CITY CLERK DEPT.
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**CITY OF EL PASO, TEXAS**
**AGENDA ITEM**
**DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** **Economic and International Development Department**

**AGENDA DATE:** **CCA Regular 10/30/2018**

**CONTACT PERSON/PH. No.:** **Jessica Herrera, Director 915-212-1624**

**DISTRICT(S) AFFECTED:** **District 1**

**SUBJECT:**
That the City Manager be authorized to sign an Economic Development Incentive Agreement in a form substantially similar to the attached documents by and between CITY OF EL PASO, a Texas home rule municipal corporation, and GWR EL PASO PROPERTY OWNER LLC, a Delaware limited liability company, (together with its successors and assigns) in support of the development, construction, and operation of a new Convention Center and Convention Center Hotel to be located at 7850 Paseo Del Norte Boulevard, El Paso, Texas 79912, El Paso County. [Economic and International Development, Jessica Herrera, 915-212-1624].

**BACKGROUND / DISCUSSION:**
Great Wolf Resorts is proposing to build a new Convention Center and Convention Center Hotel in Northwest El Paso. Great Wolf Resorts is a chain of indoor water parks offering indoor waterpark fun and dry land adventures for the entire family.

Great Wolf Resorts expects to develop and construct the Convention Center and Convention Center Hotel on real property owned by the City and located within Tax Increment Reinvestment Zone Number Ten. Great Wolf Resorts is eligible to receive a 15 year, 100% Incremental Property Tax Rebate, 15 year, 50% City Hotel Occupancy Tax rebate, 15 year, 100% City Sales Tax rebate, $526,100.00 in infrastructure and safety improvements, funded by Tax Increment Reinvestment Zone Number 10. The applicant is also eligible for a Development Grant totaling $5,000,000. Currently the City is not collecting Hotel Occupancy Tax or City Sales Tax on the proposed property.

It has an estimated investment of $150 million that facilitates the creation of approximately 600 jobs.

Economic Development Department Staff is recommending City Council approval of the Chapter 380 Economic Incentive Agreement as this will promote local economic development and stimulate business and commercial activity in the City. The City has determined that this project demonstrated the potential to generate revenues to the City that outweigh the costs associated with incentives.

**PRIOR COUNCIL ACTION:**
**Has the Council previously considered this item or a closely related one?**
No.

**AMOUNT AND SOURCE OF FUNDING:**
**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**
N/A

**BOARD / COMMISSION ACTION:**
**N/A**

********************REQUIRED AUTHORIZATION********************

for
**DEPARTMENT HEAD:** ____________________

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# RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Economic Development Incentive Agreement in a form substantially similar to the attached documents by and between CITY OF EL PASO, a Texas home rule municipal corporation, and GWR EL PASO PROPERTY OWNER LLC, a Delaware limited liability company, (together with its successors and assigns) in support of the development, construction, and operation of a new Convention Center and Convention Center Hotel to be located at 7850 Paseo Del Norte Boulevard, El Paso, Texas 79912, El Paso County.

**APPROVED this _____ day of ________________, 2018.**

CITY OF EL PASO

______________________________
Dee Margo
Mayor

ATTEST:

______________________________
Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Roberta Brito
Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:

Jessica Herrera
Jessica Herrera, Director
Economic & International Development

# 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 ($15^{th}$) 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 "<u>Development Grant Submittal Package</u>"), 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 SCHHP 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 SCHHP 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) <u>Holders of Deeds of Trust</u>. 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) <u>Rights of Holders</u>. 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 WILLL 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 of 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<br>Attn: City Manager<br>P.O. Box 1890<br>El Paso, Texas 79950-1890 |
| Copy to: | City of El Paso<br>Director, Economic and International Development<br>P.O. Box 1890<br>El Paso, Texas 79950-1890 |
| | City of El Paso<br>City Attorney<br>P.O. Box 1890 |

El Paso, Texas 79950-1890

| | |
|---|---|
| Great Wolf Resorts: | Great Wolf Resorts, Inc.<br>350 N. Orleans Street, Suite 10000B<br>Chicago, Illinois 60654 |
| Copy to: | Haynes and Boone, LLP<br>2323 Victory Ave., Suite 700<br>Dallas, Texas 75219<br>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 CLERK DEPT.
2018 OCT 25 PM4:55

**CITY OF EL PASO, TEXAS**

By: ________________________
Tomàs Gonzàlez
City Manager

**APPROVED AS TO FORM:**

Roberta Brito
________________________
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 Gonzàlez, 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 "A"

CITY CLERK DEPT.
2019 APR 27 AM 10:30

**RESOLUTION**

**WHEREAS,** the City Council desires to approve the 2019 Capital Funding Plan that includes the projects identified in Exhibit "A", with an estimated cost of $94,271,606.00; and

**WHEREAS,** the El Paso City Council reviewed and amended its Debt Management Policy on July 25, 2017 which sets forth the parameters for issuing new debt for the City of El Paso; and

**WHEREAS,** the Debt Management Policy establishes the types of bonds that may be used to fund capital improvement projects at the lowest costs possible and states that certificates of obligation are an appropriate debt instrument for certain capital projects and acquisitions at a cumulative value of $100 million or less; and

**WHEREAS,** City Council desires to consider the future issuance of Certificates of Obligation to fund the acquisition and/or construction of the projects identified in the 2019 Capital Funding Plan as funded through certificates of obligation in the estimated amount of $80,100,000.00; and

**WHEREAS,** the City further intends to make certain capital expenditures with respect to the identified projects on the 2019 Capital Funding Plan as funded through certificates of obligation, prior to the issuance of the certificates of obligation and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and

**WHEREAS,** under Treas. Reg. § 1.150-2 (the "Regulation"), to fund all or part of such reimbursement with proceeds of tax-exempt obligations, the City must declare its expectation to make such reimbursement; and

**WHEREAS,** El Paso City Council desires to authorize the City Manager to make all necessary budget transfers at the appropriate times for the execution of the 2019 Capital Funding Plan.

