

## LETTER OF CREDIT AGREEMENT

This LETTER OF CREDIT AGREEMENT (“Agreement”) is made and entered into as of October \_\_\_\_, 2004 by and among Lombard Public Facilities Corporation, an Illinois not-for-profit corporation (“LPFC”), the Village of Lombard, a non-home-rule municipal corporation located in DuPage County, Illinois (the “Village”) and Harp Lombard, LLC., an Illinois limited liability company (“Harp”).

### RECITALS:

A. 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.

B. The LPFC was formed to be in the business, directly or indirectly, in whole or in part, of owning, developing, managing and operating the Hotel and Convention Hall and is now, or soon will be the fee simple owner of certain property on which the Hotel and Convention Hall will be developed (the “Property”), which Property is generally located at the northeast corner of the Yorktown Shopping Center and is legally described in Exhibit A attached hereto and made a part hereof.

C. Harp is developing the Hotel and Convention Hall pursuant to, among other things, the terms of that certain Agreement dated December 1, 2003 between the Village and Harp and that certain Master Development Agreement dated as of August 1, 2004 by and between Harp and the LPFC (the “Master Development Agreement”).

D. The Village has determined that the optimal financial structure for the financing of the 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 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.

E. The LPFC has indicated its desire and intent to issue tax exempt revenue bonds (the “Bond Financing”) and develop a Hotel and Convention Hall on the Property (collectively the “Project”), all as described in Exhibit B attached hereto and made part hereof (the “Project Description”).

F. Harp will provide certain asset management services to LPFC pursuant to the terms of that certain Asset Management Agreement between Harp and LPFC dated of even date herewith (the “Asset Management Agreement”).

G. In connection with the Project, Harp, the Village and LPFC, with the assistance of consultants and advisors, have prepared a proforma showing the sources and uses of funds related to the Bond Financing and a projected cash flow summary of the Project through the year

2035 (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 bonds and subordinate lien tax exempt bonds in an amount sufficient to provide funds for constructing the Hotel and Convention Hall, establish various reserves, pay the costs of issuance and otherwise complete the Project, all as generally described in the Project Description and as more particularly set forth in the trust indenture and other documents relating to the issuance of the bonds (collectively, the “Bond Documents”).

I. The Village has determined that it is in the best interest of the Village to pursue the development of the Project, and thus, it is willing to undertake certain incentives to assist LPFC with the development of the Project.

J. Among other things, the Village has entered into that certain Tax Rebate Agreement with the LPFC dated August 1, 2004 (the “Tax Rebate Agreement”) pursuant to which the Village has agreed to rebate all hotel/motel taxes, all retailers’ occupation taxes and all places of eating taxes generated by the Hotel and Convention Hall or the operation thereof.

K. The parties hereto are willing to enter into this Letter of Credit Agreement upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, the Village, LPFC and Harp covenant and agree as follows:

1. Letter of Credit. In consideration of the Village’s entering into the Tax Rebate Agreement and performing its obligations thereunder and the LPFC entering into the Asset Management Agreement and the Master Development Agreement and performing its obligations thereunder, Harp agrees to furnish to the Village on or before the date that is the earlier of (a) the Date of Final Completion or (b) the date two (2) years from the date hereof, a renewable letter of credit in the amount of \$2,000,000 (the “Letter of Credit”), to be used as a source of funds that can be drawn upon by the Village in the event that the Village is required to use its general revenues not related to the Project in order to fulfill its obligations as set forth in Section V.D. of the Tax Rebate Agreement, in which case, any and all proceeds of the Letter of Credit shall be used by the Village solely to fulfill such obligations.

