

May 8, 2017

Host Community Benefit Agreement
By and Between
Merlin Entertainments Group US Holdings Inc.
and
The Town of Goshen

THIS AGREEMENT is made and entered into as the _____ day of _____, 2017, by and between Merlin Entertainments Group US Holdings Inc., whose address is 3201 Lionshead Avenue, Carlsbad, California 92010 (“Merlin Entertainments”, together with any Merlin Entertainments Affiliate to which the development or operation of the Project is assigned in accordance herewith) and the Town of Goshen, whose address is 41 Webster Avenue, Goshen, New York 10924 (the “Town”).

RECITALS

1. Merlin Entertainments proposes to construct a theme park and resort (the “Project”) on approximately 140 acres of a 521.95 acre site consisting of 15 total parcels located off Harriman Drive in the Town of Goshen (the “Project Site”). The Project, to be called LEGOLAND New York, will include rides and attractions, an aquarium, theaters, restaurants, a hotel and various back-of-house (administrative and maintenance) facilities including offices and staff areas as well as associated parking and drainage facilities.

2. The Project Site consists of 15 existing tax lots (11-1-45, 46, 47, 49.2, 58, 60, 62 through 69 and 15-1-59) comprising 521.95 acres located in the Town of Goshen and situated south of Harriman Drive, west of Arcadia Road, East of Reservoir Road and north of Conklingtown Road. The Project Site extends south to Conklingtown Road and east to Arcadia Road. The majority of the Project Site is vacant. Two residential dwellings are located along Harriman Drive on tax lot 11- 1-47, an existing communications tower is located on tax lot 11-1-45 and other structures are in various states of deterioration.

3. Merlin Entertainments is the contract vendee of all of the parcels comprising the Project Site with the exception of certain parcels which were created for a planned but unbuilt phase of the Arcadia Hills subdivision, which parcels are identified on the Town of Goshen Tax Map as 11-1-60, 11-1-62, 11-1-63, 11-1-64, 11-1-65, 11-1-66, 11-1-67, 11-1-68 and 11-1-69 (collectively, the “Town-Owned Parcels”). The Town-Owned Parcels were deeded to the Town of Goshen by the County of Orange after a tax foreclosure on July 25, 1984. Merlin Entertainments proposes to acquire those parcels, or portions thereof, from the Town of Goshen for their fair market value.

4. Merlin Entertainments has applied to the Orange County Industrial Development Agency (“OCIDA”) for a Payment In Lieu Of Taxes agreement (“PILOT Agreement”) that would establish a specific schedule of payments in lieu of real property tax payments over a specified term.

5. Merlin Entertainments hereby offers to provide the Town of Goshen, as the host community for LEGOLAND New York, with certain host community benefits, including the payment of a host community fee to the Town of Goshen for every visitor to LEGOLAND New York, as set forth herein. These host community benefits are in addition to, and not in lieu of, whatever monies are otherwise owing by Merlin Entertainments to the Town by operation of law or other agreements, including, but not limited to, real property tax payments (subject to any PILOT Agreement determined by the OCIDA), and fees, escrow payments, and bonds required under the Town Code, by virtue of any condition of approval by the Town Planning Board, or any other State or local law.

6. This Agreement shall only take effect if and when the Project receives a Resolution of Approval from the Town Planning Board.

Accordingly, the Parties, for good and valuable consideration, the receipt of which is hereby acknowledged, enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

Section 1. Project Approvals.

Merlin Entertainments has applied for and is currently pursuing all Approvals necessary to design, develop, construct and operate the Project in a manner consistent with all applicable requirements of law, including, without limitation, the State Environmental Quality Review Act ("SEQRA"), Environmental Conservation Law, Article 8 and the regulations promulgated thereunder at 6 NYCRR Part 617.

"Approvals" means any and all Federal, State, County, Town or any governmental agency or authority permits and/or approvals, licenses, waivers, authorizations, orders or findings that are applicable to the development, construction and/or operation of the Project.

Section 2. Merlin Entertainments' Obligations.