CITY CLERK DEPT.
2018 APR 27 AM 10:30

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:**

1. **THAT** the El Paso City Council approves the capital plan referenced as "2019 Capital Funding Plan" attached hereto as Exhibit "A", with an estimated cost of $94,271,606.00.

2. **THAT** certificates of obligation are identified as the funding source subject to annual budgeting requirements for some of the 2019 Capital Funding Plan, estimated at a cost of $80,100,000.00, which includes two (2) percent for the arts and up to two (2) percent for bond issuance costs.

3. **THAT** the City Manager be authorized, subject to annual budgeting requirements, to make all necessary budget transfers at the appropriate times for the execution of the 2019 Capital Funding Plan; and

4. **THAT** the City reasonably expects to reimburse capital expenditures with respect to some of the project of the 2019 Capital Funding Plan with proceeds of debt hereafter to be incurred by the City, and that this resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the projects is estimated at $80,100,000.00.

**PASSED AND APPROVED** this 30th day of April 2018.

**CITY OF EL PASO**

Dee Margo, Mayor

**ATTEST:**

Laura D. Prine
City Clerk

**APPROVED AS TO FORM:**

Sol M. Cortez
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

Robert Cortinas
Chief Financial Officer

**Exhibit "A"**

## Exhibit A
## 2019 Capital Plan

| Project | District | Amount | Funding Source |
|---|---|---|---|
| Top 25 Arterial Safety and Improvements | All Districts | $64,258,539 | Certificate of Obligation |
| Cohen Site Readiness | 4 | $2,451,400 | Certificate of Obligation |
| Media Studio and Outdoor Display | 4 | $4,336,300 | Public, Education, Govt (PEG) |
| City Conference Center @ Cohen | 4 | $5,227,250 | Other |
| City Conference Center on Westside | 1 | $5,227,250 | Other |
| Wayfinding | All Districts | $3,183,627 | Certificate of Obligation |
| Lower Valley and 5 Point Sun City Lights | 2, 6, 7 | $3,151,800 | Certificate of Obligation |
| District 2 Water Park Improvements | 2 | $721,000 | Certificate of Obligation |
| Liz Morayma Gonzalez Park | 2 | $1,273,080 | Certificate of Obligation |
| Master Plan for Eastside | 5, 6, 7 | $515,000 | Certificate of Obligation |
| Alameda Rec Center Flat Field | 3 | $1,454,360 | Certificate of Obligation |
| Visitor Center at San Jacinto Park | 8 | $2,472,000 | Hotel Occupancy Tax |
| | | | |
| **Capital Plan Total** | | **$94,271,606** | |
| | | | |
| Certificates of Obligatoin Subtotal | | $77,008,806 | |
| 2% Bond Costs | | $1,540,176 | |
| 2% for the Arts | | $1,540,176 | |
| **Certificates of Obligation Issuance Total** | | **$80,089,159** | |

EXHIBIT

B

16.2

CITY CLERK DEPT.

2015 OCT 28 PM 4:50

# RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City of El Paso Incentives Policy – Guidelines & Criteria attached hereto as Exhibit "A" be adopted as the City of El Paso Incentives Policy.

**APPROVED** this 3rd day of November, 2015.

**CITY OF EL PASO**

Oscar Leeser
Mayor

**ATTEST:**

Richarda Duffy Momsen
City Clerk

**APPROVED AS TO FORM:**

Juan S. Gonzalez
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Cary S. Westin, Director
Economic & International Development

#452756 / 15-1007-1520 / Incentives Policy Reso-2015 / JSG

**City of El Paso Incentives Policy – Guidelines & Criteria**
**2015**

## SECTION I. PURPOSE

It is the policy of the City of El Paso to provide incentives to selected private businesses that make or will make a measurable difference in achieving economic growth and development, expanding and diversifying the tax base, and creating new quality jobs within the City of El Paso.

The purpose of this policy is to define the financial incentives and establish standards for implementation. New businesses or the expansion of existing businesses can be considered for financial incentives. In order to be eligible for incentives, businesses or individuals must be current on all city taxes or any other obligation to the City of El Paso.

Incentives cannot be transferred as a result of a change in the majority ownership of the business without the expressed written consent of the City of El Paso. Any new owner shall file a new application for an economic development incentive (Exhibit A). It shall be the responsibility of the business to notify the City of El Paso of any substantive changes.

*The City is under no obligation to approve any requested incentive and no right to these incentives is neither intended nor implied. Applicant's meeting the criteria under this policy does NOT guarantee receipt of incentives. Policy allows staff to exercise discretion in deciding which projects will receive incentives. Additional evolving policy considerations may influence Staff's analysis of applicant's application.*

Council has directed that this policy be reviewed on a biennial basis. This policy will remain in effect until it is expressly revised by Council.

Economic Development will provide Council with an annual report reviewing the implementation of this policy and the resulting effects of Council's approved incentives under this policy.

## SECTION II. DEFINITIONS

**Attraction** – Process of attracting, recruiting, and selecting companies that make substantial capital investments and create new jobs. These attraction efforts are deployed thoughtfully in the context of an overall economic development strategy to create sustainable growth for the community.

**Corporate Headquarters** – The company's principal and legal location for its corporate headquarters will be in the City of El Paso.

**Destination Retail Projects** – A development that contains a retailer or group of retailers who will offer a product and or good (subject to sales tax) that is unique to the market and which is not otherwise available for purchase at a retail business physically located in the City of El Paso. A destination retailer is expected to attract new sales tax dollars or retain sales tax dollars in the City of El Paso that may otherwise go to a nearby city or metro area. Each destination retailer must have a minimum of $20.0 million in annual sales (subject to sales tax).

**Economic Impact Analysis** – Examines the effect of the investment and/or job creation on the economy and measures the cumulative effects of that economic activity. The Economic Development Department will conduct an economic impact analysis on every project considered for incentives.

**Expansion** – The expansion and growth of an existing business which includes new capital investment and/or new job creation providing new capacity or capability.

**Innovation** – Companies or individuals that create revolutionary products or technologies making advances in technology or processes.

**Quality Job** – Jobs that provide education, training, or career development opportunities for continued career advancement in addition to meeting wage and benefit requirements.

