ESTOPPEL AND AGREEMENT

_____, 2022

To: JPMorgan Chase Bank, National Association
383 Madison Avenue
New York, New York 10179

VICI Lendco LLC
535 Madison Ave, 20th Floor
New York, New York 10022

Re: Agreement Between Harris County and GWR Webster LLC effective as of May 29, 2020 (the "***Effective Date***") by and between Harris County, a body corporate and politic under the laws of the State of Texas, by and through its Commissioners Court (the "***County***") and GWR Webster LLC, a Delaware limited liability company ("***Borrower***") (collectively, the "***Agreement***").

The County understands and acknowledges that Borrower has obtained or is in the process of obtaining a loan (the "***Mortgage Loan***") that will be administered by JPMorgan Chase Bank, National Association, as administrative agent and made by JPMorgan Chase Bank, National Association and other lenders (collectively, together with their respective successors and assigns, "***Mortgage Lender***"), which Mortgage Loan is or will be evidenced by a deed of trust (the "***Deed of Trust***") upon the fee estate in the land described on Exhibit A hereto (the "***Property***"), and that Mortgage Lender, in making the Mortgage Loan to Borrower, is relying upon the County's certifications and agreements contained herein.

The County understands and acknowledges that [GWR Webster Parent LLC], a Delaware limited liability company ("***Mezzanine Borrower***"), as the sole member of Borrower has obtained or is in the process of obtaining a mezzanine loan (the "***Mezzanine Loan***" and, together with the Mortgage Loan, individually or collectively, as applicable, the "***Loan***") that will be administered by VICI Lendco LLC, a Delaware limited liability company, in its capacity as administrative agent and made by VICI Lendco LLC, a Delaware limited liability company (collectively, together with their respective successors and assigns, "***Mezzanine Lender***" and, together with Mortgage Lender, individually or collectively, as applicable, "***Lender***"), and that Mezzanine Lender, in making the Mezzanine Loan to Mezzanine Borrower, is relying upon the County's certifications and agreements contained herein. Capitalized terms that are not defined herein shall have the meanings given to them in the Agreement.

As qualified and conditioned below, the County hereby represents, warrants, certifies, and agrees (where specifically indicated) to the following with respect to the Agreement and agrees that Lender may rely upon the contents of this Estoppel and Agreement (this "***Estoppel***") in the making of its Loan to Borrower and Mezzanine Borrower, as applicable:

1. The County acknowledge that the County's consent to the granting by Borrower of the Deed of Trust and/or a pledge of the equity of Borrower and Borrower's interest under the Agreement to Lender is not required.

2. The County hereby acknowledges and confirm that the County's consent is not required for a foreclosure of all or any portion of the Deed of Trust or the equity interests in Borrower or a transfer in lieu of foreclosure under either Loan.

3. The County hereby agrees that the County shall deliver to each Lender written notice of any default by Borrower under the Agreement simultaneously with sending of such notice to Borrower. The County hereby further agrees that (a) each Lender, pursuant shall have the right, but not the obligation, to cure any default by Borrower under the Agreement and each Lender shall be afforded the same amount of time afforded to Borrower under the Agreement to cure any default or (b) in the event that any such default cannot, with reasonable diligence, be cured by Lender without first obtaining possession of the Property or the equity interests in Borrower, such longer period as may be reasonably required to complete such cure including, without limitation, such time as may be required for Lender to gain possession of Borrower's interest under the Agreement or the equity interests in Borrower.

4. The County hereby acknowledges and agrees that notwithstanding anything in the Agreement to the contrary, the County shall not terminate the Agreement for a default unless and until each (i) Lender has received the required notice and cure rights set forth in the foregoing Section 4, and (ii) each Lender has failed to cure such default within the cure period prescribed in the Agreement.

5. The County hereby acknowledges and agrees that, in the event of a foreclosure or an assignment or transfer in lieu of foreclosure, including the foreclosure of any pledge of the direct or indirect ownerships interests in Borrower, then the Lender or purchaser, as applicable, shall be subject to all of the conditions, restrictions and covenants of all documents and instruments recorded pursuant to the Agreement, and shall be entitled to the benefits of Borrower under the Agreement and such foreclosure, assignment in lieu, or transfer in lieu thereof shall not require the consent of the County or be a default under the Agreement.

6. The parties confirm that all notices and requests required or permitted hereunder or under the Agreement shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested, or (b) expedited prepaid overnight delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to the County: Harris County Budget Department
Attn: Diana Ramirez
1001 Preston, 6th Floor, Suite 670
Houston, Texas 77002

with a copy to:	Harris County Attorney Christian D. Menefee 1019 Congress, 15th Floor Houston, Texas 77002
If to Borrower:	GWR Webster LLC c/o Great Wolf Resorts, Inc. Attn: General Counsel 350 N. Orleans Street, Suite 10000B Chicago, Illinois 60654
with a copy to:	Simpson Thacher & Bartlett LLP Attn: Justin H. Vilinsky 425 Lexington Avenue New York, New York 10017
and to:	Winstead PC Attn: Andy Dow 2728 N. Harwood Street, Suite 500 Dallas, TX 75201
If to Lender:	JPMorgan Chase Bank, National Association 383 Madison Avenue New York, New York 10179 Attention: Simon B. Bruce
with a copy to:	JPMorgan Chase Bank, National Association 4 Chase Metrotech Center, 4th Floor Brooklyn, New York 11245-0001 Attention: Nancy S. Alto
and to :	VICI Lendco LLC 535 Madison Ave, 20th Floor New York, New York 10022 Attention: General Counsel
with a copy to:	Hogan Lovells US LLP 555 13th St. NW Washington, DC 20004 Attention: David W. Bonser, Esq.

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery; or in the case of expedited prepaid delivery, upon the first attempted delivery.

7. The County hereby certifies as follows:

(a) There have been no oral or written amendments, modifications, terminations or changes to the Agreement other than as referenced herein.

(b) The Agreement is in full force and effect and the County has not received formal, written notice of any assignment by Borrower under the Agreement.

(c) There are no defaults of the Borrower or the County under the Agreement, and the County knows of no condition or event which, with the giving of notice, the passage of time, or both, would constitute a default by Borrower in the performance of its obligations under the Agreement. There are no outstanding notices of default given or received by the County under the Agreement.

(d) There does not exist any agreements concerning the Property, whether oral or written, between the County and Borrower (or their respective predecessors or successors), other than the Agreement.

(e) The Agreement commenced on the Effective Date and the term of the Agreement shall expire on the earlier of (a) the date on which the County has paid Borrower all accrued Annual Payments (as defined in the Agreement) during the first ten years following the Initial Occupancy Date (b) the termination of the Agreement in accordance with its terms.

(f) The County has been advised that (i) the Deed of Trust and the other documents evidencing and/or securing each Loan may not be in existence as of the date of this Estoppel, but may be executed subsequent hereto, and (ii) agree that such fact in no way impairs the information set forth by the County in this Estoppel; it being acknowledged that the County shall be under no obligation to supplement, correct, or otherwise modify any of the representations, warranties, or certifications contained herein based on any information made known to the County following the undersigned representative's execution of this Estoppel.

(g) The undersigned has the full right, power and authority to execute this Estoppel on behalf of the County.

This Estoppel and the representations and agreements made herein are given with the understanding that this Estoppel constitutes a material inducement for each Lender in making its Loan to Borrower and Mezzanine Borrower, as applicable, and that each Lender shall rely hereon in making its Loan to Borrower and Mezzanine Borrower, as applicable. This Estoppel and the representations and agreements made herein shall inure to the benefit of each Lender and their respective successors and assigns and shall be binding on the County and its successors and assigns. In the event that all or any portion of a Loan is securitized, the statistical rating agency

or agencies rating the securities issued in connection therewith and the trustee(s) and servicer(s) of such securitization, together with their respective successors and assigns may also rely upon the truth and accuracy of the certifications contained herein.

This Estoppel may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Estoppel may be detached from any counterpart of this Estoppel without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Estoppel identical in form hereto but having attached to it one or more additional signature pages. Delivery of an executed counterpart of a signature page of this Estoppel by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Estoppel.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the County has executed this Estoppel and Agreement as of _____, 2022.

HARRIS COUNTY, TEXAS, a body corporate and politic under the laws of the State of Texas

By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

By: DocuSigned by: Kevin Mason 4A145AF8B7DF449... 08/18/22

Kevin E. Mason
Assistant County Attorney
C.A.O. File No. 22RPD0170

Exhibit A

Legal Description

Lot 1, Block 1, of DESTINATION DEVELOPMENT NORTH AMENDING PLAT NO. 1, MINOR PLAT, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Film Code No. 695843, of the Map Records of Harris County, Texas.

HARRIS COUNTY, TEXAS

BUDGET MANAGEMENT DEPARTMENT
Administration Building
1001 Preston, Suite 500
Houston, TX 77002
(713) 274-1100

May 12, 2020

	YES	NO	ABSTAIN
Judge Lina Hidalgo	☑	☐	☐
Comm. Rodney Ellis	☑	☐	☐
Comm. Adrian Garcia	☑	☐	☐
Comm. Steve Radack	☑	☐	☐
Comm. R. Jack Cagle	☑	☐	☐

To: County Judge Hidalgo and Commissioners Ellis, Garcia, Radack and Cagle

Fm: Annie Yang

Re: Hotel Occupancy Tax Rebate Agreement

Request that Commissioners Court consider approval of a Hotel Occupancy Tax Rebate Agreement between Harris County and GWR Webster LLC, a Delaware limited liability corporation for a proposed 450 to 500-room indoor water park resort. The proposed project site is located in Webster, Texas, in Precinct 2.

Attachment

Presented to Commissioners Court

May 19, 2020

Approve: G/E

*with the condition that the City of Webster and Great Wolf Lodge agree to meet with labor leaders.

EXECUTIVE SUMMARY
GWR WEBSTER LLC

HOTEL OCCUPANCY TAX REBATE AGREEMENT

The City of Webster (City), Webster Economic Development Corporation (WEDC), a Texas non-profit economic development corporation organized under and governed by the EDC Act, and GWR Webster LLC (GWR) have identified that a 30-acre site, to be owned by the City/WEDC, might be a suitable location for the proposed indoor water park resort. The proposed project includes a 450 to 500-room resort with an anticipated capital investment of approximately $200 million with a minimum appraised value of $75 million set by the City/WEDC, and a minimum of 350 jobs to be created by GWR. Furthermore, the project will generate 1,000 construction jobs during the 19 to 20-month construction period. The City and WEDC plan to sign two 10-year lease agreements with GWR for the 30-acre site and a new convention center facility, pending the County's action.

In addition to providing the project site infrastructure, the City also committed to provide $5 million from City's Hotel Occupancy Tax (HOT) Fund over three years, rebate 90% of HOT generated by GWR for a period of ten years, and a portion of sales tax (33%) generated by GWR for ten years. The City and the WEDC's combined proposed incentive package approaches $30 million over the ten-year period.

In order to compete with other potential sites, the City, WEDC, and GWR have requested Harris County (County) rebate 2% HOT to GWR, which equals 100% of the total amount of HOT generated by GWR and collected by the County under Texas Tax Code Chapter 352 for a period of ten years. Based on the aforementioned job creation and property tax increase and the review of GWR's current markets and other potential sites that GWR is evaluating, it is our recommendation that the County provide a rebate of 2% HOT generated by GWR for a period of 10 years. With Commissioners Court's approval, County would potential provide an annual rebate of $650,000 to $1 million, depending on the average room rate and the occupancy rate. The annual property tax revenue increase associated with this project is estimated in the range between $455,000 and $1.2 million depending on the actual investment. There does not appear to be any negative impact on the County's current HOT collection program. At the end of the rebate period, the County will gain the added HOT collections for its own purposes.

AGREEMENT BETWEEN HARRIS COUNTY AND

GWR WEBSTER LLC

This Agreement Between Harris County and GWR Webster LLC (this "Agreement") is made and entered into by and between **Harris County** (the "County"), a body corporate and politic under the laws of the State of Texas, by and through its Commissioners Court, and GWR Webster LLC, a Delaware limited liability company (the "Developer"). The County and the Developer are referred to herein collectively as the "Parties" and individually as a "Party."

1) GENERAL SCOPE OF THE AGREEMENT

A) The Parties hereby agree to establish a program to finance and develop certain improvements, including a Convention Center and Hotel, described in Exhibit A, (collectively, the "Improvements"), in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 381, Texas Local Government Code ("Chapter 381"), under which the County has the authority to use public funds for the public purposes of promoting local economic development and stimulating business and commercial activity within the County.

B) The Developer shall finance, develop and operate the Improvements in accordance with the terms and conditions of this Agreement.

C) The County does hereby find and determine that the Improvements and the development of the Improvements will bring positive economic impact to the County through the timely development and diversification of the economy, the attraction of new businesses, and the retention and growth of tax revenue. The County does hereby find and determine that the Improvements will provide a public benefit to the County by improving economic activity in the County.

D) The County does hereby find and determine that this Agreement, and each and every one of the Improvements and the operation of those improvements, promotes economic development in the County and, as such, meets the requirements of Chapter 381 and further, is in the best interests of the County.

2) DEFINITIONS AND TERMS.

A) "Annual Payment" means a sum of money in the form of a grant equal to a portion of the hotel occupancy tax (HOT) collected by the County under Texas Tax Code Chapter 352 or any successor statute as generated by activities of the Developer by operation of the Improvements in an amount equal to two percent (2.0%) of the room revenues. The calculation of the Annual Payment will be without regard to any increase or decrease in the rate of HOT or future abatement or rebate (pursuant to an economic development agreement, abatement or otherwise) of any portion of such taxes granted by the County.

