

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13D  
Under the Securities Exchange Act of 1934  
(Amendment No. 20)\*

**Empire Resorts, Inc.**

(Name of Issuer)

**Common Stock, \$.01 Par Value Per Share** (Title of Class of Securities)

**292052107**

(CUSIP Number)

**Steven L. Wilner, Esq.**  
**Cleary Gottlieb Steen & Hamilton LLP**  
**One Liberty Plaza**  
**New York, NY 10006**  
**212-225-2000**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

**November 9, 2018**

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 140.13d-1(g), check the following box. o

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

1. Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only).

**Kien Huat Realty III Limited**

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)

(b)

  X  

3. SEC Use Only

4. Source of Funds (See Instructions)

  AF  

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)       

6. Citizenship or Place of Organization

**Isle of Man**

Number of	7.	Sole Voting Power	<b>0</b>
Shares	8.	Shared Voting Power	<b>29,514,606</b>
Beneficially	9.	Sole Dispositive Power	<b>0</b>
Owned by	10.	Shared Dispositive Power	<b>29,514,606</b>
Each Reporting			
Person With			

11. Aggregate Amount Beneficially Owned by Each Reporting Person

**29,514,606**

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

  X  

13. Percent of Class Represented by Amount in Row (11)

**88.6%<sup>(2)</sup>**

14. Type of Reporting Person (See Instructions)

**CO**

<sup>1</sup> This includes 28,914,606 shares of common stock, par value \$.01 per share (the "Common Stock") of Empire Resorts, Inc. (the "Issuer") and 600,000 shares of Common Stock into which the Series F Preferred Stock beneficially owned by the reporting person can currently be converted.

<sup>2</sup> Calculated on a the basis of a total of 33,317,491 shares of Common Stock outstanding, as reported by the Issuer in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 and 600,000 shares of Common Stock into which the Preferred Stock beneficially owned by the reporting persons can currently be converted ).

1. Names of Reporting Persons.

I.R.S. Identification Nos. of above persons (entities only).

**Lim Kok Thay**

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a)

(b)

**X**

3. SEC Use Only

4. Source of Funds (See Instructions)

**AF**

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)       

6. Citizenship or Place of Organization

**Malaysia**

Number of	7.	Sole Voting Power	<b>0</b>
Shares	8.	Shared Voting Power	<b>29,514,606</b>
Beneficially	9.	Sole Dispositive Power	<b>0</b>
Owned by	10.	Shared Dispositive Power	<b>29,514,606</b>
Each Reporting			
Person With			

11. Aggregate Amount Beneficially Owned by Each Reporting Person

**29,514,606**

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

**X**

13. Percent of Class Represented by Amount in Row (11)

**88.6<sup>(2)</sup>**

14. Type of Reporting Person (See Instructions)

**IN**

<sup>3</sup> This includes 28,914,606 shares of Common Stock and 600,000 shares of Common Stock into which the Preferred Stock beneficially owned by the reporting person can currently be converted.

<sup>4</sup> Calculated on a the basis of a total of 33,317,491 shares of Common Stock outstanding, as reported by the Issuer in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 and 600,000 shares of Common Stock into which the Preferred Stock beneficially owned by the reporting persons can currently be converted.

This Amendment No. 20 (this “Amendment No. 20”) amends and supplements the Schedule 13D filed by Kien Huat Realty III Limited (“Kien Huat”) and Lim Kok Thay (“Mr. Lim” and, together with Kien Huat, the “Reporting Persons”) with the Securities and Exchange Commission on August 27, 2009, as previously amended (the “Schedule 13D”), relating to the common stock, par value \$.01 per share (the “Common Stock”) of Empire Resorts, Inc. (the “Issuer”). All capitalized terms used in this Amendment No. 20 and not otherwise defined herein have the meanings ascribed to such terms in the Schedule 13D.

Items 4, 5 and 6 are hereby amended and supplemented to add the following:

**Item 4. Purpose of Transaction**

On November 6, 2018, Kien Huat and the Issuer entered into the Commitment Letter (as defined in Amendment No. 19 to the Schedule 13D). On November 9, 2018, Kien Huat and the Issuer entered into an amended and restated commitment letter (the “Amended and Restated Commitment Letter”), which amended and restated the Commitment Letter in its entirety.

The Amended and Restated Commitment Letter amended the Commitment Letter to provide that the amended and restated certificate of designations (the “Amended and Restated Certificate of Designations”) for the Series F Convertible Preferred Stock (the “Preferred Stock”) will prohibit the Issuer from issuing, upon conversion of the Preferred Stock, a number of shares of Common Stock which, when aggregated with any shares of Common Stock previously issued upon conversion of the Preferred Stock, would exceed 19.99% of the Issuer’s then-issued and outstanding Common Stock (the “Conversion Limitation”) and that holders of the Preferred Stock may not vote shares of Preferred Stock to the extent shares of Common Stock issued upon conversion of that Preferred Stock would exceed Conversion Limitation (the “Voting Limitation”). The Voting Limitation and the Conversion Limitation will be removed from any existing shares of Preferred Stock and will not apply to any future shares of Preferred Stock following the receipt by the Issuer of stockholder approval. The Board of Directors of the Issuer, including each director that is independent of Kien Huat (i.e., the directors that were not nominated by Kien Huat), has voted to approve removal of the Conversion Limitation and Stockholder Limitation and recommend that the shareholders of the Issuer approve the same. Kien Huat, as holder of a majority of the shares of the Issuer entitled to vote, will execute a written consent to approve the removal of the Voting Limitation and Conversion Limitation, and the Company has agreed in the Amended and Restated Commitment Letter to file an information statement with the Securities and Exchange Commission with respect to such consent by no later than November 30, 2018.

Pursuant to the Amended and Restated Commitment Letter, the Issuer requested that Kien Huat subscribe for 120 shares of the Issuer’s Series F Preferred Stock (the “Preferred Stock”) for consideration of \$100,000 per share (the “Stated Value”), in the aggregate amount of \$12,000,000. On November 13, 2018, the Issuer and Kien Huat entered into a subscription agreement (the “Subscription Agreement”) in connection with Kien Huat’s subscription for that Preferred Stock.