A. Host Community Fee.

(1) Commencing upon the Grand Opening Date of LEGOLAND New York, and for each year that LEGOLAND New York is in operation, subject to the terms, conditions and limitations set forth in this Agreement, Merlin Entertainments shall pay the Town, in addition to all other monies as noted in "Recital 5" above, a yearly fee (the "Host Community Fee") for each visitor to LEGOLAND New York in the amount \$0.65 per visitor for each visit up to and including 2,000,000 visits, and \$0.20 per visitor for each visit in excess of 2,000,000 visits (the "Host Community Fee Rate") in any given year.

(2) For purposes of this Agreement, each daily visit to the LEGOLAND New York theme park shall be counted as one visit, regardless of whether the visit was the result of a ticket purchased at retail or promotional rates, or for a ticket

provided free of charge. The total number of annual visitors to LEGOLAND New York shall be referred to as the "Gate Number".

(3) The Host Community Fee Rate shall increase annually, beginning on January 1 of each year, by one and one-half (1.5%) percent, which increases shall be compounded. By way of example and for the avoidance of doubt, should LEGOLAND New York open on August 1, 2019, the Host Community Fee Rate shall increase by 1.5% on January 1, 2020 to \$0.65975 per visitor for each visit up to and including 2,000,000 visits, and \$0.203 per visitor for each visit in excess of 2,000,000 visits, and on January 1, 2021 the Host Community Fee Rate shall increase to \$0.66965 and \$0.206 per visit, respectively.

(4) Provided that during any year where a Force Majeure Event has not occurred, should annual attendance not exceed 800,000 visitors, Merlin Entertainments shall pay the Town of Goshen a minimum Host Community Fee based on 800,000 visitors (the "Minimum Host Community Fee") at the Host Community Fee Rate applicable to that year. By way of example and for the avoidance of doubt, should LEGOLAND New York have fewer than 800,000 visitors during year 2020, during which year the Host Community Fee Rate would be \$0.65975 per visitor for each visit up to and including 2,000,000 visits, the Minimum Host Community Fee for 2020 shall be \$527,800 (e.g., 800,000 multiplied by \$0.65975). The Minimum Host Community Fee shall be prorated in the year in which the Opening Date occurs. During any year where a Force Majeure Event has occurred, the minimum payment otherwise due to the Town would be reduced on a prorated basis by the number of days that the Force Majeure Event continued, except to the extent that Merlin Entertainments was compensated for such event through its insurance proceeds.

(5) Merlin Entertainments shall pay \$500,000 a year of the annual Host Community Fee to the Town within the first fifteen (15) days of each calendar year. Merlin Entertainments shall pay remainder portion of the Host Community Fee to the Town no later than forty-five (45) days following the end of each calendar year.

(6) Merlin Entertainments shall provide the Town with copies of records enabling the Town to verify the Gate Number for each year of operation, such records to be certified by an officer of Merlin Entertainments. Such certified records shall be delivered together with the payment of the Host Community Fee.

(7) Merlin Entertainments shall pay the Host Community Fee for a term of thirty (30) years, commencing the first year in which the Opening Date occurs, and expiring on the thirtieth (30th) anniversary of the Opening Date. Following the expiration of said 30-year term, Merlin Entertainments shall have no further obligation to pay a Host Community Fee to the Town; however, the parties agree to meet to renegotiate this agreement prior to its expiration.

(8) The Host Community Fee shall be in addition to any PILOT payments or, following the expiration of any PILOT agreement, any real property tax revenue that the Town of Goshen shall receive.

B. Land/Well Gifts.

Should the Town agree to sell to Merlin Entertainments the Town-Owned Parcels at their fair market value, Merlin Entertainments shall donate two wells which exist on the Property (as identified on the map in Schedule "A"), together with sufficient areas to meet current NYSDOH requirements for wellhead protection, and permanent easements for future access (the Donation Wells"). The Donation Wells would be donated by Merlin Entertainments to the Town solely as a benefit to the Town, and specifically the Arcadia Hills Water District that has had historic water shortages. The well, land and easement donation is intended to be used solely for municipal purposes; the use of the Donation Wells shall not be reserved for any LEGOLAND New York use. The present design of the Project anticipates the acquisition and utilization of at least some of the Town-Owned Parcels. Merlin Entertainments shall reimburse the Town for its actual costs for the permitting and development of these two wells, up to \$30,000 per well.

