

CITY OF MINERAL WELLS, TEXAS

RESOLUTION NO. 2021-11

A RESOLUTION OF THE CITY OF MINERAL WELLS, TEXAS APPROVING THE CRAZY WATER HOTEL ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE MINERAL WELLS ECONOMIC DEVELOPMENT CORPORATION, TAX INCREMENT FINANCING ZONE NUMBER TWO, AND CRAZY WATER HOTEL PBC, INC; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City Council of the City of Mineral Wells (the “City Council”) established the Tax Increment Financing Zone Number Two, City of Mineral Wells, Texas (“TIRZ #2”) by Ordinance No. 2008-15 on August 5, 2008, to promote re-development of downtown Mineral Wells through the use of tax increment financing for a time period of twenty years, which was subsequently extended for an additional fifteen years by ordinance on July 21, 2020; and

**WHEREAS**, the initial TIRZ #2 Project Plan adopted by the City Council by Ordinance No. 2008-17 on August 19, 2008 (the “Initial TIRZ #2 Project Plan”), which stated that the purpose of the establishment of the TIRZ #2 district was to provide an incentive to stimulate the redevelopment of the Baker Hotel (a historic landmark in the City) and the redevelopment of the City’s downtown area; and

**WHEREAS**, the Crazy Water Hotel is another historic landmark in the City of Mineral Wells which lies in the City’s downtown area within the original TIRZ #2 district boundaries that has been vacant in recent years; and

**WHEREAS**, Crazy Water Hotel PBC, Inc. (the “Developer”) has approached the Mineral Wells Economic Development Corporation (“EDC”) requesting a grant from the EDC from sales tax revenues to be collected at the Crazy Water Hotel site; and

**WHEREAS**, the Developer has also approached the TIRZ #2 Board requesting a grant from tax increment collected by TIRZ #2 at the Crazy Water Hotel site; and

**WHEREAS**, the EDC and TIRZ #2 have agreed to provide the requested incentives in exchange for Developer’s creation of jobs and capital expenditures at the Crazy Water Hotel site; and

**WHEREAS**, the Developer has informed the City, the EDC, and TIRZ #2 that it intends to treat the grant payments from the EDC and TIRZ #2 as non-shareholder contributions to capital made by a governmental entity under Section 118 of the Internal Revenue Code of 1986 pursuant to a “master development plan” (as used in Section 13312(b) of the Tax Cuts and Jobs Act of 2017, Public Law 115-97) enacted by City Council prior to December 22, 2017; and

**WHEREAS**, the City Council (i) affirms that it considers the Initial TIRZ #2 Project Plan a master development plan for the growth and development of the City and (ii) affirms that the agreement approved by this Resolution constitutes part of the implementation of the Initial TIRZ #2 Project Plan; and

**WHEREAS**, the City Council finds that it would be in the best interest of the citizens of the City and for the economic development of the City to approve the Crazy Water Hotel Economic Development Incentive Agreement between the EDC, TIRZ #2, and the Developer.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINERAL WELLS, TEXAS:**

**Section 1.** That the findings recited above are true and correct and incorporated as if fully set forth in the body of this Resolution and are adopted as the legislative findings of the City Council.

**Section 2.** That the City Council hereby affirms that it considers the Initial TIRZ #2 Project Plan a master development plan.

**Section 3.** That the City Council hereby affirms that the Crazy Water Hotel Economic Development Incentive Agreement between the Mineral Wells Economic Development Corporation, Tax Increment Reinvestment Zone Number Two, and Crazy Water Hotel PBC, Inc., attached hereto as Exhibit "A" (the "Economic Development Agreement") constitutes part of the implementation of the Initial TIRZ #2 Project Plan by furthering the strategic development goals for the downtown area.

**Section 4.** That the City Council hereby approves the Economic Development Agreement.

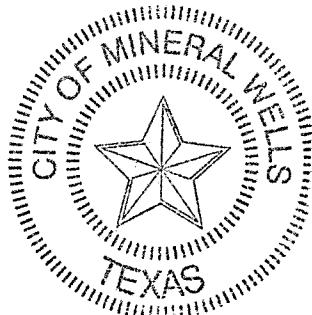
**Section 5.** That this Resolution shall take effect immediately from and after its passage.

