

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement (this "Agreement") is entered into this ____ day of December, 2016 (the "Effective Date"), by and among Williamson County, Texas, a Texas political subdivision, (the "County"), and KR Acquisitions, LLC, a Delaware limited liability Developer (the "Developer"). The County and the Developer are, collectively, the "Parties" to this Agreement.

RECITALS

WHEREAS, the Developer is considering the construction of a master-planned mixed use project on the Property anchored by a Kalahari Resort and Convention Center, including a hotel with a minimum of 975 guest rooms, a convention and exhibition center, and an indoor water park, all as further described herein (the "Project"); and

WHEREAS, the Project may also include entertainment, recreation, and other uses of the Property permitted by the zoning at the time of development; and

WHEREAS, the County has previously adopted Economic Program Guidelines authorizing the Court to enter into this Agreement in recognition of the positive economic benefits to the County through development of the Project on approximately 351.7 acres of land, as described and shown on **Exhibit A** (the "Property"); and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 381 of the Texas Local Government Code whereby the Developer intends to operate the Project in conformance with the terms and conditions stated herein, and;

WHEREAS, the Developer intends to invest or cause to be invested a minimum of \$350,000,000 in the Property, as further described herein; and

WHEREAS, the Developer intends to employ at least 700 full time equivalent employees in the Project starting no later than 12 months after the Project is opened; and

WHEREAS, the County agrees to provide performance-based Economic Incentive Payments (as defined below) to the Developer to defray a portion of the Project's costs; and

WHEREAS, the County will encourage Williamson County to enter into an agreement with the Developer pursuant to Chapter 381 of the Texas Local Government Code to rebate a portion of the taxes the county collects from the Project.

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

ARTICLE I

AUTHORITY

1.01 Authority. The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code, and constitutes a valid and binding obligation of the County in the event development of the Project proceeds. The County acknowledges that the Developer is acting in reliance upon the County's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to the Project.

1.02 Legal Representation of the Parties. This Agreement was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply.

ARTICLE II

DEFINITIONS

2.01 Definitions.

"Ad Valorem Property Tax" means the County's ad valorem real and business personal property tax on the assessed value of the Project imposed consistent with the authority granted by Article 8 of the Texas Constitution.

"Agreement" means this Economic Development Program Agreement.

"County" means Williamson County, Texas.

"Convention Center" means the convention center described in Section 3.04.

"Developer" means KR Acquisitions, LLC, a Delaware limited liability Developer.

"Economic Incentive Payment(s)" ("EIPs") means all of the payments required to be paid by the County to the Developer this Agreement.

"Effective Date" is December __, 2016.

"Full Time Equivalent Employee" ("FTE") means a combination of employees, each of whom individually may not be a full-time employee because they are not employed on average at least 35 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. FTE's shall include original hires or their replacements over time.

"Hotel" means the hotel described in Section 3.03.

"Project" means Project construction and operation of the Convention Center, Hotel and Water Park, as defined herein..

"Property" means the real property described and shown on **Exhibit A**.

"Public Improvements" means the Offsite Public Improvements, the Onsite Public Improvements and the Kenney Fort Blvd. Improvements located within and outside the boundaries of the Property that are necessary to serve the development of the Property and described in Section 6.02 of the Master Development Agreement.

"Recapture Liability" means the total amount of all EIP's that are paid as result of this Agreement that are subject to recapture by the County from the Developer in the event the County terminates this Agreement as a result of a default by the Developer.

"State" means the State of Texas.

"Texas Public Information Act" means Texas Government Code Chapter 552, as amended.

"Water Park" means the facility described in Section 3.05.

ARTICLE III **THE PROJECT**

3.01 General Description. The Project will be planned, developed and constructed on the Property. The Project will be a master planned, mixed-use development that will be anchored by a Kalahari Resort and Convention Center, which will include the Hotel, the Convention Center, and the Water Park. In addition, the Project will include entertainment, recreation, and other uses permitted by the zoning of the Property at the time of development.

3.02 Amount of Investment. The Developer agrees to spend or cause to be spent a cumulative total of at least \$350,000,000 in improvements to real property and additions to personal property within the Property not later than _____, subject to (a) the City of Round Rock (the "City") completing construction of the Offsite Public Improvements consistent with the construction schedule contemplated by Section 5.07 of the Master Development Agreement entered into between Developer and the City; (b) the City first issuing bonds to finance the construction of the Convention Center as described in Section 7.04 of the Master Development Agreement; (c) the City issuing all of the permits and other approvals necessary for construction of the Hotel, Convention Center, and Water Park; and (d) any delays caused by an event of force

majeure. Such costs shall include all hard costs and soft costs.

