

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AGREEMENT**

This Chapter 381 Economic Development Program Agreement (this “Agreement”) is made and entered into by and between the COUNTY OF EL PASO, TEXAS (“COUNTY”), a political subdivision of the State of Texas, and GWR El Paso Property Owner LLC, a Delaware Limited Liability Company authorized to do business in Texas (together with its successors and assigns, the “COMPANY”) for the purposes and considerations stated below. The COUNTY and the COMPANY are also referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, the COMPANY desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (“Chapter 381”) and the Texas Constitution Article VIII, Section 52-a; and

WHEREAS, the COUNTY desires to provide, pursuant to Chapter 381, an incentive to COMPANY to develop and build the Project in El Paso, Texas; and

WHEREAS, the COUNTY has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the County of El Paso; and

WHEREAS, the COUNTY determines that a grant of funds to COMPANY will serve the public purpose of enhancing value of the local tax base, foster and support economic growth and opportunity, ensure new investments will market the area as a thriving place to work, live, and visit, and enhance business and commercial activity with the COUNTY; and

WHEREAS, the COUNTY and COMPANY desire that the COMPANY develop and build the Project in the County of El Paso; and

WHEREAS, the construction of the Project will likely encourage increased economic development in the COUNTY, provide increases in the COUNTY’s property tax revenues, and improve the COUNTY’s ability to attract tourists; and

WHEREAS, the COUNTY, through its Comprehensive Incentives Policy, has identified COMPANY’S business as a Category 3 Capital Intensive Project Incentive; and

WHEREAS, the COUNTY has concluded and hereby finds that this Agreement embodies an eligible “program” and promotes economic development in the County of El Paso and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code and further, is in the best interests of the COUNTY and COMPANY.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **Affiliate** means, with respect to any specified person or entity, any other person or entity that, directly or indirectly, controls, is under common control with, or is controlled by such specified person or entity. For purposes of this definition, the term “control” and all derivations thereof means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, through ownership of voting securities or through partnership interest.
- B. **Base Year Value** means the value of the Property on the tax rolls of El Paso County, Texas as of January 1st of the year in which this Agreement is executed. For purposes of this Agreement, COMPANY agrees that the Base Year Value is SIX MILLION FOUR HUNDRED SEVENTY-THREE THOUSAND ONE HUNDRED SIXTEEN AND 00/100 DOLLARS (\$6,473,116.00). Under no circumstances shall the Base Year Value as defined herein, be interpreted to be equivalent of market value or determinative for appraisal purposes.
- C. **County of El Paso 381 Agreement** means an agreement between the County of El Paso and COMPANY pursuant to chapter 381 of the Texas Local Government Code whereby the County agrees to make certain grants to COMPANY for a period of up to fifteen (15) years.
- D. **County Hotel Occupancy Tax** means the County occupancy tax imposed by chapter 352 of the Texas Tax Code.
- E. **COUNTY** means the “COUNTY” of El Paso, Texas.
- F. **Deed of Trust** means any mortgage, deed of trust, security agreement, or other security instrument encumbering COMPANY's interest in any portion of the Project.
- G. **Effective Date.** The date that the latter of each of the COMPANY and COUNTY has fully executed this Agreement.
- H. **Event of Default** means any of the events of default set forth in Section 6.A. of this Agreement.
- I. **Event of Non-appropriation** means the failure of the COUNTY to appropriate for any Fiscal Year, sufficient funds to pay the Grant payment, or the reduction of any previously appropriated money below the amount necessary to permit the COUNTY to pay the Grant payments from lawfully available funds.

- J. **Go Forward Election Deadline** means the date that is the later of (i) nine (9) months from the date the PLR is issued to Great Wolf Resorts; or (ii) eighteen (18) months from the Effective Date.
- K. **Grant** means each annual payment to COMPANY under the terms of this Agreement computed as Real Property Tax Rebate, Personal Property Tax Rebate or Hotel Occupancy Tax (“HOT”) Rebate, as more specifically defined in Section 4.
- L. **Grant Period** means the period, during the Term of the Agreement, beginning January 1st of through and including December 31st. The first Grant Period shall begin on January 1st of the calendar year immediately following the Project Completion Date.
- M. **Grant Submittal Package** means the documentation required to be supplied to COUNTY on a yearly basis as a condition of receipt of any Grant, which documentation is more fully described in **Exhibit C**, attached hereto and incorporated herein for all purposes.
- N. **Ground Lease** means that certain Ground Lease between the City of El Paso and COMPANY pursuant to which COMPANY leases from the City of El Paso the Property upon which COMPANY will construct the Project.
- O. **HOT Grant** means an economic development grant in an amount equal to a percentage of the County Hotel Occupancy Taxes collected from the Project.
- P. **Minimum Investment**: Means those costs incurred by COMPANY or third parties for the improvements of the land and the building and construction of or furnishing for the Project, to include cash and in-kind contributions in an amount no less than ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000.00).
- Q. **Minimum Appraisal Value** means the value of the Property, including leasehold interest, personal property and improvements of the Project after the construction of the Project below which COMPANY cannot protest or contest the appraised value of the Project is completed, with the El Paso Central Appraisal District (EP CAD) during the Term of the Agreement. Under no circumstances shall the Minimum Appraisal Value be interpreted to be equivalent or determinative for appraisal purposes or to be utilized in any way to determine market value. In addition, under no circumstances shall COMPANY protest or contest this Minimum Appraisal Value during the Term of the Agreement. For the purposes of this Agreement, the Minimum Appraisal Value is SEVENTY-FIVE MILLION AND 00/100 DOLLARS (\$75,000,000.00).
- R. **Open for Business** means the date the Project has obtained all required certificates of occupancy, including certificates of occupancy for all guest rooms, restrooms, conference rooms, meeting rooms, ballrooms, all retail and dining spaces, and any other areas accessible to the public.

- S. **Personal Property Tax Grant** means an economic development grant in amount equal to a percentage of the personal property tax revenue generated by the value of the personal property located at the Project.
- T. **PLR** means a private letter ruling from the Comptroller of the State of Texas with respect to the application of State Convention Center Hotel Program as set forth in Texas Tax Code sections 351.001(7)(E), 351.102 and/or 151.429, and Texas Government Code Section 2303.5055 to the Project, pursuant to Texas Comptroller Rule 3.1.
- U. **PLR Tolling Period** means, in a circumstance in which a PLR is not issued and delivered to COMPANY within the period ending on the three (3) month anniversary of the Effective Date, the number of days between the three (3) month anniversary of the Effective Date and the date on which a PLR is issued and then delivered to COMPANY.
- V. **Project** means the construction and management of a resort hotel which will be approximately 400,000 square feet of gross floor area and six (6) stories tall. The resort will include an indoor water-park for hotel guests only, family entertainment center, various restaurants and other amenities including conference facilities. The location is described by metes and bounds in **Exhibit A** and the site plan is visually depicted in **Exhibit B**, both of which are attached hereto and incorporated herein for all purposes.
- W. **Project Completion Date** means the date that construction of the Project is complete and all required certificates of occupancy have been obtained. For purposes of this Agreement, a certificate of occupancy shall not include a certificate of occupancy issued in error or based on a misrepresentation fact, nor a temporary or conditional certificate of occupancy.
- X. **Property** means approximately Forty-Three and one-half (43.5) acres of land made up of two contiguous parcels owned by the City of El Paso upon which COMPANY will construct the Project. The two parcels making up the Property are more specifically described in **Exhibit A**, which is incorporated herein for all purposes and are subject to the Lease between the City of El Paso and COMPANY attached hereto as **Exhibit D**.
- Y. **Real Property Tax Grant** means an economic development grant in an amount equal to a percentage of the incremental ad valorem real property tax revenue generated by the Property and any improvements located thereon above the Base Year Value.
- Z. **Qualified Expenditures** means those hard and soft costs incurred by the COMPANY in the construction and furnishing of the improvements. For purposes of this Agreement, Qualified Expenditures for this Project shall be no less than ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000).

SECTION 2. TERM.

- A. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall end on the twentieth (20th) anniversary of the Effective Date, unless otherwise terminated in accordance with the terms herein (the "Term").

- B. **Grant Period.** The Grant Period shall commence on January 1st of the first tax year following the issuance of a permanent certificate of occupancy for the Project and after providing the COUNTY a verified receipt of all Qualified Expenditures for the Project upon the Project's completion and shall conclude at the following times or occurrences:
1. for the Real Property Tax Rebates, the earlier to occur of either January 31st of the 16th anniversary of the commencement of the Grant Period, or upon COMPANY receiving the maximum amount of incremental Real Property Tax Rebates in the amount of THREE MILLION FORTY-EIGHT THOUSAND FIVE HUNDRED FORTY-FOUR AND 54/100 DOLLARS (\$3,048,544.54) over the Term of the Agreement.
 2. for the Personal Property Tax Rebates, the earlier to occur of either January 31st of the 11th anniversary of the commencement of the Grant Period, or upon COMPANY receiving the maximum amount of Real Property Tax Rebates in the amount of TWO HUNDRED EIGHT THOUSAND EIGHT HUNDRED TWELVE AND 20/100 DOLLARS (\$208,812.20) over the Term of the Agreement, subject to the restriction set forth in Section 4.A.1.
 3. for the HOT Tax Rebates, the earlier to occur of either January 31st of the 11th anniversary of the commencement of the Grant Period, or upon COMPANY receiving the maximum amount of ONE MILLION THIRTY-SEVEN THOUSAND SEVEN HUNDRED THIRTY-SEVEN AND 42/100 DOLLARS (\$1,037,737.42) over the Term of the Agreement.
- C. **Termination.** This Agreement shall terminate, the terms herein shall have no further effect, and such termination will not represent an Event of Default if:
1. Company shall have the absolute right to terminate this Agreement in its sole discretion at any time prior to the earlier of (i) the date COMPANY delivers to the COUNTY a Go Forward Election, and (ii) the Go Forward Election Deadline. If COMPANY does not deliver a written notice of a Go Forward Election on or before the Go Forward Election Deadline, then this Agreement shall automatically terminate on the Go Forward Election Deadline without any further action by either party. In the event of a termination under this Section 2.C.1., COMPANY shall not be liable for any damages or incur any obligations, whatsoever;
 2. The Agreement is terminated by COUNTY under the provisions outlined in this Agreement; Parties enter into a written agreement terminating this Agreement;
 3. Subject to any delays attributable to an Event of Force Majeure, PLR Tolling Period, or any Tolling Period, COMPANY fails to receive a Certificate of Occupancy within forty-eight (48)-months from the Effective Date;

4. Subject to the notice and cure provisions set forth in Section 6.C. and Section 6.E. of this Agreement, one Party elects to terminate this Agreement upon a breach by the other Party of a term or condition of this Agreement;
5. Any Grant agreed to be made by COUNTY herein becomes invalid or illegal pursuant to Federal or State legislation and the conditions or provisions of said program which render such Grant invalid or illegal; provided, however, that COUNTY shall use its best efforts in working with COMPANY to restructure this Agreement (or COUNTY's obligations described in this Agreement) to be enforceable and legal;
6. The maximum amount of Grant funds as defined in Section 4, has been paid to COMPANY; or.
7. Expiration of the Grant Period, whether or not the maximum amount of Grant funds has been paid.
8. Company shall have the absolute right to terminate this Agreement in its sole discretion at any time prior to the earlier of (i) the date COMPANY delivers to the COUNTY a Go Forward Election, and (ii) the Go Forward Election Deadline. If COMPANY does not deliver a written notice of a Go Forward Election on or before the Go Forward Election Deadline, then this Agreement shall automatically terminate on the Go Forward Election Deadline without any further action by either party. In the event of a termination under this Section 2.C.8., COMPANY shall not be liable for any damages or incur any obligations, whatsoever.

SECTION 3. OBLIGATIONS OF COMPANY.

Subject to COUNTY meeting its obligations under this Agreement and COMPANY having elected in writing, in its sole discretion, for this Agreement to remain effective (a “Go Forward Election”) on or before the Go Forward Election Deadline, COMPANY shall comply with the following terms and conditions:

A. Construction. Construction requirements are as follows:

1. The COMPANY agrees to develop and construct the Project to conform to the expectations and description contained in Section 1.V. and the visual depictions in **Exhibit B**, attached hereto. COMPANY shall have the right to make any changes to the specifications set forth in **Exhibit B**, by providing COUNTY with prior written notice specifying the proposed changes, provided that such changes shall not materially or adversely deviate from the expectations set forth in **Exhibit B**.
2. COMPANY shall provide COUNTY with a copy of approved Plat and Site Plan approved by the City of El Paso in connection with the development of the Project within thirty (30) days after COMPANY'S receipt of such approval(s).
3. The COMPANY shall commence construction of the Project within six (6) months of the Go Forward Election Date, subject to any delays attributable to an Event of Force

Majeure, or any Tolling Period (as hereinafter defined) or any PLR Tolling Period. The Project Completion Date shall be within 30 months of the Go Forward Election Date, subject to any delays attributable to an Event of Force Majeure or any Tolling Period or any PLR Tolling Period.

4. The COMPANY shall make Qualified Expenditures of not less than ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000.00) for the Project. COMPANY will submit evidence of the Qualified Expenditures to COUNTY within ninety (90) days of the Project Completion Date in the form required in **Exhibit C**.
 5. During construction of the Hotel and Parking Structure, COMPANY shall make reasonable good faith efforts to hire and purchase goods and services from local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency or expected quality. If COMPANY claims that it was unable to use local sources for fulfill the requirements set forth in this Agreement, then COMPANY shall demonstrate to COUNTY, upon the COUNTY's request, reasonable good faith efforts in attempting to use local sources. Notwithstanding anything to the contrary contained in this Agreement, COMPANY's failure to reach the goal stated in this Section shall not be deemed an Event of Default by COMPANY.
- B. **Use of the Project.** For the period from the Project Completion Date until the expiration of the final Grant Period, COMPANY will not change the use of the Project to any use other than a family resort and waterpark with a standard consistent with other Great Wolf Lodge properties as of the date of the Effective Date of this Agreement.
- C. **Annual Report.** On or before June 30th of each year during the Term, COMPANY shall deliver to COUNTY a signed and verified report certifying the status of COMPANY's compliance with the terms of this Agreement through the preceding year. Such annual report shall include the number of new jobs created and retained for the Project, information with respect to any new investments in the Project, and any other information with respect to the Project that is relevant to the COUNTY's economic development goals, as may be reasonably requested by the COUNTY. Documentation for jobs may be in the form of quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly reports, or employee rosters that show the hours worked and the positions filled.
- D. **Access to Records.** During the Term, COUNTY shall have the reasonable right to access and inspect employment books and records and other books that are related to the economic development considerations and incentives described herein. The COUNTY shall (i) provide at least two (2) weeks' prior written notice to COMPANY of its intention to exercise its right to inspect; (ii) conduct such inspection during normal business hours in reasonable cooperation with the requests of COMPANY to minimize business interruption, and with a representative of COMPANY present; and (iii) conduct such inspection in accordance with the visitor access and security policies of COMPANY. In order to protect these records, the COUNTY shall maintain the confidentiality of such records in accordance with and subject

to commercially reasonable practices and all applicable laws to the extent allowed by the Texas Public Information Act.

E. **Grant Submittal Package.** On or before April 30th of each Grant Period, COMPANY shall submit to COUNTY a Grant Submittal Package in the form attached hereto as **Exhibit C**. The COUNTY shall not be obligated to process, approve, or reject any Grant Submittal Package that is incomplete; provided however, that COUNTY shall promptly provide written notice to COMPANY of its refusal to process any Grant Submittal Package, which notice shall include a detailed description of why such Grant Submittal Package is deemed incomplete.

1. Upon receipt of such notice, COMPANY shall then have thirty (30) days to resubmit a complete Grant Submittal Package, which submission shall be deemed timely made for purposes of this Agreement. If such later submitted Grant Submittal Package is insufficient, then Section 6 hereof shall apply, except that COUNTY's sole remedy for COMPANY's failure to cure shall be not having an obligation to make such Grant with respect to the period for which such Grant Submittal Package relates, but no other Grants shall be affected.
2. Notwithstanding any other provision in this Agreement to the Contrary, any Cure Period contained in Section 6 shall not extend the COUNTY'S obligation to make a Grant Payment beyond the County's fiscal year end, September 30, of the first anniversary of the date the corrected Grant Submittal Package was due. A failure by COMPANY to timely submit a corrected Grant Submittal Package and thereafter to cure any default in accordance with this Section is a waiver of the right to receive the missed Grant Payment by the COMPANY as well as by the Holder of any Deed of Trust. The COUNTY will not extend this Agreement to make up for any missed Grant Payment.

F. **Payment of Taxes and Tax Protests.**

1. **HOT Tax Payments.** Pursuant to Chapter 156 of the Texas Tax Code, COMPANY agrees to timely remit to the State Comptroller the state and local hotel occupancy taxes due for each reporting period and to provide COUNTY a copy of the report within thirty (30) days of reporting to the State Comptroller's Office. The report shall include the following:
 - a. The total amount of the payments made for the Project during the preceding reporting period;
 - b. The amount of the state hotel occupancy tax collected by COMPANY during the preceding reporting period;
 - c. The amount of Local Hotel Occupancy Tax Revenue collected by COMPANY during the preceding reporting period; and
 - d. Other information that the State Comptroller requires to be in the report.

2. **Ad Valorem Tax Payments.** On or before January 31st of each year during the Term, COMPANY shall pay all of the real property taxes and personal property taxes properly levied against the Project for the previous tax year. COMPANY shall have the right to contest the appraised value of the Project if in excess of the Minimum Appraisal Value; provided however, COMPANY acknowledges and agrees that in the event of a protest or contest, the obligation of the COUNTY to pay a Grant based on the Property Tax Rebate for the year of contest or protest shall be suspended until a final determination of the Project's value has been made. COMPANY shall notify the COUNTY in writing in the event of such protest or contest and provide copies of the contest or protest, all documents received from EP CAD, and any appeals.
 3. **Tax Protests.** COMPANY covenants and agrees that during the Term, it shall not challenge or permit anyone else to take action on its behalf to challenge any assessments by EP CAD at less than the Minimum Appraisal Value. Any such action will be deemed an Event of Default. The Minimum Appraisal Value should in no way be interpreted to affect the values set by EP CAD for tax purposes. During the Term of this Agreement or thereafter, COMPANY agrees that neither this Agreement, nor the values contained herein, will be utilized to contest appraisal values or the market value of the Project.
- G. **Copies of Property Tax Renditions.** COMPANY will provide COUNTY with copies of all renditions of real property and personal property tax values submitted to EP CAD within thirty (30) days of their submission.
- H. **Compliance with Agreement.** Notwithstanding anything contained herein to the contrary, COMPANY shall not be entitled to receive and the COUNTY shall not be obligated to pay any Grant accrued unless COMPANY has complied with this Section 3.

