

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

by and between

CITY OF RACINE, WISCONSIN

AND

RACINE CONVENTION CENTER HOTEL, L.L.C.

_____, 2020

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS	2
Section 1.1 Definitions.....	2
ARTICLE II. REPRESENTATIONS AND WARRANTIES	6
Section 2.1 Representations and Warranties of the City.....	6
Section 2.2 Representations and Warranties of RCCH	7
ARTICLE III. CONDITIONS PRECEDENT TO AGREEMENT	9
Section 3.1 Conditions Precedent to Agreement and Pre-Construction Funding... 9	9
Section 3.2 Conditions Precedent to Proceeding Beyond Pre-Construction Funding 9	9
ARTICLE IV. TRANSFER OF HOTEL PROPERTY TO RCCH	11
Section 4.1 Conditions Precedent to Transfer.....	11
Section 4.2 Transfer of Hotel Property	11
Section 4.3 Right of Reversion	11
Section 4.4 Option to Repurchase the Hotel Property North Lot	12
Section 4.5 Risk of Loss and Insurance – Hotel Property	12
Section 4.6 Condition of Hotel Property; Care and Maintenance	12
Section 4.7 Possession; Hotel Closing.....	13
Section 4.8 Abstract and Title.....	13
Section 4.9 Survey and Platting.....	13
Section 4.10 Environmental Matters.....	13
Section 4.11 Certification	13
Section 4.12 Restriction	14
ARTICLE V. CONSTRUCTION OF MINIMUM IMPROVEMENTS	14
Section 5.1 Construction of Minimum Improvements	14
Section 5.2 Construction Plans	14
Section 5.3 Commencement and Completion of Construction.....	15
Section 5.4 Hotel Certificate of Completion.....	15
ARTICLE VI. INSURANCE ON MINIMUM IMPROVEMENTS AND CONVENTION CENTER IMPROVEMENTS	15
Section 6.1 Insurance Requirements	15
ARTICLE VII. FURTHER COVENANTS.....	18
Section 7.1 Maintenance of Properties	18
Section 7.2 Maintenance of Records	18
Section 7.3 Compliance with Laws	18
Section 7.4 Non-Discrimination	20
Section 7.5 Available Information.....	20
Section 7.6 Term of Operation.....	20
Section 7.7 RCCH Completion Guarantee	20
Section 7.8 Performance Bond	21

Section 7.9	Third-Party Qualified Opportunity Funds	21
Section 7.10	City Covenants.....	22
ARTICLE VIII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER.....		23
Section 8.1	Status of RCCH; Transfer of Substantially All Assets; Assignment .	23
ARTICLE IX. PUBLIC ACCOMMODATION GRANT		24
Section 9.1	Public Accommodation Commitment; Disbursement to RCCH	24
Section 9.2	Covenants Relating to the Hotel Property	25
Section 9.3	Full and Accurate Disclosure.....	26
Section 9.4	Survival of Representations and Warranties.....	26
ARTICLE X. CONSTRUCTION OF CONVENTION CENTER IMPROVEMENTS		26
Section 10.1	Conditions Precedent to Construction of the Convention Center Improvements	26
Section 10.2	Construction of the Convention Center Improvements	27
Section 10.3	Completion of the Convention Center Improvements	27
Section 10.4	Authority to Design, Engineer and Construct.....	27
Section 10.5	Convention Center Construction Payments	27
ARTICLE XI. INDEMNIFICATION		29
Section 11.1	RCCH Release and Indemnification Covenants	29
ARTICLE XII. DEFAULT AND REMEDIES		29
Section 12.1	Events of Default Defined	29
Section 12.2	Remedies on Default.....	30
Section 12.3	City Default.....	31
Section 12.4	No Remedy Exclusive.....	31
Section 12.5	No Implied Waiver	31
Section 12.6	Agreement to Pay Attorneys’ Fees and Expenses	31
ARTICLE XIII. INTENTIONALLY OMITTED.....		31
ARTICLE XIV. MISCELLANEOUS		31
Section 14.1	Conflict of Interest	31
Section 14.2	Notices and Demands	32
Section 14.3	Titles of Articles and Sections	32
Section 14.4	Counterparts.....	32
Section 14.5	Governing Law	32
Section 14.6	Entire Agreement	32
Section 14.7	Successors and Assigns.....	32
Section 14.8	Termination Date	32
Section 14.9	Memorandum of Agreement.....	33
Section 14.10	No Third-Party Beneficiaries.....	33
ARTICLE XV. PARKING FEE REBATE		33
Section 15.1	Parking Fee Rebate	33

Section 15.2	Limitations	33
Section 15.3	Source of Parking Fee Rebates Limited.....	33
ARTICLE XVI. DEVELOPMENT INCENTIVE.....		33
Section 16.1	Development Incentive	33

PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

THIS PURCHASE, SALE, AND DEVELOPMENT AGREEMENT (“Agreement”), is made on or as of the ____ day of _____, 2020, by and between the CITY OF RACINE, WISCONSIN, a municipality (“City”), established pursuant to Chapter 62 of the Wisconsin Statutes and RACINE CONVENTION CENTER HOTEL, L.L.C., a Minnesota limited liability company, having offices for the transaction of business at 5541 Clinton Avenue, Minneapolis, MN 55419 (“RCCH”).

WITNESSETH:

WHEREAS, the City is the owner of the Festival Hall Property (defined in Section 1.1); and

WHEREAS, due to the ownership and type of use the Festival Hall Property has been subjected to, the City believes that the Festival Hall Property has been underutilized and has become a blighting influence on the community; and

WHEREAS, the City has been presented with a proposal to be undertaken by RCCH to assist the City in developing the Festival Hall Property by expanding Festival Hall and building a hotel on the Hotel Property South Lot; and

WHEREAS, RCCH is willing to cause certain Minimum Improvements to be constructed on the Hotel Property, and RCCH will thereafter cause the same to be operated as a major brand full-service hotel with approximately 171 keys in accordance with this Agreement; and

WHEREAS, it is required that RCCH and the City will enter into a Convention Center Lease Agreement (defined below); and

WHEREAS, the City is willing to provide certain incentives in consideration for RCCH’s obligations all pursuant to the terms and conditions of this Agreement; and

WHEREAS, the City anticipates issuing one or more municipal bonds or notes for the City to provide financial assistance to RCCH to construct the Minimum Improvements and Convention Center Improvements (see definition of City Bonds); and

WHEREAS, but for the City’s financial assistance to RCCH, RCCH would be unable to construct the Minimum Improvements and Convention Center Improvements; and

WHEREAS, the City believes that the development of the Festival Hall Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted, and, but for the provision of this assistance the development would not occur.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Definitions. In addition to other definitions set forth in this Agreement, including in the forgoing preamble and recitals, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Purchase, Sale, and Development Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended or supplemented.

City means the City of Racine, Wisconsin, or any successor to its functions.

City Bonds means the revenue or General Obligation bonds issued by the City to fund the Public Accommodation Grant, the Project Costs, the Convention Center Improvements, and other projects in an amount not to exceed Twenty-One Million Dollars (\$21,000,000).

Commence Construction means to commence construction of Convention Center Improvements and the Minimum Improvements on the Hotel Property after entry into a valid and binding construction contract (including, at a minimum, the commencement of construction of underground facilities such as utilities, footings and foundation), which shall be in accordance with the approved project schedule, but no later than three (3) months after the mutually agreed to date by the Parties to be determined during the Pre-Construction Work.

Commencement Date means the date of this Agreement, which shall also be the date the last party executes this Agreement.

Construction Co-Payment means payments under the Public Accommodation Ingress/Egress Easement agreement the City makes to RCCH for certified Project Costs described in Section 9.1 of this Agreement equal to seventy-five percent (75%) of the certified and approved Project Costs, (but said payments by the City shall not exceed the total Public Accommodation Grant amount of Five Million. Two Hundred Fifty Thousand Dollars (\$5,250,000)).

Construction Plans means the plans, specifications, drawings and related documents reflecting the construction work to be performed by RCCH on the Hotel Property and on the Festival Hall Property; the Construction Plans shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City as required by applicable City codes.

Convention Center Construction Payments means payments the City makes to RCCH for certified Project Costs as described in Section 10.5 of this Agreement equal to the certified and approved Project Costs related to the Convention Center Improvements (but said payments by the City shall not exceed the Convention Center Improvements budget amount of Fifteen

Million, Seven Hundred Fifty Thousand Dollars (\$15,750,000), less the Convention Center Space Allowance).

Convention Center Improvements means the expansion of the Festival Hall Building to create additional convention center space that will be leased by the City to RCCH pursuant to the Convention Center Lease Agreement. The Convention Center Improvements are more particularly described in Exhibit A-5 attached hereto. The costs of such improvements shall not exceed Fifteen Million, Seven Hundred Fifty Thousand Dollars (\$15,750,000), inclusive of the Convention Center Space Allowance.

Convention Center Lease Agreement means an agreement by and between RCCH and the City for the expansion, renovation, management, and operation of the Convention Center Improvements on the Festival Hall Property. Said Agreement shall include provisions which will provide for a mutually agreeable number of dates, occurrences, or circumstances when the City will be allowed to use or offer for use certain portions or spaces contained within the Convention Center, and/or services offered by the Convention Center for the holding of City-sponsored or sanctioned, non-profit events at established and discounted rates (such as, and by way of example only, long-established, once-yearly festivals and/or fund-raisers).

Convention Center Space Allowance means a portion of the Fifteen Million, Seven Hundred Fifty Thousand Dollar (\$15,750,000) Convention Center Improvements budget that will be specifically agreed upon by the parties during the course of the Pre-Construction Work and which will then be used toward the City's completion of the build-out of the interior of the Convention Center Improvements (including all necessary furniture, fixtures and equipment) after RCCH constructs such space to "vanilla box" finish.

Development Incentive has the meaning set forth in Section 16.1.

Event of Default means any of the events described in Section 12.1 of this Agreement.

Festival Hall Building means the building located on the Festival Hall Property as of the date hereof and currently known as "Festival Hall".

Festival Hall Property means that property described in Exhibit A-4.

Hotel Certificate of Completion means a certification in a form to be agreed upon by the parties.

Hotel Closing means the closing of the fee simple transfer of the Hotel Property to RCCH as further defined in Article IV which shall be in accordance with the approved project schedule, but no later than nine (9) months after the mutually agreed to date by the Parties to be determined during the Pre-Construction Work and if all conditions precedent are satisfied.

Hotel Deed means the Deed given by the City to RCCH for the Hotel Property in a form to be agreed upon by the parties.

Hotel Property means the Hotel Property South Lot and the Hotel Property North Lot.

Hotel Property North Lot means that property described on Exhibit A-1.

Hotel Property Purchase Price has the meaning set forth in Section 4.2.

Hotel Property South Lot means that property described on Exhibit A-1.

Incentive Period has the meaning set forth in Section 16.1.

LEED Costs has the meaning set forth in Section 7.3.

Lender(s) means any entity(s) or persons that hold secured debt on the Hotel Property.

Loan means any mortgages or debt and related loan documents executed by RCCH in favor of the Lenders that provide debt for the construction of the Minimum Improvements related to the hotel and permanent financing thereafter.

Material Adverse Effect means a material adverse effect upon the business or the financial position or results of operation of the applicable party hereunder.

Minimum Improvements means the construction of the hotel on the Hotel Property, as further described in Exhibit A-2 and depicted in Exhibit A-3.

Net Proceeds (Hotel) means any proceeds paid by an insurer to RCCH under a policy or policies of insurance required to be provided and maintained by RCCH, as the case may be, pursuant to Article VI of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

North Lot Development Deadline has the meaning set forth in Section 4.4.

North Lot Repurchase Option has the meaning set forth in Section 4.4.

Parking Facilities has the meaning set forth in Section 7.10.

Parking Fees means gross parking fees collected from the spaces allocated for RCCH's use in the Parking Facilities. The City shall authorize RCCH to collect overnight, all-day, and convention/event parking fees at the Parking Facilities.

Parking Fee Rebates has the meaning set forth in Section 15.1.

Performance Bond means one or more surety bonds, acceptable to the City, that guarantee the faithful performance of this Agreement for, in the aggregate, the anticipated full value of the completed Minimum Improvements and that further guarantees the prompt payment of all materials and labor, as further defined and set forth in Section 7.8 hereof.

Pre-Construction Funding has the meaning set forth in Section 10.5.b.

Pre-Construction Work means preparation work for the Convention Center Improvements and the Minimum Improvement and related project management, including the preparation of construction drawings, plans and specifications to approximately fifty percent (50%) of final design and development, due diligence, pursuit of City entitlements and approvals, debt and equity capital and hotel brand selection and application, title and survey review, environmental studies, availability of utilities, geotechnical work and similar activities prior to the date RCCH actually Commences Construction. This work will take approximately six (6) months to complete. During and throughout the pre-construction work, the parties agree to regularly meet and confer as to project design elements and features, engineering details, and ongoing progress so that the City and its team of professionals assigned to oversight shall have adequate, ongoing input into and understanding of the design, engineering, and any value engineering decisions as they are confronted and determined. There is an implicit understanding that the parties are working in partnership to achieve the most successful, economically competitive and sustainable project as is possible with the resources identified.

Project means the construction and operation of the Convention Center Improvements as well as the Minimum Improvements on the Festival Hall Property and the Hotel Property, respectively, and the creation and retention of jobs, as described in this Agreement.

Project Costs means all costs and expenses related to the design, development, construction and furnishing of the Minimum Improvements and Convention Center Improvements, including without limitation, soft costs such as fees and costs of architectural, engineering, consulting and other professionals, fees, permit fees and costs, financing fees, closing costs, start up, franchising fees, and developer fees.

Public Accommodation Grant means the grant made by the City to RCCH, as set forth in Article IX hereof. The Public Accommodation Grant shall be a maximum of Five Million, Two Hundred Fifty Thousand Dollars (\$5,250,000).

Public Accommodation Ingress/Egress Easement means an easement through the Hotel Property South Lot for public accesses to the rooftop observation deck executed by the City and RCCH in a form to be agreed upon by the parties.

QOF Investment has the meaning set forth in Section 7.9

QOF Investment Agreement has the meaning set forth in Section 7.9.

Qualified Hotel Employees has the meaning set forth in Section 7.3.

Racine Works Ordinance means the Racine Works Program set forth in Section 46-41 of the Racine Code of Ordinances.

RCCH means Racine Convention Center Hotel, L.L.C., and its permitted successors and assigns.

Required Eligible Worker Hours has the meaning set forth in Section 7.3.

Required Hours Shortfall has the meaning set forth in Section 7.3.

ROFO Offer has the meaning set forth in Section 7.9.

Solicited QOF Investment has the meaning set forth in Section 7.9.

State means the State of Wisconsin.

Tax Increment has the meaning set forth in the Tax Increment Law.

Tax Increment District has the meaning set forth in the Tax Increment Law.