B) "Developer" means GWR Webster LLC, and its successors or assigns.

3) ANNUAL PAYMENTS

Annual Payments. The County agrees to pay the first Annual Payment to the Developer within thirty days after the County receives four calendar quarters' worth of HOT remittance generated from the Improvements following the date on which the Improvements are completed and open for operation (the "Initial Occupancy Date"), and each Annual Payment shall thereafter be due during the Term of this Agreement on the anniversary of such first Annual Payment.

4) TIME FOR PERFORMANCE; TERMINATION, DEFAULT AND REMEDY

A) Term. This Agreement will be in full force and effect until the date on which the County has paid Developer all accrued Annual Payments accrued during the first ten years following the Initial Occupancy Date, unless this Agreement is terminated earlier (the "Term"). Upon such event, this Agreement will automatically be terminated without the requirement of any further action by any Party.

B) Time is of the Essence. Time is of the essence in the performance of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation, including, without limitation.

C) Payment Default. The County agrees that its failure to pay the Annual Payment when due is an event of default (a "Payment Default") and that the Developer is entitled to any and all of the remedies available in paragraph D below or otherwise at law or equity upon the occurrence of a Payment Default, including, without limitation, by an action or proceeding at law or in equity, securing the specific performance of the covenants and agreements herein contained, or seeking damages for failure of performance, or both.

D) General Events of Default. A Party will be deemed in default under this Agreement (which will be deemed a breach hereunder) if such Party fails to materially perform, observe or comply with any of its material commitments, covenants, agreements or obligations hereunder or if any of its representations contained in this Agreement are false.

Before the failure of any Party to perform its obligations under this Agreement, except a Payment Default, is deemed to be a breach of this Agreement, the Party claiming such failure must notify, in writing, the Party alleged to have failed to perform of the alleged failure and demand performance. No breach of this Agreement, except a Payment Default, may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within sixty (60) days of the receipt by the defaulting Party of such notice.

Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party (except for a Payment Default) is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, events caused by COVID-19 or other pandemics, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, or tornadoes), labor action, strikes or similar acts) the time for such performance shall be extended by the amount of time of such delay ("Force Majeure").

Notwithstanding anything herein to the contrary, the County's sole and exclusive remedy for any uncured breach by Developer shall be to terminate this Agreement and not owe any Annual Payments accrued after the date of such termination; provided, however, the County shall remain liable to Developer for any Annual Payments, or portion thereof, accrued prior to the effective date of termination.

5) OPERATION OF THE IMPROVEMENTS

A) The Developer shall render or agree to a minimum taxable value to the Harris County Appraisal District for all real property, improvements, and business personal property located on the property occupied by the Improvements of $75,000,000.

B) The Developer anticipates that it will create and maintain a minimum of 350 full-time/part-time equivalent jobs upon completion of the Improvements for operation and throughout the term of this Agreement, and anticipates an average hourly rate for full-time/part-time equivalent employees to exceed $14 an hour (hourly rate including benefits & perks) and to thereafter maintain competitive wages in the market.

The Developer acknowledges the County's initiative to support a minimum wage of $15 an hour, and upon reasonable request of the County at any time following the date that is eighteen months after the Initial Occupancy Date, the Developer will present its market wage analysis for any position that does not then meet such rate for discussion with the County.

6) APPLICABLE LAW AND VENUE

A) The Agreement is subject to the state and federal laws, orders, rules, and regulations relating to the Agreement.

B) This Agreement is governed by the laws of the State of Texas.

C) The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

7) NO PERSONAL LIABILITY; NO WAIVER OF IMMUNITY

A) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County or the Developer.

B) The Parties agree that no provision of this Agreement extends the County's or the Developer's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.

C) Neither the execution of this Agreement nor any other conduct of any Party relating to this Agreement shall be considered a waiver by the County or the Developer of any right, defense, or immunity under the Texas Constitution or the laws of the State of Texas.

D) Neither the County nor the Developer agrees to binding arbitration, nor does any Party waive its right to a jury trial.

8) CONTRACT CONSTRUCTION

A) This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.

B) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.

C) When terms are used in the singular or plural, the meaning shall apply to both.

D) When either the male or female gender is used, the meaning shall apply to both.

9) WAIVER OF BREACH

A) Waiver by any Party of a breach or violation of any provision of the Agreement is not a waiver of any subsequent breach.

B) In order for a waiver of a right or power to be effective, it must be in writing and signed by the waiving Party.

10) SUCCESSORS AND ASSIGNS

A) The Developer may transfer its rights, duties and obligations pursuant to this Agreement only to (A) any affiliate of the Developer without the consent of the County, (B) any holder of a security interest in the Improvements, its successors and assigns, without the consent of the County as part of a collateral assignment thereto, (C) any permitted assignee of the Developer's interest as lessee under the Ground Lease with the City of Webster without the consent of the County, and (D) any other individual or entity that is not an affiliate of the Developer with the consent of the County, which consent may not be unreasonably delayed, conditioned or withheld.

B) The County may not, without the prior written consent of the Developer, assign this Agreement to any affiliate or other third party.

11) SURVIVAL OF TERMS

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the indemnification and copyright provisions, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

12) ENTIRE AGREEMENT; MODIFICATIONS

A) This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.

B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

13) TEXAS PUBLIC INFORMATION ACT

A) The Parties expressly acknowledge that this Agreement is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended (the "Act"). Each Party expressly understands and agrees that any other Party shall release any and all information necessary to comply with Texas law without the prior written consent of the other Party.

B) It is expressly understood and agreed that the County and their respective officers and employees, may request advice, decisions and opinions of the Attorney General of Texas ("Attorney General") in regard to the application of the Act to any software, or any part thereof, or other information or data furnished to the County, the Authority or the District, whether or not the same are available to the public. It is further understood that each Party, its officers and employees shall have the right to rely on the advice, decisions, and opinions of the Attorney General, and that each Party, its officers, and employees shall have no liability or obligations to the other Party for the disclosure to the public, or to any person or persons, of any software, or a part thereof, or other information or data furnished to the County, the Authority or the District in reliance on any advice, decision or opinion of the Attorney General.

C) In the event the County receives a written request for information pursuant to the Act that affects the Developer's rights, title to, or interest in any information or data or a part thereof, furnished to one Party by the other under this Agreement, then the County will promptly notify the Developer of such request. The Developer may, at its own option and expense, prepare comments and submit information directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Act. Each Party is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Act. Such Party is solely responsible for

seeking any declaratory or injunctive relief regarding the disclosure of information that it deems confidential or privileged.

D) Electronic Mail Addresses. Developer affirmatively consents to the disclosure of its e-mail addresses that are provided to the County, including any agency or department of the County. This consent is intended to comply with the requirements of the Act, and shall survive termination of this Agreement. This consent shall apply to e-mail addresses provided by Developer and agents acting on behalf of Developer and shall apply to any e-mail address provided in any form for any reason whether related to this Agreement or otherwise.

14) NOTICE

A) Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been delivered in person or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to a Party at the following addresses. If mailed, any notice or communication shall be deemed to be received three (3) Business Days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To Developer:
GWR Webster LLC
c/o Great Wolf Resorts Holdings , Inc.
Attn: General Counsel
350 N. Orleans Street, Suite 10000B
Chicago, Illinois 60654

With a copy to:
Andy Dow
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201

To County:
Harris County Budget Department
1001 Preston, 5th Floor
Houston, Texas 77002
Attn: Annie Yang

With a copy to:
Harris County Attorney's Office
1019 Congress 15th floor
Houston, Texas 77002
Attn: Douglas P. Ray

B) Any Party may designate a different address by giving the other Party ten (10) calendar days' written notice.

15) ENTIRE AGREEMENT; MODIFICATIONS

A) This instrument contains the entire Agreement between the Parties relating to the rights herein granted and obligations herein assumed.

B) Any oral or written representations or modifications concerning this instrument shall not be effective excepting a subsequent written modification signed by both Parties.

16) SEVERABILITY

If any provision or part of the Agreement or its application to any person, entity, or circumstance is ever held by any court of competent jurisdiction to be invalid for any reason, the remainder of the Agreement and the application of such provision or part of the Agreement to other persons, entities, or circumstances are not affected.

17) EFFECTIVE DATE

The Effective Date of this Agreement will be the date the Agreement is approved by the Harris County Commissioners Court, as shown on the signature page attached hereto.

18) EXECUTION

Multiple Counterparts: The Agreement may be executed in several counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each Party warrants that the undersigned is a duly authorized representative with the power to execute this Agreement.

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the County, and the Developer.

HARRIS COUNTY, TEXAS	**GWR Webster LLC**
JUDGE LINA HIDALGO Harris County Judge Date: MAY 19 2020 VINCE RYAN County Attorney By: Douglas P. Ray with Permission Douglas P. Ray Special Assistant County Attorney	By: Steven Jacobsen Name: Steven Jacobsen Title: V.P. Domestic Development 5/29/20

Exhibit A

~~**Improvements**~~

380 Agreement

ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made to be effective as of March 17, 2020 (the "Effective Date"), by and among the **City of Webster, Texas**, a home-rule municipal corporation of the State of Texas (the "City"); **Webster Economic Development Corporation** ("WEDC"), a Texas non-profit economic development corporation organized under and governed by the EDC Act (as defined herein); and GWR Webster LLC, a Delaware limited liability company (together with its successors and assigns permitted under Section 13(p) below, if any, the "Developer").

RECITALS

WHEREAS, the Developer is an Affiliate (as defined herein) of Great Wolf Resorts Holdings, Inc., a Delaware corporation, which, together with its subsidiaries, owns and/or operates seventeen (17) Great Wolf Lodge® indoor water park resort hotels in the United States;

WHEREAS, the Developer has proposed to construct and operate the Qualified Hotel (as defined herein) and the Qualified Convention Center Facility (as defined herein) within the City;

WHEREAS, the City is authorized by Chapter 380, Texas Local Government Code (as more particularly defined below, "Chapter 380") to establish and provide for the administration of programs, including programs for making grants of public money of the City, to promote state or local economic development and to stimulate business and commercial activity in the City;

WHEREAS, the City Council of the City (the "City Council") has found and determined, and does hereby find and determine, that the construction and operation of the Qualified Hotel and the Qualified Convention Center Facility (collectively and as more particularly defined below, the "Qualified Project") and the grants made in furtherance of such Qualified Project will promote state and local economic development and will stimulate business and commercial activity in the City;

WHEREAS, pursuant to and in accordance with Chapter 351 (as defined below), the City is eligible to participate in the tax rebate program described by such legislation;

WHEREAS, through the City's participation in the Qualified Project as provided in this Agreement, the City will be entitled to receive certain rebates of State HOT (as defined herein) and State SUT (as defined herein) revenues generated at the Qualified Project;

WHEREAS, to incent the Developer to undertake and participate in the Qualified Project, the City desires to grant certain revenues and other incentives to the Developer in accordance with and under the terms described by this Agreement;

WHEREAS, the City has determined that the grant of certain City HOT (as defined below) revenue to the Developer on the terms and conditions set forth herein will directly enhance and promote tourism and the convention and hotel industry;

WHEREAS, pursuant to Section 351.101(q) of Chapter 351, the City is authorized to spend City HOT for the construction, improvement, enlarging, equipping, renovating, repairing, operation, and maintenance of a hotel, resort, or convention center facility located on land owned by the City or a nonprofit corporation acting on behalf of the City;

WHEREAS, the Developer has agreed that it will, as more particularly described herein, use certain funds paid to it from City HOT to reimburse the costs of brand-wide national advertising benefitting the Qualified Project directly or indirectly, so long as the proportion of the total cost of such national advertising benefitting the Qualified Project is allocated to the Qualified Project on a commercially reasonable basis and/or grand opening promotional costs with respect to the Qualified Project, whether incurred prior to, on or after the Initial Occupancy Date (as defined herein);

WHEREAS, the City Council has determined that such costs will promote tourism and the convention and hotel industry and constitute the costs of advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity;

WHEREAS, the Board of Directors of WEDC (the "Board") has found and determined, and hereby finds and determines, that the Qualified Project will promote economic development in the City;

WHEREAS, the Board has found and determined that the Destination Development Project (as defined herein) constitutes a "project" for purposes of Section 505.158 of the EDC Act;

WHEREAS, as required by Section 505.158 of the EDC Act, the City Council adopted a resolution authorizing the Destination Development Project after giving such resolution two separate readings;

WHEREAS, in accordance with Section 505.158 of the EDC Act, the City Council has approved of the Qualified Project, including the making of expenditures in excess of $10,000 towards the Qualified Project, by resolution after giving such resolution two separate readings;

WHEREAS, the Board hereby finds and determines that the Qualified Project is a key component, and is critical to the success, of the Destination Development Project;

WHEREAS, the Board has also found and determined, and hereby finds and determines, that the Qualified Project, as a component of the Destination Development Project, constitutes a "project" under Section 505.158 of the EDC Act, as the Qualified Project includes land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that will promote new and expanded business development in the City;

WHEREAS, WEDC is subject to Section 501.158 of EDC Act, and may not provide a direct incentive to or make an expenditure on behalf of the Developer unless WEDC first enters into a performance agreement with the Developer that specifies the terms under which repayment

must be made if the Developer does not meet the performance requirements specified in the performance agreement;

WHEREAS, Section 5(b)(1) of this Agreement specifies the terms under which repayment of a portion of the incentives and expenditures made by WEDC must be made if the Developer does not meet the performance requirements set forth in Section 4(c) of this Agreement, and, therefore, this Agreement constitutes a performance agreement described by Section 501.158 of EDC Act;

WHEREAS, the City Council and the Board have given due and thorough consideration to the potential costs and benefits of undertaking the Qualified Project; and

WHEREAS, following such consideration, the City Council and the Board hereby find and determine that participating in the Qualified Project in accordance with and on the terms set forth in this Agreement is in the best interests of the City and its constituents.