SECTION 4. OBLIGATIONS OF COUNTY.

- A. **Payment of Grants.** Subject to COMPANY's continued satisfaction of all terms and conditions of this Agreement, COUNTY shall provide the following incentives to COMPANY:
1. **Personal Property Tax Grant.** COUNTY shall provide COMPANY with ten (10) Personal Property Tax Grants, each in an amount equal to a percentage of the personal property tax revenue according to the schedule set forth below for the applicable Grant Period; provided, however, that COUNTY shall not be obligated to continue providing Personal Property Tax Grants, regardless of whether all ten (10) Grants have been paid, once the aggregate amount of Personal Property Tax Grants provided to COMPANY has reached \$208,812.20, subject to the provisions of paragraph 1.a. of this subsection A.

Grant Periods

1-5

Percentage of Personal Property Tax Revenue

Ninety percent (90%)

6-10

Seventy-Five percent (75%)

- a. In the event El Paso Central Appraisal District combines personal property tax values with the real property tax values for purposes of calculating the ad valorem taxes payable for this Project pursuant to the terms of Section 23.24 of the Texas Property Tax Code, then the total amount of Real Property Grants will be revised to \$3,257,356.74 and paragraph 2 of this subsection A will apply in lieu of paragraph 1.
2. **Real Property Tax Grant.** COUNTY shall provide COMPANY with fifteen (15) Real Property Tax Grants, each in an amount equal to a percentage of the incremental real property tax revenue according to the schedule set forth below for the applicable Grant Period; provided, however, that COUNTY shall not be obligated to continue providing Real Property Tax Grants, regardless of whether all fifteen (15) Grants have been paid, once the aggregate amount of Real Property Tax Grants provided to COMPANY has reached \$3,048,544.54.

Grant Periods

1-5

6-10

11-15

Percentage of Real Property Tax Revenue

Ninety percent (90%)

Seventy-Five percent (75%)

Fifty percent (50%)

- a. Real Property Tax Grant Rebates shall be equal to the multiple of the Percentage of Real Property Tax Revenue – for the applicable Grant Period reflected in the preceding schedule - of the COUNTY'S portion of the real property tax revenue generated by the Project that is attributable to the incremental increase in value above the Base Year Value. An example of the calculation is as follows:

\$ 66,000,000.00	Property tax value
<u>\$ 6,473,116.00</u>	Less Base Value
\$ 59,526,884.00	Incremental value
<u>X 0.00447819</u>	County real property tax rate
\$ 266,572.70	County gross real property tax revenue
<u>X 0.90</u>	90% Tax rebate
\$ 239,915.43	Real Property Tax Rebate due to applicant

3. **HOT Tax Grant.** COUNTY shall provide COMPANY with ten (10) HOT Tax Grants, each in an amount equal to twenty-five percent (25%) of the County Hotel Occupancy Taxes collected for the applicable Grant Period provided, however, that COUNTY shall not be obligated to continue providing HOT Tax Grants, regardless of whether all ten (10) Grants have been paid, once the aggregate amount of HOT Tax Grants provided to COMPANY has reached \$1,037,737.42.

- B. **Payment Date.** The COUNTY shall pay each Grant within ninety (90) days after COUNTY has approved the applicable Grant Submittal Package.

- C. **Payment Amount.** The COUNTY's determination of the amount of each of the Grants due to COMPANY is final; provided, however, that the COMPANY may appeal COUNTY's determination of the amount of a Grant to the County Commissioner's Court within thirty (30) days after such Grant has been paid. The County Commissioner's Court shall hear the appeal within thirty (30) days of request for appeal and the County Commissioners Court's determination of the amount of the Grant shall be final.
- D. **Review of Submittal Package.** Subject to any Event of Force Majeure, the COUNTY agrees to either approve or reject any complete Grant Submittal Package within ninety (90) days after its receipt. The COUNTY agrees to process to completion any Grant Submittal Package, subject to compliance with the terms of this Agreement (including Section 3.E. above). It is expressly understood by the Parties to this Agreement that except as otherwise provided herein, the payments contemplated in this Agreement in no way obligate the COUNTY to make payments out of its general fund or of any monies or credits of the COUNTY and creates no debt of, nor any liability of, COUNTY or third parties beyond the specific obligations contained herein.
- E. **County Default.** If COUNTY fails to timely meet any of its obligations hereunder, including, without limitation, its obligation to pay to COMPANY any of the Grants in accordance with the timing set forth herein, COMPANY may enforce any and all remedies available at law or equity, including specific enforcement of such obligation

SECTION 5. MORTGAGE PROTECTION.

- A. **Holders of Deed(s) of Trust.** Notwithstanding any other provisions of this Agreement, COMPANY shall have the right to grant one or more deeds of trust as security for one or more loans or other financing. Within ten (10) days after a Deed of Trust is recorded in the Official Public Records of El Paso County, Texas, COMPANY shall provide the COUNTY with a copy of such Deed of Trust, as well as any assignment or other transfer of the Deed(s) of Trust, and with the name and address of the holder of such Deed of Trust. The COMPANY's failure to provide such document(s) shall not affect any Deed of Trust, including without limitation, the validity, priority, or enforceability of such Deed of Trust. The act of recording the Deed of Trust or other document identified in this contract with the El Paso County Clerk shall not accomplish notice to the COUNTY under this Agreement.
- B. **Rights of Holders.** COUNTY shall deliver a copy of any notice or demand to COMPANY concerning any Event of Default by COMPANY under this Agreement to each Holder who has previously sent a written notice pursuant to Section 8.Q. to COUNTY for such notices. COUNTY shall have no duty to notify any Holder or subsequent transferee or successor in interest except at the addresses so provided. Any such Notice of Default shall be effective against any Holder when mailed to such Holder in accordance with Section 8.Q. Each Holder shall have the right at its option to cure or remedy any Event of Default by COMPANY in accordance with the terms of this Agreement of the documentation described in the last sentence of Section 5.C., and to add the cost thereof to the secured debt and lien of its security interest. If an Event of Default in the initiation or completion of construction can only be

remedied or cured by a Holder upon obtaining possession of the Project, such Holder may remedy or cure such Event of Default within a reasonable period of time after obtaining possession, provided such Holder seeks possession with diligence through a receiver or non-judicial foreclosure.

- C. **Noninterference with Holders.** The provisions of this Agreement do not limit the right of Holders (a) to foreclose or otherwise enforce any Deed of Trust, (b) to pursue any remedies for the enforcement of any pledge or lien encumbering such portions of the Project, or (c) to accept, or cause its nominee to accept, a deed or other conveyance in lieu of foreclosure or other realization. In the event of (i) a foreclosure sale under any such Deed of Trust, (ii) a sale pursuant to any power of sale contained in any such Deed of Trust, or (iii) a deed or other conveyance in lieu of any such sale, the purchaser or purchasers and their successors and assigns, and such portions of the Project shall be, and shall continue to be, subject to all of the conditions, restrictions, and covenants of all documents and instruments recorded pursuant to this Agreement. COUNTY will execute such further documentation regarding the rights of any Holder as is customary with respect to construction or permanent financing, as the case may be, to the extent that such documentation is reasonably requested by any Holder and is determined by COUNTY, in its sole determination, to be legally permissible for a County to execute. A refusal by COUNTY to sign any requested document cannot form the basis of a condition of default in the Deed of Trust.
- D. **Tolling.** All obligations relating to the initiation and completion of construction (including any deadlines and time periods) under this Agreement shall be tolled from and after the date on which the Holder delivers written notice to COUNTY of the existence of an event of default under such Deed of Trust (or any loan documents entered into in connection with such Deed of Trust) until the date that is six (6) months after the date on which (i) a foreclosure sale under any such Deed of Trust, (ii) a sale pursuant to any power of sale contained in any such Deed of Trust, or (iii) a deed or other conveyance in lieu of any such sale has been completed (the "Tolling Period").

SECTION 6 EVENTS OF DEFAULT.

- A. Subject to the provisions addressing Events of Force Majeure (Section 8.L.), the PLR Tolling Period, Section 6.B. below, and Notice and Opportunity to Cure (Section 6.C. and Section 6.E.), each of the following shall constitute an Event of Default under this Agreement:
1. **Failure to Construct Project during construction period.** The failure of COMPANY to construct the Project in material compliance with the specifications of Section 1.V.
 2. **Failure to Operate Project during Grant Period.** The failure of COMPANY to continuously operate the Project for the purposes specified in this Agreement during the Grant Period, excluding intermittent stops in operation due to maintenance and similar events which may not individually exceed a period of sixty (60) consecutive days during the Term, subject to any applicable Tolling Period.

3. **False Statements.** If COMPANY provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, COMPANY will be deemed in default of this Agreement, or if COMPANY obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and COMPANY fails to provide written notice to the COUNTY of the false or misleading nature of such warranty, representation or statement within thirty (30) days after COMPANY learns of its false or misleading nature.
 4. **Insolvency.** The dissolution or termination of COMPANY's existence as an ongoing business or concern, COMPANY's insolvency, appointment of receiver for COMPANY's or the Project, any assignment of all or substantially all of the assets of COMPANY for the benefit of creditors of COMPANY, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against COMPANY. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no Event of Default shall be deemed to have occurred.
 5. **Protest of Property Taxes.** COMPANY'S failure to comply with Section 3.H.
 6. **Transfer without notice.** Failure to notify the COUNTY of a sale or transfer in compliance within the applicable period as required by Section 8.D.
 7. **Unauthorized sale, transfer, assignment or conveyance.** The sale, transfer, assignment or conveyance of the Project without the COUNTY's prior written consent as required by Section 8.C. if the new owner is constitutionally unqualified to receive an economic development award and the transaction cannot be unwound during the Cure Period. In addition, COMPANY will be responsible for the immediate repayment to the COUNTY of all Grant Payments made subsequent to any legally prohibited transfer, and any amount paid to the unconstitutionally unqualified transferee shall be attributed to COMPANY for purpose of enforcing Section 6.F.
 8. **Other Defaults.** Failure of COMPANY to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents.
- B. **Exception to default.** In no event will COMPANY be deemed to be in default of this Agreement if the default results from the COUNTY'S actions, failure to act, omissions, or interference with the performance by COMPANY of any of its obligations hereunder.
- C. **Notice of Default by COMPANY.** COMPANY is responsible for notifying the COUNTY in writing of any default under this Agreement within ten (10) business days of COMPANY becoming aware of such default ("Notice of Default"). Such Notice of Default shall describe the nature of the default and whether the COMPANY intends to attempt to cure the Event of Default. After receipt of the Notice of Default by COUNTY, the provisions of Section 6.E. shall apply.

D. **Notice of Default by COUNTY.** Subject to any other provision in this Agreement to the contrary, in the event the COUNTY becomes aware of an Event of Default by the COMPANY, COUNTY will provide a Notice of Default to COMPANY of the nature of the Event of Default within ten (10) business days of COUNTY becoming aware of such default. After receipt of the Notice of Default by COMPANY, the provisions of Section 6.E. shall apply.

E. **Opportunity to Cure an Event of Default.** Upon the receipt of a Notice of Default by either Party, the following paragraphs shall apply:

1. COMPANY shall have a period of ninety (90) days after the other Party's receipt of the Notice of Default during which COMPANY shall cure the Event of Default ("Cure Period").
2. If COMPANY fails to cure the Event of Default within the Cure Period to COUNTY'S satisfaction but is actively trying to cure the Event of Default, COMPANY can notify the Economic Development Department of its efforts to cure and request an extension of the Cure Period. In such circumstance, COMPANY shall have a reasonable time to cure such default provided that it is diligently pursuing the cure of such default, and further provided that such additional time may not exceed ninety (90) days.
3. If COMPANY fails to cure the Event of Default after expressing an intention not to cure, due to lack of meaningful effort to cure, or after an extension of Cure Period has passed, COUNTY has the right to pursue its remedies as stated in Section 6.F.
4. If COMPANY has fraudulently failed to notify the COUNTY of an Event of Default pursuant to Section 6.C., COUNTY has the right to deny COMPANY an opportunity to cure the unreported Event of Default for the then-current Grant Period as well as the right to recapture any Grant amount which COMPANY should not have received pursuant to formula in Section 6.F.1., and to terminate this Agreement.
5. Notwithstanding the foregoing, if the Event of Default relates to the timely filing of a Grant Submittal Package and the corrective Grant Submittal Package has not been submitted within the initial thirty (30) day Cure Period, then COMPANY shall have an additional thirty (30) days' Cure Period after the delivery to COMPANY by the COUNTY of a final written Notice of Default stating in bold capital letters on the subject line: **"FAILURE TO TIMELY COMPLY WITH THIS NOTICE WILL RESULT IN A LOSS OF GRANT PAYMENTS BY THE COUNTY OF EL PASO TO GREAT WOLF RESORTS."**

F. **Remedies for Failure to Cure.** If COMPANY fails to cure an Event of Default in accordance with Section 6.E., the COUNTY may:

1. Recapture and collect from COMPANY an amount equal to the amount actually paid to COMPANY for each Grant Period during which the uncured Event of Default was in existence (the "Recapture Amount"); and

2. Cancel this Agreement by sending a written notice to Company giving thirty (30) days' notice of termination.
- G. **Payment of Recapture Amount.** The Recapture Amount shall be due and payable to the COUNTY no later than sixty (60) days after COMPANY's receipt of a written notice of Recapture Amount from the COUNTY.
- H. **Remedies.** Notwithstanding any provision in this Agreement to the contrary, COMPANY shall not be required to pay any damages for a breach of any of its obligations under this Agreement except for the Recapture Amount, if any, described in Section 6.F. of this Agreement plus costs of court and attorney's fees for any collection effort undertaken by COUNTY resulting from COMPANY'S failure to pay the Recapture Amount.
- I. **Liability.** In no event will either Party be liable to the other Party for any indirect, special, punitive, exemplary, incidental or consequential damages. This limitation will apply regardless of whether or not the other Party has been advised of the possibility of such damages.

SECTION 7. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT OF COMPANY.

- A. The COUNTY may terminate this Agreement for its convenience and without the requirement of an event of default by the COMPANY, which shall become effective immediately, if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical, or illegal, including any case law holding that a Chapter 381 Economic Development Agreement such as this Agreement is an unconstitutional debt.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement.

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless made in writing and signed by all Parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in El Paso County, Texas.
- C. **Assignment of Applicants Rights.** COMPANY may transfer its rights and obligation s pursuant to this Agreement to: (A) any Affiliate of COMPANY; (B) any lender as part of a collateral assignment thereto; and (C) any permitted assignee of COMPANY's interest as

lessee under the Ground Lease which is permitted by the City of El Paso, without the consent of the COUNTY. This provision does not relieve COMPANY of its obligation to notify COUNTY of such transfer pursuant to Section 8.D. Any change of control of COMPANY that does not cause COMPANY to transfer its direct ownership rights in the Project shall not require consent of the COUNTY. The COMPANY may transfer its rights and obligations pursuant to this Agreement to any individual or entity that is not an Affiliate of COMPANY with the consent of the COUNTY. This provision is a material term of this Agreement.

- D. **COMPANY's Sale or Transfer of the Project.** Prior to any sale or other transfer of direct ownership rights in the Project as early as possible, but in no event, less than five (5) business days prior to the COMPANY's anticipated closing or transfer date, COMPANY shall notify the El Paso County Chief Administrator's Office in writing of such pending sale or transfer ("Notice of Transfer"), and El Paso County Chief Administrator's Office will notify COMPANY if it believes the new owner is constitutionally unqualified to receive an economic development award as soon as is reasonably practicable after receipt of the Notice of Transfer. This provision is a material term of this Agreement.
- E. **Binding Obligation.** COUNTY warrants and represents that the individual executing this Agreement on behalf of COUNTY has full authority to execute this Agreement and bind COUNTY to the same. The individual executing this Agreement on COMPANY's behalf warrants and represents that he or she has full authority to execute this Agreement and bind COMPANY to the same.
- F. **Completion of Project.** As consideration for the agreement of the COUNTY as contained herein, COMPANY agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Project and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- G. **Confidentiality Obligations.** The confidentiality of COMPANY's employment records and any other records related to the COUNTY'S economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Texas Public Information Act, Chapter 552, Texas Government Code. Specifically, the COUNTY will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Texas Public Information Act, it will notify COMPANY if a request relating to such proprietary information is received. COMPANY represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it is COMPANY'S responsibility to assert the proprietary interest of COMPANY as a basis for nondisclosure. The COUNTY's obligations under this Section do not impose a duty upon the COUNTY to challenge any court order or ruling of the Texas Attorney General to release information in response to a specific request for information under the Act.
- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

- I. **Employment of Undocumented Workers.** During the Term of the Agreement, COMPANY agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), COMPANY shall repay the amount of the Grants received by COMPANIES from the COUNTY as of the date of such violation not later than one hundred twenty (120) days after the date COMPANY is notified by the COUNTY's Economic Development Department on behalf of the COUNTY of a violation of this Section, plus interest from the date the Grant was paid to COMPANY, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grants were paid to COMPANY until the date the reimbursement payments are repaid to COUNTY. COUNTY may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this Section.
- J. **Request for Information.** COMPANY or its lender may, at any time, and from time to time, deliver a written inquiry to COUNTY requesting the COUNTY to respond in writing as to whether: (a) this Agreement is in full force and effect and, if not, to provide a copy of any replacement agreement; (b) this Agreement has been amended or modified and, if so amended or modified, to provide a copy of all amendments or modifications; (c) COMPANY has received any Notice(s) of Default of the performance of its obligations which is then active, and, if so, to provide copies of all relevant Notice(s) of Default and other correspondence related thereto; and (d) any other information that COMPANY or its lender may request (including, without limitation, whether COMPANY is in default under the terms of this Agreement). COUNTY shall provide the requested information within ten (10) business days. COMPANY agrees: (a) COUNTY is not required to provide any attorney-client privileged information or attorney work product and (b) COMPANY waives its right to restrict COUNTY's delivery of information on the basis it is confidential or proprietary or a trade secret.
- K. **Filing.** The COUNTY shall promptly file this Agreement in the deed records of El Paso County, Texas.
- L. **Force Majeure.** It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such Party's reasonable control by reason of war, terrorism or the imminent threat thereof, insurrection, civil commotion, riots, labor disputes, strikes, lockouts, embargoes, hurricanes or named windstorms, unusual weather, fire, casualty, epidemics, quarantine, any other public health restrictions or public health advisories, disruption to local, national or international transport services, governmental restrictions, any rationing of public services or utilities, or litigation brought on by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as a result of such litigation), unavoidable casualties or other causes beyond the reasonable control of a party (each, an "Event of Force Majeure"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- M. **Indemnity.** The COUNTY affirms that it enjoys governmental immunity and it is not waiving immunity of any type or nature by entering into this Agreement. Notwithstanding such governmental immunity, COMPANY agrees to indemnify, defend and hold harmless the COUNTY and its elected officials, officers, employees and agents from and against any claims, losses, damages, causes of action, suits and liabilities arising out of negligence of COMPANY in connection with this Agreement.
- N. **Relationship of the Parties.** The relationship of the COUNTY and COMPANY under this Agreement is not and shall not be construed or interpreted to be a partnership, joint venture or agency.
- O. **Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges, or causes of action upon any third party
- P. **Exhibits.** The following exhibits are attached to and incorporated into this Agreement for all purposes.

