities within the VILLAGE;
 3. The Project will serve to further the development of adjacent areas;
 4. Without the Tax Rebate Agreement, the Project would not be possible;
 5. The operator of the Hotel and Convention Hall, as selected by the LPFC to operate the Hotel and Convention Hall on behalf of the LPFC, meets/will meet the criteria set forth in 65 ILCS 5/8-11-20(6)(A) and/or (B);
 6. The Project will strengthen the commercial sector of the VILLAGE;
 7. The Project will strengthen the tax base of the VILLAGE; and

8. The rebate of hotel/motel taxes, as provided for by 65 ILCS 5/8-3-14 and Sections 98.60 through 98.63 of the Lombard Village Code, will promote overnight stays within the VILLAGE at the hotel portion of the Project.
- L. Article VII, Section 10 of the Illinois Constitution of 1970 authorizes municipalities to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance.
- M. The VILLAGE is authorized to proceed with the Project pursuant to the Illinois Compiled Statutes, 65 ILCS 5/11-65-1, et. seq., in that the VILLAGE will become the owner of the Hotel and Convention Hall upon the repayment of all the bonds issued by the LPFC.
- N. As the VILLAGE will become the owner of the Hotel and Convention Hall upon the repayment of all the bonds issued by the LPFC, the VILLAGE will benefit from the tax rebates referenced in subsection F above.
- O. It is anticipated that the Project will generate increased hotel/motel tax revenues, places of eating tax revenues, retail occupation tax revenues and service occupation and tax revenues for the VILLAGE.
- P. It is anticipated that the Project will generate increased employment opportunities for residents of the VILLAGE.
- Q. Construction of the Project would not be economically feasible for the LPFC without the VILLAGE'S economic assistance.
- R. The VILLAGE is desirous of having the SUBJECT PROPERTY rehabilitated, developed and redeveloped in order to serve the needs of the VILLAGE, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the VILLAGE and in furtherance thereof, the VILLAGE is willing to undertake certain incentives, under the terms and conditions set forth in EXHIBIT 1 and subject to EXHIBIT 2, to assist the LPFC.
- S. The President and Board of Trustees of the VILLAGE have determined that it is in the best interests of the VILLAGE to approve the agreements attached hereto as EXHIBIT 1 and EXHIBIT 2 and pursue the development of the Project.

SECTION 2: That based on Section 1 above, the President and Board of Trustees hereby approve the “Tax Rebate Agreement Between the Lombard Public Facilities Corporation and the Village of Lombard, DuPage County, Illinois, in Regard to the Development of a Convention Hall and Hotel in the Village of Lombard” attached hereto as EXHIBIT 1, and hereby authorize and direct the Village President and Deputy Village Clerk to execute same, on behalf of the

VILLAGE, as well execute any and all additional documents necessary to carry out the terms and provisions of said EXHIBIT 1.

SECTION 3: That based on Section 1 above, the President and Board of Trustees hereby approve the “Letter of Credit Agreement” attached hereto as EXHIBIT 2, and hereby authorize and direct the Village President and Deputy Village Clerk to execute same, on behalf of the VILLAGE, as well execute any and all additional documents necessary to carry out the terms and provisions of said EXHIBIT 2.

SECTION 4: That Resolution No. 31-05, adopted July 29, 2004, entitled, “A Resolution Approving a Tax Rebate Agreement and Letter of Credit Agreement in Regard to the Development of a Convention Hall and Hotel in the Village of Lombard, DuPage County, Illinois,” is hereby repealed.

ADOPTED this 21st day of October, 2004, pursuant to a roll call vote as follows:

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this 21st day of October, 2004.

William J. Mueller
Village President

ATTEST:

Barbara A. Johnson
Deputy Village Clerk

TAX REBATE AGREEMENT BETWEEN THE LOMBARD PUBLIC FACILITIES CORPORATION AND THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, IN REGARD TO THE DEVELOPMENT OF A CONVENTION HALL AND HOTEL IN THE VILLAGE OF LOMBARD

THIS TAX REBATE AGREEMENT (hereinafter referred to as the "Agreement") is between the VILLAGE OF LOMBARD, DuPage County, Illinois, an Illinois municipal corporation (hereinafter referred to as the "VILLAGE"), and the LOMBARD PUBLIC FACILITIES CORPORATION, an Illinois not-for-profit corporation (hereinafter referred to as the "LPFC"), and is dated this 21st day of October, 2004.

