

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

DEPARTMENT: Economic & International Development Department

AGENDA DATE: CCA Regular, November 26, 2019

CONTACT PERSON/PHONE: Jessica Herrera, Director, (915) 212-1624

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign a Ground Lease in a form substantially similar to the attached document by and between CITY OF EL PASO ("City") 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 located at 7850 Paseo Del Norte Boulevard, El Paso, Texas 79912, El Paso County. (All) [Economic & International Development Department, Jessica Herrera, Director, (915) 212-1624]

BACKGROUND/DISCUSSION:

In order to be included for consideration under the newly adopted Texas House Bill 4347, all documents associated with the GWR EL PASO PROPERTY OWNER LLC 380 will have to reflect an effective date that comes after September 1, 2019. The subject Ground Lease is a GWR EL PASO PROPERTY OWNER LLC 380-associated document and so the City now desires to activate a new Ground Lease between the City and GWR EL PASO PROPERTY OWNER LLC in order to reflect the necessary post-September 1, 2019 effective date.

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:

Enter appropriate comments or N/A.

N/A

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

For
DEPARTMENT HEAD: Eddie Garcia

RESOLUTION

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

That the City Manager be authorized to sign a Ground Lease in a form substantially similar to the attached document by and between CITY OF EL PASO ("City") 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 located at 7850 Paseo Del Norte Boulevard, El Paso, Texas 79912, El Paso County.

APPROVED this ____ day of November, 2019.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta Brito
Assistant City Attorney

APPROVED AS TO CONTENT:


for _____
Jessica Herrera, Director
Economic & Int'l Development

GROUND LEASE

This Ground Lease ("Lease") is entered into this _____ day of _____, 2019 ("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 (a) that certain Chapter 380 Economic Development Program Agreement by and between Landlord and Tenant ("Chapter 380 Agreement"), which is attached hereto as Exhibit B, and (b) that certain Termination Agreement by and between Landlord and Tenant pursuant to which the parties thereto agree to terminate that certain Chapter 380 Economic Development Agreement and that certain Ground Lease, each dated as of October 30, 2018. 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 Effective 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.

SECTION 4. RENT

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

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

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

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

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

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

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

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

SECTION 5. PRIVILEGES AND USE

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

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

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

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

SECTION 6. OBLIGATIONS OF LANDLORD

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

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

6.03 Easements; Dedications; Zoning; Permits.

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

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

SECTION 7. OBLIGATIONS OF TENANT

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

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

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

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

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

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

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

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

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

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

SECTION 8. ENVIRONMENTAL LAW

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

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

8.03 Indemnification. TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ITS SUCCESSORS AND ASSIGNS, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES (TO THE EXTENT AWARDED TO A GOVERNMENTAL ENTITY) AND REASONABLE LEGAL AND INVESTIGATION FEES OR COSTS (INCLUDING REASONABLE COSTS AND EXPENSES RELATED TO INVESTIGATION OR REMEDIATION OF THE SOIL, SURFACE WATER OR GROUNDWATER ON OR ABOUT THE PREMISES TO THE EXTENT REQUIRED UNDER ENVIRONMENTAL LAWS), ARISING FROM OR RELATED TO ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, IN EACH CASE ALLEGING OR ARISING FROM A VIOLATION OF ANY

ENVIRONMENTAL LAW BY TENANT, IT SUBTENANTS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES OR INVITEES (“TENANT PARTIES”) ON THE PREMISES OR A RELEASE OF HAZARDOUS MATERIALS BY TENANT PARTIES ON THE PREMISES. TENANT'S OBLIGATIONS AND LIABILITIES UNDER THIS SECTION 8 SHALL EXPIRE UPON THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE, PROVIDED HOWEVER THAT TO THE EXTENT LANDLORD HAS PROVIDED NOTICE OF A CLAIM UNDER THIS SECTION 8.03 PRIOR TO SUCH DATE, TENANT'S OBLIGATIONS UNDER THIS SECTION 8.03 SHALL CONTINUE WITH RESPECT TO THE CLAIM THAT IS SUBJECT OF SUCH NOTICE UNTIL THE RESOLUTION OF SUCH CLAIM. FOR AVOIDANCE OF DOUBT, TENANT SHALL HAVE NO RESPONSIBILITY OR OBLIGATION UNDER THIS LEASE FOR ANY HAZARDOUS MATERIALS OR ANY VIOLATION OF ENVIRONMENTAL LAW EXCEPT TO THE EXTENT SUCH HAZARDOUS MATERIALS ARE PRESENT OR SUCH VIOLATIONS OCCUR BECAUSE OF THE ACTS OF TENANT PARTIES.