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 (defined below) agree as follows:

SECTION 1. EFFECTIVE DATE AND TERM.

This Agreement shall be effective from and after the Effective Date. The term of this Agreement shall commence on the Effective Date and shall expire on the later of (a) the date that the final Grant is paid to the Developer, and (b) the end of the calendar year in which the Grant Period expires; provided, however, that if this Agreement is terminated in accordance with Section 11 below, the term shall expire on the date of such termination (the "Term").

SECTION 2. DEFINITIONS.

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

Affiliate means, with respect to a particular Party, any entity that, directly or indirectly, controls, is controlled by, or is under common control with, such Party. 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. For purposes of Sections 13(t) and 13(u) only, such term shall not include any entity that does not exist to make a profit.

Agreement shall have the meaning assigned to such term in the first paragraph hereof.

Amenity Land means the tract of land that is more particularly described in **Exhibit D** attached hereto.

Blackout Dates means the dates selected by the Developer from time to time (in its sole discretion) on which the City shall not be entitled to use the Qualified Convention Center Facility

or Qualified Hotel pursuant to Section 4(d) of this Agreement; provided, however, that Developer may not select more than twelve (12) days in any given month as Blackout Dates.

Board shall have the meaning assigned to such term in the recitals above.

Chapter 151 means Chapter 151, Texas Tax Code, and any successor statute thereto.

Chapter 156 means Chapter 156, Texas Tax Code, and any successor statute thereto.

Chapter 323 means Chapter 323, Texas Tax Code, and any successor statute thereto.

Chapter 351 means Chapter 351, Texas Tax Code, and any successor statute thereto, including after a change of law relating to: (1) the requirements for participation in the SCCHP, (2) applicable principles for the incidence, imposition or collection of state hotel occupancy taxes, or (3) any matter similar to the foregoing addressed by Chapter 351, Texas Tax Code as of the Effective Date.

Chapter 380 means Chapter 380, Texas Local Government Code, and any successor statute thereto.

Chapter 552 means Chapter 552, Texas Government Code, and any successor statute thereto.

City shall have the meaning assigned to such term in the first paragraph of this Agreement.

City Council shall have the meaning assigned to such term in the recitals above.

City HOT means the City's municipal hotel occupancy tax at the current rate levied by the City pursuant to Chapter 351. The City's current municipal hotel occupancy tax rate is seven percent (7%).

City HOT Grant means an economic development grant provided by the City to the Developer pursuant to Chapter 380 in an amount equal to 90% of the City HOT Revenues.

City HOT Revenues means City HOT revenues that are: (1) generated at the Qualified Hotel during the Grant Period, and (2) actually received by the City.

City Party means any of the following: the City and WEDC.

City SUT means the City's sales and use tax imposed by Chapter 321, which is currently imposed at a rate of one and five tenths percent (1.5%). For the avoidance of doubt, City SUT does not include the five tenths of one percent (0.5%) sales and use tax imposed for the benefit of WEDC.

City SUT Grant means an economic development grant provided by the City to the Developer pursuant to Chapter 380, in an amount determined in accordance with Section 5(a)(4) hereof, of the City's portion of the City SUT Revenues.

City SUT Revenues means the revenue actually received by the City from the Comptroller that is derived from the City SUT generated, paid, and collected by the Qualified Hotel, and each restaurant, bar, and Retail Establishment located in or connected to the Qualified Hotel or the Qualified Convention Center Facility that is located in the City and that accrues during the Grant Period.

Commencement of Construction means both of the following have occurred: (1) issuance of a notice to proceed with construction to the applicable construction contractor, and (2) commencement and diligent pursuit of mobilization and construction by the construction contractor on the applicable construction site.

Comptroller means the Texas Comptroller of Public Accounts, and any successor officer thereto.

Comptroller Rules means the administrative rules of the Comptroller.

Convention Center Land means that certain portion of the Real Property upon which the Qualified Convention Center Facility will be constructed, as more particularly described in **Exhibit C** to this Agreement.

Convention Center Lease shall have the meaning assigned to such term in Section 5A(f) of this Agreement.

Deed of Trust means any mortgage, deed of trust, security agreement, or other security instrument encumbering the Developer's interest in any portion of the Qualified Project.

Default means the failure of a Party to perform any of its obligations under this Agreement, including, but not limited to, the failure of a Party to make a payment as and when required.

Destination Development means the project (as defined by the EDC Act) set forth in Resolution No. W-11-02 of the Board that consists of retail, dining, entertainment, recreation and tourism development on approximately 208 acres of land within the City, which land includes the Real Property.

Developer shall have the meaning assigned to such term in the first paragraph of this Agreement.

Developer Commitment Date means the sixtieth (60th) day following the Favorable PLR Determination Date.

Development and Restrictions Agreement means that certain Development and Restrictions Agreement executed by WEDC and Medistar in accordance with the terms and conditions of the Purchase and Sale Agreement.

Development Grant means an economic development grant provided by the City to the Developer pursuant to Chapter 380 to be disbursed pursuant to and in accordance with Section 5(a)(1) of this Agreement.

EDC Act means Chapters 501-505, Texas Local Government Code (formerly Section 4B of Article 5190.6, Tex. Rev. Civ. Stat. Ann.), and any successor statute thereto.

Effective Date shall have the meaning assigned to such term in the first paragraph of this Agreement.

Event of Default means: (1) with respect to the Developer, the occurrence of an event described by Section 7A or Section 8 below, and (2) with respect to a City Party, occurrence of an event described by Section 7B or Section 8 below.

Favorable PLR means a SCCHP PLR that is deemed favorable in accordance with the procedures provided in the second paragraph of Section 5(e) below.

Favorable PLR Determination Date means the date that the Developer receives the PLR Notice relative to the Favorable PLR.

Flagged Hotels means "Great Wolf Lodge" (or successor brand) flagged hotels and resorts.

Force Majeure Event shall have the meaning assigned to such term in Section 13(h) of this Agreement.

Foreclosure Date means the date of (i) a foreclosure sale under any Deed of Trust, (ii) a sale pursuant to any power of sale contained in any Deed of Trust, or (iii) execution of a deed or other conveyance in lieu of any such sale.

Grant means any of the following: (1) the Development Grant; (2) the City HOT Grant; (3) the City SUT Grant; and (4) the SCCHP Grant.

Grant Period means a period of ten (10) years, commencing on the Initial Occupancy Date and expiring on the earliest of the: (1) tenth (10th) anniversary thereof, (2) date on which the Qualified Project ceases to meet the requirements for participation in the SCCHP, and (3) the end of the Term. Notwithstanding anything to the contrary herein, no Tolling Period, Force Majeure Event or other provision hereof may extend the Grant Period.

Grant Request shall have the meaning assigned to such term in Section 4(l) of this Agreement.

Grant Year means each period, within the Grant Period, that begins on the Initial Occupancy Date (or anniversary thereof) and continues until (but does not include) the next following anniversary of the Initial Occupancy Date.

Ground Lease shall have the meaning assigned to such term in Section 5A(f) of this Agreement.

Holder means the holder of any Deed of Trust, its successors and assigns.

Hotel Land means that certain portion of the Real Property upon which the Qualified Hotel will be constructed, as more particularly described in **Exhibit B** to this Agreement.

Impact and Permitting Fee Reimbursement shall have the meaning assigned to such term in Section 5(b)(1) of this Agreement.

Incentive means any of the following: (1) the Purchase Option; and (2) the construction of the Public Infrastructure and, reimbursement of the costs of the Water Line in accordance with Section 5(b)(2) below.

Initial Occupancy Date means the earliest date on which: (1) a member of the public obtains sleeping accommodations for consideration at the Qualified Hotel, and (2) the Qualified Convention Center Facility is operational. Such date shall be determined in accordance with the Comptroller Rules and Section 351.158 of Chapter 351.

Known Holder means each Holder for whom the City Parties have received a written notice: (1) that such person or entity is a Holder, (2) including its address for notices under this Agreement.

Landowner means: (1) if the Comptroller determines in the Favorable PLR that WEDC may act on behalf of the City to satisfy the SCCHP Ownership Requirements, WEDC, or (2) if the Comptroller does not so determine, the City.

Leases means, collectively, the Ground Lease and the Convention Center Lease.

Lien means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

MAV Property means, collectively, the Real Property and all real and personal improvements now or hereafter located on the Real Property (including, but not limited to, the Qualified Hotel and Qualified Convention Center Facility), and any leasehold interests therein.

Medistar means Medistar 528/NASA 1, LLC, a Texas limited liability company.

Minimum Appraised Value means the minimum taxable appraised value of the MAV Property, which shall be for each tax year during the Term beginning with the tax year after the tax year in which the Initial Occupancy Date occurs and continuing through and including the tax year in which the Term expires: $75,000,000.00.

New Jobs means a full-time or part-time job created after the Effective Date of this Agreement and attributed to the Qualified Project. The total New Jobs shall be calculated as of a certain date by including any jobs created after the Effective Date that may be attributable to a management company and any independent contractors working at the Qualified Project.

Party means any of the following: the City, WEDC and the Developer.

Performance Certifications shall have the meaning assigned to such term in Section 4(i) of this Agreement.

Pledged Revenues means, collectively, the SCCHP Revenues and the City HOT Revenues.

PLR means a private letter ruling or similar determination from the Comptroller with respect to the application of SCCHP to the Qualified Project, pursuant to the Comptroller Rules.

PLR Notice shall have the meaning assigned to such term in Section 5(d) of this Agreement.

Predevelopment Certification shall have the meaning assigned to such term in Section 5A(a) of this Agreement.

Promotional Costs means costs of advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity, including any costs related to advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the Qualified Project. The City hereby agrees that, and the City Council of the City has determined that, Promotional Costs may include brand-wide national advertising benefitting the Qualified Project directly or indirectly, so long as the proportion of the total cost of such national advertising benefitting the Qualified Project is allocated to the Qualified Project on a commercially reasonable basis. Promotional Costs may also include grand opening promotional costs with respect to the Qualified Project, whether incurred prior to, on or after the Initial Occupancy Date.

PSA Termination Events shall have the meaning assigned to such term in Section 5A(a) of this Agreement.

Public Infrastructure means the public streets and roads, water and sewer utilities (including lift station upgrades), drainage, site improvements, and related improvements, other City infrastructure upgrades, and other targeted infrastructure necessary for the Qualified Project,

as described in **Exhibit H-1** attached to this Agreement; provided, for the avoidance of doubt, the Public Infrastructure does not include the Water Line.

Public Subsidy shall have the meaning assigned to such term in Section 2264.001, Texas Government Code.

Purchase and Sale Agreement shall mean that certain Purchase and Sale Agreement by and between WEDC and Medistar pursuant to which WEDC will acquire the Real Property, a copy of which is attached to this Agreement as **Exhibit I**.

Purchase Option shall have the meaning assigned to such term in Section 5A(e) of this Agreement.

Purchase Option Price shall mean $2,000,000.00, less the City SUT Revenues accruing during the Grant Period, through and until the date of the purchase of the Real Property, that are retained by the City (*i.e.*, not paid to the Developer through the City SUT Grant).

Purchase Option Expiration Date shall have the meaning assigned to such term in Section 5A(d) of this Agreement.

Qualified Convention Center Facility means a facility that will be constructed by or on behalf of the Developer on the Convention Center Land and that, during the Grant Period, will meet the requirements of Texas Tax Code Section 351.151(2). The Qualified Convention Center Facility is more particularly described in Section 4(b) of this Agreement.

Qualified Hotel means the hotel to be constructed, acquired and/or equipped by or on behalf of the Developer on the Hotel Land, which shall automatically be designated by the City effective as of the Developer Commitment Date as part of a "qualified project" for purposes of Chapter 351, provided this Agreement is in effect on the Developer Commitment Date. The Qualified Hotel is more particularly described by and must meet the requirements of Section 4(b) of this Agreement. The Developer shall own the Qualified Hotel. For purposes of clarity, the Qualified Hotel shall not include fee title to the Hotel Land itself.

Qualified Project means, collectively, the project to acquire, construct and equip the Qualified Convention Center Facility, the Qualified Hotel and all other items upon which Qualified Project Costs are expended.

Qualified Project Costs means the costs incurred by the Developer: (A) to acquire, construct or equip the Qualified Convention Center Facility; or (B) to acquire, construct or equip the Qualified Hotel. Qualified Project Costs may include: (i) acquiring, constructing or equipping: (a) a restaurant, bar, Retail Establishment, or spa located in the Qualified Convention Center Facility or Qualified Hotel or connected to the Qualified Convention Center Facility or Qualified Hotel, including by a covered walkway; or (b) a parking area or structure, the nearest property line of which is located not more than 1,000 feet from the nearest property line of the Qualified Convention Center Facility or Qualified Hotel; (ii) acquiring, constructing, repairing, remodeling, or expanding infrastructure that: (a) is directly related to and necessary for the Qualified

Convention Center Facility or Qualified Hotel; and (b) is located within the property lines of the Qualified Convention Center Facility or Qualified Hotel, or not more than 1,000 feet from the nearest property line of the Qualified Convention Center Facility or Qualified Hotel; or (iii) acquiring a property right, including a fee simple interest, easement, or other interest in connection with a purpose described by this definition.