**Retention** – Existing businesses in need of resources and/or assistance for employee retention and to maintain current operations.

**STEM** – Science, Technology, Engineering, and Mathematics are key academic disciplines promoting a competitive global workforce.

**Strategic Areas** – City of El Paso's business attraction, expansion, and retention strategic areas listed on Exhibit B. The Strategic Areas may be revised from time to time to reflect current market conditions and promote sustainable economic development opportunities.

**Target Industries** – City of El Paso's business expansion and attraction target industry priorities listed on Exhibit B. The Target Industries may be revised from time to time to reflect current market conditions and promote sustainable economic development opportunities.

**Wage Requirement** – Wage or salary equal to or greater than the current El Paso Median County Wage as computed annually by the Bureau of Labor Statistics and provides health insurance benefits to employees for which the employer pays at least 50%. Exceptions to wages may be made on a case-by-case basis if the jobs are Quality Jobs in Target Industries or Strategic Areas whereby such wages meet industry standards for such Target Industries and/or Strategic Areas and whereby the company can evidence education, training, or career development activities. If wages fall below the El Paso Median County Wage, exceptions to wages may be made on a case-by-case basis if the investments are promoting economic development in a distressed area and the jobs are sourced from Workforce Solutions Borderplex to deploy and enhance the employment of underutilized low skill workers or the unemployed and whereby the company can evidence education, training, or career development activities.

**SECTION III. STRATEGIC OBJECTIVES**

The City of El Paso, through the implementation of this policy, shall endeavor to accomplish the following strategic objectives:

1. The City of El Paso supports incentives that reduce business costs to create significant new Quality Jobs, investment, tax revenues, and consumer spending.
2. The City of El Paso supports the retention and expansion of existing businesses within the City, acknowledging that over 80% of the annual job growth comes from the retention and expansion of existing businesses.
3. The City of El Paso supports the attraction, expansion, and retention of Target Industries and Strategic Areas modified from time to time to reflect new market realities as more specifically detailed in Exhibit B.
4. The City of El Paso supports large private, commercial, recreational, destination retail, and tourism ventures that attract a Regional or National client base.
5. The City of El Paso supports the employment of STEM graduates and Veterans.
6. The City of El Paso supports the revitalization of designated redevelopment areas.
7. The City of El Paso supports the attraction and retention of companies that have strong Regional and National markets for their products or services.
8. The City of El Paso supports efforts that enhance economic development in the region to create a more robust regional economy.
9. The City of El Paso supports efforts to build human capital by improving skills in the workplace through education, training, and career development to promote career advancement. The City of El Paso acknowledges that the educational attainment of the region's workforce is the greatest driver for economic success.

**SECTION IV. General Criteria**

The City of El Paso may provide incentives for any business or commercial development project if that project:

1. Will substantially enhance the economic health of the City of El Paso;
2. Will result in a net increase or retention of jobs in the City or add to the tax base or will otherwise improve or enhance the economic welfare of the residents or businesses of the City; or
3. Demonstrates the potential to generate revenues to the City which outweigh costs associated with incentives.

In addition, the following criteria must be satisfied.

The project MUST:

1. Show a clear demonstration of public purpose and economic benefit through advancement of the City's economic goals which include expanding the tax base, creating quality jobs, increasing private capital investment in the community, spurring development in targeted City locations, or encouraging development of targeted businesses or clusters desirable to enhance the City's economy;
2. Include solid evidence provided by the business that demonstrates the business's financial stability and capacity to complete the project; and
3. Be in compliance with all local, state and federal laws.

The business, in order to receive any such incentives from the City of El Paso will make available credible information, including but not limited to capital investment and employment projections, to enable the City to prepare a fiscal impact analysis. The recipient will also make available an update of this data available annually after business operations have begun. The decision to provide any economic development incentives will be considered on a project by project basis, in accordance with the criteria set forth in this policy, and at the discretion of the City Council of the City of El Paso.

**SECTION V. QUALIFICATION CRITERIA**

In order to be eligible for incentives, a project must meet qualifying standards in at least ONE of the categories below.

a. For projects not meeting Wage Requirement, the City of El Paso may qualify the project, provided the applicant commits to hiring through our local workforce board, Workforce Solutions Borderplex. Workforce Solutions Borderplex provides employers with skilled workers and assists individuals in developing the skills needed to thrive in the workplace.

**Category 1 – Quality Jobs – 80% of jobs must be at or above the prevailing Median County Wage (MCW).**

If 80% of the jobs pay at least MCW the company is eligible for a 40% Grant.

**Category 2 – Business Type**

a. **Target Industry Cluster as identified by The Borderplex Alliance Regional Strategic Plan in Exhibit B,**
b. **Market for service of product is Regional, National, or Global, or**
c. **Enhances El Paso's supply chain by providing a service or capability currently not available locally.**

If applicant satisfies Category 1 and Category 2, company is eligible for a 50% grant.

**Category 3 – Capital Intensive Project**

80% of jobs must be at or above the prevailing Median County Wage (MCW), and;

Capital Investment in the amount of $30M - $49M; company is eligible for a 50% grant.
Capital Investment in the amount of $50M or more; company is eligible for a 60% grant.

Or;

90% of jobs must be at or above the prevailing Median County Wage (MCW), and;

Capital Investment in the amount of $30M - $49M; company is eligible for a 65% grant.
Capital Investment in the amount of $50M or more; company is eligible for a 70% grant.

**Category 4 – Retail Development/Destination Retail/Retail Distribution Center**

The purpose of this incentive is to specifically encourage the development or expansion of retail operations that fill an important void in the existing retail market. In order to qualify for this incentive, the applicant's project must embody a retail opportunity that conforms to the stated vision for the area, as well as fulfills an unmet demand. The City may provide a rebate of a percentage of the city's portion of the property tax and/or sales tax increment attributable to property improvements or upgraded tenant mix. The rebate can be made either to the site developer as a reimbursement for site improvement expenses or to the retail tenants of the improved center in order to assist in relocation or expansion related costs of the tenants. The percent of the City's sales tax and/or property tax rebate and length of time will be negotiable. The project will be required to provide a trade area analysis including a market analysis; feasibility study; and any other relevant information that will allow the City to make an informed decision.

