

THIRD OMNIBUS AMENDMENT TO PROJECT DOCUMENTS

THIS THIRD OMNIBUS AMENDMENT TO PROJECT DOCUMENTS, dated December 22, 2016 (“Third Amendment”) is by and among EPR CONCORD II, L.P., a Delaware limited partnership, having its principal offices located at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 (“EPR Concord”), EPT CONCORD II, LLC, a Delaware limited liability company, having its principal offices located at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 (“EPT Concord”) and 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 at One Cablevision Center, Ferndale, New York 12734 (“Agency”@).

RECITALS

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, on or about October 21, 2013, the Agency and EPT Concord entered into a lease/leaseback transaction to facilitate the (i) acquisition by the Agency of a leasehold interest or other interest in approximately seventy-one (71) parcels of land (“EPT Land”); (ii) construction and equipping on the EPT Land 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) indoor and outdoor water parks, (e) recreational vehicle parks, (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 (“EPT Improvements”); (iii) acquisition in and around the EPT Land and the EPT Improvements of certain items of equipment and other tangible personal property; and (iv) payment of certain costs and expenses incidental to the issuance of any Bonds, subject to EPT Concord entering into a Master Development and Agent Agreement (“MDAA”); and

WHEREAS, the Agency and EPT Concord entered into a MDAA 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 Application of EPT Concord to the Agency for Financial Assistance dated February 12, 2013 (“EPT Infrastructure Project”); and

WHEREAS, EPT Concord has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, install and equip the EPT Infrastructure Project in accordance with the plans and specifications presented to the Agency; and

WHEREAS, the Agency and EPT Concord entered into an Environmental Compliance and Indemnification Agreement, Bill of Sale to Agency, Bill of Sale to Company, Lease to Agency and memorandum thereto, Leaseback to Company and memorandum thereto and Payment in Lieu of Tax Agreement (collectively together with the MDAA, the “Master Developer Documents”) all dated October 21, 2013; and

WHEREAS, pursuant to rights established at the time of execution of the Master Developer Documents, on December 31, 2013 EPT Concord transferred a portion of the EPT Land consisting of all or parts of sixty-eight (68) parcels to EPR Concord. The transfer was made by Warranty Deed, dated December 20, 2013 and filed in the Sullivan County Clerk’s office on December 31, 2013 as Instrument #2013-9913; and

WHEREAS, on or about February 6, 2013, Monticello Raceway Management, Inc. (“MRMI”) submitted an application to the Agency (the “MRMI Application”) to undertake a project consisting of (i) the acquisition by the Agency 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”), and State, being more particularly identified as all or part of tax map numbers 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 of a “Casino Resort”, consisting of a casino, hotel, a half-mile harness horse racetrack, grandstand showroom, simulcast facility, 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 Development”); and

WHEREAS, the MRMI Application was subsequently amended to eliminate the half-mile harness track, grandstand showroom and simulcast facility from the Casino Improvements; and

WHEREAS, MRMI and its affiliate Montreign Operating Company, LLC (“Montreign”) have agreed to enter into a straight lease transaction with the Agency (the “Casino Development Transaction”) pursuant to transaction documents dated September 5, 2014, which transaction documents were be effective only upon the occurrence of future events, all as described in the Closing Conditions Letter by and among MRMI, Montreign, EPT Concord and the Agency and which date is referred to herein as the “Effective Date”; and

WHEREAS, the last of the future events contemplated by the Closing Conditions Letter was satisfied on the Effective Date of December 31, 2015, which was three (3) business days after MRMI and EPT Concord entered a long term Ground Lease of the Casino Land; and

WHEREAS, the Omnibus Amendment to Project Documents, dated September 5, 2014 (“First Omnibus Amendment”) by and among EPT Concord, EPR Concord and the Agency

which excludes the Casino Land from the October 21, 2013 Payment in Lieu of Tax Agreement (“EPT PILOT”) was effective as of the Effective Date; and

WHEREAS, on or about February 26, 2016, EPR Concord conveyed 13.8 acres of real estate located at the southeast corner of the intersection of County Route 42 and Concord Road to Catskill Regional Medical Center, which parcels are depicted on the Town tax map as Section 13, Block 3, Lots 2.1 and 2.2 (“CRMC Land”); and

WHEREAS, on or about February 26, 2016, EPT Concord, EPR Concord and the Agency entered into a Second Amendment to Project Documents to exclude the CRMC Land from the EPT PILOT (“Second Omnibus Amendment”); and

WHEREAS, pursuant to the rights established under the Master Developer Documents, on or about March 6, 2015, EPR Concord leased a parcel of land approximately 216.75 acres in size (“Golf Course Land”) to Adelaar Developer, LLC (“ADLLC”) and in turn on or about December 28, 2015 ADLLC subleased the Golf Course Land to Empire Resorts Real Estate I, LLC (“ERREI”) for the purpose of construction and operation of the Golf Course Project (as herein defined) (“Sub-Lease”); and

WHEREAS, on or about March 25, 2016, ERREI presented an application to the Agency, a copy of which is on file at the office of 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 (“Buildings”) situate on the Golf Course 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 Golf Course Land and the Equipment (collectively, the Golf Course, the Buildings, the Golf Course Land and the Equipment are referred to as the “Golf Course Project”); and (v) lease of the Golf Course Project from the Agency to the Company; and

WHEREAS, a combined inducement and approving resolution approving the Golf Course Project was duly adopted by the Agency on June 20, 2016; and

WHEREAS, contemporaneously herewith the Agency and ERREI entered into a straight lease transaction and in furtherance thereof executed an Agent and Project Agreement, Environmental Compliance and Indemnification Agreement, Lease to Agency, Leaseback to Company and Payment in Lieu of Tax Agreement; and

WHEREAS, EPT Concord, EPR Concord, ERREI and the Agency wish to enter into this Third Amendment to acknowledge the Golf Course PILOT and amend the Master Developer Documents to exclude a portion of the Golf Course Land from the EPT Project description.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged it is mutually agreed as follows:

1. Acknowledgement of EPR Concord Lease to ADLLC and Sub-Lease to ERREI. Pursuant to rights established at the time of execution of the Master Developer Documents, EPR Concord leased the Golf Course Land to ADLLC and in turn ADLLC subleased the Golf Course Land to ERREI.