Tax Increment Law means Section 66.1105, et seq. of the Wisconsin Statutes, or successor statutes thereto.

Termination Date means the date of termination of this Agreement, as established in Section 14.8 of this Agreement.

Third-Party Qualified Opportunity Fund means any “qualified opportunity fund” (as defined in 25 U.S.C. § 1400Z-2(d)(1)) in which neither RCCH nor any of its affiliates or their respective members have a stake or own any equity interest.

Unavoidable Delays means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City).

Wisconsin Statutes means the Wisconsin Statutes, 2019, as amended.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

b. Subject to Section 3.1(b), this Agreement has been duly and validly authorized, executed and delivered by the City and, assuming due authorization, execution and delivery by RCCH, is in full force and effect and is a valid and legally binding instrument of the City enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors’ rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting the City in any court or before any arbitrator or before or by any governmental body which in any manner raises any questions affecting the validity of the Agreement or the City's ability to perform its obligations under this Agreement.

e. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City only, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

f. The Hotel Property and Festival Hall Property are currently zoned to allow the construction and operation of the Minimum Improvements and Convention Center Improvements and is not precluded from the ability to obtain liquor licenses for the hotel, restaurants and bars located therein.

g. The City Council appoints the City Administrator as the primary contact person for the City on this Project and RCCH is entitled to rely upon such City Administrator for authorization, approvals and direction.

h. Prior to Hotel Closing, the Festival Hall Property and Hotel Property will be within a Tax Increment District, and the City is not aware of any circumstances that would render the provisions of Article XVI unenforceable or lead to the applicable Tax Increment District closing prior to expiration of the Incentive Period.

Section 2.2 Representations and Warranties of RCCH. RCCH makes the following representations and warranties:

a. Racine Convention Center Hotel L.L.C. is a Minnesota limited liability company duly organized and validly existing under the laws of the State of Minnesota, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under this Agreement.

b. This Agreement has been duly and validly authorized, executed and delivered by RCCH and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of RCCH enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

c. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the governing documents of RCCH or of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which RCCH is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

d. There are no actions, suits or proceedings pending or threatened against or affecting RCCH in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of RCCH or which in any manner raises any questions affecting the validity of the Agreement or RCCH's ability to perform its obligations under this Agreement.

e. Subject to the prior satisfaction of the conditions precedent set forth herein, RCCH will utilize best commercially reasonable efforts to cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement and all local, State, and federal laws and regulations.

f. Subject to the prior satisfaction of the conditions precedent set forth herein, RCCH will use commercially reasonable efforts to obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and will use commercially reasonable efforts to meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

g. RCCH has not received any notice from any local, State or federal official that the activities of RCCH with respect to the Hotel Property or Festival Hall Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). RCCH is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Hotel Property, and RCCH is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

h. Immediately following the Commencement Date, RCCH will pursue firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with an equity commitment (including the Public Accommodation Grant) of at least fifteen percent (15%) inclusive of any new market tax credit equity, or other financial structure as approved by the City in its reasonable discretion, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in this Agreement.

i. RCCH shall be responsible for all traffic, parking, trash removal or public safety violations of applicable law which may arise in connection with the construction and operation of the Minimum Improvements and will cooperate fully with the City in resolution of any problems related to the same, whether rising to the level of a violation of law or not.

j. RCCH expects that, barring Unavoidable Delays and delays caused by the City (including delays in achieving any condition precedent), the Hotel Property will be transferred and the Minimum Improvements will be completed by mutually agreed to dates to be determined by the parties during the Pre-Construction Work, Project construction to commence no later than November 1, 2020

k. RCCH would not undertake its obligations under this Agreement without the extension by the City of the Public Accommodation Grant and the Parking Fees paid to RCCH pursuant to this Agreement.

l. Subject to the accuracy of Section 2.1(f), RCCH will not seek to change the local assessment, or the zoning classification, of the Hotel Property South Lot or the Minimum Improvements during the term of this Agreement.

m. RCCH will in good faith negotiate and enter into the Convention Center Lease Agreement with the City.

ARTICLE III. CONDITIONS PRECEDENT TO AGREEMENT

Section 3.1 Conditions Precedent to Agreement and Pre-Construction Funding. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement including to provide the Pre-Construction Funding, is subject to each of the following conditions precedent:

a. The representations and warranties made by RCCH in Section 2.2 shall be true and correct in all material respects as of each disbursement of the Pre-Construction Funding and with the same force and effect as if made at such date;

b. The completion and satisfaction of certain separate City Council actions and all required legal proceedings to approve the Pre-Construction Funding;

c. RCCH is in material compliance with all of the terms of this Agreement;

d. There has not been a substantial change for the worse in the financial resources and ability of RCCH which change(s) make it likely, in the reasonable judgment of the City, that RCCH will be unable to fulfill its covenants and obligations under this Agreement;

e. RCCH shall be using commercially reasonable efforts to enter into the Convention Center Lease Agreement with the City.

f. City shall have created a new Tax Increment Financial District (TID #24) to include boundaries to include entire Project.

Section 3.2 Conditions Precedent to Proceeding Beyond Pre-Construction Funding. Other than the Pre-Construction Funding and the approvals and obligations of the City associated with same, it is recognized and agreed that the ability of the City to perform the obligations described in this Agreement is subject to, among other things, completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of the City Bonds. Specifically, all obligations of the City to issue the City Bonds, whose proceeds shall be used in part to fund the Public Accommodation Grant and the Project Costs, are subject to each of the following conditions precedent:

a. The representations and warranties made by RCCH in Section 2.2 shall be true and correct in all material respects as of the issue date of the City Bonds and with the same force and effect as if made at such date.

b. The completion and satisfaction of certain separate City Council actions and all required legal proceedings relating to the issuance of the City Bonds (in the judgment of bond counsel for the City);

c. The City shall have completed the sale of all or a portion of the City Bonds on such terms and conditions as it shall deem necessary or desirable in its sole discretion;

d. The City shall have approved all applicable zoning, subdivision, or platting of the Hotel Property necessary for development and construction of the Minimum Improvements;

e. RCCH is in material compliance with all of the terms of this Agreement;

f. There has not been a substantial change for the worse in the financial resources and ability of RCCH, or a substantial decrease in the financing commitments secured by RCCH for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that RCCH will be unable to fulfill its covenants and obligations under this Agreement;

g. RCCH and the City shall have executed the Public Accommodation Ingress/Egress Easement;

h. RCCH shall have furnished the City with evidence, in a form satisfactory to the City and RCCH, that RCCH has contractual commitments for construction of the Minimum Improvements;

i. RCCH shall have furnished the City with evidence, in a form satisfactory to the City and RCCH, that, together with all funds to be paid or contributed by the City, RCCH has commitments (such as loan commitments, letters of intent or signed term sheets) from its Lenders and investors, for funds that are sufficient to complete the construction of the Minimum Improvements; and

j. RCCH and the City have agreed in writing upon the amount of the Convention Center Space Allowance.

If for any reason any or all of these conditions are not met, RCCH shall be allowed to terminate this agreement without incurring any liability and the City shall not be entitled to any refunds for Pre-Construction distributions already expended. However, City shall own and RCCH shall tender to City all drawings, engineering design work product etc. related to or produced on behalf of the Project

ARTICLE IV. TRANSFER OF HOTEL PROPERTY TO RCCH

Section 4.1 Conditions Precedent to Transfer. The City's obligation to transfer title and possession of the Hotel Property to RCCH at the Hotel Closing, and RCCH's obligation to pay the Hotel Property Purchase Price, shall be subject to satisfaction of the following conditions precedent:

- a. RCCH is in material compliance with all of the terms of this Agreement.
- b. Execution of a Public Accommodation Ingress/Egress Easement by RCCH and the City.
- c. The satisfaction of the conditions set forth in Sections 3.1 and 3.2.

Section 4.2 Transfer of Hotel Property. For One Dollar (\$1.00) or similar and other consideration including the obligations being assumed by RCCH hereunder (the "Hotel Property Purchase Price"), the City agrees to sell, and RCCH agrees to purchase, the Hotel Property, together with all improvements thereon, subject to terms of this Agreement, easements and appurtenant servient estates and any zoning and other ordinances. Such transfer shall occur under the terms and conditions of this Agreement and following all process required by applicable law. RCCH shall pay the Hotel Property Purchase Price to the City by check or wire transfer at the Hotel Closing (subject to prorations, reductions and credits as provided below).

Section 4.3 Right of Reversion. Notwithstanding anything herein to the contrary, and as additional security for RCCH's obligation to Commence Construction, the Hotel Deed shall contain a right of reversion in all of the Hotel Property ("City's Reversionary Right" or "Reversionary Right"), which may be exercised by the City, in its reasonable discretion, if and only if the following condition(s) occur:

- a. By a certain reasonable amount of time after the Hotel Closing, to be mutually agreed to by the parties during the Pre-Construction Work, if RCCH does not Commence Construction and/or does not obtain financing for the construction of the Minimum Improvements;
- b. RCCH does not obtain the Performance Bond as and when required under Section 7.8; or
- c. An Event of Default has occurred by RCCH.

If any of the above conditions occur, then the City shall automatically have the City's Reversionary Right to reacquire title to and control of the Hotel Property. RCCH shall allow no

mortgages or liens to encumber the Hotel Property while the City holds its Reversionary Right. To exercise the City's Reversionary Right described herein, the City must provide written notice to RCCH (or its permitted successors, assigns or transferees) within sixty (60) days of the occurrence of any of the conditions identified in Sections 4.3(a), (b) and (c) above, and record such notice with the County Register of Deeds, in which case the title to the Hotel Property shall automatically revert to the City as of the date of the recording of the notice. Following such notice and recording, and upon request from the City made within thirty (30) days thereof, RCCH shall take all reasonable additional steps to ensure the City acquires title to the Hotel Property in at least as good of condition as was conveyed to RCCH hereunder, including without limitation, the execution of appropriate deeds and other documents. For purposes of clarification, the City shall cease to have a Reversionary Right when the conditions identified in Sections 4.3(a), (b) and (c) are no longer capable of occurring. When the City no longer has a Reversionary Right, the City agrees to execute and/or consent to the recording of any documents reasonably requested by RCCH or its Lender(s) to evidence any whole or partial termination of the City's Reversionary Right. This Section shall survive the Hotel Closing.

Section 4.4 Option to Repurchase the Hotel Property North Lot. If RCCH has not caused the North Lot Development to commence on or before the fifth anniversary of the date of the Minimum Improvements are completed (the "North Lot Development Deadline"), then the City shall have the option to repurchase all of RCCH's right, title and interest in and to the Hotel Property North Lot for a purchase price of \$1.00 (the "North Lot Repurchase Option"). The North Lot Repurchase Option shall be exercisable by written notice from the City to RCCH following the North Lot Development Deadline and until such time as RCCH has caused development of the North Lot Development to commence; provided, that, by delivery of written notice and \$50,000.00 to the City prior to the North Lot Development Deadline, RCCH shall have a one-time option to extend the North Lot Development Deadline for a period of two (2) additional years. If the North Lot Repurchase Option is properly exercised by the City, then, within sixty (60) days of RCCH receiving the City's written notice, (a) RCCH shall convey title to the Hotel Property North Lot in at least as good of condition as originally received by RCCH pursuant to this Article IV and through delivery of a quit claim deed to the City, (b) the City shall pay RCCH the amount set forth in this Section 4.4, and (c) the parties shall take such other steps as are reasonably necessary to carry-out the intent of this Section 4.4. "North Lot Development" means the development of the following on the Hotel Property North Lot: a quality hotel facility, reasonably complementary to the hotel contemplated by the Minimum Improvements and designed to (i) have at least ninety (90) hotel rooms, (ii) have at least four (4) levels, and (iii) be affiliated and marketed with a major-brand-chain designation.

Section 4.5 Risk of Loss and Insurance – Hotel Property. The City shall bear the risk of loss or damage to the Hotel Property prior to the Hotel Closing. The City agrees to maintain existing insurance, if any, and RCCH may purchase additional insurance. In the event of substantial damage or destruction prior to the Hotel Closing, the City shall have the option of using insurance proceeds to rebuild the Hotel Property such that this Agreement shall continue and RCCH shall complete the Hotel Closing regardless of the extent of damages. RCCH shall bear the risk of loss or damage to the Hotel Property after the Hotel Closing.

Section 4.6 Condition of Hotel Property; Care and Maintenance. Without limiting Section 7.1.a., as of the Hotel Closing, RCCH agrees to take the Hotel Property “As Is.” Except as specifically set forth in this Agreement, (a) the City makes no warranties or representations as to the condition of the Hotel Property, and (b) RCCH hereby waives all claims against the City as to the condition of the Hotel Property.

Section 4.7 Possession; Hotel Closing. Upon completion of the Pre-Construction Work and satisfaction of the conditions precedent in Section 4.1, and subject to Unavoidable Delays, the Hotel Closing shall take place in accordance with the approved project schedule, but no later than nine (9) months after the mutually agreed to date by the Parties to be determined during the Pre-Construction Work. This purchase shall be considered “Closed” upon the delivery to RCCH of a duly executed Hotel Deed. All parties and individual signatories hereto further agree to make, execute and deliver such further and additional documents as may be reasonably requested by the other party for the purpose of accomplishing the transfer herein contemplated.

Section 4.8 Abstract and Title. The City shall provide a commitment of title insurance for the Festival Hall Property as well as the Hotel Property, continued through a date no more than forty-five (45) days prior to the Hotel Closing, and deliver it to RCCH for examination, which shall become the property of RCCH upon the Hotel Closing. It shall show marketable title in the City in conformity with this Agreement, Wisconsin law, and to the reasonable satisfaction of RCCH. The City shall make reasonable efforts to promptly perfect title. Upon the closing of the Loan, RCCH may, at its sole cost and expense, obtain title insurance on the Hotel Property for itself and/or its Lenders and the City shall provide such deeds and other documents as the title company may require in order for RCCH to obtain such title insurance.

Section 4.9 Survey and Platting. City shall be responsible for any survey or platting work necessary to resolve a title defect or convey the Hotel Property to RCCH. The City authorizes RCCH and/or its agents and contractors reasonable access to the Festival Hall Property for survey and platting purposes prior to the Hotel Closing.

Section 4.10 Environmental Matters. At the Hotel Closing, the City will provide RCCH with a Property Condition Report stating, to the best of the City’s knowledge, without inquiry or investigation, there are no known (1) wells; (2) solid waste disposal sites; (3) hazardous waste; (4) underground storage tanks; or (5) private sewage disposal systems located on the Hotel Property. Except as provided in the preceding sentence, the City makes no warranties or representations as to the environmental condition of the Hotel Property and RCCH agrees to indemnify, release, defend and hold harmless the City for all environmental claims, damages or costs relating to the Hotel Property that did not exist as of the Hotel Closing and which arise after the date of the Hotel Closing. This Section shall survive the Hotel Closing.