Up to a 100% rebate on the city's portion of property taxes (incremental to base year value), and/or
Up to a 100% rebate on the city's portion of the sales taxes.

**SECTION VI. BONUS INCENTIVES**

In order to be eligible under this section, a company must first establish eligibility in one of the categories outlined previously in Section V: Qualification Criteria, Categories 1-4.

Up to a 50% rebate may be earned if:

1. A company locates within Downtown Plan Area and or Tax Increment Reinvestment Zone #5 (see Exhibit C).
2. A company locates within the Medical Center of the Americas Master Planned Campus. (see Exhibit D).
3. A corporate headquarters establishes their operation within the City of El Paso with a minimum of 100 employees.
4. A company locates their Research and Development (as defined by Federal Tax Code) in El Paso (25% of the total jobs must be Research & Development related or directly support the Research & Development function).

5. A company actively employs 15% of veterans through formal company hiring programs/initiatives.
6. A company engages in formal collaboration or business partnerships such as career and skills training pathways with higher educational institutions and or technical institutes (e.g. UTEP, TX Tech, EPCC, Western Tech etc.).
7. A company engages in formal collaboration or business partnerships such as mentoring, internships, and programs which provide employees with the latitude to complete minimal educational attainment (e.g. G.E.D. or High School Diplomas).
8. A company relocates/expands in the City of El Paso with aggregate wages at a minimum of two times the prevailing median county wage.

## SECTION VII. ECONOMIC DEVELOPMENT INCENTIVE

An economic impact analysis will be conducted by the Economic Development Department on every project considered for incentives. The delivery mechanism of choice for incentives will be the Chapter 380 agreement; however, the City reserves the right to use any other source (City, State, Federal, Foundation, etc.) in the award of incentives. As a matter of general policy, tax abatements/rebates and Chapter 380 agreements entered into as a result of this policy will not be used simultaneously unless the revenue stream from which the Chapter 380 agreement is paid is derived from sources other than property tax.

Agreements may be conditioned on the completion of specific improvements to real property and/or job numbers and salary levels being met. The Agreements shall contain recapture clauses in the event that such conditions are not met.

The Economic Development Department is charged with developing a recommendation to Council. In most cases, incentives will be limited to 50% of the calculated direct, indirect, and induced benefit; (excluding any bonus incentives earned) unless extraordinary benefit can be shown. All incentive packages will be limited to 100% of the taxes (real & property) actually collected in any given year unless approved by specific council action. Final percentages of all grants will be at the sole discretion of the City Council.

## SECTION VIII. INELIGIBLE AND RESTRICTED AREAS OR USES:

The following types of projects or uses are <u>not</u> eligible for incentives:

a. Projects that have been issued a building permit, including any conditional permits.
b. Projects that do not meet the Wage Requirements, except as specified in Section V., Qualification Criteria.

Exhibit A

## Department of Economic Development
## INCENTIVES APPLICATION FORM

*The City of El Paso requires the following information in order to process an application for incentives. This information is protected by the State of Texas and is not subject to public disclosure until the incentive agreement is executed. An application does not guarantee an incentive grant. City of El Paso Economic Development staff will conduct a review, normally 10 business days, and will contact the applicant once completed.*

***Please note: If Construction has commenced on a project, the incentive application process is VOID.***

### Step 1 SECTION A. COMPANY AND CONTACT INFORMATION

1. Company Headquarters (Official Name and Address): ______________________
   ***Please include web address if available** ______________________
   ______________________

2. Business Structure ( i.e. Proprietorship, Partnership, Corporation) ______________________

3. Name of Contact Person: ______________________

   Phone: (     ) ______________ Email: ______________

### SECTION B. PROPOSED PROJECT INFORMATION

4. Name and Address: ______________________
   ______________________

5. Company NAICS Code ______________________

6. Which target industry does your company most closely relate to?

- ☐ Defense and Aerospace
- ☐ Life Sciences
- ☐ Tourism
- ☐ Advanced Manufacturing
- ☐ Advanced Logistics
- ☐ Business Support Services
- ☐ Retail/Destination
- ☐ Other: (please explain)

______________________

______________________

## Step 2 SECTION C. JOB AND WAGE INFORMATION

7a. **MUST** Provide number of **FULL-TIME** jobs, with hourly wage/salary, to be created or retained. (Fringe benefits are not to be included in these calculations.) Include current employment numbers if applicable. **Attach additional sheets if necessary.**

| Title or Occupation Code | Number of Employees | Hourly Wage per employee | Annual Salary |
|---|---|---|---|
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7b (If applicable). Please also include the number of **PART-TIME** jobs, with hourly wage/salary, to be created or retained. (Fringe benefits not included in calculations). Include current PT employment numbers if applicable.

| Title or Occupation Code | Number of Employees | Hourly Wage per employee | Annual Salary |
|---|---|---|---|
| | | | |
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8. Provide the total annual payroll for each of the initial five years of operation, **excluding** benefits.

| | Year 1 ( ) | Year 2 ( ) | Year 3 ( ) | Year 4 ( ) | Year 5 ( ) |
|---|---|---|---|---|---|
| | | | | | |
| Total Annual Payroll | | | | | |

9. Health Insurance ***Please submit Paperwork to certify Health benefits, which will be offered to employees***

What type of Health insurance will the company offer employees? What percentage of Health insurance will the company cover for employees? ____________________

____________________

## Step 3 SECTION D. INVESTMENT INFORMATION

10a. Total dollar amount for proposed project improvements:

| Real Property | |
|---|---|
| Land | $ |
| Existing Building Improvements | $ |
| New Building Improvements | $ |
| **Total** | $ |
| **Personal Property** | |
| **Equipment** | |
| Computers | $ |
| Machinery | $ |
| Other- Specify ____________________(attach additional sheets if necessary) | $ |
| Furniture and Fixtures | $ |
| **Total** | $ |
| **Grand Total** | **$** |

