

**RESOLUTION**

A recessed meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on March 10, 2021, at 9:30 a.m., local time, via conference telephone as authorized by New York Governor Andrew Cuomo’s Executive Order No. 202.94.

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	[ √ ]	[   ]
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
- Barbara A. Garigliano, Agency Real Estate Counsel

The following resolution was duly offered by Howard Siegel, and seconded by Paul Guenther, to wit:

Resolution No. 09 - 21

***RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF ONE OR MORE MORTGAGES (AND RELATED FINANCING DOCUMENTS) IN AN AGGREGATE AMOUNT NOT TO EXCEED \$505,000,000 RELATING TO THE MONTREIGN OPERATING COMPANY, LLC (“MONTREIGN”), EMPIRE RESORTS REAL ESTATE I, LLC (“ERRE I”) AND EMPIRE RESORTS REAL ESTATE II, LLC (“ERRE II” AND TOGETHER WITH MONTREIGN AND ERRE I, OR EACH INDIVIDUALLY AS “BORROWER”) PROJECTS***

***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 of New York, (hereinafter collectively called the "Act"), the Agency was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving,

maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, civic, research, and recreational facilities as authorized by the Act, and enter into straight lease transactions and provide other forms of financial assistance; and

**WHEREAS**, on January 15, 2013, the Town of Thompson Town Board (“Town Board”) adopted the following (i) Resolution adopting SEQRA Findings in relation to the zoning petition and application for establishment of a Comprehensive Development Plan for the EPT Concord Resort formerly known as Adelaar and now known as “Resorts World”); (ii) Resolution adopting Local Law No. 1-2013 (introduced as Local Law 9-2012) Entitled: A Local Law Amending Various Provisions of the Town Code Section 250-27.2 – Planned Resort Development (“PRD”); and (iii) Resolution adopting a New Comprehensive Development Plan for Resorts World; and

**WHEREAS**, Montreign and Monticello Raceway Management, Inc. (“MRMI” together with Montreign collectively referred to as, the “Casino 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 Casino 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”), Sullivan County (“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 (“Casino Land”); (ii) the construction and equipping on the Casino 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 “Casino Improvements”), and (iii) the acquisition in and around the Casino Land and the Casino Improvements of certain items of equipment and other tangible personal property (“Casino Equipment,” and collectively with the Casino Land and the Casino Improvements, the “Casino Facility” or “Casino Project); and

**WHEREAS**, EPT Concord II, LLC (“EPT II”) for itself and on behalf of an entity or entities to be formed (collectively the, “EPT Entities”) submitted an application (“EPT Application”) to the Agency on February 12, 2013, requesting that the Agency undertake a certain project in one or more phases, (“Master Development Project”) for the benefit of the EPT Entities consisting of: (i) the acquisition by the Agency of a leasehold interest or other interest in approximately seventy-one (71) parcels of land containing in the aggregate approximately 1,735 acres within the Town, County, State (“EPT Land”), (ii) the construction and equipping on the EPT Land of a master planned destination resort community to include (a) an 18-hole golf course with clubhouse and maintenance facilities, (b) a casino resort to include a casino, hotel, harness horse racetrack, grandstand/showroom, simulcast facility, banquet event center, restaurants and related facilities, (c) hotels, (d) a waterpark, (e) a recreational vehicle park, (f) an entertainment village with a cinema and supporting retail facilities, (g) a residential village containing a mix of unit types including condominiums, apartments, townhouses and detached single-family homes, a civic center and an active adult residential community, all or a portion of which will be connected, via a multi-use trail system, to open space (collectively, the “EPT Improvements”), and (iii) the acquisition in and around the EPT Land and the EPT Improvements of certain items of equipment

and other tangible personal property (the “EPT Equipment”, and collectively with the EPT Land and the EPT Improvements, the “EPT Project”); and

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

**WHEREAS**, by resolution dated March 19, 2013 (“Casino Inducement Resolution”), the Agency authorized the Casino Company to act as its agent to proceed with the acquisition, construction and equipping of the Casino Project; and

**WHEREAS**, the Casino Inducement Resolution provided in applicable part as follows:

“Section 9. The Chief Executive Officer, Chairman and/or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any Lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chief Executive Officer, Chairman and/or Vice Chairman of the Agency shall approve, the execution thereof by the Chief Executive Officer, Chairman and/or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency’s interest in the Project.”

; and

**WHEREAS**, on April 10, 2013, the Town of Thompson Planning Board (“Planning Board”) adopted the following: (i) Resolution ratifying the Town Board’s SEQRA Findings Statement, (ii) Resolution granting Preliminary Site Plan Approval for Phase I of Adelaar; (iii) Resolution approving the Lot Improvement/Consolidation Plan, and (iv) Resolution granting Preliminary Subdivision Plat Approval with respect to the Casino Land; and

**WHEREAS**, by Resolution adopted July 10, 2013, the Planning Board granted Final Site Development Plan Approval with Conditions for Phase I of Adelaar; and

**WHEREAS**, on October 21, 2013, the Agency and EPT II entered into a Master Development and Agent Agreement authorizing the EPT Entities to proceed with certain work limited in scope to soil erosion and sediment control, clearing and grubbing, earthwork, construction of new roads and improvements and enhancements to existing roads, constructed wetlands, landscaping, sanitary sewer, water, storm sewer, electric power, telephone service, cable tv, internet connectivity, demolition of existing structures, and all other related facility, equipment, improvements and infrastructure costs as set forth in the EPT Application together with a Lease to Agency, Leaseback to ERRE II, Payment in Lieu of Tax Agreement and related documents (collectively the, “EPT Transaction Documents”); and

**WHEREAS**, on or about December 31, 2013, with the consent of the Agency, EPT II transferred a portion of the EPT Land to EPR Concord II, L.P.; and

**WHEREAS**, the EPT Entities and the Casino Company entered into an agreement whereby the Casino Company agreed to lease a portion of the EPT Land from the EPT Entities since Montreign was selected by the New York State Gaming Facility Location Board to apply to the NYSGC (as hereinafter defined) for the award of a license to operate a Class III casino; and

**WHEREAS**, at the time of the Casino Company’s Application, the Casino Resort development program was driven by legislation, including development incentives and gaming regulations, and market conditions present during the 2011-2013 timeframe as the project proceeded through local, state and federal permitting and approval process and environmental reviews; and

**WHEREAS**, following the November, 2013 referendum approved by State voters to amend the New York State Constitution to allow the State to issue gaming facility licenses through a competitive Request for Applications (“RFA”) process pursuant to the Upstate New York Gaming and Economic Development Act of 2013 (“Gaming Act”), the Casino Company performed additional market feasibility analyses to evaluate certain program elements, specifically the casino, hotel and harness track and proposed a minor modification to the approved site plan for the casino hotel to allow more hotel rooms, additional parking, a slightly enlarged building footprint and reconfigured casino gaming floor to further enhance the casino and hotel prior to submission of the Casino Company’s response to the RFA; and

**WHEREAS**, the application to the Planning Board for the minor site plan amendment included a completed Environmental Assessment Form, and Technical Memorandum, including a new Traffic Impact Study, and additional visual analysis providing an analysis of the visibility of the modified Casino and Hotel building from the same locations studied in the Environmental Impact Statement for the Casino Project and additional regional vantage points, including potential nighttime lighting impacts; and

**WHEREAS**, on June 3, 2014, the Town Board, as SEQRA Lead Agency, found that there are no new potential significant adverse environmental impacts associated with the minor site plan amendment that have not previously been identified, analyzed and mitigated to the maximum extent practicable under SEQRA in the DEIS and FEIS and that no supplement environmental review was warranted or required and issued a Negative Declaration of Environmental

Significance for the minor site plan amendment. The Planning Board approved the minor site plan amendment on June 11, 2014; and

**WHEREAS**, on June 30, 2014, based on the new competitive environment and the market analyses, the Casino Company submitted a response to the RFA that included a development program without the harness racetrack element, which carries with it the added benefit of reducing the overall impacts associated with the Casino Project while continuing to transform the former Concord Resort into the most comprehensive destination gaming resort in the Northeast, and attract a significant number of visitors from outside the economic development region as established by Section 230 of the State Economic Development Law, in which the Casino Project is located; and

**WHEREAS**, on August 13, 2014, the Planning Board adopted a Resolution granting Final Subdivision Approval with respect to the Casino Land; and

**WHEREAS**, at full-build of the Casino Project in accordance with the Town approved Comprehensive Development Plan and the duly enacted PRD, the Casino Company proposed to make a minimum total capital investment, not including the license fee, of approximately \$450,000,000 if there was no license awarded for a Gaming Facility located in Dutchess or Orange Counties ("Project A"); if a license was awarded for a Gaming Facility located in Dutchess or Northern Orange County, the Casino Company's total capital investment, not including the license fee, would be approximately \$275,000,000 ("Project B"); and if a license was awarded for a Gaming Facility located in Southern Orange County, the Casino Company's total capital investment, not including the license fee, would be approximately \$170,000,000 ("Project C"); and

**WHEREAS**, the Casino Company agreed with the Agency, on behalf of the Agency and as the Agency's agent, effective when and if the Casino Company shall have been selected by the New York State Gaming Facility Location Board to apply to the New York State Gaming Commission ("NYSGC") for the award of a license ("Gaming License") for a destination gaming resort to be issued by the NYSGC pursuant to The Upstate New York Gaming Economic Development Act of 2013 and such Gaming License shall have been awarded to the Casino Company, to acquire, construct, install and equip the Facility in accordance with the plans and specifications presented to the Agency; and

**WHEREAS**, on September 3, 2014, the Agency adopted a resolution approving the Casino Project and describing the financial assistance the Agency has committed to the Casino Project, in the form of: (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 Casino Facility or used in the acquisition, construction, renovation or equipping of the Casino Facility and all personal property related thereto; (ii) granting of one or more mortgage liens on the Agency's interest in the Casino Facility ("Mortgages") to secure any indebtedness incurred by or for the benefit of the Casino Company in connection with the Casino Project, which Mortgages would be exempt from all mortgage recording taxes imposed in the State; and (iii) a partial (or full) real property tax abatement structured under the PILOT Agreement, by and between the Casino Company and the Agency for the benefit of each municipality and school district having taxing jurisdiction over the

Casino Project under the Agency's Destination Resort Program as defined in the Agency's Uniform Tax Exemption Policy. The Agent Agreement (“Agent Agreement”), Environmental Compliance and Indemnification Agreement (“ECIA”), Lease Agreement, Leaseback Agreement and PILOT Agreement are collectively referred to herein as the “2014 Casino Documents”; and

**WHEREAS**, on or about September 5, 2014, the Casino Company and the Agency entered into the 2014 Casino Documents, which were to be effective as outlined in a letter agreement by and among the Agency, the Casino Company and the EPT Entities (“Closing Conditions Letter”); and

**WHEREAS**, on September 5, 2014, the Agency and the EPT Entities entered into an Omnibus Amendment to Project Documents to amend the EPT Transaction Documents to remove the Casino Land from the project description; to proportionally reduce the annual rent as contemplated by Section 2.6 of the EPT Leaseback Agreement and reduce the TVSP as established in Section 1.3(a) of the EPT PILOT Agreement, the same to be effective as of the Effective Date of the 2014 Casino Documents; and

**WHEREAS**, following the date of the Closing Conditions Letter, on December 17, 2014, the Gaming Facility Location Board (“GFLB”) announced its recommendation to the New York State Gaming Commission (“NYSGC”) that a gaming license be awarded to Montreign; and

**WHEREAS**, following the date of GFLB’s recommendation, there were unexpected delays by the NYSGC in promulgating regulations necessary to accept and process an application for a Gaming License; and

**WHEREAS**, the Agency and the Casino Company entered into an Amendment to Closing Conditions Letter so that the Agent Agreement and the ECIA became effective as of May 1, 2015; and

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

**WHEREAS**, the Casino Company revised its plans to increase its anticipated minimum total capital investment in the Casino Project by approximately \$150,000,000 for a total minimum capital investment of approximately \$600,000,000 to create an enhanced Casino Project (the “Enhanced Casino Project”). The Enhanced Casino 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 the non-gaming portions and removing the harness horse racetrack and associated facilities; and

**WHEREAS**, on July 21, 2015, the 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 Casino Project and on July 22, 2015, the Planning Board adopted a resolution independently finding that the Casino Company had complied with SEQRA and granting the Final Site Development Plan Approval for the Enhanced Casino Project; and

**WHEREAS**, the Agency, as an Involved Agency during the environmental review of the Enhanced Casino Project, determined that the Negative Declaration of Environmental Significance issued by the Town Board for the Enhanced Casino Project and found 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 were 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 Enhanced Casino 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, which was recessed and held open for written comment until 5:00 p.m., Thursday, September 17, 2015; and

**WHEREAS**, by resolution #22-15, dated September 18, 2015, the Agency approved: (i) the Enhanced Casino Project; (ii) financial assistance to the Casino Company in the form of (a) sales and use tax exemption, (b) a mortgage recording tax exemption consistent with the policies of the Agency; and (c) a partial real property tax abatement; and (iii) ratifying and confirming its findings made in the Inducement Resolution, dated March 19, 2013 and in the prior approval Resolutions, dated September 3, 2014 and May 26, 2015; and

**WHEREAS**, the Casino Company and the Agency entered into the following documents to memorialize the Enhanced Casino 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 (as the same may have been amended, collectively, the "2015 Casino Documents" and together with the 2014 Casino Documents, the "Casino Documents"); and

**WHEREAS**, on or about March 1, 2016, ERRE I submitted an application to the Agency, requesting that the Agency consider undertaking a 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 ("Golf Buildings") situate on one (1) parcel of real

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

**WHEREAS**, by resolution #21-16, dated June 20, 2016, the Agency approved the acquisition, construction, installation and equipping of the Golf Project; 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**, on December 22, 2016, the Agency and the EPT Entities entered into a Third Omnibus Amendment to Project Documents to amend the EPT Transaction Documents to remove the Golf Land from the project description; to proportionally reduce the annual rent as contemplated by Section 2.6 of the EPT Leaseback Agreement and reduce the TVSP as established in Section 1.3(a) of the EPT PILOT Agreement (“Third Omnibus”); and

**WHEREAS**, contemporaneously with the Third Omnibus, the Agency and ERRE I entered into the following documents to memorialize the lease/leaseback transaction, including but not limited to: Agent and Project Agreement, Lease to Agency, Leaseback to ERRE I and Payment in Lieu of Taxation Agreement; and

**WHEREAS**, on January 9, 2017 the Agency adopted resolution #03-17 authorizing and approving the execution and delivery of one or more mortgages (and related financing documents) in an aggregate amount not to exceed \$500,000,000; and

**WHEREAS**, Borrower entered into that certain Building Term Loan Agreement (as amended by that certain First Amendment to Building Term Loan Agreement, Building Loan Disbursement Agreement and Project Disbursement Agreement, dated as of May 26, 2017 (the “First Amendment” and as may further amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), dated as of January 24, 2017, by and among Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the “Lenders”) and Credit Suisse AG, Cayman Islands Branch, as administrative agent (together with its successors and assigns in such capacity, the “Administrative Agent”), recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 14, 2017 as Instrument No. 2017-579, pursuant to which the Lenders have



or will provide a \$520,000,000 term loan credit facility to Borrower, including \$35,000,000 of which will be provided pursuant to the First Amendment (collectively, the “Credit Facility”); and

**WHEREAS**, ERRE II has, among other things, guaranteed Borrower’s obligations under the Credit Agreement pursuant to that certain Subsidiary Guaranty, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Subsidiary Guaranty”), made by and among ERRE II and the other guarantors party thereto in favor of the Administrative Agent; and

**WHEREAS**, pursuant to that certain Building Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “Original Mortgage”) made by Agency and certain affiliates of ERRE II to Mortgagee, dated as of January 24, 2017 recorded February 14, 2017 recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 24, 2017 as Instrument No. 2017-1255, certain affiliates of ERRE II granted a first lien on certain property, excluding the Land, to Mortgagee, to secure certain obligations under the Credit Facility; and

**WHEREAS**, pursuant to that certain Building Loan Spreader Agreement (the “Original Spreader”) dated as of January 24, 2017 recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 14, 2017 as Instrument No. 2017-1256, by the Casino Company and certain other entities in favor of Mortgagee, the ERRE II and certain affiliates spread the lien of the Original Mortgage to the “New Property” (as defined in the Original Spreader), including but not limited to, the Land; and

**WHEREAS**, on May 18, 2017, the Agency adopted resolution #22-17 authorizing and approving the execution and delivery of one or more new mortgages (and related financing documents) in an aggregate amount not to exceed \$35,000,000; and

**WHEREAS**, in connection with the First Amendment, pursuant to that certain Building Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “Tack-On Mortgage”) made by Agency and certain affiliates of ERRE II to Mortgagee, dated as of May 26, 2017 recorded in the County Clerk’s office in the County of Sullivan, State of New York on May 30, 2017 as Instrument No. 2017-3852, certain affiliates of ERRE II granted a first lien on certain property to Mortgagee, to secure certain obligations under the Credit Facility; and

**WHEREAS**, pursuant to that certain Building Loan Spreader Agreement (the “Tack-On Spreader”) dated as of May 26, 2017 recorded in the County Clerk’s office in the County of Sullivan, State of New York on May 30, 2017 as Instrument No. 2017-3853, by ERRE II and certain other entities in favor of Mortgagee, ERRE II and certain affiliates spread the lien of the Tack-On Mortgage to the “New Property”; and

**WHEREAS**, it was a condition precedent to the making of loans under the Credit Agreement (including the First Amendment) that ERRE II’s obligations under the Credit Agreement, the Subsidiary Guaranty and the other Loan Documents to which ERRE II is a party be secured by, among other things, the grant of liens and security interests contemplated by a Mortgage on the EV Land; and

**WHEREAS**, Borrower entered into that certain Revolving Credit Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), dated as of January 24, 2017, by and among Borrower, the banks, financial institutions and other entities from time to time party thereto in the capacity of lenders (the “Lenders”) and Fifth Third Bank, as administrative agent (together with its successors and assigns in such capacity, the “Administrative Agent”), pursuant to which the Lenders agreed to provide a \$15,000,000 revolving credit facility to Borrower (collectively, the “Credit Facility”); and

**WHEREAS**, ERRE II has, among other things, guaranteed Borrower’s obligations under the Credit Agreement pursuant to that certain Subsidiary Guaranty, dated as of January 24, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Subsidiary Guaranty”), made by and among ERRE II and the other guarantors party thereto in favor of the Administrative Agent; and

**WHEREAS**, pursuant to that certain Revolving Loan Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the “Original Mortgage”) made by Agency and certain affiliates of ERRE II to Mortgagee, dated as of January 24, 2017 and recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 14, 2017 as Instrument No. 2017-1259, certain affiliates of ERRE II granted a first lien on certain property, excluding the Land, to Mortgagee, to secure certain obligations under the Credit Facility; and

**WHEREAS**, pursuant to that certain Revolving Loan Spreader Agreement (the “Original Spreader”) dated as of January 24, 2017 and recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 14, 2017 as Instrument No. 2017-1260, by ERRE II and certain affiliates of ERRE II in favor of Mortgagee, ERRE II and such affiliates spread the first lien of the Original Mortgage to the “New Property” (as defined in the Original Spreader), including but not limited to, the EV Land; and

**WHEREAS**, on or about August 17, 2017, ERRE II submitted an application to the Agency, requesting that the Agency consider undertaking a project consisting of the: (i) acquisition, construction, installation and equipping of an approximately 69,000 square foot four-story building to include up to 105 hotel rooms, mixed-use spaces including a coffee shop, a restaurant, and retail shops, and parking for up to 289 cars<sup>1</sup> (the “EV Hotel”), situate on one (1) parcel of real estate consisting of approximately 22 acres located along Joyland Road and Thompsonville Road, in the Town, in the County, State and identified on the Town tax map as all or a portion of tax map number 23.-1-54.6 (the “EV Land” and together with the Casino Land and Golf Land, the “Land”); (ii) acquisition, construction and equipping of the EV Hotel; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (the “EV Equipment”); (iv) construction of improvements to the

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<sup>1</sup> It should be noted that the scope of the Casino Project scope was slightly reduced post-application to account for market conditions. ERRE II obtained the necessary environmental and land use approvals for the updated Casino Project from the Town of Thompson Planning Board (the “Planning Board”). Specifically, on February 14, 2018, the Planning Board issued its Negative Declaration of Environmental Significance for the Casino Project and circulated notice of same to the Agency (an Involved Agency) pursuant to SEQRA.