Real Property means the Hotel Land and the Convention Center Land. The Real Property is more particularly described in **Exhibit A** attached to this Agreement.

Recapture Amount shall have the meaning assigned to such term in Section 9 of this Agreement.

Recapture Event means occurrence of any one or more of the following, provided no uncured Default by either of the City Parties then exists: (1) following the Developer Commitment Date, the Developer fails to cause the Commencement of Construction on the Qualified Project to occur on or before the time required by Section 4(b) below, (2) following the Developer Commitment Date, the Developer fails to cause the Initial Occupancy Date to occur on or before the time required by Section 4(b) below, or (3) following the Initial Occupancy Date, the Developer ceases to use the Qualified Hotel in accordance with its Required Use as required by Section 4(g) below.

Reimbursement Request shall have the meaning assigned to such term in Section 5(b)(1) of this Agreement.

Remedies means any remedial right to which an aggrieved Party is entitled with or without resort to a tribunal, including any such right available at law, equity, contract or otherwise, including, but not limited to, the right to obtain damages of any kind.

Repurchase Option means the option granted to Medistar to repurchase the Real Property pursuant to Section 19 of the Purchase and Sale Agreement.

Required Use shall have the meaning assigned to such term in Section 4(g) of this Agreement.

Retail Establishment means an establishment engaged in activities described by North American Industry Classification System subsector code 442, 443, 445, 446, 448, 451, 452, or 453.

Reversion Trigger means occurrence of any of the following: (1) expiration of the Grant Period, and (2) receipt by the City Parties of a written notice from the Developer that it is exercising the Purchase Option.

SCCHP means the rebate program created and governed by Subchapter C of Chapter 351.

SCCHP Grant means an economic development grant made by the City to the Developer pursuant to Chapter 380 in amount equal to 100% of the SCCHP Revenues.

SCCHP Ownership Requirements means the requirements of Sections 351.151(2)(B) and 351.151(3)(A) of the SCCHP that the City: (1) wholly own the Qualified Convention Center Facility, and (2) own the land upon which the Qualified Hotel is located.

SCCHP PLR means a PLR that entitles the City to receive the SCCHP Revenues during the Grant Period.

SCCHP Revenues means the revenue that is actually received by the City and is derived from the State SUT and State HOT generated, paid, and collected by the Qualified Hotel, and each restaurant, bar, and Retail Establishment located in or connected to the Qualified Hotel or the Qualified Convention Center Facility that is located in the City and that accrues during the Grant Period.

State HOT means the hotel occupancy tax imposed by Chapter 156.

State SUT means the sales and use tax imposed by Chapter 151.

Term shall have the meaning assigned to such term in Section 1 of this Agreement.

Tolling Period shall have the meaning assigned to such term in Section 6(d) of this Agreement.

Water Line means a 12" public water line to be constructed on the Real Property as more particularly described in **Exhibit H-2** attached to this Agreement.

SECTION 3. AD VALOREM TAXATION

(a) The Developer covenants and agrees that, for each tax year during the Term beginning with the tax year after the tax year in which the Initial Occupancy Date occurs and continuing through and including the tax year in which the Term expires, the Developer will not and will not cause or permit any other person or entity to: (1) challenge or otherwise dispute the taxable appraised value of the MAV Property if it is lower than the Minimum Appraised Value, or (2) make any claim in any ad valorem tax challenge or dispute to the effect that the taxable appraised value of the MAV Property is less than the Minimum Appraised Value.

(b) Upon termination of this Agreement, Section 3(a) above shall not restrict the Developer's ability to challenge or dispute the taxable appraised value of the MAV Property for tax years after the year in which the Term expires; provided, however, that the Developer agrees that neither this Agreement, nor the values contained herein, may be utilized by the Developer to contest the taxable appraised values of the Qualified Project.

(c) The Parties acknowledge that, but for the Developer's payment of ad valorem taxes on the MAV Property, the City would not enter into this Agreement. If, in any tax year during the Term of this Agreement, the MAV Property is determined to be wholly or partially exempt from the City's ad valorem taxes, the City shall be entitled to reduce the amount of the Grants to be paid

to the Developer by an amount equal to the ad valorem taxes that would have been paid to the City if such exemption did not apply. If the City reduces the amount of the Grants paid to the Developer pursuant to this provision and the Developer later pays ad valorem taxes on such portion of the MAV Property that was previously determined to be exempt for the applicable tax year, the City shall increase the amount of the next Grant due to the Developer by a like amount.

SECTION 4. CERTAIN OBLIGATIONS OF THE DEVELOPER.

(a) **Documentation.** Prior to the Commencement of Construction on the Qualified Project, the Developer shall submit to the City Parties (i) a summary construction budget for the Qualified Project and (ii) a comfort letter or similar indication of financing intent for the Qualified Project from the Developer's lender(s), both of which must be reasonably acceptable to the City Parties. The Developer shall provide all such information and additional information reasonably related thereto within fifteen (15) business days of a request therefor from a City Party.

(b) **Construction.** The Developer will develop, construct and operate the Qualified Convention Center Facility. Prior to Commencement of Construction on the Qualified Convention Center Facility, the Developer shall enter into a separate construction contract for the Qualified Convention Center Facility, which contract shall (i) set forth the terms pursuant to which the Developer shall cause the Qualified Convention Center Facility to be constructed, (ii) be in a form that is compliant with applicable laws and is mutually acceptable to the Developer and the Landowner, and (iii) provide that upon completion and acceptance the owner of the Qualified Convention Center Facility shall be the Landowner, except that the Landowner shall have no financial or other liability under such construction contract and the Developer shall be solely liable for all amounts due or related to such construction contract.

The Developer will develop, construct, own and operate the Qualified Hotel. The Developer shall cause the Qualified Hotel to: (1) be a family resort and waterpark, (2) contain no less than 400 keys and no less than 400,000 square feet of combined lodging and entertainment space, (3) feature an indoor water park of at least 75,000 square feet in size, and (4) contain various Retail Establishments, various restaurants, various children's activities and other amenities. The Qualified Hotel, in addition to satisfying all other requirements herein, shall maintain a general service quality standard, taken as a whole, consistent with the Flagged Hotels (whether or not the Qualified Hotel is itself, from time to time, a Flagged Hotel).

The Developer shall cause Commencement of Construction on the Qualified Project to occur no later than the third (3rd) anniversary of the Favorable PLR Determination Date, and Force Majeure Events, Tolling Periods and other extensions provided for hereunder shall not extend such deadline. The Developer shall cause the Initial Occupancy Date to occur no later than the third (3rd) anniversary of the Commencement of Construction on the Qualified Project, subject to extension for Force Majeure Events, Tolling Periods and other extensions provided for hereunder. The Developer shall provide written notice to the City Parties not later than ten (10) business days after the occurrence of each of the following: (a) the Commencement of Construction on the Qualified Project, and (b) the Initial Occupancy Date.

The Developer will cause the Qualified Project to be completed consistent the descriptions contained in this Section. The Developer will pursue the commencement and completion of the Qualified Project consistent with the terms of this Agreement. The Developer shall cause the construction of the Qualified Hotel and Qualified Convention Center Facility to comply in all material respects with all applicable federal, state, local and other laws and regulations, including the laws and regulations applicable to construction projects of the Landowner.

(c) **Performance Requirements.**

(1) The Qualified Project shall have created at least three hundred fifty (350) New Jobs no later than the first anniversary of the Initial Occupancy Date. This requirement will be satisfied so long as the Qualified Project (including the Qualified Hotel, Qualified Convention Center Facility and appropriate amenities, as updated from time to time) continues to operate on the Real Property. The City acknowledges that the obligations under this Section 4(c)(1) shall be excused for the duration of any Force Majeure Event or Tolling Period.

(2) On or before the Initial Occupancy Date, the Developer shall expend or incur no less than $75,000,000.00 towards Qualified Project Costs.

(3) The Developer will provide to the City Parties the compliance certifications required under Section 4(i) below, to confirm the Developer's fulfillment of the foregoing performance requirements.

(d) **City's Use of the Qualified Project.** For each calendar year within the Term following the Initial Occupancy Date, the Developer shall cause the following consideration to be provided to the City:

(1) Use of ballroom/meeting space at the Qualified Convention Center Facility for up to five (5) event days with no rental fees (provided, any other applicable charges, such as food and beverage purchases, technology systems, and audio/video equipment use may, if such items are requested by the City, be charged to the City at the standard rates charged to other users of the Qualified Convention Center Facility), subject to availability at the time of attempted reservation (which availability will be subject to existing reservations and rooms that are then being held out of inventory at the time of the attempted reservation), the Blackout Dates and a minimum of forty five (45) days' advance booking notice by the City; and

(2) One hundred (100) standard hotel room nights at the Qualified Hotel for $99.00 per night, which rooms may be used in one hundred nights or less over the course of the calendar year, at the City's discretion, subject to availability at the time of attempted reservation (which availability will be subject to existing reservations and rooms that are then being held out of inventory at the time of the attempted reservation), the Blackout Dates and a minimum of thirty (30) days' advance booking notice from the City. To the extent that only upgraded or premium suites are available for the requested dates, the Developer shall be permitted to charge the City the incremental charge that a 'rack rate' paying customer of the Qualified Hotel would be required to pay for such upgraded or premium suite over and above the cost of a standard room on the

requested dates; provided, however, that the City may select different dates in accordance with this Section in lieu of paying such incremental charge.

(e) **Conditions for Participation in SCCHP.** The Developer understands and agrees that, as a requirement for participation in SCCHP, the Landowner must own the completed Qualified Convention Center Facility at all times during the Grant Period.

(f) **Reserved.**

(g) **Required Use.** For the period beginning upon the Initial Occupancy Date and continuing throughout the remainder of the Term, the Developer will use the Qualified Hotel as a hotel operating as a family resort and waterpark with a general service quality standard, taken as a whole, consistent with the Flagged Hotels and, except as provided in the immediately following sentence, will brand the Qualified Hotel as a "Great Wolf Lodge" (the "Required Use"). Beginning with the Initial Occupancy Date and continuing throughout the Term, the Developer will brand the Qualified Hotel as a "Great Wolf Lodge," provided that this restriction shall not apply in the event of (i) the rebranding of the Qualified Hotel following the Foreclosure Date by any Known Holder, its successors and assigns, with prior written notice to the City Parties, so long as the Known Holder, its successors and assigns, operates the Qualified Hotel as a family resort and waterpark with a standard consistent with the Flagged Hotels; (ii) the rebranding of at least 70% of all hotels then branded as "Great Wolf Lodge"; and (iii) the expiration or termination of any license agreement such that the Developer no longer has the right to brand the Qualified Hotel as a "Great Wolf Lodge", so long as the Developer, its successors and assigns, (A) operates the Qualified Hotel as a family resort and waterpark with a standard consistent with the Flagged Hotels, and (B) is not an Affiliate of an entity with rights to license to the Qualified Hotel the trademark and related branding of "Great Wolf Lodge."

(h) **Waivers of Sales Tax Confidentiality.** At all times during the Grant Period, the Developer will cause businesses paying sales and use tax attributable to operations within the Qualified Project to provide the City Parties a waiver of sales and use tax confidentiality, which shall be substantially in the form attached hereto as **Exhibit G**. 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 otherwise independently collect sales and use tax information and will have no obligation to pay any installment of the Grants under this Agreement without receiving from the Comptroller confirmation of the amount of sales and use taxes attributable to operations within the Qualified Project. In addition to the waivers of sales and use tax confidentiality described above, the City may also request such other information from the Developer as the City reasonably determines to be necessary or appropriate to determine proper payment under and compliance with the provisions of this Agreement. The Developer may refuse, in its sole discretion to provide such information, but the City shall have no obligation to pay any portion of any installment of the Grants under this Agreement to the extent such refusal prevents the City from receiving from the Comptroller confirmation of the amount of sales and use taxes.

(i) **Performance Certifications.** At any time determined by Developer in its sole discretion, whether prior to or after the Initial Occupancy Date, the Developer will submit to the

City Parties a written and signed statement by an independent certified accounting firm certifying that prior to the Initial Occupancy Date the Developer expended at least $75,000,000.00 towards Qualified Project Costs (which may be a copy of the same statement furnished in connection with the Grant Request). At any time determined by Developer in its sole discretion, whether prior to or after the Initial Occupancy Date, the Developer will submit to the City Parties a written and signed certification that the Qualified Project has created at least three hundred fifty (350) New Jobs (together with the certification in the immediately preceding sentence, the "Performance Certifications").

(j) **Financial Consideration**. As of the Effective Date and in consideration for the City Parties' obligations under this Agreement, the Developer has paid to each of the City Parties good and valuable consideration in the amount of $500.00, the receipt and sufficiency of which is hereby acknowledged by the City Parties.

