

**FIRST AMENDMENT TO AMENDED AND RESTATED  
PAYMENT IN LIEU OF TAXATION AGREEMENT**

*THIS FIRST AMENDMENT TO AMENDED AND RESTATED PAYMENT IN LIEU OF TAXATION AGREEMENT* ("Amendment"), effective the 1<sup>ST</sup> day of January, 2021 which amends that certain Amended and Restated Payment in Lieu of Taxation Agreement, made the 1<sup>st</sup> day of October, 2015 ("PILOT Agreement") by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices located at 548 Broadway, Monticello, New York 12701 ("Agency") and MONTREIGN OPERATING COMPANY, LLC, a New York limited company, having its principal offices located at 204 State Route 17B, Monticello, New York 12701.

Unless otherwise defined herein, all capitalized terms shall have the meaning given them in the PILOT Agreement.

**RECITALS**

*WHEREAS*, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

*WHEREAS*, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

*WHEREAS*, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

*WHEREAS*, the Agency was created pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively, referred to as the "Act") and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; 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 (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; and

*WHEREAS*, by Resolution No. \_\_-21, the Agency made 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 2020 employment year, due to the mandatory closure of the Facility, the Project will not provide the one thousand fifty (1,050) FTEs established as the employment goal for the Project;
- D. A suspension of the employment goals for two (2) employment years was recommended by Agency members Paul Guenther and Joseph Perrello.

; and

*WHEREAS*, the Agency, in reliance on the foregoing findings, authorized an amendment of the PILOT Agreement to suspend employment goals for the two (2) employment years being calendar year 2020 and calendar year 2021.

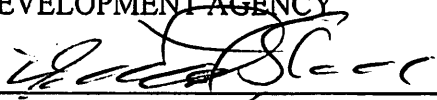
*NOW THEREFORE*, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

1. Section 3, Employment Obligations, subsection (a) Employment Goals, (ii) FT Employment Goals: is hereby deleted and the following shall be substituted in its place and stead:
  - “(ii) FT Employment Goals:
    - (1) The Company agrees that an FT employment goal of 1,050 jobs shall be maintained for the calendar year 2019.
    - (2) The Company shall not be subject to an FT employment goal for the calendar year 2020 or the calendar year 2021.
    - (3) The Company agrees that an FT employment goal of 1,050 jobs shall be maintained for the calendar year 2022 and thereafter.”
2. The first sentence of Section 3, Employment Obligations, (a) Employment Goals, (iii) Computation of PILOT Payment if FT Employment Goals Not Attained: is hereby amended to add the following after the first sentence thereof:

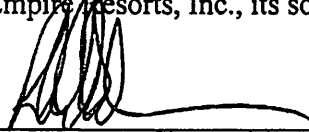
“For avoidance of doubt, Employment Goals are not applicable to the calendar year 2020 or calendar year 2021.”
3. Except as herein amended, all other terms and conditions of the PILOT Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this Amendment or the PILOT Agreement, the terms of this Amendment shall control.

*IN WITNESS WHEREOF*, the parties hereto have executed this Amendment effective as of the date hereof.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
\_\_\_\_\_  
By: Edward T. Sykes, Chief Executive Officer

MONTREIGN OPERATING COMPANY, LLC  
By: Empire Resorts, Inc., its sole member

  
\_\_\_\_\_  
By: ROBERT J. DESALVO