2. Village’s Ability to Draw on the Letter of Credit. Provided that the Village is not in default under the Tax Rebate Agreement, and further that the Asset Management Agreement remains in full force and effect, and further provided that the LPFC (i) collects all taxes, refunds and rebates that it is entitled to collect pursuant to, and as contemplated by, the Tax Rebate Agreement, (ii) makes all such taxes, refunds and rebates available for distribution in accordance with the terms of the Bond Documents and (iii) is not in default under the Master Development Agreement or the Asset Management Agreement, then the Village shall be entitled to draw upon the Letter of Credit, if and only if the Village would have to go Out of Pocket (as defined below) in order to fulfill its obligations under Section V.D. of the Tax Rebate Agreement. The Village

shall be deemed to be “Out of Pocket” at such time as (w) the total amount projected to be paid by the Village in tax rebate revenues (as set forth in the Project Proforma) in any given year exceeds the amount of available tax rebate revenues, (x) all debt service reserves available for payment of the Series “B” bond debt service from the Operating Reserve Fund, the Cash Trap Fund, the Sinking Fund, and the Series B Debt Service Reserve Fund (as set forth in the Project Proforma) have been drawn on such that none remain, (y) there is not sufficient net cash flow available from the Project to pay the Series “B” Bond debt service, and (z) the Village, but for the Letter of Credit, would be required to use its general revenues to fulfill its obligations as set forth in Section V.D. of the Tax Rebate Agreement in said year.

3. Amount of Draw. The Village shall only be entitled to draw on the Letter of Credit such amount as necessary for the Village to satisfy its obligations under Section V.D. without having to go Out of Pocket.

4. Replenishment of Letter of Credit. To the extent that the Village draws on the Letter of Credit in any one year, Harp shall use asset management fees paid to it, as the “Asset Manager” under the Asset Management Agreement during such year (“Replenishment Amount”) to replenish the Letter of Credit or provide additional or substitute letters of credit (the “New LC’s”) so that the amount available under the Letter of Credit and New LC’s is equal to \$2,000,000. To the extent that the Replenishment Amount does not cause the Letter of Credit and New LC’s to equal \$2,000,000, then Harp shall, in future years, upon receipt of additional asset management fees, continue to replenish the Letter of Credit or provide New LC’s until the Letter of Credit and New LC’s provide \$2,000,000 in available funds.

5. Amounts Drawn Treated as Loan to LPFC. All amounts drawn from the Letter of Credit or New LC’s shall be treated as a loan from Harp to LPFC since such amounts are being used to fulfill LPFC’s obligations under the Bond Financing. Such amounts shall be repaid, to the extent available, on an annual basis by LPFC to Harp, without interest (until such time that the loans have been repaid in full) from the Project’s cash flow prior to subsequent “Distributions to Government” as shown in the Project Proforma. The parties shall execute such documents as necessary or appropriate to evidence any such loans.

6. LPFC Obligations. The LPFC agrees and covenants to comply with and fulfill all of its obligations under documents relating to the Bond Financing, specifically including its obligations under the Tax Rebate Agreement. LPFC specifically covenants and agrees to use all applicable debt service revenues established pursuant to the Bond Financing and all Tax Revenues (as defined in the Tax Rebate Agreement) to secure or pay amounts due with respect to the Series “B” Bonds as referenced in the Project Proforma.

7. Term. Harp shall cause the Letter of Credit to remain outstanding until such time as any of the following shall have occurred: (i) the defeasance or redemption of the 2004 Series “B” Bonds, (ii) a default by the Village under the Tax Rebate Agreement or this Agreement subject to any applicable cure periods, (iii) the failure of the LPFC to collect taxes, refunds and rebates which it is entitled to collect pursuant to, and as contemplated by, the Tax Rebate Agreement and to make such taxes, refunds and rebates available for distribution in accordance with the terms of the Bond Documents, or (iv) the expiration or termination of the Asset

Management Agreement. Upon the occurrence of any of (i) through (iv) above, the Letter of Credit or New LC, as the case may be, shall be returned to Harp.

8. General Provisions.

- (a) Entire Agreement. This Agreement, and the other agreements and documents referred to herein, and the attachments hereto, if any, constitute 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. This Agreement shall specifically replace and supercede that certain prior Letter of Credit Agreement dated August 1, 2004 by and between Harp, LPFC and the Village.
- (b) Waiver. No failure by LPFC, Harp or the Village to insist upon strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any subsequent breach of such covenant, agreement, term or condition of this Agreement, and no breach thereof shall be waived, altered or modified, except by written instrument signed by the party or parties waiving same. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach thereof.
- (c) Amendments. This Agreement may be amended, supplemented or interpreted at any time only by written instrument duly executed by each of the parties hereto.
- (d) Notices. Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively, "Notices"), required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and personally delivered, or sent by facsimile (with a confirming copy sent by regular mail), or by a nationally recognized overnight courier service, or by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be so notified as follows:

If to LPFC: Lombard Public Facilities Corporation  
c/o Leonard Flood, Registered Agent  
255 East Wilson Avenue  
Lombard, IL 60148

Copy to: Klein Thorpe & Jenkins, Ltd.  
20 N. Wacker Drive, Suite 1660  
Chicago, IL 60606  
Attention: Gerard Dempsey/Donald E. Renner, Esq.  
Fax No.: 312-984-6444

If to Harp: Harp Lombard L.L.C.  
377 E. Butterfield Road, 6th Floor  
Lombard, IL 60148  
Attention: Thomas McGuigan or Peter Dumon  
Fax No.: 630-321-9239

Copy to: Lord, Bissell & Brook LLP  
115 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Donald J. Manikas, Esq.  
Fax No.: 312-896-6548

If to Lombard: William Lichter  
Village Manager  
255 East Wilson Avenue  
Lombard, IL 60148

Copy to: Klein Thorpe & Jenkins, Ltd.  
20 N. Wacker Drive, Suite 1660  
Chicago, IL 60606  
Attention: Thomas Bayer, Esq.  
Fax No.: 312-984-6444

Notices shall be deemed received (i) on the date of delivery if personally delivered, (ii) one (1) business day after sending if sent by facsimile or overnight courier service, or (iii) three (3) business days after sending if sent by registered mail.

- (e) Assignment. Except as provided herein, neither this Agreement nor any of the rights and obligations hereunder may be assigned by any party without the prior written consent of the other party hereto. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the parties hereto.
- (f) Severability. The provisions of this Agreement are severable. If any provision in this Agreement is found invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality and enforceability of the remaining provisions shall not in anyway be affected or impaired thereby.
- (g) Construction. This Agreement is a commercial agreement between sophisticated parties which has been entered into by the parties in reliance upon the economic and legal bargains contained herein. This Agreement shall be interpreted and construed in a fair and impartial manner without regard to which party prepared

the instruments, the relative bargaining powers of the parties or the domicile of any party.

- (h) Headings. The various headings used in this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of this Agreement or any provision hereof.
- (i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one agreement.
- (j) Time is of the Essence. Time is of the essence of this Agreement and each and every provision hereof.
- (k) No Partnership. Nothing in this Agreement is intended to constitute any party as a partner or joint venturer of any other party for any purpose.
- (l) Exhibits. All Exhibits identified in this Agreement are incorporated herein by reference.
- (m) Instruments of Further Assurance. Each of the parties hereto agrees, upon the request of any of the other parties hereto, from time to time to execute and deliver to such other party or parties all such instruments and documents of further assurance or otherwise as shall be reasonable under the circumstances, and to do any and all such acts and things as may reasonably be required to carry out the obligations of such requested party hereunder.
- (n) No Third Party Beneficiaries. Nothing in this Agreement is intended nor shall it be construed to give any person, firm, corporation or other entity, other than the parties hereto and their respective successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provisions hereof.
- (o) Governing Law. This Agreement shall be governed, construed and enforced in accordance with the internal substantive laws of the State of Illinois, excluding any choice of law rules which may direct the application of the laws of another jurisdiction, and any court proceeding in relation hereto shall be brought in DuPage County, Illinois.
- (p) Attorneys' Fees. If any party takes legal action to enforce its rights or pursue its remedies hereunder, then the non-prevailing party or parties in such litigation shall be required to pay or reimburse the prevailing party for all fees, costs and expenses incurred by the prevailing party in connection therewith, including without limitation, reasonable attorneys' fees and court costs.

- (q) Any capitalized term that is not expressly defined herein shall have the meaning as ascribed to such term in the Master Glossary of Terms for Lombard Public Facilities Conference Center and Hotel Revenue Bond Transaction dated as of October \_\_\_\_, 2004 (the “Master Glossary”).

**[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY  
SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, effective as of the date first set forth above.

**LOMBARD PUBLIC FACILITIES CORPORATION**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**HARP LOMBARD, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**VILLAGE OF LOMBARD**

By: \_\_\_\_\_  
Its: \_\_\_\_\_