

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on December 14, 2020, at 11:00 a.m. local time via teleconference as authorized by New York Governor Andrew Cuomo’s Executive Order No. 202.79.

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 | [] | [] | |
| Edward T. Sykes | [] | [] | |
| Howard Siegel | [] | [] | |
| Scott Smith | [] | [] | |
| Paul Guenther | [] | [] | |
| Joseph Perrello | [] | [] | |
| Carol Roig | [] | [] | |

The following persons were also present:

- Jennifer M. Flad, Executive Director
- Julio Garaicoechea, Project Manager
- Deborah Nola, Accounting and Financial Analyst
- Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by _____, and seconded by _____, to wit:

Resolution No. ____ - 20

RESOLUTION AUTHORIZING AN AMENDMENT TO AMENDED AND RESTATED PAYMENT IN LIEU OF TAXATION AGREEMENT RELATING TO THE MONTREIGN OPERATING COMPANY, LLC PROJECT

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, 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 of New York; and

WHEREAS, Monticello Raceway Management, Inc. (“MRMI”) and its Affiliate, Montreign Operating Company, LLC (“Montreign” and together with MRMI collectively, the "Company") for itself or on behalf of an entity or entities to be formed submitted an application to the Agency on February 6, 2013, 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 of a

leasehold interest or other interest in certain property located at Joyland Road and Thompsonville Road in the Town of Thompson (“Town”), County of Sullivan (“County”), State and being more particularly identified as all or part of tax map numbers 23-1-52.1 and 23-1-48.1 (f/k/a 23-1-11.3, 23-1-48, 23-1-52 (portion), 23-1-53 (portion), 23-1-54.1, 23-1-54.2 (portion), 23-1-54.3 (portion)) and containing in the aggregate approximately 186 acres (“Land”), (ii) the construction and equipping on the Land a “Casino Resort”, which will consist of, among other things, a casino, hotel, banquet event center, restaurants, support buildings and structured and surface parking and related facilities and amenities (collectively, the “Improvements”), and (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 “Facility” or “Project”); and

WHEREAS, on or about September 5, 2014, the Company and the Agency entered into an Agent Agreement (the “Agent Agreement”) and Environmental Compliance and Indemnification Agreement (“ECIA”), effective as of May 1, 2015, and entered into a Bill of Sale to Agency, Bill of Sale to Company, Lease to Agency, Leaseback to Company and Payment in Lieu of Tax Agreement, which documents were not yet effective (“2014 Project Documents”); and

WHEREAS, pursuant to the 2014 Project Documents, the Agency contemplates acquiring a leasehold interest in the Project and leasing the Project back to the Company; and

WHEREAS, the 2014 Project Documents, other than the Agent Agreement and the ECIA, were being held in escrow pursuant to the terms of a letter, dated September 5, 2014, which was subsequently amended by letter, dated May 1, 2015 outlining conditions precedent for the documents to be effective (collectively, the “Closing Conditions Letter”). The conditions precedent include the issuance by the New York State Gaming Commission of a license to operate a casino at the Project, which license has not been issued as of the date hereof; and

WHEREAS, subsequent to the Company and Agency entering into the 2014 Project Documents, the Company redesigned certain aspects of the Project and determined it to be in the best interest of the Project to significantly increase the Company’s investment in the Project. This request is necessary because, while the agreements pertaining to the Project anticipated some variability in the Project scope, the 2014 Project Documents do not anticipate the significantly increased capital expenditure now proposed by the Company. The Closing Conditions Letter accounted for possible changes in the scope of the Project by indicating that should a hybrid or modified Project other than the Projects then under consideration being undertaken, the 2014 Project Documents will be amended, as necessary, to accommodate the changed size and scope of the Project and to proportionally reduce or modify the Agency’s fees, rents, employment obligations and Total Value Subject to PILOT as set forth in the 2014 Project Documents; and

WHEREAS, the Company has revised its plans to increase its anticipated minimum total capital investment in the Project by approximately \$150,000,000 for a total minimum capital investment of approximately \$600,000,000 to create an enhanced Project (the “Enhanced Project”). The Enhanced Project will provide a higher level of amenities to patrons of the Montreign Resort Casino by expanding the size of the gaming floor and hotel rooms, redesigning non-gaming portions and removing the harness horse racetrack and associated facilities; and

WHEREAS, the Company has already obtained the necessary environmental and land use approvals for the Enhanced Project. On July 21, 2015, the Town of Thompson Town Board issued its Negative Declaration of Environmental Significance pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA") for the Enhanced Project and on July 22, 2015, the Town of Thompson Planning Board adopted a resolution independently finding that the Company had complied with SEQRA and granting the Final Site Development Plan Approval for the Enhanced Project; and