Pursuant to an amended and restated certificate of the designations, powers, preferences and rights of the Series F Convertible Preferred Stock executed on November 9, 2018 (the “Certificate of Designations”), Kien Huat, as a holder of Preferred Stock, is entitled to receive dividends equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock, when, as and if such dividends are paid on shares of the Common Stock. Subject to the Voting Limitation, Kien Huat shall also be entitled to vote on all matters submitted to the vote of the holders of Common Stock on an as-converted basis and not as a separate class, except as required by law.

---

The Certificate of Designations provides that the price per share of Preferred Stock will be \$100,000 (the “Stated Value”). Subject to the Conversion Limitation, the Preferred Stock will be convertible to Common Stock of the Issuer as follows:

- At any time prior to December 31, 2038 (the “Maturity Date”), the Preferred Stock is convertible in whole or in part, at the option of the holder of the Preferred Stock, into shares (the “Conversion Shares”) of Common Stock in such amount equal to the Stated Value divided by \$20.00 (the “Conversion Price”) multiplied by the number of shares of Preferred Stock being converted. The conversion price is subject to certain customary adjustments.
- If the holder of Preferred Stock has not given notice of conversion prior to the Maturity Date, each share of Preferred Stock that is outstanding on the Maturity Date shall automatically be converted into that number of shares of Common Stock determined by dividing the Stated Value by the 90-day volume-weighted average price for a share of Common Stock for the period ending the day immediately prior to the Maturity Date.

References to and descriptions of the Commitment Letter, the Amended and Restated Commitment Letter, the Subscription Agreement, and the Certificate of Designations do not purport to be complete and are qualified in their entirety by reference to the actual documents, which are filed as Exhibits 13, 14, 15 and 16 hereto, respectively, and are incorporated herein by reference.

#### **Item 5. Interest in Securities of the Issuer**

The disclosure set forth under Item 4 of this Amendment No. 20 is incorporated herein by reference.

(a-b) As of the date hereof, the Reporting Persons may be deemed to share beneficial ownership of 29,514,606 shares of Common Stock, representing approximately 88.6% of the outstanding Common Stock (calculated on the basis of a total of 33,317,491 shares of Common Stock outstanding, as reported by the Issuer in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 and 600,000 shares of Common Stock into which the Preferred Stock beneficially owned by the reporting persons can currently be converted).

#### **Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer**

The disclosure set forth under Item 4 of this Amendment No. 20 is incorporated herein by reference.

#### **Item 7. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer**

Exhibit 13            Commitment Agreement by and between Kien Huat Realty III Limited and Empire Resorts, Inc. as amended and restated by the Amended and Restated Commitment Agreement, dated as of November 9, 2018, by and between Kien Huat Realty III Limited and Empire Resorts, Inc.

Exhibit 14            Subscription Agreement, dated as of November 13, 2018, by and between Kien Huat Realty III Limited and Empire Resorts, Inc.

---

Exhibit 15

Amended and Restated Certificate of Designations for the Series F Convertible Preferred Stock, dated as of November 9, 2018,

---

## SIGNATURES

After reasonable inquiry and to the best of my knowledge, I certify that the information set forth in this statement is true, complete and correct.

Dated: November 13, 2018

### **Kien Huat Realty III Limited**

By: /s/ Gerard Lim

Name: Gerard Lim

Title: Director

/s/ Lim Kok Thay by Gerard Lim

Lim Kok Thay

---

## EXHIBIT INDEX

Exhibit Index	Description
Exhibit 1	Joint Filing Agreement, dated as of August 27, 2009, by and between Lim Kok Thay and Kien Huat Realty III Limited.
Exhibit 2	Investment Agreement, dated as of August 19, 2009, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Issuer on August 19, 2009).
Exhibit 3	Stockholder Voting Agreement, dated as of August 19, 2009, by and among Empire Resorts, Inc., Kien Huat Realty III Limited and the stockholders signatory thereto (incorporated by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by the Issuer on August 19, 2009).
Exhibit 4	Registration Rights Agreement, dated as of August 19, 2009, by and between Empire Resorts, Inc. and Kien Huat Realty III Limited (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by the Issuer on August 19, 2009).
Exhibit 5	Custody Agreement, dated as of August 19, 2009, by and between Kien Huat Realty III Limited and JPMorgan Chase Bank, National Association, as Custodian (incorporated by reference to Exhibit 5 to Schedule 13D filed on August 27, 2009).
Exhibit 6	Standby Purchase Agreement dated as of April 12, 2013, by and between Empire Resorts, Inc. and Kien Huat Realty III Ltd. (incorporated by reference to Exhibit 6 to Amendment No. 8 to Schedule 13D filed on April 15, 2013).
Exhibit 7	Standby Purchase Agreement dated as of January 2, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Ltd. (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by the Issuer on January 5, 2015).
Exhibit 8	Standby Purchase Agreement dated as of December 31, 2015, by and between Empire Resorts, Inc. and Kien Huat Realty III Ltd. (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by the Issuer on January 4, 2016).
Exhibit 9	Letter Agreement dated February 17, 2016, by and between Empire Resorts, Inc. and Kien Huat Realty III Ltd. (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed by the Issuer on February 18, 2016).
Exhibit 10	Note Exchange Agreement, dated as of December 28, 2017, among Empire Resorts, Inc., Montreign Holding Company, LLC, and Kien Huat Realty III Limited (incorporated by reference to Exhibit 10.4 of the Current Report on Form 8-K filed by the Issuer on January 3, 2018).
Exhibit 11	Amendment to Commitment Agreement, dated as of December 28, 2017, by and between Empire Resorts, Inc., and Kien Huat Realty III Limited (incorporated by reference to Exhibit 99.1 of the Current Report on Form 8-K filed by the Issuer on January 3, 2018).