10b. Please provide **ACTUAL** start and completion dates:

______________________________________________

10c. Please provide yearly investment breakdown (If any):

| Year | Investment |
|---|---|
| Year 1 (20 ) | $ |
| Year 2 (20 ) | $ |
| Year 3 (20 ) | $ |
| Year 4 (20 ) | $ |
| Year 5 (20 ) | $ |
| Year 6 (20 ) | $ |
| Year 7 (20 ) | $ |

11. What is the current Minimum Appraised Value, If known please provide: ( El Paso Central Appraisal)

| **Year:** | **Value:** **$** |
|---|---|

12. Application packet <u>must</u> include the following:

☐ If available - Metes and bounds, field notes and/or a site survey showing the location of existing and proposed improvements, and legal description ****please include Property ID***

13. Has the company previously received an incentive with all terms and conditions? ☐ YES ☐ NO

## SECTION E. CERTIFICATION

I hereby certify that the information contained within this application is true and correct.

**Name and Title of Officer of Company:** ______________________

**Signature:** ______________________

**Date:** ______________________

**Telephone:** ______________________

## (FOR INTERNAL STAFF USE ONLY) SECTION F. ACKNOWLEDGEMENT

☐ **Step 1- *Section A-B***
☐ **Step 2- *Section C***
☐ **Step 3- *Section D-E***

I hereby acknowledge that I have completed all steps within the City of El Paso's incentive application and that all information is true and correct.

| | |
|---|---|
| ______________________ | ______________________ |
| Applicant signature | Denisse Carter, EDCCC- Economic & International Development |
| ______________________ | ______________________ |
| Date | Date |

**Return Completed Application to:**

**Eddie Garcia**
**Garciaez2@elpasotexas.gov**
**Economic Development Manager**
**Economic & Int'l Development Department**
**801 Texas Ave. 2nd Floor**
**El Paso Texas, 79901**

Exhibit B

## Exhibit B

## 2015 Borderplex Alliance Strategic Recommendations

**Target Industry Sectors:**

- Defense and Aerospace
- Life Sciences
- Tourism
- Advanced Manufacturing
- Advanced Logistics
- Business Support Services

Exhibit C

## Exhibit D

Medical Center of the Americas
MCA Boundary
TIRZ #6
1,000
1,500
2,000
Feet

## Exhibit C

### Convention Center Specifications

The Convention Center will be approximately 10,000 square feet of gross area that will include 3 break out rooms, a board meeting room, and a ball room with divisible options to adjust to the different group demand. It will include restrooms, and support service area, as well as an independent entrance.

**Exhibit D**
**Convention Center Hotel**

The Convention Center Hotel features 350 guest rooms with approximately 395,000 square feet of gross area. The building will be 6-7 stories tall and include an indoor water-park, with a primary focus on young families and with an offer of self-contained vacation experience with interactive water experiences and other amenities for the entire family.

The Convention Center Hotel will include an indoor waterpark of approximately 88,000 square feet of gross area, dry-land adventures for the entire family, as well as various restaurants, arcade and other amenities and facilities for families included on the approximately 41,000 square feet of the Family Entertainment Center. The hotel will also have exterior grounds containing amenities and interactive water experiences.

# Exhibit E

## Convention Center Land

The site in which the Convention Center and Convention Center Hotel will be developed 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.

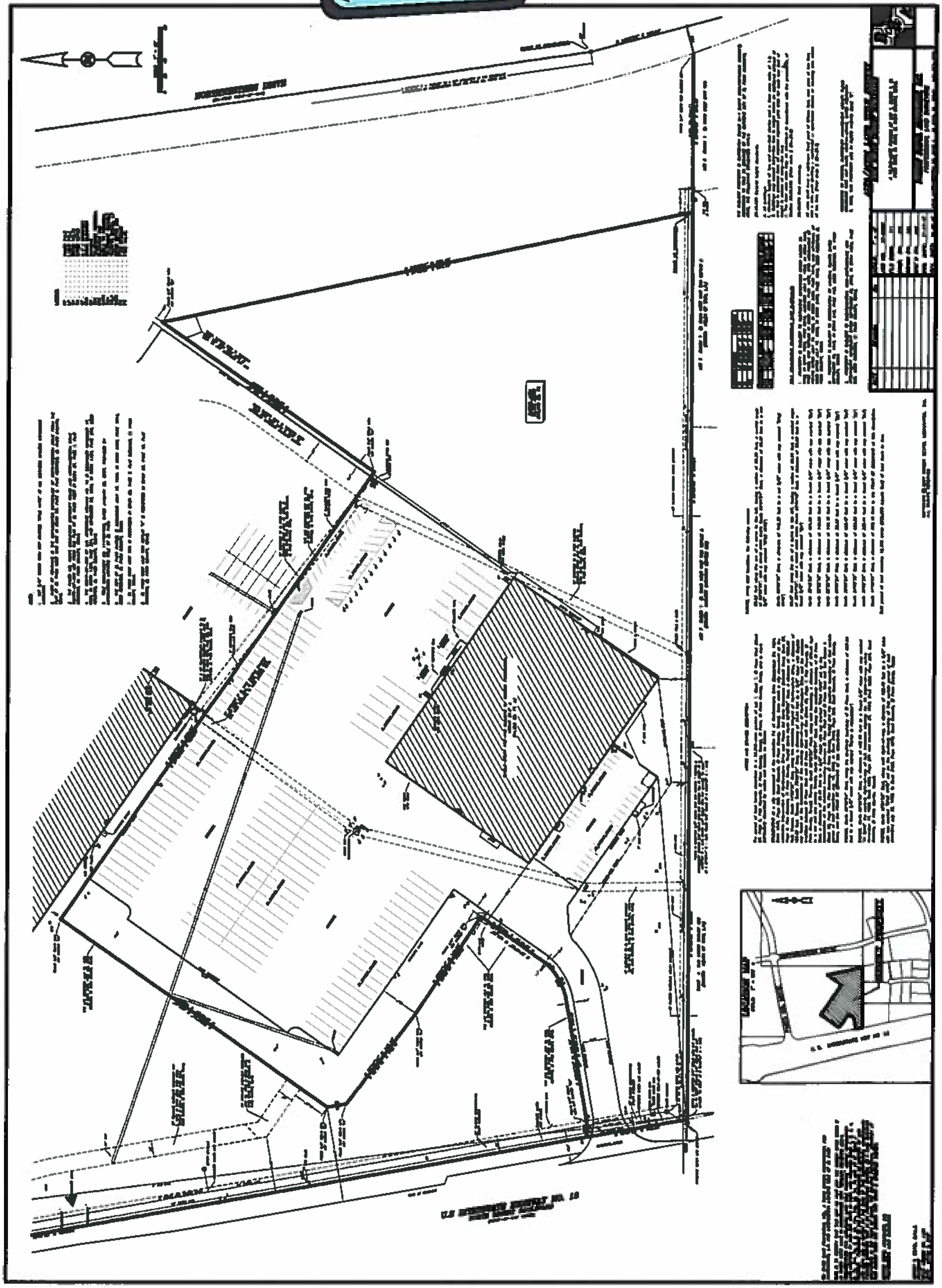
By 1991, a water utility station was constructed to the northeast and two commercial buildings were constructed to the south. Historical occupants of concern for the commercial buildings have included Gross Medick Barrows (1997) and Rock-Tenn (1997). Based on the topographic down-gradient position relative 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.