3.03 The Hotel. The Hotel shall have a minimum of 975 guest rooms, at least one full-service restaurant, additional food and beverage outlets, room service, valet parking, bell and concierge service, and entertainment and retail facilities. A spa or exercise facility shall be located within the Project. The Hotel shall be located on the Property, and shall be adjacent to the Convention Center. The Hotel may be located on a separate platted lot from the lot on which the Convention Center will be developed.

3.04 The Convention Center. The Convention Center shall have a minimum of 150,000 square feet of indoor convention, exhibition, and meeting space. The Convention Center shall be located on the Property and shall be attached or adjacent to the Hotel. The Convention Center may be located on a separate platted lot from the lot on which the Hotel will be developed.

3.05 The Water Park. The Water Park shall have a minimum of 200,000 square feet of water and related space attached or adjacent to the Hotel. The indoor portion of the Water Park may be in a separate building from the Hotel. The Water Park may include indoor and outdoor features. The Water Park may be located on a separate platted lot from the Hotel.

3.06 Additional Property. The Developer has entered into a contract to purchase an additional 1.5-acre tract of land known by the Parties as the "Boyles Tract, ". The Parties agree that this Agreement will be amended to include the Boyles Tract as part of the "Property" after closing.

ARTICLE IV

OBLIGATIONS OF DEVELOPER

4.01 Construction and Operation of the Project. In consideration of and subject to the County's compliance with this Agreement, the Developer agrees to construct, operate, and maintain the Project and comply with all other the terms and conditions of this Agreement.

4.02 Jobs. The Developer agrees to cause the employment of at least 700 FTE's in the Project no later than 12 months after the Project is opened and to cause to be maintained at least 700 FTE's in the Project thereafter during the term of this Agreement.

4.04 Job Compliance Affidavit. Commencing 12 months after the Project is opened, the Developer agrees to provide to the County an annual Job Compliance Affidavit for the remainder of the term of this Agreement. A copy of the Job Compliance Affidavit form is attached hereto as **Exhibit B**. The County shall have the right, following reasonable advance notice to the Developer, to audit the Developer's records to verify that this obligation has been satisfied.

4.05 Developer Accounting. The Developer shall each maintain complete books and records showing its compliance with its obligations under this Agreement, which books and records shall be deemed complete if kept in accordance with generally acceptable accounting principles as applied to Texas corporations. Such books and records shall be available for examination by the

duly authorized officers or agents of the County during normal business hours upon request made not less than 10 business days prior to the date of such examination. The Developer shall maintain such books and records throughout the term of this Agreement. Such books and records contain confidential information of the Developer, including proprietary information, that is exempt from Texas public information act disclosure. If in the future the County. receives a request for public information, the County will (1) immediately notify the Developer as required by Section 552.305(d) of the Texas Public Information Act of the request for information; (2) withhold the requested information from disclosure pending a Texas Attorney General determination requiring disclosure; and (3) notify the requestor of the withholding pending the Texas Attorney General's determination. The notice to the Developer will include a copy of the written request for information and a statement that Developer may, within 10 business days of receiving the notice, submit to the Texas Attorney General reasons why the information in question should be withheld and explanations in support thereof. Developer, has 10 business days after receiving notice from the County of the request for public information to assert an exception from disclosure under Section 552.101, 552.110, 552.113, or 552.131 of the Texas Public Information Act and present its arguments to the Texas Attorney General for nondisclosure.

4.06. Compliance with §22.07 of the Texas Tax Code. The Developer agrees to allow the chief appraiser or his authorized representative to enter the premises of the Project in accordance with § 22.07 of the Texas Tax Code, as amended.

4.07 Employee Benefits. Developer agrees to provide County proof of provision of reasonably-affordable health insurance to all FTE's

4.08 EIP Submittal Package. In order to receive each annual EIP, the Developer shall submit to the County an EIP Submittal Package. Each EIP Submittal Package shall be in a form as approved by the County. If Developer shall fail to timely submit a Grant Submittal Package for a particular year, then the County *may* give Developer written notice of Developer's failure to timely submit such EIP Submittal Package, and Developer shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such EIP Submittal Package. The County's determination of the amount of the EIP due to Developer is final.