(k) **Use of Grants**. The City SUT Grant and SCCHP Grant shall be disbursed solely to reimburse the Developer for Qualified Project Costs and Promotional Costs previously incurred at any time following the Effective Date. Exactly thirty percent (30%) of the total amount of Development Grant and City HOT Grant disbursements within each fiscal year of the City (currently October 1 to September 30) shall be used to reimburse the Developer for Promotional Costs, and the remaining seventy percent (70%) of the Development Grant and City HOT Grant will be used to reimburse the Developer for Qualified Project Costs incurred at any time following the Effective Date. The amount of Development Grant and City HOT Grant disbursements within each fiscal year of the City may be adjusted by the City to the extent necessary to satisfy such thirty percent (30%) minimum threshold (provided, however, the City will notify the Developer of any such adjustment and any undisbursed balance of Qualified Project Costs and Promotional Costs eligible for reimbursement shall be carried forward during the Grant Period). The Developer shall maintain reasonably detailed records regarding the Developer's expenditures for Promotional Costs. The Developer will not be required to furnish the City Parties with copies of any information related to Promotional Costs, but the City will have the right to review at mutually convenient times at the Qualified Hotel information related to Promotional Costs expenditures reasonably necessary for the City to confirm the amount of such expenditures (without taking away from such meetings any confidential information). The Developer shall have no other obligation to furnish the City Parties with records or other information concerning the Developer's expenditures on Promotional Costs or use of Grant proceeds received once disbursements of the Grant are made to the Developer. Notwithstanding anything seemingly to the contrary herein, the Parties agree that the Grant will not be disbursed in a manner inconsistent with the Favorable PLR.

(l) **Grant Request**. Within six (6) months after the Initial Occupancy Date, the Developer will notify the City of the total amount of Qualified Project Costs and Promotional Costs incurred between the Effective Date and the Initial Occupancy Date, along with a written and signed statement by an independent certified accounting firm certifying as to such amount of Qualified Project Costs that have been incurred by the Developer and a written and signed statement by the Developer certifying as to such amount of Promotional Costs that have been incurred by the Developer (the "**Grant Request**"). The Developer may supplement the Grant Request from time to time with additional amounts of Qualified Project Costs and Promotional Costs, provided that included along with any such supplemental Grant Request is a written and

signed statement by an independent certified accounting firm certifying to any additional amount of Qualified Project Costs and a written and signed statement by the Developer certifying as to any additional amount of Promotional Costs.

SECTION 5. CERTAIN OBLIGATIONS OF THE CITY PARTIES.

(a) If the Developer has achieved the performance requirements set forth in Sections 4(c) above and is not in uncured Default with respect to any other provision of this Agreement, the City shall comply with terms and conditions set forth in Sections 5(a)(1)-(4) below. As required by and in accordance with Section 351.155 of Chapter 351, to secure the timely payment in full in cash and performance of the City's obligation to pay the Grants in accordance with Sections 5(a)(1)-(4) below, the City hereby assigns, grants, pledges, conveys and transfers to the Developer the Pledged Revenues; provided, however, that such assignment, grant, pledge, conveyance and transfer to the Developer shall be: (i) subordinated in all respects to all City indebtedness (whether now outstanding or hereafter issued) and any Lien now or hereafter created on the Pledged Revenues in favor of such indebtedness, and (ii) without any force or effect unless and until the Initial Occupancy Date occurs. Notwithstanding the above, the City will pay: (i) the Development Grant solely from lawfully available funds in its Hotel Occupancy Tax Fund, (ii) the City SUT Grant solely from lawfully available City SUT Revenues in the City's General Fund, and (iii) all other amounts that may be due from the City hereunder solely from lawfully available Pledged Revenues within the City's Hotel Occupancy Tax Fund. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE CITY SHALL NEVER BE REQUIRED TO AND SHALL NEVER APPLY AD VALOREM TAX REVENUES TO THE PAYMENT OF THE GRANTS OR ANY OTHER AMOUNTS THAT MAY BE DUE FROM THE CITY HEREUNDER.

(1) Development Grant. The City will pay the Development Grant in three (3) installments, which will be disbursed as follows:

(A) $3,000,000.00 will be payable beginning within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications;

(B) $1,000,000.00 will be payable beginning within thirty (30) days after the first (1st) anniversary of the Initial Occupancy Date; provided, however, that if the Grant Request and Performance Certifications have not been received by the date fixed for such payment, such payment shall be payable within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications; and

(C) $1,000,000.00 will be payable beginning within thirty (30) days after the second (2nd) anniversary of the Initial Occupancy Date; provided, however, that if the Grant Request and Performance Certifications have not been received by the date fixed for such payment, such payment shall be payable within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications.

(2) SCCHP Grant. The City shall pay the Developer the SCCHP Grant in monthly installments beginning within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications.

(3) City HOT Grant. The City shall pay the Developer the City HOT Grant in monthly installments beginning within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications.

(4) City SUT Grant. The City shall pay the Developer the City SUT Grant in monthly installments beginning within thirty (30) days after the date that the City has received from the Developer both the Grant Request and the Performance Certifications. The aggregate amount of the installment payments of the City SUT Grant to be paid in any particular Grant Year shall be determined as follows:

(A) no City SUT Grant shall be paid during a Grant Year until the City SUT Revenues for such Grant Year are more than $200,000.00;

(B) if the City SUT Revenues for the Grant Year are between $200,000.01 and $300,000.00, the City SUT Grant shall be equal to all City SUT Revenues in excess of $200,000.00; and

(C) if the City SUT Revenues for the Grant Year exceed $300,000.00, the City SUT Grant shall be $100,000.00 (*i.e.*, the amount payable under subsection (B) above), plus one-third (1/3rd) of all amounts in excess of $300,000.00.

(b) WEDC will pay all amounts that may be due from WEDC hereunder, solely from lawfully available revenues within WEDC's Sales Tax Revenue Fund and only as permitted by and in accordance with the resolutions and other documents authorizing or relating to WEDC's indebtedness (whether now outstanding or hereafter issued). Without limiting the generality of the foregoing, the Developer understands and agrees that any amounts due from WEDC to the Developer hereunder shall be subordinated in all respects to all WEDC indebtedness (whether now outstanding or hereafter issued) and any Lien now or hereafter created on WEDC's Sales Tax Revenue Fund or any other fund or assets of WEDC in favor of such indebtedness.

(1) Impact and Permitting Fee Reimbursement. If the Developer is not then in uncured Default under this Agreement, WEDC shall reimburse the Developer for up to $500,000.00 of the impact and permitting fees paid by the Developer to the City (the "Impact and Permitting Fee Reimbursement"). The Impact and Permitting Fee Reimbursement shall be payable by WEDC to the Developer within thirty (30) days of receiving a written request from the Developer to WEDC in the form attached hereto as **Exhibit F** ("Reimbursement Request"). The Developer may not submit a Reimbursement Request until after construction of vertical improvements for the Qualified Hotel has commenced. If the Developer fails to achieve the performance requirements set forth in Section 4(c) above or to provide the Performance Certifications as and when required by Section 4(i) above, the Developer will repay the City $10,000 out of the Impact and Permitting Fee Reimbursement within ninety (90) days after the first anniversary of the Initial Occupancy Date.

(2) Construction of Public Infrastructure and Water Line. WEDC will, at its cost, construct or cause to be constructed the Public Infrastructure. WEDC shall use commercially reasonable efforts to complete construction of the Public Infrastructure on or before the Initial Occupancy Date, subject to extension due to the occurrence of any Force Majeure Events.

The Developer will design the Water Line, provided that the City will reasonably designate the location for tie-in of the Water Line to then-existing public facilities. The Developer shall enter into a separate construction contract for the Water Line, which contract shall (i) set forth the terms pursuant to which the Developer shall cause the Water Line to be constructed, (ii) be in a form that is compliant with applicable laws and is mutually and reasonably acceptable to the Developer and the City, and (iii) provide that the owner of the Water Line upon completion and acceptance shall be the City, except that the City shall have no financial or other liability under such construction contract and the Developer shall be solely liable for all amounts due or related to such construction contract. The Developer shall use commercially reasonable efforts to substantially complete construction of the Water Line (*i.e.*, approved pressure testing of the line) on or before the Initial Occupancy Date, subject to extension due to the occurrence of any Force Majeure Events. Upon substantial completion of the Water Line, to the extent necessary, the Developer will grant to the City a 10'-wide non-exclusive water line easement along, across and under the Real Property then-owned by the Developer, centered on the location of the Water Line, as-built. WEDC will reimburse the Developer for actual costs incurred or expended for the design, construction and installation of the Water Line, payable to the Developer (if the Developer is not then in uncured Default under this Agreement) in two installments, as follows: (a) 80% within forty-five (45) days of WEDC's receipt of a written and signed request for reimbursement from the Developer following substantial completion of the Water Line, and (b) 20% within forty-five (45) days of WEDC's receipt of a written and signed request for reimbursement from the Developer following acceptance by the City of the Water Line. Each such request for reimbursement must: (a) certify that the amounts requested for reimbursement have actually been spent by or on behalf of the Developer towards costs of the Water Line, (b) provide documentary evidence concerning such expenditures sufficient for the Board to determine that such amounts are actual costs incurred or expended for the design, construction and installation of the Water Line and therefore eligible for reimbursement under this Section, and (c) attach or include a letter from a professional engineer licensed in the State of Texas certifying as to the dollar amount of the work on the Water Line that has been completed. Additionally, the Developer will furnish to WEDC any other information reasonably requested by the Board in order for it to determine that the Developer actually incurred amounts requested for reimbursement and that such amounts relate to the construction of the Water Line.

(3) Environmental Insurance. WEDC will purchase an environmental insurance policy with respect to the Real Property, which will name the Developer as an additional insured. WEDC will determine the appropriate term, limits and other features of such policy, subject to the Developer's reasonable approval and the remaining provisions of this Section. Prior to obtaining such policy, WEDC will, promptly upon written request therefor from the Developer, provide a proposed copy of such policy and any other reasonably requested information concerning such proposed policy. The Parties agree to work together in good faith to determine commercially reasonable coverage costing at least $100,000 but not more than $200,000. WEDC agrees to obtain

quotes from at least three (3) different insurers and will select the insurer that, in its opinion, provides the best value. WEDC further agrees to be solely responsible for the costs of such policy up to $200,000. Notwithstanding the above, WEDC agrees that it will obtain any additional coverage requested by the Developer, provided that the Developer shall be solely responsible for the costs of such additional coverage and such additional coverage may not, in the opinion of WEDC, in any way impair the features or coverage provided by the proposed policy selected by WEDC.

(c) **Processing of Payments.** The City agrees to process and remit to the Developer all Grants in accordance with terms of this Agreement. For the avoidance of doubt, the amount of Qualified Project Costs and Promotional Costs requested in the Grant Request, as supplemented from time to time by the Developer, shall carry forward; and the City shall continue to pay all installments of the Grants that the Developer is entitled to receive that have accrued during the Grant Period until the Developer has received all such Grants, regardless of whether such installments are paid after the Grant Period has expired. Notwithstanding anything to the contrary herein, the amount of any Grant shall not include any delinquent taxes, penalties or similar charges or fees paid by the Developer or any other party for failing to pay taxes as and when required by applicable law.

(d) **Cooperation on PLRs.** The City and the Developer shall each use commercially reasonable efforts and good faith in working together on a request for a PLR and on all other matters necessary to receive a PLR that is a SCCHP PLR and will otherwise be acceptable to each of the Parties. None of the Parties guarantees that such a PLR will be obtained and none of the Parties shall have any liability for failing to obtain such a PLR.

(e) **PLR Notices; Favorable PLR.** The City shall furnish the Developer with a copy of any PLR within ten (10) business days after its receipt from the Comptroller (the "PLR Notice"). If such PLR constitutes a SCCHP PLR, the City shall also provide a copy of such PLR Notice or otherwise provide written notice to Medistar of the receipt of such SCCHP PLR within ten (10) business days.

With respect to the first SCCHP PLR received by the City, such SCCHP PLR shall be considered the Favorable PLR unless the Developer, in its sole discretion, designates such SCCHP PLR as unfavorable in a writing delivered to the City Parties within sixty (60) days of the Developer's receipt of the PLR Notice relative to such SCCHP PLR. With respect to the second SCCHP PLR received by the City, such SCCHP PLR shall be considered the Favorable PLR unless all of the Parties, in their individual and reasonable discretion, have designated such SCCHP PLR as unfavorable in writing to the other Parties and Medistar within sixty (60) days of the Developer's receipt of the PLR Notice. With respect to the third SCCHP PLR and any subsequent SCCHP PLR received by the City, such SCCHP PLR shall be considered the Favorable PLR unless Medistar has, in its sole discretion, agreed in writing that such SCCHP PLR is unfavorable within sixty (60) days of the Developer's receipt of the PLR Notice.

If a PLR received by the City is not a Favorable PLR, the Parties shall use commercially reasonable efforts and work together in good faith to promptly: (i) negotiate an amendment to this Agreement with appropriate alterations such that the Qualified Project will satisfy the requirements

of the SCCHP based on the PLR received, (ii) submit a new request for a PLR to the Comptroller, and/or (iii) take such other commercially reasonable actions as may be necessary or appropriate to obtain a PLR that is a SCCHP PLR and will otherwise be acceptable to each of the Parties. If the second or any subsequent SCCHP PLR received by the City is deemed to be the Favorable PLR, the City Parties agree to reasonably cooperate with the Developer in the event the Developer requests the submission of a new request for a PLR to the Comptroller, notwithstanding the issuance of the deemed Favorable PLR.

(f) **PLR Matters.** Until resolved to the reasonable satisfaction of all of the Parties, the Parties agree that the following matters shall be included within each request for a PLR:

(1) The Parties agree to request the Comptroller's determination of whether the alternatives described in Sections 5A(b)-(c) below satisfy the SCCHP Ownership Requirements.

