

AMENDED AND RESTATED  
MASTER DEVELOPMENT AND AGENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPMENT AND AGENT AGREEMENT, effective as of the 21<sup>st</sup> day of October, 2023, by and among 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”), EPT CONCORD II, LLC, a Delaware limited liability company having an address at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 (“EPT Concord”); and EPR CONCORD II, L.P., a Delaware limited partnership, having its principal offices located at 909 Walnut Street, Suite 200, Kansas City, Missouri 64106 (“EPR Concord” and together with EPT Concord collectively, the “Company”).

WITNESSETH:

*WHEREAS*, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

*WHEREAS*, on or about October 21, 2013, the Agency and EPT Concord entered into a lease/leaseback transaction to facilitate the (i) acquisition by the Agency of a leasehold interest or other interest in approximately seventy-one (71) parcels of land (“EPT Land”); (ii) construction and equipping on the EPT Land a master planned destination resort community to include (a) an 18-hole golf course with clubhouse and maintenance facilities, (b) a casino resort to include a casino, hotel, harness horse racetrack, grandstand/showroom, simulcast facility, banquet event center, restaurants and related facilities, (c) hotels, (d) indoor and outdoor water parks, (e) recreational vehicle parks, (f) an entertainment village with a cinema and supporting retail facilities, (g) a residential village containing a mix of unit types including condominiums, apartments, townhouses and detached single-family homes, a civic center and an active adult residential community, all or a portion of which will be connected, via a multi-use trail system, to open space (“EPT Improvements”); (iii) acquisition in and around the EPT Land and the EPT Improvements of certain items of equipment and other tangible personal property; and (iv) payment of certain costs and expenses incidental to the issuance of any Bonds, subject to EPT Concord entering into a Master Development and Agent Agreement (“MDAA”); and

*WHEREAS*, the Agency and EPT Concord entered into a MDAA limited in scope to soil erosion and sediment control, clearing and grubbing, earthwork, construction of new roads and improvements and enhancements to existing roads, constructed wetlands, landscaping, sanitary sewer, water, storm sewer, electric power, telephone service, cable tv, internet connectivity, demolition of existing structures and all other related Facility, Equipment, Improvements and Infrastructure costs as set forth in the application of EPT Concord to the Agency for Financial Assistance dated February 12, 2013 (“EPT Infrastructure Project”); and

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

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

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

*WHEREAS*, on or about February 6, 2013, Monticello Raceway Management, Inc. ("MRMI") submitted an application to the Agency (the "MRMI Application") to undertake a project consisting of (i) the acquisition by the Agency a leasehold interest or other interest in certain property located at Joyland Road and Thompsonville Road in the Town of Thompson ("Town"), Sullivan County ("County"), and State, being more particularly identified as all or part of tax map numbers 23-1-11.3, 23-1-48, 23-1-52 (portion), 23-1-53 (portion), 23-1-54.1, 23-1-54.2 (portion), 23-1-54.3 (portion) and containing in the aggregate approximately 186 acres ("Casino Land"), (ii) the construction and equipping on the Casino Land of a "Casino Resort", consisting of a casino, hotel, a half-mile harness horse racetrack, grandstand showroom, simulcast facility, banquet event center, restaurants, support buildings and structured and surface parking and related facilities and amenities (collectively, the "Casino Improvements"); and (iii) the acquisition in and around the Casino Land and the Casino Improvements of certain items of equipment and other tangible personal property ("Casino Equipment," and collectively with the Casino Land and the Casino Improvements ( the "Casino Development"); and

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

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

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

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

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

*WHEREAS*, pursuant to the rights established under the Master Developer Documents, on or about March 6, 2015, EPR Concord leased a parcel of land approximately 216.75 acres in size (“Golf Course Land”) to Adelaar Developer, LLC (“ADLLC”) and in turn on or about December 28, 2015 ADLLC subleased the Golf Course Land to Empire Resorts Real Estate I, LLC (“ERREI”) for the purpose of 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, 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 PILOT (“Third Omnibus Amendment”); and

*WHEREAS*, on or about February 8, 2013, EPR Concord presented an application to 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 relating to the Waterpark Project; and

*WHEREAS*, on or about 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 (“Waterpark PILOT”); and

*WHEREAS*, on or about August 1, 2017, EPT Concord, EPR Concord, ADLLC and the Agency entered into a Fourth Omnibus Amendment to Project Documents to acknowledge the Waterpark PILOT relating to the Waterpark Project and amend the Master Developer Documents to exclude the Waterpark Land from the EPT PILOT (“Fourth 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 22 acres in size (“EV Hotel Land”) to ADLLC and in turn on or about December 28, 2015 ADLLC subleased the EV Hotel Land (as herein defined) 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<sup>1</sup> (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 or about March 1, 2018, EPT Concord, EPR Concord, ADLLC and the Agency entered into a Fifth Omnibus Amendment to Project Documents to acknowledge the EV Hotel PILOT relating to the EV Hotel Project and amend the Master Development Documents to exclude the EV Hotel Land from the EPT PILOT (“Fifth Omnibus Amendment”); and

