

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of _____, 2017, by and between LK Waterloo, LLC, a Wyoming limited liability company (the "Company"), and the City of Waterloo, Iowa (the "City").

RECITALS

- A. City considers economic development within the City a benefit to the community and is willing for the overall good and welfare of the community to provide financial incentives so as to encourage that goal.
- B. Company is willing and able to finance and undertake acquisition and rehabilitation of an existing convention center property located in the Downtown Waterloo Urban Renewal and Redevelopment Plan Area.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. **Sale of Property.** Subject to the terms and conditions of this Agreement, City will convey to Company for the sum of \$1.00 the real property described on Exhibit "A" attached hereto ("Property"), located at 200 W. 4th Street and consisting of assessor parcel no. 8913-26-231-002. Company will undertake the Project (defined below) upon the Property. Included with the Property at no additional cost will be all personal property and fixtures (collectively, the "FFE") located therein or thereon that belong to City, and the skywalk that connects the Convention Center (defined below) with the hotel located at 205 W. 4th Street, including structures supporting the skywalk. Company agrees to take the Property, all FFE, and the skywalk and supporting structures in their "as is, where is" condition, subject to all faults. Company further agrees that City has not made and does not hereby make any representation or warranty concerning the Property, FFE, or the skywalk and supporting structures as to their condition, operability, merchantability, fitness for any particular use, or otherwise, and Company hereby disclaims any and all such warranties.

2. **Improvements by Company.** Company shall upgrade and renovate the lobby, meeting rooms and other facilities (all of the foregoing renovations and improvements are collectively referred to as the "Improvements") at a minimum estimated investment cost of \$6,000,000. A list of intended Improvements is attached hereto as Exhibit "B". The Improvements shall be constructed in accordance with all applicable City, state, and federal building codes and shall comply with all applicable City ordinances and other applicable law. The Property, the Improvements, and all development-related work to make the Property usable for Company's purposes as contemplated by this Agreement are collectively referred to as the "Project". Company shall commence Improvements within six (6) months after the date of this Agreement or after taking ownership of the Property, whichever occurs last, and shall substantially complete the Project within eighteen (18) months thereafter. Commencement of Improvements for purposes of this Agreement shall mean the delivery of plans to the City for the referenced renovations. The City agrees to provide expedited review of all matters submitted for approval and to coordinate responses so as to complete any reviews and/or administrative approval within the most expeditious time frame available using commercially reasonable efforts.

3. **City Commitments in Aid of Project.**

A. Rebates. City shall provide property tax rebates as further set forth in Section 10 below.

B. Economic development grants. City will make an economic development grant to Company in the amount of \$700,000, payable within sixty (60) days after plans for exterior improvements have been approved by the downtown design/build management team (DBMT) and Waterloo Building Official. City will make a further economic development grant to Company in the amount of \$350,000, payable within sixty (60) days after completion of final permit inspections relating to interior Improvements.

C. Parking. The parties agree to enter into a separate agreement for use of up to 200 non-reserved spaces in the connected parking ramps by patrons of the Waterloo Convention Center (the "Convention Center") and the associated hotel (the "Hotel"). Because both facilities will be under management by Company, no particular number of spaces is allocated herein between the facilities. Company may choose to validate parking for authorized patrons, at rates to be determined by City policy.

D. Dedicated Support. City agrees that for a period of ten (10) years after it deeds the Property to Company, City will not promote, provide incentives for, or otherwise assist in the development or utilization of any convention center or events center in Black Hawk County, Iowa that contains more than 10,000 square feet of rentable space, nor will City assist or encourage any other person or entity to do so.