WITNESSETH

IN CONSIDERATION of the Preliminary Statements, the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereto agree as follows:

I. PRELIMINARY STATEMENTS

Among the matters of mutual inducement which have resulted in this Agreement are the following:

- A. The VILLAGE is an Illinois municipality pursuant to Section 7 of Article VII of the Constitution of the State of Illinois of 1970.
- B. Within the corporate limits of the VILLAGE, is an approximately 6.69 acre parcel of real estate generally located at the Northeast corner of the Yorktown Shopping Center and legally described in EXHIBIT A attached hereto and made a part hereof (hereinafter referred to as the "SUBJECT PROPERTY").
- C. The LPFC is, or in the very near future will be, the fee simple owner of the SUBJECT PROPERTY.
- D. The VILLAGE has long desired to encourage the development of a hotel and convention hall with associated banquet facilities, restaurants and other facilities (the "Hotel and Convention Hall") as a means of promoting tourism and other business activity within the VILLAGE.
- E. The VILLAGE has determined that the optimal financial structure for the financing of a Hotel and Convention Hall development will include, among other things, the issuance of tax exempt revenue bonds through the LPFC, coupled with the rebate by the VILLAGE of all hotel/motel taxes, all retailers' occupation taxes, all service occupation taxes and all places of eating taxes generated by the Hotel and Convention Hall or the operation thereof, along with the provision of additional reserve funds, as security for a portion of said bonds.

- F. The LPFC has indicated its desire to issue exempt revenue bonds (the “Bond Financing”) and develop a Hotel and Convention Hall on the SUBJECT PROPERTY (collectively the “Project”), all as described in EXHIBIT B attached hereto and made part hereof (the “Project Description”).
- G. In connection with the Project, the VILLAGE and the LPFC, with the assistance of consultants and advisors, have prepared a proforma showing the sources and uses of funds and a projected cash flow summary through the year 2035 for the Project (the “Project Proforma”) and a project budget estimating and itemizing costs and expenses relating to the Project (the “Project Budget”), copies of which Project Proforma and Project Budget are attached hereto as EXHIBIT C and EXHIBIT D, respectively, and made part hereof.
- H. The Bond Financing requires the LPFC to issue senior lien tax exempt revenue bonds and subordinate lien tax exempt revenue bonds in a sufficient amount to provide funds to construct the Hotel and Convention Hall, establish various reserves and pay the costs of issuance and otherwise complete the Project, all as generally described in the Project Description.
- I. In regard to the SUBJECT PROPERTY, the VILLAGE has determined as follows:
1. The SUBJECT PROPERTY is vacant and has remained vacant for at least one (1) year;
 2. The Project is expected to create job opportunities within the VILLAGE;
 3. The Project will serve to further the development of adjacent areas;
 4. Without this Agreement, the Project would not be possible;
 5. The operator of the Hotel and Convention Hall, as selected by the LPFC to operate the Hotel and Convention Hall on behalf of the LPFC, meets/will meet the criteria set forth in 65 ILCS 5/8-11-20(6)(A) and/or (B);
 6. The Project will strengthen the commercial sector of the VILLAGE;
 7. The Project will strengthen the tax base of the VILLAGE; and
 8. The rebate of hotel/motel taxes, as provided for by 65 ILCS 5/8-3-14 and Sections 98.60 through 98.63 of the Lombard Village Code, will promote overnight stays within the VILLAGE at the hotel portion of the Project, and will promote conventions within the VILLAGE at the convention hall portion of the Project.
- J. Article VII, Section 10 of the Illinois Constitution of 1970 authorizes municipalities to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by law or ordinance.

- K. The VILLAGE is authorized to proceed with the Project pursuant to the Illinois Compiled Statutes, 65 ILCS 5/11-65-1, et. seq., in that the VILLAGE will become the owner of the Hotel and Convention Hall upon the repayment of all the bonds issued by the LPFC.
- L. As the VILLAGE will become the owner of the Hotel and Convention Hall upon the repayment of all the bonds issued by the LPFC, the VILLAGE will benefit from the tax rebates referenced in subsection I.E. above.
- M. It is anticipated that the Project will generate increased hotel/motel tax revenues, places of eating tax revenues, retail occupation tax revenues and service occupation tax revenues for the VILLAGE.
- N. It is anticipated that the Project will generate increased employment opportunities for residents of the VILLAGE.
- O. Construction of the Project would not be economically feasible for the LPFC without the VILLAGE'S economic assistance.
- P. The VILLAGE is desirous of having the SUBJECT PROPERTY rehabilitated, developed and redeveloped in order to serve the needs of the VILLAGE, increase employment opportunities, stimulate commercial growth and stabilize the tax base of the VILLAGE and in furtherance thereof, the VILLAGE is willing to undertake certain incentives, under the terms and conditions hereinafter set forth, to assist the LPFC.
- Q. The President and Board of Trustees of the VILLAGE have determined that it is in the best interests of the VILLAGE to enter into this Agreement and pursue the development of the Project.