---



- Exhibit 12      Amendment to Letter Agreement, dated as of December 28, 2017, by and between Empire Resorts, Inc., and Kien Huat Realty III Limited (incorporated by reference to Exhibit 4.1 of the Current Report on Form 8-K filed by the Issuer on January 3, 2018).
- Exhibit 13      Commitment Agreement by and between Kien Huat Realty III Limited and Empire Resorts, Inc. as amended and restated by the Amended and Restated Commitment Agreement, dated as of November 9, 2018, by and between Kien Huat Realty III Limited and Empire Resorts, Inc..
- Exhibit 14      Subscription Agreement, dated as of November 13, 2018, by and between Kien Huat Realty III Limited and Empire Resorts, Inc.
- Exhibit 15      Amended and Restated Certificate of Designations for the Series F Convertible Preferred Stock, dated as of November 9, 2018,

Kien Huat Realty III Limited

November 9, 2018

Empire Resorts, Inc.  
c/o Monticello Casino and Raceway  
204 State Route 17B, P.O. Box 5013  
Monticello, New York 12701

Attention:  
Emanuel R. Pearlman, Executive Chairman of the Board of Directors  
Ryan Eller, President and Chief Executive Officer

Re: Financing

Gentlemen:

We understand that Empire Resorts, Inc. (the “Company”) may raise additional financing (“Financing”) to supplement the Company’s existing resources.

The purpose of this letter is to amend and restate in its entirety that certain letter, dated November 6, 2018, by and between the Company and Kien Huat Realty III Limited (“KHRL”) and to reconfirm the commitment of KHRL to participate in the Financing in accordance with the terms, and subject to the conditions, set forth in the Term Sheet attached as Exhibit A hereto.

Unless the parties mutually agree to its earlier termination, KHRL’s commitment set forth in this letter shall expire upon the earlier to occur of (i) the Company’s receipt of funding of Third Party Financing (as defined in the Term Sheet) in an amount no less than the Required Funding Amount (as defined in the Term Sheet) and (ii) April 15, 2020. The Company hereby agrees to use its reasonable efforts to secure Third Party Financing in an amount at least equal to the Required Funding Amount.

This commitment letter, including the attached Term Sheet, (a) supersedes all prior discussions, agreements, commitments, arrangements, negotiations or understandings, whether oral or written, of KHRL and the Company with respect to the subject matter hereof; (b) shall be governed by the laws of the State of New York; (c) shall not be assignable by the Company without the prior written consent of KHRL (and any purported assignment without such consent shall be null and void); (d) is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto; and (e) may not be amended or waived except by an instrument in writing signed by the Company and KHRL.

[signature page follows]

---

Sincerely,

KIEN HUAT REALTY III LIMITED

By: /s/ Gerard Lim Ewe Keng  
Name: Gerard Lim Ewe Keng  
Title: Director

Accepted as of the date above written:

EMPIRE RESORTS, INC.

By: /s/ Ryan Eller  
Name: Ryan Eller  
Title: President and Chief Executive Officer

[Signature Page to Commitment Letter]

November 9, 2018

**Financing Summary of Terms**

- Issuer:** Empire Resorts, Inc. (“Empire” and, together with its subsidiaries, the “Company”) and/or such other direct or indirect subsidiaries of the Company as mutually agreed by Kien Huat Realty III Limited (“KHRL”) and the Company.
- Maximum Amount of Financing to be Raised:** Up to \$126 million (the “Principal Amount”)
- KHRL Commitment:** KHRL will provide financing to the Company on the terms set forth in this Term Sheet and otherwise on commercially reasonable and market terms to be mutually and reasonably agreed to by the Company and KHRL (the “KHRL Financing”) in an aggregate amount (the “Maximum KHRL Financing Amount”) up to the excess (if any) of (i) the Principal Amount (the “Required Funding Amount”) less (ii) the aggregate amount of additional financing (whether debt or equity) raised by Empire from third parties (net of fees and transaction costs) after the date hereof (the “Third Party Financing”). For purposes of this Term Sheet, Third Party Financing shall exclude \$29 million of equity financing raised by Empire from any person (or affiliate thereof) with which Empire enters into a commercial agreement relating to online gaming and sports betting at Resorts World Catskills.
- Preferred Stock Financing:** In the KHRL Financing, the Company shall issue shares of convertible preferred stock (the “Convertible Preferred Stock”) having substantially the terms set forth on Schedule 1 hereto.

**Written Consent / Approval:**

KHRL, as holder of a majority of the shares of the Company entitled to vote, will execute a written consent (the “Stockholder Consent”), to approve (i) the issuance of shares of Convertible Preferred Stock and the shares of common stock of the Company underlying the Convertible Preferred Stock pursuant to the terms of this Term Sheet, if any, and the terms of any specific financing consummated in connection herewith, (ii) the removal of the “Conversion Limitation” (as defined in Schedule 1) from any shares of Convertible Preferred Stock issued prior to the date of the Stockholder Consent and (iii) the issuance of shares of Convertible Preferred Stock without the Conversion Limitation following the date of the Stockholder Consent. Further, the Board of Directors of the Company, including each director that is independent of KHRL, shall approve and recommend that the Company take each of the actions described in clauses (i) through (iii) of the preceding sentence (together with the Stockholder Consent, the “Approvals”). If applicable, the Company will file an information statement (the “Information Statement”) with respect to the Stockholder Consent with the Securities and Exchange Commission. The Approvals shall be obtained, and the Information Statement shall be filed with the Securities and Exchange Commission no later than November 30, 2018. The Company will agree to maintain at all times sufficient authorized shares of Company common stock to account for the conversion of all the Convertible Stock contemplated hereby.

**Funding Fee:**

KHRL shall be entitled to a funding fee (the “Funding Fee”) in connection with each funding of any portion of the KHRL Financing in an amount of 1% of the amount so funded by KHRL, or such other amount as is mutually agreed by the Company and KHRL. Each Funding Fee payment shall be due and payable simultaneously with the applicable funding by KHRL.