4. **Conveyance; Title.** Conveyance shall be by special warranty deed (the "Deed"), free and clear of all encumbrances arising by or through City except: (a) easements, conditions and restrictions of record; (b) current and future real estate

real property taxes and assessments subject to the agreements made herein; (c) general utility and right-of-way easements serving the Property; and (d) restrictions imposed by the City zoning ordinances and other applicable law. City shall have no duty to convey title to Company until Company delivers to City reasonable and satisfactory proof of financial ability to undertake and carry on the Project (defined below), which may take the form of a lending commitment letter. The parties will schedule a closing to occur as promptly as possible following completion of the hearings, procedures and approvals that City is required to complete pursuant to Section 17. No less than 30 days before closing, City shall provide to Company any abstracts of title for the Property in its possession, updated to a date within 60 days before closing. Company may, at its own expense, obtain whatever additional form of title evidence it desires. City shall make every reasonable effort to promptly perfect title. If closing is delayed due to City's inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days' written notice to the other party. The abstract shall become the property of Company when the Purchase Price is paid in full.

5. Timeliness of Construction; Possibility of Reverter. The parties agree that Company's commitment to undertake the Project and to construct the Improvements in a timely manner constitutes a material inducement for the City to convey the Property, or to cause the Property to be conveyed, to Company and that without said commitment City would not do so. Company must tender plans for a building permit within six (6) months after the date this Agreement is approved by City (the "Project Start Date") and substantially complete renovations within eighteen (18) months of the date building permits are issued (the "Project Completion Date").

If Company has not, in good faith, begun work on the Improvements by the Project Start Date, then title to the Property shall revert to the City, except as provided in this Agreement; provided, however, that if work has not begun by the Project Start Date but the development of the Project is still imminent, the City Council may, but shall not be required to, consent to an extension of time for work on the Improvements, and if an extension is granted but the work has not begun within such extended period, then the title to the Property shall revert to the City after the end of said extended period. If Company determines at any time that the Project is not economically feasible, then after giving thirty (30) days' advance written notice to City, Company may convey the Property to City by special warranty deed, and thereupon neither party shall have any further obligation under this Agreement except as expressly provided. If work has commenced by the Project Start Date or any extended period and is stopped and/or delayed as a result of an act of God, war, civil disturbance, court order, labor dispute, fire, or other cause *beyond* the reasonable control of Company, the requirement that the Improvement work is to be completed by the Project Completion Date shall be tolled for a period of time equal to the period of such stoppage or delay, and thereafter if work is not completed within the allowed period of extension the title to the Property shall revert to the City after the end of said period.

6. Dedicated Property Use; Possibility of Reverter. The parties acknowledge that the Property is used principally as a convention center and events

facility (the "Dedicated Uses"). Company agrees that the Property will continue to be used principally for such purposes until City gives its written consent to an alternate principal use. If Company permits the Property to be used principally for any purpose other than the Dedicated Uses, then title to the Property shall revert to the City. The parties agree that the Deed shall include a statement of the Dedicated Uses and the possibility of reverter.

7. Reverter of Title; City as Attorney-in-Fact; Indemnity. In the event of any reverter of title, Company agrees that it shall, at its own expense, promptly execute all documents, including but not limited to a special warranty deed, or take such other actions as the City may reasonably request to effectuate said reverter and to deliver to City title to the Property that is free and clear of any lien, claim, charge, security interest, mortgage or encumbrance (collectively, "Liens") arising by or through Company. Company shall pay in full, so as to discharge or satisfy, all Liens on or against the Property. If Company fails to deliver such documents, including but not limited to a special warranty deed, to City within thirty (30) days of written demand by City.

Company further agrees that it shall indemnify City and hold it harmless with respect to any demand, claim, cause of action, damage, or injury made, suffered, or incurred as a result of or in connection with the Project, Company's failure to carry on or complete same, or any Lien or Liens on or against the Property of any type or nature whatsoever that attaches to the Property by virtue of Company's ownership of same. If City files suit to enforce the terms of this Agreement and prevails in such suit, then Company shall be liable for all legal expenses, including but not limited to reasonable attorneys' fees, incurred by City. Company's duties of indemnity pursuant to this Section shall survive the expiration, termination or cancellation of this Agreement for any reason.

8. No Encumbrances; Limited Exception. Until completion of the Improvements, Company agrees that it shall not create, incur, or suffer to exist any Liens on the Property, other than such mortgage or mortgages as may be reasonably necessary to finance Company's completion of the Improvements and of which Company notifies City in advance of Company's execution of any such mortgage. Company may not mortgage the Property or any part thereof for any purpose except in connection with financing of the Improvements or any replacement financing for same.