**PASSED AND APPROVED** by the City Council of the City of Mineral Wells, Texas, this the 6<sup>th</sup> day of July, 2021.

Regan Johnson  
Regan Johnson, Mayor

ATTEST:

Peggy Clifton  
Peggy Clifton, City Clerk



**CRAZY WATER HOTEL  
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

**THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT** (the “Agreement”) is made and entered into by and between the Mineral Wells Economic Development Corporation, a Type B economic development corporation (the “EDC”), Tax Increment Reinvestment Zone Number Two (“TIRZ#2”), and Crazy Water Hotel PBC, Inc., a Texas public benefits corporation (“Developer”) on this the ~~6th~~ day of July, 2021 (the “Effective Date”). The EDC, TIRZ#2, and Developer are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties”.

**RECITALS:**

**WHEREAS**, the Crazy Water Hotel was originally constructed in 1912 over the most famous of the local mineral springs well, the Crazy Well, and was reconstructed, after being destroyed in a fire, in 1927, but has been vacant and fallen into disrepair in recent years; and

**WHEREAS**, the EDC is authorized to provide incentives to promote new and expanded business development pursuant to Chapter 505 of the Texas Government Code; and

**WHEREAS**, TIRZ#2 is authorized to enter into agreements to provide tax increment revenue for project costs that benefit the reinvestment zone pursuant to Section 311.010(b) of the Texas Tax Code; and

**WHEREAS**, with the incentives described herein, Developer will redevelop the Crazy Water Hotel and cause it to be a catalyst for additional economic development within TIRZ#2 and for the City of Mineral Wells and Palo Pinto County;

**WHEREAS**, on July 6, 2021, the City Council of the City of Mineral Wells adopted Resolution No. 2021-\_\_ approving this Agreement; and

**NOW, THEREFORE**, by and in consideration of the mutual covenants and agreements contained herein, the EDC, TIRZ#2, and Developer hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Whenever used in this Agreement, the following terms shall have the following meanings ascribed to them:

“**Base Year**” shall be tax year 2021.

“**City**” means the City of Mineral Wells, Texas.

“**Developer Parties**” means Developer and Developer’s tenants at the Project.

“**Force Majeure Event**” means any event or occurrence that is not within the control of such Party or its Affiliates and prevents a Party from performing its obligations under this Agreement, including

without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies, or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of any Party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake, or other casualty; pandemic; any law, order, regulation, or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition, or other decision of any governmental agency having jurisdiction over the Party, over the Project, or over a Party's operations.

**“Project”** means the redevelopment of the Crazy Water Hotel on the Property, as described in Article II, below.

**“Project Term”** shall mean a period beginning on the Tax Payment Effective Date and continuing to the end of Tax Year 2044.

**“Property”** means the real property described on Exhibit A, attached hereto.

**“Real Property Improvements”** means any improvements constructed on the Project.

**“Real Property Taxes”** are the TIRZ#2's share of the ad valorem taxes on the value of all Real Property Improvements.

**“Sales Tax Revenues”** means the total amount of taxable sales and taxable purchases from and/or on the Project during the Project Term.

**“Tax Increment”** means the amount of ad valorem property tax generated and collected from the Project above the tax generated in the Base Year, less a pro-rata share of the City's reasonable costs associated with the administration of TIRZ#2, as determined by the City.

**“Tax Payment Effective Date”** shall mean January 1 following the date the Project opens for business to the public.

## **ARTICLE II** **PROJECT DESCRIPTION**

**2.1    Project.** Developer intends to construct, or cause to be constructed, the redevelopment of the Crazy Water Hotel as an event venue and tourist destination with a minimum of 74 residential units for lease, sale, or hospitality; a minimum of 10,000 square feet of meeting and entertainment spaces including the upper story event center ballroom and pavilion, a game room, and a series of meeting spaces; a minimum of 17,000 square feet of retail and restaurant space in a variety of sizes and located in spaces historically appropriate to the structure; and buildout of the North Property, as defined in Exhibit A, for retail and restaurant activity (the “Project”).

**2.2    Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City for the Project and commence operation by December 31, 2021.

