

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened in public session on March 13, 2017, at 11:00 a.m., local time, at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Chairman Ira Steingart, and, upon roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[√]	[]
Suzanne Loughlin	[]	[√]
Sean Rieber	[]	[√]
Edward T. Sykes	[√]	[]
Howard Siegel	[√]	[]
Scott Smith	[√]	[]
Paul Guenther	[]	[√]
Joseph Perrello	[√]	[]
Carol Roig	[√]	[]

The following persons were also present:

Jennifer M. Flad, Executive Director
Steve White, Chief Executive Officer
Julio Garaicoechea, Project Manager
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Howard Siegel, and seconded by Joseph Perrello, to wit:

Resolution No. 12 - 17

RESOLUTION (I) AMENDING THE AGENCY’S RESOLUTION #10-13 (AS HEREINAFTER DEFINED); (II) APPROVING THE EPR CONCORD II, LLC (“COMPANY”) ADELAAR WATERPARK HOTEL PROJECT; AND (III) AUTHORIZING THE AGENCY TO EXECUTE THE LEASE TO AGENCY, LEASEBACK TO COMPANY AGREEMENT, PAYMENT-IN-LIEU OF TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE CONSTRUCTION AND EQUIPPING OF THE WATERPARK PROJECT (AS HEREINAFTER DEFINED)

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York ("State"), as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State; and

WHEREAS, the Company for itself or on behalf of an entity or entities to be formed submitted an application to the Agency, requesting that the Agency undertake a certain project, in one or more phases, for the benefit of the Company consisting of: (i) the acquisition by the Agency a leasehold interest or other interest in certain property located at the southeast corner of Joyland Road and Thompsonville Road in the Town of Thompson ("Town"), Sullivan County, State, being more particularly identified as tax map number 23-2-8 and containing in the aggregate approximately 50 acres ("2013 Land"); (ii) the construction and equipping on the 2013 Land of an approximately 450,000 square-foot indoor water park resort hotel ("Waterpark Hotel") including, but not limited, to (a) an approximately four-story 400-unit hotel/resort, (b) an approximately 20,000 square-foot banquet room/conference center, (c) an approximately 85,000 square-foot indoor water park, (d) a split-level lobby core on an approximately 58,000 square-foot foot print, (e) a porte-cochere, (f) outdoor pools with concession areas and bars, (g) an outdoor pavilion stage adjacent to the conference center to be used for concerts and other events, and (h) related amenities (collectively, the "2013 Improvements"), (iii) the acquisition in and around the 2013 Land and the 2013 Improvements of certain items of equipment and other tangible personal property ("2013 Equipment," and collectively with the 2013 Land and the 2013 Improvements, the "2013 Project" or "2013 Facility"); and (iv) paying certain costs and expenses incidental to the issuance of any Bonds (as hereinafter defined) (the costs associated with items (i) through (iv) above being hereinafter collectively referred to as the "2013 Project Costs" with the portion of the 2013 Project Costs qualifying for use of tax exempt bond proceeds referred to as "2013 Tax Exempt Eligible Project Costs"); and

WHEREAS, on March 12, 2013, pursuant to General Municipal Law Section 859-a, the Agency held a public hearing at 2:00 p.m., local time, at the Town Hall, 4052 Route 42, Monticello, New York, 12701, with respect to the 2013 Project and the proposed financial assistance being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, on March 19, 2013, the Agency adopted resolution #7-13, which ratified the Findings Statement issued by the Town Board for the 2013 Project, and determined that all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the financial assistance contemplated by the Agency with respect to the 2013 Project have been satisfied; and

WHEREAS, on March 19, 2013, the Agency adopted resolution #10-13 (i) authorizing to the issuance of its taxable or tax exempt industrial development revenue bonds in one or more issues or series in a maximum aggregate principal amount of \$152,000,000 ("Bonds"), and/or a straight lease transaction; (ii) authorizing financial assistance to the Company with respect to the 2013 Project in the form of: (1) financing of the 2013 Project and certain necessary and

incidental expenditures incurred in connection therewith through the issuance by the Agency of the Bonds in an amount not to exceed the lesser of the 2013 Tax Exempt Eligible Project Costs or \$152,000,000, (2) an exemption from all State and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the 2013 Facility or used in the acquisition, construction, renovation or equipping of the 2013 Facility, (3) the grant of one or more mortgage liens on the Agency's interest in the 2013 Facility (the "2013 Mortgages") to secure the Bonds and/or any other indebtedness incurred by or for the benefit of the Company in connection with the 2013 Project, which 2013 Mortgages would be exempt from all mortgage recording taxes imposed in the State, and (4) a partial real property tax abatement structured under a Payment-In-Lieu-of-Tax Agreement, by and between the Company and the Agency, for the benefit of each municipality and school district having taxing jurisdiction over the 2013 Project ("Resolution #10-13"); and