Section 4.11 Certification. RCCH and City each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person” or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly

on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

Section 4.12 Restriction. RCCH acknowledges and agrees that until the Termination Date, the Hotel Property South Lot and Minimum Improvements shall be used solely and exclusively for a hotel and convention center including ancillary uses such as restaurant, bar, observation deck, meeting space, spa and similar uses, as described in Exhibit A-2 and depicted in Exhibit A-3.

ARTICLE V. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1 Construction of Minimum Improvements. Subject to satisfaction of the conditions precedent set forth herein, RCCH agrees that it will cause the Minimum Improvements to be constructed on the Hotel Property in substantial conformance with the Construction Plans submitted to and approved by the City. RCCH agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans. RCCH shall prepare the hotel budget and subject to the other provisions hereof, shall have total and sole approval rights over the inclusion of line items and the amounts thereof. Notwithstanding anything herein to the contrary, the City shall have approval rights over all disbursements of the Public Accommodation Grant, which approval rights shall not be unreasonably withheld, conditioned or delayed.

Section 5.2 Construction Plans. Subject to satisfaction of the conditions precedent set forth herein, RCCH shall cause the Construction Plans to be provided for the Minimum Improvements, which shall be subject to approval by the City as provided in this Section 5.2, such approval not to be unreasonably withheld, conditioned or delayed. The Construction Plans shall be in conformity with all applicable federal, State and local laws and regulations. The City shall approve such Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations, and City permit requirements; (iii) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (iv) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such approval of the Construction Plans pursuant to this Section 5.2 shall constitute approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Hotel Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve RCCH of any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State and local laws, ordinances and regulations, nor shall approval of the Construction Plans by the City be deemed to constitute a waiver of any Event of Default.

Approval of the Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.

Section 5.3 Commencement and Completion of Construction. Following the City's approval of the Construction Plans under Section 5.2, and subject to Unavoidable Delays, RCCH shall cause construction of the Minimum Improvements to be undertaken and completed: (i) in accordance with the approved project schedule; or (ii) by such other date as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. All work with respect to the Minimum Improvements shall be in substantial conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

RCCH agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Hotel Property and the Festival Hall Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

Section 5.4 Hotel Certificate of Completion. Upon written request of RCCH after issuance of an occupancy permit for that portion of the Minimum Improvements on the Hotel Property, the City will furnish RCCH with a Hotel Certificate of Completion for the Minimum Improvements. Such Hotel Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement solely with respect to the obligations of RCCH to construct the Minimum Improvements on the Hotel Property and the renovation and expansion of Festival Hall.

The Hotel Certificate of Completion may be recorded in the proper office of the Register of Deeds, together with any other instruments pertaining to the Hotel Property at RCCH's sole expense. If the City shall refuse or fail to provide a Hotel Certificate of Completion in accordance with the provisions of this Section 5.4, the City shall, within twenty (20) calendar days after written request by RCCH, provide RCCH with a written statement indicating in adequate detail in what respects RCCH has failed to complete the applicable portion of the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts will be necessary, in the reasonable opinion of the City, for RCCH to take or perform in order to obtain such Hotel Certificate of Completion.

Issuance by the City of the Hotel Certificate of Completion pursuant to this Section 5.4 is solely for the purposes of this Agreement, and shall not constitute approval for any other City

purpose nor shall it subject the City to any liability for the Hotel Property or the Minimum Improvements as constructed.

ARTICLE VI. INSURANCE ON MINIMUM IMPROVEMENTS AND CONVENTION
CENTER IMPROVEMENTS

Section 6.1 Insurance Requirements.

a. RCCH will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements and Convention Center Improvements (and, from time to time at the request of the City, furnish the City with proof of payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk-Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements and Convention Center Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least One Million Dollars (\$1,000,000) for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the Project and arising out of any act, error, or omission of RCCH, its directors, officers, shareholders, contractors, and subcontractors or anyone else working under RCCH and for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to RCCH and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times thereafter prior to the Termination Date, RCCH shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than Fifty Thousand Dollars (\$50,000) or self-insurance up to not more than One Million Dollars (\$1,000,000) (subject to adjustment in the future based on increases in the consumer price index). No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance

provisions or otherwise, without the prior consent thereto in writing by the City. The term “full insurable replacement value” shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by RCCH and approved by the City.

ii. Comprehensive general liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Hotel Property, in the minimum amount for each occurrence and for each year of One Million Dollars (\$1,000,000).

iii. Such other insurance, including workers’ compensation insurance respecting all employees of RCCH, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that RCCH may be self-insured with respect to all or any part of its liability for workers’ compensation.

c. All insurance required by this Article VI to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by RCCH, which are authorized under the laws of the State to assume the risks covered thereby. RCCH will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article VI, and to the extent commercially and reasonably available from any applicable insurer of RCCH, each policy shall contain a provision that the insurer shall not cancel or modify it without giving written notice to RCCH and the City at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, RCCH shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VI, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, RCCH may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event RCCH shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. RCCH agrees to notify the City immediately in the case of damage exceeding Twenty-Five Thousand Dollars (\$25,000) (subject to adjustment in the future based on increases in the consumer price index) in amount to, or destruction of, the Minimum Improvements and Convention Center Improvements or any portion thereof resulting from fire or other casualty. Subject to approval by the applicable lender, The Net Proceeds (Hotel) of any such insurance shall be paid directly to RCCH, and RCCH will forthwith repair, reconstruct, and restore the Minimum Improvements and Convention Center Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, RCCH will apply the Net Proceeds (Hotel) of any insurance relating to such damage received by RCCH to the payment or reimbursement of the costs thereof.

e. RCCH shall complete or cause to be completed the repair, reconstruction, and restoration of the Minimum Improvements and Convention Center Improvements, whether or not the Net Proceeds (Hotel) of insurance received by RCCH for such purposes are sufficient.

ARTICLE VII. FURTHER COVENANTS

Section 7.1 Maintenance of Properties. The parties acknowledge that there may be structural deficiencies in the structure located at 441 Lake Avenue, the former Johnson Bank drive-through facility, and that RCCH is not responsible for repairing such existing structural deficiencies, if any. The parties shall cooperate to identify any such deficiencies and the City shall cause such structural deficiencies to be repaired or corrected, to the extent necessary to support the existing single level 16 space surface parking prior to Commence Construction. The City shall pay all costs associated with the repair or correction of such structural deficiencies, such costs will not be included among the Project Costs, and will not be paid for out of the Public Accommodation Grant or the Convention Center Construction Payments.

b. Subject to Section 7.1.a., during the term of this Agreement, RCCH will maintain, preserve, and keep its properties on the Hotel Property and attached convention center, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions pursuant to applicable law and in its reasonable discretion.

Section 7.2 Maintenance of Records. RCCH will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of RCCH and relating to the Minimum Improvements and/or Hotel Property in accordance with generally accepted accounting principles, consistently applied throughout the period involved, and RCCH will provide reasonable protection against loss or damage to such books of record and account. Compliance with Laws. RCCH will comply with all State, Federal and local laws, rules and regulations relating to the Hotel Property and Minimum Improvements, including but not limited to the following: The Racine Works Ordinance, to the extent the Project or a portion thereof constitutes a “qualifying contract” thereunder, which ordinance generally requires that a number of work hours equal to 20% of the total “Worker Hours” involved in a qualifying contract (the “Required Eligible Worker Hours”) be worked by “Eligible Residents” (as such terms are defined in the Racine Works Ordinance). However, while RCCH will make best efforts to fulfill the Required Eligible Worker Hours be worked as part of the Project, pursuant to Subsection (c) of the Racine Works Ordinance, the City (including the appropriate City personnel) and RCCH agree that the Required Eligible Worker Hours may be fulfilled by hours worked by Qualified Hotel Employees as follows:

i. Following completion of the Project RCCH shall determine the total Worker Hours involved in completion of the Project and the difference, if any, between the Required Eligible Worker Hours and the actual number of Worker Hours worked by Eligible Residents (the “Required Hours Shortfall”).

ii. RCCH shall ensure that the aggregate of any Required Hours Shortfall is made up by hours worked by Qualified Hotel Employees.

iii. “Qualified Hotel Employees” means operational employees of the Hotel who are Eligible Residents and who are paid base wages of not less than \$15.00/hour.

iv. For purposes of compliance with the Racine Works Ordinance, compliance shall not be achieved until all Required Eligible Worker Hours have been worked, whether as part of the Project construction, or by Qualified Hotel Employees. To this end, RCCH agrees to continue to provide electronic data to the City’s Human Resources Department regarding Qualified Hotel Employees consistent with that required for construction-related work and consistent with the requirements of the Racine Works Ordinance, until the Required Hours Shortfall is satisfied by hours worked by Qualified Hotel Employees. The City agrees that RCCH’s compliance with this Section 7.3.a. shall be deemed full compliance with the Racine Works Ordinance and the City will not take any action or make any claim to the contrary.

b. Subject to Section 2.1(f), the City zoning ordinance, building code, and downtown design standards having the force of law, including certain Energy Efficiency and Sustainability Goals as follows:

i. Subject to subsection 7.3.b.iii., in connection with the Convention Center Improvements (excluding the Festival Hall Building and improvements thereto, structures connecting the Convention Center Improvements to the Hotel or other separate structures), RCCH shall use best efforts to achieve Leadership in Energy and Environmental Design (LEED) Standards certification at the minimum “Silver” level (ideally at the “Gold” level), including by consulting with City staff to maximize sustainability of the Convention Center Improvements through incorporation of those elements identified in Exhibit C that the parties reasonably determine promote sustainability and the overall success of the Convention Center project.

ii. Subject to subsection 7.3.b.iii. and the obligation of RCCH to comply with any standards or requirements imposed by any applicable franchisor hotel brand, in connection with the Minimum Improvements, the parties shall jointly assess the LEED scoring elements identified in Exhibit C in a cooperative effort to maximize sustainability of the hotel, incorporate in the Construction Plans any such elements as are jointly agreed upon by the parties and use reasonable efforts to pursue LEED certification at the minimum “Silver” level (ideally at the “Gold” level) for the Minimum Improvements following the incorporation of such jointly agreed upon elements, contingent upon (A) the City’s efforts to identify LEED points pertinent to City operations, infrastructure or functions that support LEED Silver certification as identified in LEED v4 for BD+C: Hospitality, and (B) the City’s completion, at its cost, of such actions as are necessary to achieve between fifteen (15) and twenty (20) LEED points toward such Silver certification.

iii. The City and RCCH agree that the Project budget on which the financial terms of this Agreement were based did not include the cost of pursuit, achievement and administration of LEED Certification and/or the elements identified in Exhibit C (collectively, “LEED Costs”). Under no circumstances shall the pursuit of LEED certification require the

Convention Center Improvements to exceed, \$16,000,000 (the Convention Center Improvements budget plus \$250,000 of the Public Accommodation Grant) and any and all LEED administration and commissioning costs, fees or expenses for the Minimum Improvements shall be included solely in the Convention Center Improvements budget. Accordingly, incurring LEED Costs in connection with the Convention Center Improvements or Minimum Improvements will require changes to the design and construction of such Convention Center Improvements to offset such LEED Costs and RCCH's obligation to complete any portion of the Convention Center Improvements in connection with any rendering, drawing, plans or specifications provided to the City, including Exhibit A-5, shall be reasonably revised by RCCH to reflect such offsets. RCCH shall consult with the City regarding where and how such offsets will be incorporated in the Convention Center Improvements. The parties agree that the integrated nature of the design and construction of the Project may result in a single, unified LEED certification designation for the entire Project, which will satisfy the requirements of subsections 7.3.b.i. and 7.3.b.ii. At minimum, two (2) qualified City staff members will be included on the LEED Project Team; provided, that such staff members will be compensated by the City outside of the Project budget.

c. RCCH shall work in cooperation with the City to incorporate strategically selected and mutually agreed Smart City elements into the Project and market the building as meeting such Smart City elements, taking advantage of Racine's "Smart City" designation. The strategically selected Smart City elements within the Project will include but not be limited to: (i) HVAC controls, lighting controls, acoustical controls (including in each case both hardware and software), (ii) the hospitality reservations software system required by the applicable franchisor hotel brand, and (iii) equipping not less than 3% of the available, site-designated parking spaces with electric vehicle charging stations. Further, RCCH agrees to cooperate with the City regarding use of the Project grounds to accommodate mutually agreed upon future or technologically advanced Smart City elements and shall not unreasonably refuse a City request to incorporate such elements; provided, however, that it will not be unreasonable to refuse such a request if (A) RCCH believes that such an element as installed would impair the profitability of the Project or the ability of the Project to effectively and competitively function as planned, or (B) if the incorporation of such element would cause or be likely to cause, in RCCH's reasonable opinion, RCCH or its affiliates to violate any provision of an agreement with the applicable franchisor hotel brand, and, furthermore, that it will not be unreasonable to condition acceptance of such a request on the elements not interfering materially with the operations of RCCH's or the applicable franchisor hotel brand's systems, and the City's obligation to pay for the installation, maintenance, repair and replacement of any such elements.

Section 7.4 Non-Discrimination. In the construction and operation of the Minimum Improvements, RCCH shall not discriminate against any applicant, employee or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. RCCH shall ensure that applicants, employees, and tenants are considered and are treated without regard to their age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status. Available Information. Upon reasonable request, RCCH shall promptly provide the City with copies of information requested by City and/or the State that are related to this Agreement, the Award Agreement, the Hotel Property, and/or the Minimum Improvements so that City can determine compliance with this Agreement.