**2.3 Job Creation.** Within 12 months of its receipt of a Certificate of Occupancy for the Project, Developer Parties shall collectively and directly employ at least 50 full time equivalent employees on the Project and shall maintain such level of employment during the Project Term. On or before February 1 of each calendar year during the Project Term, Developer shall cause Developer Parties to provide to the EDC and TIRZ#2 affidavits certifying each Developer Party's contribution to the compliance with the foregoing employment requirements in the form attached hereto as Exhibit B ("Job Compliance Affidavit"), and, upon request by the EDC and/or TIRZ#2, Developer shall provide the EDC and TIRZ#2 with any and all necessary documentation to verify Developer Parties' compliance with the job creation and retention obligations under this Agreement.

## ARTICLE III ECONOMIC INCENTIVES

**3.1 Project – Economic Development Grant.** EDC shall pay to Developer an economic development grant in the form of a lump sum payment made solely from sales tax revenues collected by the EDC. TIRZ#2 shall pay to Developer an economic development grant in the form of an annual payment made solely from Real Property Taxes collected on the Project. Developer understands and agrees that the EDC and TIRZ#2 are not certifying or otherwise encumbering any funds for the incentives set forth in this Agreement. Developer agrees not to make any claims against the EDC or TIRZ#2 for any monies other than those from (a) sales tax revenues collected by the EDC and (b) Real Property Taxes collected on the Project. Nothing in this Agreement shall require the EDC or TIRZ#2 to make payment from revenue sources other than from (a) sales tax revenues collected by the EDC and (b) Real Property Taxes collected on the Project.

**a. EDC Project Grant.** The EDC shall pay Developer a performance driven incentive of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00), conditioned upon issuance of Certificates of Occupancy for 50 percent of retail and restaurant space in the Project. The EDC Project Grant payment shall be made within 30 days of the issuance of last Certificate of Occupancy which brings the Project over the 50 percent threshold.

**b. TIRZ#2 Project Grant.** Beginning on the Tax Payment Effective Date, TIRZ#2 shall annually pay to Developer 100 percent of the Tax Increment generated and collected from the Project by each taxing entity participating in TIRZ#2 and conveyed to TIRZ#2 beginning with Tax Year 2021 until the end of Tax Year 2031 and, thereafter, shall annually pay to Developer 80 percent of the Tax Increment generated and collected from the Project for the remaining Project Term.

**c. Use of Funds.** Notwithstanding the foregoing, so long as Developer expends funds in connection with the Project in the categories and amounts set forth above, the actual Tax Increment funds may be specifically allocated by Developer to costs and line item expenditures which Developer determines (without any recommendation, opinion, or determination by the City) do not constitute "qualified rehabilitation expenditures" under Section 47 of the Internal Revenue Code of 1986, as amended (the "Code").

**3.2 Conditions to Grants.** The EDC's and TIRZ#2's obligation to pay any economic development grant under this Agreement shall be conditioned upon and subject to Developer's timely compliance with and satisfaction of all of the terms and conditions of this Agreement, including, without limitation, each of the conditions set forth below.

a. For each year of the term of this Agreement, Developer shall submit to the EDC and TIRZ#2 a true and correct copy of the Job Compliance Affidavit(s).

b. The fiscal year begins October 1<sup>st</sup> and ends September 30<sup>th</sup>. Therefore, Developer shall submit written requests for economic development grant payments accrued during that time not later than August 31<sup>st</sup> of each year. In any year, if Developer fails to request the grant payments as set forth above, the EDC and/or TIRZ#2 shall have no obligation to make such payment to Developer and Developer will have forever forfeited the right to receive such payment.

**3.3 Additional Developer Agreements.** In addition to the conditions to the grant payments set forth above, Developer agrees to the following requirements of the Project:

a. Developer covenants and agrees to maintain a minimum annual average of 50 percent or greater occupancy of event, residential, retail and restaurant space for a period of no less than 5 years beginning at one year from the issuance of the first Certificate of Occupancy for the Project and commencement of operation of the Project.

b. Developer covenants and agrees that it shall not protest valuations on the Property during the Project Term.

c. Developer covenants and agrees that it shall be the Developer's responsibility to offer subsidies, reduced rent, or other incentives to attract retail and restaurant activity to the Project.