Alternatively, should the Town not agree to sell to Merlin Entertainments the Town-Owned Lots, Merlin Entertainments will be put to additional effort and expense in developing an alternative design of the Project without the utilization of the Town-Owned Lots. In such event, and owing to the additional effort and expense occasioned by such re-design, Merlin Entertainments will not be able to make the donation of the Donation Wells to the Town.

Nothing in this Agreement restricts, limits, or binds the Town in making a determination as to whether or not it will sell the Town-Owned Parcels to Merlin Entertainments. That determination, to be made at some later date, cannot and will not be made until after the completion of the State Environmental Quality Review Act process for the Project.

Section 3. Undertakings and Representations.

A. *Special Events.*

(1) Whenever Merlin Entertainments anticipates a special event that may draw significant attendance to LEGOLAND New York, Merlin Entertainments may request in advance that the Town of Goshen provide additional police assistance. If the Town provides such additional police assistance, Merlin Entertainments shall reimburse the Town for the actual costs of such additional police coverage of such events in accordance with an agreement that will be entered into and reviewed on an annual basis.

(2) Merlin Entertainments agrees to provide the use of the park to the Town for two Host Community Days each year during the shoulder seasons, *i.e.*, before and after the peak season for the Project. The Town will receive an amount of

tickets that it can reasonably sell, and the parties to this agreement will agree upon the admission price of those tickets; Merlin Entertainments may sell the remaining tickets available for those days in accordance with its usual pricing protocols. The proceeds from the Town-sold tickets will be split in half, with one-half being paid to Merlin Entertainments, and the other half being paid to the Town, with the Town able to use the proceeds for any lawful purpose. The Town will also receive its Host Community Fee for each visitor to the park on the Host Community Days – regardless of whether the ticket is sold by the Town or Merlin Entertainments – as provided in Section 2(A) above.

B. *No Additional Taxes.*

The Host Community Fee was calculated on the present and reasonably anticipated taxing and fee structure of the Town, any new local law imposing new taxes on hotel, lodging, or commercial attraction uses shall not apply to the Project. However, Merlin Entertainments is agreeable to being subject to up to a 2.5% hotel tax, provided that the Town can institute a cost sharing agreement whereby the Town and Merlin Entertainments share the revenue on an equal basis.

C. *Town Residents*

All Town residents will receive a 50% discount on daily admission tickets, which can also be used as a partial credit toward a season pass. There will be limited "blackout dates" for the use of these discounted tickets, such dates to be set by Merlin Entertainments annually. Valid proof of Goshen residency required for each ticket. Tickets sold at a discount to Town residents are non-transferable and may not be resold. Merlin Entertainments reserves the right to limit, suspend or terminate the sale of discounted tickets should widespread resale or fraud occur with this benefit if, after notice of such resale or fraud and a reasonable opportunity to cure, the widespread resale or fraud continues.

D. *Representations and Warranties.*

The representations and warranties set forth in this section shall survive for the duration of the term of this Agreement. The Town and Merlin entertainments each represent and warrant respectively as to them as follows:

(1) Each is duly organized, validly existing and in good standing under the laws of the State of New York, with full power and authority to execute, deliver and perform its respective obligations under this Agreement.

(2) Each has the power to enter into this Agreement and perform its respective obligations and is subject to any and all covenants and obligations set forth herein;

(3) Each has been duly authorized to enter into this Agreement by all action required, and in compliance with all notice, filing and all applicable procedural or other requirements;

(4) This Agreement is and shall remain a valid, binding and enforceable agreement for the entirety of its term, regardless of changes in personnel of each of the authorizing bodies, and does not constitute a violation or breach of, or a default under, (a) any constitutional or organizational documents, (b) any applicable law, rule or regulation, or (c) any agreements to which each is a party.

E. *Intervention in Litigation.*

The Town may elect to defend, intervene in, or participate as *amicus curiae* in, any lawsuit challenging any Town, State or federal Approvals for the Project including an appeal of or legal challenge to this Agreement; *provided, however*, that if the Town (either at Merlin Entertainments' request or at the Town's own initiative) defends, intervenes or participates in any such lawsuit, Merlin Entertainments shall be responsible for the payment of all reasonable and documented disbursements and fees, including legal fees, for the Town's attorneys and consultants selected by the Town after consultation with Merlin Entertainments in connection with defending, intervening or participating in such lawsuit.