9. Minimum Assessment Agreement. Company acknowledges and agrees that it will pay when due all taxes and assessments, general or special, and all other lawful charges whatsoever levied upon or assessed or placed against the Property. Company further agrees that, prior to the date set forth in Section 2 of Exhibit "C", it will not seek or cause a reduction in the taxable valuation for the Property, which shall be fixed for assessment purposes, below the aggregate amount of \$5,000,000 ("Minimum Actual Value"), through:

- (i) willful destruction of the Property, Improvements, or any part of either;

- (ii) a request to the assessor of Black Hawk County; or
- (iii) any proceedings, whether administrative, legal, or equitable, with any administrative body or court within the City, Black Hawk County, the State of Iowa, or the federal government.

Company agrees to sign the agreement attached as Exhibit "C" at closing.

10. Property Tax Rebates. Provided that Company has completed the Improvements as set forth herein and has executed the Minimum Assessment Agreement as set forth in Section 9, the City agrees to rebate property taxes (with the exceptions noted below) as follows:

50% rebate for each of Years One through Ten, inclusive,

for any taxable value over the January 1, 2018 value of \$2,500,000, subject to adjustment as provided in this Section based on evaluation by the performance review board provided for in Section 14. If the board's scoring system at any time yields an aggregate score of less than six (6), Company's eligibility for a full rebate shall be placed on probationary status and the rebate payable in the succeeding year will be adjusted down to a 25% rebate if the aggregate score in the succeeding year is not at least six (6). Each year will be separately evaluated using the foregoing methodology.

Rebates are payable in respect of a given year only to the extent that Company has actually paid general property taxes due and owing for such year. To receive rebates for a given year, Company must, within twelve (12) months after the tax payment due date, submit a completed rebate request to City on the form provided by or otherwise satisfactory to City, otherwise Company will forfeit its right to a rebate for that year in the City's discretion.

The taxable value of the Property as a result of the Improvements must be increased by a minimum of 10% and must increase the annual tax by a minimum of \$500. This rebate program is not applicable to any special assessment levy, debt service levy, or any other levy that is exempted from treatment as tax increment financing under the provisions of applicable law. The first year in which a rebate may be given ("Year One") shall be the first full year for which the assessment is based upon the completed value of the Improvements and not a prior year for which the assessment is based solely upon the value of the land or upon the value of the land and a partial value of the Improvements, due to partial completion of the Improvements or a partial tax year.

11. Job Creation. Company agrees that it will hire no fewer than 100 employees to provide an adequate staffing level for operation of the Hotel and Convention Center to a standard of quality established by an oversight board more fully described in Section 14 hereof. The employees hired hereunder to meet the requirements include the employees hired pursuant to Section 6 of the Development

Agreement of even date herewith as to the Hotel adjacent to the Property. Company shall be free to assign or allocate its personnel between the facilities as it deems best for optimal operation of the two facilities, consistent with the quality standards referenced above. During each year that a tax rebate is payable hereunder, Company shall, within thirty (30) days after the close of City's fiscal year, provide a written report to City showing the number of full-time (30 or more hours per week) and part-time employees that Company has on its payroll as of the last calendar day of each month during the reporting period.

12. **Insurance.** Until City has, following completion of the Improvements, released its rights for reverter of title as provided in Section 5, Company agrees to keep in force one or more policies of insurance covering the Property and FFE against loss or damage, in an amount not less than the Minimum Actual Value. Such policy or policies shall name City as an additional insured and provide for at least a 30-day notice of cancellation to City. Company shall provide proof of insurance to City at each policy renewal.