**Use of Proceeds:**

Proceeds will be used for general working capital and corporate purposes of the Company and/or such other direct or indirect subsidiaries of the Company as mutually agreed by KHRL and the Company.

**Funding Dates and Amounts:**

The Company may draw-down the KHRL Financing (but not more than the Maximum KHRL Financing Amount in the aggregate) on such dates as mutually agreed by KHRL and the Company but in any event no earlier than pursuant to the installment schedule set forth on Schedule 2 hereto. In connection with each draw-down, the Company and KHRL shall enter into separate subscription agreements, each substantially in the form attached hereto as Exhibit A.

**Additional Agreements:**

The receipt of any Third Party Financing will be subject to the approval of the New York State Gaming Commission (if required).

**Expenses**

The Company shall pay for or reimburse KHRL for all of its legal expenses in connection with the negotiation, execution, and delivery hereof and the consummation of the transactions contemplated hereby.

Schedule 1

**Terms of Preferred Stock**

<i>Securities:</i>	Convertible preferred stock (the “Convertible Preferred Stock”)
<i>Price Per Share:</i>	\$100,000 (“Original Purchase Price”)
<i>Maturity:</i>	December 31, 2038 (“Maturity Date”)
<i>Priority:</i>	The Convertible Preferred Stock shall be senior to the rights, preferences and privileges of all other equity securities of the Company, except for the Series B Preferred Stock, par value \$.01 per share, of the Company (the “Series B Preferred Stock”).
<i>Voluntary Conversion; Mandatory Conversion at Maturity:</i>	The holder of the Convertible Preferred Stock will have the right to convert its shares of Convertible Preferred Stock into shares of common stock at any time prior to the Maturity Date at a conversion price of \$20 per share of common stock, which conversion price shall be subject to adjustment for certain customary corporate events to be agreed by the holder and the Company (as adjusted, the “Original Conversion Price”). Unless the holder has given notice of conversion prior to the Maturity Date to voluntarily convert the Convertible Preferred Stock, if the Convertible Preferred Stock is outstanding on the Maturity Date, then the outstanding Convertible Preferred Stock shall automatically convert into shares of common stock at a conversion price equal to the 90-day volume-weighted average price for a share of common stock of the Company for the period ending the day immediately prior to the Maturity Date.

<i>Mandatory Conversion upon Change in Control:</i>	In the event of a change in control (as shall be defined in the certificate of designations for the Convertible Preferred Stock), the Convertible Preferred Stock will participate on an as-converted basis with the holders of all other equity of the Company at a conversion price equal to the purchase price of the common stock of the Company in such change in control transaction. The Company shall provide the holder of the Convertible Preferred Stock with notice of such change in control prior to the record date for such transaction and such holder shall have the right to provide a notice of voluntary conversion up until the record date relating to such change of control transaction.
<i>Limitation on Conversion:</i>	Until the Company has obtained the Stockholder Consent, the Company may not issue, upon conversion of the Convertible Preferred Stock, a number of shares of common stock which, when aggregated with any shares of common stock previously issued upon conversion of the Convertible Preferred Stock, would exceed 19.99% of the Company's then-issued and outstanding common stock (the "Conversion Limitation").
<i>Dividends:</i>	Subject to the rights of the Series B Preferred Stock with respect to dividends and distributions, dividends will be paid on the Convertible Preferred Stock on an as-converted basis when, as and if paid on the Common Stock.
<i>Liquidation Preference:</i>	In the event of liquidation, dissolution or winding up of the Company, the proceeds shall be paid as follows: Subject to the rights of the Series B Preferred Stock, first pay one time the Original Purchase Price plus declared and unpaid dividends on each share of Convertible Preferred Stock that the Convertible Preferred Stock would receive on an as-converted basis. The balance of the proceeds shall be distributed pro-rata to the holders of common stock.

<i>Voting Rights:</i>	Subject to the Conversion Limitation, the Convertible Preferred Stock shall vote together with the common stock on an as-converted basis and not as a separate class, except as required by law. The Company’s certificate of incorporation will provide that the number of authorized shares of common stock may be increased or decreased with the approval of a majority of the Convertible Preferred Stock and common stock voting together as a single class and without a separate vote by the common stock subject to the Company’s obligation to maintain sufficient authorized shares of common stock to meet any reasonably foreseeable conversion event with respect to the Convertible Preferred Stock.
<i>Written Consent:</i>	If necessary, KHRL, as holder of a majority of the Company common stock will execute a written consent (the “Stockholder Consent”) approving the issuance of the Convertible Preferred Stock and the shares of common stock issuable upon conversion thereof. If necessary, the Company will file an information statement with respect to the Stockholder Consent with the Securities and Exchange Commission.
<i>Registration Rights:</i>	The registration rights granted to KHRL in that certain commitment letter, dated June 26, 2014, by and between the Company and KHRL, shall apply to the shares of common stock issuable upon conversion of the Convertible Preferred Stock.



Schedule 2

**Funding Dates**

<b>Draw Date No Earlier Than</b>	<b>Maximum Funding Amount</b>
11/9/2018	\$12 million
2/15/2019	\$20 million
5/15/2019	\$20 million
8/15/2019	\$15 million
11/15/2019	\$37 million
3/15/2020	\$22 million

---

Schedule 2-1

Exhibit A

**FORM OF  
SUBSCRIPTION AGREEMENT**

THIS SUBSCRIPTION AGREEMENT (this “*Agreement*”) is made and entered into as of [ ], by and among Empire Resorts, Inc., a Delaware corporation (the “*Company*”), and Kien Huat Realty III Limited, a corporation organized in the Isle of Man (the “*Purchaser*”).