EXHIBIT A: Legal Description

EXHIBIT B: Project Specifications

EXHIBIT C: Grant Submittal Package Form

EXHIBIT D: City of El Paso Lease of 43.5 acres to COMPANY

- Q. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the Party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address.

COUNTY: County of El Paso
County Judge
500 E. San Antonio, Suite 301
El Paso, Texas 79901

Copy To: El Paso County Economic Development Director
500 E. San Antonio, Suite 312
El Paso, Texas 79901

COMPANY: c/o Great Wolf Resorts, Inc.
Attn: Development: El Paso
350 N. Orleans St., Suite 10000B
Chicago, IL 60654

Copy To: Haynes and Boone, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Attention: Jeff W. Dorrill

- R. **Compliance with Applicable Laws.** The Project, including the Property, the improvements constructed thereon, and the business operations associated therewith, at all times shall be constructed, operated and used in the manner that is in accordance with all applicable local and state laws, codes and regulations. This Agreement shall confer no vested rights on the Project unless specifically enumerated herein.
- S. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below, to be effective as of the Effective Date.

COUNTY OF EL PASO, TEXAS

Ruben John Vogt
County Judge

APPROVED AS TO LEGAL FORM:

Assistant County Attorney

APPROVED AS TO CONTENT:

Jose Quinonez, Director
El Paso County Economic Development
Department

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF EL PASO §

This document was acknowledged before me on the _____ day of _____, 2018 by Ruben John Vogt, in his capacity as County Judge of El Paso County, Texas.

Notary Public, State of Texas

[Signatures continue on next page]

COMPANY: GWR El Paso Property Owner, LLC

By:_____

Name: Greg Miller

Title: Executive Vice President

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF EL PASO §

§

This instrument was acknowledged before me on the ____ day of _____, 2018, by **Greg Miller** in his capacity as **Executive Vice President** of GWR El Paso Property Owner, LLC.

Notary Public, State of Texas

EXHIBIT A

PROPERTY DESCRIPTION

{Parcel 1} Exhibit A:

Property description: A 30.279-acre portion of Lot 1, Block 1, El Paso West, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 30.279-acre portion of Lot 1, Block 1, El Paso West (Book 57, Page 5, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the centerline P.I. of Northwestern Drive (September 24, 1984, Book 1547, Page 589, Deed Records, El Paso County, Texas), from which a city monument at the centerline intersection of Northwestern Drive and Paseo Del Norte Boulevard (Artcraft Road, Book 57, Page 5, Plat Records, El Paso County, Texas) bears North 08°03'06" West, a distance of 1562.82 feet; Thence, South 14°59'32" East, along the centerline tangent of Northwestern Drive, a distance 123.89 feet; Thence, South 75°00'28" West, a distance of 34.64 feet to a 5/8" rebar with illegible cap found at the intersection of the westerly right-of-way of Northwestern Drive and the common boundary between El Paso West and El Paso West Unit Two (Book 60, Page 7, Plat Records, El Paso County, Texas) for the **POINT OF BEGINNING** of this description;

THENCE, South 89°59'20" West, along said boundary, a distance of 370.40 feet to a set nail and shiner;

THENCE, North 89°50'54" West, along the southerly boundary of El Paso West, a distance 29.61 feet to a 5/8" rebar with cap marked "RPLS 4178" set at the intersection of the common boundary between El Paso West and El Paso West Unit Two Replat A (Book 65, Page 19, Plat Records, El Paso County, Texas) and the southerly boundary of that certain parcel of land described July 15, 1998, in Book 3406, Page 998, Deed Records, El Paso County, Texas;

THENCE, along said southerly boundary, the following courses:

North 11°40'01" West, a distance of 678.10 feet to a found 5/8" rebar with cap marked "SLI";

South 35°02'33" West, a distance of 325.41 feet to a found 5/8" rebar with cap marked "SLI";

North 54°59'36" West, a distance of 680.56 feet to a found 5/8" rebar with cap marked "SLI";

South 35°00'24" West, a distance of 408.47 feet to a found 5/8" rebar with cap marked "SLI";

South 09°51'24" East, a distance of 23.99 feet to a found 5/8" rebar with cap marked "SLI";

South 52°32'12" East, a distance of 142.15 feet to a found 5/8" rebar with cap marked "SLI";

South 55°55'13" East, a distance of 146.02 feet to a found 5/8" rebar with cap marked "SLI";

South 35°45'23" West, a distance of 101.86 feet to a set 5/8" rebar with cap marked "RPLS 4178";

56.07 feet along the arc of a curve to the right, having a radius of 82.91 feet, a central angle of 38°44'43" and a chord which bears South 63°04'48" West, a distance of 55.00 feet to a found 5/8" rebar with cap marked "SLI";

South 80°08'36" West, a distance of 148.38 feet;

20.52 feet along the arc of a curve to the right, having a radius of 50.36 feet, a central angle of 23°20'31" and a chord which bears North 89°04'21" West, a distance of 20.37 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the easterly right-of-way of U.S. Interstate Highway No. 10 (right-of-way varies; November 17, 1956, Book 1320, Page 251 and November 27, 1956, Book 1320, Page 231, Deed Records, El Paso County, Texas);

THENCE, North 10°01'08" West, along said right-of-way, a distance of 1075.90 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, 207.89 feet along the arc of a curve to the right, having a radius of 135.00 feet, a central angle of 88°13'47", and a chord which bears North 34°05'46" East, a distance of 187.95 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the southerly right-of-way of Paseo Del Norte Boulevard;

THENCE, North 78°12'40" East, along said right-of-way, a distance of 688.94 feet to a 5/8" rebar with cap marked "RPLS 4178" set on the southerly boundary of that certain parcel of land described July 15, 1998, in Book 3406, Page 1016, Deed Records, El Paso County, Texas;

THENCE, along said southerly boundary, the following courses:

South 10°00'38" East, a distance of 29.51 feet to a set 5/8" rebar with cap marked "RPLS 4178";

36.53 feet along the arc of a curve to the left, having a radius of 95.00 feet, a central angle of 22°01'58" and a chord which bears South 21°01'37" East, a distance of 36.31 feet to a set 5/8" rebar with cap marked "RPLS 4178";

South 32°02'36" East, a distance of 119.50 feet to a set 5/8" rebar with cap marked "RPLS 4178";

80.80 feet along the arc of a curve to the right, having a radius of 68.30 feet, a central angle of 67°47'09" and a chord which bears South 01°49'58" West, a distance of 76.17 feet to a set 5/8" rebar with cap marked "RPLS 4178";

South 55°00'42" East, a distance of 521.80 feet to a set chiseled "X";

92.90 feet along the arc of a curve to the right, having a radius of 229.50 feet, a central angle of 23°11'35" and a chord which bears North 70°21'32" East, a distance of 92.27 feet to a set chiseled "X";

North 81°57'20" East, a distance of 200.93 feet to a chiseled "X" found on the westerly right-of-way of Northwestern Drive;

THENCE, South 08°03'06" East, along said right-of-way, a distance of 760.76 feet to a set 5/8" rebar with cap marked "RPLS 4178";

THENCE, 258.96 feet continuing along said right-of-way and along the arc of a curve to the left, having a radius of 1306.04 feet, a central angle of 11°21'37" and a chord which bears South 13°43'55" East, a distance of 258.53 feet to the **POINT OF BEGINNING** of this description.

Said parcel of land contains 30.279 acres (1,318,969 square feet) of land more or less.

{Parcel 2} EXHIBIT A:

Property description: A 13.315-acre portion of Lot 1, Block 1, El Paso West, El Paso, El Paso County, Texas

METES AND BOUNDS DESCRIPTION

The parcel of land herein described is a 13.315-acre portion of Lot 1, Block 1, El Paso West (Book 57, Page 5, Plat Records, El Paso County, Texas), El Paso, El Paso County, Texas, and is more particularly described by metes and bounds as follows:

COMMENCING at a city monument at the centerline P.I. of Northwestern Drive (September 24, 1984, Book 1547, Page 589, Deed Records, El Paso County, Texas), from which a city monument at the centerline intersection of Northwestern Drive and Paseo Del Norte Boulevard (Artcraft Road, Book 57, Page 5, Plat Records, El Paso County, Texas) bears North 08°03'06" West, a distance of 1562.82 feet; Thence, South 14°59'32" East, along the centerline tangent of Northwestern Drive, a distance of 123.89 feet; Thence, South 75°00'28" West, a distance of 34.64 feet to a 5/8" rebar with illegible cap found at the intersection of the westerly right-of-way of Northwestern Drive and the common boundary between El Paso West and El Paso West Unit Two (Book 60, Page 7, Plat Records, El Paso County, Texas); Thence, South 89°59'20" West, along said boundary, a distance of 370.40 feet to a set nail and shiner; Thence, North 89°50'54" West, along the southerly boundary of El Paso West, a distance of 29.61 feet to a 5/8" rebar with cap marked "RPLS 4178" set at the intersection of the common boundary between El Paso West and El Paso West Unit Two Replat A (Book 65, Page 19, Plat Records, El Paso County, Texas) and the southerly boundary of that certain parcel of land described July 15, 1998, in Book 3406, Page 998, Deed Records, El Paso County, Texas, and the **POINT OF BEGINNING** of this description;

THENCE, North 89°50'54" West, along the southerly boundary of El Paso West, a distance of 667.64 feet to a found 5/8" rebar with cap marked "Flores & Associates";

THENCE, North 89°55'05" West, a distance of 462.99 feet to a found 5/8" rebar with cap marked "TX 2998" the easterly right-of-way of U.S. Interstate Highway No. 10 (right-of-way varies; November 17, 1956, Book 1320, Page 251 and November 27, 1956, Book 1320, Page 231, Deed Records, El Paso County, Texas);

THENCE, North 10°01'08" West, along said right-of-way, a distance of 128.49 feet to

a 5/8" rebar with cap marked "RPLS 4178" set on the southerly boundary of that certain parcel of land described July 15, 1998, in Book 3406, Page 1016, Deed Records, El Paso County, Texas;

THENCE, along said boundary, the following courses:

20.52 feet along the arc of a curve to the left, having a radius of 50.36 feet, a central angle of 23°20'31", and a chord which bears South 89°04'21" East, a distance of 20.37 feet to a set 5/8" rebar with cap marked "RPLS 4178";

North 80°08'36" East, a distance of 148.38 feet to a set 5/8" rebar with cap marked "RPLS 4178";

56.07 feet along the arc of a curve to the left, having a radius of 82.91 feet, a central angle of 38°44'43", and a chord which bears North 63°04'48" East, a distance of 55.00 feet to a found 5/8" rebar with cap marked "SLI";

North 35°45'23" East, a distance of 101.86 feet to a found 5/8" rebar with cap marked "SLI";

North 55°55'13" West, a distance of 146.02 feet to a found 5/8" rebar with cap marked "SLI";

North 52°32'12" West, a distance of 142.15 feet to a found 5/8" rebar with cap marked "SLI";

North 09°51'24" West, a distance of 23.99 feet to a found 5/8" rebar with cap marked "SLI";

North 35°00'24" East, a distance of 408.47 feet to a found 5/8" rebar with cap marked "SLI";

South 54°59'36" East, a distance of 680.56 feet to a found 5/8" rebar with cap marked "SLI";

North 35°02'33" East, a distance of 325.41 feet to a found 5'8" rebar with cap marked "SLI";

South 11°40'01" East, a distance of 678.10 feet to the **POINT OF BEGINNING** of this description.

Said parcel of land contains 13.315 acres (580,005 square feet) of land more or less.

EXHIBIT B

SITE PLAN





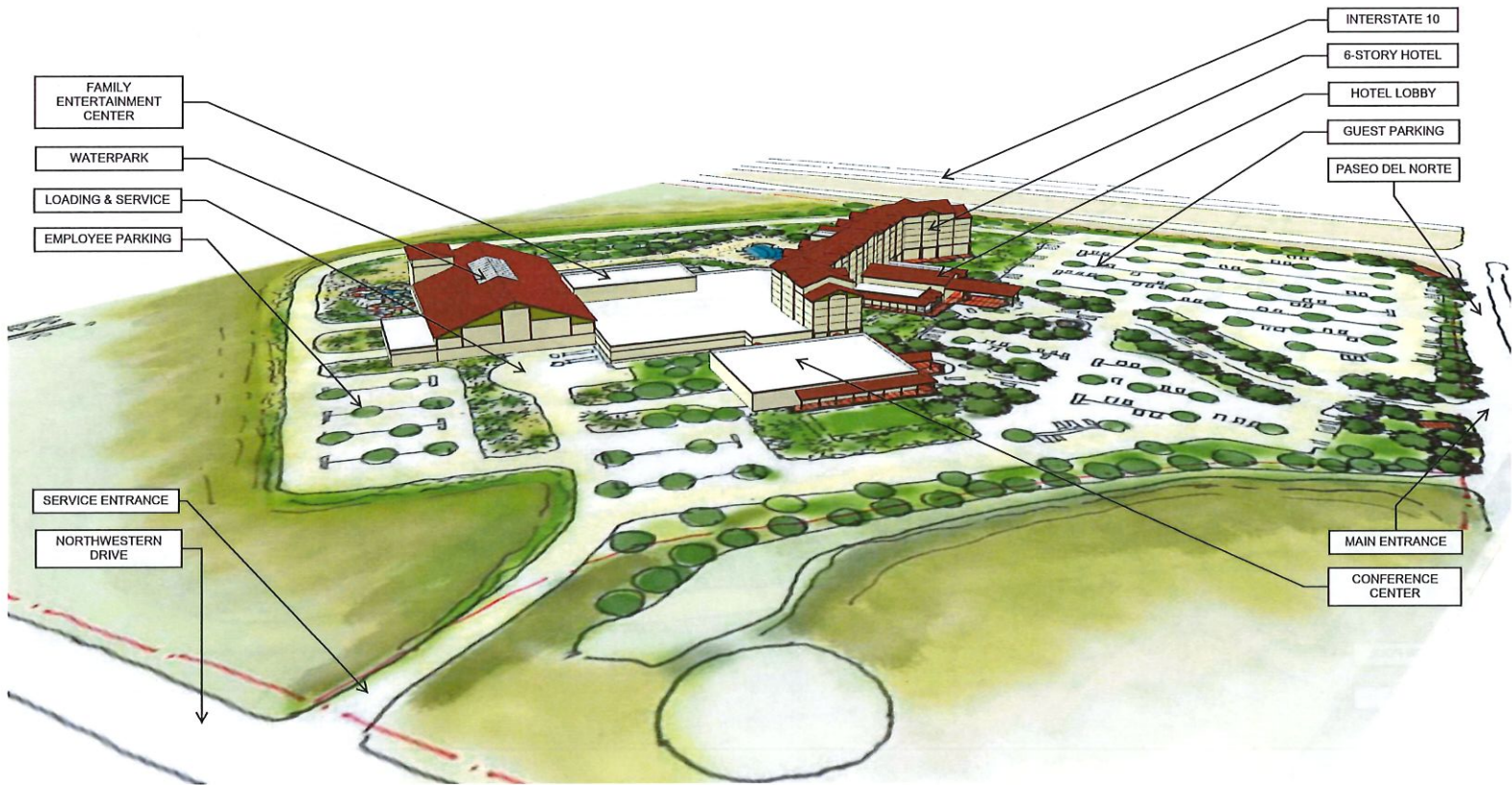
VIEW FROM NORTH



VIEW FROM NORTHWEST



VIEW FROM SOUTHWEST



VIEW FROM NORTHEAST

ESTIMATED**PROJECT PROGRAM****ZONED AREAS:****EP PROGRAM - V1**

GUESTROOMS	217,000	GSF
LOBBY	17,978	GSF
CONFERENCE	16,793	GSF
FEC + CONNECTOR	27,790	GSF
FEC FOOD & BEVERAGE	9,975	GSF
WATERPARK	86,138	GSF
MEP + KITCHENS + BOH	27,808	GSF
TOTAL BUILDING AREA	403,482	GSF

EXHIBIT C

GRANT SUBMITTAL PACKAGE FORM

EXHIBIT C

[Grant Submittal Package Form]

[COMPANYS NAME] believes that it has substantially met its obligations under the Chapter 381 Agreement dated the _____ day of _____, 20____ and signed by _____ of [COMPANY'S NAME] submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

1. Property Tax Payment Receipt(s) showing proof of payment for tax year
2. Any information on any new investments in the Project, beyond the scope of the Agreement (personal and real property)
3. Tax Year for which Grant is requested
4. Qualified Expenditures to evidence ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000). Receipts shall be signed, typed and verified by project engineer or manager.
5. Proof of Certificate of Occupancy
6. Proof of Commencement of Construction; (e.g. Construction Permits).
7. Notice of contest or protest if applicable, under the terms of this Agreement.