(2) Any other matters reasonably requested by the Developer or the City.

SECTION 5A. REAL PROPERTY MATTERS.

(a) **SCCHP Ownership Requirements.** As of the Effective Date, WEDC is under contract to purchase the entirety of the Real Property from Medistar pursuant to the terms and conditions of the Purchase and Sale Agreement. WEDC represents and warrants to the Developer that the copy of the Purchase and Sale Agreement attached to this Agreement as **Exhibit I** is true and correct, has not been modified, and is in full force and effect. Not later than July 1, 2020, the Developer shall provide WEDC with a written certification signed by the Developer to the effect that the Developer has committed, incurred or expended at least $250,000 of predevelopment costs related to the contemplated Qualified Hotel ("Predevelopment Certification"). So long as the Purchase and Sale Agreement has not terminated prior to the end of the inspection period thereunder, the Predevelopment Certification is received on or before July 1, 2020, and no PSA Termination Event (defined below) has occurred, WEDC agrees that it will not amend, modify, or terminate the Purchase and Sale Agreement or waive any material rights of WEDC under the Purchase and Sale Agreement without the prior written consent of the Developer, which shall not be unreasonably withheld, conditioned or delayed. So long as the Purchase and Sale Agreement has not terminated prior to the end of the inspection period thereunder, the Predevelopment Certification is received on or before July 1, 2020, and no PSA Termination Event has occurred, WEDC agrees to close on its purchase of the Real Property from Medistar; provided, however, WEDC may terminate the Purchase and Sale Agreement with or without the Developer's consent if any one or more of the following exists: (1) Medistar fails to remove mandatory cure items under Section 4.2 of the Purchase and Sale Agreement, (2) a new title or survey matter arises after the expiration of the inspection period that adversely affects title to the Real Property under Section 4.4 of the Purchase and Sale Agreement, (3) a failure of any closing condition occurs under Sections 6 or 7 of the Purchase and Sale Agreement, (4) closing does not occur due to a default by Medistar under the Purchase and Sale Agreement, (5) Medistar fails to deliver one or more of the items required to close under the Purchase and Sale Agreement, including the deliverables identified under Section 9.2 of the Purchase and Sale Agreement, (6) the Exxon Mobil Use Restriction is not removed to the reasonable satisfaction of WEDC prior to the expiration of the inspection period provided under the Purchase and Sale Agreement, or (7) Medistar fails to timely

cure to the reasonable satisfaction of WEDC any material title objection made by WEDC pursuant to Section 4.2 and Section 4.3 of the Purchase and Sale Agreement (items (1)-(7) above, "PSA Termination Events"). WEDC will notify the Developer of any notices received from Medistar under the Purchase and Sale Agreement, any material changes that occur under the Purchase and Sale Agreement, and the occurrence of closing on the purchase of the Real Property. WEDC will provide the Developer with a true and correct copy of its title insurance policy relative to the Real Property within ten (10) business days after WEDC's receipt of same and the deed conveying the Real Property to WEDC within ten (10) business days after closing on its purchase of the Real Property.

The Parties have identified two mutually acceptable alternatives, which are set forth in Sections 5A(b)-(c) below, for satisfying the SCCHP Ownership Requirements. The Parties agree that the initial request for a PLR submitted to the Comptroller will include a request for the Comptroller to determine whether one or both of the alternatives set forth in Sections 5A(b)-(c) below satisfy the SCCHP Ownership Requirements. The Parties agree that the alternative set forth in Section 5A(b) below is the most efficient and effective alternative of the two for satisfying the SCCHP Ownership Requirements. Therefore, if the Comptroller determines in the Favorable PLR that the alternative described in Section 5A(b) below satisfies the SCCHP Ownership Requirements, the Parties agree that such alternative shall apply and be binding on the Parties and Section 5A(c) below shall be of no effect. If the Comptroller determines in the Favorable PLR that the alternative described in Section 5A(b) below does not satisfy the SCCHP Ownership Requirements but the alternative described in Section 5A(c) below does satisfy the SCCHP Ownership Requirements, the Parties agree that the alternative described in Section 5A(c) below shall apply and be binding on the Parties and Section 5A(b) below shall be of no effect.

(b) **Preferred Ownership Option.** Section 351.154 of Chapter 351 provides that the City may authorize a nonprofit corporation, including WEDC, to act on behalf of the City for any purpose under the SCCHP. As permitted by Section 351.154 of Chapter 351, the City hereby authorizes WEDC to act on behalf of the City for purposes of the SCCHP Ownership Requirements. Therefore, unless and until the Developer exercises the Purchase Option in accordance with Section 5A(d) below, WEDC shall as agent acting on behalf of the City by: (i) owning the Hotel Land, and (ii) wholly owning the Qualified Convention Center Facility.

(c) **Alternative Ownership Option.** Within sixty (60) days of receipt of the Favorable PLR within which the Comptroller determines that the option described in Section 5A(b) above does not satisfy the SCCHP Ownership Requirements, WEDC shall convey to the City fee simple title to the Real Property by special warranty deed that: (i) provides for the automatic reversion of the Real Property to WEDC upon occurrence of a Reversion Trigger, and (ii) is in a form mutually acceptable to the City Parties. This Section 5A(c) shall be of no effect unless the Comptroller determines in the Favorable PLR that Section 5A(b) does not satisfy the SCCHP Ownership Requirements and that this Section does satisfy the SCCHP Ownership Requirements.

(d) **Purchase Option.** Subject to WEDC's acquisition of the Real Property under the Purchase and Sale Agreement and in exchange for the Developer causing the Initial Occupancy Date to occur, WEDC and its successors and assigns will grant and hereby grant the Developer an

exclusive option to purchase the Real Property together with the Qualified Convention Center Facility and all related improvements thereon (the "Purchase Option") for the Purchase Option Price. The Developer may only exercise the Purchase Option by providing written notice to the City Parties at any time during the period beginning on the Initial Occupancy Date and expiring on the date that is later of: (i) the date that is six (6) months after the end of the Grant Period, and (ii) thirty (30) days from the date that the Landowner provides written notice to the Developer that the Developer will forfeit its Purchase Option if same is not exercised within such thirty (30) day period, which notice must be given on or after the date that is ninety (90) days before the end of the Grant Period. If the Developer exercises the Purchase Option during the Grant Period, the Developer agrees: (i) no less than thirty (30) days prior to the date fixed for the conveyance of the Real Property and Qualified Convention Center to the Developer, to notify the Comptroller in writing of the change in ownership of the Real Property, and (ii) that the City shall have no obligation to make payment of any installment of the SCCHP Grant after the date of such conveyance. Except for the Purchase Option and the Repurchase Option, the City Parties represent and warrant to Developer and agree that (as of the Effective Date and throughout the Term) (x) the City Parties have not committed or obligated themselves to sell the Real Property or any interest therein to any party other than the Developer; and (y) no rights of first offer or rights of first refusal regarding the Real Property exist under any agreement to which the City Parties are a party or, to the actual knowledge of the City Parties, the Real Property is or may be bound or affected. Within ten (10) business days after WEDC's acquisition of the Real Property, the Parties shall execute, and the City Parties shall file for record in the Official Public Records of Real Property of Harris County, Texas, a memorandum in the form of **Exhibit E** attached hereto.

(e) **Ground Lease.** Prior to the Commencement of Construction on the Qualified Project, the Developer and Landowner shall enter into a ground lease for the Real Property (the "Ground Lease"), which shall be in a form to be mutually agreed upon by the Landowner and Developer (on commercially reasonable terms with the Landowner and Developer agreeing to negotiate in good faith). The Ground Lease will be terminable by the Developer in its sole discretion without any penalty or obligation at any time prior to the Developer Commitment Date. Rent under the Ground Lease shall be One Dollar ($1.00) per year commencing upon the effective date of the Ground Lease, and the term of the Ground Lease shall be coterminous with the Term hereof. The Ground Lease will include the Purchase Option, and a memorandum of ground lease will be filed for record by the Landowner. The City Parties agree that (as of the Effective Date and throughout the Term) the City Parties have not and will not, except with the prior written consent of the Developer, committed or obligated themselves to lease or encumber the Real Property or any interest therein to any party other than the Developer. The Ground Lease shall contain an indemnity provision, whereby the Developer will indemnify and hold landlord harmless the City Parties from and against any and all claims, demands, damages, costs, and expenses, and 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 the Qualified Hotel or the Developer's business on the Real Property, the Developer's use of the Real Property, or from any breach on the part of the Developer of the terms of the Ground Lease, from any act, omission or negligence of the Developer, the Developer's agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Real Property, excluding any act, omission or negligence of the City Parties or any of the City Parties' agents, contractors, employees, subtenants, concessionaires, or

licensees. Notwithstanding the above, the Parties agree that the indemnity shall not cover any liability related to environmental contamination or claims relating to environmental laws.

(f) **Convention Center Lease.** Prior to the Initial Occupancy Date, the Landowner and the Developer shall enter into a separate lease agreement of the Qualified Convention Center Facility, whereby the Landowner will be the lessor and the Developer will be the lessee ("Convention Center Lease"). The Convention Center Lease shall be in a form to be mutually agreed upon by the Landowner and Developer (on commercially reasonable terms with the Landowner and Developer agreeing to negotiate in good faith); provided, however, that the Convention Center Lease shall (i) clearly identify the Convention Center Land and the Qualified Convention Center Facility and other improvements on the Convention Center Land as wholly owned by the Landowner; (ii) provide that the Qualified Convention Center Facility shall be used exclusively as the Landowner's convention center, and (iii) provide that the Qualified Convention Center Facility shall be operated in a public manner in accordance with Landowner policies regarding use of Landowner property for conventions and meetings. The Convention Center Lease shall contain an indemnity provision, whereby the Developer will indemnify and hold landlord harmless the City Parties from and against any and all claims, demands, damages, costs, and 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 the Qualified Hotel or the Developer's business on the premises, the Developer's use of the premises, or from any breach on the part of the Developer of the terms of the Convention Center Lease, from any act, omission or negligence of the Developer, the Developer's agents, contractors, employees, subtenants, concessionaires, or licensees in or about the premises. Notwithstanding the above, the Parties agree that the indemnity shall not cover any liability related to environmental contamination or claims relating to environmental laws. The Convention Center Lease shall provide that all costs and revenues associated with the operation of the Qualified Convention Center Facility shall be the responsibility of and inure to the lessee thereunder. For the avoidance of doubt, due to the integrated nature of the Qualified Project, the Developer shall not be required to construct or maintain separate facilities (such as parking, electricity, utilities, etc.) for each of the Qualified Convention Center Facility and the Qualified Hotel, nor shall it be required, as lessee of the Qualified Convention Center Facility, to treat the Qualified Convention Center Facility as separate from the Qualified Hotel. For example, given the integral nature of the Qualified Project, the Qualified Convention Center Facility and the Qualified Hotel may share use of and access to the common parking areas and green space. Nothing in this Section shall be interpreted as permitting the Qualified Convention Center Facility to be located in the Qualified Hotel.

(g) **Amenity Land.** WEDC agrees that following its acquisition of the Real Property, neither WEDC nor its successors or assigns will use or permit use of the Amenity Land for any purpose other than as permitted by the Development and Restrictions Agreement.

SECTION 6. MORTGAGE PROTECTION.

(a) **Holders of Deeds of Trust.** Notwithstanding any other provisions of this Agreement, the Developer shall have the right to grant one or more Deeds of Trust as security for one or more loans or other financing of the Qualified Project or any portion thereof. Within ten (10) days after a Deed of Trust is recorded in the Official Public Records of Harris County, Texas,

the Developer shall provide the City Parties 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 the Developer's failure to provide such document shall not affect any Deed of Trust, including without limitation, the validity, priority, or enforceability of such Deed of Trust.

(b) **Rights of Holders.** The City Parties shall deliver a copy of any notice or demand to the Developer concerning any Default by the Developer under this Agreement to each Known Holder. Any such Default demand or notice shall not be effective against any Known Holder unless given to such Known Holder. Any such Default demand or notice shall be effective against any Holder that is not a Known Holder whether or not such Holder has knowledge of such demand or notice. Each Holder shall have the right at its option to cure or remedy any Default by the Developer to the same extent as the Developer, and to add the cost thereof to the secured debt and lien of its security interest on the Qualified Project or any portion thereof. If a Default can only be remedied or cured by a Holder upon obtaining possession of the Qualified Project or any portion thereof, such Holder may remedy or cure such Default within a reasonable period of time (but not to exceed sixty (60) days) 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 Qualified 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 Qualified 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 Parties agree to execute such further documentation regarding the rights of any Holder, its successors and assigns, 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, its successors and assigns, and is reasonably acceptable to the City Parties.

(d) **Tolling**. All obligations under this Agreement, except those obligations that are not expressly subject to Tolling Periods or other extensions in accordance with the terms hereof (including, but not limited to, the deadline for Commencement of Construction on the Qualified Project set forth in Section 4(b) above), shall be tolled from and after the date on which a Known Holder delivers written notice to the City Parties 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 earlier of: (1) 30 days following the Foreclosure Date, or (2) 180 days after the date on which the City Parties were provided notice of the existence of such event of default (the "Tolling Period").