WHEREAS, the Company and the Purchaser entered into that certain amended and restated commitment letter agreement, dated as of November 9, 2018 (the “**Commitment Letter**”), pursuant to which the Purchaser agreed to make an aggregate financing commitment to the Company that would be funded in installments and subject to reduction from time to time in accordance therewith; and

WHEREAS, pursuant to the Commitment Letter and consistent with the installment schedule included therein, the Company desires to issue shares of its Series F Convertible Preferred Stock, par value \$0.01 per share as set forth in Section 1.1 (the “*Preferred Stock*”), and the Purchaser desires to acquire such Preferred Stock and contribute to the capital of the Company the amount set forth in Section 1.1 hereof.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

**ARTICLE I**

**SUBSCRIPTION FOR PREFERRED STOCK**

Section 1.1. Subscription for Preferred Stock. Subject to the terms and conditions hereinafter set forth, the Purchaser hereby subscribes for [ ]<sup>[1]</sup> shares of the Preferred Stock (the “*Shares*”) and agrees to pay to the Company cash on the date hereof, as the purchase price for the Preferred Stock, in the amount of \$100,000 per share of Preferred Stock, in the aggregate amount of \$[ ], and the Company agrees to sell such Shares to the Purchaser.

Section 1.2. Issuance of Shares. The Company shall issue to and register in the name of the Purchaser one (1) certificate evidencing the Shares.

---

[1] **Note to Draft:** To reference number of shares to be issued in connection with relevant funding.

---

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company hereby represents and warrants to the Purchaser as of the date hereof as follows:

Section 2.1. Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 2.2. Authority.

(a) The execution, delivery, and performance by the Company of this Agreement have been duly authorized by all necessary action.

(b) This Agreement constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

Section 2.3. Title to Shares. Upon the issuance by the Company to the Purchaser of the Shares in accordance with the terms of this Agreement, the Shares will be validly issued, fully paid, and non-assessable and free of preemptive rights, and will represent 100% of the issued and outstanding shares of the Preferred Stock (taking into account all previous issuances of Preferred Stock to Purchaser) and upon delivery by the Company to the Purchaser of such Shares in accordance with the terms of this Agreement, the Purchaser will acquire good and marketable title to the Shares.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Company as of the date hereof as follows:

Section 3.1. Organization. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Isle of Man.

Section 3.2. Authority and Execution.

(a) The Purchaser has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and performance by the Purchaser of this Agreement have been duly authorized by all necessary action.

(b) This Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent

that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

Section 3.3. Experience. The Purchaser has such knowledge and experience in financing and business matters that it is capable of evaluating the merits and risks of an investment in the Shares and of making an informed decision and has the capacity to protect its own interests.

Section 3.4. Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended.

Section 3.5. Investment; Access to Data. The Purchaser is acquiring the Shares for its own account, not as a nominee or agent and not with the view to, or for resale in connection with, any distribution thereof. It has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management and has been supplied with all information it deems necessary to make an informed investment decision.

Section 3.6. Restrictions on Transfer.

(a) The Purchaser acknowledges and agrees that the Shares may not be offered for sale, sold or transferred except (a) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*") or in a transaction which is exempt from registration under the Securities Act or for which such registration is otherwise not required or (b) pursuant to an effective registration statement under any applicable securities laws of any state (the "*State Acts*") or in a transaction which is exempt from registration under such State Acts or for which such registration otherwise is not required. Purchaser agrees that if any transfer of its Shares or any interest is proposed to be made, as a condition precedent to any such transfer, Purchaser may be required to deliver to the Company an opinion of counsel satisfactory to the Company.

(b) All certificates representing the Shares shall have endorsed thereon legends substantially as follows:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THIS COMPANY, IS AVAILABLE.”

(c) In the event of the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company's outstanding capital stock without receipt of consideration, any new, substituted or additional securities or other property which are by reason of such transaction distributed with respect to any Shares subject to this Section 3 or into which such Shares thereby become convertible shall immediately be subject to this Section 3. Pursuant to Section 5 of the Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock of the Company, appropriate adjustments to reflect the distribution of such securities or property shall be made to the number and/or class of shares of Preferred Stock subject to this Section 3.

## ARTICLE IV

### MISCELLANEOUS PROVISIONS

Section 4.1. Amendments, Etc. No amendment, modification or waiver of any provision of this Agreement, nor consent to any departure by any party herefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 4.2. Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon any person or entity, other than the parties and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or any provision herein contained.

Section 4.3. Successors, Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, that neither this Agreement nor any of the rights hereunder may be assigned by any of the parties hereto without the consent of each other party.

Section 4.4. Governing Law. This Agreement shall be governed in all respects by the laws of the State of New York, without regard to conflicts of laws principles thereof. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party hereto shall commence an action or

proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

Section 4.5. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, which need not contain the signatures of more than one party, but such counterparts taken together will constitute one and the same agreement. This Agreement may be executed and delivered by electronic transmission in portable document format and/or facsimile transmission or by such other method as the parties may mutually agree.

Section 4.6. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any other purpose.

Section 4.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. Notwithstanding the foregoing, this Agreement does not supersede any terms of the Commitment Letter, which shall continue to govern the KHRL Financing (as such term is defined in the Commitment Letter) and operate in full force and effect in accordance with its terms.

Section 4.8. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**EMPIRE RESORTS, INC.**

By: \_\_\_\_\_  
Name: Ryan Eller  
Title: President and Chief Executive Officer

**KIEN HUAT REALTY III LIMITED**

By: \_\_\_\_\_  
Name: Gerard Lim Ewe Keng  
Title: Authorized Signatory

## SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this “*Agreement*”) is made and entered into as of November 13, 2018, by and among Empire Resorts, Inc., a Delaware corporation (the “*Company*”), and Kien Huat Realty III Limited, a corporation organized in the Isle of Man (the “*Purchaser*”).