It is understood by [COMPANY'S NAME] that the County of El Paso has up to ninety (90) days to process this request, provided that any protest or contest of any assessment by the EP CAD of the Project, has not been filed and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

[COMPANY'S NAME]

Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____,
20_____, by _____, as **TITLE** of [COMPANYS NAME]. _____
_____.

My Commission Expires:

NOTARY PUBLIC

EXHIBIT D

CITY OF EL PASO GROUND LEASE

GROUND LEASE

This Ground Lease ("Lease") is entered into this _____ day of _____, 2018 ("Effective Date") between the CITY OF EL PASO, a Texas home rule municipal corporation ("Landlord") and GWR EL PASO PROPERTY OWNER LLC, a Delaware limited liability company ("Tenant"). In consideration of the premises and the respective undertakings of the parties herein set forth, it is hereby agreed as follows:

SECTION 1. DESCRIPTION OF PREMISES

Subject to the terms, conditions, covenants, and agreements herein, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the real property located in Tax Incremental Reinvestment Zone Ten in El Paso County, Texas ("Premises"), and described on Exhibit A, attached hereto.

SECTION 2. CHAPTER 380 AGREEMENT

This Lease is being executed simultaneously and in connection with that certain Chapter 380 Economic Development Program Agreement by and between Landlord and Tenant ("Chapter 380 Agreement"), which is attached hereto as Exhibit B. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Chapter 380 Agreement.

SECTION 3. TERM

The Term of this Lease shall commence on the Go Forward Election Date (the "Commencement Date") and shall terminate on the later of (a) the date that the final Grant and Incentive to be provided by Landlord to Tenant pursuant to the Chapter 380 Agreement is paid to Tenant and (b) the end of the calendar year in which the 15th anniversary of the Project Completion Date, unless otherwise terminated in accordance with the terms of this Lease. For avoidance of doubt, (i) neither Tenant nor Landlord shall have any obligations or liabilities pursuant to the terms of this Lease prior to the Commencement Date, and (ii) to the extent Tenant does not make a Go Forward Election on or before the Go Forward Election Deadline, this Lease shall be null and void.

SECTION 4. RENT

4.01 Rent. Tenant shall pay Landlord rent of \$1,000.00 per year during the Term of the Lease. Tenant's obligation to pay rent is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Lease by Landlord, shall release Tenant of its obligation to pay rent.

4.02 Commencement of Rent. Tenant's obligation to pay rent to Landlord shall commence on the Commencement Date.

4.03 Time of Payment. Tenant shall make its initial rent payment within 30 days of the Commencement Date. Thereafter, Tenant shall make its rent payments in advance, on or before the first day of the annual anniversary of the Commencement Date.

4.04 Unpaid Rent, Fees and Charges. Any rent, fees, or other charges accruing pursuant to this Lease that Tenant fails to pay to Landlord by the 20th day of the month in which payment is due, will be deducted from any payments to Tenant from Landlord as contemplated by the Chapter 380 Agreement.

4.05 Place of Payment. Tenant shall make all rent payments at the following address:

Office of the Comptroller
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

In lieu of rent payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Landlord.

4.06 Holding Over. Any holding over by Tenant of the Premises at the expiration, termination or cancellation of this Lease shall be construed as a month-to-month tenancy at a monthly rental amount of \$5,000.00 per month. Tenant shall be liable to Landlord for all loss or damage on account of any holding over against Landlord's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Lease, or affect any notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

SECTION 5. PRIVILEGES AND USE

5.01 Granting Lease. The granting of this Lease by Landlord and its acceptance by Tenant is made and done in connection with and as contemplated by the Chapter 380 Agreement.

5.02 Right to Construct. Tenant shall have the right and privilege to construct improvements upon the Premises subject to the terms, covenants, and conditions herein contained.

5.03 Use of the Premises. Tenant shall use the Premises exclusively for the purpose of developing, constructing and operating the Convention Center Hotel (and uses ancillary and related thereto) and managing and operating the Convention Center to be located on the Premises, all as contemplated and agreed to in the Chapter 380 Agreement.

5.04 Restriction of Privileges, Uses and Rights. The rights and privileges granted Tenant hereunder are subject and expressly limited to the terms and conditions of the Chapter 380 Agreement.

SECTION 6. OBLIGATIONS OF LANDLORD

6.01 Quiet Enjoyment. So long as Tenant is not in default under any term or condition of this Lease, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Term, subject only to the Permitted Exceptions.

6.02 Net Lease. This Lease is a net lease and shall be without cost to Landlord except for any Landlord obligations specifically set forth in this Lease; provided, however, the foregoing shall not limit or reduce the grants and incentives described in Section 5(a) of the Chapter 380 Agreement.

6.03 Easements; Dedications; Zoning; Permits.

- (a) In order to develop the Premises for the Convention Center Hotel and other improvements, it may be necessary or desirable that (a) street, water, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights be granted or dedicated over or within portions of the Premises by plat, replat, grant, deed or other appropriate instrument or acquired on other properties, or (b) that existing street, sewer, drainage, gas, power lines, set back lines or other easements, dedications or similar rights on, in the vicinity of or affecting the Premises or portions thereof be vacated or abandoned. Landlord shall, on written request of Tenant, join with Tenant in executing and delivering such documents or otherwise cooperating with or assisting Tenant, from time to time throughout the Term, as may be appropriate or necessary for the development of the Premises or to reasonably facilitate future improvements on the Premises.
- (b) In the event that Tenant deems it necessary or appropriate to obtain use, zoning, site plan approval or any permit from Landlord or any other governmental entity having jurisdiction over the Premises or any part thereof, Landlord, from time to time on request of Tenant and solely to the extent necessary as fee owner of the Premises, shall execute such documents or join in such petitions, applications and authorizations as may be appropriate.

6.04 Development Obligations. Notwithstanding anything to the contrary in the foregoing, pursuant to and in accordance with the terms of the Chapter 380 Agreement, Landlord shall, at its sole cost and expense, complete construction of those certain public improvements more fully described in Section 5 (c) of the Chapter 380 Agreement.

SECTION 7. OBLIGATIONS OF TENANT

7.01 Payment of Rent. Tenant shall pay rent in compliance with Section 4, above.

7.02 Maintenance and Repair of Premises; Alterations. Tenant shall keep and maintain the Premises and, so long as improvements are located on the Premises, such improvements located thereon in good repair at all times, reasonable wear and tear excepted. Tenant shall, without the consent or approval of Landlord, have the right to construct, alter, make additions to, demolish and remove any improvements located on the Premises from time to time during the Term so long as such constructions, alterations, additions, demolitions and removals do not affect the use of the Premises as contemplated and agreed to by the parties in the Chapter 380 Agreement.

7.03 Payment of Taxes. Landlord is a tax-exempt governmental entity and is not responsible for any taxes or assessments arising from Tenant's use or possession of the Premises. During the Term, Tenant shall, subject to the contest rights described in Section 17.12 below, pay all ad valorem taxes and assessments ("AV Taxes") of any kind that may be assessed against Tenant or Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant's use and occupancy of the Premises. By September 1 of each year of this Lease and at no charge to Landlord, Tenant will provide written proof satisfactory to the Landlord that all taxes and governmental charges of any kind have been paid in full, subject to the right of the Tenant's Mortgagee and the securing of the documents to be provide by the Mortgagee, with prior notice to Landlord.

7.04 Acceptance of Condition of Premises. Tenant accepts the Premises in their present condition and agrees that the Premises are suitable for Tenant's business and operations proposed to be conducted thereon relying on its own inspection and judgment. Subject to Section 8 below, Landlord has not made any warranties expressed or implied with regard to the condition of the Premises or their suitability for a particular use. Subject to Section 8 below, Tenant accepts the Premises "As Is", with all faults, relying on Tenant's own inspection and judgment and not in reliance on any representations of Landlord. Landlord assumes no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance or repair necessary to keep the Premises in a safe and serviceable condition.

7.05 Compliance with General Laws. Tenant, at Tenant's sole expense, agrees that it will construct, operate and maintain improvements on the Premises in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, with respect to Tenant's use, occupation or alteration of the Premises and of Tenant's improvements thereon.

7.06 Landlord's Approval of Plans. Landlord's approval of any plans, specifications and working drawings for Tenant's construction shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency or compliance with all laws, rules and regulations of federal, state, county and municipal authorities; provided, however, nothing herein shall act as a waiver of or limit or reduce Tenant's right to rely on permits and approvals issued by the planning or building department (or similar department or agency) of Landlord, not in its capacity as Landlord under this Lease but as a governmental authority with jurisdiction over construction of the Project.

7.07 Landscaping. Tenant shall landscape the Premises, adhering to any applicable municipal code provisions addressing landscaping and following any Chapter 380 Agreement terms and conditions regarding landscaping.

7.08 Utilities. Tenant shall pay for all costs or charges for utility services furnished to Tenant during the Term. Tenant shall have the right to connect to any storm and sanitary sewers and water and utility outlets at its sole cost and expense; provided, however, the foregoing shall not limit or reduce the grants or incentives described in Section 5(a) of the Chapter 380 Agreement.

7.09 Trash, Garbage, and Other Refuse. Tenant shall arrange for the adequate sanitary handling and disposal, away from the Premises, of all trash, garbage and other refuse caused by its use and occupancy of the Premises. Tenant shall provide and use suitable covered commercial type receptacles for all garbage, trash and other refuse, and will maintain the receptacles.

7.10 Penalties Assessed by State or Federal Agencies. In the event any state or federal agency assesses a civil penalty against Landlord for any violation as a result solely due to any act or failure to act (in each case in violation of the terms of this Lease) on the part of Tenant, its subtenants, agents, employees contractors, licensees or invitees, Tenant shall reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within 30 calendar days of receipt of written notice from Landlord to Tenant shall constitute an event of default.

SECTION 8. ENVIRONMENTAL LAW

8.01 Compliance with Environmental laws. Tenant, at Tenant's sole expense, agrees to comply in all material respects with laws, rules, ordinances, regulations and legally-binding requirements of federal, state, county and municipal authorities relating to the protection of the environment (collectively, "Environmental Laws").

8.02 Hazardous Material. Tenant shall not cause or permit any Hazardous Material to be used, generated, manufactured, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Tenant, its subtenants, agents, employees, contractors, invitees or licensees, in each case in a manner that is in material violation of any Environmental Law. For purposes of this provision, "Hazardous Material" means all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like. For purposes of this provision, "release" means any releasing, spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, disposing, or dumping into the environment.

8.03 Indemnification. TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS SUCCESSORS AND ASSIGNS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES (TO THE EXTENT AWARDED TO A GOVERNMENTAL ENTITY) AND REASONABLE LEGAL AND

INVESTIGATION FEES OR COSTS (INCLUDING REASONABLE COSTS AND EXPENSES RELATED TO INVESTIGATION OR REMEDIATION OF THE SOIL, SURFACE WATER OR GROUNDWATER ON OR ABOUT THE PREMISES TO THE EXTENT REQUIRED UNDER ENVIRONMENTAL LAWS), ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, IN EACH CASE ALLEGING OR ARISING FROM A VIOLATION OF ANY ENVIRONMENTAL LAW BY TENANT, IT SUBTENANTS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES ("TENANT PARTIES") ON THE PREMISES OR A RELEASE OF HAZARDOUS MATERIALS BY TENANT PARTIES ON THE PREMISES. TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS SECTION 8 SHALL EXPIRE UPON THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE, PROVIDED HOWEVER THAT TO THE EXTENT LANDLORD HAS PROVIDED NOTICE OF A CLAIM UNDER THIS SECTION 8.03 PRIOR TO SUCH DATE, TENANT'S OBLIGATIONS UNDER THIS SECTION 8.03 SHALL CONTINUE WITH RESPECT TO THE CLAIM THAT IS SUBJECT OF SUCH NOTICE UNTIL THE RESOLUTION OF SUCH CLAIM. FOR AVOIDANCE OF DOUBT, TENANT SHALL HAVE NO RESPONSIBILITY OR OBLIGATION UNDER THIS LEASE FOR ANY HAZARDOUS MATERIALS OR ANY VIOLATION OF ENVIRONMENTAL LAW EXCEPT TO THE EXTENT SUCH HAZARDOUS MATERIALS ARE PRESENT OR SUCH VIOLATIONS OCCUR BECAUSE OF THE ACTS OF TENANT PARTIES.

8.04 Contamination. Without limiting the foregoing, if there is a release of any Hazardous Material on, under or about the Premises or in any improvements thereon to the extent caused either directly or indirectly by Tenant, Tenant shall take all actions at its sole cost with respect to such Hazardous Materials as are required under Environmental Law taking into account the commercial use of the premises and the lack of use of groundwater on the Premises and shall keep Landlord informed of those steps that it takes with respect to such matters and provide the Landlord with any filings regarding such matters made with the appropriate governmental authorities.

8.05 Compliance. Tenant shall, at Tenant's sole expense, to the extent required by Environmental Laws, operate its business on the Premises in material compliance with Environmental Law under the Environmental Laws and shall prepare and undertake any cleanup plans at the site to the extent such plans are (i) required as a result of Tenant's violation of Environmental Law and (ii) required by the government. At no cost or expense to Landlord,

Tenant shall promptly provide all information reasonably requested by Landlord in writing to respond to any governmental investigation alleging a violation of Environmental Law by Tenant or to respond to any claim of liability by third parties alleging a release of Hazardous Materials by Tenant.

8.06 Notification to Landlord. Tenant shall notify Landlord within five working days after Tenant receives written notice of any of the following: (a) any correspondence or communication from any governmental entity to Tenant regarding a release of Hazardous Materials or an actual or potential violation of Environmental Laws on the Premises or in connection with Tenant's operation on the Premises.

8.07 Reporting. At any time that Tenant submits any non-routine filing or response required under Environmental Laws to a governmental agency indicating a violation of Environmental Law or a release of Hazardous Materials pertaining to the Premises or Tenant's operations on the Premises, Tenant shall provide duplicate copies to Landlord of such filing(s) or response(s).

8.08 Landlord's Representations and Warranties. Landlord represents and warrants to Tenant that (1) the Premises are in material compliance with Environmental Law, (2) there has been no release of Hazardous Materials on, at, to or from the Premises, and (3) that no claims, agreements, or orders are in existence or are threatened with respect to Environmental Law or Hazardous Materials.

SECTION 9. INSURANCE AND INDEMNIFICATION

9.01 Insurance. Prior to the execution of this Agreement, Tenant shall obtain, provide proof of, and shall maintain for the term of this Agreement, the types and amounts of insurance coverage listed below:

Comprehensive General Liability Insurance in an amount not less than One Million Dollars for bodily injury to one person for each occurrence,

Two Million Dollars for bodily injuries to more than one person arising out of each occurrence, and

One Million Dollars for Property Damage arising out of each occurrence.

9.02 Additional Insured. Landlord shall be named as an Additional Insured on all insurance policies either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy.

9.03 Notice to Landlord. All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without 30 calendar days prior written

notice to the Landlord or 10 calendar days prior written notice for non-payment of insurance policy premiums.

9.04 Fire and Other Risks Insurance. Tenant, at its sole cost, shall throughout the term of this Lease, keep or cause to be kept all improvements now or hereafter located upon the Premises insured against loss or damage by fire and against loss or damage by other risks embraced by “extended coverage” and against civil commotions, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, including costs of replacing excavations and foundation, but without deduction for depreciation (full insurable value).

9.05 Authorized Insurance and Surety Companies. All required policies of insurance and bonds shall be written by insurance and surety companies with an A.M. Best rating of A-VII or higher. Certificates of insurance shall be delivered to Landlord at least 10 calendar days prior to the effective date of the insurance policy for which the certificate is issued and prior to the Commencement Date of this Lease. Each insurance policy shall contain:

- A. a statement of the coverage provided by the policy;
- B. a statement certifying the Landlord to be listed as an additional insured in the policy;
- C. a statement of the period during which the policy is in effect;
- D. a statement that the annual premium or the advance deposit premium for such policy has been paid in accordance with the terms of the policy; and
- E. an agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least thirty (30) days' prior written notice to Landlord.

9.06 Indemnification. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES, BUT EXCLUDING IN EACH CASE SUCH CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR

WILLFUL MISCONDUCT OF LANDLORD OR ITS AGENTS. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL REASONABLY ACCEPTABLE TO LANDLORD. NOTWITHSTANDING THE FOREGOING, THE INDEMNIFICATION UNDER THIS SECTION 9.06 SHALL NOT COVER ANY MATTER ARISING UNDER ENVIRONMENTAL LAW OR WITH RESPECT TO HAZARDOUS MATERIALS, WHICH MATTERS ARE ADDRESSED EXCLUSIVELY UNDER SECTION 8.

SECTION 10. DESTRUCTION BY FIRE OR OTHER CASUALTY

10.01 Obligations of Tenant. Subject to Tenant's rights under Section 10.01 (E) below, during the Term, should the improvements on the Premises be materially damaged or destroyed in whole or in part by fire or other casualty, Tenant shall give prompt notice thereof to Landlord, and Tenant, at its own cost and expense, shall promptly repair, replace and rebuild the same, at least to the same extent as the value and as nearly as practical to the character (the "Existing Character") of the buildings and improvements existing immediately prior to such time. If the estimated costs of restoration would reasonably be expected to exceed \$25,000,000.00 or if Tenant desires to restore a material component of the Premises in a manner that materially differs from the Existing Character, then such repairs, replacements or rebuilding shall, subject to Tenant's rights under Section 10.01(E) below, be made by Tenant as aforesaid and subject to and in accordance with the following terms and conditions:

- A. Prior to commencing such work, Tenant shall deliver to Landlord a set of the preliminary construction plans and specifications. In the event the preliminary plans and specifications are substantially different from the original development plans, and the development plans are not for a family resort and waterpark with a standard consistent with Tenant's other properties, Tenant will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto. Tenant's subsequent failure for 90 days after written notice from Landlord to prepare and provide preliminary construction plans and specifications in substantial conformity with the original development plans for the Premises (or plans for development otherwise permitted under Section 6.02 above), shall be deemed an event of default of this Lease and a cross default of the Chapter 380 Agreement, including and specifically Section 4 (c) (2); and in such event Landlord shall be entitled to (i) terminate this Lease, or (ii) exercise the recapture of incentives pursuant to Section 9 of the Chapter 380 Agreement.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and

specifications. Upon completion of the final working plans and specifications, Tenant shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to Landlord one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.