ALL-STATE LEGAL®

EXHIBIT

F



## Exhibit G

## Description of Real Property

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

EXHIBIT

H

# 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** **<u>Rent</u>.** 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** **<u>Commencement of Rent</u>.** 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** **<u>Contamination.</u>** 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** **<u>Compliance</u>.** 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 polices 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 <u>Encumbrance</u>.** 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 <u>Mortgagee's Rights</u>.**

**(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 <u>Notice of Condemnation</u>.** 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 <u>Rights of Parties During Condemnation Proceeding</u>.** 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 if 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** **<u>Binding Authority</u>.** 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** **<u>Chapter 380 Agreement</u>.** 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** **<u>Headings</u>.** 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** **<u>Interpretation</u>.** 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** **<u>Memorandum of Lease</u>.** 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** **<u>Notices</u>.** 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<br>Attn: City Manager<br>P.O. Box 1890<br>El Paso, Texas 79950-1890 |
| Copy to: | City of El Paso<br>Director, Economic and International Development<br>P.O. Box 1890<br>El Paso, Texas 79950-1890 |
| | City of El Paso<br>City Attorney<br>P.O. Box 1890<br>El Paso, Texas 79950-1890 |

| | |
|---|---|
| Tenant: | Great Wolf Resorts, Inc.<br>350 N. Orleans Street, Suite 10000B<br>Chicago, Illinois 60654 |
| Copy to: | Haynes and Boone, LLP<br>Attn: Jeff Dorrill<br>2323 Victory Ave., Suite 700<br>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 <u>Waiver of Warranty of Suitability</u>.** **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 <u>Waiver of Landlord</u>.** 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:**

______________________________
Roberta Brito
Assistant City Attorney

**APPROVED AS TO CONTENT:**

______________________________
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]***

**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 GWR El Paso Property Owner, LLC.

______________________________
Notary Public, State of __________

My Commission Expires:

______________________

## EXHIBIT I

### Initial Rebate Submittal Package Form

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the __ day of_______________, 20_____ and signed by________________ of **GREAT WOLF RESORTS.** Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the rebates referenced in the Agreement in consideration for its obligations met therein.

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

1. **PRIOR TO COMMENCEMENT OF CONSTRUCTION** Budget for the Project
2. **PRIOR TO COMMENCEMENT OF CONSTRUCTION** Financial Pro forma for the project
3. **PRIOR TO COMMENCEMENT OF CONSTRUCTION** Loan commitment documentation from Lenders

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: _________________________

### ACKNOWLEDGMENT

**STATE OF ____________§**
**§**
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of _____________,

20____, by ______________________________, as __________________________ of the **GREAT WOLF RESORTS.**

______________________________

Notary Public, State of __________

My Commission Expires:

______________________

**EXHIBIT J**

**Waiver of Sales and Use Tax Confidentiality**

Date ______________________

I authorize the State of Texas Comptroller of Public Accounts to release (sales tax) tax information pertaining to the taxpayer indicated below to ____________, a ____________, its successors, assigns or nominees, and the City of El Paso, Texas. I understand that this waiver applies only to place of business located at _______________ in the City of El Paso, El Paso County, Texas.

Please print or type the following information as shown on your Texas [Sales and Use Tax Permit]: Name of Taxpayer Listed on Texas Sales Tax Permit:

_______________________________________________

Name under Which Taxpayer is Doing Business (d/b/a or Store Name):

_______________________________________________

Taxpayer Mailing Address:

____________________________

____________________________

____________________________

Physical Location of Business Permitted for [Sales Tax] in El Paso, Texas:

_______________________________________________

**Texas Taxpayer ID Number**
**Tax Outlet Number / TABC Number**

**Authorized Signature**

_________________________

**Printed Name:**
**Title:**
**Phone:**

The authorized signature must be an owner, officer, director, partner, or agent authorized to sign a Texas Sales Tax Return. If you have any questions concerning this Waiver of confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.

**EXHIBIT K**

**DEVELOPMENT GRANT SUBMITTAL PACKAGE FORM**

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the __ day of________________, 20_____ and signed by________________ of **GREAT WOLF RESORTS.** Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Development Grant Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the rebates referenced in the Agreement in consideration for its obligations met therein.

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

1. **Development Grant Disbursement No. 1 ($1,000,000)** – upon commencement of construction, evidence of framing must be submitted.
2. **Development Grant Disbursement No. 2 ($3,000,000)** – upon completion of 50% of the development, a signed and notarized affidavit from Great Wolf Resorts certifying 50% completion of the development must be submitted.
3. **Development Grant Disbursement No. 3 ($1,000,000)** – upon Completion of 100% of development, a signed and notarized affidavit from Great Wolf Resorts certifying 100% completion of development and Permanent Certificate of Occupancy must be submitted.