EV Hotel, the EV Land and the EV Equipment (collectively, the EV Hotel, the EV Land and the EV Equipment are referred to as the “EV Facility” or the “EV Project”); and (v) lease of the EV Project from the Agency to ERRE II; and

**WHEREAS**, by resolution #40-17, dated August 23, 2017, the Agency approved the acquisition, construction, installation and equipping of the EV Project; and

**WHEREAS**, the Agency agreed to provide financial assistance to ERRE II in the development and construction of the EV Project in exchange for certain economic benefits that ERRE II will provide to the local community, and in connection therewith, Agency agreed to the grant of liens and security interests contemplated by a Mortgage on the EV Land; and

**WHEREAS**, ERRE II leased the EV Land from Adelaar Developer, LLC, pursuant to that certain Sub-Lease, dated as of December 28, 2015, a memorandum of which was recorded in the County Clerk’s office in the County of Sullivan, State of New York on April 7, 2016 as Instrument No. 2016-2473 (as amended by that certain First Amendment to Entertainment Village Lease dated as of January 19, 2017 (which amendment was reflected in that certain First Amendment to Memorandum of Lease recorded in the County Clerk’s office in the County of Sullivan, State of New York on February 14, 2017 as Instrument No. 2017-1242) and as may be and as further amended, amended and restated, supplemented or otherwise modified from time to time, the “EV Lease”); and

**WHEREAS**, it was a condition precedent to the making of loans under the Credit Agreement that ERRE II’s obligations under the Credit Agreement, the Subsidiary Guaranty and the other Loan Documents to which ERRE II is a party, be secured by, among other things, the grant of liens and security interests contemplated by a Mortgage on the EV Land; and

**WHEREAS**, ERRE II sub-leased the EV Land to the Agency pursuant to that certain Lease to Agency dated as of March 1, 2018, between ERRE II and the Agency, a memorandum of which was recorded in the Office of the Sullivan County Clerk on April 3, 2018 as Instrument No. 2018-2311; and

**WHEREAS**, the Agency sub-leased the EV Land back to ERRE II pursuant to that certain Leaseback to ERRE II dated as of March 1, 2018 between ERRE II and the Agency, a memorandum of which was recorded in the Office of the Sullivan County Clerk on April 3, 2018 as Instrument No. 2018-2312; and

**WHEREAS**, by resolution duly adopted on May 14, 2018, the Agency authorized execution and delivery of one or more new mortgages (and related financing documents) by the Agency and ERRE II in an aggregate amount not to exceed \$35,000,000; and

**WHEREAS**, on or about May 14, 2018, the Agency and ERRE II executed a Building and Loan Mortgage, Leasehold Mortgage, Assignment of Rents, Leases, Security Agreement and Fixture Filing in favor of Credit Suisse AG Cayman Islands Branch in its capacity as Collateral Agent for the benefit of the Secured Parties securing \$35,000,000 as contemplated by the Credit Agreement and Subsidiary Guaranty (“EV Mortgage”); and

**WHEREAS**, following execution of the EV Mortgage, the total principal outstanding under the Credit Agreement was \$520,000,000 (collectively, the “Credit Suisse Obligations”) and

**WHEREAS**, on or about March 23, 2020 pursuant to a Bridge Loan Facility, BNP Paribas in its capacity as Collateral Agent for the benefit of the Secured Parties made a loan to Montreign and a certain affiliate of Montreign, in the original principal amount of \$350,000,000 (“BNP Bridge Loan”); and

**WHEREAS**, the BNP Bridge Loan resulted in the retirement of the Credit Suisse Obligations and as required by the BNP Bridge Loan documents, the mortgages and related security agreements securing the Credit Suisse Obligations were discharged; and

