

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on February 8, 2021, at 11:00 a.m. local time via teleconference as authorized by New York Governor Andrew Cuomo’s Executive Order No. 202.92.

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. \_\_\_\_ - 21

***RESOLUTION DIRECTING THE RECAPTURE OF UNAUTHORIZED SALES AND USE TAX BENEFITS FROM EMPIRE RESORTS REAL ESTATE I, LLC (“COMPANY”)***

*WHEREAS*, by Title 1 of Article 18-A of the General Municipal Law of the State of New York ("State"), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

*WHEREAS*, on or about March 25, 2016, the Company presented an application (“Application”) to the Agency, a copy of which is on file with the Agency, requesting the Agency’s assistance with respect to a certain project consisting of the: (i) acquisition, construction, installation and equipping of a new eighteen (18) hole golf course (“Golf Course”), an approximately 14,000± square foot clubhouse, an approximately 12,800± square foot maintenance

building and related structures (“Buildings”) situate on one (1) parcel of real estate consisting of approximately 216.75± acres located along Thompsonville Road and Chalet Road, Town of Thompson (“Town”), County of Sullivan (“County”), State and identified on the Town tax map as 15.-1-15 (“Land”); (ii) acquisition, construction and equipping of the Golf Course and Buildings; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iv) construction of improvements to the Golf Course, the Buildings, the Land and the Equipment (collectively, the Golf Course, the Buildings, the Land and the Equipment are referred to as the “Facility” or the “Project”); and (v) lease of the Project from the Agency to the Company; and

*WHEREAS*, by resolution, dated June 20, 2016 (“Resolution”), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing, installing and equipping the Facility and conferred on the Company certain financial assistance consisting of: (a) an exemption from all State and local sales and use tax for the purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes conferred through a certain payment in lieu of tax agreement requiring the Company to make payments in lieu of taxes (“PILOT”) for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes, are hereinafter collectively referred to as the “Financial Assistance”). Provision of Financial Assistance is subject to the Company entering into this Agreement; and

*WHEREAS*, on or about December 22, 2016, the Agency and Company entered into an Agent and Project Agreement; and

*WHEREAS*, the Company has submitted Monthly Purchase Reports to the Agency indicating the taxable purchases made without payment of sales tax, and has submitted annual ST-340 Forms to the New York State Department of Taxation and Finance, indicating the total sales and use tax exemptions claimed; and

*WHEREAS*, during a review of these documents, the Agency became aware that the Company made purchases during the months of January through May 2020, after the sales tax exemption period had ended on December 31, 2019; and

*WHEREAS*, as contemplated by Section 874 (10)-(12) of the General Municipal Law (“GML”), the Agency established a Project Recapture and Termination Policy which requires the recapture of financial assistance including sales and use tax exemption amounts not authorized by the Agency; and

*WHEREAS*, in accordance with Section 875(3) of the GML, if the Agency determines sales and use tax exemptions claimed by the Company were not authorized by the Agency, then the Agency shall recapture such sales and use tax benefits from the Company; and

*WHEREAS*, Tax Bulletin ST-385 (TB-ST-385) sets forth the procedure to be followed in

the event the Agency must recapture unauthorized sales and use tax exemption benefits claimed.

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

Section 1. The Agency hereby makes the following findings:

- A. The company made purchases during the months of January through May 2020, after the sales tax exemption period had ended on December 31, 2019; and
- B. The total value of the sales and use tax exemption benefits claimed by the Company during the months of January through May 2020 was in the amount of \$9,301.07.

Section 2. The Executive Director of the Agency is hereby authorized and directed to recapture the amount of sales and use tax exemption benefits claimed by the Company and not authorized by the Agency, which amount is \$9,301.07.

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	[ ] 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

The resolution was 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 via conference call on February 8, 2021 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.

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. 202.92, and (iv) there was a quorum present throughout.

*IN WITNESS WHEREOF*, I have hereunto set my hand and seal on the 8<sup>th</sup> day of February, 2020.

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Secretary