

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on October 16, 2023 at 11:00 a.m. local time at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Vice Chairman Edward T. Sykes, and, upon the roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[     ] ]	[   √  ] ]
Edward T. Sykes	[   √  ] ]	[     ] ]
Carol Roig	[   √  ] ]	[     ] ]
Howard Siegel	[   √  ] ]	[     ] ]
Scott Smith	[     ] ]	[   √  ] ]
Paul Guenther	[     ] ]	[   √  ] ]
Sean Brooks	[   √  ] ]	[     ] ]
Philip Vallone	[   √  ] ]	[     ] ]
Kathleen Lara	[   √  ] ]	[     ] ]

The following persons were also present:  
Jennifer M. Flad, Executive Director  
John W. Kiefer, Chief Executive Officer  
Julio Garaicoechea, Project Manager  
Bethanii Padu, Economic Development Coordinator  
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Sean Brooks, and seconded by Kathleen Lara, to wit:

Resolution No. 37 - 23

*RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED MASTER DEVELOPMENT AND AGENT AGREEMENT AMONG THE AGENCY, EPR CONCORD II, L.P. (“EPR CONCORD”), EPT CONCORD II, LLC (“EPT CONCORD” AND TOGETHER WITH EPR CONCORD AND ADELAAR DEVELOPER, LLC, THE “COMPANY”) TO EXTEND THE MASTER DEVELOPER DESIGNATION FOR AN ADDITIONAL PERIOD OF APPROXIMATELY FIVE (5) YEARS ENDING ON OCTOBER 31, 2028*

*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 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 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 EPT 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”) entered 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

*WHEREAS*, the last of the future events contemplated by the Closing Conditions Letter was satisfied on December 31, 2015, which was three (3) business days after MRMI and EPT Concord entered into 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 December 15, 2015; 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 the construction and operation of the Golf Course Project (as herein defined); 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 (“Golf 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 (“Golf Equipment”); (iv) construction of improvements to the Golf Course, the Golf Buildings, the Golf Course Land and the Golf Equipment (collectively, the Golf Course, the Golf Buildings, the Golf Course Land and the Golf Equipment are referred to as the “Golf Course Project”); and (v) lease of the Golf Course Project from the Agency to ERREI; 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*, on or about December 22, 2016, 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 (“Golf Course PILOT”); and

*WHEREAS*, on or about December 22, 2016, EPR Concord, EPT Concord and ERREI entered into a Third Omnibus Amendment to Project Documents to acknowledge the Golf Course PILOT and amend the Master Developer Documents to exclude the Golf Course Land from the EPT Infrastructure Project description; and

*WHEREAS*, on or about February 8, 2013, EPR Concord 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 Waterpark Project (as hereinafter defined); and

*WHEREAS*, on March 19, 2013, the Agency adopted resolution #10-13 to induce the development of the Waterpark Project; 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 131 acres in size (“Waterpark Land”) to ADLLC; and

*WHEREAS*, on March 13, 2017, the Agency adopted resolution #12-17 approving modifications to the Waterpark Project to consist of: (i) the acquisition by the Agency of a leasehold interest in the Waterpark Land; (ii) the construction and equipping on the Waterpark Land of an approximately 425,000 square-foot indoor water park resort hotel including, but not limited, to (a) an approximately seven-story 324 unit hotel/resort, (b) an approximately 20,000 square-foot conference center with a 6,500 square foot ballroom, (c) an approximately 85,000 square-foot indoor water park, (d) a split-level lobby core on an approximately 47,000 square-foot foot print (94,000 square feet total), (e) a porte-cochere, (f) outdoor pools with concession areas

and bars, (g) an outdoor pavilion stage adjacent to the conference center to be used for concerts and other events, and (h) related amenities (collectively, the "Waterpark Improvements"), (iii) the acquisition in and around the Waterpark Land and the Waterpark Improvements of certain items of equipment and other tangible personal property ("Waterpark Equipment," and collectively with the Waterpark Land and the Waterpark Improvements, the "Waterpark Project"); and

*WHEREAS*, on April 1, 2017, ADLLC and the Agency entered into an Agent and Project Agreement and an Environmental Compliance and Indemnification Agreement; and

*WHEREAS*, on August 1, 2017, the Agency and ADLLC entered into a straight lease transaction relating to the Waterpark Project and in furtherance thereof executed a Lease to Agency, Leaseback to Company and Payment in Lieu of Tax Agreement; and