- C. Without limiting compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies having been paid to Tenant. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.
- D. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.
- E. Notwithstanding anything to the contrary herein, in the event of a total or substantial loss or damage to the improvements on the Premises (including any damage which, in Tenant's reasonable judgment, cannot feasibly be repaired in a manner that would enable Tenant to conduct or resume its operations on the Premises in substantially the same manner as conducted prior to the total or substantial loss or damage), Tenant shall have the option, in its sole discretion, within 180 days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to Landlord within said 180-day period, in which event this Lease shall terminate as of the termination date specified in such notice to Landlord, which shall not be less than 30 days after the date of such notice, and Tenant shall pay all other payments due and owing as of the termination date. Subject to Section 10.01(f) below, Lessee shall not be required to repair damage, and all insurance proceeds available as a result of such damage shall be paid to and be the property of Tenant.
- F. In the event of a termination of the Lease as described in Paragraph E, Tenant acknowledges its obligation to demolish and remove any improvements on the Premises; provided however, that such obligation shall be limited such that Tenant shall only be required to remove the improvements on the Premises to the extent that the cost to Tenant for such removal and demolition shall not exceed the amount of insurance proceeds received by Tenant as a result of the damage

described in Paragraph E. For avoidance of doubt, the excess of any insurance proceeds used to demolish and remove improvements pursuant to this Paragraph F shall be the property of Tenant.

10.02 Insurance Proceeds. Upon receipt by Tenant of the proceeds of the property casualty insurance policy or policies, if Tenant is required to repair or restore as provided in this Section 10, Tenant (or, if required by Tenant's lender, Tenant's lender or designee) shall receive and use the amount of such proceeds to pay for the cost of such repair, replacement or rebuilding. Tenant shall only be required to make repairs to the extent proceeds of insurance are sufficient to pay the costs of the necessary repair, replacement or rebuilding of such damaged improvements. If the amount of such insurance proceeds is in excess of the costs thereof, the amount of such excess shall be retained by Tenant.

SECTION 11. TENANT'S PURCHASE OPTION FOR THE HOTEL LAND.

11.01 Definition of Hotel Land. As used in this Section, *Hotel Land* means that certain portion of the Premises as more specifically described in Exhibit C, (attached).

11.02 Grant of Option for Hotel Land. For separate, additional consideration in the amount of \$10.00, the receipt and sufficiency of which is hereby acknowledged, and in accordance with section 311.008 (b) (2), Landlord grants to Tenant the exclusive option to purchase the Premises from Landlord for the agreed upon price of \$5,000.00.

11.03 Exercise of Option for Hotel Land.

A. Tenant may exercise its option to purchase the Hotel Land at any time on or after the Project Completion Date. The option to purchase the Hotel Land shall expire 120 days prior to the scheduled expiration of the Term of the Lease. This period is referred to as the "Option Period for the Hotel Land."

C. Tenant must give written notice to Landlord that it will exercise its option to purchase the Hotel Land before the Option Period for the Hotel Land expires.

D. Tenant must purchase the Hotel Land within 90 days after the date of the expiration of the Option Period for the Hotel Land, and must pay the agreed upon purchase price.

E. Unless the parties have determined that Landlord's ownership of the Hotel Land is not a requirement for Tenant to be eligible to receive Grants pursuant to SCCHP, Tenant's exercise of the option to purchase the Hotel Land shall immediately terminate any remaining Grants to be made pursuant to the SCCHP.

11.04 Failure to Exercise Option for Hotel Land. Tenant's failure to exercise the option to purchase the Hotel Land shall be deemed a waiver by Tenant of the purchase option incentive as outlined in the Chapter 380 Agreement, Section 5 (a) (9), and a waiver of its monetary value. In the event of such waiver, Landlord shall have **no** obligation to provide an alternative incentive as a substitute for the Hotel Land purchase option incentive and its monetary value.

SECTION 12. TENANT'S PURCHASE OPTION FOR THE CONVENTION CENTER LAND

12.01 As used in this Section, *Convention Center Land* means that certain portion of the Premises, together with any improvements thereon, as more specifically described in Exhibit D (attached).

12.02 Grant of Option for Convention Center Land. For separate, additional consideration in the amount of \$10.00, the receipt and sufficiency of which is hereby acknowledged, and in accordance with section 311.008 (b) (2), Landlord grants to Tenant the exclusive option to purchase the Convention Center Land from Landlord for the agreed upon price of \$5,000.00.

12.03 Exercise of Option for Convention Center Land.

A. Tenant may exercise its option to purchase the Convention Center Land at any time on or after the Project Completion Date. The option to purchase the Convention Center Land shall expire 120 days prior to the scheduled expiration of the Term of the Lease. This period is referred to as the "Option Period for the Convention Center Land."

C. Tenant must give written notice to Landlord that it will exercise its option to purchase the Convention Center Land before the Option Period for the Convention Center Land expires.

D. Tenant must purchase the Convention Center Land within 90 days after the date of the expiration of the Option Period for the Convention Center Land , and must pay the agreed upon purchase price.

E. Unless the parties have determined that Landlord's ownership of the Convention Center Land is not a requirement for Tenant to be eligible to receive Grants pursuant to SCCHP, Tenant's exercise of the option to purchase the Convention Center Land shall immediately terminate any remaining Grants to be made pursuant to the SCCHP.

12.04 Failure to Exercise Option for Hotel Land. Tenant's failure to exercise the option to purchase the Convention Center Land shall be deemed a waiver by Tenant of the purchase option incentive as outlined in the Chapter 380 Agreement, Section 5 (a) (10), and a waiver of its monetary value. In the event of such waiver, Landlord shall have **no** obligation to provide an alternative incentive as a substitute for the Hotel Land purchase option incentive and its monetary value.

SECTION 13. INTENTIONALLY OMITTED

SECTION 14. TERMS AND CONDITIONS OF PURCHASE OPTIONS

In the event that the Premises are to be acquired by Tenant pursuant to Tenant's exercise of the Purchase Option the following terms and conditions apply:

A. The closing of such acquisition shall occur in such place as Landlord and Tenant mutually determine.

B. The closing shall occur on a date designated by Tenant not later than 90 days after the termination of the Option Period or such earlier date as may be agreed in writing by Landlord and Tenant.

C. The purchase option price shall be paid in cash.

D. Landlord and Tenant shall terminate this Lease as to the Hotel Land and/or the Convention Center Land, as applicable, and file a memorandum of termination in the Deed Records of El Paso County.

E. Landlord shall execute and deliver such other documentation as shall be necessary to vest title to the Leased Premises and all appurtenances owned by Landlord in Tenant, including, without limitation, a special warranty deed conveying to Tenant (or its designee) fee simple ownership of the Premises and any and all other interests of Landlord in such real property, subject only to the Permitted Exceptions.

F. All expenses of closing, including but not limited to any title policy premiums, survey costs, and recording fees (but excluding attorneys' fees, which shall be borne by the party incurring such fees), shall be borne solely by Tenant.

SECTION 15. ENCUMBRANCES

15.01 Encumbrance. As used in this Lease, the word "Mortgage" includes a deed of trust and the word "Mortgagee" includes the beneficiaries under deeds of trust, whether one or more. Tenant may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage; if so, Tenant shall promptly notify Landlord in writing. The Mortgagee of any such Mortgage may deliver to Landlord a written notice specifying:

A. The amount of the obligation secured by the Mortgage,

B. The date of the maturity or maturities thereof; and

C. The name and mailing address of the Mortgagee.

After receipt of such notice, Landlord shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Landlord upon Tenant under the terms of this Lease so long as such Mortgage is in effect.

15.02 Mortgagee's Rights.

(1) Upon Mortgagee's receipt from Landlord of a notice of default by Tenant or demand in accordance with Section 14.01 above, Mortgagee shall have 120 days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot reasonably be cured within 120 days, to commence performance within such 120 day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

(2) No notice of a default by Tenant hereunder given by Landlord shall be effective for purposes of commencing the cure rights set forth in Section 14.02(1) above against a Mortgagee that has provided Landlord the information specified in Section 14.01 of this Lease unless Landlord has given a copy of such notice of default to such Mortgagee as provided in Section 15.01.

(3) No Mortgagee shall have any personal liability under this Lease unless and until it becomes Tenant under this Lease.

(4) Landlord will, upon request by any Mortgagee, certify in writing that this Lease is in full force and effect, whether this Lease has been amended, that to Landlord's knowledge Tenant is not in default, and the date through which rent has been paid, and in addition, Landlord agrees to accept any amendments of this Lease which are requested by a Mortgagee prior to the execution of its Mortgage which are reasonably calculated to protect the Mortgagee's interest in this Lease under its Mortgage and do not, in the reasonable opinion of Landlord, materially diminish the rights of Landlord under this Lease.

(5) If this Lease and the fee estate in the Premises are ever commonly held as a result of a default by Tenant, then they shall remain separate and distinct estates and shall not merge until all cure periods for Mortgagee specified in this Lease have expired.

(6) This Lease may not be amended, modified, changed, cancelled, waived, or terminated without prior written notice to all Mortgagees. Landlord shall not accept a voluntary surrender of the Lease without consent by all Mortgagees.

(7) Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination or rejection in bankruptcy of this Lease for any reason prior to the stated expiration date, Landlord shall promptly notify all Mortgagees of such termination or rejection. If the Mortgagee having the highest priority with respect to the Lease cures all defaults (that are reasonably susceptible to cure) that gave rise to such termination or rejection as provided below, Landlord shall enter into a new lease of the Premises with such Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination

or rejection of this Lease, at the Rental and other payments payable hereunder and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(a) the Mortgagee entitled to the new lease shall make written request to Landlord for a new lease within 60 days after receipt by the Mortgagee of written notice from Landlord of the date of termination or rejection of this Lease; and

(b) at the time of the execution and delivery of the new lease, the Mortgagee or its designee shall pay to Landlord all amounts specified in the notice of termination delivered by Landlord of amounts due hereunder (excluding, however, any such amounts representing rents for the period after the date of the new lease, which rents shall be paid as provided as and when due pursuant to Section 4.01 above), and shall promptly thereafter cure all other defaults (to the extent reasonably susceptible to cure) giving rise to such termination or rejection.

15.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Lease.

15.04 Estoppel Certificates. Upon request, Landlord, acting through the Director of Economic and International Development, may provide to Tenant or Tenant's Mortgagee an estoppel certificate containing the following information and no more: confirmation that Landlord remains owner of the Premises and lessor under this Lease; that this lease contains the full agreement between Landlord and Tenant with regard to the Premises; that Tenant is current in its obligations under this Lease as of a certain date; that, to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, and length of term under this Lease.

SECTION 16. EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

16.01 Expiration. This Lease shall expire at the end of the term or any extension thereof.

16.02 Cancellation. The following shall be events of default in which event, so long as such event of default continues, Landlord may, as its sole and exclusive remedy therefore, terminate this Lease by written notice to Tenant (and, if applicable, any Mortgagee):

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of thirty (30) days after Landlord has notified Tenant in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Tenant's property and such petition is not dismissed within ninety (90) days after filing;
- C. Make any general assignment for the benefit of creditors;

- D. Subject to an Event of Force Majeure, cease all construction of improvements, or following the Project Completion Date, cease all operations on the Premises for at least 180 consecutive days;
- E. Be in violation of any local, state, or federal rules and/or regulations or in default in the performance of any of the covenants and conditions required herein (except payments) to be kept and performed by Tenant, and such violation or default continues for a period of ninety (90) days after receipt of written notice from Landlord to cure such default, unless during such ninety-day period, Tenant shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged in a final, non-appealable order, as bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Tenant where such receivership is not vacated within ninety (90) days after the appointment of such receiver.

16.03 Failure to Cancel Lease. Failure of Landlord to declare this Lease canceled upon the default of Tenant for any of the reasons set out shall not operate to bar or destroy the right of Landlord to cancel this Lease by reason of any subsequent violation of the terms of this Lease.

16.04 Receipt or Acceptance of Money. No receipt or acceptance of money by Landlord from Tenant after the expiration or cancellation of this Lease or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease, or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

16.05 Cross Default. Failure of the Great Wolf Resorts to comply with or perform any term, obligation, or condition of this Lease after written notice by the City and the expiration of any opportunity to cure as herein provided, will be deemed an event of default under the Chapter 380 Agreement executed by the parties. Accordingly, a notice of default under the terms of this Lease will also constitute a notice of default of the Chapter 380 Agreement. Likewise, a notice of default under the terms of the Chapter 380 Agreement will constitute a notice of default of this Lease.

16.06 Assignment and Transfer. Tenant shall have the right and privilege to assign or transfer this Lease subject to the prior written approval of Landlord, which shall not be unreasonably withheld; provided, however, that Landlord's approval shall not be required in the event of an assignment of this Lease by Tenant to the first leasehold Mortgagee (and any purchaser or designee of Mortgagee at a foreclosure or deed in lieu of foreclosure) or by Tenant to an affiliate of Tenant.

Any person or entity to which this Lease is assigned to pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

16.07 Subleasing. Tenant shall have the right to sublease all or any part of the Premises hereunder for the same purposes permitted under the terms and provisions of this Lease, including but not limited to the insurance and indemnity requirements. Any such sublease executed after the effective date of this Lease shall be subject to the same conditions, obligations and terms as set forth herein and Tenant shall be responsible for the observance by its subtenants of the terms and covenants contained in this Lease. Tenant shall, upon request of Landlord, promptly report to Landlord any subleases of the Premises, or any improvements thereon and, Tenant shall furnish Landlord with a copy of the Sublease Agreement. In addition, Tenant shall provide a list of its subtenants and the subtenants contact information to the Landlord every six months or, if sooner, whenever the identity of any subtenant may change. Course-of-business bookings, leases for durations of less than 180 days, or contracting for use of rooms, entertainment, meeting or other spaces within the Premises will not constitute “subleasing” under this Section 16.07.

SECTION 17. CONDEMNATION

17.01 Definitions. The following definitions apply in construing the provisions of this Lease relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. “Taking” means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. “Total taking” means the taking of the fee title to all of the Premises and improvements thereon.
- C. “Substantial taking” means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not, without significant investment by or additional expense to Tenant, be economically and feasibly useable by Tenant;
 - (2) Without significant investment by or additional expense to Tenant, the conduct of Tenant’s business on the Premises would be substantially prevented or impaired;

- (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Tenant under this Lease.
- D. “Partial taking” means the taking of a fee title that is not either a total or substantial taking.
- E. “Improvements” includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. “Notice of intended taking” means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking, as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. “Award” means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. “Date of Taking” means the date that Tenant is required to vacate the Premises or portion thereof subject to a taking pursuant to a final order of condemnation or agreement between the parties hereto.

17.02 Notice of Condemnation. The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking;
- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

17.03 Rights of Parties During Condemnation Proceeding. Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each

party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

17.04 Taking of Leasehold. Upon a total taking, Tenant's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial under the aforementioned definition, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If Tenant does not so notify Landlord, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

17.05 Total Taking. All of Tenant's obligations under the Lease shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for the Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the land and Landlord-constructed improvement as unencumbered by Tenant-owned improvements, but subject to the Lease, shall be disbursed to Landlord.

17.06 Partial Taking. Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises or property; and
- B. The balance, if any, to Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-constructed improvements and the leasehold value of the Lease. Landlord shall receive all sums awarded for the land as unencumbered by the Tenant-owned improvements but subject to the Lease.

17.07 Obligations of Tenant Under Partial Taking. Promptly after any such partial taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the Premises as aforesaid by notifying Landlord of its intention to that effect.

17.08 Taking of Temporary Use of Premises and Improvements. Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Tenant shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or

claims arising there from, Tenant shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

SECTION 18. NONDISCRIMINATION COVENANT

18.01 Nondiscrimination in Use of Premises. Lessee, for itself, its personal representatives, successors in interest and assigns, as part of the consideration herein, agrees as a covenant running with the land that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Premises on the basis of race, color, national origin, religion, disability, gender, or sexual orientation.

18.02 Nondiscrimination in Construction of Improvements. Lessee agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any services on or in the construction of any improvements or alterations to the Premises on grounds of race, color, national origin, religion, disability, gender, or sexual orientation.

18.03 Nondiscrimination in Provision of Goods and Services. Lessee agrees to furnish its accommodations and to price its goods and services without discrimination on grounds of race, color, national origin, religion, disability, gender or sexual orientation.

18.04 Compliance with Federal Law. Lessee covenants and agrees that it will at all times comply with any Title VI of the Civil Rights Act of 1964, and any amendment thereto, and applicable provisions of Title 49 of the Code of Federal Regulations.

18.05 Indemnification. If any claim arises from an alleged violation of this non-discrimination covenant by Lessee, its personal representatives, successors in interest or assigns, Lessee agrees to indemnify Lessor and hold Lessor harmless.

SECTION 19. GENERAL PROVISIONS

19.01 Amendments. This Lease constitutes the parties' entire understanding and agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.

19.02 Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with Texas state laws and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.

19.03 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party

shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

19.04 Binding Authority. Landlord represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same. Tenant represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

19.05 Chapter 380 Agreement. This Lease is subject to the terms, covenants and conditions contained in the Chapter 380 Agreement entered into by the parties. If this Lease conflicts with the provisions of Chapter 380 Agreement, the Chapter 380 Agreement controls.