II. CONDITIONS PRECEDENT TO THE UNDERTAKINGS ON THE PART OF THE VILLAGE AND THE DEVELOPER

This Agreement is contingent upon the occurrence of the following within sixty, (60) days of the effective date of this Agreement (said term being defined below in Section VII.M.), subject to any extensions of such time period as may be agreed to between the parties:

- A. The LPFC proceeding with the Bond Financing;
- B. The LPFC becoming the fee simple owner of the SUBJECT PROPERTY;
- C. The LPFC entering into the following agreements relative to the Project:
 - 1. A master development agreement with Harp Lombard, LLC, d.b.a Harp Mid-America, L.L.C., an Illinois limited liability company (hereinafter referred to as "HARP");
 - 2. An asset management agreement with HARP;

3. Pre-opening, technical services and management/operator agreements with a hotel company;
 4. One (1) or more restaurant management agreement(s).
- D. All obligations of HARP, as provided for in the agreement between HARP and the VILLAGE dated December 1, 2003 (the “Harp/Lombard Agreement”) being satisfied by HARP; said Harp/Lombard Agreement being incorporated herein by reference.
- E. The LPFC entering into a construction monitor agreement and hotel consultant agreement, relative to the Project, with a construction monitor and hotel consultant, respectively.
- F. In the event that the hotel consultant referenced in subsection E above cannot also provide restaurant and insurance consulting services relative to the Project, the LPFC entering into a restaurant consultant agreement and/or insurance consultant agreement, relative to the Project, with a restaurant consultant and/or insurance consultant.

III. UNDERTAKINGS ON THE PART OF THE VILLAGE

Upon complete satisfaction of all conditions itemized in Section II above, the VILLAGE shall undertake the following:

- A. The VILLAGE will expeditiously issue such approvals, consents, permits, licenses and authorizations as the LPFC may require to cause the construction of the Project, or any portion thereof, provided the Project complies with the applicable VILLAGE codes and ordinances.
- B. The VILLAGE shall approve or reject, in writing, any construction plans submitted within ninety (90) days after submittal by the LPFC to the VILLAGE. Immediately upon approval of any construction plans, the VILLAGE shall issue a building permit for the work covered by said construction plans. If the VILLAGE rejects the construction plans, said rejection shall specify any and all deficiencies in the construction plans based on applicable VILLAGE codes and ordinances. Following receipt of the rejection, the LPFC shall submit new or corrected construction plans within thirty (30) days after the date the LPFC receives written notice of the VILLAGE'S rejection of the construction plans referred to in the latest such notice. The provisions of this subsection relating to such approval, rejection and resubmittal of the construction plans shall continue to apply to resubmittal of corrected construction plans until the construction plans have been approved by the VILLAGE and a building permit for the work covered by said construction plans is issued. Said approval shall not be unreasonably withheld or delayed by the VILLAGE. The LPFC agrees that all construction work by the LPFC or its agents or independent contractors shall be in conformity with the construction plans as finally approved by the VILLAGE.

- C. Promptly after completion of the Project, in accordance with the provisions of this Agreement and all applicable VILLAGE codes and ordinances, the VILLAGE will furnish the LPFC with a certificate of occupancy so certifying, which certificate of occupancy shall not be unreasonably withheld. Issuance by the VILLAGE of a certificate of occupancy for the Project shall be a conclusive determination of the satisfaction of the conditions precedent to the LPFC receiving the TAX REVENUES (as said term is defined below) hereunder. If the VILLAGE shall refuse or fail to provide a certificate of occupancy, the VILLAGE shall, within ten (10) days after written request by the LPFC, provide to the LPFC a written statement setting forth in detail how the LPFC has failed to complete the Project in reasonable accordance with the provisions of this Agreement or is otherwise in default, and what reasonable measures or acts the LPFC must take or perform, in the opinion of the VILLAGE, to obtain such certificate of occupancy.
- D. Notwithstanding the foregoing, the VILLAGE agrees to issue a conditional certificate of occupancy, subject to appropriate terms and conditions as deemed reasonably necessary by the VILLAGE, so as to allow for the installation of computer equipment related to the Project and the training of employees who will work for the entity operating the Hotel and Convention Hall on behalf of the LPFC, prior to the issuance of an unconditional certificate of occupancy.