WHEREAS, since the adoption of Resolution #10-13, there have been various modifications to the 2013 Project size, scope, location and cost as follows:

	<u>2013 Project</u>	<u>Modified Project</u>
Location	Southeast corner of Joyland Road and Thompsonville Road	East of Chalet Road
Parcel	23-2-8	15-1-14.4
Acres	50	120
Overall Size	450,000 square feet	425,000 square feet
Number of Rooms	400	324
Height of Building	4 stories	7 stories
Split-level	58,000	47,000
Lobby core		
Project Cost	\$152,000,000	\$168,679,011

Accordingly, after the modifications to the 2013 Project, the Waterpark Project (hereinafter defined) consists of the following:

“(i) the acquisition by the Agency a leasehold interest or other interest in certain property located east of Chalet Road in the Town of Thompson (“Town”), County of Sullivan, State of New York, being more particularly identified as tax map number 15-1-14.4 and containing in the aggregate approximately 120 acres ("Land"); (ii) the construction and equipping on the Land of an approximately 425,000 square-foot indoor water park resort hotel including, but not limited, to (a) an approximately seven-story 324 unit hotel/resort, (b) an approximately 20,000 square-foot conference center with a 6,500 square foot ballroom, (c) an approximately 85,000 square-foot indoor water park, (d) a split-level lobby core on an approximately 47,000 square-foot foot print (94,000 square feet total), (e) a porte-cochere, (f) outdoor pools with concession areas and bars, (g) an outdoor

pavilion stage adjacent to the conference center to be used for concerts and other events, and (h) related amenities (collectively, the "Improvements"), (iii) the acquisition in and around the Land and the Improvements of certain items of equipment and other tangible personal property ("Equipment," and collectively with the Land and the Improvements, the "Waterpark Project"); and"

WHEREAS, on November 25, 2014, EPR Concord II, L.P. ("EPR"), the owner of the Land, on behalf of the Concord Resorts Master Association ("CRMA"), and the waterpark developer, Concord HWP, LLC (now known as Adelaar HWP, LLC and together with EPR and CRMA, the "Applicant") submitted an application to the Town of Thompson Planning Board ("Planning Board") for Site Plan Approval of the Waterpark Project ("Waterpark Project Application"); and

WHEREAS, on December 10, 2014, the Planning Board adopted a resolution, in which it (i) declared its intent to assume Lead Agency status in connection with the SEQRA review of the Waterpark Project, and (ii) directed the Town Clerk to transmit Part 1 of the environmental assessment form prepared by the sponsor ("EAF Part 1") and Planning Board's Notice of Intent to the Involved Agencies (as hereinafter defined); and

WHEREAS, the Planning Board exercised due diligence in identifying other agencies with jurisdiction to fund, approve, or directly undertake the Waterpark Project ("Involved Agencies") and the Agency was identified as an Involved Agency; and

WHEREAS, on December 17, 2014, the Town Clerk duly transmitted the EAF Part 1 to the Involved Agencies; and

WHEREAS, no other Involved Agency expressed an interest in serving as Lead Agency in connection with the SEQRA review of the Waterpark Project; and

WHEREAS, on January 28, 2015, the Planning Board adopted a resolution assuming Lead Agency status in connection with the SEQRA review of the Waterpark Project; and

WHEREAS, on August 15, 2016, the Applicant submitted updated applications for the Waterpark Project and certain improvements to Chalet Road ("Chalet Road Improvements"), as described in the EAF Part 1; and

WHEREAS, on August 24, 2016, the Applicant, through its representatives, presented the Waterpark Project to the Planning Board for its review and consideration and thoroughly addressed the Planning Board's questions and comments; and

WHEREAS, on August 24, 2016, the Planning Board referred the Waterpark Project Application to the Sullivan County Division of Planning and Environmental Management ("DPEM") pursuant to Section 239-m of the General Municipal Law; and