Section 7.6 Term of Operation. Subject to any circumstance that would give rise to an Unavoidable Delay and renovations, operations at the Minimum Improvements on the Hotel Property shall be maintained until the Termination Date of this Agreement. RCCH Completion Guarantee. By signing this Agreement, RCCH hereby guarantees to the City performance by RCCH of all the terms and provisions of this Agreement pertaining to RCCH's obligations with respect to the construction of the Minimum Improvements and Convention Center Improvements. Without limiting the generality of the foregoing, RCCH guarantees that: (a) construction of the Minimum Improvements and Convention Center Improvements shall commence and be completed within the time limits set forth herein barring any Unavoidable Delays or force majeure event; (b) the Minimum Improvements and Convention Center Improvements shall be constructed and completed substantially in accordance with the Construction Plans; (c) the Minimum Improvements and Convention Center Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens (except mechanic's and materialman's liens being contested by appropriate proceedings); and (d) all costs of constructing the Minimum Improvements and Convention Center Improvements shall be paid when due. Performance Bond. Prior to the time RCCH Commences Construction in accordance with the approved project schedule (which shall be no later than twelve (12) months after the mutually agreed to date by the Parties to be determined during the Pre-Construction Work), RCCH shall obtain or shall require the general contractors retained to construct the Minimum Improvements and Convention Center Improvements to obtain, one or more surety bonds that guarantee the faithful performance in completing Minimum Improvements and Convention Center Improvements under this Agreement for, in the aggregate, the anticipated full value of the completed Minimum Improvements and Convention Center Improvements and that further guarantees the prompt payment of all materials and labor. Specifically, such surety bond shall guarantee one hundred percent (100%) performance, and labor and materials payment for the Minimum Improvements and Convention Center Improvements in a form reasonably acceptable to the City, to assure completion of the Minimum Improvements and Convention Center Improvements. The surety bond(s) shall remain in effect until construction of the Minimum Improvements and Convention Center Improvements are completed. The bond(s) shall clearly specify RCCH and City as joint obligees. If RCCH fails to construct the Minimum Improvements and Convention Center Improvements by mutually agreed to date between the Parties to be determined during the Pre-Construction Work (with the exception of Unavoidable Delays), or by such other date as the parties shall mutually agree upon in writing, such failure shall constitute an Event of Default under Section 12.1 and the City may exercise all of its rights under Section 12.2, and shall immediately pursue all necessary actions against the surety for the Minimum Improvements and Convention Center Improvements and shall use its best efforts to urge the surety to complete construction of the Minimum Improvements and Convention Center Improvements. RCCH shall assist the City's efforts. If the surety for the Minimum Improvements and Convention Center Improvements elects to advance funds to the City in lieu of completing the construction, then upon receipt of such funds, the City shall complete or cause to be completed construction of the Minimum Improvements and Convention Center Improvements. If the surety for the Minimum Improvements and Convention Center Improvements fails for any reason or is insufficient to complete the Minimum Improvements and Convention Center Improvements, the City reserves the right to finance the shortfall of the costs to complete the Minimum Improvements and Convention

Center Improvements through various financing avenues, including but not limited to, special assessments.Third-Party Qualified Opportunity Funds. If: (i) RCCH desires to solicit an investment from a Third-Party Qualified Opportunity Fund in any “qualified opportunity zone property” (as defined in 25 U.S.C. § 1400Z-2(d)(2)) (a “QOF Investment”); and (ii) the Badger State Opportunity Fund, LLC is at such time a “qualified opportunity fund” (as defined in 25 U.S.C. § 1400Z-2(d)(1)) and has achieved at least 90% of its \$25,000,000 target funding, then:Before soliciting any such QOF Investment, RCCH shall notify the City of its intention to do so and the known details of the QOF Investment it desires to solicit (the “Solicited QOF Investment”).

b. The City shall have the right within ten (10) days of receipt of said notice to make a written offer to make the Solicited QOF Investment (a “ROFO Offer”).

c. A ROFO Offer shall include the economic terms and conditions and other material terms and conditions of such offer and shall be expressly irrevocable (and coupled with reasonable independent consideration if necessary for irrevocability under applicable law) for a period of ten (10) days following RCCH’s receipt thereof.

d. A ROFO Offer may be accepted or rejected by RCCH in its reasonable discretion; provided, that, the consummation of any transaction contemplated by a ROFO Offer is subject to the execution, within thirty (30) days of acceptance of the ROFO Offer, of a definitive agreement (a “QOF Investment Agreement”) containing the accepted ROFO Offer terms and conditions and such other terms and conditions as are mutually acceptable to RCCH and the Badger Opportunity Fund, LLC.

e. Failure to timely deliver a ROFO Offer, reasonable rejection of a ROFO Offer by RCCH, failure to execute a mutually acceptable QOF Investment Agreement within the period set forth above, or failure to close any required transaction under the QOF Investment Agreement shall not adversely impact RCCH’s ability to thereafter solicit and accept a QOF Investment.

f. For purposes of clarification, this Section shall not apply to any solicitation or acceptance of an investment from a qualified opportunity fund that is not a Third Party Qualified Opportunity Fund.

Section 7.10 City Covenants. The City covenants and agrees as follows:

a. The City will in good faith timely pursue the completion and satisfaction of all City Council actions and all required legal proceedings necessary for the City to fund the Pre-Construction Funding, relating to the issuance of the City Bonds, and the sale of all or a portion of the City Bonds on such terms and conditions as it shall deem necessary or desirable in its sole discretion;

b. The City shall in good faith negotiate and enter into the Convention Center Lease Agreement with RCCH which shall include an annual minimum lease payment of \$279,000 for a minimum term of 20 years. The Lease Agreement will also provide terms associated with the

sale of “naming rights” for the Convention Center, and shall provide that the City and RCCH share the net proceeds derived from the sale of naming rights on an equal (50%/50%) basis.

c. Prior to the Hotel Closing, the City will in good faith work with RCCH to comply with Section 9.2.b.ii. and to otherwise resolve all applicable zoning, subdivision, or documentation of the Hotel Property necessary for development and construction of the Minimum Improvements, and will cooperate with RCCH in all Pre-construction work, including providing information, timely reviewing approving plans, schedules and similar items and assisting with obtaining City permitting approvals;

d. As long as hotel operations are being conducted as part of the Project, the City shall maintain the parking garages and/or locations (or a substantially similar alternative replacement structures) listed below (the “Parking Facilities”), and provide the number of parking spaces for the exclusive use of RCCH within the Parking Facilities as is set forth next to the name of each Parking Facility. The City shall be responsible for all general and ongoing maintenance and repair of said Parking Facilities that are reasonably necessary to meet hotel brand standards.

Parking Facility	Exclusive Parking Spaces
Civic Center Ramp – 501 Lake Avenue	145 Spaces
300 Lake Avenue Garage – 300 Lake Avenue	120 Spaces (upon completion of 2 nd hotel)

e. The City shall install and, if possible, RCCH shall operate and maintain, as long as a related hotel or convention center are in operation; a universal and interconnected parking fee collection system that allows RCCH to sell parking services for the hotel and convention center at the Parking Facilities at rates agreed to by RCCH. RCCH shall receive eighty-five percent (85%) of all gross Parking Fees and the City shall be entitled to fifteen percent (15%) of all gross Parking Fees in connection with the Parking Facilities. If such interconnected parking fee collection system is only operable by the City, then the City shall operate and maintain such system, charge the Parking Fees agreed to by RCCH in the Parking Facilities, and remit payment of eighty-five percent (85%) of such Parking Fees to RCCH in accordance with the same terms as RCCH would otherwise be obligated to remit the Parking Fee Rebate to the City, as set forth in Article XV.

f. At all City owned parking locations and facilities, including on street parking, located within the area identified on Exhibit B (the area east of Wisconsin Avenue and lying between Gas Light Drive on the North and 7th Street on the South, including both sides of such named streets), the City agrees to charge, or cause any transferee or operator thereof to charge, the following uniform rates and/or impose the following restrictions: (i) overnight parking (including any parking that includes the hours of 2:30 a.m. to 3:30 a.m. local time but excluding monthly renters) will be charged at a minimum of seven dollars (\$7); (ii) starting at 6:00 a.m. and ending at 10:00 p.m., all-day parking for parking times up to 12 hours will be charged at a

minimum of five dollars (\$5). The City reserves the right to charge for parking on an hourly basis, but in so doing agrees that the overnight/\$7 and the all-day/\$5 minimum will be met.

ARTICLE VIII. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 8.1 Status of RCCH; Transfer of Substantially All Assets; Assignment. As security for the obligations of RCCH under this Agreement, RCCH represents and agrees that, prior to the Termination Date, RCCH will maintain existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Hotel Property South Lot, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee has acquired the Hotel Property South Lot through foreclosure; (ii) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the future obligations of RCCH under this Agreement; and (iii) the City consents thereto in writing in advance thereof, which consent shall not be unreasonably withheld, conditioned, or delayed.

Notwithstanding the forgoing, in the event that RCCH wishes to assign this Agreement, including its rights and duties hereunder, RCCH and transferee individual or entity shall request that the City and RCCH consent to an amendment or assignment of this Agreement to accommodate the assignment and to provide for the assumption of all future RCCH obligations under this Agreement. Such assignment shall not be effective unless and until the City and RCCH consent in writing to an amendment or assignment of this Agreement authorizing the assignment, which consent shall not be unreasonably withheld or delayed; provided, however, RCCH shall have the right to assign all or a portion of its development obligations under this Agreement to an affiliated entity upon prior written notice to City.

ARTICLE IX. PUBLIC ACCOMMODATION GRANT

Section 9.1 Public Accommodation Commitment; Disbursement to RCCH.

a. The Public Accommodation. Subject to the terms and conditions hereof, the City shall make the Public Accommodation Grant to RCCH in consideration for the Public Accommodation Ingress/Egress Easement for a maximum amount of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000). The funding of the Public Accommodation Grant shall be subject to satisfaction of the following conditions:

- i. The City and RCCH have executed the Public Accommodation Ingress/Egress easement;
- ii. RCCH has secured financing necessary to complete the Minimum Improvements;
- iii. Each of the conditions precedent in this Agreement have been satisfied; and
- iv. RCCH remains in material compliance with all terms and conditions of this Agreement.

b. Construction Co-Payments to RCCH related to Project Costs. If the conditions set forth in Section 9.1,a, i, ii, iii, and iv are satisfied, the City shall disburse the Public Accommodation Grant as payments to RCCH for Project Costs incurred by RCCH in constructing the Minimum Improvements, subject to the following:

i. RCCH shall certify to the City the amount of the costs incurred as Project Costs in connection with the Minimum Improvements in the form the City and RCCH Lender(s) agree upon in writing; and

ii. Such Project Costs are subject to review and approval by the Lender(s) and the City; each of which shall review and approve the certified Project Costs, if they determine, in good faith but in their sole discretion, that such Project Costs were incurred for the Project; then

iii. The City shall pay seventy-five percent (75%) of the certified and approved Project Costs, (but said payments by the City shall not exceed the total Public Accommodation Grant amount of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000)). The Lender(s) and RCCH shall make a commercially reasonable agreement on payment of the remaining twenty-five percent (25%) of certified and approved Project Costs pursuant to this Agreement up to the total Public Accommodation Grant and one-hundred percent (100%) of such Minimum Improvement Project Costs beyond the total Public Accommodation Grant.

Section 9.2 Covenants Relating to the Hotel Property.

a. Title Issues.

i. Until the Termination Date, RCCH shall not permit any liens (other than the Loan and taxes which are not yet due or delinquent and mechanic's and materialman's liens being contested by appropriate proceedings) to attach to the Hotel Property. As of the Hotel Closing, RCCH will have good title to the Hotel Property and will have the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same. There are not now, and until the Termination Date, there will not be any outstanding options or agreements to purchase or rights of first refusal affecting the Hotel Property South Lot.

ii. Until the Termination Date, RCCH shall not permit any assessments, fees, water, sewer, or other charges by governmental authorities relating to the Hotel Property to become delinquent.

b. Status of the Hotel Property.

i. If any portion of the Minimum Improvements is now or hereinafter located in an area identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency or any successor thereto as an area having special flood or seismic hazards, RCCH will obtain and maintain any applicable flood hazard and/or earthquake insurance.

ii. RCCH will obtain or cause to be obtained and, until the Termination Date, will maintain or cause to be maintained all the necessary certificates, licenses, permits, and other approvals, governmental and otherwise, then necessary for the operation of the Minimum Improvements on the Hotel Property; and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are and, until the Termination Date, will remain in full force and effect and not subject to revocation, suspension, forfeiture or modification.

iii. As of the Hotel Closing, and until the Termination Date: (a) the Hotel Property and the present and contemplated use, occupancy, operation and construction thereof are and will remain in full compliance with all covenants and restrictions and all applicable licenses, permits and other approvals and all zoning ordinances, building codes, land use and environmental laws, and other similar laws, (b) none of the Minimum Improvements lie or will lie outside of the boundaries of the Hotel Property or the applicable building restriction lines to the extent that such would have a Material Adverse Effect, (c) no improvements on adjoining properties (now or will) materially encroach upon the Hotel Property.

iv. The Hotel Property is served or will be served by all utilities required for the current or contemplated use thereof. All utility service is or will be provided by public utilities and the Hotel Property has accepted or is equipped to accept such utility service. The Hotel Property is served or will be served by public water and sewer systems. All of the foregoing utilities are located or will be located in the public right-of-way abutting the Festival Hall Property, and all such utilities are connected or will be connected so as to serve the Hotel Property either (a) without passing over property other than the Festival Hall Property or, (b) if such utilities pass over other property, they do so pursuant to valid easements. The removal and/or abandonment of any public infrastructure that runs through the construction site on the Festival Hall Property will be completed by the City without special assessment or other cost to RCCH. The City shall be responsible for ensuring the Hotel Property is directly served by properly sized public service infrastructure without special assessment or other cost to RCCH.

v. Any and all liquid and solid waste disposal, septic and sewer systems located on the Festival Hall Property will be in a good and safe condition and repair and in compliance with all legal requirements.

Section 9.3 Full and Accurate Disclosure. To the best of each party's knowledge, no statement of fact made by or on behalf of such party in this Agreement or in any other document or certificate delivered to by such party to the other party hereunder contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to either party which has not been disclosed to the other party which could have a Material Adverse Effect.

Section 9.4 Survival of Representations and Warranties. RCCH agrees that (a) all of the representations and warranties of RCCH set forth in this Agreement are made as of the date hereof (except as expressly otherwise provided) and (b) all representations, warranties and covenants made by RCCH shall survive the Hotel Closing and continue until the Termination Date as set forth in Section 14.8.

ARTICLE X. CONSTRUCTION OF CONVENTION CENTER IMPROVEMENTS

Section 10.1 Conditions Precedent to Construction of the Convention Center Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement, except for Section 10.5.b below, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of the City Bonds. Specifically; all obligations of the City to issue the City Bonds whose proceeds shall be used to construct the Convention Center Improvements are subject to each of the following conditions precedent:

- a. The completion and satisfaction of certain separate City Council actions and all required legal proceedings relating to the issuance of the City Bonds (in the judgment of bond counsel for the City);
- b. The City shall have completed the sale of all or a portion of the City Bonds on such terms and conditions as it shall deem necessary or desirable in its sole discretion;
- c. RCCH is in material compliance with all of the terms of this Agreement;

Section 10.2 Construction of the Convention Center Improvements. Contingent on RCCH being and remaining in material compliance with the terms of this Agreement and contingent upon satisfaction of the conditions precedent in this Agreement, the City intends to issue City Bonds to (among other things) fund, and then construct, the Convention Center Improvements on the Festival Hall Property. The City's obligation to issue the City Bonds to construct the Convention Center Improvements as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) including the holding of all required public hearings relating to the same.

Section 10.3 Completion of the Convention Center Improvements. Contingent upon satisfaction of the conditions precedent in this Agreement, and the City's issuance and sale of the City Bonds and funding of the Convention Center Construction Payments, and subject to Unavoidable Delays, RCCH shall cause construction of the Convention Center Improvements to be undertaken and completed by a mutually agreed to date by the parties to be determined during the Pre-Construction Work. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. Except as may be contemplated by the approved project schedule, RCCH shall cause the construction of the Convention Center Improvements to not materially interfere with or delay the construction of the Minimum Improvements.

