

## SECOND AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT

*THIS SECOND AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT* ("Second Amended PILOT"), effective the 31<sup>st</sup> day of December, 2023, 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 at 548 Broadway, Monticello, New York 12701 ("Agency") and EMPIRE RESORTS REAL ESTATE II, LLC, a New York limited liability company, having its principal offices at c/o Resorts World Catskills, 888 Resorts World Drive, Monticello, New York 12701 ("Company"), amends that certain Payment in Lieu of Taxation Agreement, made as of March 1, 2018 ("2018 PILOT Agreement"), which was previously amended by that certain First Amended Payment in Lieu of Taxation Agreement, dated as of March 31, 2022 ("First Amended PILOT" and together with the 2018 PILOT Agreement, the "PILOT Agreement").

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*, 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, (the "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 of

Thompson, Sullivan County, New York (the "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*, 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 Company, 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. ("EPR II"); and

*WHEREAS*, the EPT Entities and the Company, a wholly owned subsidiary of Montreign Operating Company, LLC ("MOC"), entered into an agreement whereby the Company leased a portion of the EPT Land from the EPT Entities effective only if MOC was 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 to operate a Gaming Facility; and

*WHEREAS*, on December 21, 2015, the NYSGC awarded a Gaming Facility License (the "Gaming Facility License") to MOC; and

*WHEREAS*, subsequent to the award of the Gaming Facility License, in December 2015, the Company and EPR II entered into agreements wherein it was agreed that the Company will be the entity developing an entertainment village hotel; and

*WHEREAS*, on or about August 17, 2017, the Company presented an application ("EV Hotel Project 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 an approximately 124,000 square foot six-story building to include up to 162 rooms, mixed-use spaces including a coffee shop, a restaurant, a night club, and retail, 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, in the Town, County, State and identified on the Town tax map as all or a portion of tax map numbers 23.-1-54.6 ("EV Hotel Project Land"); (ii) acquisition, construction and equipping of the

EV Hotel Project; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“EV Hotel Project Equipment”); (iv) construction of improvements to the EV Hotel, the EV Hotel Project Land and the EV Hotel Project Equipment (collectively, the EV Hotel, the EV Hotel Project Land and the EV Hotel Project Equipment are referred to as the “EV Hotel Project”); and (v) lease of the EV Hotel Project from the Agency to the Company; and

*WHEREAS*, pursuant to General Municipal Law Section 859-a, on Wednesday, August 23, 2017 at 10:30 a.m., local time, at the Legislative Hearing Room, Sullivan County Government Center, 100 North Street, Monticello, New York, the Agency held a public hearing with respect to the EV Hotel Project and the proposed financial assistance being contemplated by the Agency (the “EV Hotel Project Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A summary of the Minutes of the EV Hotel Project Public Hearing together with the Notice of EV Hotel Project Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said EV Hotel Project Public Hearing were attached to Resolution No. 40-17; and

*WHEREAS*, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by SEQR, the Town of Thompson Planning Board (“Town Planning Board”), acted as Lead Agency; and

*WHEREAS*, the Company obtained the necessary environmental and land use approvals for the EV Hotel Project. Specifically, on May 24, 2017, the Town Planning Board issued its Negative Declaration of Environmental Significance pursuant to SEQRA for the EV Hotel Project. Subsequently, on May 24, 2017, the Town Planning Board adopted a resolution independently finding that the Company had complied with SEQRA and granting the Final Site Development Plan Approval for the EV Hotel Project; and

*WHEREAS*, the Agency gave due consideration to the EV Hotel Project Application of the Company and to representations by the Company that the proposed financial assistance is an inducement to the Company to undertake the EV Hotel Project; and

*WHEREAS*, prior to adoption of Resolution No. 40-17 on August 23, 2017, the Agency considered the following matters as more fully set forth in its then in effect UTEPs:

- A. Permanent private sector job creation and retention;
- B. Estimated value of the tax exemption;
- C. Whether the affected taxing jurisdictions shall be reimbursed by the Company if the EV Hotel Project does not fulfill the purposes for which the exemption was granted;
- D. Impact of EV Hotel Project on existing and proposed business or economic development projects;
- E. The amount of private sector investment generated or likely to be generated by the EV Hotel Project;
- F. Demonstrated public support for the EV Hotel Project;
- G. Likelihood of accomplishing the EV Hotel Project in a timely fashion;
- H. Environmental impact;
- I. Extent to which the EV Hotel Project will require additional services including, but not limited to educational, police, transportation, EMS and fire;

- J. Extent to which the EV Hotel Project will provide additional revenues; and
- K. Extent to which the EV Hotel Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and

*WHEREAS*, the EV Hotel Project fell within the Agency's "Destination Resort Program"<sup>1</sup> under the Agency's then in effect UTEP; and

*WHEREAS*, the Agency desired to encourage the Company to advance the job opportunities, health, general prosperity and economic welfare of the people of Sullivan County, New York by providing the contemplated financial assistance and undertaking the EV Hotel Project; and

*WHEREAS*, the Agency's Executive Director negotiated the EV Hotel Project Transaction Documents with the Company; and

*WHEREAS*, on or about March 1, 2018, the Agency (i) designated the Company as its agent for the purpose of acquiring, constructing, installing and equipping the EV Hotel Project; (ii) negotiated and entered into an Agent Agreement, a Lease, a Leaseback and a PILOT Agreement with the Company (collectively, the "EV Hotel Project Transaction Documents"); (iii) took a leasehold interest in the EV Hotel Project Land, the improvements and personal property thereon which constitute the EV Hotel Project; and (iv) provide financial assistance to the Company in the form of (a) sales tax exemption for purchases related to the acquisition, construction, installation and equipping of the EV Hotel Project; (b) a real property tax abatement on increased value resulting from improvements to the EV Hotel Project Land through a PILOT Agreement; and (c) a mortgage recording tax exemption for financing related to the EV Hotel Project; and

*WHEREAS*, on or about March 1, 2018, the Agency and the EPT Entities entered into a Fifth Omnibus Amendment of the EPT Transaction Documents to amend the project description to remove the EV Hotel Project Land from the project description and reduce the TVSP as established in Section 1.3(a) of the EPT PILOT Agreement; and

*WHEREAS*, by letter dated March 9, 2022, the Company proposed to amend the EV Hotel project to construct a golf club house inside The Alder Hotel, including locker rooms, a pro shop and offices; and

*WHEREAS*, based on representations made by the Company to the Agency, a review of the short-form EAF and supporting SEQR documents, the Agency determined that (a) pursuant to 6 NYCRR Section 617.5(c)(1), (2), and (9), the EV Hotel Project is a "Type II action"; and (b) therefore, the Agency determined that no environmental impact statement or any other determination or procedure is required under Article 8 of the Environmental Conservation Law; and

*WHEREAS*, on or about March 31, 2022, the Agency and the Company entered into a (i) First Amendment to Agent and Project Agreement; (ii) Amended and Restated Agent and Project

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<sup>1</sup> The Destination Resort Program was eliminated by the Agency on March 14, 2022 by Resolution No. 10-22.

Agreement; (iii) Omnibus Amendment to Project Documents and (iv) First Amended PILOT to amend the EV Hotel Project Transaction Documents as follows:

- A. Modify the description of the EV Hotel Project to include construction of a golf club house inside The Alder Hotel, including locker rooms, a pro shop and offices;
- B. Increase the total budget by \$300,000;
- C. Increase the total authorized exempt purchases by an additional \$250,000;
- D. Increase the sales tax exemption by an additional \$20,000;
- E. Extend the date for completion to June 1, 2023; and
- F. Amend the PILOT Agreement governing the EV Hotel Project to increase the TVSP for periods on and after January 1, 2025; and

*WHEREAS*, by letter from Karen M. Cho, General Counsel, dated June 7, 2023, MOC requested a three (3) year extension of the PILOT benefit period for the Resorts World Catskills project; and

*WHEREAS*, by Resolution 39-23, duly adopted by the Agency on October 16, 2023, the Agency authorized extension of the MOC PILOT for the Resorts World Catskills casino (“Resorts World Casino”) for a period of two (2) years based on the findings adopted by Resolution 39-23; and

*WHEREAS*, the Employment Goals for the Company’s project are based on the aggregate employment at the Resorts World Casino, a related Golf Project and the EV Hotel Project; and

*WHEREAS*, by letter dated November 6, 2023, Karen M. Cho, General Counsel to Resorts World Catskills, requested a two (2) year extension of the Company’s PILOT; and

*WHEREAS*, in reliance on the findings as set forth in Resolution No. 39-23 and since employment goals are based on the aggregate reporting of Employment Obligations as contemplated by the MOC PILOT, the Agency by Resolution No. 44-23 authorized extension of the Company’s PILOT benefit period for a period of two (2) years.

*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 PILOT. Article I of the PILOT Agreement is hereby deleted and a revised Article I is inserted in its place and stead, to read as follows:

“ARTICLE I  
PAYMENT IN LIEU OF AD VALOREM TAXES

- 1.1 Exemption From General Ad Valorem Property Taxes. Pursuant to the PILOT Agreement, the EV Hotel Project has been exempt from Real Estate Taxes commencing with the July 1, 2018 School year and the January 1, 2019 County and Town tax year. For

the purposes of the foregoing, "Real Estate Taxes" shall mean all general ad valorem real property taxes levied against the EV Hotel Project by the Taxing Jurisdictions. The Company previously provided the Agency the information necessary for the completion and filing of an exemption application relating to the PILOT Agreement ("Exemption Application"); the Agency filed the Exemption Application; and the exemption was granted by the Assessor of the Town. Notwithstanding anything contained herein or in the Lease Agreement and the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay, subject to the Company's right to challenge the underlying assessments on the EV Hotel Project pursuant to ¶6 hereof) all Real Estate Taxes levied upon the EV Hotel Project as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the EV Hotel Project continues to qualify as a "project" under the Act; (ii) neither the EV Hotel Project nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes, except to the extent that such denial results solely from the failure of the Agency to timely file the Exemption Application with the appropriate assessors or Boards of Assessment Review by the Taxable Status Date.

- 1.2 Agreement to make payments in lieu of taxes. As long as the Agency holds a leasehold interest in the EV Hotel Project, the Company agrees to pay to the Agency at 548 Broadway, Monticello, New York 12701, or at such other address as shall be designated from time to time by the Agency, annual payments in lieu of taxes (each, a "PILOT Payment") computed in accordance with this Second Amended PILOT.

Subject Premises. PILOT Payments shall be made on account of the following premises located in the Town:

Section, Block and Lot
23.-1-54.6

- 1.3. Computation of PILOT Payments. This ¶1.3 shall be applicable to the eighteen (18) year period with the first such year designated as "Year 1". Year 1 relates to the payment due February 1, 2019.

- (a) TVSP Years 1-5. For the PILOT Payment dates February 1, 2019, February 1, 2020, February 1, 2021, February 1, 2022 and February 1, 2023, the Company previously made a PILOT Payment to the Agency based on a Total Value Subject to PILOT ("TVSP") of \$1,500,000.
- (b) (i) TVSP Year 6. For the PILOT Payment date February 1, 2024, the Company shall make a PILOT Payment to the Agency based on a TVSP of \$1,500,000.

- (ii) TVSP Years 7-10. For the PILOT Payment dates February 1, 2025, February 1, 2026, February 1, 2027 and February 1, 2028, the Company shall make PILOT Payments to the Agency based on a TVSP of \$1,800,000.
- (c) Calculation of Annual PILOT Payment. The calculation of the annual PILOT Payments for 2024 through 2028 shall be made as follows:
  - (i) The TVSP from ¶1.3(b)(i) (Year 6) and (ii) (Years 7 through 10) shall be multiplied by the equalization rate as defined in ¶1.3(f) hereof; and
  - (ii) The annual PILOT Payment shall be determined by multiplying the amount derived in ¶1.3(c)(i) hereof by the tax rates identified in ¶1.3(g).
- (d) For Year 11 Through Year 18. For the PILOT Payment date February 1, 2029 through and including February 1, 2036, the TVSP shall be the following amounts for the following years:

<u>Payment Date</u>	<u>TVSP</u>
February 1, 2029	{[Assessed Value — (\$1,800,000 x Eq rate)] x 12.50%} + (\$1,800,000 x Eq rate)
February 1, 2030	{[Assessed Value — (\$1,800,000 x Eq rate)] x 25.00%} + (\$1,800,000 x Eq rate)
February 1, 2031	{[Assessed Value — (\$1,800,000 x Eq rate)] x 37.50%} + (\$1,800,000 x Eq rate)
February 1, 2032	{[Assessed Value — (\$1,800,000 x Eq rate)] x 50.00%} + (\$1,800,000 x Eq rate)
February 1, 2033	{[Assessed Value — (\$1,800,000 x Eq rate)] x 62.50%} + (\$1,800,000 x Eq rate)
February 1, 2034	{[Assessed Value — (\$1,800,000 x Eq rate)] x 75.00%} + (\$1,800,000 x Eq rate)
February 1, 2035	{[Assessed Value — (\$1,800,000 x Eq rate)] x 87.50%} + (\$1,800,000 x Eq rate)
February 1, 2036	{[Assessed Value — (\$1,800,000 x Eq rate)] x 100.00%} + (\$1,800,000 x Eq rate)

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

- (e) Calculation of Annual PILOT Payment. The calculation of the annual PILOT Payments for 2029 through and including 2036 shall be made by multiplying the TVSP calculated in ¶ 1.3(d) by the tax rates identified in ¶1.3(g).
- (f) Equalization Rate. The equalization rate to be used in making the computation contemplated by 1.3(c)(i) and 1.3(d) 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(c)(i) and 1.3(d) shall be one hundred (100%) percent.
- (g) Tax Rates. For the purposes of determining the amount of the PILOT Payments as contemplated by 1.3(c)(ii) and 1.3(e) 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.

The chart which follows set forth the anticipated years of the overall eighteen (18) year period for PILOT Payments under the Agency's Destination Resort Uniform Tax Exemption Program; the date that a PILOT Payment is due; and the appropriate tax periods utilized in determining the tax rates for computing the PILOT Payment.

<b>Year</b>	<b>PILOT Payment Due Date</b>	<b>School Fiscal Year Beginning</b>	<b>County and Town</b>
1	February 1, 2019	July 1, 2018	January 1, 2019
2	February 1, 2020	July 1, 2019	January 1, 2020
3	February 1, 2021	July 1, 2020	January 1, 2021
4	February 1, 2022	July 1, 2021	January 1, 2022
5	February 1, 2023	July 1, 2022	January 1, 2023
6	February 1, 2024	July 1, 2023	January 1, 2024
7	February 1, 2025	July 1, 2024	January 1, 2025
8	February 1, 2026	July 1, 2025	January 1, 2026
9	February 1, 2027	July 1, 2026	January 1, 2027
10	February 1, 2028	July 1, 2027	January 1, 2028
11	February 1, 2029	July 1, 2028	January 1, 2029
12	February 1, 2030	July 1, 2029	January 1, 2030
13	February 1, 2031	July 1, 2030	January 1, 2031
14	February 1, 2032	July 1, 2031	January 1, 2032
15	February 1, 2033	July 1, 2032	January 1, 2033
16	February 1, 2034	July 1, 2033	January 1, 2034
17	February 1, 2035	July 1, 2034	January 1, 2035
18	February 1, 2036	July 1, 2035	January 1, 2036

- 1.4 Other Agreements Relating to PILOT Payments. The Agency shall remit to the Taxing Jurisdictions amounts received hereunder within thirty (30) days of receipt and shall allocate the PILOT Payments among the Taxing Jurisdictions in the same proportion as normal taxes would have been allocated but for the Agency's involvement.