d. Developer covenants and agrees that it will provide or ensure a minimum of 120 off-street parking spaces in compliance with the City's Zoning Ordinance for the duration of the Project Term. Said parking spaces must be located within four blocks of the Property. The parking spaces may be shared spaces with existing uses only if Developer obtains and provides a study which shows to the satisfaction of the EDC and TIRZ#2 that such sharing does not negatively impact existing uses for said parking spaces.

e. Developer agrees to maintain an annual membership with the Mineral Wells Area Chamber of Commerce.

f. Developer agrees to make a reasonable effort to hire qualified residents of the City as employees of the Project (this requirement shall survive termination).

g. Developer agrees to make a reasonable effort to hire local contractors, subcontractors, and suppliers in constructing the Project, as evidenced by the companies from which Developer solicits bids for the Project. Developer shall submit to the EDC and TIRZ#2 the names of the companies and individuals from which it solicits bids for the Project and the city in which the business or individual is located. This documentation shall be submitted prior to the commencement of construction and annually thereafter until construction is complete as evidenced by the issuance of a Certificate of Occupancy.

**h.** Developer agrees that the construction, reconstruction, and maintenance of the Project shall comply with any ordinance, code, rule, regulation, standard, policy, order, guideline, or other requirement adopted or enforced by the City, including but not limited to, the International Building Code and International Fire Code, as adopted and amended by the City, as interpreted by the City's building, code, or other enforcement officials (the "City Regulations"). However, this agreement shall not prohibit Developer from making formal requests to the City for development due process authorized under the City Regulations, such as zoning changes, variances, or administrative appeals.

## **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES OF THE EDC**

**4.1** The EDC represents and warrants that:

**a.** It is a Type B economic development corporation and has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

**b.** The EDC knows of no litigation, proceedings, initiative, referendum, investigation, or threat of any of the same contesting the powers of the EDC or its officials with respect to this Agreement that has not been disclosed to the Developer.

**c.** The EDC knows of no law, order, rule, or regulation applicable to the EDC or to the EDC's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.

**d.** This Agreement constitutes a valid and binding obligation of the EDC, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, the EDC will defend the validity of this Agreement in the event of any litigation arising hereunder that names the EDC as a party or which challenges the authority of the EDC to enter into or perform its obligations hereunder.

## **ARTICLE V** **REPRESENTATIONS AND WARRANTIES OF TIRZ#2**

**5.1** TIRZ#2 represents and warrants that:

**a.** TIRZ#2 is a tax increment reinvestment zone created by Ordinance No. 2008-15 of the Mineral Wells City Council dated August 5, 2008, expanded in area by Ordinance No. 2020-11 of the Mineral Wells City Council dated July 21, 2020, and extended in duration by Ordinance No. 2020-21 of the Mineral Wells City Council dated October 20, 2020. TIRZ#2 has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

b. TIRZ#2 knows of no litigation, proceedings, initiative, referendum, investigation, or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to Developer.

c. TIRZ#2 knows of no law, order, rule, or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with, the execution and delivery of this Agreement.

d. This Agreement constitutes a valid and binding obligation of TIRZ#2, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws or general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, TIRZ#2 will defend the validity of this Agreement in the event of any litigation arising hereunder that names TIRZ#2 as a party or which challenges the authority of TIRZ#2 to enter into or perform its obligations hereunder.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES OF DEVELOPER

**6.1** Developer represents and warrants that:

a. Developer is authorized to do business, and is in good standing, in the State of Texas and shall remain in good standing in the State of Texas during the Project Term. As used herein, the term "good standing" means the status of Developer with the Comptroller of the State of Texas shall be "Active".

b. No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer that may result in any material adverse change in Developer's business or operation.

c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated and Developer has not been informed of any potential involuntary bankruptcy proceedings.

d. Developer shall remain current and in good standing with all sales taxes, property taxes, fees, and other recurring charges of the City, the State of Texas, and Palo Pinto County tax jurisdictions throughout the Project Term.

## ARTICLE VII DEFAULT, TERMINATION, AND REMEDIES

**7.1 Noncompliance with Jobs Obligations; Withholding Payments.** If, at any time during any year of the Project Term, Developer does not demonstrate that Developer Parties are in compliance with the obligations under Section 2.3 to create and retain jobs, no economic development grant payment shall be due from the EDC or TIRZ #2 for that year and Developer would have no recourse or claim for recovery of the amount of the economic development grant payment that would have otherwise been due for that year.