ARTICLE V

ECONOMIC INCENTIVE PAYMENTS

5.01 Conditions Precedent to Payment of EIPs. The following conditions must be satisfied before all or any portion of the EIPs or the Supplemental EIPs are paid:

(a) **Construction of the Project.** Developer shall develop, plan, design, and construct the Project in accordance with the terms and conditions of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Developer and the County shall have no obligations or responsibilities under this Agreement if the City of Round Rock fails to substantially comply

with the terms and conditions of the Master Development Agreement entered into between Developer and the City..

(b) **Construction Schedule.** The Parties agree that it is their intention that the construction of the Hotel, Convention Center, and the Water Park will be complete no later than December 31, 2021, or such other date agreed upon by the Parties after finalizing the development schedule. The Parties agree that it is their intention to use their best efforts to work together to finalize a development schedule no later than December 31, 2017, that is reasonable and will meet the aforesaid goals.

5.02 EIP'S Not Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to the Developer that require annual appropriation. The payments to be made to the Developer shall be made by the County as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 381 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the County under applicable Texas law, subject to any applicable limitations or procedural requirements. To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

5.03 EIP Recapture. In the event the County terminates this Agreement as result of a default by the Developer, the County may recapture and collect from the Developer the Recapture Liability. Provided however, the Recapture Liability hereunder shall not exceed, in the aggregate, an amount equal to the EIPs paid hereunder during the immediately preceding two calendar years. Developer shall pay to the County the Recapture Liability within 30 days after the County makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Developer may be entitled. Notwithstanding anything herein to the contrary, such Recapture Liability shall not exceed, in the aggregate, an amount equal to all EIPs that were paid pursuant to this Agreement from the Effective Date to the date of termination (together with interest thereon to be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas, but without the addition of a penalty). The County shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

5.04 Undocumented Workers. The Developer and Tenant each certify that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, the Developer or Tenant is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer or Tenant, respectively, shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

ARTICLE VI

OBLIGATIONS OF COUNTY

6.01 EIP Reimbursement. During the term of this Agreement and so long as an Event of Default has not occurred and is continuing as set forth in this Agreement (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), County will comply with the following terms and conditions:

- (a) For each calendar year during the term of this Agreement and beginning in tax year 2018, an amount equaled to 50% the real and business personal Ad Valorem Property Tax revenue paid by Developer and attributed solely to the Project shall be tendered from the County's general fund as an EIP Reimbursement by the County to Developer on an annual basis upon Developer's satisfaction of the requirements of this Agreement. The County agrees to process any County EIP's to Developer within sixty (60) days after the County has approved the EIP Submittal Package.
- (b) The above-described EIP's shall be paid for a period of fifteen (15) years, so long as Developer complies with the terms and condition of this Agreement. If Developer remains in substantial compliance with the terms and conditions of the Agreement, the Court will grant a fifteen (15) year extension. After the extended term has expired, all future Ad Valorem Taxes shall be retained by the County.
- (c) Developer agrees that it is the sole obligation of Developer to present satisfactory evidence to the County that all Ad Valorem Tax payments have actually been paid to and received by the County for the Project. If for any reason, the County is unable to verify that the Ad Valorem Tax payments were received by the County, the County is under no obligation to make the Grant payments.

ARTICLE VII

MISCELLANEOUS

7.01 Mutual Assistance. The County and the Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Property.

7.02 Representations and Warranties. The County represents and warrants to the Developer that: (a) this Agreement is within its authority, (b) it is duly authorized and empowered to enter into this Agreement, and (c) this Agreement is enforceable against the County. The Developer, represents and warrants to the County that it has the requisite authority to enter into this Agreement and this agreement is enforceable against it.

7.03 Default; Remedies.

(a) No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure, such reasonable time determined based on the nature of the alleged failure, but in no event less than 30 days or more than 90 days after written notice of the alleged failure has been given. In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given or another Party begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. Notwithstanding the foregoing, however, a Party shall be in default of its obligation to make any payment required under this Agreement if such payment is not made within five business days after it is due.

(b) IF A PARTY IS IN DEFAULT, THE AGGRIEVED PARTY MAY, AT ITS OPTION AND WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT SEEK ANY RELIEF AVAILABLE AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, THE REMEDIES STATED HEREIN, AN ACTION UNDER THE UNIFORM DECLARATORY JUDGEMENT ACT, SPECIFIC PERFORMANCE, MANDAMUS, AND INJUNCTIVE RELIEF.

