

**FIRST AMENDMENT TO  
LEASEBACK TO COMPANY**

*THIS FIRST AMENDMENT TO LEASEBACK TO COMPANY* ("First Amendment"), effective the \_\_\_\_ 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 located 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 Leaseback to Company, effective as of the 1<sup>st</sup> day of March, 2018, by and between the Agency and the Company ("2018 Leaseback"), which was further amended by that certain Omnibus Amendment to Project Documents, made as of March 31, 2022, by and between the Agency and the Company ("Omnibus Amendment" and together with the 2018 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 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 and Project Agreement, a Lease to Agency ("Lease Agreement"), the 2018 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

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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.

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 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; and

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

*WHEREAS*, the Lease Agreement was extended to cover the time period of the extended PILOT benefit period; and

*WHEREAS*, the Leaseback Agreement must be extended to cover the same time period as the extended Lease Agreement.

*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 February 1, 2036, or on such earlier date as may be permitted by Section 8.1 hereof.”

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 Five Hundred Thousand (\$500,000.00) Dollars. 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 Leaseback 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 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.”

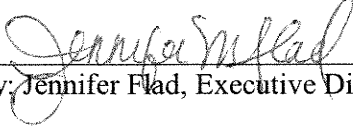
5. Expenses. All fees and costs related to this First Amendment shall be paid by the Company.

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.

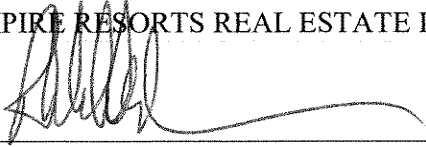
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*IN WITNESS WHEREOF*, the parties hereto have executed this First Amendment effective as of the date hereof.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
\_\_\_\_\_  
By: Jennifer Flad, Executive Director

EMPIRE RESORTS REAL ESTATE II, LLC

  
\_\_\_\_\_  
By: Robert DeSalvio, President