19.06 [Intentionally omitted]

19.07 Headings. The section headings in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of the Agreement.

19.08 Interpretation. This Lease has been freely negotiated by both parties. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Lease or any portion thereof.

19.09 Memorandum of Lease. Simultaneously with the execution of this Lease, Landlord and Tenant may execute a memorandum of Lease in form and substance reasonably acceptable to Landlord and Tenant. Tenant shall provide to Landlord a copy of any memorandum filed of record in the Real Property records for El Paso County, Texas.

19.10 Notices. All notices required to be given under this Agreement must be in writing and will be effective when actually delivered or deposited in the United States mail, certified first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Each party agrees to keep the other informed of any address change by giving written notice to the other party, specifying that the purpose of the notice is to change the party's address.

Landlord:

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to:

City of El Paso
Director, Economic and International
Development
P.O. Box 1890
El Paso, Texas 79950-1890

City of El Paso
City Attorney

P.O. Box 1890
El Paso, Texas 79950-1890

Tenant: Great Wolf Resorts, Inc.
350 N. Orleans Street, Suite 10000B
Chicago, Illinois 60654

Copy to: Haynes and Boone, LLP
Attn: Jeff Dorrill
2323 Victory Ave., Suite 700
Dallas, Texas 75201

19.11 Restrictions and Reservations. This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Tenant reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Landlord consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Landlord's interest in the Premises.

19.12 Right to Contest. Tenant in good faith may contest any tax or governmental charge, subject to the terms of the Chapter 380 Agreement and provided that Tenant may not permit such tax or governmental charge to remain unpaid during the period of such contest, subject to state law, and any appeal therefrom unless, in the opinion of counsel satisfactory to Landlord, such action will not adversely affect any right or interest of Landlord.

19.13 Right to Inspect. Landlord's representatives, at any reasonable time and with 5 working days' notice (including notice via electronic mail), may enter upon and inspect the Premises to ascertain whether the maintenance of the Premises, and construction of structures thereon comply with municipal, state, federal laws, so long as Landlord's inspection does not unreasonably interfere with Tenant's operations or cause a violation or breach of any duties Tenant owes to third parties. Landlord shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

19.14 Severability. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

19.15 Successors and Assigns. All terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding on Landlord and Tenant, their successors, assigns, legal representatives, heirs, executors and administrators. Tenant shall cause any assignee to execute an agreement whereby the assignee expressly agrees to be bound by the terms of this Lease.

19.16 Survival of Certain Provisions. All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease

19.17 Waiver of Warranty of Suitability. LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. SUBJECT TO SECTION 7 ABOVE, TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE PREMISES AND IS COMPLETELY FAMILIAR WITH THE PREMISES AND TENANT LEASES THE PREMISES “AS IS – WHERE IS” AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT’S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.

19.18 Waiver of Landlord. Landlord hereby waives all constitutional, statutory or consensual liens which Landlord may have or be entitled to claim against the goods, wares and any other personal property of Tenant, and shall sign such confirmations thereof as Tenant may reasonably request.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this _____ day of _____, 2018.

LANDLORD:

CITY OF EL PASO

Tomás González
City Manager

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Roberta Brito
Assistant City Attorney

Jessica Herrera, Director
Economic and International Development

ACKNOWLEDGMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2018,
by Tomás González as City Manager for the City of El Paso, Texas (Landlord).

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ATTEST:

TENANT:

**GWR EL PASO PROPERTY OWNER
LLC**,
a Delaware limited liability company

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____ 2018,
by _____ as _____ of _____.

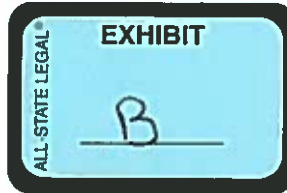
Notary Public, State of _____

My Commission Expires:

EXHIBIT A

Description of Real Property

Being a 43.594-acre portion of Lot 1 Block 1, El Paso West, El Paso County, Texas



CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Chapter 380 Economic Development Program Agreement (this "Agreement") is entered into between the CITY OF EL PASO, a Texas home rule municipal corporation (the "City"), and GWR El Paso Property Owner LLC, a Delaware limited liability company (together with its successors and assigns, "Great Wolf Resorts"), for the purposes and considerations stated below.

RECITALS

The City has passed and approved the 2019 Capital Funding Plan Resolution, attached as Exhibit A ("Capital Improvement Resolution"), establishing a capital improvement plan for the construction of a convention center facility.

The City has the authority under Chapter 380 of the Texas Local Government Code ("Chapter 380") to make the grants of public funds to promote local economic development and to stimulate business and commercial activity in the City.

Pursuant to Chapter 380, the City desires to provide grants of public funds to Great Wolf Resorts to develop and construct a Convention Center and Convention Center Hotel.

The City has determined that the grant of funds to Great Wolf Resorts will promote local economic development and stimulate business and commercial activity in the City.

The City has determined that this project demonstrates the potential to generate revenues to the City that outweigh costs associated with incentives.

The City has determined that the grant of revenue from local hotel occupancy taxes will directly enhance and promote tourism and the convention and hotel industry in accordance with Section 351.101 of the Texas Tax Code.

The City recognizes that tourism is a significant component of the City's economy and cites the Convention Center and Convention Center Hotel as a critical element in the City's efforts to promote tourism in the City.

Great Wolf Resorts expects to develop and construct the Convention Center and Convention Center Hotel pursuant to the terms of this Agreement and in accordance with the City Economic Incentive Development Policy.

Great Wolf Resorts expects to construct the Convention Center and Convention Center Hotel on real property owned by the City and located within Tax Increment Reinvestment Zone Number Ten.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. EFFECTIVE DATE AND TERM.

The Effective Date of the Agreement shall be the date the Agreement is executed by both parties. The term of this Agreement shall commence on the Effective Date and shall terminate on the later of (a) the date that the final Grant and Incentive is paid to Great Wolf Resorts and (b) the end of the calendar year in which the 15th anniversary of the Project Completion Date occurs, unless otherwise terminated in accordance with the terms of this Agreement (the "Term").

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

1,000 Foot Requirement means that requirement set forth in Chapter 351.001(2) of the Texas Tax Code and used to define convention center facilities, as such requirement is interpreted by the State Comptroller.

Affiliate means any entity that, directly or indirectly, controls, is controlled by, or is under common control with, Great Wolf Resorts. For this purpose, the term "control" and all derivations thereof means the ability to control the primary activities of an entity, whether through the ownership of an interest in such entity, by contract or otherwise.

Ancillary Facilities means those certain Facilities ancillary to the Convention Center Hotel that meet the 1,000 Foot Requirement, as such requirement is interpreted by the State Comptroller.

Base Year Value means the amount designated as the fair market value of the Real Property and any improvements thereon by the El Paso Central Appraisal District on January 1, 2018, which is \$6,743,116.00. Under no circumstances, and at no time, shall the Base Year Value be (i) determinative of the market value of the Real Property for appraisal purposes; or (ii) utilized in any way to determine the market value of the Real Property. Upon determination of the square footage of the Hotel Land, as defined herein, the City shall determine the base year value of the Hotel Land as a parcel within the Real Property.

BCI means the monthly building cost index for Dallas, Texas, as published in Engineering News-Record.

Blackout Dates means certain dates selected by Great Wolf Resorts from time to time (in its sole discretion) on which the City shall not be entitled to use the Convention Center or Convention Center Hotel pursuant to Section 4(d) of this Agreement.

Building Construction and Planning Fees Waiver means the City's waiver of 100% of the City's Building Construction and Planning Fees pursuant to Section 5(a)(8) of this Agreement.

City Economic Development Incentive Policy means that certain City policy set forth on Exhibit B to this Agreement.

City Grant Period means a period of fifteen (15) years, commencing on the Project Completion Date.

City Hotel Occupancy Tax means the municipal hotel occupancy tax levied by the City pursuant to chapter 351 of the Texas Tax Code, as amended. The current the rate is seven percent (7%), as of the effective date of this Agreement.

City Hotel Occupancy Tax Grant means an economic development grant in an amount equal to 50% of the City Hotel Occupancy Tax in relation to guests staying at the Convention Center Hotel.

City Sales and Use Tax means the sales tax imposed by chapter 321 of the Texas Tax Code.

City Sales and Use Tax Grant means an economic development grant in an amount equal to 100% of the City's portion of City Sales and Use Tax levied on the sale of Taxable Items Consummated at the Project.

Construction Materials City Sales Tax Grant means the one-time grant of 100% of the City's portion of sales tax (1%) on the materials and labor used for the Project.

Consummated shall have the same meaning assigned by Texas Tax Code section 321.203 or its successor.

Convention Center means the facility to be built by Great Wolf Resorts on the Convention Center Land that will be used to host conventions and meetings. The City shall own the Convention Center. The Convention Center is more specifically described in Exhibit C to this Agreement.

Convention Center Hotel means the hotel, including parking areas and green space, to be built by Great Wolf Resorts on the Hotel Land owned by the City. The Convention Center Hotel is more specifically described in Exhibit D to this Agreement. Great Wolf Resorts shall own the Convention Center Hotel.

Convention Center Land means that certain portion of the Real Property which is not the Hotel Land as more specifically described in Exhibit E to this Agreement.

Deed of Trust means any mortgage, deed of trust, security agreement, or other security instrument encumbering Great Wolf Resorts' interest in any portion of the Project.

Destination Marketing Organization means the City department(s) responsible for destination marketing, including convention development, meeting planning services, tourism development, visitor information centers, advertising, and media relations.

Destination Tourism Grant means an economic development grant in the amount set forth in Section 5(a)(11) below that the City shall disburse to Great Wolf Resorts, subject to the terms set forth in Section 5(a)(11) of this Agreement.

Development Grant means an economic development grant in the amount of Five Million Dollars (\$5,000,000.00) that the City will disburse to Great Wolf Resorts pursuant to the benchmarks set forth in Section 5(a)(1) of this Agreement.

Facility means a single building or improvement (irrespective of the number of tenants of such building or improvement).

Favorable PLR means a PLR that, in Great Wolf Resorts opinion (as it determines in its sole discretion), would result in the Maximum SCCHP Grant.

Go Forward Election Deadline means the date that is the later of (i) nine (9) months from the date the PLR is issued to Great Wolf Resorts; or (ii) eighteen (18) months from the Effective Date.

Grant means any of the following: 1) the Development Grant; 2) the Destination Tourism Grant (if applicable pursuant to the terms set forth in Section 5(a)(11) herein); 3) the City Hotel Occupancy Tax Grants; 4) the City Sales and Use Tax Grants; 5) the State Hotel Occupancy Tax Grants; and 6) the State Sales and Use Tax Grants.

Holder means the holder of any Deed of Trust.

Hotel Land means that certain portion of the Real Property upon which the Convention Center Hotel is to be constructed, and the pertinent surrounding property, as more fully described in the Ground Lease.

Incentive means any of the following: 1) the Construction Materials City Sales Tax Grant; 2) the Building Construction and Planning Fees Waiver; 3) the Convention Center Hotel Incremental Property Grant; 4) the Hotel Land Purchase Option; and 5) the Convention Center Land Purchase Option.

Maximum SCCHP Grant means the aggregate State Sales and Use Tax Grant and the State Hotel Occupancy Tax Grant that would apply if (a) the SCCHP applies in full and without limitation to the Project and (b) the Ancillary Facilities includes all of the property and improvements set forth on Exhibit F.

Minimum Appraised Value means the value of the Real Property, leasehold interest, improvements and the personal property that comprises the Project after completion. For purposes of this Agreement, the Minimum Appraised Value is Seventy-Five Million Dollars (\$75,000,000.00).

PLR means a private letter ruling from the Comptroller of the State of Texas with respect to the application of SCCHP to the Project, pursuant to Texas Comptroller Rule 3.1.

PLR Tolling Period means, in a circumstance in which a PLR is not issued and delivered to Great Wolf Resorts within the period ending on the three (3) month anniversary of the Effective Date, the number of days between the three (3) month anniversary of the Effective Date and the date on which a PLR is issued and then delivered to Great Wolf Resorts.

Project means, collectively, the Convention Center, the Convention Center Hotel, the Real Property and all tangible personal property located on the Real Property.

Project Completion Date means the date that construction of the Project is complete and all required certificates of occupancy have been obtained. For purposes of this Agreement, a certificate of occupancy shall not include a certificate of occupancy issued in error or based on a misrepresentation fact, nor a temporary or conditional certificate of occupancy.

Property Tax Grant means an economic development grant in an amount equal to 100% of the City's portion of the (i) incremental ad valorem property tax revenue generated by the Hotel Land and any improvements located thereon above the Base Year Value, and (ii) personal property tax revenue generated by the value of the personal property located at the Project. The grant payments shall be paid to Great Wolf Resorts annually for a period of fifteen (15) consecutive years.

Qualified Expenditures mean the costs incurred by Great Wolf Resorts (and its Affiliates) in the construction of the Project.

Real Property means the land owned by the City and located within Tax Increment Reinvestment Zone Number Ten on which Great Wolf Resorts will construct the Convention Center and Convention Center Hotel. The Real Property is more specifically described in Exhibit G attached to this Agreement.

SCCHP means the State Convention Center Hotel Program as set forth in Texas Tax Code sections 351.001(7)(E), 351.102 and/or 151.429, and Texas Government Code section 2303.5055.

State Comptroller means the Texas Comptroller of Public Accounts.

State Grant Period means a period of ten (10) years, commencing on the Project Completion Date.

State Hotel Occupancy Tax means the hotel occupancy tax imposed by Chapter 156 of the Texas Tax Code

State Hotel Occupancy Tax Grant means an economic development grant in amount equal to 100% of State Hotel Occupancy Taxes derived from or attributable to the Convention Center Hotel and any Ancillary Facilities and refunded to the City by operation of section 351.101 of the Texas Tax Code.

State Sales and Use Tax means sales tax imposed by Chapter 151 of the Texas Tax Code.

State Sales and Use Tax Grant means an amount equal to 100% of the State Sales and Use Tax levied on the sale of Taxable Items Consummated at the Convention Center Hotel and at the Ancillary Facilities and remitted to the City by the State Comptroller pursuant to the SCCHP. The grant payments shall be paid quarterly, for a period of ten (10) consecutive years.

Taxable Items means both "taxable items" and "taxable services" as those terms are defined by Chapter 151, Texas Tax Code, as amended.

Ten SCHHP Year means each of the first ten years following the Project Completion Date.

West Towne Market Place Grant Amount means the amount of State Sales and Use Grants and State Hotel Occupancy Grants that are derived from the State Sales and Use Tax and State Hotel Occupancy Tax generated at West Towne Market Place Shopping Center.

SECTION 3. PROPERTY VALUATIONS

(a) Great Wolf Resorts covenants and agrees that, from the Project Completion Date until the end of the Term or the termination of this Agreement, Great Wolf Resorts will not challenge, or knowingly permit anyone else take actions on its behalf to challenge, the Minimum Appraised Value. Upon termination of this Agreement, this provision shall have no further effect; however, Great Wolf Resorts agrees that neither this Agreement, nor the values contained herein, may be utilized by Great Wolf Resorts to contest appraisal values of the Project.

(b) Great Wolf Resorts covenants and agrees that, from the Effective Date until the Project Completion Date, Great Wolf Resorts will not challenge, or knowingly permit anyone else to take actions on its behalf to challenge, the Base Year Value of the Real Property, leasehold interests, and improvements or the personal property that comprises the Project if that value is \$6,743,116.00 or less. Upon termination of this Agreement, this provision shall have no further effect; however, Great Wolf Resorts agrees that neither this Agreement, nor the values contained herein, may be utilized by Great Wolf Resorts to contest appraisal values of the Project.

SECTION 4. OBLIGATIONS OF GREAT WOLF RESORTS.

Except for the obligation to enter into a ground lease simultaneously with this Agreement as set forth in Section 4 (a), Great Wolf Resorts' obligations below are subject to (a) the City meeting its obligations under this Agreement, and (b) Great Wolf Resorts having elected in writing in its sole discretion for this Agreement to remain effective (a "Go Forward Election") on or before the Go Forward Election Deadline. Except for the obligation to enter into a ground lease simultaneously with this Agreement, Great Wolf Resorts shall comply with the following terms and conditions only if it exercises its Go Forward Election evidenced solely by a written notice from Great Wolf Resorts to the City expressly stating the occurrence of such circumstance:

- (a) **Ground Lease.** Upon exercising the Go Forward Election, Great Wolf Resorts shall enter into a ground lease with the City for lease of the Hotel Land (the "Ground Lease"), in the form attached hereto as Exhibit H.
- (b) **Documentation.** Prior to commencement of construction, Great Wolf Resorts shall submit to the City the Initial Submittal Package in the form attached hereto as Exhibit I, together with the following documents:
 - (1) a Budget for the Project; and
 - (2) a financial pro forma for the Project.
 - (3) Loan commitment documentation from Great Wolf Resorts' lenders.
- (c) **Construction.**
 - (1) Great Wolf Resorts will develop, construct and operate the Convention Center. Prior to commencement of construction of the Convention Center, the City and Great Wolf Resorts shall enter into a separate construction contract for the Convention Center, which contract shall (i) set forth the terms pursuant to which Great Wolf Resorts shall cause the Convention Center to be constructed, and (ii) be in a form proposed by Great Wolf Resorts and reasonably acceptable to the City. The Convention Center will consist of approximately ten thousand (10,000) square feet of meeting space and will substantially conform to the expectations and description shown in Exhibit C attached to this Agreement. Great Wolf Resorts shall have the right to make any changes to the specifications set forth in Exhibit C, by providing the City with prior written notice specifying the proposed changes, provided that such changes shall not materially and adversely deviate from the expectations set forth in Exhibit C. Prior to or upon completion of construction of the Convention Center, Great Wolf Resorts will lease the Convention Center from the City, pursuant to the terms set forth in Section 4(f), below.
 - (2) Great Wolf Resorts will develop, construct, own and operate the Convention Center Hotel. The Convention Center Hotel will be a family resort and

waterpark and will have and maintain a standard consistent with other Great Wolf Lodge properties.