13. **Improvement Plan and Escrow.** The parties acknowledge that the Convention Center is a 40-year-old facility that is likely to require significant periodic maintenance, renovation, and upgrade. Accordingly, Company agrees to maintain a segregated escrow account into which Company will deposit, during each calendar year or within thirty (30) days after the close of each calendar year, an amount equal to three percent (3%) of the Convention Center's operating revenues for such calendar year, but not less than \$75,000. Company's first contribution to the account shall be after the second year that it operates the Convention Center. For purposes of this section, "operating revenues" means the total amount received from third parties by Company or any other person or entity operating the Convention Center on behalf of Company, directly or indirectly arising out of or connected with the Convention Center, including but not limited to transactions for cash, credit and credit card sales, less applicable sales taxes. Company may utilize funds from the escrow account to defray the cost of capital upgrades and improvements to the Convention Center. By having such a fund, the parties express no expectation that it will be the sole source of funds for such upgrades or improvement costs. Company shall develop and periodically update (not less than annually) a facility improvement plan to address foreseeable needs for Convention Center maintenance or upgrades, desired improvements, and contingencies. The plan shall be provided to the performance review board described in Section 14 after each update, and Company shall consider input from said board.

14. **Review Board.** The parties agree to formation of a performance review board for the Convention Center (the "Board"). The Board shall consist of at least five members, including one City staff member appointed by the mayor, the Executive Director or other designee of the Waterloo Convention & Visitors Bureau, the Executive Director or other designee of Main Street Waterloo, one representative of Company, and one representative from a company in the community that is designated by the mayor because of the company's high utilization of the Convention Center. Each organization that contributes a Board member may replace its appointed member at any time in its discretion. The Board will meet at least semi-annually to evaluate the

use, operation and condition of the Convention Center and to assess the extent to which the Convention Center has been utilized to positively impact the local economy, to enhance the business climate of Waterloo, and to enhance the quality of life for Waterloo residents and area visitors by providing a high-quality venue and user experience for meetings, conventions, banquets, and other community gatherings and events. Evaluation criteria shall include user attendance and the service satisfaction metrics described in Exhibit "D" attached hereto. At least annually, the Board will rate the evaluation criteria as set forth in Exhibit "D" to encourage continuous improvement and to provide an incentive to Company for payment of full rebates as provided in Section 10.

15. Restrictions on Transfer; Purchase Rights. Company may not sell, convey, give, or otherwise transfer title to the Property to any third party without the prior written consent of City, except to a successor by merger or consolidation, which consent shall not be unreasonably withheld if such third party has demonstrated experience of no less than ten (10) years in profitably operating one or more facilities of similar size and agrees to assume all obligations of Company hereunder. If Company is in receipt of a bona-fide purchase offer from a party that is unrelated to Company by common ownership or control, and if the terms of the offer are acceptable to Company, then Company shall promptly deliver a full and true copy of same to City. For a period of sixty (60) days after receipt of the offer, City shall have a right of first refusal to purchase the Property for the same price as stated in the offer, which City may exercise by delivery of written notice to Company. At closing, City shall be given credit against the purchase price as set forth below:

- (i) If the City exercises its purchase right on or before December 31, 2023, the credit will equal the sum of (a) the assessed value of the Property at the time of conveyance to Company pursuant to Section 4 above, namely, \$2,500,000, and (b) the economic development grant paid to Company pursuant to Section 3.B above.
- (ii) If City exercises its purchase right from January 1, 2024 until and including December 31, 2028, the credit will be the assessed value of the Property at the time of conveyance to Company pursuant to Section 4 above.
- (iii) If City exercises its purchase right after December 31, 2028, the credit will be \$250,000.

In any event where City exercises a right of purchase, the closing shall occur within an additional forty-five (45) days after delivery of written notice of exercise, and Company shall provide to City an updated abstract of title for the Property and convey title at closing by general warranty deed.

16. Regulatory Approvals. Company acknowledges and agrees that the Project will require Company to obtain various approvals from the City of Waterloo

and/or other applicable governmental authorities, including but not limited to zoning, site plan, subdivision, building permit and other approvals required or necessary for Company's proposed Improvements to the Property. To optimize coordination of Project plans and development with such approvals, Company agrees to participate regularly and in good faith in the project management/design-build management (PMT/DBMT) process applicable to the Property for design issues, landscape design, parking, construction documents, and other matters.

17. Obligations Contingent. Each and every obligation of City under this Agreement is expressly made subject to and contingent upon City's completion of all procedures, hearings and approvals deemed necessary by City or its legal counsel for amendment of the urban renewal plan applicable to the Property and/or project area, all of which must be completed within 120 days from the date this Agreement is approved by the City council. Likewise, Company's obligations under this Agreement are subject to and contingent upon City's completion of all such procedures, hearings and approvals.