*WHEREAS*, on August 1, 2017, EPT Concord, EPR Concord, ADLLC and the Agency entered into a Fourth Amendment to acknowledge the Payment in Lieu of Tax Agreement relating to the Waterpark Project and amend the Master Developer Documents to exclude the Waterpark Land from the EPT Land; 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 22 acres in size ("EV Hotel Land") to ADLLC and in turn on or about December 28, 2015 ADLLC subleased the EV Hotel Land to Empire Resorts Real Estate II, LLC ("ERRE II") for the purpose of the construction and operation of an entertainment village; and

*WHEREAS*, on August 17, 2017, ERRE II presented an application to the Agency, requesting the Agency's assistance with respect to a certain 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 (the "EV Hotel"), situate on one (1) parcel of real estate consisting of approximately 22 acres located along Joyland Road and Thompsonville Road, Town, County, State and identified on the Town tax map as all or a portion of tax map number 23.-1-54.6 ("EV Hotel 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 ("EV Hotel Equipment"); (iv) construction of improvements to the EV Hotel, the EV Hotel Land and the EV Hotel Equipment (collectively, the EV Hotel, the EV Hotel Land and the EV Hotel Equipment are referred to as the "EV Hotel Project"); and (v) lease of the EV Hotel Project from the Agency to ERRE II; and

*WHEREAS*, a combined inducement and approving resolution approving the EV Hotel Project was duly adopted by the Agency on August 23, 2017; and

*WHEREAS*, on or about March 1, 2018 ERRE II and the Agency 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 ("EV Hotel PILOT"); and

*WHEREAS*, on March 1, 2018, EPR Concord, EPT Concord and the Agency entered into a Fifth Amendment to amend the Master Developer Documents to exclude the EV Hotel Land from the EPT PILOT; and

*WHEREAS*, the MDAA was for a term of ten (10) years expiring on October 21, 2023; and

*WHEREAS*, EPR Concord and EPT Concord have requested the Agency enter into an Amended and Restated MDAA to extend the development period for approximately five (5) years ending on October 31, 2028; and

*WHEREAS*, the Agency is willing to extend the development period for an additional five (5) years and authorize execution of an Amended and Restated MDAA to memorialize the extension.

*NOW, THEREFORE, BE IT RESOLVED,*

Section 1. That the Agency hereby authorized its Chairperson or Executive Director (either acting individually) to execute an Amended and Restated MDAA to extend the development period by approximately five (5) years to terminate on October 31, 2028, subject to the following conditions:

1. The form of the Amended and Restated MDAA shall be approved by the Agency's Executive Director and General Counsel.
2. The Company pay the Agency an extension fee in the amount of Ten Thousand and 00/100 (\$10,000.00) Dollars.
3. All costs of the Agency for professional fees associated with this extension be reimbursed by the Company to the Agency or directly paid to the Agency's professionals.

Section 2. 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 3. 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:

Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" 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
Carol Roig	<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 type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Philip Vallone	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Kathleen Lara	<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 of the Agency DO HEREBY CERTIFY THAT:

- 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.
- Such resolution was passed at a meeting of the Agency duly convened in public session on October 16, 2023 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[    ]	[ √ ]
Edward T. Sykes	[ √ ]	[    ]
Carol Roig	[ √ ]	[    ]
Howard Siegel	[ √ ]	[    ]
Scott Smith	[    ]	[ √ ]
Paul Guenther	[    ]	[ √ ]
Sean Brooks	[ √ ]	[    ]
Philip Vallone	[ √ ]	[    ]
Kathleen Lara	[ √ ]	[    ]

- The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

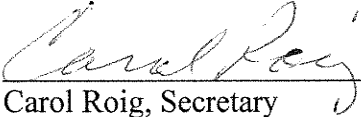
Suzanne Loughlin	[    ] Yes	[    ] No	[ √ ] Absent	[    ] Abstain
Edward T. Sykes	[ √ ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Carol Roig	[ √ ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Howard Siegel	[ √ ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Scott Smith	[    ] Yes	[    ] No	[ √ ] Absent	[    ] Abstain
Paul Guenther	[    ] Yes	[    ] No	[ √ ] Absent	[    ] Abstain
Sean Brooks	[ √ ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Philip Vallone	[ √ ] Yes	[    ] No	[    ] Absent	[    ] Abstain
Kathleen Lara	[ √ ] 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 104 of the Public Officers Law (Open Meetings 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 103(a) 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 16<sup>th</sup> day of October, 2023.

  
\_\_\_\_\_  
Carol Roig, Secretary