The PILOT Payments provided for herein commenced on February 1, 2019. In no event shall the Company be entitled to receive tax benefits relative to the EV Hotel Project for more than the period provided in the PILOT Agreement and this Second Amended PILOT. The Company agrees that it will not seek any tax exemption for the EV Hotel Project which could provide benefits for more than the periods provided for in the PILOT Agreement and this Second Amended PILOT and specifically agrees that the exemptions provided for in the PILOT Agreement and this Second Amended PILOT, to the extent actually received (based upon the number of years elapsed), supersede and are in substitution of the exemptions provided by §485b of the Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Taxing Jurisdictions can rely upon and enforce this waiver to the same extent as if it were signatories hereto.

- 1.5. Determination of TVSP. The Agency and the Company have agreed upon the TVSP of the EV Hotel Project. Such valuation was made without regard to the actual cost of construction of improvements to be made at the EV Hotel Project. The TVSP has been increased by this Second Amended PILOT to include the improvements described in the 2022 Letter Application. Such valuation shall not be increased or decreased if the EV Hotel Project or any related work on or improvements are completed in substantial conformity with the plans and specifications. If there is a substantial change relating to the EV Hotel Project or any related work or improvements during the construction phase, the Agency may redetermine the improvement value of the EV Hotel Project. An increase in building size shall not be deemed to be a substantial change, unless such increase or decrease is more than five (5%) percent.
- 1.6. Termination of Use; Modification. If the substantial use of the EV Hotel Project shall be discontinued by the Company, the TVSP may be modified. It is understood that the benefits of the PILOT Agreement and this Second Amended PILOT have been extended to the Company on the grounds set forth in various related agreements between the parties; that new jobs at the EV Hotel Project will be an economic asset to the County's economy; that the creating of new jobs in the County is considered beneficial to the well-being of the County as of the date of this Second Amended PILOT and for the foreseeable future; and that the discontinuance of the substantial use of the EV Hotel Project by the Company would alter the purpose for which this Second Amended PILOT was made. In such event, the Agency may give notice to the Company that modification is required. If the parties cannot agree on the basis of modification the Agency may increase the TVSP to an amount not exceeding the assessed value of the EV Hotel Project as determined by the Town Assessor.”

2. Article III, Section 3(a), Employment Goals, of the 2018 PILOT Agreement, as amended by the First Amendment, is hereby deleted and a revised Article III, Section 3(a), is inserted in its place and stead, to read as follows:

“(a) Employment Goals.

This PILOT Agreement is one of three (3) PILOT agreements for projects comprising the Resorts World Complex. The related PILOT agreements are the PILOT agreement by and between the Agency and Empire Resorts Real Estate I, LLC which relates to the Golf Project (“Golf Project PILOT”) and the PILOT agreement by and between the Agency and MOC which relates to the

Casino Resort (“Casino PILOT”). The Casino Resort, Monster Golf Course (“Golf Project”) and the EV Hotel Project are referred to herein as the “Resorts World Complex”. This PILOT Agreement together with the Golf Project PILOT and Casino PILOT are referred to herein as the “Resorts World Complex PILOTs”.

- (i) Employment Goal Definitions: For the purposes of this Agreement, the following terms shall have the meaning set forth in each definition:
  - (1) "Employee" shall mean a person first employed by the Company, an affiliate of the Company, a tenant of the Company, a consultant or any third-party vendor at the Resorts World Complex.
  - (2) “Full-Time Equivalent Employee” or “FT” shall mean an employee who works thirty-five (35) hours in any seven (7) day period at the Resorts World Complex.
  - (3) “Base Compensation” shall be determined in accordance with the provisions of the Fair Labor Standards Act.
- (ii) FT Employment Goals:
  - (1) An FT employment goal of 1,050 jobs at the Resorts World Complex 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) An FT employment goal of 1,050 jobs at the Resorts World Complex shall be maintained for the calendar year 2022 and thereafter.”

The Company shall cause MOC to file with the Agency on January 1<sup>st</sup> of each year until the latest of the Resorts World Complex PILOTs have terminated, a statement certified under oath setting forth the actual FTs employed at the Resorts World Complex for the preceding calendar year. Such statement shall contain such additional information as the Agency may reasonably request. The Company shall cause MOC to make available to the Agency such information as it may request to verify the information provided to the Agency including, but not limited to State and Federal employment tax forms and payroll records of the Company. "Actual average FT - employment" shall be determined by adding the actual FTs employed in each month of the applicable calendar year and dividing such sum by twelve (12).