WHEREAS, the Company and the Purchaser entered into that certain amended and restated commitment letter agreement, dated as of November 9, 2018 (the “*Commitment Letter*”), pursuant to which the Purchaser agreed to make an aggregate financing commitment to the Company that would be funded in installments and subject to reduction from time to time in accordance therewith; and

WHEREAS, pursuant to the Commitment Letter and consistent with the installment schedule included therein, the Company desires to issue shares of its Series F Convertible Preferred Stock, par value \$0.01 per share as set forth in Section 1.1 (the “*Preferred Stock*”), and the Purchaser desires to acquire such Preferred Stock and contribute to the capital of the Company the amount set forth in Section 1.1 hereof.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

### ARTICLE I

#### SUBSCRIPTION FOR PREFERRED STOCK

Section 1.1. Subscription for Preferred Stock. Subject to the terms and conditions hereinafter set forth, the Purchaser hereby subscribes for 120 shares of the Preferred Stock (the “*Shares*”) and agrees to pay to the Company cash on the date hereof, as the purchase price for the Preferred Stock, in the amount of \$100,000 per share of Preferred Stock, in the aggregate amount of \$12,000,000, and the Company agrees to sell such Shares to the Purchaser.

Section 1.2. Issuance of Shares. The Company shall issue to and register in the name of the Purchaser one (1) certificate evidencing the Shares.

### ARTICLE II

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Purchaser as of the date hereof as follows:

Section 2.1. Organization. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

Section 2.2.

---



Authority.

(a) The execution, delivery, and performance by the Company of this Agreement have been duly authorized by all necessary action.

(b) This Agreement constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

Section 2.3. Title to Shares. Upon the issuance by the Company to the Purchaser of the Shares in accordance with the terms of this Agreement, the Shares will be validly issued, fully paid, and non-assessable and free of preemptive rights, and will represent 100% of the issued and outstanding shares of the Preferred Stock (taking into account all previous issuances of Preferred Stock to Purchaser) and upon delivery by the Company to the Purchaser of such Shares in accordance with the terms of this Agreement, the Purchaser will acquire good and marketable title to the Shares.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby represents and warrants to the Company as of the date hereof as follows:

Section 3.1. Organization. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the Isle of Man.

Section 3.2. Authority and Execution.

(a) The Purchaser has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and performance by the Purchaser of this Agreement have been duly authorized by all necessary action.

(b) This Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

Section 3.3. Experience. The Purchaser has such knowledge and experience in financing and business matters that it is capable of evaluating the merits and risks of an investment in the Shares and of making an informed decision and has the capacity to protect its own interests.

Section 3.4. Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D under the Securities Act of 1933, as amended.

Section 3.5.

Investment; Access to Data. The Purchaser is acquiring the Shares for its own account, not as a nominee or agent and not with the view to, or for resale in connection with, any distribution thereof. It has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management and has been supplied with all information it deems necessary to make an informed investment decision.

Section 3.6. Restrictions on Transfer.

(a) The Purchaser acknowledges and agrees that the Shares may not be offered for sale, sold or transferred except (a) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “*Securities Act*”) or in a transaction which is exempt from registration under the Securities Act or for which such registration is otherwise not required or (b) pursuant to an effective registration statement under any applicable securities laws of any state (the “*State Acts*”) or in a transaction which is exempt from registration under such State Acts or for which such registration otherwise is not required. Purchaser agrees that if any transfer of its Shares or any interest is proposed to be made, as a condition precedent to any such transfer, Purchaser may be required to deliver to the Company an opinion of counsel satisfactory to the Company.

(b) All certificates representing the Shares shall have endorsed thereon legends substantially as follows:

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS AND NEITHER THE SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR SUCH LAWS OR AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND SUCH LAWS WHICH, IN THE OPINION OF COUNSEL FOR THIS COMPANY, IS AVAILABLE.”

(c) In the event of the declaration of a stock dividend, the declaration of an extraordinary dividend payable in a form other than stock, a spin-off, a stock split, an adjustment in conversion ratio, a recapitalization or a similar transaction affecting the Company’s outstanding capital stock without receipt of consideration, any new, substituted or additional securities or other property which are by reason of such transaction distributed with respect to any Shares subject to this Section 3 or into which such Shares thereby become convertible shall immediately be subject to this Section 3. Pursuant to Section 5 of the Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock of the Company, appropriate adjustments to reflect the distribution of such securities or property shall be made to the number and/or class of shares of Preferred Stock subject to this Section 3.

**ARTICLE IV**

## MISCELLANEOUS PROVISIONS

Section 4.1. Amendments, Etc. No amendment, modification or waiver of any provision of this Agreement, nor consent to any departure by any party herefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 4.2. Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed to confer upon any person or entity, other than the parties and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or any provision herein contained.

Section 4.3. Successors, Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, that neither this Agreement nor any of the rights hereunder may be assigned by any of the parties hereto without the consent of each other party.

Section 4.4. Governing Law. This Agreement shall be governed in all respects by the laws of the State of New York, without regard to conflicts of laws principles thereof. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party hereto shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.

Section 4.5. Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, which need not contain the signatures of more than one party, but such counterparts taken together will constitute one and the same agreement. This Agreement may be executed

and delivered by electronic transmission in portable document format and/or facsimile transmission or by such other method as the parties may mutually agree.

Section 4.6. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement for any other purpose.

Section 4.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof. Notwithstanding the foregoing, this Agreement does not supersede any terms of the Commitment Letter, which shall continue to govern the KHRL Financing (as such term is defined in the Commitment Letter) and operate in full force and effect in accordance with its terms.

Section 4.8. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**EMPIRE RESORTS, INC.**

By: /s/ Ryan Eller  
Name: Ryan Eller  
Title: President and Chief Executive Officer

**KIEN HUAT REALTY III LIMITED**

By: /s/ Gerard Lim Ewe Keng  
Name: Gerard Lim Ewe Keng  
Title: Authorized Signatory

*[Signature Page to Subscription Agreement]*

AMENDED AND RESTATED  
CERTIFICATE OF THE DESIGNATIONS, POWERS,  
PREFERENCES AND RIGHTS  
OF THE  
SERIES F CONVERTIBLE PREFERRED STOCK  
(\$0.01 PAR VALUE PER SHARE)

OF

EMPIRE RESORTS, INC.  
A DELAWARE CORPORATION

-----

PURSUANT TO SECTION 151 OF THE  
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

-----

The undersigned officers of Empire Resorts, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), do hereby certify:

1. The name of the Corporation is "Empire Resorts, Inc."
  2. The original Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock of the Corporation was filed with the Secretary of State of the State of Delaware on November 5, 2018 (the "Original Certificate").
  3. Pursuant to the authority conferred upon the Corporation's Board of Directors by the Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), this Amended and Restated Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock (the "Amended and Restated Certificate") hereby restates and amends the provisions of the Original Certificate.
  4. This Amended and Restated Certificate shall become effective on the date of filing with Secretary of State of Delaware. Prior to such filing, no shares of Series F Convertible Preferred Stock have been issued.
  5. The text of the Original Certificate is hereby restated and amended in its entirety to read as follows:
    1. DESIGNATIONS AND AMOUNT. One Thousand Five Hundred (1,500) shares of the Preferred Stock of the Corporation, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series F Preferred Stock" (the "Series F Preferred Stock"). The Series F Preferred Stock shall be offered for sale at a purchase price of \$100,000 per share and shall have a stated value of \$100,000 per share (the "Stated Value").
-

2. **DIVIDENDS.** Except for stock dividends or distributions for which adjustments are to be made pursuant to Section 5 herein, the holders of shares of Series F Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series F Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the common stock, par value \$0.01 per share, of the Corporation (the “Common Stock”), when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Series F Preferred Stock, subject to and in accordance with Section 5 herein.

3. **RIGHTS ON LIQUIDATION, DISSOLUTION OR WINDING UP, ETC.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (each, a “Liquidation”), no distribution shall be made to the holders of Junior Securities (as defined in Section 6) unless, prior thereto, the holders of such shares of Series F Preferred Stock shall have received the Stated Value per share (the “Liquidation Value”), plus an amount equal to all declared, and accrued but unpaid dividends and distributions thereon to the date of such payment. For the avoidance of any doubt, a Change of Control Transaction (as defined in Section 4(b)(iii) herein) shall not be deemed a Liquidation.

4. **RIGHT TO CONVERT.**

(a) Conversion at Option of Holder. At any time and from time to time prior to December 31, 2038 (the “Maturity Date”), the Series F Preferred Stock is convertible in whole or in part, at the option of the holder of the Series F Preferred Stock, into shares (the “Conversion Shares”) of Common Stock upon surrender of the Series F Preferred Stock, at the office of the Corporation, accompanied by a written notice of conversion in a form reasonably satisfactory to the Corporation, duly executed by the registered holder or its duly authorized attorney. The Series F Preferred Stock shall be convertible at any time into shares of Common Stock in such amount equal to (a) the Stated Value divided by \$20.00 (the “Base Conversion Price”) (subject to the adjustments as provided for in Section 5 herein), multiplied by (b) the number of shares of Series F Preferred Stock being converted. In the event the Series F Preferred Stock is converted in part, the Corporation shall deliver a new certificate of like tenor in the amount equal to the remaining balance of the Series F Preferred Stock after giving effect to such partial conversion. Following any conversion of the Series F Preferred Stock, the holder of the Conversion Shares received in connection with such conversion shall be entitled to receive any dividends that were declared but unpaid at the time of such conversion if and to the extent that such holder would have been entitled to receive such dividend under Section 2 had the conversion not occurred.

(b) Mandatory Conversion.

(i) Unless the holder has given notice of conversion pursuant to Section 4(a) prior to the Maturity Date, each Series F Preferred Stock that is outstanding on the Maturity Date shall automatically be converted into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series F Preferred Stock by the volume-weighted average price for a share of Common Stock as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NYY <equity> AQR” for the ninety (90) consecutive Trading Days ending on the Trading Day immediately prior to the Maturity Date. As used herein, “Trading Day” means a day on which national stock exchanges are open for trading.

(ii) In the event of a Change of Control Transaction, each share of Series F Preferred Stock shall automatically be converted into that number of shares of Common Stock determined by dividing the Stated Value of such share of Series F Preferred Stock by the per share consideration being offered to any holder of Common Stock in connection with any such Change of Control Transaction. Following any such conversion, the holder of the Conversion Shares received in connection with such conversion shall be

entitled to participate in such Change of Control Transaction and to receive the same per share consideration, in both amount and form, that any other holder of Common Stock is entitled to receive as a result of such Change of Control Transaction. The Corporation shall provide the holder of the Series F Preferred Stock with notice of any such proposed Change of Control Transaction prior to the record date (or effective date, as the case may be) for such transaction and such holder shall have the right to provide a written notice of conversion pursuant to Section 4(a) at any time prior to the record date (or effective date, as the case may be) relating to such Change of Control Transaction.

(iii) As used herein, “Change of Control Transaction” means the occurrence after the date hereof of:

(I) A tender offer (or series of related offers) shall be made and consummated for the ownership of 50% or more of the outstanding voting securities of the Corporation, unless as a result of such tender offer more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the stockholders of the Corporation (as of the time immediately prior to the commencement of such offer), or (B) any employee benefit plan of the Corporation or its subsidiaries, and their affiliates;

(II) The Corporation shall be merged or consolidated with another corporation, unless as a result of such merger or consolidation more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the stockholders of the Corporation (as of the time immediately prior to such transaction); provided, that a merger or consolidation of the Corporation with another company which is controlled by persons owning more than 50% of the outstanding voting securities of the Corporation shall constitute a Change of Control Transaction unless the Board of Directors, in its discretion, determines otherwise, or (B) any employee benefit plan of the Corporation or its subsidiaries, and their affiliates; or

(III) A Person (as defined below) shall acquire 50% or more of the outstanding voting securities of the Corporation (whether directly, indirectly, beneficially or of record), unless as a result of such acquisition more than 50% of the outstanding voting securities of the surviving or resulting corporation or entity shall be owned in the aggregate by (A) the stockholders of the Corporation (as of the time immediately prior to the first acquisition of such securities by such Person), or (B) any employee benefit plan of the Corporation or its subsidiaries, and their affiliates. As used herein, “Person” shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof; however, a Person shall not include (A) the Corporation or any of its subsidiaries; (B) a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or any of its subsidiaries; (C) an underwriter temporarily holding securities pursuant to an offering of such securities; or (D) a corporation owned, directly or indirectly, by the stockholders of the Corporation in substantially the same proportion as their ownership of stock of the Corporation.