WHEREAS, the Agency, as an Involved Agency during the environmental review of the Enhanced Project, has determined that the Negative Declaration of Environmental Significance issued by the Town Board for the Enhanced Project and finds that all of the provisions of SEQRA that are required to be complied with as a condition precedent to its consideration and determination of this application have been satisfied; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Monday, September 14, 2015, at 11:00 a.m., local time, at the Sullivan County Government Center Legislative Committee Room, 100 North Street, Monticello, New York 12701, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, which was recessed and held open until Thursday, September 17, 2015, at 5:00 p.m.; and

WHEREAS, the Company and the Agency entered into the following documents to memorialize the Enhanced Project, including but not limited to: Amended and Restated Agent Agreement, made September 18, 2015, Amended and Restated Lease to Agency, dated October 1, 2015, Amended and Restated Leaseback to Company, dated October 1, 2015 and Amended and Restated Payment in Lieu of Tax Agreement, dated October 1, 2015 ("PILOT Agreement") (as the same may have been amended, collectively, the "2015 Casino Documents" and together with the 2014 Project Documents, the "Casino Documents"); and

WHEREAS, on or about November 21, 2016, MRMI and Montreign entered into an Omnibus Assignment and Assumption Agreement whereby MRMI transferred and assigned to Montreign all of its right, title and interest in and to and the Casino Documents and Montreign assumed all of MRMI's obligations under the Casino Documents; and

WHEREAS, on or about December 12, 2016, the Agency consented to the assignment from MRMI to Montreign; and

WHEREAS, Article III, 3(a)(iii)(1), of the PILOT Agreement established employment goals for the Project pursuant to which the Company agreed to employ not less than one thousand fifty (1050) full-time equivalent employees ("FTE") at the Facility; and

WHEREAS, Montreign, by letter dated December 2, 2020, requested the Agency suspend employment goals for the Project due to the COVID-19 Pandemic; and

WHEREAS, Chairman Steingart appointed Agency members Paul Guenther and Joseph Perrello to make a recommendation to the Board in response to Montreign's request.

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

Section 1. That the Agency hereby makes the following findings:

- A. The Company has made a significant investment in the Project and in Sullivan County;
- B. The Project including the casino, hotel, and food and beverage outlets have suspended operation as mandated by various Executive Orders to reduce the transmission of the COVID-19 virus;
- C. For the employment year ended September 30, 2020, due to the mandatory closure of the Facility, the Project has failed to provide the one thousand fifty (1050) FTEs established as the employment goal for the Project;
- D. A suspension of the employment goals for the two-year periods October 1, 2019 to September 30, 2020 and October 1, 2020 to September 30, 2021 has been recommended by Agency members Paul Guenther and Joseph Perrello.

Section 2. Based on the foregoing findings, the Agency hereby authorizes an amendment of the PILOT Agreement to suspend employment goals for the two (2) employment years October 1, 2019 to September 30, 2020 and October 1, 2020 to September 30, 2021, subject to the following condition:

- A. All costs of the Agency related to amendment of the PILOT Agreement and notification of the impacted Taxing Jurisdictions of the amendment be paid by Montreign.

Section 3. 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 and documents, 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, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. These Resolutions shall take effect immediately

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 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 type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Edward T. Sykes | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Howard Siegel | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Scott Smith | <input 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 type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Joseph Perrello | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |
| Carol Roig | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Absent | <input type="checkbox"/> Abstain |

The resolution was thereupon duly adopted.

STATE OF NEW YORK :
:SS.:
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the County of Sullivan Industrial Development Agency,
DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“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 via teleconference on December 14, 2020 at 11:00 a.m. at which the following members were present:

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

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 | [] Yes | [] No | [] Absent | [] Abstain |
| Suzanne Loughlin | [] Yes | [] No | [] Absent | [] Abstain |
| Edward T. Sykes | [] Yes | [] No | [] Absent | [] Abstain |
| Howard Siegel | [] Yes | [] No | [] Absent | [] Abstain |
| Scott Smith | [] Yes | [] No | [] Absent | [] Abstain |
| Paul Guenther | [] Yes | [] No | [] Absent | [] Abstain |
| Joseph Perrello | [] Yes | [] No | [] Absent | [] Abstain |
| Carol Roig | [] Yes | [] No | [] Absent | [] Abstain |

and therefore, the resolution was declared duly adopted.

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I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and (c) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public via videoconferencing and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and (c) and 104, (iii) the meeting in all respects was duly held via teleconference as authorized by New York Governor Andrew Cuomo's Executive Order No. 202.79, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 14th day of December, 2020.

Secretary