WHEREAS, the Waterpark Project Application included a full Environmental Assessment Form, Part 1, Site Plan Drawings, and Technical Memorandum, with Appendices and Exhibits; and

WHEREAS, on September 1, 2016, the Planning Board scheduled a public hearing on the Waterpark Project for September 14, 2016; and

WHEREAS, on September 2, 2016, the Town Clerk, duly noticed the public hearing on the applications to be held on September 14, 2016; and

WHEREAS, by letter dated September 7, 2016 DPEM provided its written response and comments on the Waterpark Project, wherein DPEM recommended approval, and indicated that: (i) the Waterpark Project is consistent with the Town's Comprehensive Development Plan; (ii) there is unlikely to be an adverse visual impact on community character; (iii) community character and countywide character will be enhanced; (iv) the Chalet Road Improvements includes improvements which will keep traffic levels of service at acceptable standards for the Chalet Road and Kiamesha Lake Road intersection, including providing a shared left-turn/through land and right turn lane on the north bound approach to Chalet Road; (v) Chalet Road will benefit from roadway improvements included in the Waterpark Project; (vi) the Waterpark Project is not anticipated to have any significant adverse impacts to drainage, flood prevention, and stormwater run-off at the inter-municipal or County level; and (vii) the Waterpark Project is consistent with the Town and the County's development policies; and

WHEREAS, on September 12, 2016, the Applicant submitted materials in response to the Planning Board and Town staff's comments, including, revised Preliminary Site Plan Drawings for the Waterpark Project, a revised EAF Part 2, and a Final Technical Memo; and

WHEREAS, on September 14, 2016, a public hearing on the Waterpark Project was held at the Town Hall, whereat members of the public were invited to speak; and

WHEREAS, on September 28, 2016, the County Department of Public Works ("County DPW") and its consultant, McFarland Johnson, provided additional comments on behalf of the County, which did not change the County's initial recommendation of approval made by DPEM; and

WHEREAS, the County has suggested certain roadway improvements, as set forth in its letter, dated September 28, 2016, which the Applicants intends to incorporate into the Waterpark Project; and

WHEREAS, on August 12, 2016, August 22, 2016, August 30, 2016, September 28, 2016, November 3, 2016 and December 19, 2016, the Town's engineer, McGoey, Hauser and Edsall Consulting Engineers D.P.C. ("MH&E"), issued Technical Review Comments, providing comments on the Waterpark Project, all of which were satisfactorily addressed by the Applicant or as otherwise set forth in the planning board approval resolution; and

WHEREAS, the Waterpark Project conforms with the approved Comprehensive Development Plan approved by the Town, and was studied generically as part of the DGEIS/FGEIS for Adelaar; and

WHEREAS, the potential environmental impacts of the site plan application for the Waterpark Project were considered and analyzed in the DGEIS, dated July 24, 2012, which was subject to a public hearing (held August 28, 2012), and was the subject of a Final Environmental Impact Statement (“FGEIS”), dated January 2, 2013, Statement of Findings, dated January 15, 2013, and Environmental Assessment Form Parts I, II and III for the Waterpark Project, including the Technical Memorandum, with Appendices and Exhibits; and

WHEREAS, the Planning Board considered the potential environmental impacts of the Waterpark Project in light of the criteria set forth in the SEQRA regulations (6NYCRR Sections 617.7(c) and 617.9(a)(7)) and concluded based on its review and consideration of the record of the Waterpark Project and prior environmental reviews for the Waterpark Project, that there are no new potential significant adverse environmental impacts associated with the Waterpark Project that have not previously been identified, analyzed and mitigated to the maximum extent practicable under SEQRA and that no supplemental environmental review is warranted or required; and

WHEREAS, on September 28, 2016, the Planning Board issued a Negative Declaration of Environmental Significance for the Waterpark Project, and adopted a resolution granting Preliminary Site Development Approval for the Waterpark Project, subject to outstanding engineering comments from the Town’s Engineer; and

WHEREAS, the Applicant made revisions to the Final Site Plan for the Waterpark Project, which were submitted to the Planning Board on December 2, 2016; and

WHEREAS, on December 28, 2016, the Planning Board granted Final Site Development Plan Approval with Conditions For the Waterpark Project; and

WHEREAS, the Company has determined that it will not pursue financing of the Waterpark Project by the issuance of Bonds; and

WHEREAS, the Agency desires to amend Resolution #10-13 as herein provided; and

WHEREAS, the Lease to Agency, Leaseback to Company, PILOT Agreement and all related documents have been negotiated.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. Resolution #10-13 is hereby amended as hereinafter set forth.