Section 4. General Provisions.

A. *Notices.*

Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any Party to the other shall be deemed to have been duly given if given in writing and personally delivered, or sent by nationally recognized overnight courier, or sent by certified mail, postage prepaid, with return receipt requested, at the following addresses:

If to the Town:

Town of Goshen
41 Webster Avenue
Goshen, NY 10924
Attn: Supervisor

If to Merlin Entertainments:

Merlin Entertainments Group US Holdings, Inc.
3201 Lionshead Avenue
Carlsbad, California 92010
Attention: Chief Financial Officer

With a copy to:

Richard B. Golden
Attorney for Town of Goshen
Burke, Miele, Golden & Naughton, LLP
P.O. Box 216
Goshen, New York 10924

With a copy to:

Drake Loeb PLLC
555 Hudson Valley Avenue
New Windsor, New York 12553
Attn: Dominic Cordisco, Esq.

Notices delivered personally or by courier shall be deemed communicated as of actual receipt; notices sent by certified mail shall be deemed communicated as of 10:00 am on the fifth Business Day after mailing. Any Party may change its address for notice hereunder by giving notice of such change in the manner provided in this section.

B. *Agreement Not Transferrable or Assignable.*

Neither Merlin Entertainments nor the Town shall transfer or assign its rights or obligations under this Agreement without prior written authorization of the other party; *provided* that Merlin Entertainments may assign its rights and obligations under this Agreement to a subsidiary of Merlin Entertainments, and *further provided* that such subsidiary is demonstrated to the satisfaction of the Town to have the requisite assets and financial ability to comply with Merlin Entertainments' monetary obligations set forth in this Agreement.

C. *Binding Effect.*

This Agreement shall be binding upon the Parties, together with their respective successors, and permitted assigns.

D. *Language; Captions; References.*

Whenever the context requires, references in this Agreement to the singular number shall include the plural, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine, and neuter. Section headings in this Agreement are for convenience of reference only and shall not be considered in construing or interpreting this Agreement. "Hereof," "hereto," "herein," and words of similar import used in this Agreement shall be deemed references to this Agreement as a whole, and not to any particular section, paragraph, or other provision of this Agreement unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Agreement unless the context indicates to the contrary. Whenever the term "including" is used herein, it shall mean including without limitation.

E. *Ambiguities.*

The general rule of contract construction that any ambiguity in a contract will be construed against the party drafting such contract shall not apply to this Agreement.

F. *No Third Party Beneficiaries.*

This Agreement does not create, and shall not be construed as creating, any right enforceable by any person not a party to this Agreement. Any covenant or agreement contained in this Agreement shall be only for the benefit of the Parties and their respective successors and permitted assigns.

G. *Relationship of the Parties.*

Nothing in this Agreement shall create or be deemed to create the relationship of partners, joint venturers, employer-employee, fiduciaries or principal-agent among the Parties, nor shall any Party have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other Party or to bind any other Party in any manner whatsoever, nor shall any Party make any representation, warranty, covenant, agreement, or commitment on behalf of any other Party.

H. *Breaches.*

The Town and Merlin Entertainments agree that any material breach by a Party (the "Breaching Party") of this Agreement (including, without limitation, the failure to satisfy in all material respects any obligation when due or required) shall, following notice and the expiration of the applicable cure period set forth below, be a breach of this Agreement for which the other Party (the "Non-Breaching Party") may seek any remedy at law or in equity, subject to the balance of this Section 4(H). Notwithstanding the foregoing, the time for performance by either Party of any obligations hereunder shall be extended for the period of any Force Majeure Event. In the event of a material breach of the terms hereof, the Non-Breaching Party shall promptly give written notice thereof to the Breaching Party and the Breaching Party shall (i) in the event of a breach of a monetary obligation, have thirty Business Days following receipt of such notice to cure such breach and (ii) in the event of a material breach of a non-monetary obligation, have a reasonable time to cure such breach provided the Breaching Party promptly commences and diligently pursues such cure to completion.

I. *Disputes.*

It is acknowledged by the Parties that a quick and efficient resolution of any Dispute is critical to the implementation of this Agreement. In order to effectuate such intent, the Parties do hereby establish the Dispute Resolution Procedure set forth in this Section 4(I) to govern any and all Disputes between the Parties concerning this Agreement.