(c) In lieu of the remedies identified herein, the County may opt to pursue any of the following remedies, in which case such remedy shall be the exclusive remedy for the default to which it applies:

(i) If the Developer is in Default in that the amount by which the investment which falls short of \$350,000,000, this amount may be deducted from the payments required to be paid by the County to the Developer and the Tenant pursuant to this Agreement.

(iii) If the Developer is in Default of Section 4.03 (Jobs), \$5,000 for each job not provided may be deducted from the payments required to be paid by the County to the Developer pursuant to this Agreement.

(d) In the event any legal action or proceeding is commenced between the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

7.04 Binding Effect; Entire Agreement. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. This Agreement constitutes the entire agreement between the Parties and supersede all prior agreements, whether oral or written, covering the subject matter of this Agreement.

7.05 Attorney's Fees. In the event any legal action or proceeding is commenced between all or

some of the Parties to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

7.06 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.

7.07 Assignment. Except as otherwise provided in this section, the Developer may not assign all or part of its rights and obligations to a third party without the express written consent of the County unless such assignment is a collateral assignment to a lender. The Developer may each assign all or part of its respective rights and obligations under this Agreement to an entity that is controlled by or under common control with the Developer, and shall provide a copy of the assignment to the County within 15 days after the effective date of the assignment.

7.08 Amendment. This Agreement may be amended only by the mutual written agreement of the Parties.

7.09 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, by electronic mail, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

If to County: Williamson County
County Judge
710 Main Street, suite 101
Georgetown, Texas 78626

If to the Developer:

KR Acquisitions LLC

P.O. Box 590
1305 Kalahari Drive
Wisconsin Dells, WI 53965
Attn: Mary Bonte Spath
Phone: (608) 254-5320
Email: mbonte@kalahariresorts.com

With required copy to:

Shupe Ventura Lindelow & Olson, PLLC
9406 Biscayne Blvd.
Dallas, Texas 74218
Attn: Misty Ventura
Phone: (214) 328-1101
Email: misty.ventura@svlandlaw.com

Any Party may designate a different address at any time upon written notice to the other Parties.

7.10 Interpretation. Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.

7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.14 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

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

7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (an "event of force majeure"). An event of force majeure for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay; unusual weather events; and unusual delays in obtaining County approvals of plats, permits, or other development approvals required to construct and operate the Project.

Except as otherwise expressly provided herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of force majeure.

7.17 Exhibits. The following **Exhibits A - B** are attached and incorporated by reference for all purposes:

<u>Exhibit A:</u>	Property Description and Depiction
<u>Exhibit B:</u>	Job Compliance Affidavit

7.18 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The County, its past, present and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

7.19 Term. This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate fifteen (15) years after the Effective Date. However, if Developer remains in substantial compliance with the terms and conditions of this Agreement, the Commissioners Court shall extend the term for an additional fifteen (15) years.

EXECUTED to be effective as of the Effective Date.

(SIGNATURES ON FOLLOWING PAGES)

WILLIAMSON COUNTY, TEXAS,

By: _____
Dan A. Gattis, County Judge

Date: _____

Attest:

Nancy Rister, County Clerk

KR ACQUISITONS, LLC
a Delaware limited liability Developer

By: _____
Todd Nelson, President

Date: _____

EXHIBIT A

PROPERTY DESCRIPTION AND DEPICTION

EXHIBIT B

JOB COMPLIANCE AFFIDAVIT

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED _____(NAME)_____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED BELOW AND AFTER HAVING BEEN DULY SWORN, ON HIS/HER OAT STATED AS FOLLOWS:

1. "MY NAME IS _____. I AM OVER THE AGE OF 21 YEARS AND AM CAPABLE OF MAKING THIS AFFIDAVIT. THE FACTS STATED IN THIS AFFIDAVIT ARE WITHIN MY PERSONAL KNOWLEDGE AND ARE TRUE AND CORRECT.

2. "I AM THE _____(TITLE)_____ OF _____ AND I AM DULY AUTHORIZED TO MAKE THIS AFFIDAVIT.

3. "AS OF DECEMBER 31, 201____, ____ (NUMBER OF FTE'S) WERE EMPLOYED AT THE RPROJECT.

DATED THIS ____ DAY OF _____, 201____.

(PRINTED NAME)

(TITLE)

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS THE ____ DAY OF _____, 201____.

NOTARY PUBLIC, STATE OF _____