Section 2. All approvals for issuance of taxable or tax exempt industrial development revenue bonds for the Waterpark Project are hereby rescinded.

Section 3. The financial assistance to be provided for the benefit of the Waterpark Project by the Agency include (i) an exemption from all State and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Waterpark Project or used in the acquisition, construction and equipping of the Waterpark Project, (ii) the grant of one or more Mortgage liens on the Agency's interest in the Waterpark Project to secure the indebtedness incurred by or for the benefit of the Company in connection with the Waterpark Project, which Mortgages would be exempt from all mortgage recording taxes imposed in the State, and (iii) a partial real property tax abatement structured under a PILOT Agreement in accordance with the Agency's Destination Resort Uniform Tax Exemption Policy.

Section 3. Subject to the Company executing an Agent and Project Agreement in form and substance approved by the Chief Executive Officer, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Waterpark Project and hereby appoints the Company as the true and lawful agent of the Agency to acquire, construct and equip the Waterpark Project on behalf of the Agency; with the authority to delegate its status as agent of the Agency to the Company's agents, subagents, contractors, subcontractors, suppliers, vendors and other such parties as the Company may choose. The appointment described above includes the following activities as they relate to the acquisition, construction and equipping of the Waterpark Project, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Waterpark Project; (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping of the Waterpark Project; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with the acquisition, construction and equipping of the Waterpark Project; and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Waterpark Project, including all repairs and replacements of such property. This agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Waterpark Project, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Waterpark Project shall expire on April 30, 2017 if the straight lease transaction documents have not been executed and delivered, provided however, that the expiration date may be extended by up

to thirty (30) days upon request of the Company or the Agency.

Section 4. Based upon the representation and warranties made by the Company in its application for financial assistance as supplemented by information as to modifications made to the Waterpark Project since the adoption of Resolution #10-13, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Waterpark Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to \$98,201,357, which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$7,856,108. The Agency agrees to consider any requests by the Company for increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 5. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Waterpark Project; or (iv) the Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Waterpark Project. As a condition precedent of receiving Sales and Use Tax Exemption Benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Waterpark Project, must (i) cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. The Chairman, Vice Chairman and Chief Executive Officer are each hereby authorized, on behalf of the Agency, to execute and deliver the Lease to Agency, Leaseback to Company, PILOT Agreement and related documents in the form

approved by Agency's Counsel all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman or Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval.

Section 7. The Chairman, Vice Chairman and Chief Executive Officer are each hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rent, security agreement, UCC-1 Financing Statement and all documents reasonably contemplated by these resolutions or prepared on advice of counsel to the Agency; and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the financing documents and to attest the same, provided in all events recourse against the Agency is limited to the Agency's interest in the Waterpark Project.

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments, documents, and to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or in the opinion of the officer, employee or agent acting on behalf of the Agency desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all the terms, covenants and provisions of the documents for and on behalf of the Agency.

Section 9. These resolutions shall take effect immediately.

The question of adoption of the foregoing resolutions were duly put to a vote on roll call, which resulted as follows:

Ira Steingart	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Rieber	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Joseph Perrello	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolutions were thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on the 13th day of March, 2017 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[<input checked="" type="checkbox"/>]	[]
Suzanne Loughlin	[]	[<input checked="" type="checkbox"/>]
Sean Rieber	[]	[<input checked="" type="checkbox"/>]
Edward T. Sykes	[<input checked="" type="checkbox"/>]	[]
Howard Siegel	[<input checked="" type="checkbox"/>]	[]
Scott Smith	[<input checked="" type="checkbox"/>]	[]
Paul Guenther	[]	[<input checked="" type="checkbox"/>]
Joseph Perrello	[<input checked="" type="checkbox"/>]	[]
Carol Roig	[<input checked="" type="checkbox"/>]	[]

3. The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Ira Steingart	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Sean Rieber	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Edward T. Sykes	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Joseph Perrello	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 13th day of March, 2017.



Edward T. Sykes, Assistant Secretary