IV. UNDERTAKINGS ON THE PART OF THE LPFC

Upon complete satisfaction of all conditions itemized in Section II above, the LPFC shall undertake the following:

- A. The LPFC shall cause construction of the Project to begin within sixty (60) days after the LPFC has closed on the purchase of the SUBJECT PROPERTY, and to be completed in full compliance with the approved plans therefor within one thousand ninety-five (1095) days after the LPFC has closed on the purchase of the SUBJECT PROPERTY, subject to delays caused by force majeure.
- B. The LPFC shall submit (or cause the submittal of) construction plans, for VILLAGE approval, in sufficient completeness and detail to show that construction of the Project will be in accordance with the provisions of this Agreement and in compliance with all applicable VILLAGE codes, ordinances and regulations. The construction plans shall be prepared by a professional engineer(s) and a professional architect(s) licensed to practice in the State of Illinois. Construction plans and all construction practices and procedures with respect to the Project shall be in conformity with all applicable state and local laws, ordinances and regulations.
- C. The LPFC shall construct the Project in compliance with VILLAGE Ordinance Nos. 5396 and 5397, approved on November 20, 2003.

V. REFUND OF TAXES/ADDITIONAL RESERVES

- A. The VILLAGE hereby pledges and shall semi-annually refund to the LPFC, or pay as directed by the LPFC, within ninety (90) days after the end of each SEMI-

ANNUAL PERIOD (as said term is defined in subsection B below), an amount equal to the amount the VILLAGE has received from the collection of the TAX REVENUE (as said term is defined in subsection C below) generated by the Hotel and Convention Hall during said SEMI-ANNUAL PERIOD, solely for the purpose of securing the Series "B" Bonds as referenced in the Project Proforma.

- B. The aforementioned refund of TAX REVENUE to the LPFC shall take place beginning in 2006 and ending at such time as the Series "B" Bonds are defeased or redeemed in their entirety, even if said defeasance or redemption occurs prior to the date shown in the Project Proforma. For purposes of this Agreement, the semi-annual refund periods shall be from January 1st through June 30th and from July 1st through December 31st (each semi-annual refund period being hereinafter referred to as a "SEMI-ANNUAL PERIOD"). The LPFC and the VILLAGE agree to cooperate with each other in ascertaining the amount of TAX REVENUE generated by the Hotel and Convention Hall and received by the VILLAGE during each SEMI-ANNUAL PERIOD, with the LPFC to release such information in its possession and control, and use reasonable efforts to cause HARP, the hotel manager and restaurant manager(s) to release information and execute such documents as necessary to allow the VILLAGE to comply with its tax rebate obligations as set forth in Section V.A. above.
- C. For purposes of this Agreement, "TAX REVENUE" shall be construed to refer to that net portion of taxes imposed by the State of Illinois for distribution to the VILLAGE pursuant to the Retailers' Occupation Tax Act, 35 ILCS 120/1, et seq. and the Service Occupation Tax Act, 35 ILCS 115/1, et seq. (and any amendments thereto), which are collected by the State of Illinois and distributed to the VILLAGE, along with hotel/motel taxes collected by the VILLAGE pursuant to Sections 98.60 through 98.63 of the Lombard Village Code (as authorized by 65 ILCS 5/8-3-14) and places of eating taxes collected by the VILLAGE pursuant to Section 98.111 of the Lombard Village Code (as authorized by 65 ILCS 5/11-42-5), plus all future revenues derived during the period of this Agreement from taxes enacted by law or ordinance by any governmental authority which are intended to replace any one or more of the aforementioned taxes generated by the Project.
- D. In addition to the rebate of TAX REVENUE as set forth in Section V.A. above, the VILLAGE hereby commits, subject to the requirement of a prior appropriation therefor, to provide funds to reconcile the difference between the amounts of said TAX REVENUE shown in the Project Proforma for each calendar year, and the actual amounts received in each calendar year, if (i) the total of such TAX REVENUE in any given calendar year is less than projected in the Project Proforma (see the line item in the Project Proforma labeled, "HOT, F & B, Sales Tax Contribution"), (ii) the subordinate lien bond debt service payment for the "Series B Bonds" as set forth in the Project Proforma cannot be paid from Project revenues in said given calendar year, (iii) all reserve funds available for the payment of such bond debt service (the Operating Reserve Fund, the Cash Trap Fund, the Sinking Fund and Series B Debt Service Reserve Fund as shown on the Project Proforma) have been exhausted, and (iv) funds available pursuant to the Harp/Lombard Agreement for the payment of such bond debt service have been