**WHEREAS**, the BNP Bridge Loan documents required, among other conditions, that the Borrower execute a First Lien Mortgage, Leasehold Mortgage, Assignment of Rents and Leases Security Agreement and Fixture Filing in favor of BNP Paribas to secure the BNP Bridge Loan; and

**WHEREAS**, the Borrower and the Agency joined in execution of a certain First Lien Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (“BNP 2020 Mortgage”) to secure an amount not to exceed THREE HUNDRED THIRTY MILLION AND 00/100 (\$330,000,000.00) DOLLARS in favor of BNP Paribas, in its capacity as Collateral Agent for the benefit of Secured Parties (as defined in the BNP 2020 Mortgage; the “BNP 2020 Lenders”), pursuant to which the Agency and Borrower granted, mortgaged, pledged and confirmed unto the BNP 2020 Lenders a mortgage lien on and a security interest in the Land; and

**WHEREAS**, the BNP 2020 Mortgage was duly recorded in the Office of the Clerk of Sullivan County on September 2, 2020 as Instrument No. 2020-6209; and

**WHEREAS**, Borrower has secured additional financing facilities including (i) an assignment of the BNP 2020 Mortgage to Raven Asset-Based Credit Fund I LP (“Raven”) and (ii) an extension of time to pay ONE HUNDRED FIFTY-FIVE MILLION and 00/100 (\$155,000,000.00) DOLLARS of the current debt owed to the BNP 2020 Lenders to be secured by a new first mortgage lien; and

**WHEREAS**, Borrower has requested the Agency join in execution of a First Lien Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing to secure an amount not to exceed ONE HUNDRED SIXTY-FIVE MILLION and 00/100 (\$165,000,000.00) DOLLARS (“BNP 2021 Mortgage”) in favor of BNP Paribas, in its capacity as Collateral Agent for the benefit of the Secured Parties (as defined in the BNP 2021 Mortgage; the “BNP 2021 Lenders”), pursuant to which Borrower will grant, mortgage, pledge and confirm unto the BNP 2021 Lenders a mortgage lien on and a security interest in the Land; and

**WHEREAS**, Borrower has requested the Agency join in execution of a certain Second Lien Mortgage, Leasehold Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture

Filing to secure an amount not to exceed THREE HUNDRED FORTY MILLION AND 00/100 (\$340,000,000.00) DOLLARS (“Raven 2021 Mortgage”) in favor of Raven, in its capacity as Administrative Agent and Collateral Agent for the benefit of the Secured Parties (as defined in the Raven 2021 Mortgage; the “Raven 2021 Lenders”), pursuant to which Borrower will grant, mortgage, pledge and confirm unto the Raven 2021 Lenders a mortgage lien on and a security interest in the Land.

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

Section 1. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver one or more mortgages (together with any and all related financing documents) in favor of the BNP 2021 Lenders which in the aggregate shall not exceed ONE HUNDRED SIXTY-FIVE MILLION and 00/100 (\$165,000,000.00) DOLLARS all in form approved by Counsel to the Agency and with such changes, variations, omissions and insertions as the Executive Director of the Agency shall approve, the execution thereof by the Executive Director of the Agency to constitute conclusive evidence of such approval.

Section 2. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver one or more mortgages (together with any and all related financing documents) in favor of the Raven 2021 Lenders which in the aggregate shall not exceed THREE HUNDRED FORTY MILLION AND 00/100 (\$340,000,000.00) DOLLARS all in form approved by Counsel to the Agency and with such changes, variations, omissions and insertions as the Executive Director of the Agency shall approve, the execution thereof by the Executive Director of the Agency to constitute conclusive evidence of such approval.

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, 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 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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Suzanne Loughlin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input 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 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 resolution was thereupon duly adopted.

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

I, the undersigned Secretary (Assistant) 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 conference call on March 10, 2021 at 9:30 a.m. 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"/> ]	[       ]
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"/> ]	[       ]
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:

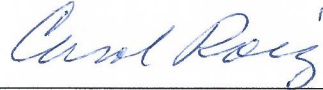
Ira Steingart	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Suzanne Loughlin	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Edward T. Sykes	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Howard Siegel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

Signature Page to Agency Resolution

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, 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 10<sup>th</sup> day of March, 2021.



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Carol Roig, Assistant Secretary