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________
Name: ________________________
Title: _________________________

**ACKNOWLEDGMENT**

**STATE OF ____________§**
**§**
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of _____________, 20____, by ____________________________, as _________________________ of the **GREAT WOLF RESORTS.**

______________________________

Notary Public, State of ___________

My Commission Expires:

______________________

## EXHIBIT L

## STATE HOTEL OCCUPANCY TAX
## REBATE SUBMITTAL PACKAGE FORM

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20_____ and signed by_________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Hotel Occupancy Tax Submittal Package Form in compliance with the Agreement and in anticipation of receiving the State Hotel Occupancy Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of _____________________ expenses detailed and attached hereon representing eligible expenses incurred from ___________ to _____________ of 20__________.

1. State Hotel Occupancy Tax payment receipts showing proof of payment for ________ :

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: _________________________

Title: __________________________

**ACKNOWLEDGMENT**

**STATE OF _____________**§
§
**COUNTY OF ___________**§

This instrument was acknowledged before me on the ____ day of _____________,

20____, by ____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of ___________

My Commission Expires:

______________________

## EXHIBIT M

## STATE SALES AND USE TAX
## REBATE SUBMITTAL PACKAGE FORM

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20____ and signed by_________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Sales and Use Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the State Sales and Use Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of _____________________ expenses detailed and attached hereon representing eligible expenses incurred from ___________ to _____________ of 20__________.

1. Sales and Use Tax payment receipts showing proof of payment for __________:

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: _________________________

**ACKNOWLEDGMENT**

**STATE OF ____________§**
**§**
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of ____________,

20____, by _____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of ___________

My Commission Expires:

______________________

## EXHIBIT N

## LOCAL HOTEL OCCUPANCY TAX
## REBATE SUBMITTAL PACKAGE FORM

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20_____ and signed by________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Hotel Occupancy Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Local Hotel Occupancy Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of ____________________ expenses detailed and attached hereon representing eligible expenses incurred from ___________ to ____________ of 20__________.

1. Hotel Occupancy Tax payment receipts showing proof of payment for ________ :

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: _________________________

**ACKNOWLEDGMENT**

**STATE OF ____________§**
§
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of ____________,

20____, by ____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of ___________

My Commission Expires:

_____________________

## EXHIBIT O

## LOCAL SALES AND USE TAX
## REBATE SUBMITTAL PACKAGE FORM

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20_____ and signed by_________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Sales and Use Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Local Sales and Use Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of _____________________ expenses detailed and attached hereon representing eligible expenses incurred from ___________ to _____________ of 20__________.

1. Sales and Use Tax payment receipts showing proof of payment for __________:

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: _________________________

## ACKNOWLEDGMENT

**STATE OF _____________§**
**§**
**COUNTY OF ___________§**

This instrument was acknowledged before me on the ____ day of _____________,

20____, by ______________________________, as _________________________ of the

**GREAT WOLF RESORTS.**

______________________________

Notary Public, State of ___________

My Commission Expires:

______________________

**EXHIBIT P**

**PROPERTY TAX REBATE SUBMITTAL PACKAGE FORM**

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20_____ and signed by________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Property Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Property Tax Rebate payments referenced in the Agreement in consideration for its obligations met therein.

The following information is submitted as documentation required for the reimbursement of ____________________ expenses detailed and attached hereon representing eligible expenses incurred from ___________ to ____________ of 20__________.

1. Property tax payment receipts showing proof of payment for tax year ________:

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: ________________________

**ACKNOWLEDGMENT**

**STATE OF ____________§**
**§**
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of ____________,

20____, by ____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of __________

My Commission Expires:

______________________

## EXHIBIT Q

## CONSTRUCTION MATERIALS SALES TAX REBATE SUBMITTAL PACKAGE FORM

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of_______________, 20_____ and signed by_______________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Construction Materials Sales Tax Rebate Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Construction Materials City Sales Tax Rebate referenced in the Agreement in consideration for its obligations met therein.

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

1. Documentation evidencing the materials and labor of Taxable Items used in the construction of the Development eligible for rebate to Applicant under the Construction Materials Sales Tax Rebate.

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Rebate request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

_______________________________

Name: _________________________

Title: __________________________

### ACKNOWLEDGMENT

**STATE OF _____________** §
§
**COUNTY OF __________** §

This instrument was acknowledged before me on the ____ day of _____________,

20____, by ____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of ___________

My Commission Expires:

______________________

EXHIBIT

R

FY 2019 SCHEDULE C
DEPARTMENTAL FEE LIST

| Line No. | Department | Account | Fee Description | Detail FY 2019 Preliminary | [illegible] Adopted Fees |
|---|---|---|---|---|---|
| 460 | Planning & Inspections | 441010 | Building Permits | Solar Shingle per 100 sq. ft. | $14 per sq. ft. plus base fee plus applicable technology fee |
| 461 | Planning & Inspections | 441010 | Building Permits | Contractor starting work without a permit on a residential building, structure, electrical, gas, mechanical, irrigation, or plumbing system before obtaining the necessary permits or written authorization from the building official | Triple the permit fee for working without a permit plus applicable technology fee |
| 462 | Planning & Inspections | 441010 | Building Permits | Contractor starting work without a permit on a commercial building, structure, electrical, gas, mechanical, irrigation, or plumbing system before obtaining the necessary permits or written authorization from the building official | Triple the permit fee for working without a permit plus applicable technology fee |
| 463 | Planning & Inspections | 441011 | Building Permits | Homeowner starting work without a permit on his own residential building, structure, electrical, gas, mechanical, irrigation or plumbing system before obtaining the necessary permits or written authorization from the building official | Double the permit fee for working without a permit plus applicable technology fee |
| 464 | Planning & Inspections | 441020 | Building Permits | Permit which required only one inspection | $76 plus applicable technology fee |
| 465 | Planning & Inspections | 441020 | Building Permits | Pre-Inspection Fee | $76 plus applicable technology fee |
| 466 | Planning & Inspections | 441020 | Building Permits | building/existing building C of O | $76 plus applicable technology fee |
| 467 | Planning & Inspections | 441020 | Building Permits | building /fences | $76 plus applicable technology fee |
| 468 | Planning & Inspections | 441020 | Building Permits | Building/electrical fence | $152 plus applicable technology fee |
| 469 | Planning & Inspections | 441020 | Building Permits | building/placement | $76 plus applicable technology fee |
| 470 | Planning & Inspections | 441020 | Building Permits | building/plumbing/CHP | $76 plus applicable technology fee |
| 471 | Planning & Inspections | 441020 | Building Permits | building/right of way | $76 plus applicable technology fee |
| 472 | Planning & Inspections | 441020 | Building Permits | building/siding | $76 plus applicable technology fee |
| 473 | Planning & Inspections | 441020 | Building Permits | building/weatherization | $76 plus applicable technology fee |
| 474 | Planning & Inspections | 441020 | Building Permits | building/windows | $76 plus applicable technology fee |
| 475 | Planning & Inspections | 441020 | Building Permits | Permit which required two inspections - will receive detail | $115 plus applicable technology fee |
| 476 | Planning & Inspections | 441020 | Building Permits | Demolition Permit | $115 plus applicable technology fee |
| 477 | Planning & Inspections | 441020 | Building Permits | building/residential/swimming pool, spa | $115 plus applicable technology fee |
| 478 | Planning & Inspections | 441020 | Building Permits | building/retaining walls | $115 plus applicable technology fee |
| 479 | Planning & Inspections | 441020 | Building Permits | Moving a building | $115 plus applicable technology fee |
| 480 | Planning & Inspections | 441020 | Building Permits | Temporary structures-amusement devices | |
| 481 | Planning & Inspections | 441020 | Building Permits | per ride-per month | $9 plus applicable technology fee |
| 482 | Planning & Inspections | 441020 | Building Permits | minimum | $51 plus applicable technology fee |
| 483 | Planning & Inspections | 441190 | Building Permits | Cellular Service | Based on the valuation of the tower. The same as a commercial building, plus applicable technology fee |
| 489 | Planning & Inspections | 441020 | Building Permits - Commercial | | For Structural repair work costing over five hundred dollars ($500.00) and less than fifteen thousand dollars ($15,000.00) all repair work, new work and remodeling with a valuation up to and not including fifteen thousand dollars and requiring plans and plan review, the fee shall be one hundred sixty dollars and forty-nine cents ($160.49) plus plan review fee and applicable technology fee. |
| 490 | Planning & Inspections | 441020 | Building Permits - Commercial | | For a valuation from fifteen thousand dollars and including one hundred thousand dollars, the fee shall be one hundred sixty-one dollars and twelve cents ($161.12) for the first fifteen thousand dollars plus eight dollars and forty-eight cents ($8.48) per thousand for each additional thousand or fraction thereof by which the valuation exceeds fifteen thousand dollars plus plan review fee and applicable technology fee. |
| 491 | Planning & Inspections | 441020 | Building Permits - Commercial | | For a valuation over one hundred thousand dollars up to and including five hundred thousand dollars, the fee shall be eight hundred thirty-seven dollars and forty cents ($837.40) for the first one hundred thousand dollars, plus six dollars and thirty-six cents ($6.36) for each one thousand dollars or fraction thereof by which the valuation exceeds one hundred thousand dollars plus plan review fee and applicable technology fee. |
| 492 | Planning & Inspections | 441020 | Building Permits - Commercial | | For a valuation over five hundred thousand dollars up to and including one million dollars, the fee shall be three thousand one hundred twelve dollars and seventy-two cents ($3,112.72) for the first five hundred thousand dollars plus three dollars and twenty eight cents ($3.28) for each one thousand dollars of fraction thereof by which the valuation exceeds five hundred thousand dollars plus plan review fee and applicable technology fee. |
| 493 | Planning & Inspections | 441020 | Building Permits - Commercial | | For a valuation over one million dollars, the fee shall be four thousand seven hundred fifty-eight dollars and thirty-four cents ($4,758.34) for the first one million dollars plus two dollars and twelve cents ($2.12) for each one thousand dollars of fraction thereof by which the valuation exceeds one million thousand dollars plus plan review fee and applicable technology fee. |
| 494 | Planning & Inspections | 441020 | Building Permits - Commercial | Plan Review for Commercial Swimming Pool | $238 plus applicable technology fee |

## EXHIBIT S

## DESTINATION TOURISM GRANT (If applicable)

**GREAT WOLF RESORTS** believes that it has substantially met its obligations under the Chapter 380 Agreement dated the _______ day of________________, 20_____ and signed by________________ of **GREAT WOLF RESORTS.**

Pursuant to the Agreement, **GREAT WOLF RESORTS** submits this Destination Tourism Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the payments referenced in the Agreement in consideration for its obligations met therein.

As required by the agreement, the following information is submitted:

1. **Destination Tourism Grant Request** – signed and notarized *this form* **($4,000,000 annual payment)** – upon project completion, evidence of project completion must be submitted.

It is understood by **GREAT WOLF RESORTS** that the City of El Paso has up to thirty **(30) days** to process this request and reserves the right to deny the Grant request if the Applicant has not complied with the terms of the Agreement.

**GREAT WOLF RESORTS**

______________________________

Name: ________________________

Title: _________________________

### ACKNOWLEDGMENT

**STATE OF ____________§**
**§**
**COUNTY OF __________§**

This instrument was acknowledged before me on the ____ day of _____________,

20____, by ____________________________, as ________________________ of the

**GREAT WOLF RESORTS.**

______________________________
Notary Public, State of ___________

My Commission Expires:

______________________

# Exhibit T

## Depiction of West Towne Market Place Intersection

The existing entrance road to the site and Convention Center Hotel will be need to be modified by The City of El Paso in order to intersect directly with the main entrance road of the West Towne Market Place, including a stop light and curb cuts. Signage on the roads for the Convention Center Hotel will be placed on locations with good visibility along the I-10 and Paseo del Norte road will be put in place by the City of El Paso.