exhausted. Notwithstanding the foregoing commitment, once the debt service payment for the "Series B Bonds" is made for a particular calendar year, the VILLAGE shall not be required to make up any shortfall in TAX REVENUE for said calendar year, even if the TAX REVENUE for said calendar year was less than as shown on the Project Proforma.

- E. In addition to the rebate of TAX REVENUE as set forth in Section V.A. above and the additional reserve provided for in Section V.D. above, the VILLAGE hereby commits, subject to the requirement of a prior appropriation therefor, to provide for the Supplement Reserve Fund (Series A Bonds only), as shown in the Project Proforma, in an annual amount not to exceed Nine Hundred Thousand and No/100 Dollars (\$900,000.00), from the VILLAGE'S Hotel/Motel Tax Fund or from such other fund(s) as determined by the VILLAGE, if (i) the bond debt service payment for the "Series A Bonds" as set forth in the Project Proforma cannot be paid from Project revenues in a given calendar year and (ii) all reserve funds (the Operating Reserve Fund, the Cash Trap Fund and the Sinking Fund as shown on the Project Proforma) available for the payment of such bond debt service, other than the Series A Debt Service Reserve Fund, have been exhausted. The foregoing commitment by the VILLAGE shall begin upon the Opening Date for the Project and shall cease upon (y) the end of the fifth Operating Year after the Opening Date or (z) the end of the second successive Operating Year in which the First Tier Debt Service Coverage Ratio for the Operating Year equals or exceed one hundred twenty-five percent (125%) of the Net Debt Service on the Outstanding First Tier Bonds (Series "A" Bonds), whichever occurs first.

VI. ADDITIONAL COVENANTS, UNDERTAKINGS AND AGREEMENTS OF THE PARTIES

- A. This Agreement, together with the Exhibits attached thereto (all of which are attached hereto or incorporated herein by this reference), contains the entire agreement and understanding between the parties and supersedes any prior understanding or written or oral agreements between them with respect to the subject matter of this Agreement. To the extent that there is an inconsistency between the text of the Agreement and an Exhibit hereto, the Exhibit shall be controlling. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein or set forth in the Exhibits hereto. No oral modification, amendment, or change shall be allowed to this Agreement. Any modification, amendment, or change hereto shall be in writing and approved by the VILLAGE and LPFC. To the extent that a capitalized term used herein is not defined herein, it shall be construed to have the meaning as assigned to said term pursuant to the "Master Glossary of Terms for Lombard Public Facilities Corporation Conference Center and Hotel Revenue Bond Transaction" relative to the Project and the Bond Financing.
- B. Time is of the essence in the performance of this Agreement.
- C. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, and such counterparts together shall

constitute one and the same Agreement.

- D. This Agreement shall be in full force and effect, and legally binding, after it is signed by the duly authorized officers of each party. Each of the signatories to this Agreement are the duly authorized representatives of their respective corporate entity and each such person has signed this Agreement pursuant to the authority duly granted to him or her by the corporate authorities of said corporate entity, who have acted by motion or approved a resolution that authorized and directed the representatives to sign this Agreement.
- E. This Agreement shall be binding upon and shall inure to the benefit of the parties agreeing hereto and to their successor corporations, officers, officials, trustees, successors in office or interest, heirs, representatives, and assigns. Notwithstanding the foregoing, except for transfers or assignments to a receiver, master, sheriff, trustee in bankruptcy or other assignee by operation of law, the LPFC shall not assign this Agreement or any interest therein, or sublet the same, without the prior written consent of the VILLAGE; provided, however, at the time of such assignment, there is no default under this Agreement by the LPFC.
- F. If the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.
- G. All notices and requests, if any, required pursuant to this Agreement shall be sent by certified mail, return receipt requested, by personal service, or by a national overnight/next day delivery courier (e.g., Federal Express) addressed as follows:

If to the LPFC:

with copy to:

Lombard Public Facilities Corporation
c/o Leonard Flood, Registered Agent Donald E. Renner
255 East Wilson Avenue
Lombard, Illinois 60148

Gerard E. Dempsey
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, IL 60606

If to the VILLAGE:

with copy to:

William T. Lichter
Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

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

- H. This Agreement relates to the development of real estate located in the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The parties agree that for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in either the Circuit Court of DuPage County, Illinois, or the U.S. District Court for the Northern District of Illinois, Eastern

Division, and the parties consent to the in personam jurisdiction of either of said Courts for any such action or proceeding.

- I. The captions at the beginning of the several Sections herein are for convenience only, and shall not affect the construction of this Agreement.
- J. If any provision of this Agreement or an Exhibit hereto, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement or such Exhibit shall be construed as if such invalid part was never included and this Agreement or said Exhibit shall be and remain valid and enforceable to the fullest extent permitted by law, provided that the Agreement and/or any Exhibit hereto, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in the Exhibit shall govern and control.
- K. The VILLAGE and LPFC agree to fully cooperate with each other and to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intent of the parties as reflected by the terms of this Agreement.
- L. True and correct copies of the below-listed Exhibits are attached hereto and made a part of this Agreement:
 - 1. EXHIBIT A - Legal Description for the SUBJECT PROPERTY.
 - 2. EXHIBIT B - Project Description.
 - 3. EXHIBIT C - Project Proforma.
 - 4. EXHIBIT D - Project Budget
- M. This Agreement shall be deemed dated and become effective on the date that the last signatory signs this Agreement.
- N. No recourse under or upon any obligation, covenant, or agreement of this Agreement or for any claim based thereon or otherwise in respect thereof shall be had against the VILLAGE in any amount in excess of any specific sum, agreed by the VILLAGE to be paid to the LPFC hereunder, subject to the terms and conditions herein, and no liability, right or claim at law or in equity shall attach to or shall be incurred by the VILLAGE'S officers, officials, trustees, agents and/or employees and any such rights or claims of the LPFC against the VILLAGE'S officers, officials, trustees, agents and/or employees are hereby expressly waived and released as a condition of and as consideration for the execution of the Agreement by the VILLAGE.

- O. The LPFC hereby covenants and agrees to promptly pay or cause to be paid as the same become due, any and all taxes and governmental charges of any kind that may at any time be lawfully assessed with respect to the Project.
- P. Neither the VILLAGE nor the LPFC nor any successor in interest or assign shall be considered in breach or default of their respective obligations under this Agreement, and time for performance of obligations hereunder shall be extended, in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or other casualty; condemnation; strike; lockout; civil disorder; war; restrictive government regulations; issuance of any permits and/or legal authorization (including engineering approvals) by any governmental entity necessary for the LPFC to proceed with construction; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the parties' reasonable control, included by not limited to, any court order of judgment resulting from any litigation affecting the Project or this Agreement.
- Q. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement.

VII. REPRESENTATIONS AND WARRANTIES OF THE LPFC

- A. The LPFC hereby represents and warrants that it is an Illinois not-for-profit corporation in good standing with proper authority to execute this Agreement pursuant to its Articles of Incorporation, By-Laws and the laws of the State of its organization.
- B. The LPFC hereby represents and warrants that the Project shall be constructed and fully completed in a good and workmanlike manner and in accordance with all applicable laws, rules and regulations of the VILLAGE, the State of Illinois and the United States of America, and all agencies thereof.
- C. The LPFC hereby represents and warrants that it shall comply with all terms, provisions and conditions and shall not knowingly permit a default under any document or agreement relating to the Project to which it is a party, including, but not limited to this Agreement and all agreements and documentation in connection with the Bond Financing.
- D. The LPFC hereby represents and warrants that it will use commercially reasonable efforts to alert VILLAGE residents to the employment opportunities available as a result of the Project.

VIII. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE

- A. The VILLAGE hereby represents and warrants to the LPFC that subject to its compliance with the Illinois Statutes and its own Ordinances, it has the power and authority to execute, deliver and perform the terms and obligations of this

Agreement and the Exhibits hereto.