*WHEREAS*, the EPT Land following execution of the First Omnibus Amendment which excluded the Casino Land; the Second Omnibus Amendment which excluded the CRMC Land; the Third Omnibus Amendment which excluded the Golf Course Land; the Fourth Omnibus Amendment which excluded the Waterpark Land; and the Fifth Omnibus Amendment which excluded the EV Hotel Land, consists of sixty-two (62) parcels of land listed on Schedule A annexed hereto and made a part hereof (“2023 Land”); and

*WHEREAS*, the designation of the Company as the Master Developer of the Land (as originally defined in the MDAA) was for a period of ten (10) years; and

*WHEREAS*, EPR Concord and EPT Concord requested the Agency enter into an Amended and Restated MDAA to extend the development period for a period of five (5) years; and

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<sup>1</sup> It should be noted that the EV Hotel Project scope was slightly reduced post-application to account for market conditions. ERRE II obtained the necessary environmental and land use approvals for the updated Project from the Town of Thompson Planning Board (the “Planning Board”). Specifically, on February 14, 2018, the Planning Board issued its Negative Declaration of Environmental Significance for the EV Hotel Project and circulated notice of same to the Agency (an Involved Agency) pursuant to SEQRA.

*WHEREAS*, by Resolution No. 37-23 adopted on October 16, 2023, the Agency authorized the execution of this Amended and Restated Master Development and Agent Agreement to memorialize an extension to October 31, 2028.

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

1. Scope of Agency and Agency Benefits.

(a) Master Developer Designation - The Agency hereby designates the Company its true and lawful agent, as well as the Developer for the 2023 Land and the EPT Infrastructure Project, and the Company hereby accepts such agency on behalf of itself, solely for purposes of undertaking various projects on the Land. The initial phase of development has been completed. The designation of the Company as the master developer shall terminate on October 31, 2028 (“Extended Development Period”). The Agency shall provide all authorized forms of Agency financial assistance to the Company or its designees for future project phases which are or will be the subject of separate applications to the Agency (collectively, the “Future Phases” and together with development to date, the “Project”). During the Extended Development Period, the Agency shall not modify, alter or change the proposed forms of financial assistance as more particularly provided for Section 2 hereof, including, but not limited to the Relevant UTEP Programs, except to the extent that (i) there is a change in supervening Federal or State laws, rules or regulations, or (ii) a change in circumstances or newly discovered information, establishing that the Project or any portion thereof is likely to result in a material harm or endangerment to the public health, safety or welfare, which harm or endangerment cannot be prevented by the Company after reasonable notice and time to cure. In the event that an exception to the protections set forth hereunder occur and continue during the Extended Development Period, said exception shall relate only to the portion or aspect of the Project affected by the newly discovered information or change in circumstances. The Agency shall evaluate periodically the progress of the development of the Project, and shall have the right in its reasonable discretion to rescind any rights granted to the Company under this subparagraph 1(a), if the Company and its tenants, lessees, subtenants or other owners or occupants’ of the Land (as originally defined in the MDAA) have failed to employ one thousand fifty (1,050) full time equivalent employees (“FTEs”) at the various projects developed on the (including the Future Phases) Lands (as originally defined in the MDAA).

So long as the Company and its tenants, lessees, subtenants or other owners or occupants’ of the Land (as originally defined in the MDAA) cumulatively employ one thousand fifty (1,050) permanent FTEs at the various projects developed on the Lands (as originally defined in the MDAA) at the end of any calendar year, then the Agency during the Extended Development Period shall not modify, alter or change the proposed forms of financial assistance herein, including, but not limited to the Relevant UTEP Programs. The Extended Development Period hereunder is not a personal right and shall attach to and run with the 2023 Land and Improvements hereunder.

(b) Sales Tax Exemption – At the time of execution of the MDAA on October 21, 2013, the Agency delivered to the Company a Sales Tax Abatement Letter, which was extended from time to time throughout the initial phase of development of the Project.

(c) **Mortgage Tax Exemption** – The Agency shall from time to time execute and deliver mortgages on the 2023 Land securing amounts incurred to pursue the Project, provided the mortgages are non-recourse to the Agency and the mortgages contain hold harmless language in form acceptable to counsel to the Agency. Except for the right of the Agency (i) to be held harmless and (ii) to have its fees, counsel charges and other third-party costs paid, the interests of the Agency under the Lease Agreement and Leaseback Agreement and PILOT shall be subordinate to the lien of said mortgages. At the time of execution of any mortgage of by the Agency, the Company shall pay the Agency a mortgage tax abatement fee of the greater of \$5,000.00 or 1/10% of the amount secured by each such mortgage.