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

8.05 Compliance. Tenant shall, at Tenant's sole expense, to the extent required by Environmental Laws, operate its business on the Premises in material compliance with Environmental Law under the Environmental Laws and shall prepare and undertake any cleanup plans at the site to the extent such plans are (i) required as a result of Tenant's violation of Environmental Law and (ii) required by the government. At no cost or expense to Landlord, Tenant shall promptly provide all information reasonably requested by Landlord in writing to respond to any governmental investigation alleging a violation of Environmental Law by Tenant or to respond to any claim of liability by third parties alleging a release of Hazardous Materials by Tenant.

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

8.07 Reporting. At any time that Tenant submits any non-routine filing or response required under Environmental Laws to a governmental agency indicating a violation of Environmental Law

or a release of Hazardous Materials pertaining to the Premises or Tenant's operations on the Premises, Tenant shall provide duplicate copies to Landlord of such filing(s) or response(s).

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

SECTION 9. INSURANCE AND INDEMNIFICATION

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

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

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

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

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

9.03 Notice to Landlord. All policies shall provide either in the policy itself and reflected on the certificate of insurance or through an endorsement attached to the policy, that the insurance cannot be canceled or the amount of coverage changed without 30 calendar days prior written notice to the Landlord or 10 calendar days prior written notice for non-payment of insurance policy premiums.

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

9.05 Authorized Insurance and Surety Companies. All required policies of insurance and bonds shall be written by insurance and surety companies with an A.M. Best rating of A-VII or higher. Certificates of insurance shall be delivered to Landlord at least 10 calendar days prior to

the effective date of the insurance policy for which the certificate is issued and prior to the Commencement Date of this Lease. Each insurance policy shall contain:

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

9.06 Indemnification. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES, BUT EXCLUDING IN EACH CASE SUCH CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ITS AGENTS. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL REASONABLY ACCEPTABLE TO LANDLORD. NOTWITHSTANDING THE FOREGOING, THE INDEMNIFICATION UNDER THIS SECTION 9.06 SHALL NOT COVER ANY MATTER ARISING UNDER ENVIRONMENTAL LAW OR WITH RESPECT TO HAZARDOUS MATERIALS, WHICH MATTERS ARE ADDRESSED EXCLUSIVELY UNDER SECTION 8.

SECTION 10. DESTRUCTION BY FIRE OR OTHER CASUALTY

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

- A. Prior to commencing such work, Tenant shall deliver to Landlord a set of the preliminary construction plans and specifications. In the event the preliminary plans and specifications are substantially different from the original development plans, and the development plans are not for a family resort and waterpark with a standard consistent with Tenant's other properties, Tenant will be so notified and the notice shall specify in detail the reasons therefor and the requested modifications or alterations thereto. Tenant's subsequent failure for 90 days after written notice from Landlord to prepare and provide preliminary construction plans and specifications in substantial conformity with the original development plans for the Premises (or plans for development otherwise permitted under Section 6.02 above), shall be deemed an event of default of this Lease and a cross default of the Chapter 380 Agreement, including and specifically Section 4 (c) (2); and in such event Landlord shall be entitled to (i) terminate this Lease, or (ii) exercise the recapture of incentives pursuant to Section 9 of the Chapter 380 Agreement.
- B. Upon approval of the preliminary plans and specifications, as herein provided, Tenant shall prepare, or cause to be prepared, final working plans and specifications in substantial conformity to the preliminary plans and specifications. Upon completion of the final working plans and specifications, Tenant shall submit the same to appropriate governmental agencies for approval. Upon approval by such agencies and the issuance of permits for the commencement of construction, Tenant shall deliver to Landlord one complete set of the final working plans and specifications as approved by the governmental agencies exercising jurisdiction thereover and copies of all issued permits for the Premises. Changes from the preliminary plans and specifications shall be considered to be within the scope of the preliminary plans and specifications if such changes are reasonably inferable therefrom or if they are made to comply with suggestions, requests or requirements of the governmental agencies exercising jurisdiction.
- C. Without limiting compliance with the foregoing, Tenant's obligation to repair, replace or rebuild shall be subject to settlement occurring with the insurance company or companies and said proceeds of such insurance policy or policies