- B Subject to the terms and conditions of Section V of this Agreement, the VILLAGE has full authority to refund to the LPFC the TAX REVENUE generated by the Hotel and Convention Hall as distributed to the VILLAGE by the Illinois Department of Revenue or as collected directly by the VILLAGE.
- C. The VILLAGE agrees that during the term of this Agreement, the VILLAGE shall not further encumber or pledge any portion of the TAX REVENUE or take any action inconsistent with the terms of this Agreement.

IX. DEFAULTS

Subject to Force Majeure, failure on the part of either party to comply with any term, representation, warranty, obligation, provision or condition of this Agreement, within thirty (30) days from the date of written notice thereof from the other party, shall constitute an event of default. Notwithstanding the foregoing, in the event that the non-compliance cannot be corrected within said thirty (30) day period because of matters not within the reasonable control of the defaulting party, the defaulting party shall be given a reasonable period of time to correct said non-compliance provided, however, that the defaulting party diligently pursues the correction of said non-compliance within said reasonable period of time and that said reasonable period of time does not exceed an additional ninety (90) days beyond said initial thirty (30) day period; with non-compliance after said one hundred twentieth (120th) day being deemed to constitute an event of default. Upon an occurrence of an event of default, and after notice and expiration of all cure periods, the non-defaulting party may institute such proceedings as may be necessary or desirable, in its opinion, to cure and remedy such default, including, but not limited to, proceedings to compel specific performance by the defaulting party, but specifically excluding the right to terminate this Agreement. Further, upon an occurrence of any event of default the defaulting party shall be responsible to the non-defaulting party for reimbursement of all costs incurred by the non-defaulting party seeking to enforce the performance and observance of any obligation, understanding, covenant or agreement as aforesaid, including, but not limited to, costs and fees incurred by use of its employees, officers, consultants and attorneys, provided the non-defaulting party is the prevailing party in any such enforcement proceeding.

X. AGREEMENT TERM

The term of this Agreement shall commence as of the date of its execution by the last signatory hereto and shall expire upon the cessation of LPFC'S right to receive a refund of TAX REVENUE under Section V above.

IN WITNESS WHEREOF, the President and Board of Trustees of the VILLAGE have approved this Agreement by passage of a Resolution and the Village President and Deputy Village Clerk of the VILLAGE, pursuant to the authority granted by the passage of said Resolution, have signed this Agreement, and the Board of Directors of the LPFC have approved this Agreement by passage of a Resolution and the President and Secretary of the LPFC, pursuant to authority granted by the passage of said Resolution have signed this Agreement.

VILLAGE OF LOMBARD
An Illinois Municipal Corporation
corporation

BY: _____
William J. Mueller
Village President

Date: _____

ATTEST:

BY: _____
Barbara A. Johnson
Deputy Village Clerk

Date: _____

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

BY: _____
Jeff Mills
President

Date: _____

ATTEST:

BY: _____
Toni Sherman
Secretary

Date: _____

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named William J. Mueller and Barbara A. Johnson, personally known to me to be the Village President and Deputy Village Clerk of the Village of Lombard, and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such Village President and Deputy Village Clerk, respectively, appeared before me this day in person and severally acknowledged that as such Village President and Deputy Village Clerk they signed and delivered the said instrument, pursuant to authority given by said Village, as their free and voluntary act, and as the free and voluntary act and deed of said Village, for the uses and purposes therein set forth, and that said Deputy Village Clerk as custodian of the corporate seal of said Village caused said seal to be affixed to said instrument as said Deputy Village Clerk's own free and voluntary act and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2004.

Notary Public

My Commission Expires: _____

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 the above-named Jeff Mills and Toni Sherman, personally known to me to be the President and Secretary of the Lombard Public Facilities Corporation and also known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and severally acknowledged that as such President and Secretary they signed and delivered the said instrument, pursuant to authority given by 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, and that said Secretary as custodian of the corporate seal of said Corporation caused said seal to be affixed to said instrument as said Secretary's own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2004.

Notary Public

My Commission Expires: _____

EXHIBIT A
(Legal Description for Subject Property)

LOT 2 IN YORKTOWN PERIPHERAL/TARGET SUBDIVISION, BEING A PART OF THE NORTHEAST ¼ OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 17, 1995 AS DOCUMENT R95-162762, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT B
(Project Description)

EXHIBIT C
(Project Proforma)

EXHIBIT D
(Project Budget)