(c) Share Reserve. So long as any shares of Series F Preferred Stock are outstanding, the Corporation shall reserve and keep available out of its duly authorized but unissued shares of Common Stock such number of Common Stock and other securities as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series F Preferred Stock.

(d) Issuance Limitations. Notwithstanding anything herein to the contrary, if the Corporation has not obtained Shareholder Approval, then the Corporation may not issue, upon conversion of the Series F Preferred Stock, a number of shares of Common Stock which, when aggregated with any Conversion Shares issued prior to such conversion date, would equal 20% or more of the common stock or 20% or more of the voting power of the Corporation outstanding immediately before the issuance (such number of



shares, the “Issuable Maximum”). Until Shareholder Approval is obtained and in the event of a conversion that would otherwise exceed the Issuable Maximum, each holder of Series F Preferred Stock shall be entitled to a portion of the Issuable Maximum, determined at the time of any applicable conversion, equal to the quotient obtained by dividing (x) the original Stated Value of such holder’s Series F Preferred Stock by (y) the aggregate Stated Value of all Series F Preferred Stock then-issued to all holders of Series F Preferred Stock. As used herein, “Shareholder Approval” means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the stockholders of the Corporation with respect to a “20% Issuance” (as defined by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity)).

5. CERTAIN ADJUSTMENTS; ADDITIONAL RIGHTS.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series F Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions that is payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Series F Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the applicable conversion price shall be (a) multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event or (b) as otherwise customarily calculated in accordance with any similar calculations previously agreed to by the parties consistent with their past practice. Any adjustment made pursuant to this Section 5(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re classification.

(b) Subsequent Rights Offerings. If at any time the Corporation grants, issues or sells any Common Stock or rights to purchase stock, warrants, securities or other property pro rata to all (or substantially all) of the record holders of any class of shares of Common Stock (the “Purchase Rights”), then each holder of Series F Preferred Stock will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such holder could have acquired if such holder had held the number of shares of Common Stock acquirable upon complete conversion of such holder’s Series F Preferred Stock immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

6. RANK. The Series F Preferred Stock shall rank, with respect to the rights, preferences and privileges, including but not limited to the distribution of assets, senior to all classes or series of equity securities of the Corporation (the “**Junior Securities**”) except the Series B Preferred Stock, par value \$.01 per share, of the Corporation, which is and shall remain senior in all respects to the Series F Preferred Stock.

7. VOTING RIGHTS. The holders of Series F Preferred Stock shall be entitled to notice of all stockholders’ meetings in accordance with the By-laws of the Corporation and, subject to the restrictions contained in this Section 7, to vote on all matters submitted to the vote of the holders of Common Stock on an as-converted basis and not as a separate class, except as required by law. Each share of Series F Preferred Stock shall represent such number of votes as shall equal the number of shares of Common Stock into

which such share is convertible at such time in accordance with the provisions of Section 4 hereof; provided, that, if at any given time, the total number of votes represented by the Series F Preferred Stock on an as-converted basis would exceed the Issuable Maximum, determined at any such time, then, at such relevant times, the votes represented by any given holder's shares of Series F Preferred Stock shall equal a portion of the aggregate votes represented by the Issuable Maximum, determined at any such time, equal to the quotient obtained by dividing (x) the original Stated Value of such holder's Series F Preferred Stock by (y) the aggregate Stated Value of all Series F Preferred Stock then-issued to all holders of Series F Preferred Stock, unless and until Shareholder Approval has been obtained, at which time this proviso will no longer be in effect. Notwithstanding the foregoing, the Corporation shall not, without the affirmative vote of the holders of a majority of the then-outstanding shares of the Series F Preferred Stock, voting together as a single class and without a separate vote of the holders of Common Stock, amend its Certificate of Incorporation, this Amended and Restated Certificate or the by-laws of the Corporation in any manner to increase or decrease the number of authorized shares of Common Stock or in any manner that would otherwise adversely affect the rights, preferences or privileges of the holders of the Series F Preferred Stock; and provided, further, that any such increase or decrease to the number of authorized shares of Common Stock referenced in the foregoing proviso shall be subject to the Corporation's obligation to maintain sufficient authorized shares of Common Stock to meet any reasonably foreseeable event pursuant to which the then-outstanding shares of Series F Preferred Stock would be convertible pursuant to Section 4.

8. MISCELLANEOUS.

(a) Amendments in Writing. Except as otherwise provided herein, the provisions of the Series F Preferred Stock may be amended and the Corporation may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Corporation has obtained the written consent of the holders representing at least a majority of the outstanding Series F Preferred Stock.

(b) Stamp or Transfer Tax. The Corporation will pay any documentary stamp or transfer taxes attributable to the initial issuance of the Common Stock issuable upon the conversion of the Series F Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for the Common Stock in a name other than that of the holder of Series F Preferred Stock in respect of which such Common Stock is issued, and in such case the Corporation shall not be required to issue or deliver any certificate for the Common Stock until the person requesting the same has paid to the Corporation the amount of such tax or has established to the Corporation's satisfaction that such tax has been paid.

(c) Mutilated, Lost, Stolen or Destroyed Certificate. In case the Series F Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the certificate, mutilated, lost, stolen or destroyed, a new certificate of like tenor and representing an equivalent right or interest, but only upon receipt of evidence reasonably satisfactory to the Corporation of such loss, theft or destruction and an indemnity or bond, if requested, also reasonably satisfactory to it.

\*\*\*\*\*

**IN WITNESS WHEREOF**, the Corporation has caused this Amended and Restated Certificate of Designations, Preferences and Rights to be signed in its name and on its behalf on this 9th day of November, 2018 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

By: /s/ Ryan Eller\_\_\_\_\_

Name: Ryan Eller

Title: President and Chief Executive Officer

-  
-