18. Representations and Warranties of City. City hereby represents and warrants as follows:

A. City is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

B. Each person who executes and delivers this Agreement and all documents to be delivered hereunder is and shall be authorized to do so on behalf of City.

19. Representations and Warranties of Company. Company hereby represents and warrants as follows:

A. Company is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

B. Company is duly organized, validly existing, and in good standing under the laws of the state of its organization and is duly qualified and in good standing under the laws of the State of Iowa.

C. Company has full right, title, and authority to execute and perform this Agreement and to consummate all of the transactions contemplated herein, and each person who executes and delivers this Agreement and all documents to be delivered to City hereunder is and shall be authorized to do so on behalf of Company.

D. Company may operate the Convention Center through a separate company affiliated with Company by common ownership and/or control, but

Company will be responsible to ensure that Company or its operating affiliate perform all of the terms of this Agreement that are Company's duty to perform.

20. Materiality of Company's Promises, Covenants, Representations, and Warranties. Each and every promise, covenant, representation, and warranty set forth in this Agreement on the part of Company to be performed is a material term of this Agreement, and each and every such promise, covenant, representation, and warranty constitutes a material inducement for City to enter this Agreement. Company acknowledges that without such promises, covenants, representations, and warranties, City would not have entered this Agreement and would not have offered the substantial Project incentives described herein. Upon breach of any promise or covenant, or in the event of the incorrectness or falsity of any representation or warranty, City shall provide written notice of such breach to Company, and if Company fails to cure such breach within sixty (60) days thereafter, City may, at its sole option and in addition to any other right or remedy available to it, terminate this Agreement and declare it null and void.

21. Notices. Any notice under this Agreement shall be in writing and shall be delivered in person, by overnight air courier service, by United States registered or certified mail, postage prepaid, or by facsimile (with an additional copy delivered by one of the foregoing means), and addressed:

(a) if to City, at 715 Mulberry Street, Waterloo, Iowa 50703, facsimile number 319-291-4571, Attention: Mayor, with copies to the City Attorney and the Community Planning and Development Director.

(b) if to Company, at 1402 S. 13th Street, Omaha, NE 68108, Attn: Edwin W. Leslie. With a copy to: Matthew R. Berens, Berens Blonstein PLC, 7033 East Greenway Parkway, Suite 210, Scottsdale, AZ 85254.

Delivery of notice shall be deemed to occur (i) on the date of delivery when delivered in person, (ii) one (1) business day following deposit for overnight delivery to an overnight air courier service which guarantees next day delivery, or (iii) three (3) business days following the date of deposit if mailed by United States registered or certified mail, postage prepaid.

22. No Joint Venture. Nothing in this Agreement shall, or shall be deemed or construed to, create or constitute any joint venture, partnership, agency, employment, or any other relationship between the City and Company nor to create any liability for one party with respect to the liabilities or obligations of the other party or any other person.

23. Amendment, Modification, and Waiver. No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or by the duly authorized representative of same, and specifying with particularity the extent and nature of the amendment, modification, or waiver. Any waiver by any party of any default by another party shall not affect or impair any rights arising from any subsequent default.

24. **Severability.** Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any portion of this Agreement shall be deemed invalid or unenforceable, whether in whole or in part, the offending provision or part thereof shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. If, for any reason, a court finds that any portion of this Agreement is invalid or unenforceable as written, but that by limiting such provision or portion thereof it would become valid and enforceable, then such provision or portion thereof shall be deemed to be written, and shall be construed and enforced, as so limited.

25. **Captions.** All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted only as a matter of convenience and/or reference, and they shall in no way be construed as limiting, extending, or describing either the scope or intent of this Agreement or of any provisions hereof.

26. **Binding Effect.** This Agreement shall be binding and shall inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

28. **Entire Agreement.** This Agreement, together with the Minimum Assessment Agreement attached hereto as Exhibit "D", constitutes the entire agreement of the parties and supersedes all prior or contemporaneous negotiations, discussions, understandings, or agreements, whether oral or written, with respect to the subject matter hereof.

