

FIRST AMENDMENT TO AMENDED AND RESTATED
LEASEBACK TO COMPANY

THIS FIRST AMENDMENT TO AMENDED AND RESTATED LEASEBACK TO COMPANY ("First Amendment"), made as of the 11th day of December, 2023 by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY ("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 548 Broadway, Monticello, New York 12701 and MONTREIGN OPERATING COMPANY, LLC, a New York limited liability company having its principal office at 888 Resorts World Drive, Monticello, New York 12701 ("Montreign"), amends that certain Amended and Restated Leaseback to Company, made as of the 1st day of October, 2015, by and among the Agency, Monticello Raceway Management, Inc. ("MRMI") and Montreign ("A&R Leaseback"), which was further amended by that certain Omnibus Amendment to Project Documents, made as of January 19, 2017, by and between the Agency and Montreign ("Omnibus Amendment" and together with the A&R Leaseback, the "Leaseback Agreement").

Unless otherwise defined herein, all capitalized terms shall have the meaning given them in the Leaseback 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 the 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 contemplated 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 included the issuance by the New York State Gaming Commission of a license to operate a casino at the Project, which license was issued on or about February 5, 2018; 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. While the agreements pertaining to the Project anticipated some variability in the Project scope, the 2014 Project Documents did not anticipate the significantly increased capital expenditure subsequently 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 were amended 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, as detailed in the October 1, 2015 amendment to the Closing Conditions Letter, the Company 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 was designated to 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 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, determined that the Negative Declaration of Environmental Significance issued by the Town Board for the Enhanced 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 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 Agreement, dated October 1, 2015, the A&R Leaseback and Amended and Restated Payment in Lieu of Tax Agreement, dated October 1, 2015 (“Amended and Restated PILOT Agreement” and 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, effective as of January 19, 2017, EPT Concord II, LLC (“EPT Concord”) and Montreign entered into a First Amendment to Casino Lease to, among other things, modify the

definition of Leased Premises, and to correct a scrivener's error in the legal description of the Leased Premises (as defined in the Lease dated December 28, 2015, by and between EPT Concord and Montreign); and

WHEREAS, on or about January 19, 2017, the Agency and Montreign entered into an Omnibus Amendment to modify the legal description of the Leased Premises; and

WHEREAS, the Omnibus Amendment was evidenced by an Amended Memorandum of Amended and Restated Leaseback to Company, dated as of January 19, 2017 by and between the Agency and Montreign and recorded in the Sullivan County Clerk's Office on February 14, 2017 as Instrument No. 2017-1248; and

WHEREAS, Article III, 3(a)(iii)(1), of the Amended and Restated 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, Montreign, by letter dated December 2, 2020, requested the Agency suspend employment goals for the Project due to the COVID-19 Pandemic; and

WHEREAS, by Resolutions No. 64-20 and 02-21, the Agency authorized the amendment of the Amended and Restated PILOT Agreement to suspend the employment goals for two employment years, October 1, 2019 to September 30, 2020 and October 1, 2020 to September 30, 2021; and

WHEREAS, on or about January 1, 2021, the Agency and Montreign entered into the First Amendment to Amended and Restated PILOT Agreement to suspend employment goals for the two (2) employment years being calendar year 2020 and calendar year 2021; and

WHEREAS, by letter from Karen M. Cho, General Counsel, dated June 7, 2023, the Company requested a three (3) year extension of the PILOT benefit period; and

WHEREAS, the Agency has considered the Company's request and based upon the findings set forth in Resolution 39-23, is willing to extend the PILOT benefit period for two (2) years; and

WHEREAS, contemporaneously herewith the Company and Agency intend to enter into a Second Amendment to Amended and Restated PILOT Agreement, which will extend the PILOT benefit period for two (2) years, through the payment due on February 1, 2036; and

WHEREAS, therefore, this Leaseback Agreement must be extended to cover the time period of the extended PILOT benefit period.

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. Amendment to Leaseback Agreement. Article II, Section 2.5(b) is hereby deleted and a revised Article II, Section 2.5(b), is inserted in its place and stead, to read as follows:

“(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on the February 1st following payment of the PILOT payment for Year 18, as defined in the Second Amendment to Amended and Restated Payment in Lieu of Taxation Agreement by and between the Agency and Company of even date herewith.”

2. Article III, Section 3.5(a), Additional Provisions Respecting Insurance, is hereby deleted and a revised Article III, Section 3.5(a), is inserted in its place and stead, to read as follows:

“(a) All insurance required by Section 3.4(c) hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company (and reasonably satisfactory to the Agency) and authorized to write such insurance in the State. Such insurance may be written with deductible amounts not exceeding \$10,000.00. All policies of insurance shall be primary and non-contributory. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Company and the Agency.”

3. Article V, Section 5.2, Hold Harmless Provisions; is hereby amended to add to the beginning of the first sentence “To the fullest extent permitted by law,”.

4. Article IX, Section 9.1, Notices, is hereby deleted and a revised Article IX, Section 9.1, is inserted in its place and stead, to read as follows:

“9.1 Notices. All notices provided for by this Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given; or on the date of receipt if transmitted by electronic mail to the party to whom notice is to be given; or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

To the Agency:

County of Sullivan Industrial Development Agency

548 Broadway

Monticello, New York 12701

Attn: Executive Director

with a copy to:

Walter F. Garigliano P.C.
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701
Attn: Walter F. Garigliano, Esq.

To the Company:

Montreign Operating Company, LLC
888 Resorts World Drive
Monticello, New York 12701
Attn: Chief Executive Officer

with a copy to:

Montreign Operating Company, LLC
888 Resorts World Drive
Monticello, New York 12701
Attn: General Counsel

and to such other addresses and/or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the matter provided in this Section. Any electronic notice sent outside of regular business hours shall be deemed given on the next business day.”

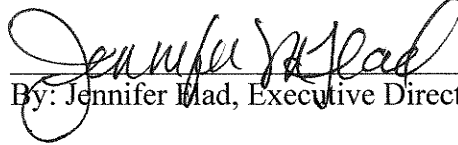
5. Expenses. All fees and costs related to this First Amendment shall be paid by the Company.

6. Integration. Except as herein amended, all other terms and conditions of the Leaseback Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this First Amendment or the Leaseback Agreement, the terms of this First Amendment shall control.

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY

A handwritten signature in black ink, appearing to read "Jennifer Mad", is written over a horizontal line.

By: Jennifer Mad, Executive Director

MONTREIGN OPERATING COMPANY, LLC

By: Empire Resorts, Inc., its Sole Member

By: _____

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY

By: Jennifer Flad, Executive Director

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

By: 