having been paid to Tenant. After actual receipt of such insurance proceeds, Tenant shall commence such repair, replacements or rebuilding within a reasonable time and shall continue such work with reasonable diligence until completion.

- D. Upon completion of the construction, Tenant shall deliver to Landlord, a complete set of record (as-built) drawings of the construction signed and sealed by a professional engineer licensed in Texas, and a copy of the issued Certificate of Occupancy for the Premises, all to be in hard-copy form and in electronic form.
- E. Notwithstanding anything to the contrary herein, in the event of a total or substantial loss or damage to the improvements on the Premises (including any damage which, in Tenant's reasonable judgment, cannot feasibly be repaired in a manner that would enable Tenant to conduct or resume its operations on the Premises in substantially the same manner as conducted prior to the total or substantial loss or damage), Tenant shall have the option, in its sole discretion, within 180 days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to Landlord within said 180-day period, in which event this Lease shall terminate as of the termination date specified in such notice to Landlord, which shall not be less than 30 days after the date of such notice, and Tenant shall pay all other payments due and owing as of the termination date. Subject to Section 10.01(f) below, Lessee shall not be required to repair damage, and all insurance proceeds available as a result of such damage shall be paid to and be the property of Tenant.
- F. In the event of a termination of the Lease as described in Paragraph E, Tenant acknowledges its obligation to demolish and remove any improvements on the Premises; provided however, that such obligation shall be limited such that Tenant shall only be required to remove the improvements on the Premises to the extent that the cost to Tenant for such removal and demolition shall not exceed the amount of insurance proceeds received by Tenant as a result of the damage described in Paragraph E. For avoidance of doubt, the excess of any insurance proceeds used to demolish and remove improvements pursuant to this Paragraph F shall be the property of Tenant.

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

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

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

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

11.03 Exercise of Option for Hotel Land.

A. Tenant may exercise its option to purchase the Hotel Land at any time on or after the Project Completion Date if either (i) Tenant will not receive Grants for the Project pursuant to MHCCPP, (ii) Tenant will receive Grants for the Project pursuant to MHCCPP, but the parties have determined that the Landlord's ownership of the Hotel Land is not a requirement for Tenant to be eligible to receive Grants for the Project pursuant to MHCCPP, or (ii) Tenant elects to opt out of participation in the MHCCPP. 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 MHCCPP, Tenant's exercise of the option to purchase the Hotel Land shall immediately terminate any remaining Grants to be made pursuant to the MHCCPP.

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 if either (i) Tenant will not receive Grants for the Project pursuant to MHCCPP, (ii) Tenant will receive Grants for the Project pursuant to MHCCPP, but the parties have determined that the Landlord's ownership of the Convention Center Land is not a requirement for Tenant to be eligible to receive Grants for the Project pursuant to MHCCPP, or (iii) Tenant elects to opt out of participation in the MHCCPP. 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 MHCCPP, Tenant's exercise of the option to purchase the Convention Center Land shall immediately terminate any remaining Grants to be made pursuant to the MHCCPP.