2. Description of Land. The description of the EPT Land in the Master Developer Documents is hereby amended to exclude the Golf Course Land. A copy of the metes and bounds description of the Golf Course Land is annexed hereto as Exhibit 2.

3. Recording Memos – ERREI. Contemporaneously herewith, EPT Concord, EPR Concord and the Agency shall execute and thereafter record in the Office of the Sullivan County Clerk Amendments to the Memorandum of Lease to Agency and Memorandum of Leaseback to Company to exclude the Golf Course Land from the description referenced in the Recording Memos.

4. Amendment To EPT PILOT. ¶1.3 of the EPT PILOT is hereby deleted and the following is inserted in its place and stead:

“1.3 Computation of PILOT Payments. The PILOT Payment shall be made in the amount:

(a) Year 1. For year 1 (2015), the total value subject to PILOT (“TVSP”) shall be \$17,127,000.

(b) Year 2. For year 2 (2016), the TVSP shall be \$14,986,125.

(c) Years 3 – 10. For the years 3 through 10 (2017 through and including 2024), the total value subject to TVSP shall be \$12,911,125.

(d) Calculation of Annual PILOT Payment in Lieu of Tax. The calculation of the annual PILOT Payments years 1 – 10 (2017 - 2024) shall be made, as follows:

(i) The TVSP shall be multiplied by the equalization rate as defined in ¶1.3(g) hereof; and

(ii) The annual PILOT Payment shall be determined by multiplying the amount derived in ¶1.3(d)(i) hereof by the tax rates identified in ¶1.3(h) hereof.

(e) TVSP for Years 2025 - 2034. For the PILOT years 11 - 20, the TVSP shall be the following amounts for the following years:

<u>Payment Date</u>	<u>TVSP</u>
February 1, 2025	{[Assessed Value – (\$12,911,125 x Eq rate)] x 75.00%} + (\$12,911,125 x Eq rate)
February 1, 2026	{[Assessed Value – (\$12,911,125 x Eq rate)] x 77.50%} + (\$12,911,125 x Eq rate)
February 1, 2027	{[Assessed Value – (\$12,911,125 x Eq rate)] x 80.00%} + (\$12,911,125 x Eq rate)
February 1, 2028	{[Assessed Value – (\$12,911,125 x Eq rate)] x 82.50%} + (\$12,911,125 x Eq rate)
February 1, 2029	{[Assessed Value – (\$12,911,125 x Eq rate)] x 85.00%} + (\$12,911,125 x Eq rate)
February 1, 2030	{[Assessed Value – (\$12,911,125 x Eq rate)] x 87.50%} + (\$12,911,125 x Eq rate)
February 1, 2031	{[Assessed Value – (\$12,911,125 x Eq rate)] x 90.00%} + (\$12,911,125 x Eq rate)
February 1, 2032	{[Assessed Value – (\$12,911,125 x Eq rate)] x 92.50%} + (\$12,911,125 x Eq rate)
February 1, 2033	{[Assessed Value – (\$12,911,125 x Eq rate)] x 95.00%} + (\$12,911,125 x Eq rate)
February 1, 2034	{[Assessed Value – (\$12,911,125 x Eq rate)] x 97.50%} + (\$12,911,125 x Eq rate)

The Assessed Value shall be that value determined by the Town Assessor, and set on the final tax roll of the Town.

(f) Calculation of Annual PILOT Payment 2025-2034. The calculation of the annual PILOT Payments for the years 2025 through and including 2034 shall be made by multiplying the TVSP calculated in 1.3(e) by the tax rates identified in ¶1.3(h) hereof.

(g) Equalization Rate. The equalization rate to be used in making the computation contemplated by ¶1.3(d)(i) and ¶1.3(e) hereof shall mean the equalization rate for the Town used by the County to allocate and levy County taxes in connection with the January 1st tax roll immediately preceding the due date of the PILOT Payment. In the event that the equalization rate shall exceed one hundred (100%) percent, the equalization rate used in making the computation contemplated by ¶1.3(d)(i) and ¶1.3(e) shall be one hundred (100%) percent.

(h) Tax Rates. For the purposes of determining the amount of the PILOT Payments as contemplated by ¶1.3(d)(ii) and ¶1.3(f) hereof, the tax rates for each Taxing Jurisdiction shall mean the last tax rate used before the Taxable Status Date for levy of taxes by each such jurisdiction. For County and Town purposes, the tax rates used to determine the PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT Payment due date. For school tax purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the school tax year which began in the calendar year immediately preceding the year in which the PILOT Payment is due.”

5. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.

6. Integration. In the event of a conflict between the terms of any of the Master Developer Documents, the First Omnibus Amendment, Second Amendment and this Third Amendment, the terms and conditions hereof shall control.

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY

By: Edward T. Sykes, Executive Director

EPT CONCORD II, LLC

By: EPT Concord, LLC

By: EPR Properties



By: Gregory K. Silvers, President and
Chief Executive Officer

EPR CONCORD II, L.P.

By: EPR TRS Holdings, Inc., its sole General
Partner



By: Gregory K. Silvers, President

EXHIBIT 2
GOLF COURSE LAND DESCRIPTION