(3) Great Wolf Resorts will begin construction of the Project within 6 months of the Go Forward Election Date, subject to any delays attributable to an Event of Force Majeure or any Tolling Period (as hereinafter defined) or any PLR Tolling Period. The Project Completion Date shall be within 30 months of the Go Forward Election Date, subject to any delays attributable to an Event of Force Majeure or any Tolling Period or any PLR Tolling Period.

(4) Great Wolf Resorts will make Qualified Expenditures consistent with and necessary to complete and achieve the Project as described in Exhibit D (the Convention Center Hotel) and Exhibit C (the Convention Center).

(5) Great Wolf Resorts will pursue the commencement and completion of the Project consistent with the terms of the Agreement. Great Wolf Resorts agrees that it will use commercially reasonable efforts to ensure all construction will be in accordance with all applicable and material federal, state, and local laws and regulations; provided, however, Great Wolf shall not be responsible for legal compliance of any party other than itself and its Affiliates and contracted parties, including, without limitation, compliance by the City, County or any of their respective employees, affiliates or agents. Further, Great Wolf Resorts shall not bear the risk of the City's interpretation of and reliance on Section 272.001 (b)(6) of the Texas Local Government Code (exemptions to notice and bidding requirements), or any other state or federal provision addressing municipal legal obligations, or exemptions thereto.

(6) Each of Great Wolf Resorts' obligations in this Section 4(c) is conditioned on there being a Go Forward Election.

(d) **City's Use of the Project.** For each year of the Term that the Convention Center Hotel is Open for Business, Great Wolf Resorts will provide the following consideration to the City:

(1) Use of ballroom/meeting space for five (5) event days with no rental fee, subject to availability at the time of attempted reservation (which availability will be subject to, without limitation, existing reservations, rooms being held out of inventory at the time and similar ordinary course practices), the Blackout Dates and a minimum of thirty (30) days' advance notice from the City;

(2) Complimentary use of Wi-Fi on the event days and in the ballroom/meeting space selected by the City pursuant to Section 3(d)(1) above; and

(3) One hundred (100) complimentary standard hotel room nights, which rooms may be used in one hundred nights or less over the course of the year, at Destination Marketing Organization's discretion, subject to availability at the time of attempted reservation (which availability will be subject to, without limitation,

existing reservations, rooms being held out of inventory at the time and similar ordinary course practices), the Blackout Dates and a minimum of thirty (30) days' advance notice from the City. To the extent only upgraded or premium suites are available for the requested dates, Great Wolf Resorts shall be permitted to require a charge for the incremental value of the available suite above a standard room without violating this covenant.

(e) **Conditions for Participation in SCCHP.** Great Wolf Resorts understands and agrees that, as a requirement for participation in SCCHP, the City must own the completed Convention Center for ten (10) years from the Project Completion Date. The first day after such ten-year period is the "Required Ownership End Date".

(f) **Operation of the Convention Center** Prior to Great Wolf Resorts opening to the public for business, the City and Great Wolf Resorts shall enter into a separate lease agreement of the Convention Center, whereby the City is the lessor and Great Wolf Resorts is the lessee, which agreement shall be in a form proposed by Great Wolf Resorts and reasonably acceptable to the City; provided however, that such lease shall (i) clearly identify the Convention Center Land and the improvements thereon as property owned by the City; (ii) provide that the Convention Center shall be used exclusively as the City's convention center; and (iii) provide that the Convention Center shall be operated in a public manner in accordance with City policies regarding use of City property for conventions and meetings. For avoidance of doubt, due to the integrated nature of the Project, Great Wolf Resorts shall not be required to construct or maintain separate facilities (such as parking, electricity, utilities, etc.) for each of the Convention Center and the Convention Center Hotel, nor shall it be required, as lessee of the Convention Center, to treat the Convention Center as separate from the Convention Center Hotel. For example, given the integral nature of the Project, the Convention Center and the Convention Center Hotel shall share use of and access to the Project's parking areas and green space as reasonably allocated by Great Wolf Resorts in its discretion.

(g) **Required Use.** For the period from the Project Completion Date until the fifteenth (15th) anniversary of the Project Completion Date, Great Wolf Resorts will not change the use of the Convention Center Hotel to any use other than a hotel operating as a family resort and waterpark with a standard consistent with other Great Wolf Resort properties (the "Required Use"). Beginning with the Project Completion Date, Great Wolf Resorts will brand Convention Center Hotel as a "Great Wolf Lodge" for ten (10) years, provided that this restriction on Great Wolf Resorts is subject to (i) a valid license remaining in effect granting the Convention Center Hotel the rights to use the name "Great Wolf Lodge" and related branding; (ii) the express written approval of any Holder or other lender having a security interest in the Project; and (iii) any material rebranding by Great Wolf Resorts across multiple hotel facilities that Great Wolf Resorts deems in its and the Convention Center Hotel's best economic interests.

(h) **Waivers of Sales Tax Confidentiality.** During the period beginning on the date on which Great Wolf Resorts first becomes entitled to a Sales Grant, and ending on the last day on which Great Wolf Resorts is entitled to a Sales Grant, Great Wolf Resorts will

cause businesses paying sales and use tax attributable to operations within the Project to provide a waiver of sales tax confidentiality to be substantially in the form attached hereto as Exhibit J. The City agrees to use information it obtains with any confidentiality waiver solely for purposes of determining proper payment under, compliance with, and enforcing the provisions of, this Agreement. The City will have no obligation to collect sales and use tax information and will have no obligation to make payments under this Agreement without sales and use tax payment confirmation from the State Comptroller.

(i) **Submittal Package.**

(1) Great Wolf Resorts or its Affiliate shall submit to the City a Submittal Package quarterly, which shall be in the form attached hereto as Exhibit I. Great Wolf Resorts shall submit the first such Submittal Package within sixty (60) days of the end of the first fiscal quarter after the Project Completion Date, and shall submit a Submittal Package within sixty (60) days of the end of each fiscal quarter thereafter until all Grants have been paid. If Great Wolf Resorts or its Affiliate fails to submit a timely Submittal Package for a particular fiscal quarter, then the notice and cure rights set forth in Section 8(a) of this Agreement shall apply. Notwithstanding the foregoing, any Submittal Package submitted in connection with the Development Grant (a "Development Grant Submittal Package"), which shall be in the form attached hereto as Exhibit K, is not required to be submitted within the timeline set forth in the immediately preceding sentence, but may be submitted upon completion of each of the benchmarks set forth in Section 5(a)(1) below.

(2) Great Wolf Resorts' failure to submit or timely submit Submittal Package after notice and cure periods is a waiver by Great Wolf Resorts to receive an incentive payment for that the relevant fiscal quarter only but not any other fiscal quarter.

(j) **No Damages.** Notwithstanding any provision of this Agreement to the contrary, Great Wolf Resorts and its Affiliates shall not have any liability to the City or any third parties under this Agreement or be required to pay any damages for any breach of any of its obligations under this Agreement except for the amounts, if any, described in Section 9 of this Agreement and the City's sole remedies under this Agreement against Great Wolf Resorts shall be limited to those remedies specifically described in Sections 9 (recapture) and 10 (specific performance in the event of abandoning construction).

(k) **Right to Terminate.** Great Wolf Resorts shall have the absolute right to terminate this Agreement in its sole discretion at any time prior to the earlier of (i) the date Great Wolf Resorts delivers to the City a Go Forward Election, and (ii) the Go Forward Election Deadline. If Great Wolf Resorts does not deliver a written notice of a Go Forward Election on or before the Go Forward Election Deadline, then this Agreement shall automatically terminate on the Go Forward Election Deadline without any further action by either party. In the event of a termination under this Section 4(k), Great Wolf Resorts shall not be liable for any damages or incur any obligations, whatsoever.

(l) **Consideration.** As of the Effective Date and in consideration for the City's obligations pursuant to this Agreement, Great Wolf Resorts has paid to the City good and

valuable consideration in the amount of \$1,000.00, the receipt and sufficiency of which is hereby acknowledged by the City.

SECTION 5. OBLIGATIONS OF THE CITY.

If an event of default has not occurred and is not continuing, and taking into account notice and cure provisions, the City shall comply with the following terms and conditions:

(a) The City will provide the following Grants and Incentives to Great Wolf Resorts:

(1) Development Grant. The City will provide a development grant of Five Million Dollars and 00/100 (\$5,000,000.00) to Great Wolf Resorts. The City will disburse the Development Grant as follows: 1) One Million Dollars and 00/100 (\$1,000,000.00) will be paid when construction of the Project begins, which, for purposes of clarity, may include general grading and/or site work; 2) Three Million Dollars and 00/100 (\$3,000,000.00) will be paid when construction of the Project is 50% complete (as reasonably determined by Great Wolf); and 3) One Million Dollars and 00/100 (\$1,000,000.00) will be paid at Project Completion. The City will make each disbursement of the Development Grant within thirty (30) days of receipt of the Development Grant Submittal Package from Great Wolf Resorts.

(2) State Hotel Occupancy Tax Grant. The City shall pay Great Wolf Resorts forty (40) State Hotel Occupancy Tax Grants that accrue during the State Grant Period, if any. Each State Hotel Occupancy Tax Grant shall be paid quarterly upon submission of a State Hotel Occupancy Tax Rebate Submittal Form, to be substantially in the form attached hereto as Exhibit L, within thirty (30) days after the date on which the City is refunded (or credited with) the amount of any applicable State Hotel Occupancy Taxes in accordance with SCCHP. For avoidance of doubt, the City shall continue to pay the State Hotel Occupancy Tax Grants that accrue during the State Grant Period, regardless of whether the State Grant Period has expired.

(3) State Sales and Use Tax Grant. The City shall pay Great Wolf Resorts forty (40) State Sales and Use Tax Grants that accrue during the State Grant Period, if any. Each State Sales and Use Tax Grant shall be paid quarterly upon submission of a State Sales and Use Tax Rebate Submittal Form, to be substantially in the form attached hereto as Exhibit M, within thirty (30) days after the date on which the City is refunded (or credited with) the amount of any applicable State Sales and Use Taxes in accordance with SCCHP. For avoidance of doubt, the City shall continue to pay the State Sales and Use Tax Grants that accrue during the State Grant Period, regardless of whether the State Grant Period has expired.

(4) City Hotel Occupancy Tax Grant. The City shall pay Great Wolf Resorts sixty (60) City Hotel Occupancy Tax Grants that accrue during the City Grant Period. Each City Hotel Occupancy Tax Grant shall be paid quarterly, within thirty (30) days after Great Wolf Resorts has submitted the applicable Submittal Package, to be substantially in the

form attached hereto as Exhibit N. For avoidance of doubt, the City shall continue to pay the City Hotel Occupancy Tax Grants to Great Wolf Resorts until Great Wolf Resorts has received all City Hotel Occupancy Tax Grants that accrue during the City Grant Period, regardless of whether the City Grant Period has expired.

(5) City Sales and Use Tax Grant. The City shall pay Great Wolf Resorts sixty (60) City Sales and Use Tax Grants that accrue during the City Grant Period. Each City Sales and Use Tax Grant shall be paid quarterly, within thirty (30) days after Great Wolf Resorts has submitted the applicable Submittal Package, to be substantially in the form attached hereto as Exhibit O. For avoidance of doubt, the City shall continue to pay the City Sales and Use Tax Grants to Great Wolf Resorts until Great Wolf Resorts has received all City Sales and Use Tax Grants that accrue during the City Grant Period, regardless of whether the City Grant Period has expired.

(6) Convention Center Hotel Incremental Property Tax Grant. The City shall pay Great Wolf Resorts fifteen (15) Property Tax Grant to be disbursed annually for fifteen (15) consecutive years beginning in the first calendar year after the Project Completion Date. Each Property Tax Grant shall be paid within thirty (30) days after the City receives the relevant property taxes from Great Wolf Resorts, upon submittal of the Property Tax Rebate Submittal Form, to be substantially in the form attached hereto as Exhibit P. The Convention Center Hotel Incremental Property Tax Grant is a rebate from the City to Great Wolf Resorts and is dependent on Great Wolf Resorts paying the relevant property taxes.

(7) Construction Materials City Sales Tax Grant. Great Wolf Resorts shall receive a one-time rebate of 100% of the City Sales Tax collected on the sale of materials for Project-related construction. The City will disburse the Construction Materials Tax Grant within thirty (30) days after the applicable Submittal Package, to be substantially in the form attached hereto as Exhibit Q, is submitted.

(8) Building Construction and Planning Fees Waiver. The City shall waive 100% of the City's Building Construction and Planning Fees as those fees are outlined on the attached Exhibit R.

(9) Hotel Land Purchase Option. Pursuant to section 272.001(b)(6) of the Texas Local Government Code and section 311.008(b)(2) of the Texas Tax Code, the City will sell Great Wolf Resorts a purchase option for the Hotel Land (the "Hotel Land Purchase Option"), which Great Wolf Resorts may exercise if (i) it has exercised the Go Forward Election; (ii) either (A) Great Wolf Resorts will not receive Grants for the Project pursuant to SCCHP, or (B) Great Wolf Resorts will receive Grants for the Project pursuant to SCCHP, but the parties have determined that the City's ownership of the Hotel Land is not a requirement for Great Wolf Resorts to be eligible to receive Grants for the Project pursuant to SCCHP; and (iii) the Project Completion Date has occurred. The parties will memorialize the Hotel Land Purchase Option in the Ground Lease.

(10) Convention Center Land Purchase Option. Pursuant to section 272.001(b)(6) of the Texas Local Government Code and section 311.008(b)(2) of the Texas Tax Code, the City will sell Great Wolf Resorts a purchase option for the Convention Center Land, with improvements (the "Convention Center Land Purchase Option"), which Great Wolf Resorts may exercise if (i) it has exercised a Go Forward Election; (ii) either (A) Great Wolf Resorts will not receive Grants for the Project pursuant to SCCHP, or (B) Great Wolf Resorts will receive Grants for the Project pursuant to SCCHP, but the parties have determined that the City's ownership of the Convention Center Land is not a requirement for the Great Wolf Resorts to be eligible to receive Grants for the Project pursuant to SCCHP; and (iii) the Project Completion Date has occurred. The parties will memorialize the Convention Center Land Purchase Option in the Ground Lease.

(11) Destination Tourism Grant.

(a) If the SCCHP does not apply to the Project, then the City will provide a grant (each, a "Destination Tourism Grant") to Great Wolf Resorts for each of the Ten SCCHP Years equal to \$4,000,000.00 (for a total of \$40,000,000.00 over the Ten SCCHP Years).

(b) If the SCCHP applies to the Project and the entire West Towne Market Place Shopping Center is treated as an ancillary facility pursuant to the SCCHP with respect to the Project, then the Destination Tourism Grant shall be zero dollars each year.

(c) If (i) the SCCHP applies to the Project but less than the entire West Towne Market Place Shopping Center is treated as an ancillary facility pursuant to the SCCHP with respect to the Project, and (ii) for a particular one of the Ten SCCHP Years the aggregate West Towne Market Place Grant Amount is \$4,000,000.00 or more, then the Destination Tourism Grant for such particular year shall be equal to zero dollars.

(d) If (i) the SCCHP applies to the Project but less than the entire West Towne Market Place Shopping Center is treated as an ancillary facility pursuant to the SCCHP with respect to the Project, and (ii) for a particular one of the Ten SCCHP Years the aggregate West Towne Market Place Grant Amount is less than \$4,000,000.00, then the Destination Tourism Grant for such particular year shall be equal to (A) \$4,000,000.00 minus (B) the aggregate West Towne Market Place Grant Amount actually received by Great Wolf Resorts for such particular year.

(e) To request payment for any amount due pursuant to this subsection 11, Great Wolf Resorts shall submit a Destination Tourism Grant submittal form, to be substantially in the form attached hereto as Exhibit S.

(b) **Processing of Payments.** The City agrees to promptly process and remit to Great Wolf Resorts all Grants and Incentives in accordance with terms of this Agreement.

(c) **Development Obligations.** Prior to the Project Completion Date, the City shall, at its sole cost and expense, complete construction of curb cuts and traffic signals necessary to facilitate access to the Project at the intersection where the Project entrance abuts West Towne Market Place (as depicted on Exhibit T). Such curb cuts and traffic signals are limited to those that can be constructed or installed on City property or City right-of-ways and easements, and excludes any improvements on state or county property, right-of-ways, or easements. City shall expend an amount not to exceed \$526,100.00 to construct and install the curb cuts and traffic signals contemplated by this paragraph.

(d) **Favorable PLR and SCCHP Eligibility.** The City shall diligently and in good faith work with Great Wolf Resorts and the State Comptroller to receive a Favorable PLR. However, the City does not guarantee the State Comptroller will issue a Favorable PLR.

(e) **City Default.** If the City fails to timely meet any of its obligations hereunder, including, without limitation, its obligation to pay Great Wolf Resorts any of the Grants or Incentives in accordance with the timing set forth herein, Great Wolf Resorts will provide the City with written notice of the City's default, and the City shall have thirty (30) days from the receipt of such notice to cure the default; provided that if such default is not reasonably curable within such thirty (30) day period, then City shall have an additional thirty (30) days to cure such default provided that it is diligently attempting to cure the default. If the City does not cure the default in accordance with the timing set forth herein, Great Wolf Resorts may enforce any and all remedies available at law or equity, including specific enforcement of such obligation subject to the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

SECTION 6. MORTGAGE PROTECTION

(a) **Holders of Deeds of Trust.** Notwithstanding any other provisions of this Agreement, Great Wolf Resorts shall have the right to grant one or more deeds of trust as security for one or more loans or other financing. Within ten (10) days after a Deed of Trust is recorded in the Official Public Records of El Paso County, Texas, Great Wolf shall provide the City with a copy of such Deed of Trust and with the name and address of the holder of such Deed of Trust; provided, however, that Great Wolf Resorts' failure to provide such document shall not affect any Deed of Trust, including without limitation, the validity, priority, or enforceability of such Deed of Trust.

(b) **Rights of Holders.** The City shall deliver a copy of any notice or demand to the Great Wolf Resorts concerning any default by Great Wolf Resorts under this Agreement to each Holder who has previously made a written request to the City for such notices. Any such notice shall not be effective against any Holder unless given to such Holder. Each Holder shall have the right at its option to cure or remedy any default by Great Wolf

Resorts in accordance with the terms of the documentation described in the last sentence of Section 5(b)(3), and to add the cost thereof to the secured debt and lien of its security interest. If a default can only be remedied or cured by a Holder upon obtaining possession of the Project, such Holder may remedy or cure such default within a reasonable period of time after obtaining possession, provided such Holder seeks possession with diligence through a receiver or non-judicial foreclosure.