**7.2 Termination for Misrepresentation.** Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the EDC or TIRZ#2 may terminate this Agreement immediately by providing written notice to Developer if Developer, its officers or signatories to this Agreement intentionally misrepresented or misrepresent any material fact or information: (a) upon which the EDC or TIRZ#2 relied in entering into this Agreement; (b) upon which the EDC or TIRZ#2 relies in making an incentive payment; or (c) as an inducement for the EDC or TIRZ#2 to make an incentive payment. In the event of termination under this Section 7.2, Developer shall, within sixty (60) days of written notice of termination, repay 100 percent of all grant payments received by Developer from the EDC and TIRZ #2.

**7.3 Notice of Default.** At any time during the Project Term that Developer is not in compliance with its obligations under this Agreement, other than Developer Parties' obligations to create and retain jobs at the Project, the EDC or TIRZ#2 may send Developer notice of such non-compliance. If such non-compliance is not cured within 60 days after Developer's receipt of such notice, if non-compliance is not reasonably susceptible to cure within 60 days, or if a cure is not begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a "Cure"), then the EDC or TIRZ#2 may, at its option, terminate this Agreement or withhold incentive payments otherwise due for the calendar year or years in which the non-compliance occurred and continues. If the EDC or TIRZ#2 elects to withhold incentive payments rather than to terminate the Agreement, then, upon a Cure by Developer, Developer will be eligible to receive incentive payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Project Term. An incentive payment withheld by the EDC or TIRZ#2 as a result of Developer's failure to Cure under this Section is deemed forfeited by Developer and the EDC or TIRZ#2 has no obligation to make retroactive payment even after Developer comes back into compliance. The Project Term shall not be extended as a result of any cure period under this Section.

**7.4 Remedies.** Except to the extent that this Agreement or applicable law requires otherwise, the remedies set forth in this Section are the sole and exclusive remedies available upon a violation, default, Breach, or Material Breach (each as defined below) of this Agreement.

**a. Effect of Breach.** A Party will be deemed to be in "Breach" of this Agreement only if:

i. it fails to substantially comply with any material provision of this Agreement; and

ii. it does not cure such failure within a reasonable period of time following delivery to it of notice by another Party describing such failure in reasonable detail, which period will not be less than 60 days. The EDC and TIRZ#2 agree and acknowledge that the Developer's representations, warranties, covenants, agreements, and performance obligations under this Agreement are limited to and apply exclusively to the operations of Developer at the site of the Property and any determination as to whether Developer is in violation, default, Breach, or Material Breach of this Agreement will be limited to Developer's operations on the Property. In the event of a Breach for which this Agreement does not provide a specific remedy, the other Party may pursue any legal or equitable remedies they may have under this Agreement or applicable law; provided however, that the EDC and TIRZ#2 agree that, except that

expressly provided in this Agreement, in the event of a Breach by Developer, it will not be entitled to and may not seek or pursue the remedy of recapturing any incentive payments realized by Developer prior to the date of the Breach or Material Breach.

**b. Effect of Material Breach.** If Developer Breaches its obligations under this Agreement to make or cause to be made the Real Property Improvements (after any applicable notice and cure period has lapsed, a “Material Breach”), the EDC or TIRZ#2 has the right to terminate this Agreement in full and Developer shall repay all grant payments received by Developer from the EDC or TIRZ #2 within sixty (60) days of the written notice of termination.

**c. Effect of Force Majeure Event.** A Party will not be deemed in Breach, Material Breach, default or otherwise in violation of any term of this Agreement to the extent such Party’s action, inaction, or omission is the result of a Force Majeure Event. The Parties agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A Force Majeure Event pauses a Party’s performance obligation for the duration of the event but does not excuse it.

**d. Overpayments.** Notwithstanding the limitations or remedies in this Article, it is understood and agreed that, because the incentive payments are from public funds, any verified overpayments to Developer may be recovered by the EDC or TIRZ#2, at the EDC’s or TIRZ#2’ sole discretion, through available remedies at law or in equity, or by reducing future incentive payments by the amount of an overpayment.