(e) **Right of City Parties to Cure.** In the event of a default or breach by the Developer of a loan by a Holder prior to Initial Occupancy Date, one or both of the City Parties may, upon prior written notice to the Developer, cure the Default, prior to the completion of any foreclosure. In such event, the applicable City Parties shall be entitled reduce the future installments of the

Grants or Impact and Permitting Fee Reimbursement, as applicable, due to the Developer by the amount of all costs and expenses incurred by the applicable City Parties in curing the Default. The applicable City Parties shall also be entitled to a lien upon the Qualified Project or any portion thereof to the extent of such costs and disbursements. The City Parties agree that such lien shall be subordinate to any lien in favor of any then-existing Known Holders. The Developer shall execute from time to time documentation to grant such lien, provided that such documentation must be in a form reasonably acceptable to the Developer. The City Parties shall execute from time to time any and all documentation reasonably requested by the Developer to effect such subordination so long as such documentation is in a form reasonably acceptable to the City Parties.

SECTION 7A. DEVELOPER EVENTS OF DEFAULT.

(a) **Lease Event of Default.** The occurrence of an event of default under either of the Leases (other than an event of default committed by the Landowner) shall constitute an immediate Event of Default by the Developer for purposes of this Agreement.

(b) **Construction Failures.** The failure of the Developer to cause the Commencement of Construction or the Initial Occupancy Date to occur by the applicable deadline provided in Section 4(b) above shall constitute an immediate Event of Default by the Developer for purposes of this Agreement.

(c) **Repurchase of Real Property.** The exercise by Medistar of the Repurchase Option shall constitute an immediate Event of Default by the Developer for purposes of this Agreement.

(d) **Recapture Event.** The occurrence of a Recapture Event shall constitute an immediate Event of Default by the Developer for purposes of this Agreement. For the avoidance of doubt, no Event of Default shall be deemed a Recapture Event unless such Event of Default is a Recapture Event, as defined in Section 2 of this Agreement.

(e) **Breach of Terms and Other Matters.** Subject to the provisions of Section 6(d), Section 13(h), and Section 8, the occurrence and continuation of each of the following after applicable tolling and cure periods, the following shall constitute an Event of Default by the Developer:

(1) Any Default by the Developer.

(2) If any written warranty, representation or statement made or furnished to the City Parties by the Developer under this Agreement, or any document(s) related hereto furnished to the City Parties by the Developer, is false or misleading in any material respect as of the date of such warranty, representation or statement. The Developer shall promptly notify the City Parties if and when it becomes aware that any written warranty, representation or statement made or furnished to the City Parties by the Developer under this Agreement, or any document(s) related hereto furnished to the City Parties by the Developer, is false or misleading in any material respect as of the date of such warranty, representation or statement.

(3) The dissolution or termination of the Developer's existence as an ongoing business or concern, the Developer's insolvency, appointment of receiver for all or any part of the Developer's assets, any assignment of all or substantially all of the assets of the Developer for the benefit of its creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Developer.

SECTION 7B. EVENTS OF DEFAULT OF CITY PARTIES.

(a) **Lease Event of Default.** The occurrence of an event of default under either of the Leases by the Landowner shall constitute an immediate Event of Default by the City Parties for purposes of this Agreement.

(b) **Breach of Terms and Other Matters.** Subject to Section 13(h) and Section 8, the occurrence and continuation of a Default by the City or WEDC after applicable tolling and cure periods shall be considered an Event of Default by the City Parties. Any Default or Event of Default committed by either one of the City Parties shall constitute a Default or Event of Default on the part of the other City Party.

SECTION 8. NOTICE AND OPPORTUNITY TO CURE.

(a) Following the occurrence of a Default under this Agreement, any Party not in Default may provide written notice to the Party in Default of the nature of the Default and the Party in Default 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 the Party in Default shall have as much time as reasonably necessary to cure such Default (but in no event more than a total of 180 days) provided that it is diligently attempting to cure such Default.

(b) If the Party in Default does not cure the Default to the reasonable satisfaction of the other Parties within the period provided in Section 8(a) above, such Default shall constitute an Event of Default.

SECTION 9. RECAPTURE.

If a Recapture Event occurs, the Developer forfeits entitlement to any future installments of the Grants and the Incentives. In addition, within thirty (30) days after a Recapture Event, the Developer shall pay to WEDC an amount (the "Recapture Amount") equal to one hundred percent (100%) of all unrecoverable premiums paid by WEDC for the purchase of the environmental insurance policy with respect to the Real Property required under Section 5(b)(3) above, not to exceed $200,000. The Parties agree that if a Recapture Event were to occur, it would be difficult to determine actual damages. Based on the facts known to the Parties as of the Effective Date, the Parties agree that the Recapture Amount is a reasonable estimate of the damages to the City Parties that would accrue if a Recapture Event were to occur. The Parties agree that the amount of liquidated damages is fair and reasonable and would not act as a penalty to the Developer.

SECTION 10. ABANDONMENT OF CONSTRUCTION.

If the Developer commences construction of the Qualified Project, but abandons it before completion, the Developer 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. The Developer will only be deemed to have abandoned the Qualified Project if there have been at least 180 consecutive days with no construction activities at the Qualified Project, which 180 day-period shall not include any delays attributable to an Force Majeure Event or any Tolling Period.

SECTION 11. TERMINATION OF AGREEMENT; REMEDIES.

(a) Notwithstanding anything seemingly to the contrary, no Party may terminate this Agreement except in accordance with this Section 11. The Parties' only available Remedies against the other Parties are those explicitly provided in this Section 11 and the Parties waive and forever release all other Remedies.

(b) While any Event of Default by the Developer is continuing, the City Parties may terminate this Agreement by providing written notice of such termination to the Developer. The City Parties' sole remedies under this Agreement against the Developer shall be limited to termination of this Agreement as provided in this Section 11 and those remedies specifically described in Section 9 (recapture) and Section 10 (specific performance in the event of abandoning construction); with the City Parties hereby waiving all other remedies against the Developer (including, without limitation, damages).

(c) While any Event of Default by either of the City Parties is continuing, the Developer may terminate this Agreement by providing written notice of such termination to the City Parties. The Developer's sole remedies under this Agreement shall be limited to termination of this Agreement as provided in this Section 11, and an action to specifically enforce the obligations of the City or WEDC, as applicable, to pay the Developer the installments of the Grants and the Impact and Permitting Fee Reimbursement to which it is then entitled and has not yet received; with the Developer hereby waiving all other remedies against the City Parties (including, without limitation, damages). The City Parties hereby waive any immunity of suit, but not damages, for purposes of enforcement of this Agreement by the Developer. In the event of a termination under this Section 11(c), the Developer shall not be liable to the other Parties for any damages or have any further obligation under this Agreement, other than those obligations that expressly survive termination.

(d) The Developer shall have the absolute right to terminate this Agreement in its sole discretion at any time prior to the Developer Commitment Date by delivering written notice of termination to the City. Additionally, the Developer shall have the absolute right to terminate this Agreement in its sole discretion at any time after the Developer Commitment Date by delivering written notice of termination to the City; provided, however, the Developer shall pay to WEDC the Recapture Amount within ten (10) business days of such notice unless such termination by Developer is pursuant to Section 11(c). In the event of a termination under this Section 11(d), the

Developer shall not be liable to the other Parties for any damages or have any further obligation under this Agreement, other than those obligations that expressly survive termination.

(e) The City Parties may together terminate this Agreement with or without an Event of Default by the Developer if any state of federal statute, regulation, case law, or other law issued or adopted after the date of this Agreement renders any material portion of this Agreement illegal; provided, however (1) a termination under this Section 11(d) shall not entitle any Party to any Remedies against the other Parties, and (2) in such event, the Parties shall use commercially reasonable efforts to cause this Agreement to be promptly restructured such that it will be enforceable and legal and on terms that are acceptable to all Parties.

SECTION 12. REPRESENTATIONS AND WARRANTIES

(a) The Developer hereby warrants and represents to the City Parties that:

(1) it is a limited liability company organized, validly existing and operating under the laws of the State of Delaware and validly authorized to transact business in the State of Texas;

(2) it has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;

(3) the form, execution, delivery and performance by the Developer have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the Developer or its Affiliates are party or by which the Developer or its Affiliates or any of their properties may be bound; and

(4) this Agreement is a legal, valid and binding obligation of the Developer enforceable against the Developer in accordance with its terms except that enforceability of the Developer's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) The City hereby warrants and represents to the Developer that:

(1) it is a home-rule municipal corporation of the State of Texas organized, validly existing and operating under the laws of the State of Texas;

(2) it has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;

(3) the form, execution, delivery and performance of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which the City is a party or by which it or any of its properties may be bound; and

(4) this Agreement is a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms except that enforceability of the City's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) WEDC hereby warrants and represents to the Developer that:

(1) it is a non-profit economic development corporation of the State of Texas organized, validly existing and operating under the laws of the State of Texas;

(2) it has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms and provisions hereof;

(3) the form, execution, delivery and performance of this Agreement have been duly authorized by all necessary action and do not violate or contravene any law or any order of any court or governmental agency or any agreement or other instrument to which WEDC is a party or by which it or any of its properties may be bound; and

(4) this Agreement is a legal, valid and binding obligation of WEDC enforceable against WEDC in accordance with its terms except that enforceability of WEDC's obligations hereunder may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

SECTION 13. MISCELLANEOUS PROVISIONS.

(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 all Parties hereto.

(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 Harris County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Harris County, Texas.

(c) **Binding Obligation.** This Agreement shall become a binding obligation on the Parties upon execution by all Parties hereto. Each Party represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind such Party to the same. This Agreement supersedes any and all prior agreements, whether oral or written, covering the subject matter of this Agreement other than the Leases.

(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 Parties' economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including Chapter 552. To the extent permitted by applicable law, the City Parties will maintain the confidentiality of any proprietary information of the Developer and the City Parties agree that, if required by Chapter 552, it will notify the Developer if they receive a request under Chapter 552 for proprietary information of the Developer. To the extent permitted by applicable law, the City Parties acknowledge and agree that the Developer may redact any information that the Developer considers confidential prior to submitting to any of the City Parties. The City Parties agree to timely furnish the Developer with a third party notice of any public information request involving the Developer's privacy or property interests and to seek a determination from the Texas Attorney General to withhold or release such information.

(f) **Employment of Undocumented Workers**. The Developer does not and, during the Term of this Agreement, will not knowingly employ an undocumented worker (as defined in Section 2264.001, Texas Government Code). If convicted of a violation under 8 U.S.C. Section 1324a (f), the Developer shall repay all Public Subsidies it has received from a City Party as of the date of such violation not later than one hundred twenty (120) days after the date the Developer is notified by the City and/or WEDC of a violation of this Section, plus interest from the date the Public Subsidy was paid to the Developer, at the rate of seven percent (7%) per annum. Such interest will accrue from the date the Public Subsidy was paid to the Developer until the date the full reimbursement is made to the City or WEDC, as applicable. The City and WEDC may also recover court costs and reasonable attorney's fees incurred to recover Public Subsidies subject to reimbursement under this section. To the extent permitted by Chapter 2264, Texas Government Code, the Developer is not liable for a violation of this Section by any subsidiary, Affiliate, franchisee, or by any person with whom the Developer contracts.

(g) **Estoppels**. The Developer or its lender may, at any time, and from time to time, deliver written notice to a City Party requesting such City Party to execute an estoppel certificate that, to the best of the City Party's knowledge: (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) the Developer 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 the Developer may reasonably request. The City Manager and the President of the Board of WEDC, without the need for approval of the City Council or the Board of WEDC, may execute and return such certificate promptly upon request by the Developer.

(h) **Force Majeure**. The occurrence of an event which materially interferes with the ability of a Party to perform its obligations or duties hereunder (other than those obligations and duties explicitly not subject to Force Majeure Events pursuant to the other provisions of this Agreement) which is not within the reasonable control of the Party affected or any of its Affiliates, and which could not with the exercise of diligent efforts have been avoided (each, a "Force Majeure Event"), including, but not limited to, war, rebellion, earthquake, fire, accident, strike, riot, civil commotion, act of God, inability to obtain raw materials, delay or errors by shipping companies or change in law, shall not excuse such Party from the performance of its obligations or duties under this Agreement, but shall merely suspend such performance during the continuance

of the Force Majeure Event. The Party subject to a Force Majeure Event shall promptly notify the other Parties in writing of the occurrence and particulars of such Force Majeure Event and shall provide the other Parties, from time to time, with its best estimate of the duration of such Force Majeure Event and with notice of the termination thereof. The Party so affected shall use diligent efforts to avoid or remove such causes of non-performance as soon as is reasonably practicable. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall without delay recommence and shall provide written notice of the termination of the Force Majeure Event to the other Parties.

(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 Parties shall have the reasonable right to access and inspect the books and records of the Developer to the extent such books and records are directly related to the Qualified Project. The applicable City Party shall (i) provide a least five (5) days' prior written notice to the Developer of its intention to exercise its right to inspect; (ii) conduct such inspection during normal business hours, in reasonable cooperation with the requests of the Developer to minimize business interruption, and with a representative of the Developer present; and (iii) conduct such inspection in accordance with the visitor access and security policies of the Developer. All Parties will maintain the confidentiality of all records related to this Agreement, subject to applicable law, including Chapter 552.

(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 Parties, their past, present and future officers, elected officials, employees, agents and other representatives, do not assume any responsibilities or liabilities to any third party in connection with the Qualified Project or the design, construction, or operation of the Qualified 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. The Parties may from time to time change their respective addresses, and each may specify as its address any other address within the United States of America by giving at least five (5) days' written notice to the other Parties. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following the Saturday, Sunday or legal holiday.