Section 10.4 Authority to Design, Engineer and Construct. RCCH shall have the authority design, engineer and construct the Convention Center Improvements in accordance with current City standards and design guidelines, other applicable design standards, the terms of this Agreement, and in accordance with the provisions of the Wisconsin Statutes. RCCH shall engage the same architect to design the Convention Center Improvements that RCCH engages for the design of the Minimum Improvements. The City shall have the right to provide a final

written approval for the Construction Plans for the Convention Center Improvements prior to RCCH submitting the Convention Center Improvements which approval shall not be unreasonably withheld, conditioned, or delayed. Further, in no event shall such approval right cause the total cost of the Convention Center Improvements to exceed Fifteen Million Seven Hundred and Fifty Thousand Dollars (\$15,750,000).

Section 10.5 Convention Center Construction Payments.

a. Subject to the terms and conditions hereof, the City shall make the Convention Center Construction Payments to RCCH in the maximum amount set forth in Section 1.1. The funding of the Convention Center Constructions Payments, except as provided in paragraph (b) below, shall be subject to satisfaction of the following conditions:

- i. RCCH has secured financing to complete the Minimum Improvements;
- ii. Each of the conditions precedent in this Agreement have been satisfied;
- iii. RCCH remains in material compliance with all terms and conditions of this Agreement; and
- iv. The City and RCCH shall have executed a Convention Center Lease Agreement.

b. Disbursements to RCCH related to Pre-Construction Funding. Subject to and conditioned on RCCH being and remaining in material compliance with the terms of this Agreement and the satisfaction of all of the preconditions set forth exclusively in Section 3.1 above, the City shall prefund and remit funding to RCCH in an amount not to exceed One Millions, Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000) in the aggregate (“Pre-Construction Funding”) (to be considered a portion of the \$15,750,000 Project budget) as follows: Seven Hundred Fifty Thousand Dollars (\$750,000) within two (2) weeks of the Commencement Date which includes one hundred percent (100%) of RCCH’s professional services fees (not to exceed twenty percent (20%) of total Pre-Construction Funding) to be paid in connection with the Pre-Construction Work, Three Hundred Seventy-Five Thousand Dollars (\$375,000) within eight (8) weeks of the Commencement Date and Seven Hundred Fifty Thousand Dollars (\$750,000) within sixteen (16) weeks of the Commencement Date, subject to the following:

- i. RCCH shall certify to the City the amount of the costs incurred for Pre-Construction Work in the form customary for RCCH reporting with accompanying proof of payment where applicable. RCCH professional services and project management fees are not subject to this provision; and
- ii. The costs related to the Pre-Construction Funding, other than the RCCH professional services and project management fees, are subject to review, if the City determines, in good faith but in its sole discretion that the Pre-Construction Work costs were not incurred in good faith and were not commercially reasonable the parties shall enter into binding arbitration for such disputes that have been made by the City.

c. Convention Center Construction Payments to RCCH related to Project Costs. Subject to and conditioned on RCCH being and remaining in material compliance with the terms of this Agreement and the satisfaction of all of the preconditions set forth in Section 10.5, the City shall disburse the remainder (i.e., in excess of the amounts funded for Pre-Construction Funding under Section 10.5.b.) of the Convention Center Construction Payments as payments to RCCH for Project Costs incurred by RCCH in constructing the Convention Center Improvements, subject to the following:

i. RCCH shall certify to the City the amount of the costs incurred as Project Costs in connection with the Convention Center Improvements in the form the City and RCCH agree upon in writing; and

ii. Such Project Costs are subject to review and approval by the City; which may review and approve the certified Project Costs for the Convention Center Improvements, if they determine, in good faith but in their sole discretion, that such Project Costs were incurred for the Convention Center Improvements; then

iii. The City shall pay the certified and approved Project Costs for the Convention Center Improvements, (but said payments by the City shall not exceed the total amount of Fifteen Million Seven Hundred and Fifty Thousand Dollars (\$15,750,000) less the Pre-Construction distributions and the Convention Center Space Allowance).

ARTICLE XI. INDEMNIFICATION

Section 11.1 RCCH Release and Indemnification Covenants.

a. Except for the obligations of City as set forth in this Agreement or arising out of the design or construction of the Convention Center Improvements or other public improvements on any property, or the City's gross negligence or willful misconduct, RCCH releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article XI, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend, and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or Hotel Property.

b. Except for any willful misrepresentation or any material violation of this Agreement, willful or wanton misconduct or any unlawful act of the Indemnified Parties or gross negligence, RCCH agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement by RCCH (except with respect to any suit, action, demand or other proceeding brought by RCCH or an affiliate of RCCH against the City to enforce its rights under this Agreement); (ii) the acquisition of the Hotel Property and the construction, installation, ownership, and operation of the Minimum Improvements; or (iii) any hazardous substance or environmental contamination located on the

Hotel Property that did not exist on the Hotel Property as of the date of Hotel Closing, or did not arise out of any action or inaction by the City.

c. The Indemnified Parties shall not be liable for any damage or injury to the persons or property of RCCH or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements or Hotel Property due to any act of negligence of any person, other than any act of gross negligence on the part of any such Indemnified Party or its officers, agents, servants or employees.

d. All covenants, stipulations, promises, agreements, and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements, and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

ARTICLE XII. DEFAULT AND REMEDIES

Section 12.1 Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

a. Subject to Unavoidable Delay, failure by RCCH to timely Commence Construction;

b. Subject to Unavoidable Delay, failure by RCCH to cause the construction of the Minimum Improvements to be timely completed and the operations to continue pursuant to the terms and conditions of this Agreement;

c. Transfer of RCCH’s interest in the Hotel Property, Minimum Improvements, or this Agreement, or the assets of RCCH, in violation of the provisions of this Agreement;

d. Failure by RCCH to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

e. Any representation or warranty made by RCCH in this Agreement or in any written statement or certificate furnished by RCCH pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any demonstrably material respect on or as of the date of the issuance or making thereof.

The occurrence of any of the foregoing events shall constitute an “Event of Default” hereunder only after the City has given forty-five (45) days’ written notice to RCCH of the default, but only if the default has not been cured to the reasonable satisfaction of the City within said forty-five (45) days, or if the default cannot be reasonably cured within forty-five (45) days and RCCH does not provide assurances reasonably satisfactory to the City that the default will be cured as soon as reasonably possible.

Section 12.2 Remedies on Default. Whenever any Event of Default referred to in Section 12.1 of this Agreement occurs and is continuing following the cure period set forth above, the City may take any one or more of the following actions:

- a. The City may suspend its performance under this Agreement until it receives assurances from RCCH, deemed adequate by the City, that RCCH will cure the default and continue its performance under this Agreement;
- b. The City may terminate this Agreement;
- c. The City may withhold the Hotel Certificate of Completion;
- d. The City may enforce the Performance Bond in Section 7.8 of this Agreement;
- e. The City may take any action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of RCCH, as the case may be, under this Agreement;
- f. The City shall have no obligation to make payment of the Public Accommodation Grant (or any disbursements thereof) to RCCH subsequent to an Event of Default and shall be entitled to recover from RCCH, and RCCH shall repay to the City, an amount equal to the amount of the Public Accommodation Grant previously made to RCCH under Article IX hereof with interest (from and after the occurrence of the Event of Default) thereon at the same rate as the City Bonds issued in association with this Project plus two percent (2%). The City may take any action, including any legal action it deems necessary, to recover such amount from RCCH.

Section 12.3 City Default. If (a) the City fails to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; or (b) any representation or warranty made by the City in this Agreement or in any written statement or certificate furnished by the City pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any demonstrably material respect on or as of the date of the issuance or making thereof, then the City shall be in default of this Agreement if the same is not cured to the reasonable satisfaction of RCCH within forty-five (45) days' of written notice from RCCH to the City of such breach, or if such breach cannot be reasonably cured within forty-five (45) days and the City does not provide assurances reasonably satisfactory to RCCH that the default will be cured as soon as reasonably possible. Upon a default by the City, RCCH may exercise all rights and remedies available to RCCH in connection with this Agreement, at equity or under applicable law.

Section 12.4 No Remedy Exclusive. No remedy herein is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 12.5 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 12.6 Agreement to Pay Attorneys' Fees and Expenses.

a. Each party hereto shall pay for their respective legal, administrative, and other costs incurred in connection with the negotiation, drafting, and authorization of this Agreement; and

b. Whenever any uncured default occurs and either party shall employ attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of a defaulting party, such defaulting party agrees that it shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the non-defaulting party in connection therewith.

ARTICLE XIII. INTENTIONALLY OMITTED

ARTICLE XIV. MISCELLANEOUS

Section 14.1 Conflict of Interest. RCCH represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 14.2 Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of RCCH, is addressed or delivered personally to Racine Convention Center Hotel L.L.C. at 5541 Clinton Avenue, Minneapolis, MN 55419, Attn: Don Kaiser with a copy to Vantage Law Group, PLLC, 125 SE Main St., Minneapolis, MN 55414, Attn: Tyler Adams.

b. In the case of the City, is addressed to or delivered personally to the City at 10 1st St. NW, Racine, IA 50401, Attn: City Administrator;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 14.3 Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 14.5 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

Section 14.6 Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto. The terms of this Agreement shall survive the Hotel Closing.

Section 14.7 Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 14.8 Termination Date. This Agreement shall terminate and be of no further force or effect on and after the date that is twenty (20) years following the date that the hotel constructed as part of the Minimum Improvements is first opened to the public, unless terminated earlier under the provisions of this Agreement.

Section 14.9 Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the parties by virtue hereof. The City shall prepare the Memorandum Agreement, subject to RCCH approval prior to recording, and pay for all costs of recording.

Section 14.10 No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

ARTICLE XV. PARKING FEE REBATE

Section 15.1 Parking Fee Rebate. For and in consideration of the obligations being assumed by City and RCCH hereunder, the RCCH agrees, subject to City being and remaining in material compliance with the terms of this Agreement, to make quarterly payments to the City of the Parking Fee Rebate, the starting date is the first (1st) of the following month after the RCCH first starts collecting Parking Fees and continuing until the Termination Date.

Each quarterly payment shall be equal in amount to fifteen percent (15%) of the gross Parking Fees collected by RCCH during the preceding quarter, but subject to limitation and

adjustment as provided in this Article (such payments being referred to collectively as the “Parking Fee Rebates”).

Section 15.2 Limitations. The Parking Fee Rebates shall be payable from and secured solely by the Parking Fees actually collected directly by RCCH from the Parking Facilities during the time period set forth in Section 15.1.

Section 15.3 Source of Parking Fee Rebates Limited. The Parking Fee Rebates shall be payable from and secured solely and only by the amount of Parking Fees collected directly by the operation of the Minimum Improvements and RCCH operations and remitted to the City.

ARTICLE XVI. DEVELOPMENT INCENTIVE

Section 16.1 Development Incentive. The City shall pay to RCCH a tax increment RCCH-funded Development Incentive equal to ninety-five percent (95%) of all Tax Increment attributable to the Hotel Property (the “Development Incentive”) for a period of twelve (12) years (2021 – 2032) (the “Incentive Period”). For purposes of clarification, the sole source of payment for the Development Incentive will be the Tax Increment attributable to the Hotel Property during the Incentive Period. Following each year (or partial year) during the Incentive Period, the City shall pay the Development Incentive annually within thirty (30) days after receipt of tax payments for such year. The Development Incentive shall be a special and limited obligation to the City, and not a general obligation. RCCH acknowledges that as a result of this special limited nature of the City’s obligation to pay the Development Incentive, RCCH’s recovery of the Development Incentive may depend on various factors, including, but not limited to, future mill rates, changes in the assessed value of the Hotel Property, the failure of the Hotel Property to generate Tax Increments at the rate expected by RCCH, changes in the Tax Increment Law, and other factors beyond the City and/or RCCH’s control.

This Agreement replaces and supersedes any other agreement or agreements, oral or written, between RCCH and the City, including but not limited to prior Predevelopment agreements.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, RCCH has caused this Agreement to be duly executed in its name and behalf by its authorized representatives, all on or as of the day first above written.

CITY OF RACINE:

By: _____
Cory Mason, Mayor

By: _____
Tara Coolidge, City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF RACINE)

Personally came before me this ____ day of, 2019, the above-named Cory Mason, Mayor, and Tara Coolidge, City Clerk, of the City of Racine, and to me known to be such Mayor and City Clerk of said municipal corporation and acknowledged that they executed the foregoing instrument as such officers as the deed of said municipal corporation by its authority, and pursuant to the authorization by the Common Council from their meeting on the ___ day of _____, 2019.

Notary Public, State of Wisconsin
My commission expires: _____

APPROVED AS TO FORM:

Scott R. Letteney, City Attorney

Provisions have been made to pay the liability that will accrue hereunder.

David Brown, Finance Director

[Signature page to Purchase, Sale and Development Agreement – City of Racine]

SCHEDULE OF EXHIBITS

EXHIBIT A-1Legal Description of Hotel Property
EXHIBIT A-2 Description of Minimum Improvements
EXHIBIT A-3...Sample Site Plans, Floor Plans and Renderings of Minimum Improvements*
EXHIBIT A-4 Legal Description of Festival Hall Property
EXHIBIT A-5 Description of Convention Center Improvements
EXHIBIT B.....Depiction of Parking Restriction Area
EXHIBIT C.....LEED Scoring Elements

** This content for this exhibit was developed prior to the parties' agreement to change the location where the Minimum Improvements will be constructed. Accordingly, such content is included as an example of how the Minimum Improvements will appear, but does not necessarily provide, and RCCH makes no representation or warranty that it provides, a specific description or rendering of the Minimum Improvements, which will be constructed pursuant to the Construction Plans.*

EXHIBIT A-1

Legal Description of Hotel Property

Description of Hotel Property South Lot:

A legal description of the Hotel Property South Lot will be developed and agreed upon by the parties during the course of Pre-Construction Work and will roughly correspond to Hotel Property South Lot outlined and labeled as the “Sheraton Hotel Parcel” on the Site Parcelization Plan included as part of Exhibit A-3.

Description of Hotel Property North Lot:

A legal description of the Hotel Property North Lot will be developed and agreed upon by the parties during the course of Pre-Construction Work and will roughly correspond to Hotel Property North Lot outlined and labeled as the “Phase II Hotel Parcel” on the Site Parcelization Plan included as part of Exhibit A-3.