**e. Limitation on Damages.** Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall be a Party be entitled to punitive, special, or consequential damages.

**7.5 Indemnity.** DEVELOPER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE EDC AND TIRZ#2, THEIR BOARD MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTION, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY’S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY A THIRD PARTY AND ARISING OUT OF DEVELOPER’S PERFORMANCE OF THIS AGREEMENT. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 7.5 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## ARTICLE VIII MISCELLANEOUS PROVISIONS

**8.1 Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties.

**8.2 Audits and Monitoring.** During the term of this Agreement, the EDC and TIRZ#2 reserve the right to conduct reasonable audits to determine compliance with the terms and conditions of the Agreement. Auditable materials include, but are not limited to, the sales and use tax records, property

tax records, and employment records of all businesses associated with this Agreement. Developer is required to provide reasonable assistance in obtaining such records from tenant businesses. Failure to provide such assistance shall be grounds for the EDC and/or TIRZ#2 to withhold grant payments until assistance is provided and records received.

**8.3 Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

**8.4 Construction and Interpretation.**

**a.** Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words “including,” “such as”, or words of similar import, when following any general term, statement, or matter, shall not be construed to limit such statement, term, or matter to specific terms, whether or not language of non-limitation, such as “without limitation” or “but not limited to” are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term, or matter.

**b.** The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

**c.** This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

**8.5 Assignability.** Developer may assign or transfer its rights (including the right to receive payments), duties, and obligations under this Agreement to any person or entity only with prior written approval and consent by the EDC and TIRZ#2, which approval shall not be unreasonably withheld, conditioned, or delayed.

**8.6 Severability.** If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.

**8.7 Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.

**8.8 Federal Income Tax Treatment of Economic Development Grant Payments.** Developer intends to treat the economic development grant payments paid to it under this Agreement

as non-shareholder contributions to capital made by a governmental entity under Section 118 of the Code pursuant to a “master development plan” (as used in Section 13312(b) of the Tax Cuts and Jobs Act of 2017, Public Law 115-97) and the Developer intends to treat the 2008 TIRZ #2 Project Plan, adopted by the City Council of the City of Mineral Wells on August 19, 2008 by Ordinance No. 2008-17 as a “master development plan” for this purpose. Developer acknowledges and agrees that the City, the EDC, and TIRZ#2 express no opinions whatsoever regarding the Developer’s treatment of the economic development grant payments and that none of the City, the EDC, or TIRZ#2, nor any of their respective boards, directors, partners, officers, consultants, employees, or agents have made any representations or covenants with respect to the federal income tax treatment of the economic development grant payments.

**8.9     Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.

**8.10    Notice.** Any notice or demand, which any Party is required to or may desire to serve upon another, must be in writing and shall be sufficiently served if (a) personally delivered, (b) sent by registered or certified mail, postage prepaid, or (c) sent by commercial overnight carrier, and addressed to:

If to EDC or TIRZ#2:

City of Mineral Wells  
ATTN: City Manager  
P.O. Box 460  
Mineral Wells, TX 76067

With a Copy to:

Eileen M. Hayman  
Messer, Fort & McDonald, PLLC  
500 Chestnut Street, Suite 1601  
Abilene, TX 79602

If to Developer:

Crazy Water Hotel PBC, Inc.  
ATTN: Thomas R. Nix, President  
103 SE 1<sup>st</sup> Street  
Mineral Wells, TX 76067

With a Copy to:

Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard, Suite 3800  
Dallas, Texas 75201  
Attn: Phillip Geheb

Or such other address or addresses which any Party may be notified in writing by any other Party to the Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed, or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed, or improperly addressed; provided, however, that should such notice pertain to the change of address to any of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

**8.11 Force Majeure.** In the event any Party is rendered unable, wholly or in part, by an Event of Force Majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving notice and full particulars of such Event of Force Majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by the Event of Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

**8.12 Governing Law.** This Agreement and the relationship between the Parties shall be governed by the laws of the State of Texas, and venue for any action pertaining to this Agreement shall be in the State District Court of Palo Pinto County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

**8.13 Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the EDC and TIRZ#2 shall be the City Manager or his or her designee (the "City Representative"), and the initial representative for Developer shall be Randy Nix (the "Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property.