The City:	City of Webster, Texas Attn: City Manager City of Webster, Texas 101 Pennsylvania Avenue Webster, Texas 77598
Copies to:	City of Webster, Texas Attn: Economic Development Director City of Webster, Texas

101 Pennsylvania Avenue
Webster, Texas 77598

Ben Morse
Marks Richardson PC
3700 Buffalo Speedway, Suite 830
Houston, Texas 77098

Dick H. Gregg Jr.
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

WEDC:

Webster Economic Development Corporation
Attn: President, Board of Directors
City of Webster, Texas
101 Pennsylvania Avenue
Webster, Texas 77598

Copies to:

City of Webster, Texas
Attn: City Manager
City of Webster, Texas
101 Pennsylvania Avenue
Webster, Texas 77598

Ben Morse
Marks Richardson PC
3700 Buffalo Speedway, Suite 830
Houston, Texas 77098

Dick H. Gregg Jr.
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

The Developer:

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

Copy to:

Andy Dow
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201

(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**. Either Party may file this Agreement of record in the Real Property Records of Harris County, Texas.

(o) **Revenue Sharing Agreement**. Pursuant to the Section 321.3022 of Chapter 351, the City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request and obtain City SUT and State SUT information from the Comptroller.

(p) **Sale or Transfer**. The Developer may transfer its rights, duties and obligations pursuant to this Agreement only to (A) any Affiliate of the Developer without the consent of the City Parties, (B) any Known Holder, its successors and assigns, without the consent of the City Parties as part of a collateral assignment thereto if such Known Holder, successor or assign, agrees to be bound by the terms of this Agreement following the Foreclosure Date, (C) any permitted assignee of the Developer's interest as lessee under the Ground Lease without the consent of the City Parties, and (D) any other individual or entity that is not an Affiliate of the Developer with the consent of the City Manager of the City (but without further consent from the City Parties), which consent may not be unreasonably delayed, conditioned or withheld. Except with respect to (B) in the immediately preceding sentence, the Developer may only transfer its rights, duties and obligations hereunder in whole. Prior to effectuating any transfer under this Section 13(p), the Developer shall give thirty (30) days' written notice to the City Parties of such proposed transfer, which notice shall attach a copy of the instrument under which the Developer proposes to effect such transfer.

(i) Within sixty (60) days after any sale or other transfer of the Developer's interest as lessee under the Ground Lease, the Developer 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. Nothing in this Section permits the Developer to sell or otherwise transfer the Developer's interest as lessee under the Ground Lease except as explicitly permitted therein.

(ii) Neither City Party may, without the prior written consent of each of the other Parties, assign this Agreement to any Affiliate or other 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 Parties hereby agree that this Agreement is enforceable by the Parties against the Parties in accordance with the terms of the Agreement and applicable federal and state laws.

(t) **Anti-Boycott Verification**. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other Affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(u) **Iran, Sudan and Foreign Terrorist Organizations**. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other Affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code and excludes the Developer and its parent company, wholly- or majority-owned subsidiaries, and other Affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

(v) **Form 1295**. To the extent required by Chapter 2252 of the Texas Government Code, submitted herewith is a completed Form 1295 in connection with the Developer's participation in the execution of this Agreement generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from the Developer, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Developer and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement and made it effective as of the Effective Date.

GWR WEBSTER LLC

_____

Name: _____

Title:_____

STATE OF _____§
§
COUNTY OF _____§

This instrument was acknowledged before me on the ____ day of _____ 20_____, by_____, as _____ of GWR Webster LLC.

_____
Notary Public, State of _____

My Commission Expires:

_____

CITY OF WEBSTER, TEXAS

Mayor

ATTEST:

City Secretary

STATE OF Texas §
§
COUNTY OF Harris §

This instrument was acknowledged before me on the 17th day of March 2020, by Donna Rogers, Michael Muscarello the Mayor and City Secretary of the City of Webster, Texas, on behalf of the City of Webster, Texas.

AMBER CRUMPLER
Notary Public, State of Texas
Comm. Expires 01-08-2023
Notary ID 130070796

Notary Public, State of Texas

My Commission Expires:

01·08·2023

WEBSTER ECONOMIC DEVELOPMENT CORPORATION

President, Board of Directors

ATTEST:

Secretary, Board of Directors

STATE OF Texas §
§
COUNTY OF Harris §

This instrument was acknowledged before me on the 17th day of March 2020, by Donna Rogers, Michael Muscarello the President and Secretary of the Webster Economic Development Corporation, on behalf of the Webster Economic Development Corporation.

AMBER CRUMPLER
Notary Public, State of Texas
Comm. Expires 01-08-2023
Notary ID 130070786

Notary Public, State of Texas

My Commission Expires:
01.08.2023

Exhibit A
Description of Real Property

[To follow; will not include 6.26 acres]

Exhibit B
Hotel Land

[To follow]

Exhibit C
Convention Center Land

[To follow]

Exhibit D
Amenity Land

[To follow; this is the 6.26 acre tract]

Exhibit E
Form of Memorandum of Agreement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF AGREEMENT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Memorandum of Agreement is made this 17 day of March, 2020, by and between by and among the **City of Webster, Texas**, a home-rule municipal corporation of the State of Texas (the "City"); **Webster Economic Development Corporation** ("WEDC"), a Texas non-profit economic development corporation organized under and governed by the EDC Act (as defined in the hereinafter defined Agreement); and **GWR Webster LLC**, a Delaware limited liability company (together with its successors and assigns permitted hereunder, if any, the "Developer").

The City, WEDC and the Developer have entered into an Economic Development Agreement dated March 17, 2020 (the "Agreement"), whereby (among other rights) the City and WEDC granted to the Developer the right to purchase certain real property described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Real Property").

The City and WEDC hereby give actual and constructive notice to all persons dealing with the Real Property of the existence of the Agreement, and that the rights of the City and WEDC with respect to the Real Property are subject to the Agreement. A copy of the Agreement is in the possession of the City, WEDC and the Developer. In the event of any conflict between the terms of this Memorandum of Agreement and the terms of the Agreement, the terms of the Agreement shall control. This Memorandum of Agreement may be executed in counterparts.

[*Signatures appear on following page.*]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement and made it effective as of the date first written above.

GWR WEBSTER LLC

_____

Name: _____

Title:_____

STATE OF _____§
§
COUNTY OF _____§

This instrument was acknowledged before me on the ____ day of _____ 20_____, by__ _____, as _____ of [GWR Affiliate].

_____
Notary Public, State of _____

My Commission Expires:

_____

CITY OF WEBSTER, TEXAS

Mayor

ATTEST:

City Secretary

STATE OF Texas §
COUNTY OF Harris §

This instrument was acknowledged before me on the 17th day of March 2020, by Donna Rogers, Michael Muscarello, the Mayor and City Secretary of the City of Webster, Texas, on behalf of the City of Webster, Texas.

AMBER CRUMPLER
Notary Public, State of Texas
Comm. Expires 01-08-2023
Notary ID 130070796

Notary Public, State of Texas

My Commission Expires:
01·08·2023

15

WEBSTER ECONOMIC DEVELOPMENT CORPORATION

President, Board of Directors

ATTEST:

Secretary, Board of Directors

STATE OF Texas §
§
COUNTY OF Harris §

This instrument was acknowledged before me on the 17th day of March 2020, by Donna Rogers, Michael Muscarello, the President and Secretary of the Webster Economic Development Corporation, on behalf of the Webster Economic Development Corporation.

AMBER CRUMPLER
Notary Public, State of Texas
Comm. Expires 01-08-2023
Notary ID 130070796

Notary Public, State of Texas

My Commission Expires:
01-08-2023

Exhibit A to Memorandum of Agreement
Real Property Description

[To follow]

Exhibit F
Form of Reimbursement Request[1]

Pursuant to the Economic Development Agreement (the "Agreement"), dated _____, by and between [GWR Affiliate], the City of Webster, Texas and Webster Economic Development Corporation (collectively, the "City Parties"), the Developer submits this Reimbursement Request in accordance with the Agreement and in anticipation of receiving the Impact and Permitting Fee Reimbursement referenced in the Agreement in consideration for meeting its obligations therein. All initially capitalized terms not defined herein shall have the meaning assigned thereto in the Agreement.

[_____] (the "Developer")[, as successor to [GWR Affiliate],] hereby represents and warrants to WEDC that:

1. The Developer is not in an uncured Default under the Agreement and no Recapture Event has occurred;

2. The Developer hereby certifies that the aggregate amount of impact fees and permitting fees that the Developer has paid to the City prior to the date hereof is $_____[2] and the amount of the Impact and Permitting Fee Reimbursement already received by Developer pursuant to previously submitted Reimbursement Requests is $_____;[3]

3. Attached to this Reimbursement Request is documentation sufficient for WEDC to determine whether the Developer is entitled to receive the Impact and Permitting Fee Reimbursement described in Paragraph 4 above and the amount thereof; and

4. The Developer is entitled, under the terms and conditions of the Agreement, to receive the installment of the Impact and Permitting Fee Reimbursement requested herein.

It is understood by the Developer that WEDC has up to thirty (30) days to process this Reimbursement Request and reserves the right to deny this Reimbursement Request if: (1) the Developer is in Default under the Agreement or any Recapture Event has occurred, or (2) if this Reimbursement Request is incomplete or is otherwise not properly submitted in accordance with the terms of the Agreement. WEDC also reserves the right to limit payment to amounts that are objectively verifiable based upon the documentation attached to this Reimbursement Request. The Developer understands and agrees that the City has no responsibility or liability with respect to payment of the installment of the Impact and Permitting Fee Reimbursement requested herein.

---

[1] Form to request payment from WEDC of all or a portion of the Impact and Permitting Fee Reimbursement.

[2] Must be in integral multiples of $100,000.

[3] Insert previously received portion of the Impact and Permitting Fee Reimbursement.

THE DEVELOPER

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

STATE OF _____§
§
COUNTY OF _____§

This instrument was acknowledged before me on the ____ day of _____ 20_____, by_ _____, as _____ of **THE DEVELOPER**.

_____
Notary Public, State of _____

My Commission Expires:

_____

Exhibit G

Waiver of Sales and Use Tax Confidentiality

Date _____

I authorize the State of Texas Comptroller of Public Accounts to release sales and use tax information pertaining to the taxpayer indicated below to the City of Webster, Texas and the Webster Economic Development Corporation. I understand that this waiver applies only to the place of business located at _____ in the City of Webster, Harris County, Texas. This waiver shall remain in force for three (3) years or the maximum period permitted by applicable law, whichever is shorter.

Please print or type the following information as shown on your Texas Sales and Use Tax Permit:
Name of Taxpayer Listed on Texas Sales and Use 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 Webster, 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 Sales and Use Tax Confidentiality, please contact the Texas Comptroller of Public Accounts at (800) 531-5441.

Exhibit H-1
Public Infrastructure

1. The Drainage Facilities, as defined in the Purchase and Sale Agreement.
2. [to be inserted]

Exhibit H-2
Water Line

Exhibit I
Purchase and Sale Agreement

[follows this cover page]

Presented to Commissioners Court

May 19, 2020

Approve: G/E

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court, virtually, on the 19th day of May, 2020, with the following members present, to-wit:

Lina Hidalgo	County Judge
Rodney Ellis	Commissioner, Precinct No. 1
Adrian Garcia	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING THE EXECUTION OF AN AGREEMENT UNDER TEXAS LOCAL GOVERNMENT CODE CHAPTER 381 BETWEEN HARRIS COUNTY AND GRW WEBSTER LLC

Commissioner Garcia introduced an order and made a motion that the same be adopted. Commissioner Ellis seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	X	☐	☐
Comm. Rodney Ellis	X	☐	☐
Comm. Adrian Garcia	X	☐	☐
Comm. Steve Radack	X	☐	☐
Comm. R. Jack Cagle	X	☐	☐

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

RECITALS:

Texas Local Government Code Chapter 381 authorizes the commissioners court of a county to award grants for the promotion of the economic development of Harris County; and

It is the policy of Harris County encourage the redevelopment of areas wherein the creation and retention of new jobs and investment will benefit the area economy, provide needed opportunities, strengthen the real estate market and generate tax revenue to support local services; and

The Project Site is an area within Harris County, Texas, generally described as consisting of a proposed convention center and resort lodge located within the boundaries of a number of taxing units whose ad valorem taxes are by law approved or levied by the Commissioners Court

of Harris County, to wit: Harris County, the Harris County Flood Control District, the Port of Houston Authority of Harris County, Texas, and the Harris County Hospital District; and

GRW Webster LLC, represents that they will create and maintain 350 full time/part time equivalent positions and continuing through the term of this Agreement; and

GRW Webster LLC, represents that they will invest at least $75 million in Improvements which will result in an estimated increase in certified appraised value of at least $75 million; and

The Commissioners Court of Harris County desires to approve the County's entering into an economic development grant agreement with GRW Webster LLC, based on the aforesaid representations.

NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS THAT:

Section 1. The recitals set forth in this order are true and correct.

Section 2. The hotel occupancy tax rebate agreement between the County and GWR Webster, LLC for a proposed indoor water part resort in Webster, Texas in Precinct Two is approved with the condition that the City of Webster and Great Wolf Lodge agree to meet with labor leaders.

Section 3. The County Judge of Harris County is authorized to execute an agreement on behalf of Harris County the Agreement with GRW Webster LLC.

Section 4. All officers, employees and agents of Harris County are hereby directed to execute all documents and take any other actions necessary to perform the agreement.