EXHIBIT A-2

Description of Minimum Improvements

The Minimum Improvements shall consist of and include a “first-class”, full-service hotel, with a major brand franchise designation (flag), constructed to contain approximately one hundred seventy (170) guest rooms; on no fewer than five (5) levels, with a roof-top bar and restaurant. For purposes of this agreement the parties agree that the definition of “first-class” shall mean a hotel of a quality that will result in the property consistently being rated as three-star or three-diamond, or higher, under the criteria established for hotels by the American Automobile Association, J.D. Power and Associates, Mobil Oil Company, or comparable hotel rating entity, and which includes operation of the hotel on a twenty-four-hour per-day, seven-day per-week basis, with housekeeping services, food and beverage services, room services, banquet and meeting services, concierge and bell services, fitness and business support facilities, and parking (valet) services.

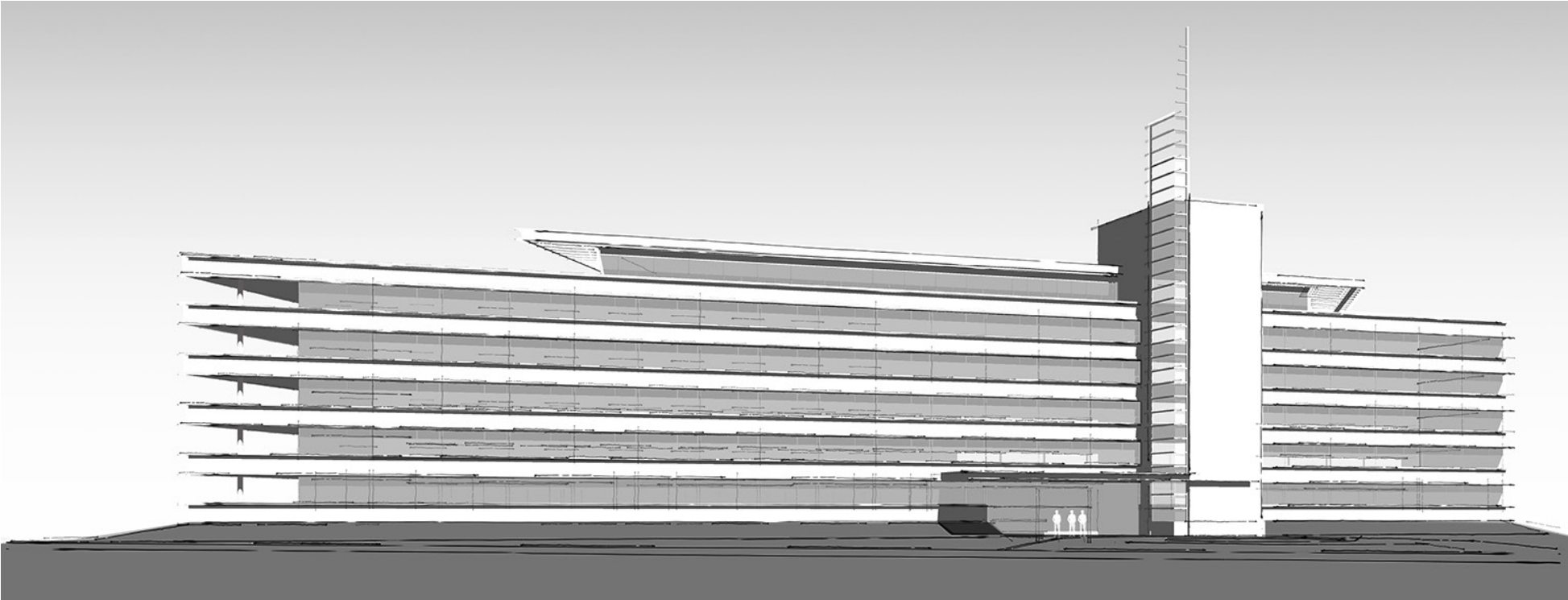
EXHIBIT A-3

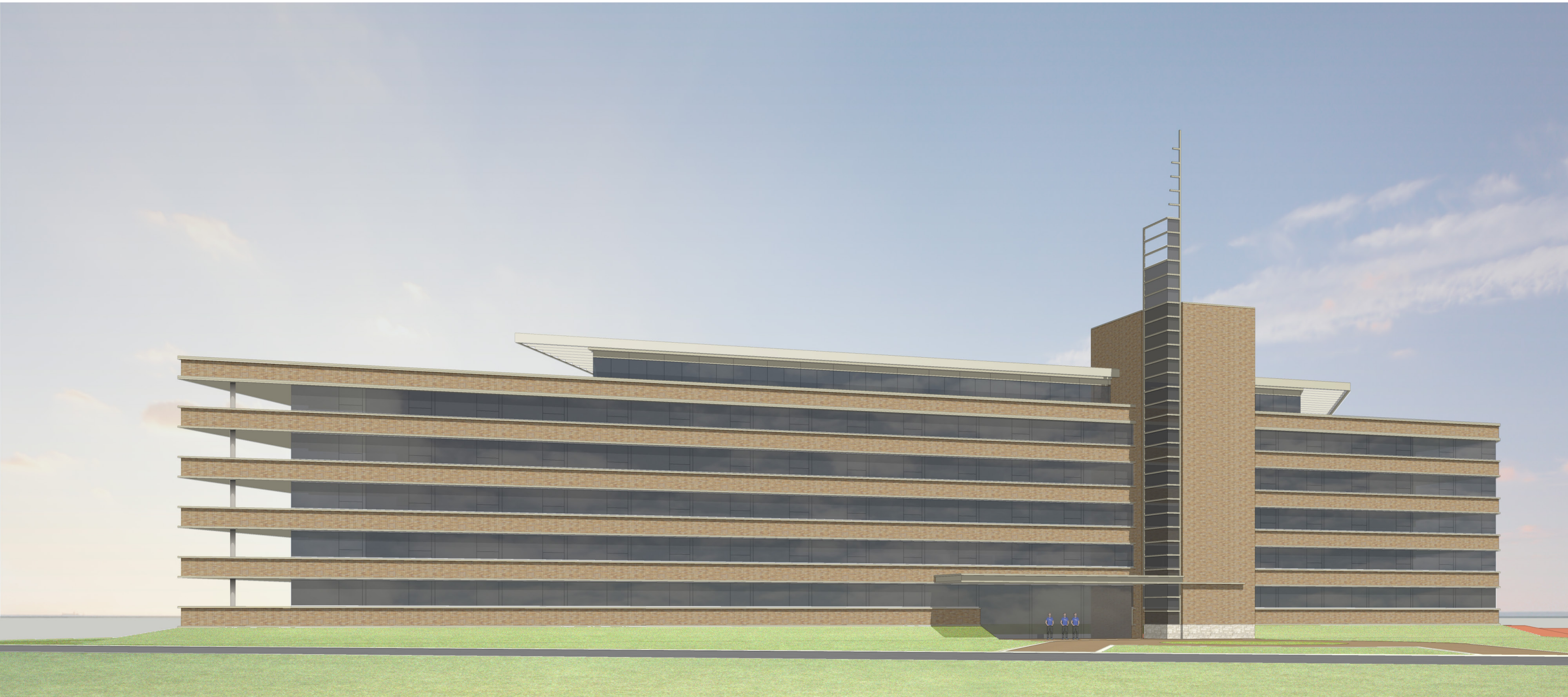
Sample Site Plans, Floor Plans and Renderings of Minimum Improvements

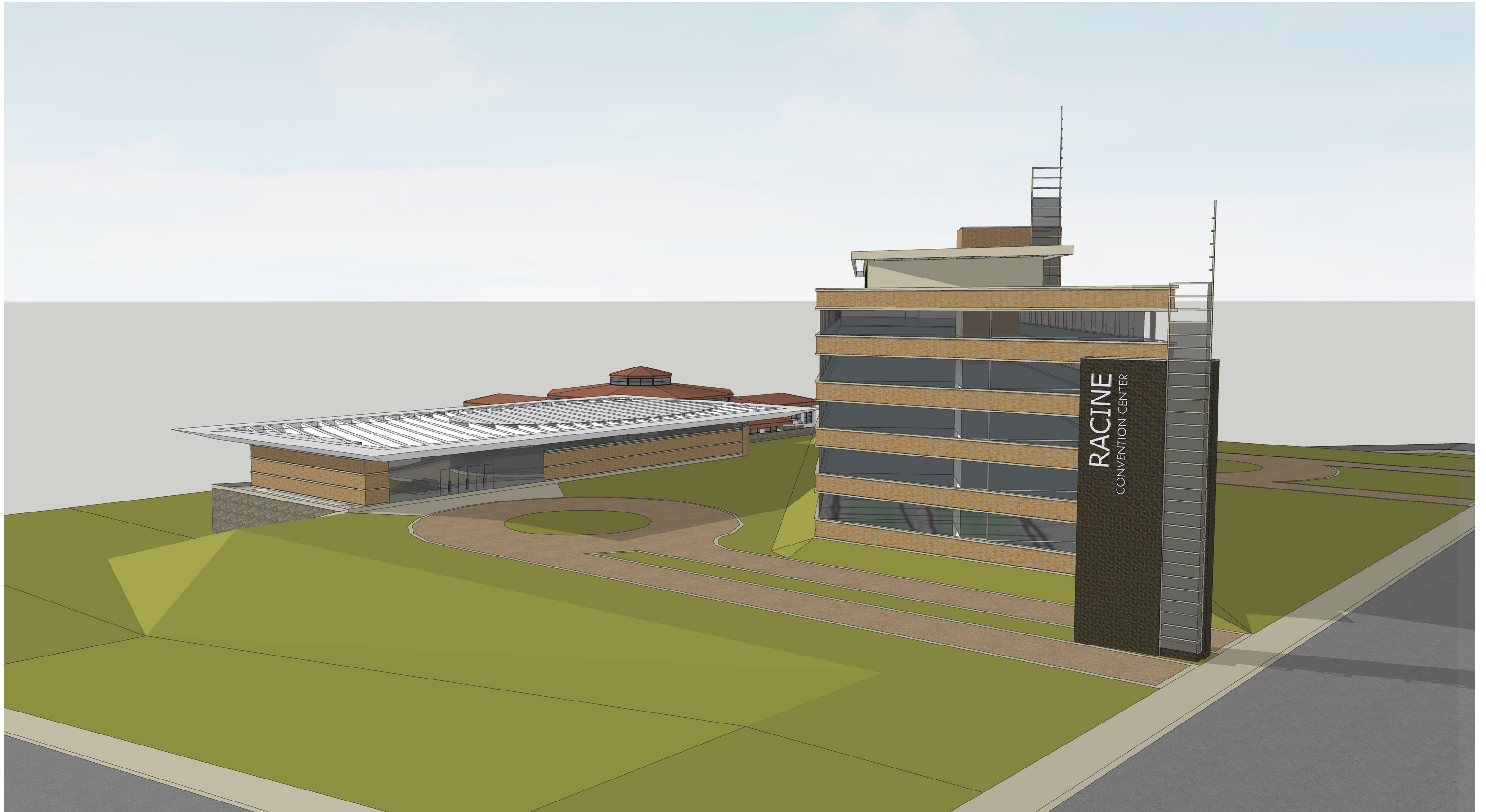
Beginning on the following page.