**8.14 Effective Date.** This Agreement shall be binding and take effect only upon all Parties' signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

**8.15 Legal Contest.** This Agreement is entered into in accordance with the applicable law as understood by the Parties. In the event any part, provision, or paragraph hereof shall become unenforceable by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

**8.16 Public and Confidential Information.** Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by EDC and TIRZ#2 as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information

Act (the “Act”), the EDC and/or TIRZ#2 shall follow the standards set out in the Act and under the Texas Attorney General’s procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

**8.17 Automatic Termination.** In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify the EDC and TIRZ#2 in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice. If a term, covenant, or condition of this Agreement does not have an earlier express termination date, all terms, covenants, and conditions of this Agreement shall automatically terminate upon the later of the payment of all grant funds due herein.

**8.18 Undocumented Workers.** During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, Developer agrees not to knowingly employ any undocumented workers and to use commercially reasonable efforts to cause other Developer Parties to comply with this Section of the Agreement to the extent that the jobs in question are counted towards Developer Parties’ compliance with the job creation and retention requirements under this Agreement. Developer further agrees that if Developer is convicted of a violation under 8 U.S.C. § 1324a(f), grant payments shall terminate.

**8.19 Incorporation of Recitals.** The recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

#### LIST OF EXHIBITS

Exhibit A      Property Description (Survey and Legal Description)  
Exhibit B      Job Compliance Affidavit (form)

*Signature Pages Follow*

EXECUTED on this the 6<sup>th</sup> day of July, 2021.

MINERAL WELLS ECONOMIC  
DEVELOPMENT CORPORATION

Mitchell Bradshaw

DR. JOHN KUHN, President

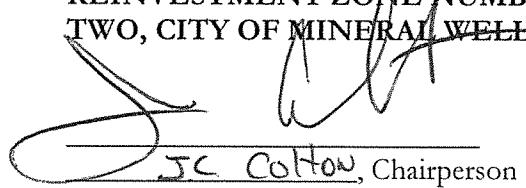
Mitchell Bradshaw, Acting President

ATTEST:

Tracey Kirsch  
TRACEY KIRSCH, Secretary

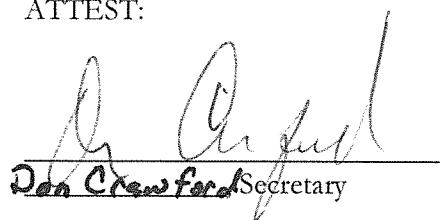
EXECUTED on this the 6 day of July, 2021.

REINVESTMENT ZONE NUMBER  
TWO, CITY OF MINERAL WELLS



JC Cotton, Chairperson

ATTEST:

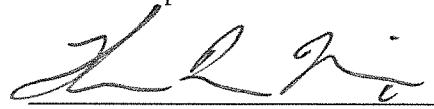


Don Crawford Secretary

EXECUTED on this the 6 day of July, 2021.

DEVELOPER:

**CRAZY WATER HOTEL PBC, INC.**  
a Texas corporation



Thomas Randall Nix, President

**EXHIBIT A**

*(Insert Survey and Legal Description)*



EXHIBIT B

## JOB COMPLIANCE AFFIDAVIT

STATE OF TEXAS  
COUNTY OF PALO PINTOS

On this day personally appeared \_\_\_\_\_, a person known to me, who being duly sworn stated as follows:

1. "My name is \_\_\_\_\_, I am over the age of 21, have never been convicted of a felony, and am fully competent to testify to the truth of the matters stated herein. Each and every statement contained herein is based upon my personal knowledge and is true and correct.

2. I am the \_\_\_\_\_ of \_\_\_\_\_ [Developer Party], a \_\_\_\_\_, and am duly authorized to make this affidavit on behalf of \_\_\_\_\_ [Developer Party].

3. At all times from January 1, 20\_\_ to December 31, 20\_\_, [Developer Party] directly employed at least \_\_\_ full-time equivalent jobs at the Crazy Water Hotel located in Mineral Wells, Texas."

Further Affiant sayeth not.

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Printed Name

Sworn and subscribed to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public in and for the State of Texas