

FIRST AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT

THIS FIRST AMENDED PAYMENT IN LIEU OF TAXATION AGREEMENT ("First Amended PILOT Agreement"), dated March 31, 2022 amends that certain Payment in Lieu of Taxation Agreement, made as of March 1, 2018 ("PILOT 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").

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, the Company presented an application ("Application") to the Agency, a copy of which is on file with 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 cars¹ (the "EV Hotel"), situate on one (1) parcel of real estate consisting of approximately 22 acres

¹ It should be noted that 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.

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 "Project"); and (v) lease of the Project from the Agency to the Company; and

WHEREAS, by resolution adopted on August 23, 2017 (the "2017 Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to, among other conditions, the Company entering into the PILOT 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;

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

WHEREAS, by letter application dated March 9, 2022 ("2022 Letter Application"), the Company requested the 2018 Transaction Documents be amended; and

WHEREAS, by Resolution dated March 30, 2022 ("2022 Resolution" and together with the 2017 Resolution, the "Resolutions"), the Agency authorized amendment of the 2018 Transaction Documents as follows:

- A. To 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 by \$300,000.

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, install and equip the Project in accordance with the plans and specifications presented to the Agency as modified by the 2022 Letter Application and approved by the Resolutions; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to execute and deliver this First Amended PILOT Agreement making provision for payments in lieu of taxes by the Company for the benefit of the County, Town and the Monticello Central School District ("School") (collectively, the County, the Town and the School are referred to as the "Taxing Jurisdictions"); and

WHEREAS, all agreements of the Agency and the Company relating to payments in lieu of taxes for the Land on or after the date hereof shall be governed by this First Amended PILOT 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. Article I, Payment In Lieu of Ad Valorem Taxes, is hereby deleted in its entirety and the following Article I is inserted in its place and stead:

“1.1 Exemption From General Ad Valorem Property Taxes. Pursuant to the PILOT Agreement, the 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 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 Project pursuant to ¶6 hereof) all Real Estate Taxes levied upon the 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 Project continues to qualify as a "project" under the Act; (ii) neither the 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 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 First Amended PILOT Agreement.

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 sixteen (16) year period with the first such year designated as "Year 1". Year 1 relates to the payment due February 1, 2019.
- (a) TVSP Years 1-4. For the PILOT Payment dates February 1, 2019, February 1, 2020, February 1, 2021 and February 1, 2022, 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 Years 5-6. For the PILOT Payment dates February 1, 2023 and February 1, 2024, the Company shall make PILOT Payments to the Agency based on a TVSP of \$1,500,000.
 - (ii) TVSP Years 7-8. For the PILOT Payment dates February 1, 2025 and February 1, 2026, the Company shall make PILOT Payments to the Agency based on a TVSP of \$1,800,000.
 - (c) Calculation of Annual Payment in Lieu of Tax. The calculation of the annual PILOT Payments for 2023 through 2026 shall be made as follows:
 - (i) The TVSP from ¶1.3(b)(years 5 through 8) 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 9 Through Year 16. For the PILOT Payment date February 1, 2027 through and including February 1, 2034, the TVSP shall be the following amounts for the following years:

<u>Payment Date</u>	<u>TVSP</u>
February 1, 2027	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 12.50\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2028	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 25.00\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2029	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 37.50\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2030	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 50.00\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2031	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 62.50\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2032	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 75.00\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2033	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 87.50\% \} + (\$1,800,000 \times \text{Eq rate})$
February 1, 2034	$\{[\text{Assessed Value} - (\$1,800,000 \times \text{Eq rate})] \times 100.00\% \} + (\$1,800,000 \times \text{Eq rate})$

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 2027 through and including 2034 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 sixteen (16) 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.

Year	PILOT Payment Due Date	School Fiscal Year Beginning	County and Town
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

- 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 Project for more than the period provided in the PILOT Agreement and this First Amended PILOT Agreement. The Company agrees that it will not seek any tax exemption for the Project which could provide benefits for more than the periods provided for in the PILOT Agreement and this First Amended PILOT Agreement and specifically agrees that the exemptions provided for in the PILOT Agreement and this First Amended PILOT Agreement, 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 Project. Such valuation was made without regard to the actual cost of construction of improvements to be made at the Project. The TVSP has been increased by this First Amended PILOT Agreement to include the improvements described in the 2022 Letter Application. Such valuation shall not be increased or decreased if the 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 Project or any related work or improvements during the construction phase, the Agency may redetermine the improvement value of the 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 Project shall be discontinued by the Company, the TVSP may be modified. It is understood that the benefits of the PILOT Agreement and this First Amended PILOT Agreement have been extended to the Company on the grounds set forth in various related agreements between the parties; that new jobs at the 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 First Amended PILOT Agreement and for the foreseeable future; and that the discontinuance of the substantial use of the Project by the Company would alter the purpose for which this First Amended PILOT Agreement 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 Project as determined by the Town Assessor."

2. The Company confirms the Representations and Warranties set forth in Article V are true and correct as of the date hereof.

3. The Notice addresses set forth in Section 14(a) are hereby amended as follows:

"To the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701
Attn: Agency Counsel

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"


4. 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 First Amended PILOT Agreement and the PILOT Agreement, the terms of this First Amended PILOT Agreement shall control.

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY


By: Suzanne Loughlin, Chairperson

EMPIRE RESORTS REAL ESTATE II, LLC

DocuSigned by:



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By: Robert DeSalvio, President