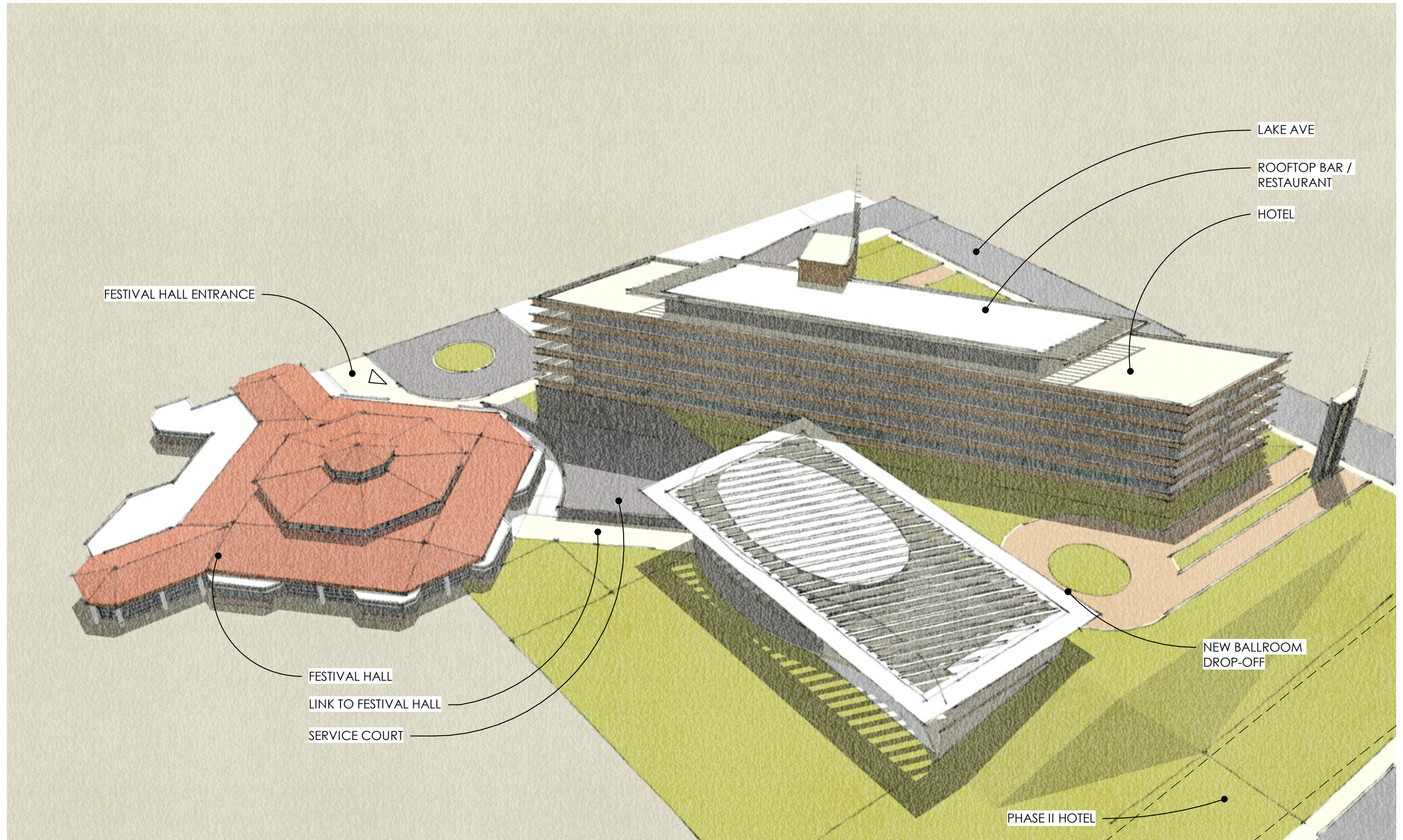
CONVENTION CENTER HOTEL

RACINE, WI
GATEHOUSE CAPITAL









FESTIVAL HALL ENTRANCE

LAKE AVE

ROOFTOP BAR / RESTAURANT

HOTEL

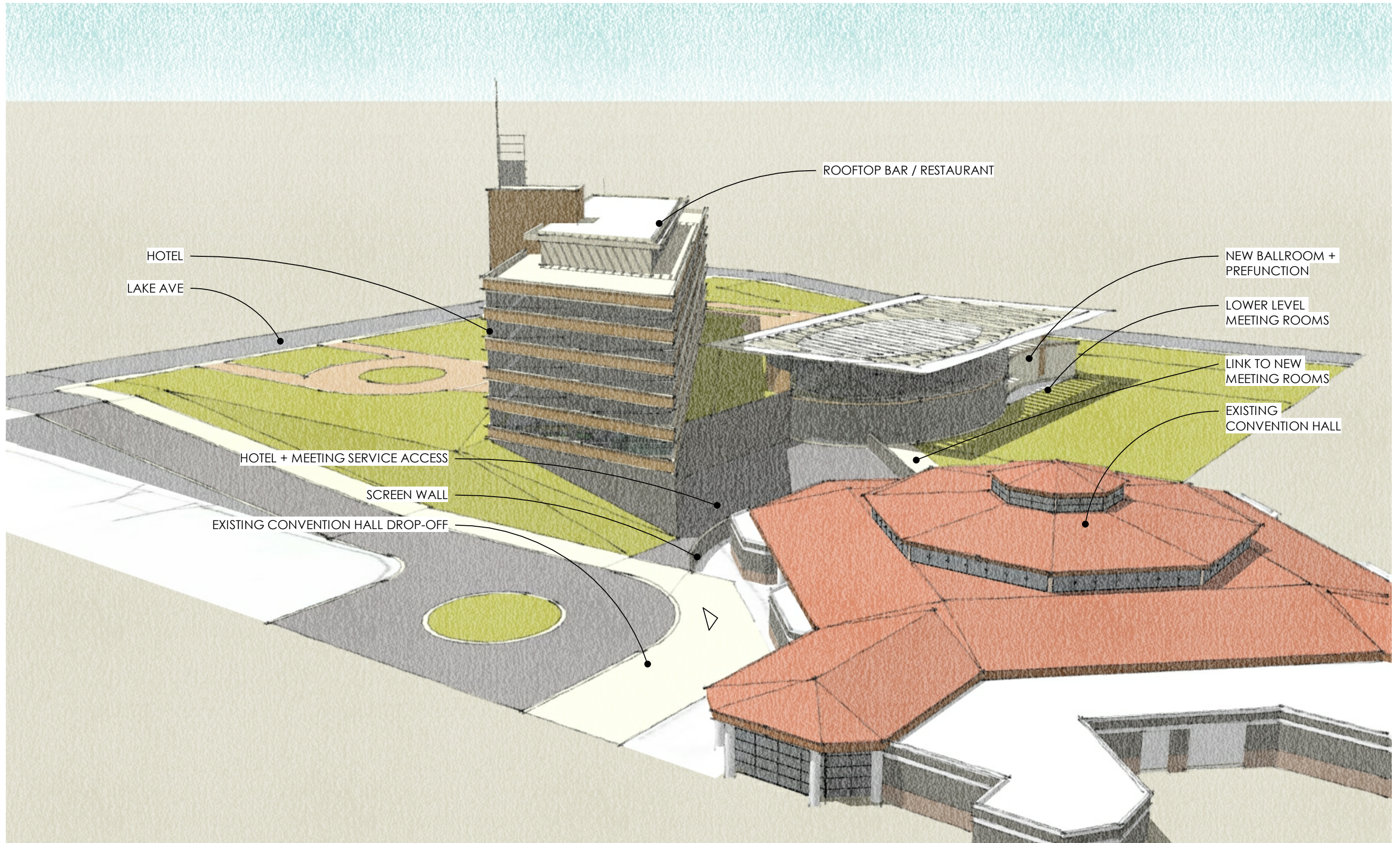
FESTIVAL HALL

LINK TO FESTIVAL HALL

SERVICE COURT

NEW BALLROOM DROP-OFF

PHASE II HOTEL



HOTEL
LAKE AVE

ROOFTOP BAR / RESTAURANT

NEW BALLROOM + PREFUNCTION

LOWER LEVEL MEETING ROOMS

LINK TO NEW MEETING ROOMS

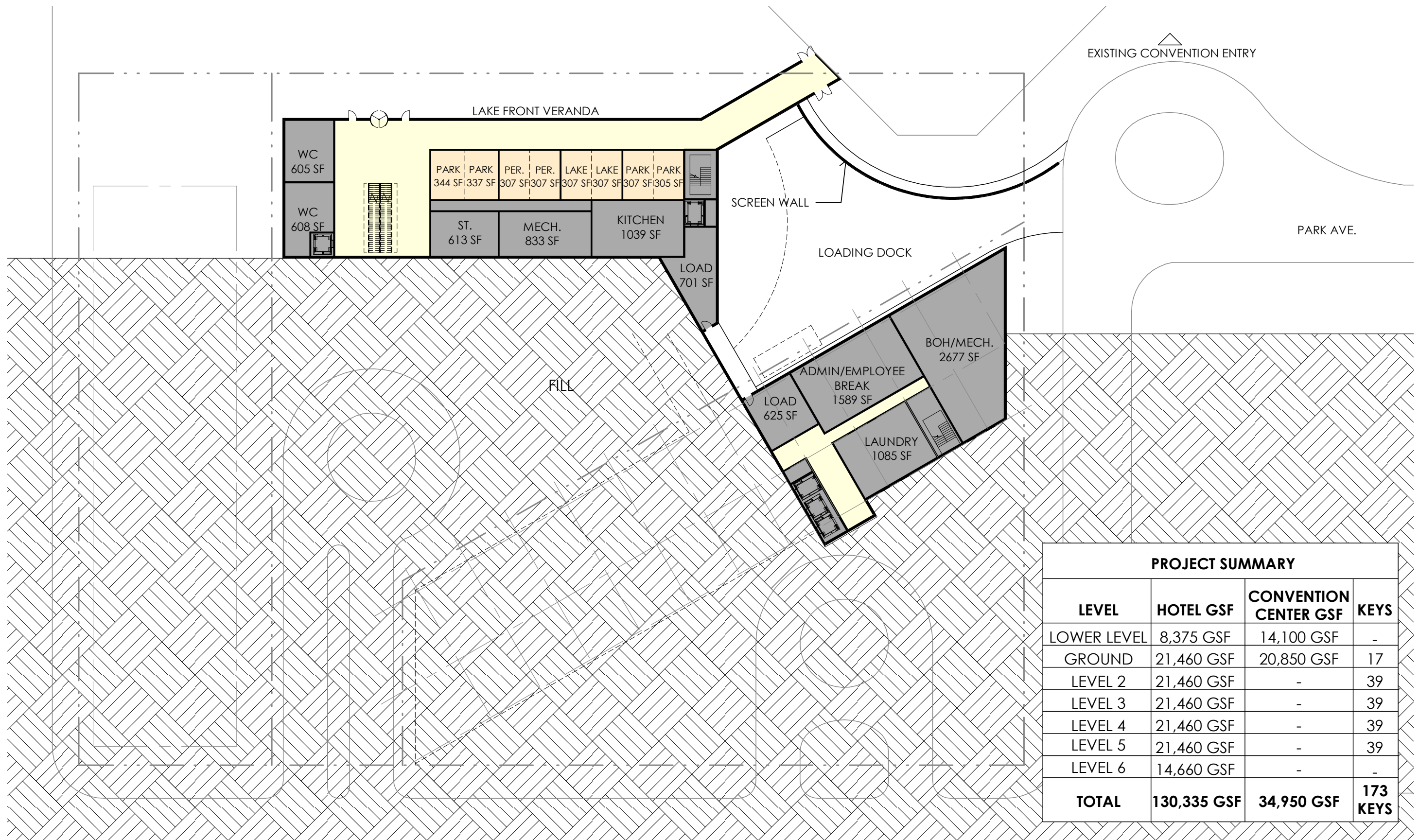
EXISTING CONVENTION HALL

HOTEL + MEETING SERVICE ACCESS

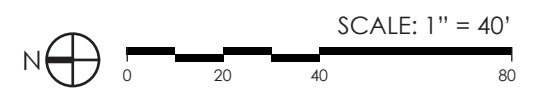
SCREEN WALL

EXISTING CONVENTION HALL DROP-OFF

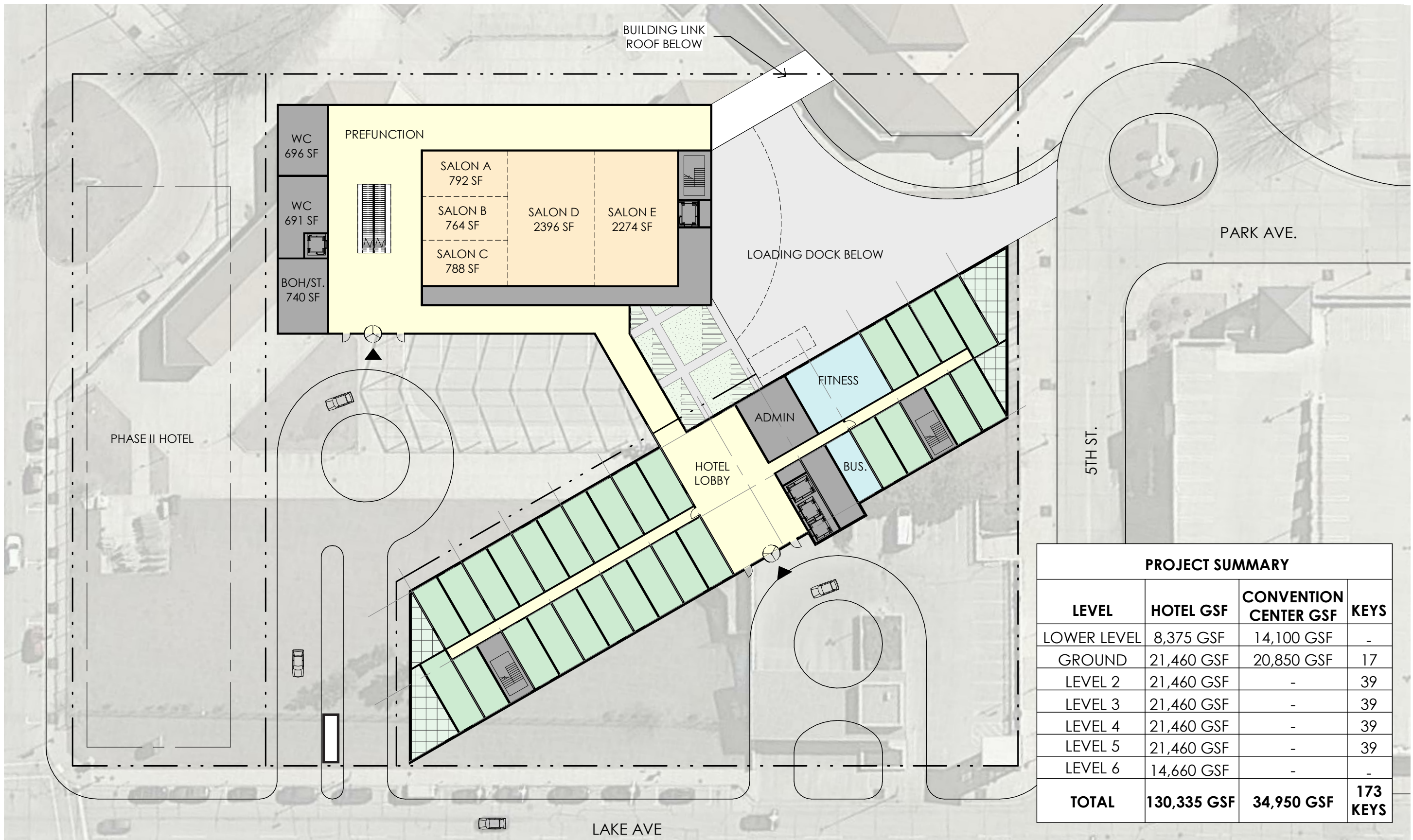
VIEW LOOKING NORTHWEST



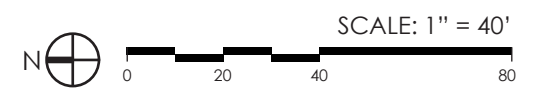
PROJECT SUMMARY			
LEVEL	HOTEL GSF	CONVENTION CENTER GSF	KEYS
LOWER LEVEL	8,375 GSF	14,100 GSF	-
GROUND	21,460 GSF	20,850 GSF	17
LEVEL 2	21,460 GSF	-	39
LEVEL 3	21,460 GSF	-	39
LEVEL 4	21,460 GSF	-	39
LEVEL 5	21,460 GSF	-	39
LEVEL 6	14,660 GSF	-	-
TOTAL	130,335 GSF	34,950 GSF	173 KEYS