29. **Time of Essence.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Development Agreement by their duly authorized representatives as of the date first set forth above.

CITY OF WATERLOO, IOWA

LK WATERLOO, LLC

By: _____
Quentin M. Hart, Mayor

By: _____
Edwin W. Leslie,
Managing Member of Leslie
Hospitality Consulting, LLC, its
Manager

Attest: _____
Kelley Felchle, City Clerk

PERSONAL GUARANTY. The undersigned, being either an officer, shareholder, manager, or member of Company, hereby agree for themselves and their heirs, personal representatives, and assigns, to unconditionally guarantee to City, its successors and assigns, the full and prompt performance by Company, its successors and assigns, of all promises and covenants on the part of Company to be performed pursuant to the foregoing Agreement, including but not limited to the duties of indemnity set forth therein.

Edwin W. Leslie

EXHIBIT "A"

Legal Description of Property

Block 7, Original Plat on the West Side of the Cedar River, City of Waterloo, Iowa, and Lots 1 through 6 of Elwell's Subdivision, city of Waterloo, Iowa, including all alleys but excepting street right of way.

EXHIBIT "B"

Description of Improvements

See attached.

EXHIBIT "C"

MINIMUM ASSESSMENT AGREEMENT

This Minimum Assessment Agreement (the "Agreement") is entered into as of _____, 2017, by and among the CITY OF WATERLOO, IOWA ("City"), LK Waterloo, LLC ("Company"), and the COUNTY ASSESSOR of the City of Waterloo, Iowa ("Assessor").

WITNESSETH:

WHEREAS, on or before the date hereof the City and Company have entered into a development agreement (the "Development Agreement") regarding certain real property, described in Exhibit "A" thereto, located in the City; and

WHEREAS, it is contemplated that pursuant to the Development Agreement, the Company will undertake the development of an area ("Project") within the City and within the Downtown Waterloo Urban Renewal and Redevelopment Plan Area; and

WHEREAS, pursuant to Iowa Code § 403.6, as amended, the City and the Company desire to establish a minimum actual value for the land and the building(s) pursuant to this Agreement and applicable only to the Project, which shall be effective upon substantial completion of the Project and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of the land and buildings as to the Project only; and

WHEREAS, the City and the Assessor have reviewed the preliminary plans and specifications for the improvements (the "Improvements") which the parties contemplate will be erected as a part of the Project.

NOW, THEREFORE, the parties hereto, in consideration of the promises, covenants, and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the Improvements by the Developer, the minimum actual taxable value which shall be fixed for assessment purposes for the land and Improvements to be constructed thereon by the Company as a part of the Project shall not be less than \$5,000,000 ("Minimum Actual Value") until termination of this Agreement. The parties agree for purposes of this Agreement that construction of the Improvements will be substantially completed on or before December 31, 2019.

2. The Minimum Actual Value herein established shall be of no further force and effect, and this Minimum Assessment Agreement shall terminate, on December 31, 2034. Nothing herein shall be deemed to waive the Company's rights under Iowa Code § 403.6, as amended, to contest that portion of any actual value assignment made by

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged before me on _____, 2017 by Edwin W. Leslie as
Managing Member of Leslie Hospitality Consulting, LLC, Manager of LK Waterloo, LLC.

Notary Public

CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed for the development, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of the property subject to the development, upon completion of improvements to be made on it and in accordance with the Minimum Assessment Agreement, certifies that the actual value assigned to such land and building upon completion of the development shall not be less than Five Million Dollars (\$5,000,000).

Assessor for Black Hawk County, Iowa

Date _____

STATE OF IOWA)
) ss.
COUNTY OF BLACK HAWK)

Subscribed and sworn to before me on _____, 2017, by T.J. Koenigsfeld, Assessor for Black Hawk County, Iowa.