2. **Program Reliance.** The Company has relied upon its qualification for benefits under the Agency’s General Abatement Program, Tourism Industry Program and Destination Resort Program (collectively, “Relevant UTEP Programs”) in making its decision to undertake and invest in the Project. Financial projections and budgets relating to the Project have been prepared with the assumption that the Relevant UTEP Programs will remain available to the Company or its designees throughout the Extended Development Period. Financial projections and budgets have been provided to prospective lenders, development partners and relied upon in financial reporting by the Company. Accordingly, consistent with subparagraph 1(a) herein, any amendment or modification of the Relevant UTEP Programs by the Agency, which makes such programs less beneficial than the programs presently in existence, which occur during the Extended Development Period, shall specifically exclude projects that have been undertaken with express reliance upon the Relevant UTEP Programs, including specifically the Project. The Agency also finds that it is necessary and desirable, as a result of public policy, the multi-year build out and substantial investment of the Company in the Project, and the practical timing, cost, phasing and other considerations in implementing the approved Comprehensive Development Plan for the Project, and the intent of the PRD, to grant the Company the rights and protections hereunder during the designated Extended Development Period.

3. **Representations and Covenants of the Company.** The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project, to the best of its knowledge:

(a) Neither the execution and delivery of this Amended and Restated Master Development and Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Amended and Restated Master Development and Agent Agreement, will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(b) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (b).

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way, in its reasonable belief, materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Amended and Restated Master Development and Agent Agreement.

(d) The Company covenants (i) that the Project will comply in all respects with all environmental laws and regulations; (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Project except in compliance with all applicable laws; (iii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Project or onto any other property; (iv) that no asbestos will be incorporated into or disposed of on the Project; (v) that no underground storage tanks will be located on the Project except in full compliance at all times with all applicable laws, rules, and regulation; and (vi) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section (d), shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company) representatives, their respective successors and assigns and personal representatives from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Project, the Company agrees to pay the reasonable expenses of same to the Agency upon demand.

4. Hold Harmless Provision. To the extent permitted by law, the Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, their respective successors and assigns and personal representatives harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or breach by the Company of this Amended and Restated Master Development and Agent Agreement or (ii) liability arising from or expense incurred by the Agency's (i) financing, acquiring, constructing, installing and equipping of the Project; (ii) its taking of a leasehold interest in the Project; and (iii) its leasing of the Project back to the Company, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expense, incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its respective chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), and representatives, their respective successors and assigns and personal



representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

5. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable Worker's Compensation Law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

6. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 5(a) 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. All policies of insurance shall be primary and noncontributory. Such insurance may be written with deductible amounts not exceeding \$2,500.00. 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.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Amended and Restated Master Development and Agent Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the

policy has been renewed or replaced or is no longer required by this Amended and Restated Master Development and Agent Agreement.

7. This Amended and Restated Master Development and Agent Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.

8. Notices. All notices provided for by this Amended and Restated Master Development and Agent 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:

EPT CONCORD II, LLC  
909 Walnut Street, Suite 200  
Kansas City, Missouri 64106  
Attn: Chief Operating Officer

and:

EPR CONCORD II, L.P.  
909 Walnut Street, Suite 200  
Kansas City, Missouri 64106  
Attn: Chief Operating Officer

with a copy to:

Mintzer Mauch PLLC  
290 Madison Avenue, 4<sup>th</sup> Floor  
New York, New York 10017  
Attn: Helen Mauch, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. Any electronic notice sent outside of regular business hours shall be deemed given on the next business day.

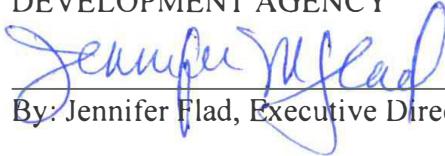
9. This Amended and Restated Master Development and Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the Federal or state courts located in County, State.

10. By executing this Amended and Restated Master Development and Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or transaction counsel (if applicable), and (2) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company acknowledges the receipt of a written estimate of fees and costs of the Agency's counsel. The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

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IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Master Development and Agent Agreement as of the day and year first above written.


COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: Jennifer Flad, Executive Director

EPT CONCORD II, LLC


By: EPT Concord, LLC

By: EPR Properties

  
By: Gregory E. Zimmerman, Vice President

EPR CONCORD II, L.P.

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

  
By: Gregory E. Zimmerman, Vice President