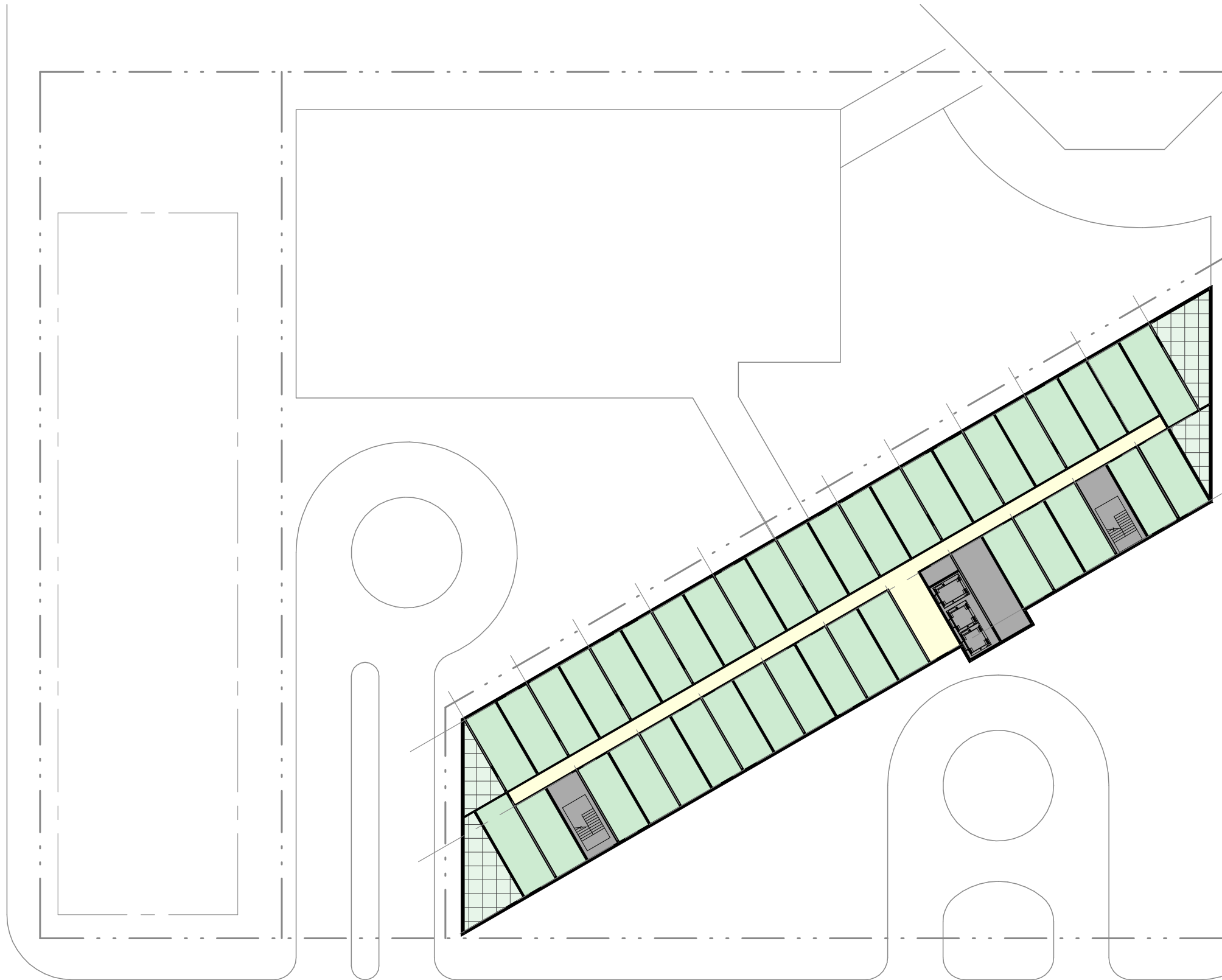
LOWER LEVEL



PROJECT SUMMARY			
LEVEL	HOTEL GSF	CONVENTION CENTER GSF	KEYS
LOWER LEVEL	8,375 GSF	14,100 GSF	-
GROUND	21,460 GSF	20,850 GSF	17
LEVEL 2	21,460 GSF	-	39
LEVEL 3	21,460 GSF	-	39
LEVEL 4	21,460 GSF	-	39
LEVEL 5	21,460 GSF	-	39
LEVEL 6	14,660 GSF	-	-
TOTAL	130,335 GSF	34,950 GSF	173 KEYS



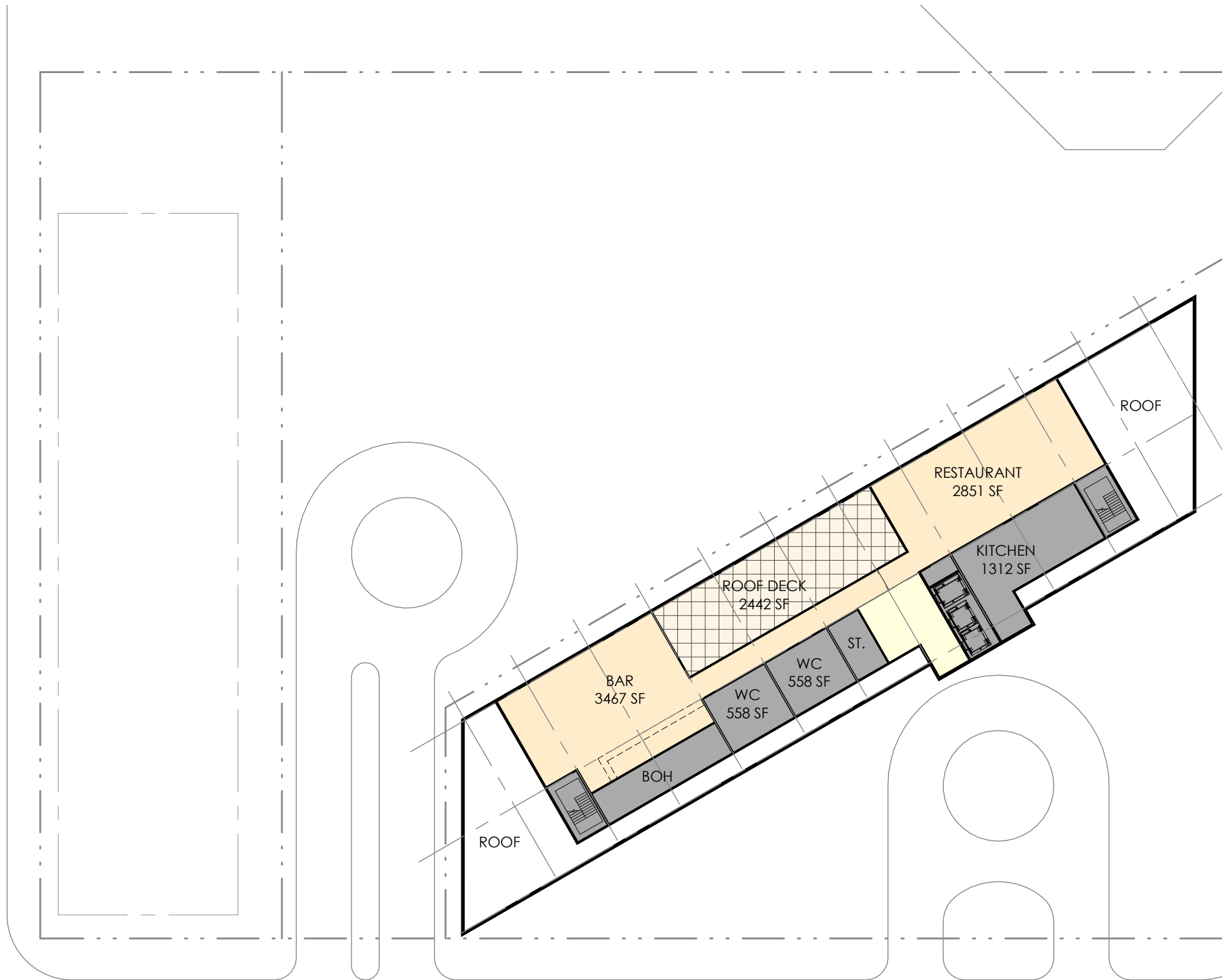
GROUND FLOOR



PROJECT SUMMARY			
LEVEL	HOTEL GSF	CONVENTION CENTER GSF	KEYS
LOWER LEVEL	8,375 GSF	14,100 GSF	-
GROUND	21,460 GSF	20,850 GSF	17
LEVEL 2	21,460 GSF	-	39
LEVEL 3	21,460 GSF	-	39
LEVEL 4	21,460 GSF	-	39
LEVEL 5	21,460 GSF	-	39
LEVEL 6	14,660 GSF	-	-
TOTAL	130,335 GSF	34,950 GSF	173 KEYS

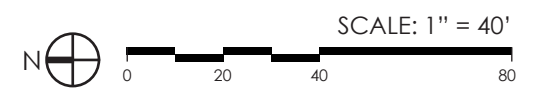


TYPICAL FLOOR



PROJECT SUMMARY			
LEVEL	HOTEL GSF	CONVENTION CENTER GSF	KEYS
LOWER LEVEL	8,375 GSF	14,100 GSF	-
GROUND	21,460 GSF	20,850 GSF	17
LEVEL 2	21,460 GSF	-	39
LEVEL 3	21,460 GSF	-	39
LEVEL 4	21,460 GSF	-	39
LEVEL 5	21,460 GSF	-	39
LEVEL 6	14,660 GSF	-	-
TOTAL	130,335 GSF	34,950 GSF	173 KEYS

ROOF TOP



CONVENTION PARCEL	60,360 SF
SHERATON HOTEL PARCEL	46,350 SF
PHASE II HOTEL PARCEL	27,385 SF
TOTAL	134,095 SF

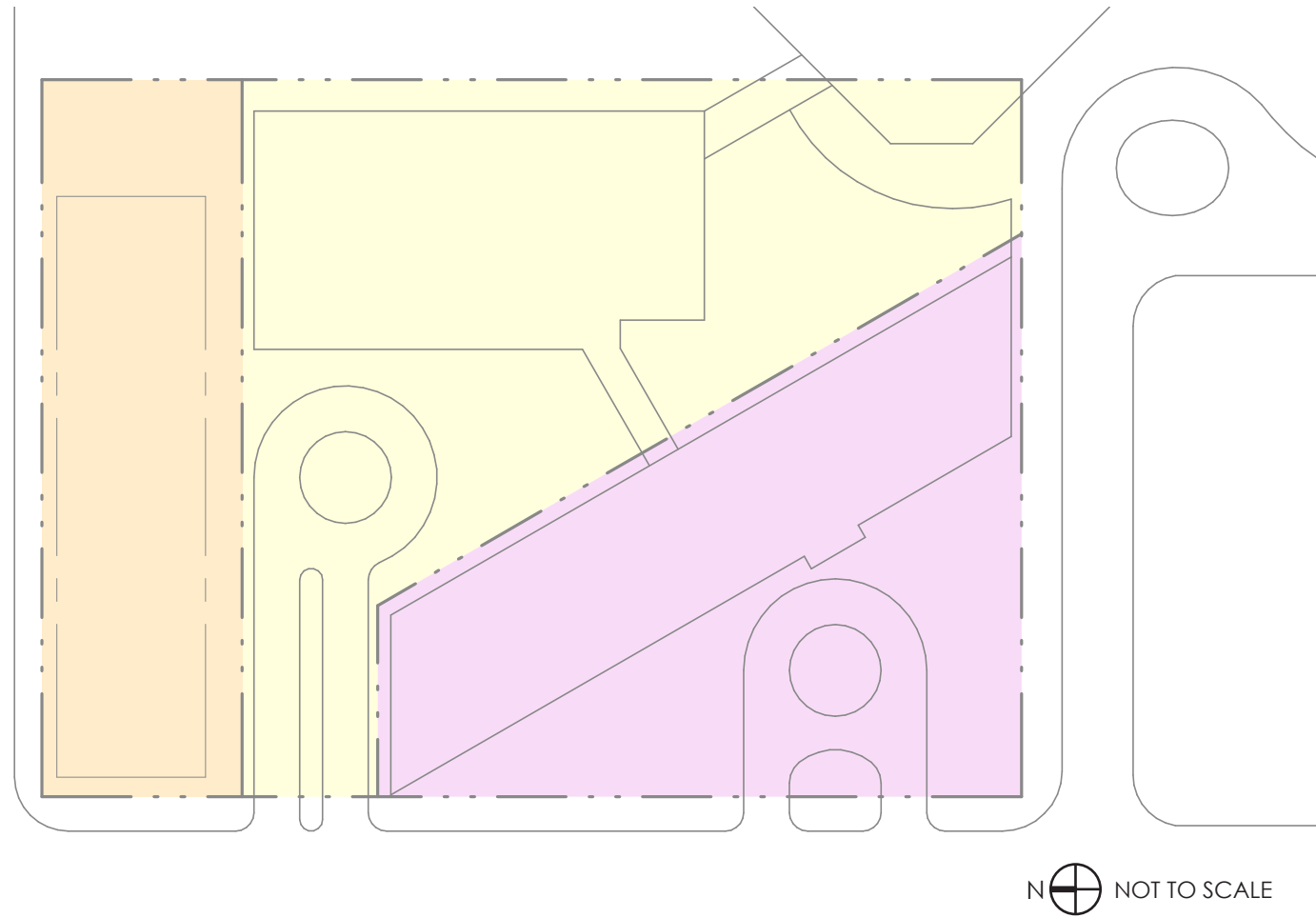


EXHIBIT A-4

Legal Description of Festival Hall Property

A legal description of the Festival Hall Property will be developed and agreed upon by the parties during the course of Pre-Construction Work and will roughly correspond to the Festival Hall Property outlined and labeled as the “Convention Parcel” on the Site Parcelization Plan included as part of Exhibit A-3.

EXHIBIT A-5

Description of Convention Center Improvements

The Convention Center Improvements shall consist of and include not less than thirty-thousand (30,000) gross square feet of newly-constructed convention center space integrally designed with and spatially and operationally connected to an updated and redecorated, existing Festival Hall Exhibition Hall and Minimum Improvements (Hotel), to create and function as a high-quality regional destination, meeting, banquet, conference, and convention center, that the parties intend would be marketed to professional conference and meeting planners, with physical internal connections to the Minimum Improvements (Hotel). The Convention Center Improvements shall further consist of and contain the following, all as detailed, modified and agreed upon pursuant to the Construction Plans:

- 1.) Multiple salons, meeting rooms, break-out rooms, and/or junior ballrooms, which function in one or varying combinations to form a large (or larger) ballroom/grand ballroom banquet space; or, through demising partition walls, to be used and accessed separately and independently.
- 2.) Substantial reception and pre-function space.
- 3.) A full catering kitchen
- 4.) Adequate and properly configured storage for moveable furnishings and equipment.
- 5.) Adequate and properly configured loading facilities.
- 6.) Adequate, back-of-house support, employee, and mechanical and equipment functions.
- 7.) Fit, finish, quality, functionality, and technology consistent with, approved by, and supportive of the Hotel Flag requirements and/or standards; as well as similar standards or requirements established by associations of conference and meeting planners and/or trade associations.
- 8.) Furniture, fixtures, equipment, and technology (fixed and moveable) to meet contemporary and market-competitive standards.
- 9.) Subject to Section 7.3.c. of the Agreement, select “smart city” elements and technologies to set a regional standard in keeping with Racine’s “Smart City” brand.

EXHIBIT B

Depiction of Parking Restriction Area



EXHIBIT C

LEED Scoring Elements to be Included in Minimum Improvements (Hotel)

- Low E glass
- Rain gardens
- Reduced storm water runoff
- High efficiency low flow plumbing fixtures
- Energy Star appliances
- High efficiency furnaces
- Low VOC Interior Finishes
- Electric car charging stations (3% of spaces)
- Available bike sharing program
- Bike Storage
- Community recycling program in partnership with the City of Racine
- LED common area lighting
- Utilizing existing municipal services
- Highest possible walkable and bikeable location
- Construction waste management and recycling
- Construction Indoor Air Quality Management Plan (clean construction site)
- Use of local reasonable renewable resources/construction materials
- Reduced parking footprint
- Access to Public Transit
- Building on an infill and previously developed parcel of land
- Biophilic design in common areas (incorporation of nature)
- Material Optimization (select products with Environmental Product Declarations / Health Product Declarations)
- Incorporate “smart” room thermostat devices for energy and lifestyle management
- Civic Engagement (community volunteer opportunities are posted in employee common areas) <https://v2.wellcerINCENTIVEied.com/v2.2/en/community/feature/11>
- Light Pollution Reduction (exterior lights shine on the site and not up to the night sky or trespass to neighboring site)
- Environmentally friendly refrigerants