

Cappillino & Rothschild LLP

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY
(DUTCHESS COUNTY, NEW YORK)

and

EMPIRE HOTEL DEVELOPMENT, INC.

AMENDMENT OF LEASE AGREEMENT

Dated as of December 1, 2018

Dutchess County Industrial Development Agency
(Amendment to Empire Hotel Development, Inc. 2017 Facility)

THIS AMENDMENT OF LEASE AGREEMENT (this “**Amendment of Lease Agreement**”), dated as of December 1, 2018, is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601-5545 (the “**Agency**”), and EMPIRE HOTEL DEVELOPMENT INC., a corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 11 Cedar Pond Lane, Poughkeepsie, New York 12603 (the “**Company**”).

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing, installing, furnishing and equipping certain facilities as authorized by the Act; and the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below; and

WHEREAS, the Agency has previously agreed to provide financial assistance to the Company in connection with the following:

- (A) the acquisition, construction, installation, furnishing and equipping of an approximately 59,526 square foot, four-story hotel containing approximately 93 to 95 rooms (the “**Improvements**”) to be built on an 8.43 acre parcel located in the Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map No. 134689-6159-01-287638-0000 (the “**Land**”; and together with the Improvements, the “**Facility**”), said Facility to be utilized as a hotel, banquet and conference center (the “**Project**”); and
- (B) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of August 1, 2017 (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency and the Company entered into a Lease and Project Agreement, dated as of August 1, 2017 (the “**Lease Agreement**”); and

WHEREAS, pursuant to the terms of the Lease Agreement, the Sales Tax Exemption expires upon the earliest of: (A) the termination of the Lease Agreement, (B) the Completion Date, (C) the completion of the Facility as provided in Section 4.3 of the Lease Agreement, or (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 of the Lease Agreement; and

WHEREAS, the Company has experienced construction delays that have prevented them from completing the Project before the termination of the Lease Term; and

WHEREAS, the Company has not yet received the Maximum Company Sales Tax Savings Amount (as defined in the Lease Agreement); and

WHEREAS, the Company requested a six (6) month extension of the Lease Term, extending the termination date to June 30, 2019; and

WHEREAS, the Agency approved the extension of the Lease Term and this Amendment of Lease pursuant to a Resolution Authorizing Extension dated November 13, 2018; and

WHEREAS, contemporaneously with the execution and delivery of this Amendment of Lease Agreement, the Agency and the Company will enter into an Amendment of Company Lease Agreement, dated as of December 1, 2018 (the “**Amendment of Company Lease**”), by and between the Company and the Agency.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions in this Amendment of Lease Agreement. All capitalized terms used in this Amendment of Lease Agreement which are not otherwise defined herein shall have the meanings assigned thereto in the Lease Agreement which definitions are incorporated herein and made a part hereof by reference.

ARTICLE II

AMENDMENT OF LEASE AGREEMENT

Section 2.1 Amendment of Lease Agreement. The Lease Agreement is hereby amended and modified in all respects to reflect that Lease Term termination date is extended from December 31, 2018 to June 30, 2019. Any reference to December 31, 2018 throughout the Lease Agreement shall hereby be extended to June 30, 2019.

Section 2.2 Recording of Memorandum of Amendment of Lease Agreement. In connection with the execution and delivery of this Amendment of Lease Agreement, the Agency and the Company shall record or cause to be recorded a Memorandum of Amendment of Lease reflecting the amendment and modification of the Lease Agreement pursuant to the terms of this Amendment of Lease Agreement.

ARTICLE III
MISCELLANEOUS

Section 3.1. Binding Effect. This Amendment of Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 3.2. Severability. In the event any provision of this Amendment of Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.3. Amendments, Changes and Modifications. This Amendment of Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 3.4. Execution of Counterpart. This Amendment of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.5. Applicable Law. This Amendment of Lease Agreement shall be governed exclusively by the applicable laws of the State of New York without regard or reference to its conflict of laws principles.

Section 3.6. Ratification of Lease Agreement. Except as otherwise amended and modified by this Amendment of Lease Agreement, the Lease Agreement is hereby ratified and confirmed and remains in full force and effect.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment of Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date and year first above written.

**DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Sarah Lee
Title: Executive Director


STATE OF NEW YORK)
 : ss.:
COUNTY OF DUTCHESS)

On the 27 day of December in the year 2018, before me, a Notary Public in and for said State, personally appeared **SARAH LEE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

JASMIN D. HAYLETT
Notary Public - State of New York
No. 01HA6181058
Qualified In Dutchess County
My Commission Expires February 12, 2019

EMPIRE HOTEL DEVELOPMENT, INC.

By: 
Name: Erfan Khan
Title: President

STATE OF NEW YORK)
 : SS.:
COUNTY OF DUTCHESS)

On the 20 day of December in the year 2018, before me, the undersigned, personally appeared **ERFAN KHAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

JESSICA JANETTE GLASS
Notary Public, State of New York
No. 02GL6244840
Qualified in Dutchess County
Commission Expires July 18, 2019

SCHEDULE 1

LEGAL DESCRIPTION OF REAL PROPERTY

Schedule A Description

Title Number 17-NV-DU-68174

Page 1

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Poughkeepsie, County of Dutchess and State of New York, being shown as Lot 1 on a certain map entitled, "Map of Subdivision of Three Partners Realty and filed as map number 8016 and being more particularly bounded and described in the Schedule "A" attached hereto.

SCHEDULE "A"

BEGINNING at a point on the westerly side of Route 9 a k a South Road, said point being the southeasterly corner of Lot 2 as shown on a certain map entitled, "Map of Subdivision of Three Partners Realty" and filed as map number 8016, said point also being the northeasterly corner of the herein described parcel which is shown on map number 8016 as Lot 1, thence heading southwesterly along the westerly side of Route 9, S04°24'15"W for 373.15 feet to a point being 1.0 feet northwesterly of a NYSDOT concrete monument found, thence continuing southwesterly along Route 9, S18°13'14"W for 97.62 feet to a NYSDOT concrete monument found, thence heading southeasterly along Route 9 and across the Casper Creek, S16°00'28"E for 85.89 feet to a NYSDOT concrete monument found, thence continuing southeasterly along Route 9, S46°10'00"E for 83.21 feet to a point on the westerly side of Sheafe Road, said point being the southeasterly corner of this described Lot 1, thence heading southwesterly along Sheafe Road the following four courses, S31°27'00"W for 168.20 feet, S35°46'00"W for 115.40 feet, S20°38'00"W for 51.20 feet and S26°32'00"W for 50.20 feet to a point at the northeasterly corner of lands now or formerly of Coratti (L1812 P311), said point also being the southwesterly corner of this described Lot 1, thence heading northwesterly along the lands of Coratti, N36°14'00"W for 433.21 feet and N30°24'00"W 110.07 feet to a point at the northwesterly corner of lands of Coratti and the northeasterly corner of Lot H-1 as shown on a certain map entitled, "Casperkill Ridge Subdivision" and filed as map number 10674, thence heading northwesterly along Lots H-1 and H-2 of map number 10674 and across the previously mentioned Casper Creek, N03°13'40"W for 350.89 feet to a point at the northeasterly corner of Lot 4 block 2E as shown on a certain map entitled, "Section II South Gates Estates" and filed as map number 2765, thence heading northwesterly along Lot 4, N33°20'40"W for 76.72 feet to a point, thence heading northeasterly along Lot 4 and Lot 3, block 2E, N39°37'00"E for 160.00 feet to a point on the easterly side of Lot 3 and the southwesterly corner of the previously mentioned Lot 2 of map number 8016, said point also being the northwesterly corner of this described Lot 1, thence heading southeasterly along Lot 2, S84°33'32"E for 446.51 feet to the point and place of beginning. Containing 8 43 acres of land, more or less.

Continued On Next Page

Schedule A Description - continued

Title Number 17-NV-DU-68174

Page 2

SUBJECT TO a permanent easement for stream channel and drainage granted to the New York State Department of Transportation (The People of the State of New York), as shown in Lot 1 on the previously mentioned map number 8016 and described in liber 1629 at page 487 and shown on the NYSDOT map number 124 as parcel 146.

SUBJECT TO a 30 foot wide sanitary sewer easement along the northerly line of Lot 1 and southerly through Lot 1 to Lot H-2 as shown on the previously mentioned map number 10674, granted to Sword Associates & The Town of Poughkeepsie as described in liber 2019 at page 232.

ALSO having the rights to an easement for ingress/egress to and from Route 9 across Lot 2 as shown on the previously mentioned map number 8016 and described in liber 1758 at page 242 and a revised description described in document number 02-2005-5590.