- (iii) Computation of PILOT Payment if FT Employment Goals Not Attained: In the event the FT employment goal is not attained with respect to any calendar year during which Employment Goals are applicable, the next ensuing PILOT Payment shall be subject to adjustment. For avoidance of doubt, Employment Goals are not applicable to the calendar year 2020 or calendar year 2021. The amount due (“Adjusted PILOT Payment”) shall be

the amount calculated in ¶1.3 (as applicable), plus an amount equal to the tax calculated as if an exemption under RPTL §485b were in effect, less the amount calculated in ¶1.3 (as applicable), times the percentage:

- (1) the numerator of which is equal to 1050 minus the actual average FT employment for the prior calendar year, and
- (2) the denominator of which is 1050.

By way of example, if in calendar year 2025 (i) the actual average FT employment is 945; (ii) the Town equalization rate used by the County to allocate 2025 taxes is fifty (50%) percent; (iii) the Town combined school, county and town rate relating to the 9/1/2025 school tax and 1/1/2026 county and town tax bills is \$50.00 per \$1,000.00 of assessed value (iv) the assessed value of the Facility on the 2025 Final Assessment Roll is \$5,000,000 full value; (v) \$4,000,000 of improvement value would have been eligible for the §485b exemption at a rate of twenty-five (25%) percent, then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

PILOT Payment

PILOT Payment = Total Value Subject to PILOT x Equalization Rate x tax rates

$$\$45,000 = \$1,800,000 \times 50\% \times 50/1000$$

Tax under §485b

Tax under §485b = Assessed Value - §485b exemption x tax rates

$$\$200,000 = (\$5,000,000 - \$1,000,000) \times 50/1000$$

Adjusted PILOT Payment

Adjusted PILOT Payment = PILOT Payment + [(tax under §485b - PILOT Payment amount) x Percentage of Underemployment]

$$\$60,500 = \$45,000 + [(\$200,000 - \$45,000) \times 105/1050]$$

In no event shall the Adjusted PILOT Payment exceed the amount payable if the Facility were subject to taxation and a §485b exemption had been granted to eligible portions of the Facility.”

3. Article XII Indemnification, at Section 12 of the PILOT, is hereby amended to add to the beginning of the first sentence “To the fullest extent permitted by law,”

4. Article XIV, Section 14(a) Notices of the PILOT is hereby deleted and a revised Article XIV, Section 14(a), is inserted in its place and stead, to read as follows:

“(a) 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:

Empire Resorts Real Estate II, LLC

c/o Resorts World Catskills

888 Resorts World Drive

Monticello, New York 12701

Attn: President

with a copy to:

Resorts World New York City

110-00 Rockaway Boulevard

Jamaica, New York 11420

Attn: General Counsel”

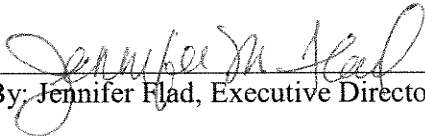
and to such other addresses and/or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this ¶14(a). All notices shall be deemed given when mailed or personally delivered in the matter provided in this ¶14(a). Any electronic notice sent outside of regular business hours shall be deemed given on the next business day.”

5. Expenses. All fees and costs related to this Second Amended PILOT shall be paid by the Company.

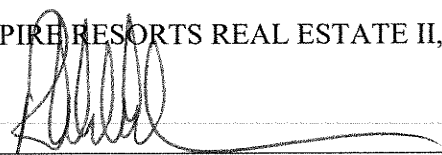
6. Integration. Except as herein amended, all other terms and conditions of the PILOT Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this Second Amended PILOT or the PILOT Agreement, the terms of this Second Amended PILOT shall control.

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

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: Jennifer Flad, Executive Director

EMPIRE RESORTS REAL ESTATE II, LLC

  
By: Robert DeSalvio, President