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

SECTION 13. INTENTIONALLY OMITTED

SECTION 14. TERMS AND CONDITIONS OF PURCHASE OPTIONS

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

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

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

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

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

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

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

SECTION 15. ENCUMBRANCES

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

- A. The amount of the obligation secured by the Mortgage,
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

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

15.02 Mortgagee's Rights.

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

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;
- C. If the default cannot reasonably be cured within 120 days, to commence performance within such 120 day period and thereafter diligently prosecute same

to completion, in which event, the default will have been deemed to have been cured; or

D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

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

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

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

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

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

(7) Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination or rejection in bankruptcy of this Lease for any reason prior to the stated expiration date, Landlord shall promptly notify all Mortgagees of such termination or rejection. If the Mortgagee having the highest priority with respect to the Lease cures all defaults (that are reasonably susceptible to cure) that gave rise to such termination or rejection as provided below, Landlord shall enter into a new lease of the Premises with such Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the date of termination or rejection of this Lease, at the Rental and other payments payable hereunder and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

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

(b) at the time of the execution and delivery of the new lease, the Mortgagee or its designee shall pay to Landlord all amounts specified in the notice of termination delivered by

Landlord of amounts due hereunder (excluding, however, any such amounts representing rents for the period after the date of the new lease, which rents shall be paid as provided as and when due pursuant to Section 4.01 above), and shall promptly thereafter cure all other defaults (to the extent reasonably susceptible to cure) giving rise to such termination or rejection.

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

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

SECTION 16. EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

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

16.02 Cancellation by Landlord. 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), subject to the rights of Mortgagee described herein:

- 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.

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.

16.08 Cancellation by Tenant. Tenant shall have the absolute right to terminate this Lease at any time with or without cause and without penalty (other any amounts due to Landlord that were incurred prior to the effective date of termination) upon thirty (30) days' prior written notice to Landlord.

SECTION 17. CONDEMNATION

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

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending. The taking shall be considered to take place the date actual physical possession is taken by the condemning authority.
- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - (1) The remaining portion of the Premises and improvements thereon after such taking would not, without significant investment by or additional expense to Tenant, be economically and feasibly useable by Tenant;
 - (2) Without significant investment by or additional expense to Tenant, the conduct of Tenant's business on the Premises would be substantially prevented or impaired;
 - (3) The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Tenant under this Lease.

- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking, as distinguished by a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of Taking" means the date that Tenant is required to vacate the Premises or portion thereof subject to a taking pursuant to a final order of condemnation or agreement between the parties hereto.

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

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

17.03 Rights of Parties During Condemnation Proceeding. Landlord and Tenant shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Lease relating to the condemnation.

17.04 Taking of Leasehold. Upon a total taking, Tenant's obligation to pay rent and other charges hereunder shall terminate on the Date of Taking, but Tenant's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation. If the taking is substantial under the aforementioned definition, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If

Tenant does not so notify Landlord, the taking shall be deemed a partial taking. Upon a partial taking, this Lease shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder by Tenant shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

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

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

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

17.07 Obligations of Tenant Under Partial Taking. Promptly after any such partial taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the Premises as aforesaid by notifying Landlord 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 Binding Authority. Landlord represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same. Tenant represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

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

19.06 [Intentionally omitted]

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

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

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

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

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

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

City of El Paso
City Attorney
P.O. Box 1890
El Paso, Texas 79950-1890

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

Copy to: Winstead PC
500 Winstead Building
2728 North Harwood Street
Dallas, Texas 75201

Attention: Andy Dow

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

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

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

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

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

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

19.17 Waiver of Warranty of Suitability. LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. SUBJECT TO SECTION 7 ABOVE, TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE PREMISES AND IS COMPLETELY FAMILIAR WITH THE PREMISES AND TENANT LEASES THE PREMISES "AS IS - WHERE IS" AND LANDLORD DOES

NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE NOR SHALL LANDLORD BE RESPONSIBLE OR LIABLE FOR ANY CONDITION OF THE PREMISES WHICH SHALL SOLELY BE THE RESPONSIBILITY OF TENANT.

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

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

