

## FIRST AMENDMENT TO AGENT AND PROJECT AGREEMENT

*THIS FIRST AMENDMENT TO AGENT AND PROJECT AGREEMENT* (“First Amendment”), dated March 31, 2022 and effective as of the 13<sup>th</sup> day of August, 2018 amends that certain Agent and Project Agreement, made as of March 1, 2018 (“Agreement”) 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”).

### WITNESSETH:

**WHEREAS**, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York ("State") pursuant to Title I of Article 18-A of the (General Municipal Law of the State of New York (collectively referred to as the “Enabling Act”), as a body corporate and politic and as a public benefit corporation of the 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 their 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**, pursuant to and in connection with the provisions of the Enabling Act, the Agency is empowered under the Act to undertake the providing of financing and taking of title or a leasehold interest in the Project (as described below); and

**WHEREAS**, on or about August 17, 2017, the Company presented an application (“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>a</sup> (the “EV

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<sup>a</sup> It should be noted that the scope of the Project scope was slightly reduced post-application to account for market conditions. The Company 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 Project and circulated notice of same to the Agency (an Involved Agency) pursuant to SEQRA.

Hotel”), situate on one (1) parcel of real estate consisting of approximately 22 acres located along Joyland Road and Thompsonville Road, Town of Thompson (the “Town”), County of Sullivan (“County”), New York State and identified on the Town tax map as all or a portion of tax map number 23.-1-54.6 (the “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 (the “Equipment”); (iv) construction of improvements to the EV Hotel, the Land and the Equipment (collectively, the EV Hotel, the Land and the Equipment are referred to as the “Facility” or the “Project”); and (v) lease of the Project from the Agency to the Company; and

**WHEREAS**, by resolution, dated August 23, 2017 (“Resolution”), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing, installing and equipping the Facility and conferred on the Company certain financial assistance consisting of: (a) an exemption from all State and local sales and use tax for the purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes conferred through a certain payment in lieu of tax agreement requiring the Company to make payments in lieu of taxes (“PILOT”) for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes, are hereinafter collectively referred to as the “Financial Assistance”). Provision of the Financial Assistance is subject to the Company entering into this Agreement; and

**WHEREAS**, the Agency and the Company entered into the following documents:

1. Agent and Project Agreement, dated March 1, 2018;
2. Environmental Compliance and Indemnification Agreement, dated March 1, 2018;
3. Bill of Sale to Agency, dated March 1, 2018;
4. Bill of Sale to Company, dated March 1, 2018;
5. Lease to Agency and memorandum thereto, dated March 1, 2018;
6. Leaseback to Company and memorandum thereto, dated March 1, 2018; and
7. Payment in Lieu of Tax Agreement, dated March 1, 2018 (“PILOT Agreement”);

(Items 1-7 collectively referred to as the “2018 Transaction Documents”); and

**WHEREAS**, by its letter, dated June 30, 2018, the Company requested an increase in the authorized amount of the sales and use tax exemption from One Million Five Hundred Thousand and 00/100 (\$1,500,000.00) Dollars to Two Million and 00/100 (\$2,000,000.00) Dollars; and

**WHEREAS**, the direct and indirect benefits to the local economy of additional construction activity far exceeds the cost of the increased sales and use tax exemption; and

**WHEREAS**, on August 13, 2018, the Agency by Resolution #27-18 approved the increase in the authorized amount of the sales and use tax exemption; and

**WHEREAS**, it appears that this First Amendment prepared in August, 2018 was not contemporaneously executed; and

**WHEREAS**, the Company and Agency desire to execute this First Amendment on the date first written above, intending this First Amendment to be effective as of August 13, 2018.

**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. Section 4(e) of the Agreement is hereby deleted in its entirety and the following inserted in its place and stead:

“(e) The Company further (i) covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in the amount up to \$25,000,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$2,000,000.00, (ii) confirms that the mortgage recording tax exemption amount shall not exceed \$519,000, and (iii) confirms that the real property tax abatement benefits to be provided to the Company shall conform to those contained in the PILOT Agreement.”

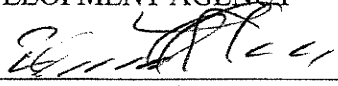
2. Integration. Except as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control.

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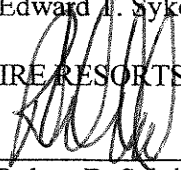
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*IN WITNESS WHEREOF*, the parties hereto have executed this First Amendment as of the day and year first above written.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: ~~Suzanne Loughlin, Chairperson~~  
Edward T. Sykes, Vice Chairman

EMPIRE RESORTS REAL ESTATE II, LLC

  
By: Robert DeSalvio, President