Notary Public

EXHIBIT "D"

Criteria to Evaluate Service Satisfaction

The annual performance review will be conducted by weighing Company's performance each fiscal year (July 1 to next June 30) against quantitative and qualitative goals mutually established by the Performance Review Board in the categories of (1) attendance and (2) service satisfaction. The definition of each category is as follows:

(1) "Attendance" is the total number of persons attending events at the Facility in a fiscal year, determined by recording the attendance at each usage and adding up the total attendance for all usages for the year. For attendance figures to be counted in this calculation, an event must be a contracted event, for which a contract has been completed. Casual attendance resulting from such day-to-day activities such as facility tours shall not be counted as attendance. Attendance will be compared to targets previously set by the Board and scored accordingly on the scale described below.

VAGUE AND NEEDS DEFINITION

(2) "Service Satisfaction" is the level of satisfaction set annually by the Performance Review Board, rating Company's performance in meeting the overall goals of the Board. The Board will consider each of the following sub-categories, giving consideration to the criteria set forth for each sub-category and other relevant and related considerations: WHO DETERMINES WHAT IS TIMELY, ETC ??

Cleanliness – Are the building and grounds consistently in a high state of cleanliness? Is cleaning done beyond a surface level? Company shall have a manual that outlines cleaning procedures, schedules and standards applicable to the facility. Company will provide committee with a copy of the manual as well as documentation of cleaning.

Event Execution – Do set-up and tear-down happen in a timely fashion? Is the audio-visual equipment prepared appropriately for the event? Are the details and expectations that are set out in the banquet event order matched? The committee will review all customer surveys that Company receives.

Customer Service – Have Company and staff performed all duties in a professional productive manner with the aim of ensuring a successful event and experience for the client, ensured that client needs are met and operational policies and procedures followed, and been responsive to requests by customers and prospective customers to view the facility and to address inquiries satisfactorily and in a timely manner?

Food and beverage service – Is food served at the appropriate temperature? Are guests being served the correct food? Does the quantity of food match

what was ordered by the customer? Are food and beverage served in a **timely** (standard) ? fashion? Does the setup of food service adequately provide guests an opportunity to serve themselves (banquet setup)? Are there enough beverages available to guests? **Are dirty plates, glasses, silverware cleared at the appropriate time?**

Maintenance – Are all facility features, systems and mechanicals in good working order and, if appropriate, of a presentable appearance?

Reports and communications – Has Company made regular reports (monthly, unless otherwise noted) to the Board with attendance figures, property and equipment maintenance, facility cleaning and post-event customer surveys?

Sales and marketing – Has Company worked with the Convention & Visitors Bureau to ensure that the facility event calendar is kept up-to-date, and met regularly with Convention & Visitors Bureau sales team?

Compliance (Legal and Audit) – Has Company maintained all appropriate permits and insurance and ensured that staff has appropriate training? Have Company and its staff complied with all applicable local, state and federal laws?

Under this plan, each Board member would complete a score card at the end of each fiscal year for which a property tax rebate may be payable. For each evaluation category, one of the following scores would be assigned: **(PREFER A SCORE CARD SUBMITTED BY MEETING PLANNERS)**

- 0 – Fails to meet expectations
- 1 – Sometimes meets expectations
- 2 – Consistently meets expectations
- 3 – Meets and sometimes exceeds expectations
- 4 – Consistently exceeds expectations

Each sub-category under “service satisfaction” will be separately scored, and then the scores will be totaled, averaged and rounded to the nearest tenth of a point to determine a score for the service satisfaction category as a whole.

The overall score on all evaluation criteria shall be the sum of (a) the attendance category score and (b) the service satisfaction category score times two. Aggregate scores for the two major categories falling below six (6) for more than one consecutive year would lead to Company being placed on probation for the next year for tax rebate purposes. Operator will be required to provide plans for specific corrective measures. Failure to bring scores to six (6) or above by the end of the probationary period may result in downward adjustment of the tax rebate as provided in the Development Agreement. **The scoring system and expectations for scores will be reviewed annually by the Performance Review Board and modified as deemed appropriate by a majority of all members of the Board.** DISUPTE RESOLUTION AND WHAT IF BOARD

DOESN'T AGREE **[NEED SUMMARY ARBITRATION RULES FOR BINDING
RESOLUTION]**