(c) Noninterference with Holders. The provisions of this Agreement do not limit the right of Holders (a) to foreclose or otherwise enforce any Deed of Trust, (b) to pursue any remedies for the enforcement of any pledge or lien encumbering such portions of the Project, or (c) to accept, or cause its nominee to accept, a deed or other conveyance in lieu of foreclosure or other realization. In the event of (i) a foreclosure sale under any such Deed of Trust, (ii) a sale pursuant to any power of sale contained in any such Deed of Trust, or (iii) a deed or other conveyance in lieu of any such sale, the purchaser or purchasers and their successors and assigns, and such portions of the Project shall be, and shall continue to be, subject to all of the conditions, restrictions, and covenants of all documents and instruments recorded pursuant to this Agreement. The City agrees to execute such further documentation regarding the rights of any Holder as is customary with respect to construction or permanent financing, as the case may be, to the extent that such documentation is reasonably requested by any Holder and is reasonably approved by City.

(d) Tolling. All obligations (including any deadlines and time periods) under this Agreement shall be tolled from and after the date on which the Holder delivers written notice to the City of the existence of an event of default under such Deed of Trust (or any loan documents entered into in connection with such Deed of Trust) until the date that is six (6) months after the date on which (i) a foreclosure sale under any such Deed of Trust, (ii) a sale pursuant to any power of sale contained in any such Deed of Trust, or (iii) a deed or other conveyance in lieu of any such sale has been completed (the "Tolling Period").

(e) Right of City to Cure. In the event of a default or breach by Great Wolf Resorts of a loan by a Holder prior to Project Completion Date, City may, upon prior written notice to Great Wolf Resorts, cure the default, prior to the completion of any foreclosure. In such event, the City shall be entitled to reimbursement from Great Wolf Resorts of all costs and expenses incurred by City in curing the default. The City shall also be entitled to a lien upon the Project or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any lien in favor of a Holder, and the City shall execute from time to time any and all documentation reasonably requested by Great Wolf Resorts to effect such subordination.

SECTION 7. EVENTS OF DEFAULT.

Subject to PLR Tolling Period and the provisions addressing the Tolling Period (Section 6(d)), Force Majeure (Section 12(h)), Third Party Actions (Section 7(e)), and Notice and

Opportunity to Cure (Section 8), each of the following shall constitute an event of default under this Agreement:

(a) **Breach or Default of Terms.** Any breach of, or default under, any material term of this Agreement.

(b) **Failure to Timely Pay Property Taxes.** If Great Wolf Resorts fails to timely pay when due all property taxes properly levied against the Project and improvements thereon; provided however, that, subject to Section 3 of this Agreement, any delay in the payment of property taxes due to any properly filed appeal or tax contest by Great Wolf Resorts shall not be considered a default for purposes of this Section 7(b).

(c) **False Statements.** If any material written warranty, representation or statement made or furnished to the City by Great Wolf Resorts under this Agreement, or any document(s) related hereto furnished to the City by Great Wolf Resorts, is knowingly false or misleading in any material and substantial respect as of the date of such warranty, representation or statement.

(d) **Insolvency.** The dissolution or termination of Great Wolf Resorts' existence as an ongoing business or concern, Great Wolf Resorts' insolvency, appointment of receiver for all or any part of Great Wolf Resorts' assets on the Project, any assignment of all or substantially all of the assets of Great Wolf Resorts for the benefit of its creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Great Wolf Resorts.

(e) **Third Party Actions.** In no event will Great Wolf Resorts be deemed to be in default of this Agreement if the default results or would result from the actions, failure to act, omissions, or interference with the performance by Great Wolf Resorts of any of its obligations hereunder by the City or third parties that are not under the direct control or supervision of Great Wolf Resorts.

SECTION 8. NOTICE AND OPPORTUNITY TO CURE.

(a) In the event of default by Great Wolf Resorts, the City will provide Great Wolf Resorts with written notice of the nature of the default and Great Wolf Resorts shall have ninety (90) days from the receipt of such notice to cure the default; provided that if such default is not reasonably curable within such 90-day period, then Great Wolf Resorts shall have as much time as reasonably necessary to cure such default provided that it is diligently attempting to cure such default. If Great Wolf Resorts does not cure the default to the City's reasonable satisfaction, the City may terminate this Agreement by written notice to Great Wolf Resorts; whereupon, the parties' obligations shall cease and the City may pursue enforcement of the right to recapture pursuant to Section 9, below (and, with respect to Great Wolf Resorts' obligation pursuant to Section 10 below only (and not any other provision in this Agreement), may sue for specific performance). Notwithstanding the foregoing, if the default relates to the timely filing of a Submittal Package, then the cure period shall be 15 days instead of 90 days, but if such Submittal

Package has not been submitted within such 15 day cure period, then Great Wolf Resorts or its Affiliate shall have an additional 10 days' cure period after the delivery to Great Wolf Resorts by the City of a second written notice of such default, with the second notice stating in bold capital letters on the subject line of the notice as follows: **"FAILURE TO TIMELY COMPLY WITH THIS NOTICE WILL RESULT IN A LOSS OF INCENTIVE PAYMENTS BY THE CITY OF EL PASO TO GREAT WOLF RESORTS."**

(b) Failure of Great Wolf Resorts to comply with or perform any term, obligation, or condition of this Agreement, after written notice by the City and the expiration of any opportunity to cure as herein provided herein, will be deemed an event of default under the Ground Lease executed by the parties. Accordingly, a notice of default under the terms of the Agreement will also constitute notice of default of the Ground Lease. Likewise, a notice of default under the terms of the Ground Lease will constitute a notice of default of this Agreement.

(c) In addition to the remedies set forth above in this Agreement with respect to an event of default by the City under this Agreement, Great Wolf Resorts may sue the City for damages at law and equity, and for specific performance if relevant.

SECTION 9. RECAPTURE.

If, during the Term of this Agreement, Great Wolf Resorts ceases to use the Convention Center Hotel in accordance with its Required Use, the City may recapture and collect from Great Wolf Resorts an amount equal to a portion (or all, depending on the date of the change of use) of specified Grant Payments paid pursuant to this Agreement, as calculated in the accordance with the formula in the immediately following sentence (the "Recapture Amount"). The Recapture Amount shall be an amount equal to fifty percent (50%) of the total amount of the Grants and Incentives paid over the 2 years immediately preceding the date of the change of use. Any Recapture Amount shall be subject to any and all lawful offsets settlements, deduction, or credits to which Great Wolf Resorts may be entitled. In addition, if Great Wolf Resorts intends to continue operation of the Convention Center Hotel for a use that is not the Required Use, then Great Wolf Resorts must purchase the Hotel Land from the City for the price of \$14,242,000.00.

SECTION 10. ABANDONMENT OF CONSTRUCTION.

If Great Wolf Resorts commences construction of the Project, but abandons it before completion, Great Wolf Resorts will, at the City's election, and subject to any superseding rights of any Holder, return the site to a condition substantially similar to its condition prior to construction having been commenced to the extent achievable through commercially reasonable efforts and expense. Great Wolf Resorts will only be deemed to have abandoned the Project if there have been at least 180 consecutive days with no activity at the Project, which 180 day-period shall not include any delays attributable to an Event of Force Majeure or any Tolling Period.

SECTION 11. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT

The City may terminate this Agreement without an event of default by Great Wolf Resorts if any state or federal statute, regulation, case law, or other law issued or adopted after the date of this Agreement renders this Agreement illegal; provided, however (a) a termination under this Section 11 shall not entitle the City to any rights or damages under this Agreement, including, without limitation, the Recapture Amount, and (b), in such event, the City shall use its best efforts in working with Great Wolf Resorts to restructure this Agreement (or the City's obligations described in this Agreement) to be enforceable and legal. In addition, City may terminate this Agreement for any reason and without cause if there is not a Go Forward Election on or before the Go Forward Election Deadline.

SECTION 12. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the parties' entire understanding and agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are performable in El Paso County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of El Paso County, Texas.
- (c) **Binding Obligation.** This Agreement shall become a binding obligation on the parties upon execution by all signatories hereto. The City represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind City to the same. Great Wolf Resorts represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same. This Agreement supersedes any and all prior agreements, whether oral or written, covering the subject matter of this Agreement.
- (d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all shall constitute the same document.
- (e) **Confidentiality Obligations.** The confidentiality of records related to the City's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. To the extent permitted by state or federal law, the City shall maintain the confidentiality of any proprietary information and shall not copy any such information except as necessary for dissemination to the City's agents and employees and agrees that, as required by the

Public Information Act, it will notify Great Wolf Resorts if a request relating to such proprietary information is received.

(f) **Employment of Undocumented Workers.** During the Term of this Agreement, Great Wolf Resorts shall not knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a (f), Great Wolf Resorts shall repay all incentives it has received from the City as of the date of such violation not later than one hundred twenty (120) days after the date Great Wolf Resorts is notified by City of a violation of this section, plus interest from the date the Grant(s) was paid to Great Wolf Resorts, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant was paid to Great Wolf Resorts until the date the full reimbursement is made to the City. The City may also recover court costs and reasonable attorney's fees incurred to recover incentive payments subject to reimbursement under this section. Great Wolf Resorts is not liable for a violation of this Section 12(f) by any subsidiary, Affiliate, franchisee, or by any person with whom Great Wolf Resorts contracts.

(g) **Estoppels.** Great Wolf Resorts or its lender may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; (c) Great Wolf Resorts is not in default of the performance of its obligations, or if in default, to describe therein the nature and extent of such defaults; and (d) such other certifications that Great Wolf Resorts may reasonably request. The City Manager, without the need for City Council approval shall execute and return such certificate promptly upon request by Great Wolf Resorts. Great Wolf Resorts and the City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and lenders. The failure to promptly deliver such a statement, or to explain in writing why such notice cannot be provided, shall constitute a presumption against the City that this Agreement is in full force and effect without modification (except as may be asserted by Great Wolf Resorts) and that there are no uncured defaults in the performance of Great Wolf Resorts.

(h) **Force Majeure.** If the performance of any obligation hereunder is delayed by reason of war, terrorism or the imminent threat thereof, insurrection, civil commotion, riots, labor disputes, strikes, lockouts, embargoes, hurricanes or named windstorms, unusual weather, fire, casualty, epidemics, quarantine, any other public health restrictions or public health advisories, disruption to local, national or international transport services, governmental restrictions, any rationing of public services or utilities, or litigation brought on by a third party (but only to the extent performance is enjoined by a court of competent jurisdiction as a result of such litigation), unavoidable casualties or other causes beyond the reasonable control of a party, or an increase of more than 5% in the BCI over any six (6) month period and continuing until the BCI has not increased by more than 2% over any three (3) month period (each, an "Event of Force Majeure"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or

requirement shall be extended for a period of time equal to the period such party was delayed.

(i) **Headings.** The section headings in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of the Agreement.

(j) **Inspection of Records.** During the Term, the City shall have the reasonable right to access and inspect the books and records of Great Wolf Resorts to the extent such books and records are directly related to the Project to ensure compliance with the obligations of Great Wolf Resorts under this agreement. The City shall (i) provide a least ten (10) days' prior written notice to Great Wolf Resorts of its intention to exercise its right to inspect; (ii) conduct such inspection during normal business hours, in reasonable cooperation with the requests of Great Wolf Resorts to minimize business interruption, and with a representative of Great Wolf Resorts present; and (iii) conduct such inspection in accordance with the visitor access and security policies of Great Wolf Resorts. The City will maintain the confidentiality of all records, subject to the Public Information Act.

(k) **No Joint Venture.** The terms of this Agreement are not intended to create and do not create a partnership or joint venture between the parties. The City, its past, present and future officers, elected officials, employees and agents, do not assume any responsibilities or liabilities to any third party in connection with the Project or the design, construction, or operation of the Project, or any portion thereof.

(l) **Notices.** All notices required to be given under this Agreement must be in writing and will be effective when actually delivered or deposited in the United States mail, certified first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Each party agrees to keep the other informed of any address change by giving written notice to the other party, specifying that the purpose of the notice is to change the party's address.

The City:

City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

Copy to:

City of El Paso
Director, Economic and International
Development
P.O. Box 1890
El Paso, Texas 79950-1890

City of El Paso
City Attorney
P.O. Box 1890

El Paso, Texas 79950-1890

Great Wolf
Resorts:

Great Wolf Resorts, Inc.
350 N. Orleans Street, Suite 10000B
Chicago, Illinois 60654

Copy to:

Haynes and Boone, LLP
2323 Victory Ave., Suite 700
Dallas, Texas 75219
Attention: Jeff W. Dorrill

(m) **Ordinance Applicability.** The parties shall be subject to all ordinances of the City, whether now existing or in the future arising, save and except to the extent expressly waived in this Agreement.

(n) **Recording.** This Agreement shall be filed of record Real Property Records of El Paso County, Texas.

(o) **Revenue Sharing Agreement.** The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to the Texas Tax Code, Section 321.3022.

(p) **Sale or Transfer.**

(i) Great Wolf Resorts may transfer its rights and obligations pursuant to this Agreement and all related agreements to (A) any Affiliate of Great Wolf Resorts without the consent of the City, (B) any lender as part of a collateral assignment thereto, (C) any permitted assignee of Great Wolf Resorts' interest as lessee under the Ground Lease, and (D) any individual or entity that is not an Affiliate of Great Wolf Resorts with the consent of the City, which consent shall not be unreasonably withheld, delayed or conditioned.

(ii) Within sixty (60) days after any sale or other transfer of Great Wolf Resorts' interest as lessee under the Ground Lease, Great Wolf Resorts shall notify the City in writing of such sale or transfer. Failure to notify the City of the sale or transfer within sixty (60) days shall constitute a default, subject to the notice and cure provisions set forth in Section 8 of this Agreement. This Section 12(p)(ii) shall not apply to any sublease by Great Wolf Resorts of the Convention Center Hotel in order to effectuate the Project as contemplated and described in this Agreement.

(iii) The City may not assign this Agreement to any Affiliate of the City or to any third party.

(q) **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(r) **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

(s) **Enforceability.** The City hereby agrees that this Agreement is enforceable by Great Wolf Resorts against the City in accordance with the terms of the Agreement and applicable federal and state laws.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this _____ day of _____, 2018.

(Signatures on Following Page)

GWR El Paso Property Owner LLC
a Delaware Limited Liability Company

By:(name)_____
Its: (title)_____

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF EL PASO §

 This instrument was acknowledged before me on the ____ day of _____, 2018, by _____, as _____ of GWR El Paso Property Owner, LLC.

Notary Public, State of Texas

My Commission Expires:

(Signatures Continue On Following Page)

CITY OF EL PASO, TEXAS

By: _____
Tomàs González
City Manager

APPROVED AS TO FORM:

Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT

Jessica Herrera, Director
Economic and International
Development

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____,
20____, by Tomàs González, City Manager of the City of El Paso, Texas, on behalf of
the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(EXHIBITS ON THE FOLLOWING PAGES)

EXHIBIT C

Hotel Land

The site in which the Hotel will be developed in the area that currently consists of approximately 43.63 acres of unoccupied land located southeast of Desert Boulevard North and Paseo del Norte in El Paso, El Paso County, Texas. The site is improved with access drives and utilities.

Based on a review of historical information, the site consisted of undeveloped land with a tributary along the northern boundary from at least 1936 through approximately 1960, when the portion associated with the tributary was graded.

By 1979, the office building and northern warehouse of the Johnson & Johnson facility were constructed; and by 1991, the southern warehouse was constructed. The site remained relatively unchanged until approximately 2011, when the on-site buildings were demolished. The site has remained unoccupied since the demolition of the buildings.

Historically, the adjoining properties have consisted of undeveloped land from at least 1936 until approximately 1960, when Desert Boulevard North and US Highway 85/Interstate 10 were constructed on the western adjoining property. From the early 1960s through the present, various portions of the adjoining properties were graded prior to development; and by 1984, Paseo del Norte was constructed to the north, and Northwestern Drive was constructed to the east.

By 1991, a water utility station was constructed to the northeast and two commercial buildings were constructed to the south. Historical occupants of concern for the commercial buildings have included Gross Medick Barrows (1997) and Rock-Tenn (1997). Based on the topographic down-gradient position relative to the site and regulatory status, Gross Medick Barrows and Rock-Tenn do not constitute recognized environmental conditions (RECs) to the site.

The legal description will be confirmed once the site is subdivided.

EXHIBIT D

Convention Center Land

The site in which the Convention Center will be developed in the area that currently consists of approximately 43.63 acres of unoccupied land located southeast of Desert Boulevard North and Paseo del Norte in El Paso, El Paso County, Texas. The site is improved with access drives and utilities.

Based on a review of historical information, the site consisted of undeveloped land with a tributary along the northern boundary from at least 1936 through approximately 1960, when the portion associated with the tributary was graded.

By 1979, the office building and northern warehouse of the Johnson & Johnson facility were constructed; and by 1991, the southern warehouse was constructed. The site remained relatively unchanged until approximately 2011, when the on-site buildings were demolished. The site has remained unoccupied since the demolition of the buildings.

Historically, the adjoining properties have consisted of undeveloped land from at least 1936 until approximately 1960, when Desert Boulevard North and US Highway 85/Interstate 10 were constructed on the western adjoining property. From the early 1960s through the present, various portions of the adjoining properties were graded prior to development; and by 1984, Paseo del Norte was constructed to the north, and Northwestern Drive was constructed to the east.

By 1991, a water utility station was constructed to the northeast and two commercial buildings were constructed to the south. Historical occupants of concern for the commercial buildings have included Gross Medick Barrows (1997) and Rock-Tenn (1997). Based on the topographic down-gradient position relative to the site and regulatory status, Gross Medick Barrows and Rock-Tenn do not constitute recognized environmental conditions (RECs) to the site.

The legal description will be confirmed once the site is subdivided.