(1) Dispute Notice. Should either Party believe that a Dispute exists, such Party shall provide the other with a Dispute Notice as a condition precedent to seeking any other remedy relating to such Dispute, including, without limitation, commencing suit relating to the Dispute. The Dispute Notice shall set forth a description of the Dispute, including without limitation a reference to the applicable sections of this Agreement relevant to the Dispute, and the amount of loss, damage, and cost of expense claimed, if any. The Dispute Notice shall be delivered consistent with the terms of this Section.

(2) Good Faith Negotiations. The Parties shall negotiate in good faith to resolve the Dispute during the thirty (30) day period following delivery of the Dispute Notice to the other Party (the "Negotiation Period"). The Parties may mutually agree, in writing, to extend the Negotiation Period for any additional period of time. No lawsuit or legal proceeding concerning the Dispute may be commenced by either Party during the Negotiation Period. Any statute of limitations, statute of repose or other time period by which a remedy may be sought concerning the Dispute shall be tolled during the Negotiation Period. Upon expiration of the Negotiation Period, either Party may commence suit or otherwise seek any remedy with respect to the Dispute.

J. *Consent to Jurisdiction.*

Any proceeding against a Party relating in any way to this Agreement shall be brought and enforced solely in the Courts of the State of New York sitting in Orange County, New York or the United States District Court for the Southern District of New York, to the extent subject matter jurisdiction exists therefor, and the Parties irrevocably submit to the exclusive jurisdiction of both such Courts in respect of any such proceeding. Each of the Parties irrevocably waives, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such proceeding in the Courts of the State of New York located in Orange County or the Southern District of New York and any claim that any such proceeding brought in any such court has been brought in any inconvenient forum. Any judgment may be entered in any court having jurisdiction thereof.

K. Choice of Law.

The laws of the State of New York shall govern the validity or enforceability and the interpretation and construction of all provisions of this Agreement and all issues hereunder.

L. Effective Date.

This Agreement shall become effective as of the date first above written upon this Agreement being executed by both Parties.

M. Amendment/Modification.

This Agreement may not be modified or amended except by a writing signed by both Parties

N. Entire Agreement/Merger.

This Agreement is a fully integrated contract and contains the entire agreement between the Parties with respect to the subject matter addressed herein.

O. Severability.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable as agreed to by the Parties.

P. Execution in Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute but one and the same instrument.

Section 5. Definitions.

Capitalized terms used but not defined elsewhere in this Agreement shall have the meanings set forth in this Section.

“Agreement” means this Host Community Agreement between Merlin Entertainments and the Town as the same may be amended, modified, or restated from time to time in accordance with the terms hereof.

“Dispute” means any dispute, claim, or controversy arising under or relating to this Agreement, the breach, termination, or validity of this Agreement, or the dealings between the Parties or with respect to any claim arising by virtue of any representations made by any Party herein.

“Force Majeure Event” shall mean delays due to circumstances beyond the reasonable control of either Party including, without limitation, (i) strikes, lockouts, casualties, acts of God, war or injunction, or (ii) material adverse events or circumstances which impact businesses generally in the Town or the State, or the tourism industry, or LEGOLAND New York specifically.

“Grand Opening Date” means the date on which the Project is first open to the general public for business.

“Party” means either Merlin Entertainments or the Town or their respective successors or assigns.

“Parties” means, together, Merlin Entertainments and the Town and their respective successors or assigns.

“Person” means any natural person, corporation, business trust, joint venture, association, company, limited liability company, partnership, governmental authority or other entity.

“Merlin Entertainments Affiliate” means a directly or indirectly controlled subsidiary of Merlin Entertainments Group US Holdings Inc. that may develop or operate the Project.

“Supervisor” means the duly elected Town Supervisor of the Town.

“Town” means the Town of Goshen, a municipality of the State.

“Town Board” means the duly elected Town Board of the Town. Any references in this Agreement to consent or approval of the Town shall mean consent or approval of the Town Board.

May 8, 2017

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

Merlin Entertainments Group TOWN OF GOSHEN
US Holdings, Inc.

BY:

BY: