

SUB-BINDER 1

Part 5 – Operators

OPERATOR INFORMATION

Application of PointsBet New York LLC

JOINT BID CONSORTIUM

Primary Applicant

Kambi

Applicants

CAESARS.
SPORTSBOOK POINTSBET

 *Resorts World*

RUSH STREET
INTERACTIVE **wynnBET**

New York State
Gaming Commission

Request for Applications for Mobile Sports
Wagering Platform Providers

PART 5 – OPERATORS



August 2021

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The Applicant shall include a separate subdivision within the Primary Binder for each Platform Provider, comprised of material required to be submitted in response to each section contained within this Part.

5.1 OPERATOR

The responsibilities, duties and requirements of an Operator are defined and determined, by context, in the draft regulation Part 5330, which has been included as Appendix A: Draft Regulation Part 5330.

PointsBet is aware of the draft regulations in Part 5330 and will monitor any further iterations or amendments, including the finally adopted regulations following the completion of the RFA process, to ensure compliance with all applicable rules, regulations and other directives.

5.2 NUMBER OF OPERATORS TO BE HOSTED

The Applicant shall identify the number of Operators the Applicant proposes to host on the Applicant's Platform.

PointsBet intends to host two operators on its proprietary platform. The first is PointsBet as an internally integrated B2C operator. The second is a business-to-business relationship with the operator in this instance being Resorts World.

5.3 OPERATOR ORGANIZATION

For each Operator the Applicant proposes to host as part of this Application, the Applicant shall provide the full name of the Operator as it appears on such Operator's certificate of incorporation, charter or other official formation document, along with any D/B/A or trade names.

The Application shall include for each proposed Operator, information on the Operator consistent with that required for the Applicant pursuant to Sections 4.3 through 4.14 of Part 4 of this RFA.

4.3 CONTACT PERSON

The name, title, email address and telephone number of the individual to be contacted for the Applicant in reference to the Application.

Marcus Ap
Senior Legal Counsel
PointsBet USA

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.4 LOCATION OF THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS

The street address, city, state, zip code and telephone number for the Applicant's principal place of business, as well as the URL for any website maintained by or for the Applicant.

1331 17th Street, Suite 900, Denver, CO 80202
Phone: +1 833-338-7238

URL: <https://pointsbet.com/>

4.5 TYPE OF BUSINESS FORMATION

The type of business entity under which the Applicant is formed (e.g., corporation, limited liability company, partnership), the state (or other jurisdiction) of formation and the Federal Tax Identification Number (also known as the Federal Employer Identification Number). Attach evidence of the entity's current ability to conduct business (e.g., certificate of good standing, certificate of status) from the state (or other jurisdiction) of formation as of a date not earlier than 10 days prior to the submission of the Application.

[REDACTED]
Type of entity: Limited Liability Company

[REDACTED]

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The screenshot shows the 'Entity Information' page for PointsBet New York LLC. The page includes the New York State logo, navigation links for Services, News, Government, and COVID-19 Vaccine, and the Department of State Division of Corporations header. Below the header, there are two buttons: 'Return to Results' and 'Return to Search'. The main content area displays the following information:

ENTITY NAME: POINTSBET NEW YORK LLC	DOS ID: 5377895
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTION OF LAW: 203 LLC - LIMITED LIABILITY COMPANY LAW	ENTITY STATUS: Active
DATE OF INITIAL DOS FILING: 07/18/2018	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 07/18/2018	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: CURRENT
COUNTY: New York	NEXT STATEMENT DUE DATE: 07/31/2022
JURISDICTION: New York, United States	NFP CATEGORY:

At the bottom of the page, there is a navigation bar with the following tabs: ENTITY DISPLAY, NAME HISTORY, FILING HISTORY, MERGER HISTORY, and ASSUMED NAME HISTORY.



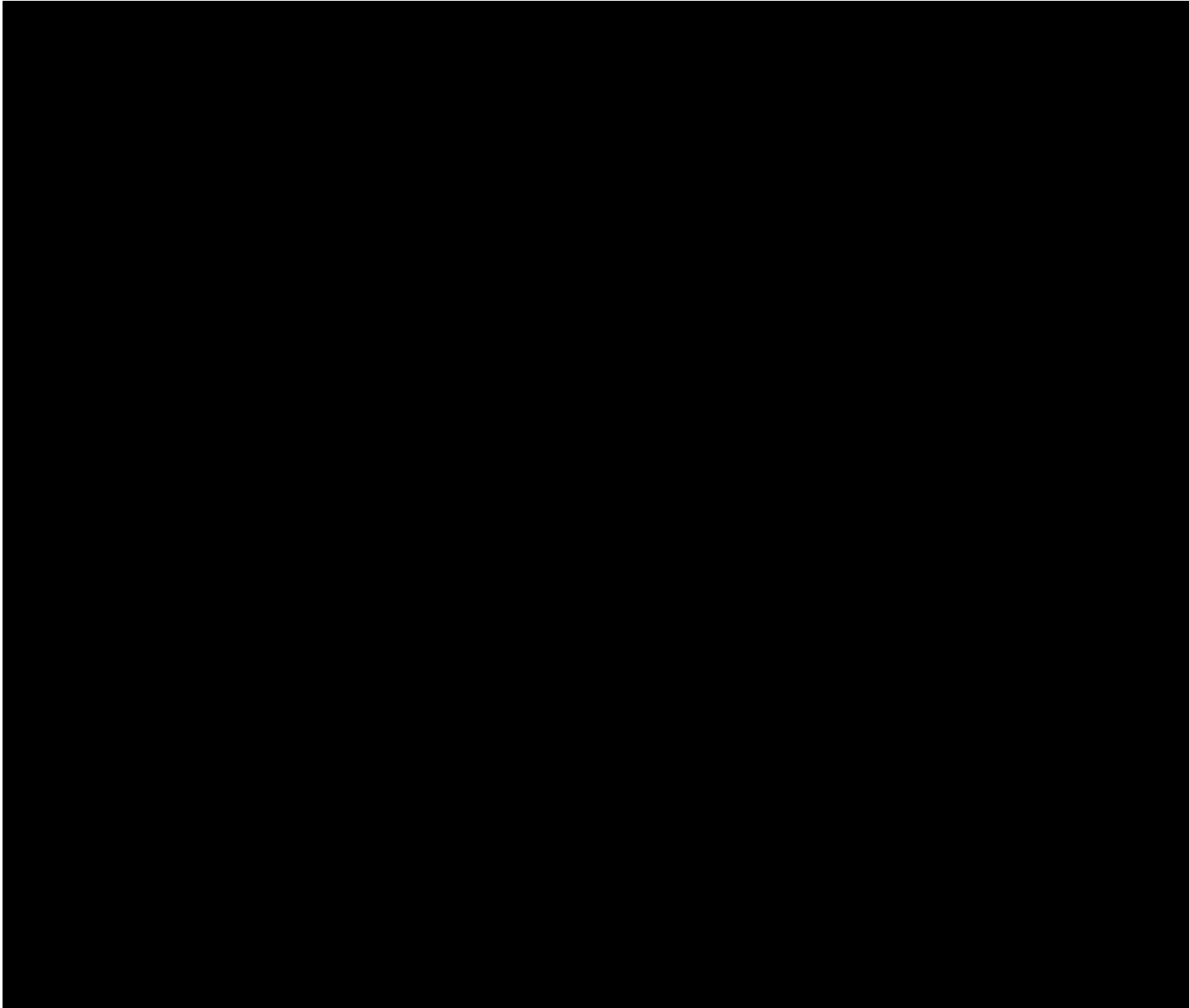
4.6 TABLE OF OWNERSHIP

A full and complete ownership chart for the Applicant and its affiliates including percentage ownership interests in the Applicant by its respective direct and indirect owners, illustrating the ultimate beneficial owners. For a publicly held company, disclosure of owners may be limited to owners owning five percent or more of the publicly held company.

The applicant (PointsBet New York LLC) is a 100% wholly owned subsidiary of PointsBet Holdings Limited (“PBH”).

Please note that ultimate parent company PBH is a publicly traded company, listed on the Australian Stock Exchange.

Please see group structure chart below and presented separately as **Exhibit B – PointsBet Table of Ownership**.



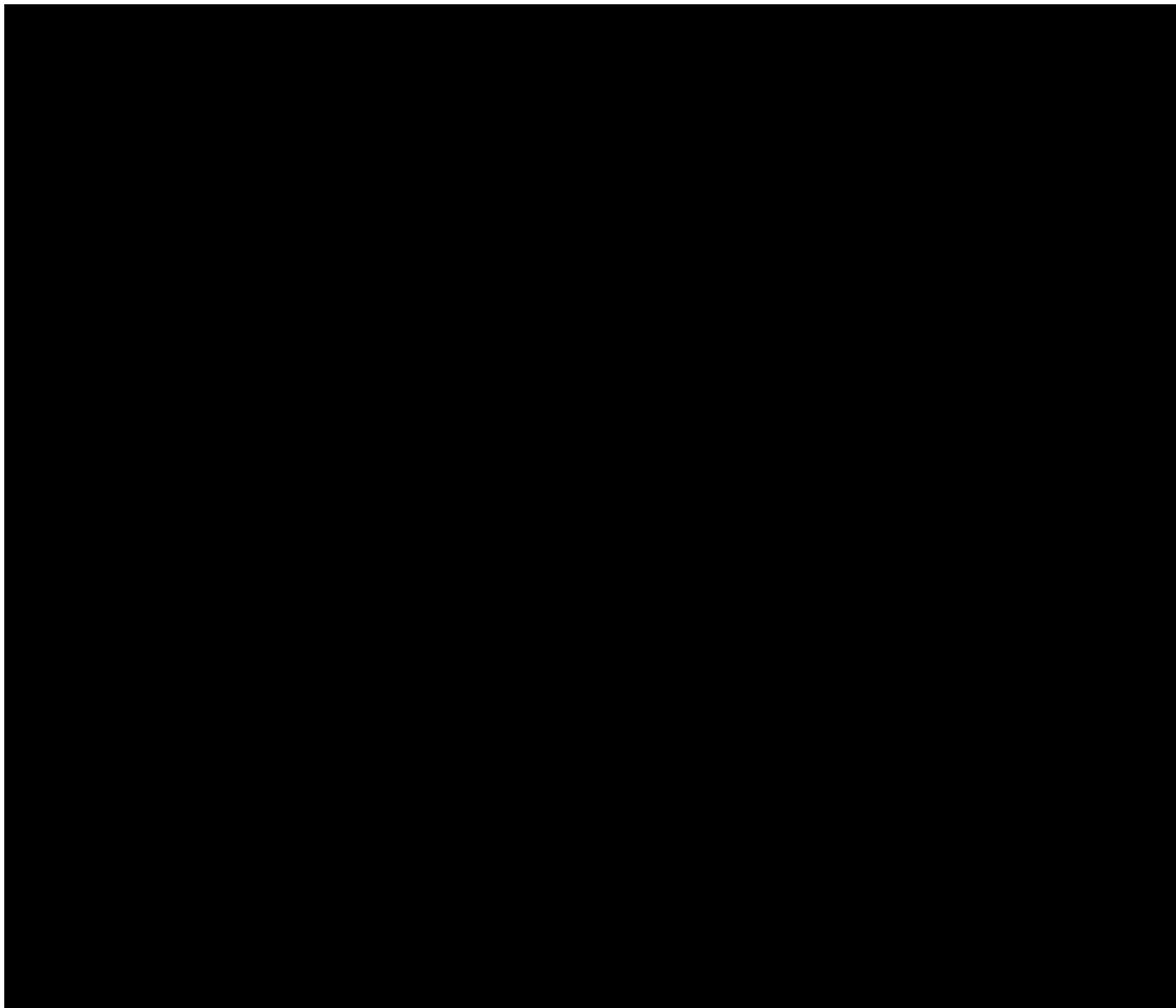
See further information available at:

<https://www2.asx.com.au/markets/company/pbh>

<https://investors.pointsbet.com.au/>

4.7 ORGANIZATIONAL CHART

An organizational chart of the Applicant including all key employees anticipated to be licensed as such pursuant to Appendix A: Draft Regulation Part 5330 of the Commission's regulations, when adopted.



4.8 NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS

The name, address, and title of each Director or General Partner of the Applicant and each officer and proposed key employee of the Applicant, within the meaning of Appendix A: Draft Regulation Part 5330 and resumes or C.V.s of all principals and known individuals who will perform executive management duties or oversight of the Applicant.



PointsBet has provided the name, address, and title of individuals, initially identified by the Commission's Licensing Bureau for licensure as presented below:

- Brett Paton, Non-Executive Chairman
[REDACTED]
[REDACTED]
- Sam Swanell, Managing Director and Group CEO (Co-Founder)
[REDACTED]
[REDACTED]
- Manjit Gombra Singh, Executive Director and President, Global Technology and Product
[REDACTED]
[REDACTED]
- Anthony Symons, Non-Executive Director
[REDACTED]
[REDACTED]
- Peter McCluskey, Non-Executive Director
[REDACTED]
[REDACTED]
- Becky Harris, Non-Executive Director
[REDACTED]
[REDACTED]
- Kosha Gada, Non-Executive Director
[REDACTED]
[REDACTED]
- Johnny Aitken, PointsBet USA CEO
[REDACTED]
[REDACTED]
- Andrew Mellor, Group Chief Financial Officer
[REDACTED]
[REDACTED]

PointsBet has provided the resumes for its principals and known individuals who will perform executive management duties or oversight. All resumes are presented separately as **Exhibit D - PointsBet Resumes**.

[REDACTED]

4.9 LOBBYIST REGISTRATION REQUIREMENT

PML Section 1329 requires each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission to first register with the secretary of the Commission. While this obligation falls to the lobbyist, Applicant identification of its lobbyists is requested.

[REDACTED]

The Applicant previously engaged a lobbyist in 2020 and early 2021, however that engagement is no longer in place. For completeness, we provide the previous Lobbyist details below:

Lobbyist: Park Strategies LLC
Representative: Michael Wilton
Albany Office:
111 Washington Avenue, Suite 600
Albany, NY 12210

4.10 NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS

The name and business address of each person or entity who or that has a direct or indirect ownership or other proprietary interest (financial, voting or otherwise) in five percent or more in the Applicant.

PointsBet New York LLC's ("PBNY") parent companies and persons with a direct or indirect ownership interest of 5% or more are as follows:

- [REDACTED]
- [REDACTED]
- PointsBet Holdings Limited ("PBH") ([REDACTED] 100% indirect interest in PBNY). Note: PBH is a publicly traded corporation listed on the ASX – See further: <https://www2.asx.com.au/markets/company/pbh>.

Only one shareholder holds more than 5% interest in PBH being:

- Brett Paton, Non-Executive Chairman (6.27% direct interest in PBH and 6.27% indirect interest in PBNY).

The addresses of relevant persons listed above are as follows:

- [REDACTED]
- PointsBet Holdings Limited – Level 2, 165 Cremorne Street, Cremorne VIC 3121, Australia
- Brett Paton – [REDACTED]

4.11 CONFLICTS OF INTEREST

A description of any relationship or affiliation of the Applicant or any of the Applicant's affiliates that currently exists or existed in the past five years with any member, employee, consultant or agent of the Commission that is a conflict of

interest or may be perceived as a conflict of interest during the RFA process. Further, if any such conflict should arise during the term of the RFA process, the Applicant shall notify immediately the Commission, in writing, of such conflict.

The Commission shall make the final determination as to whether any activity constitutes a conflict of interest pursuant to this provision. The Commission's decision shall be final; however, the Commission will not make any such decision without providing the Applicant with an opportunity to present comments.

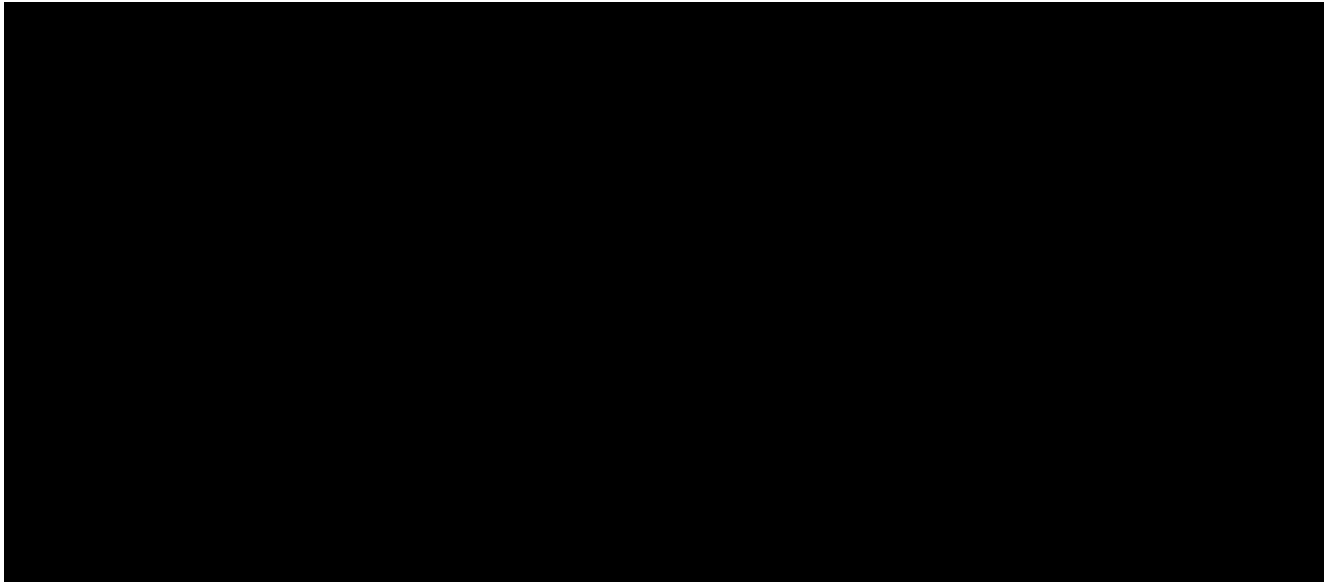
If an Applicant does not identify any direct or indirect conflict of interest, or perceived conflict of interest, at the time the Applicant submits the Applicant's Application, the Applicant shall state that no conflict or perceived conflict of interest exists with respect to such Application. If the Applicant identifies a conflict of interest or perceived conflict of interest, the Applicant shall disclose the conflict and the steps the Applicant will take to resolve such conflict.

There are no actual or perceived conflicts of interest to be notified to the Commission under this section.

4.12 PUBLIC OFFICIALS

Submit a list of names, titles, addresses and telephone numbers of any public officials or officers or employees of any governmental entity, and immediate family members of any such public officials, officers or employees, to the extent known, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant or their Affiliates. Also submit a statement listing all persons and entities not listed in the immediately preceding sentence who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or the process of obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

There are no public officials or other individuals to be notified to the Commission under this Section 4.12.



No other persons shall receive any compensation in connection with this Application from the Applicant (PointsBet).

4.13 CONTRACTS WITH THE STATE OF NEW YORK

Submit a list of any current or previous contracts that the Applicant or its affiliates has had with, and any current or previous licenses that the Applicant has been issued by or under, any department or agency of the State. Include the contract or license name and number and a concise explanation of the nature of the contract or license.

There are no contracts with the State of New York to be notified to the Commission under this section.

4.14 ORGANIZATIONAL DOCUMENTS

Submit, as applicable, copies of the following documents that apply to the Applicant or the Applicant's owners:

A. certified copy of each relevant certificate of incorporation, articles of incorporation or corporate charter;

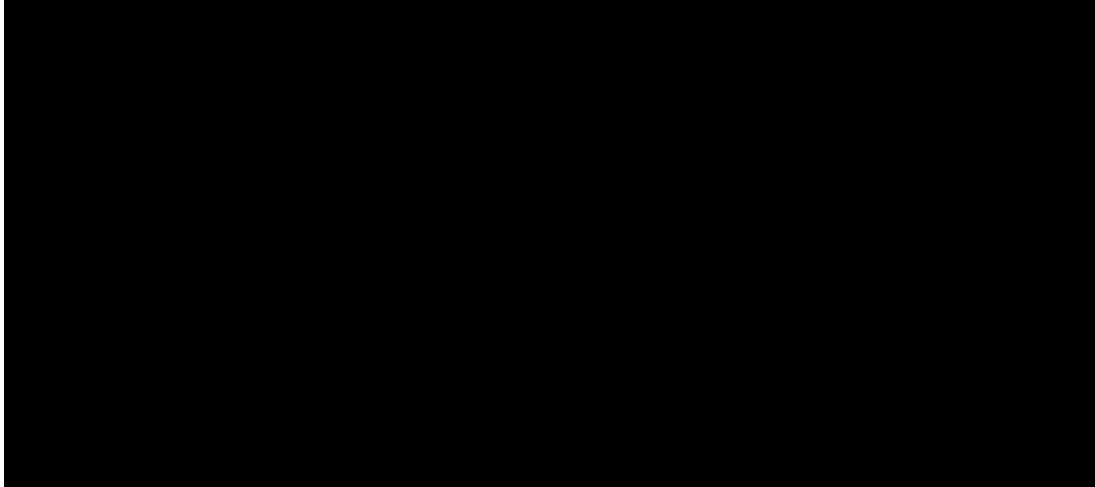
- A. A certified copy of each relevant certificate of incorporation, articles of incorporation or corporate charter;**
- B. by-laws as amended through the date of the Application;**

- C. certified copy of its certificate of formation or articles of organization of a limited liability company;**
- D. limited liability company agreement or operating agreement as amended through the date of the Application;**
- E. certified copy of each relevant certificate of partnership;**
- F. partnership agreement as amended through the date of the Application;**
- G. certified copy of each relevant certificate of limited partnership;**
- H. limited partnership agreement as amended through the date of the Application;**
- I. other legal instruments of organization;**
- J. joint venture agreement;**
- K. trust agreement or instrument, each as amended through the date of the Application;**
- L. voting trust or similar agreement; and stockholder, member or similar agreement.**


PointsBet has provided the applicable organizational documents for PointsBet New York LLC and its ownership entities. The organizational documents are outlined below and presented as **Exhibit E – PointsBet Organizational Documents**.


PointsBet New York, LLC

- Certificate of Formation
- Operating Agreement


PointsBet Holdings Ltd.

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- Certified ASIC Gazette, dated January 15, 20219 – Change of Name [See page 14 of ASIC Gazette]
 - ASIC Company Search, dated July 24, 2021
 - ASX Listing Application and Agreement, dated June 11, 2019
 - ASX Market Release Official Quotation of PointsBet Holdings Ltd., dated June 11, 2019
 - PointsBet Holdings Ltd. Certificate of Registration
 - PointsBet Holdings Ltd. Constitution
- 

5.4 APPLICANT AS AN OPERATOR

If the Applicant intends also to be an Operator tied to the Application, the Applicant must identify itself as such.

The Applicant (PointsBet) intends to be an internally integrated B2C operator.

5.5 LICENSURE

Each Operator must be licensed as a Mobile Sports Wagering Licensee, separate from the Mobile Sports Wagering License issued to the Platform Provider. The standard for licensing shall be equivalent to that of a Casino Vendor Enterprise pursuant to PML Article 13 Title 4 – Enterprise and Vendor Licensing and Registration.

PointsBet is working together with the New York State Gaming Commission's Bureau of Licensing to ensure that all license requirements are satisfied. PointsBet is committed to successfully completing the licensing process pursuant to applicable law and as directed by the Commission's Bureau of Licensing.

5.6 ADVERTISING AND PROMOTIONAL PLANS

The Applicant shall provide detailed information demonstrating the marketing and promotion efforts proposed by its Operators, including:

- estimated marketing budget;
- promotion and player loyalty programs;
- advertising plans;
- player acquisition models; and
- efforts to be undertaken to convert customers from wagering through unlicensed channels to wagering legally in the State.

The Applicant shall provide examples and samples of marketing, advertising, and promotional activities recently undertaken in other jurisdictions by each of the proposed Operators in the Application.

Estimated Marketing Budget

PointsBet anticipates that its marketing budget, based on certain assumed variables and conditions, will be between [REDACTED], annually.

PointsBet has emerged from a brand-new operator in the sports betting space a few years ago to a distinguished, tier one, market leading operator in multiple jurisdictions. We have been able to do this, in part, through strategic marketing initiatives combined with agile technology, unique and superior product offerings and world class execution. What this section will illustrate is our commitment to thought-out, responsible and tactical advertising and promotions designed to capture the unregulated and illegal betting activity that is currently taking place in New York. We will address our strategic vision and preparatory efforts to maximize customer participation with licensed operators in New York to benefit the state.



The PointsBet brand journey has been rapid, successful and unique. A validation as to the trajectory of the brand is best signified by the exclusive sports betting partnership executed with NBC Sports. As the Official Sports Betting Partner of NBC Sports, not only has PointsBet undoubtedly arrived at tier one status in the United States but also propelled the current and future advertising and promotional efforts with access to unmatched assets and properties in which to execute its strategic marketing vision. In addition to rare opportunities such as brand placement within *Football Night in America* and *Sunday Night Football* on NBC and access to audiences consuming OTT platform Peacock, PointsBet will be able to leverage local and regional assets to reach millions of households in New York. Our estimates indicate that our

[REDACTED]
New York marketing database already contains [REDACTED] New York residents through both internally owned and externally accessible channels.
[REDACTED]



A similar yet crucial partnership is our standing as the sports betting partner of SportsNet New York (SNY), a key partnership that includes commercial units and custom integrations in pre and post-game shows. This is a further testament to the preparation and readiness for the New York market as we look to acquire new customers with speed and efficiency.

To further validate the path PointsBet and the brand are taking, recently retired NFL superstar Drew Brees signed on to spearhead major marketing efforts as a brand ambassador. This, coupled with other brand ambassadors such as CNBC's Jim Cramer, will thrust PointsBet further into the spotlight and allow the strategic marketing efforts to resonate more broadly in the New York area.



A pivotal piece to our marketing vision is the strategic alliances we have struck with major sporting leagues in the United States, many of whom are headquartered in New York. We have struck essential partnerships with the NFL, MLB, NBA, NHL, LaLiga and PGA Tour and will continue to add to this growing list of iconic leagues who support PointsBet in its efforts to expand its footprint in the United States.



Promotion and Player Loyalty Programs

[REDACTED]
Our approach with promotions and player loyalty programs is to create a robust and agile toolbox for our marketing teams to deploy locally in New York. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Local Promotions Accessible to New York Customers

Local Crowd Booster Example: Yankees to Beat the Nationals

[REDACTED]

Price Freeze Example: Brooklyn Nets to Win the NBA Championship

[REDACTED]

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Popular Player Boosters Example: New York Giants (Daniel Jones, QB)



Make it Rain Example: Yankees \$5 in Free Bets for Every Home Run

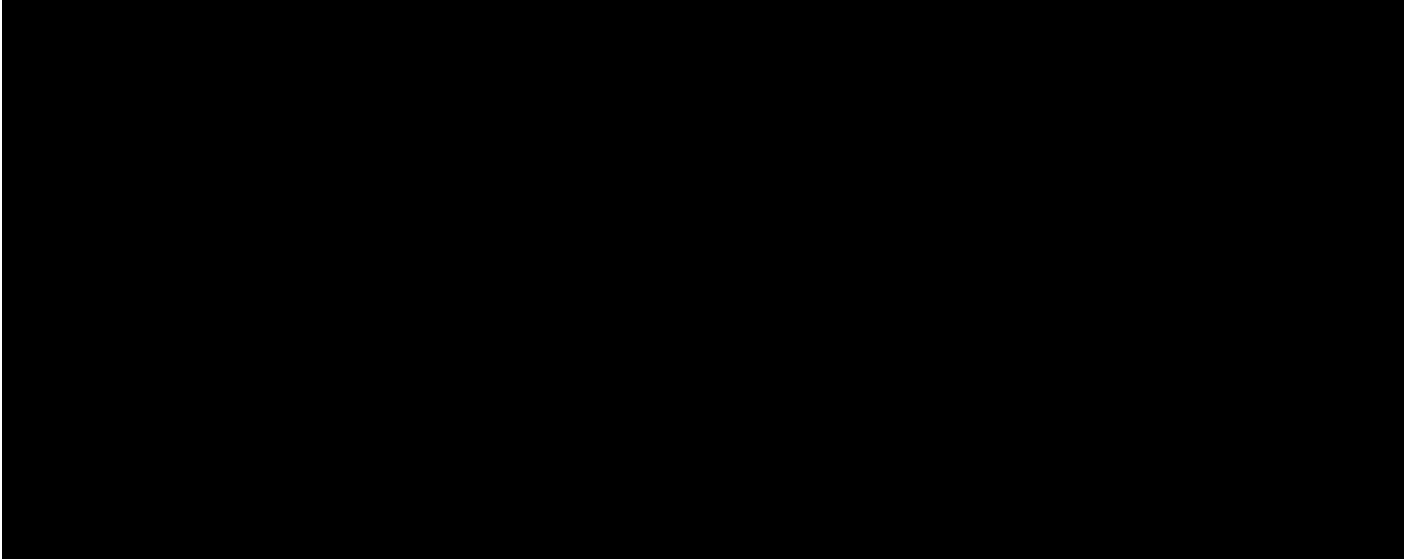


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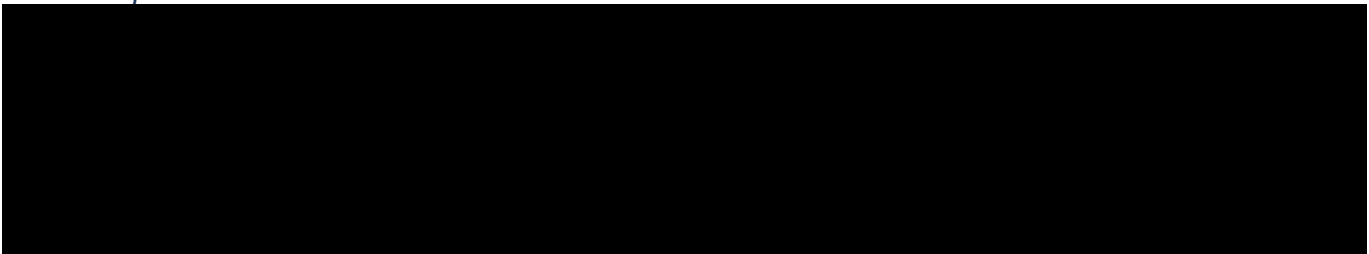
*Playoffs Super Booster Example: New York
Giants*

General Promotions Accessible to New York Customers

Risk-Free Wagers



Deposit Match



Example: Deposit \$20 and get \$100 in free bets



Bet X, Get Y



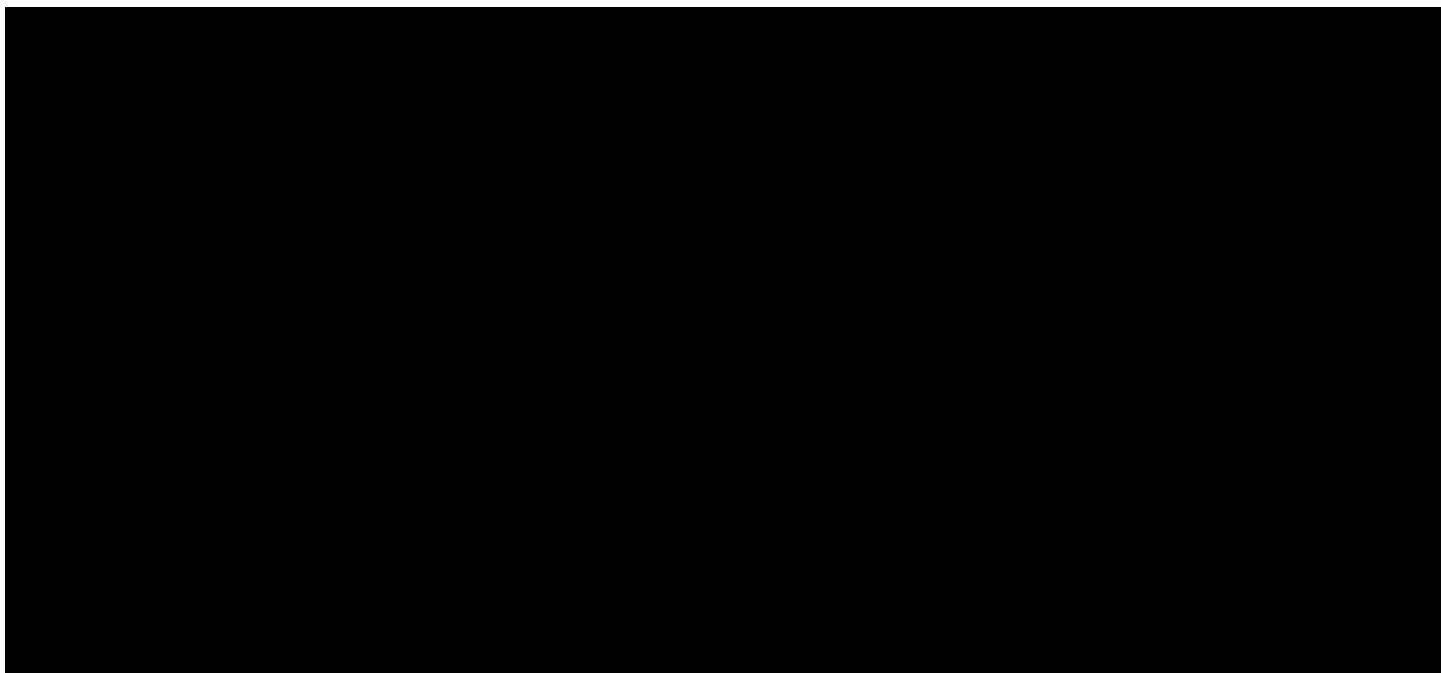
Example: Bet \$30 on an NHL Playoff Game and receive \$300 in free bets regardless of the outcome

PointsBet Diamond Club

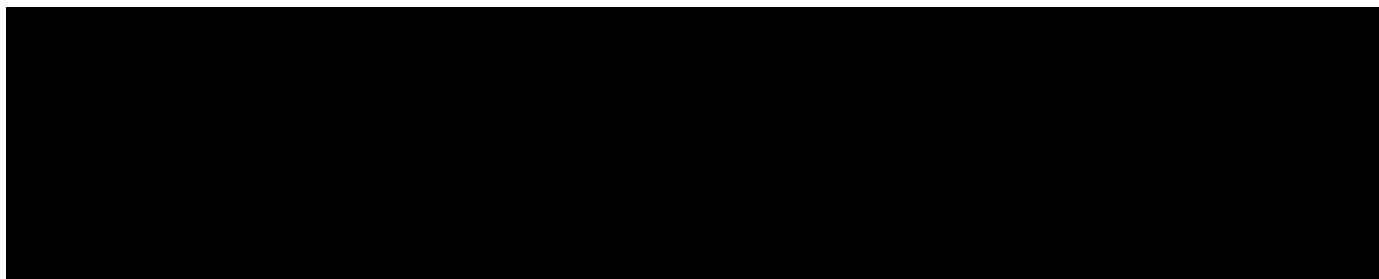


Example: Get a 100% first deposit match up to \$1,000

PointsBet Platinum Club

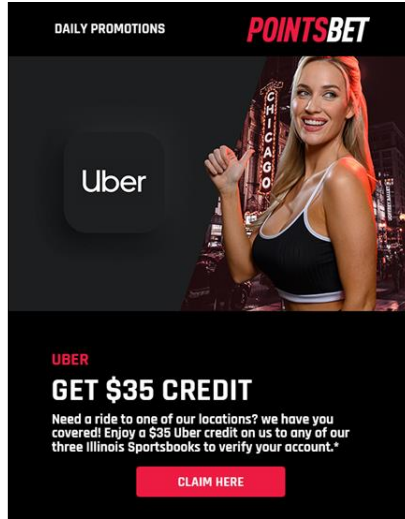
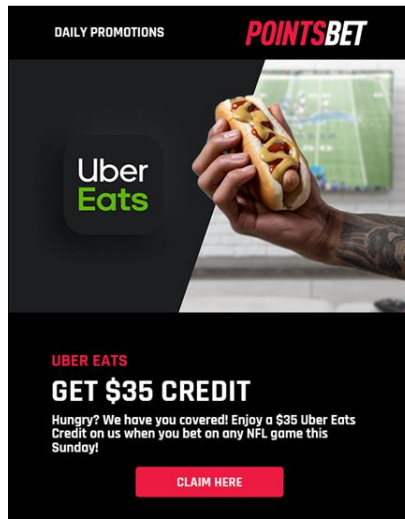


Giveaways

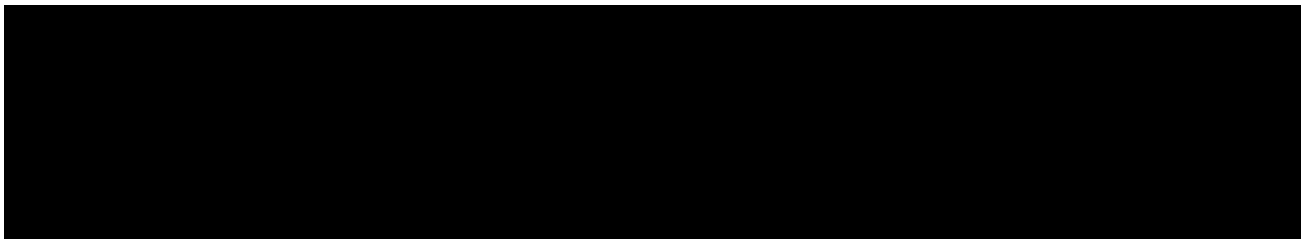


Example: Sign up today and get a free Uber ride up to \$35 to our PointsBet Retail Location

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Co-Branded Offers



Example: Sign up today and get a free round of golf on GolfNow.com (the #1 tee time booking site owned by NBC)

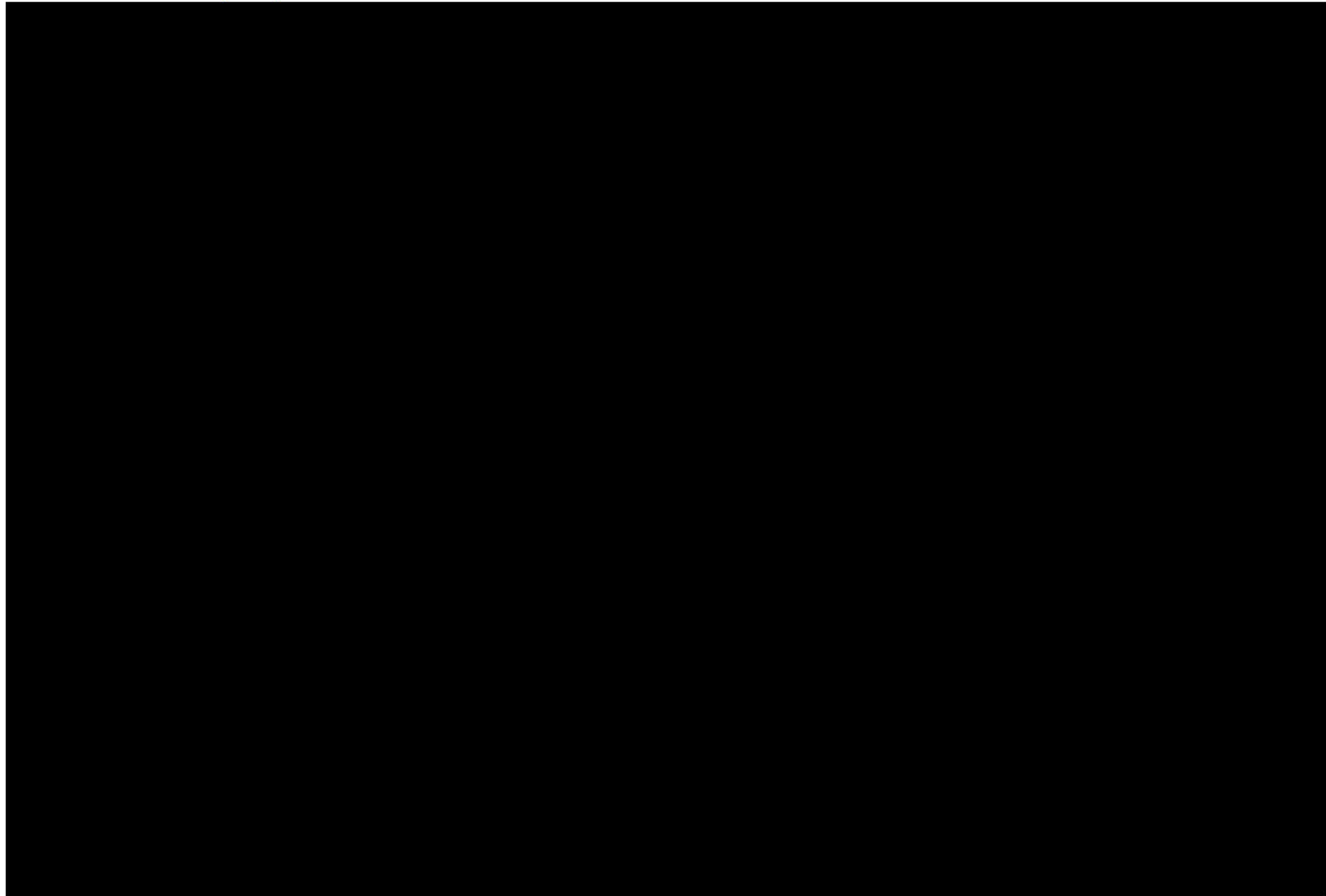
Non-member dual offer dedicated hero

GolfNow dedicated email mock-up
(main body content is not final)

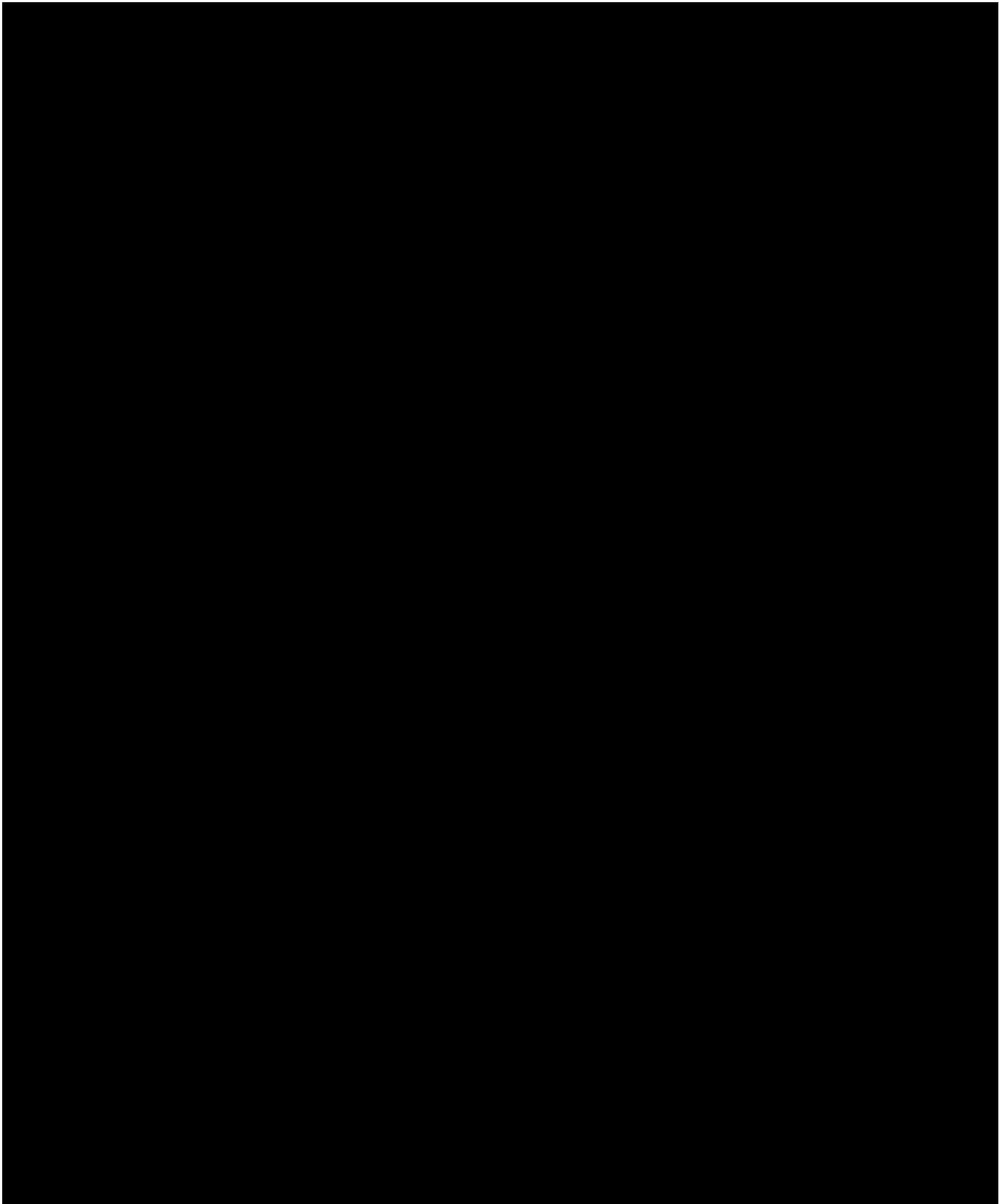
PointsBet Loyalty Program



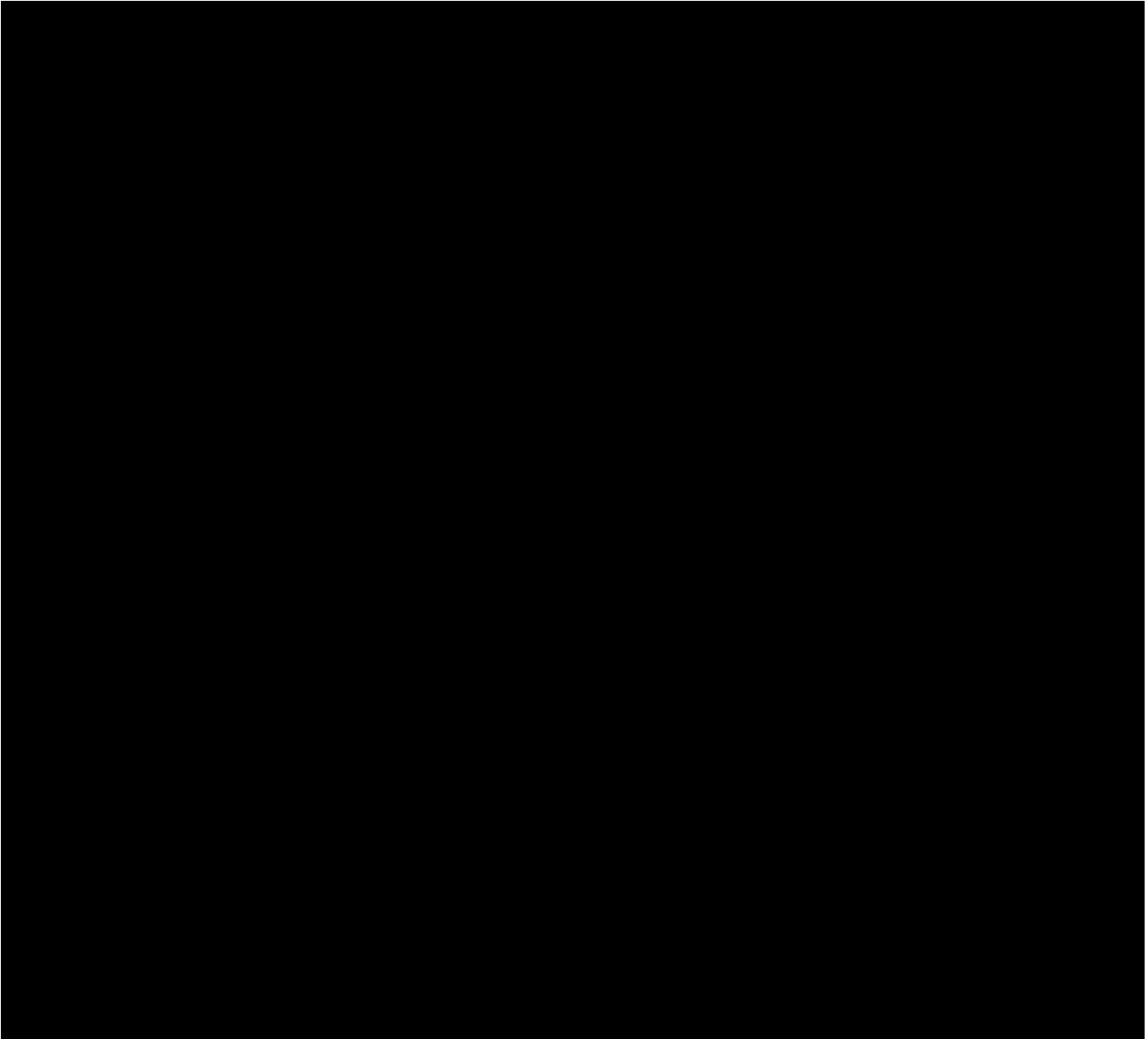
Premium Parlay Experience



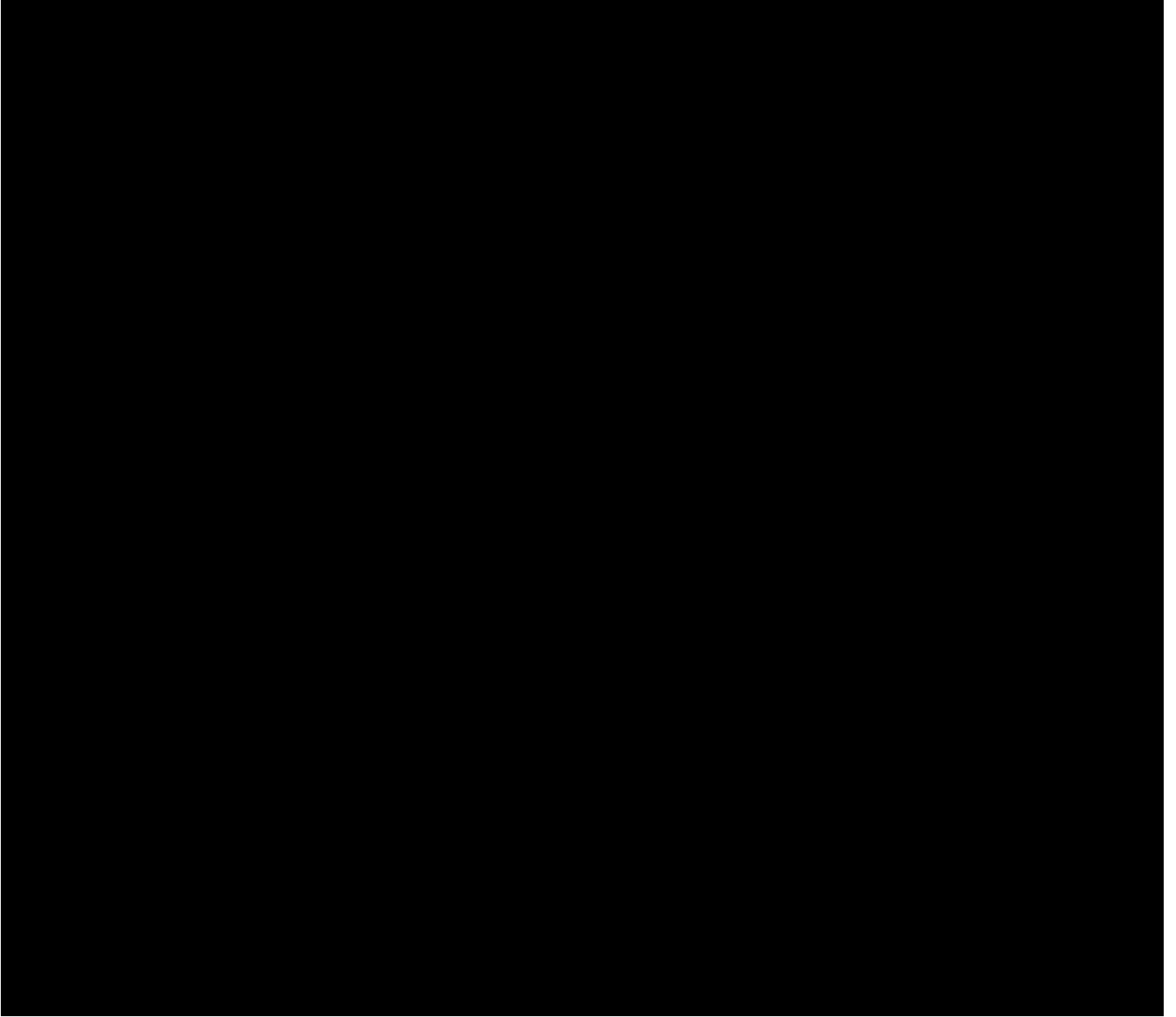
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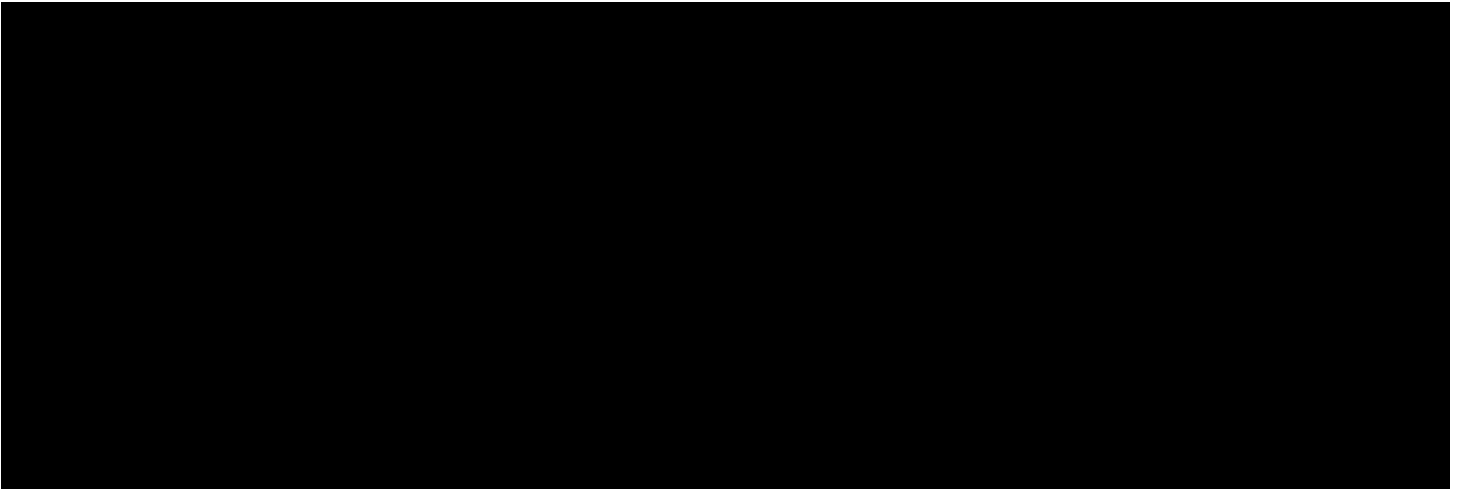


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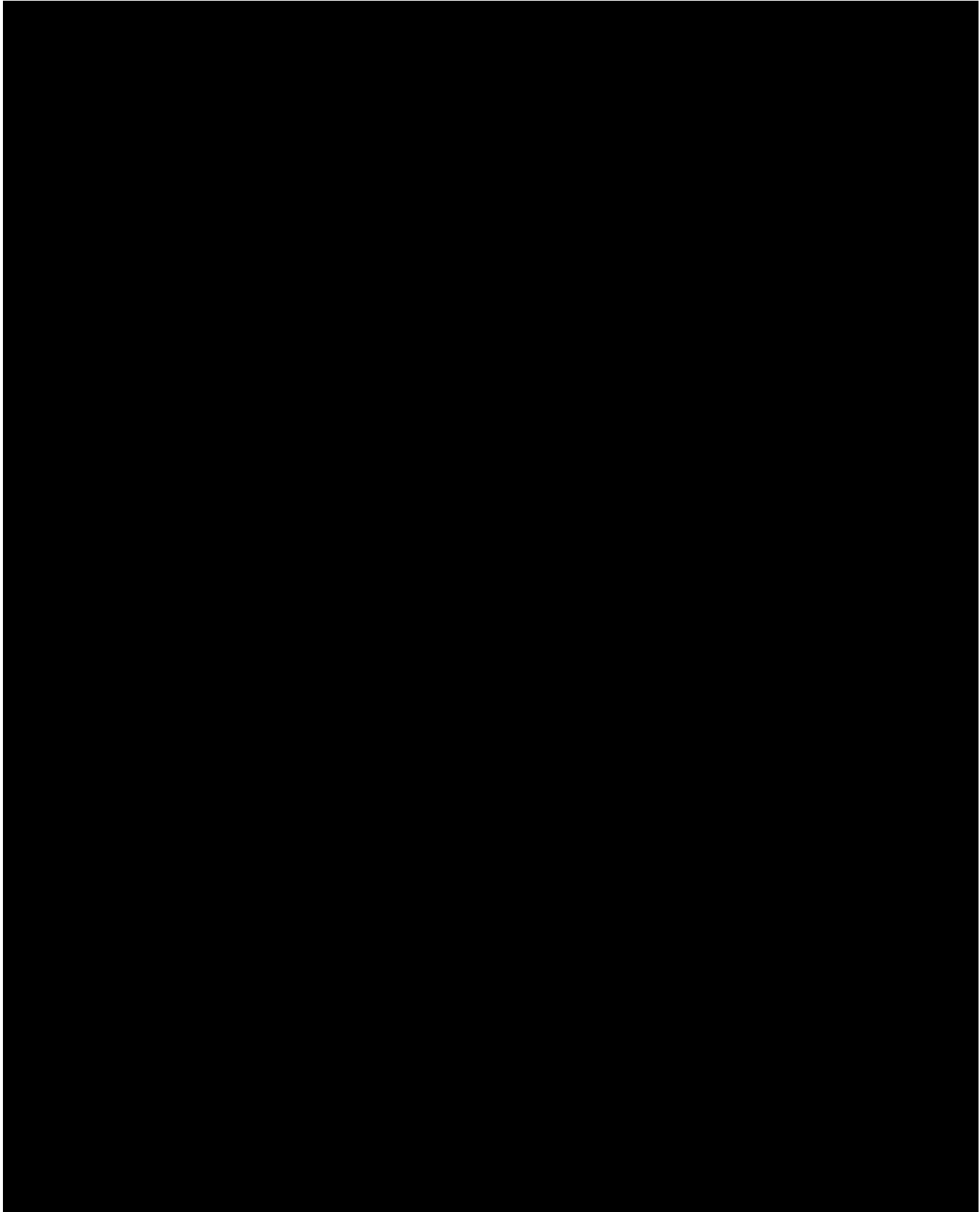




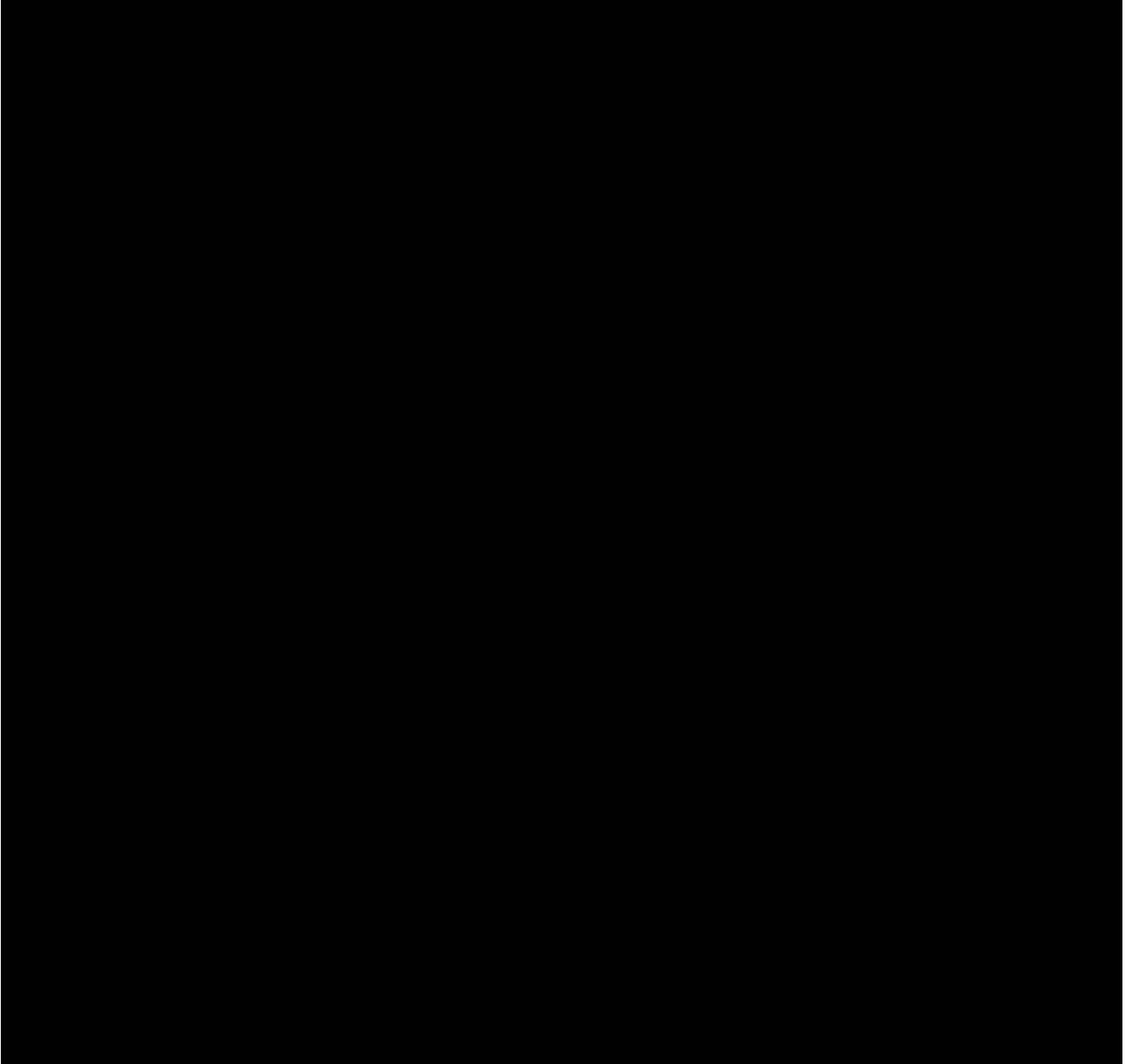
Affiliates



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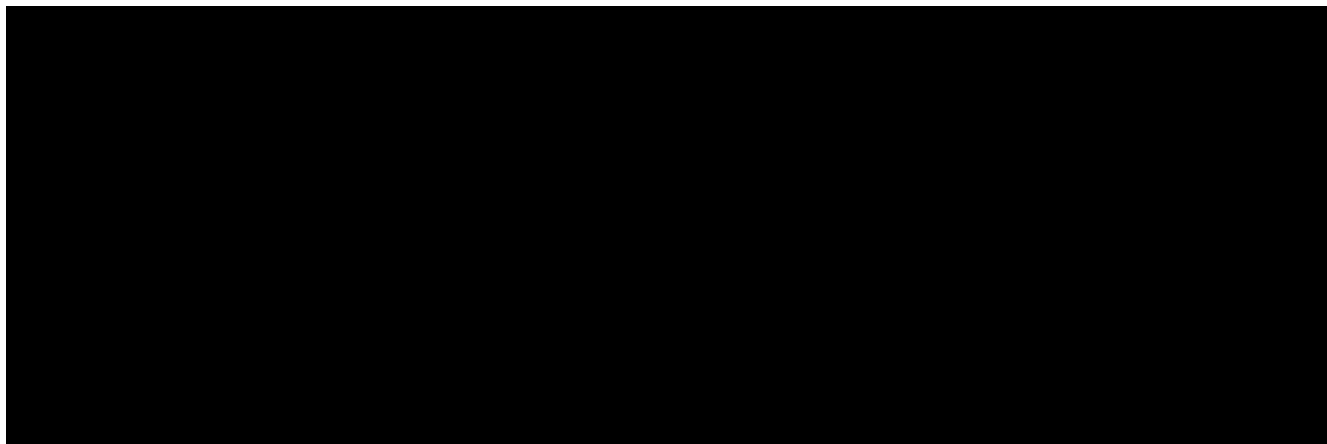


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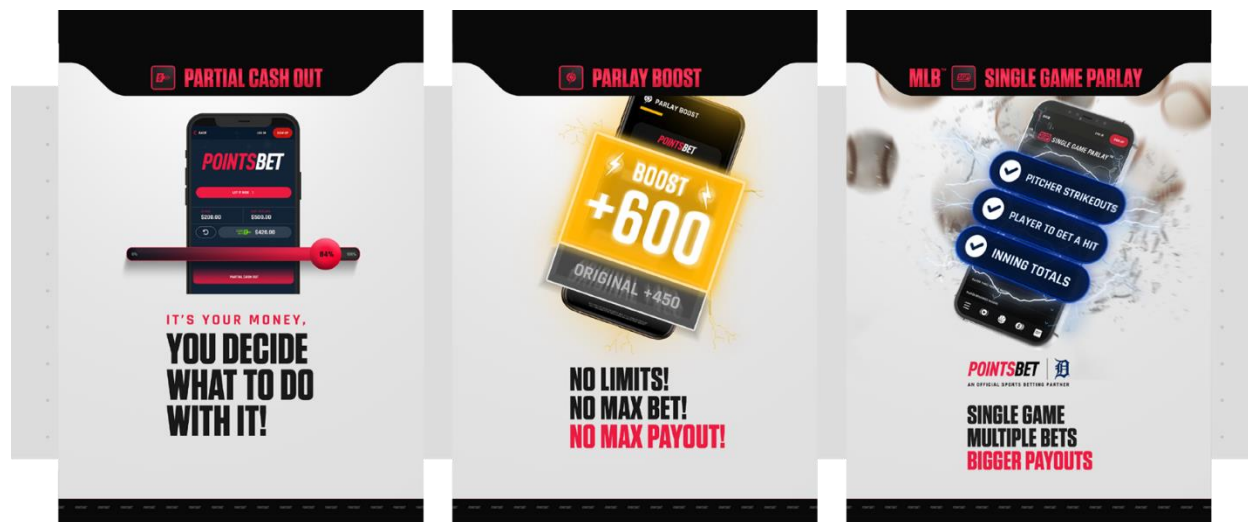
Player Acquisition - Marketing Strategy

A critical focus across the entire marketing strategy is to convert bettors currently using unregulated or illegal offerings. We strive to provide them with an unmatched customer journey so that they will convert to the legal and regulated options in New York. The best approach includes a mix of strategic marketing, superior product, better pricing, enhanced customer service, more deposit and withdrawal options, attractive promotions and a seamless user experience.



Premium Product

At the heart of everything we do is the premium PointsBet app and betting experience we provide to customers. We believe that the best product will ultimately win with customers and as a result have been relentless on upgrading and tailoring our product. We are able to leverage our proprietary technology, and given that we own our entire technology stack, which is a unique feature in the industry, we can deploy a product led marketing strategy. This approach involves clear brand and feature messaging combined with premium assets, which allows us to showcase our product experience and unique attributes.



Premium Partnerships

We have prioritized key partnerships that elevate the PointsBet brand and speak to local sports fans. Those partnerships come in a variety of forms such as local teams (e.g., Denver Nuggets) and league-wide (e.g., National Football League) partnerships, brand ambassadors (e.g., Paige Spiranac and Drew Brees) and adjacent sports companies.

Our flagship partner is NBC Sports. We are delighted to be the exclusive sports betting partner of such a recognized and iconic brand that shares the same values as we do.

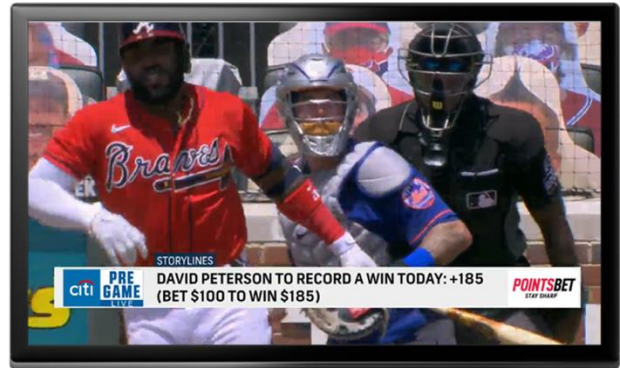


Undoubtedly, NBC Sports has a unique and comprehensive portfolio, which is the perfect pairing with PointsBet's innovative approach to sports betting. This partnership allows for cut-through marketing campaigns that convert and retain customers. As an example, PointsBet and NBC will launch localized programs designed to reach the New York sports audiences across a myriad of NBC Sports assets.

Local Linear TV

Local TV distribution including local owned and operated NBC stations (e.g., NBC New York, Telemundo New York), as well as New York regional sports network assets (e.g., SNY).

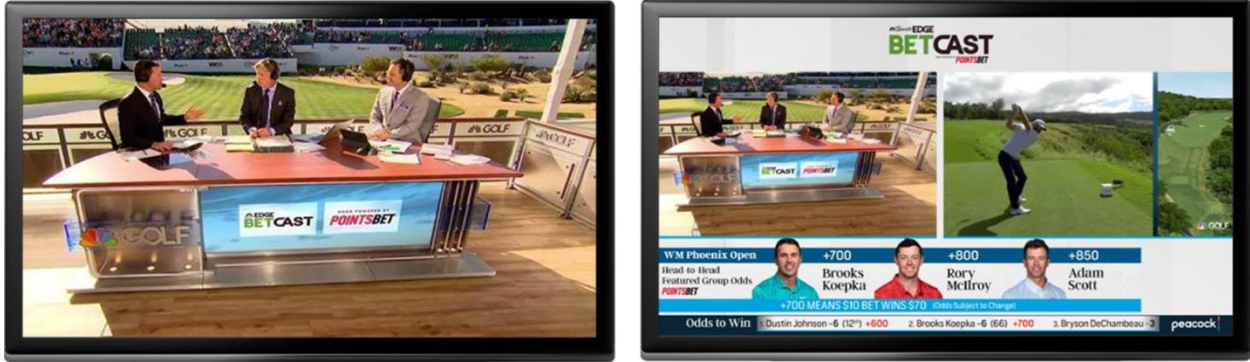
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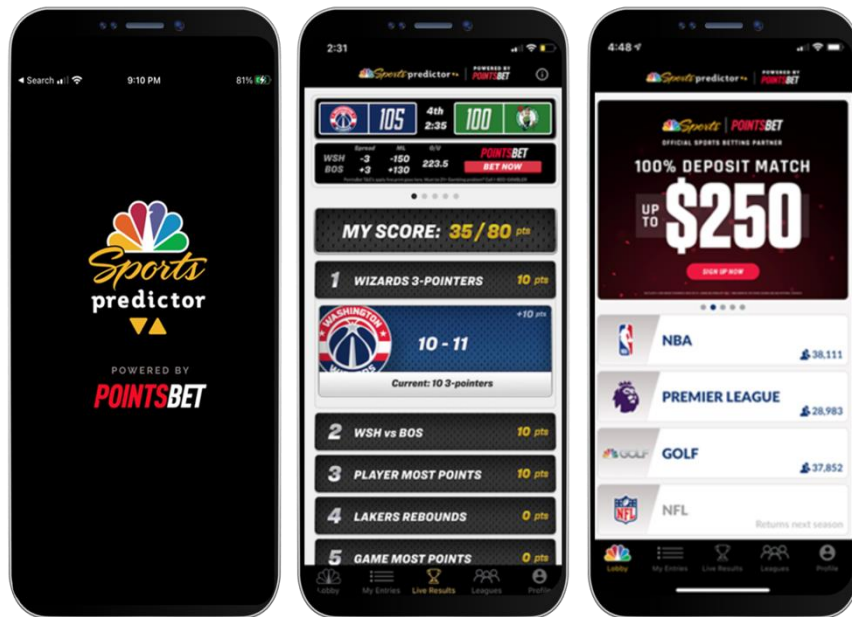
NBC Studio Produced Custom Content

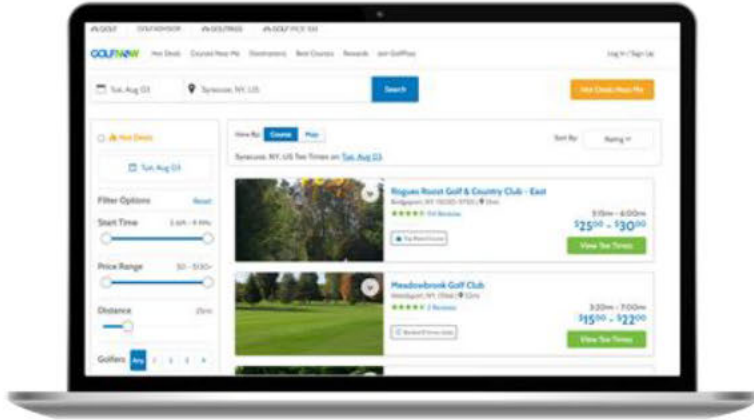
Co-produced sports betting content distributed across linear TV, digital channels, social platforms, podcasts, etc.



NBC Predictor

A market-leading free to play app with approximately 2 million downloads that creates an evergreen lead generation vehicle for attracting customers.



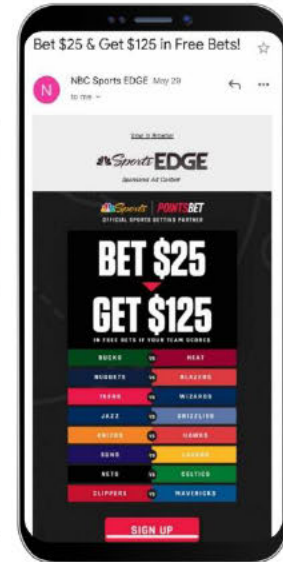


Golf Now and Golf Pass

Popular properties that can reach local New York golf enthusiasts, which have a high crossover rate to high staking bettors, including the #1 tee time booking site in the country.

NBC Wingspan Database

The complete NBC sports database that PointsBet and NBC activate each week, with localized New York offers relevant to their fandom and sports consumption habits.

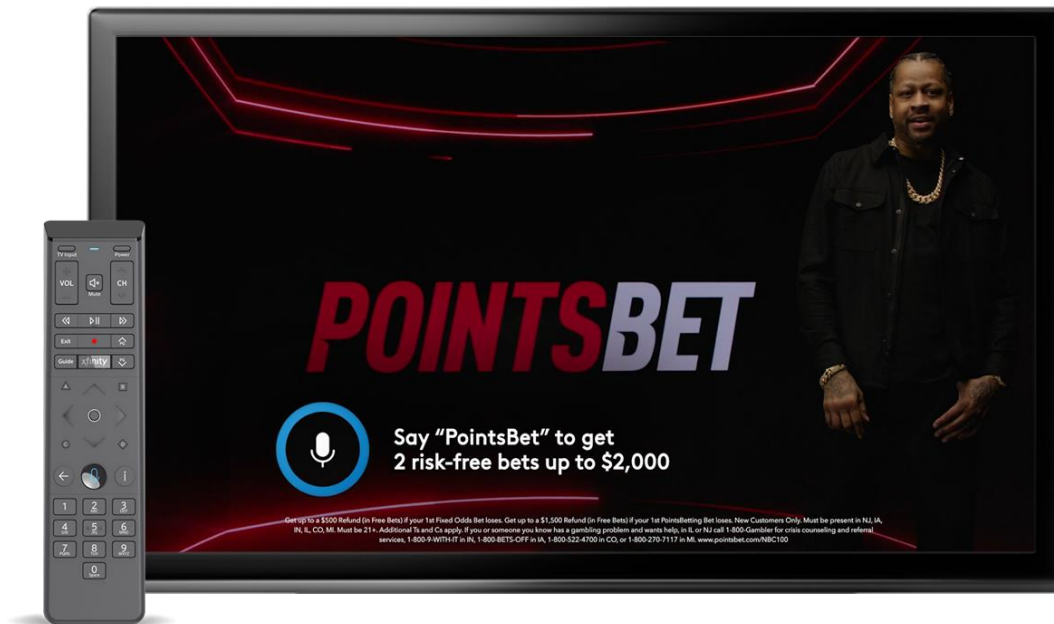


NBC Sports Edge

Recently rebranded from Rotoworld, NBC Sports Edge is a leading sporting news and betting resource site. This includes co-branded PointsBet promotions and exclusive content.

Comcast / Xfinity Cable

Through the Comcast cable subscriber footprint, PointsBet can reach local Xfinity audiences with micro targeted linear TV media, all powered by set top box data targeting. This includes proprietary voice activated commercials, that allow customers to speak into their Xfinity remote to instantly get texted a PointsBet promotion.



Premium Placement

The PointsBet marketing team analyzes each local market and secures media inventory that reaches key local audiences. This extends into our exclusive NBC Sports partnership, where PointsBet gets premium inventory access, including new opportunities before they hit market.



This localized New York media approach will allow PointsBet assets to penetrate key geographies that over index for sports bettors and high staking customers.

Premium media placements include New York targeted television, billboards, local sports radio, geotargeted digital, local events, social media and more. This also includes PointsBet's robust digital affiliate network comprised of 150+ individual partners, all designed to drive new customer growth.



Premium Pricing

An important area that we leverage to separate from our competitors, and that we believe will appeal to local New York sports bettors, is enhanced pricing. With our 100% in-house trading team, PointsBet can swiftly deploy enhanced pricing and better odds. Price focused promotions that are tailored to each specific sport or betting market will attract and retain customers. This will often lead to PointsBet having the best odds in market, which will enhance the customer experience and bring them back to the app rather than the previous options that they are accustomed to in the unregulated and illegal market. This approach is limited to certain moments, rather than being an always on strategy, and is strategically deployed so as to not impact our typical hold percentage or expected margin.



Premium Promotions

The final component of our strategic marketing plan to drive player acquisition is the promotions we offer to potential and active customers. A comprehensive overview of our promotional offerings is provided above in the Promotion and Player Loyalty Programs segment of this section.

Converting Customers to Wager Legally

One of the biggest challenges we face is converting current New York betting activity across to the licensed and locally regulated options being made available. This is not a simple task nor one that will be conquered in any specific or short timeframe. It will be an ongoing challenge that not every sports betting operator will be capable of overcoming. Given we are uniquely placed with our technology and trading being entirely owned and operated internally, as opposed to outsourced technology licensing and development, we are distinctly equipped to be able to adapt and evolve to the requirements of the jurisdiction. We can be agile with our product development, marketing strategy and optimization for the best interests of New York and its consumers. This, in turn, will ensure that the state of New York benefits from the betting activity taking place. Our expert team will have the ability to assess, implement and execute across all critical functions to ensure that we cater to the New York sports bettors and provide an unmatched product offering. The compounding nature of building on top of our own technology will allow PointsBet to separate over time and continue to enhance and augment in addition to our already compelling offering. Our approach to technology in conjunction with a commitment to superior, unique product development and innovation will ensure that PointsBet will be best in class.

The initiatives that will be prevalent in our efforts to absorb all current betting activity and convert that to regulated sports wagering will include all areas previously covered in this section as well as additional aspects which are compelling when compared to the inferior and unregulated options that sports bettors may have had access to in the past.

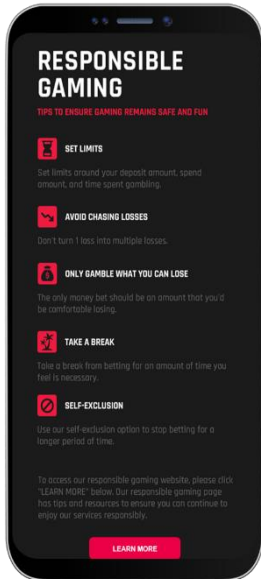
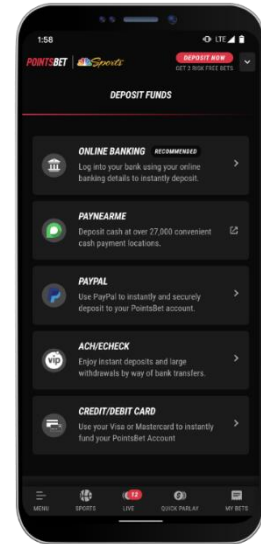
Banking and Payment Safety

[REDACTED]

PointsBet is committed to making depositing and withdrawing as seamless as possible by providing a large variety of deposit options and ensuring customers receive funds as quickly as possible through internal processes. [REDACTED]

[REDACTED] It is extremely important to clients to feel their money is secure and to receive winnings as quickly as possible, an area on which PointsBet focuses and prides itself.

[REDACTED]



Responsible Gambling

Our enhanced responsible gaming initiatives provide a safer and more controlled environment to gamble responsibly and enjoy the sports betting products we offer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We have taken steps to provide a dedicated responsible gaming page (<https://co.pointsbet.com/responsible-gaming>) with extra information for customers to consume. We are pointed in our efforts on social media and ensure daily posts dedicated to responsible gambling. Additionally, we are proactive in ensuring that problem gambling red flag behaviors are escalated to our Responsible Gambling Manager for review.



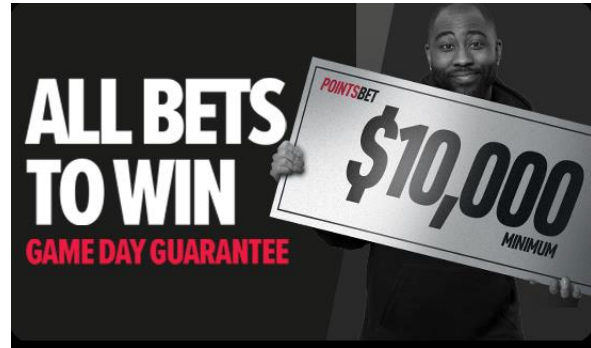
Karma Kommittee

PointsBet introduced the concept of “Bad Beat Refunds” to the industry via the PointsBet Karma Kommittee. The Karma Kommittee is an internal group that decides whether a specific situation or bad beat is worthy of a large refund to customers in the form of free bets. This is an extra value proposition for customers as they will know, in the back of their mind, that if they are subject to a bad beat there is always a chance of a refund with PointsBet. PointsBet has completed over 25 Good Karma Refunds since launch.

Example: refunds on all AL and World Series futures on the Yankees in 2019.

Higher Limits

PointsBet is committed to accepting large wagers to continue to attract all types of bettors away from unlicensed operators. In the past, we have introduced “game day guarantees” on NFL that were extremely well received. In general, PointsBet has a higher propensity than our competitors to accept large bets, not cutting back customers who go on winning runs.



Best Odds

PointsBet consistently runs selective “Best Odds” campaigns, which provide extra value to PointsBet customers in comparison to unlicensed channels. This is typically offered on high-profile markets.



For customers who monitor all betting options available to them, this is a very simple to understand value proposition that drives customer satisfaction and retention whilst at the same time pulling them away from illegal and unregulated options.

With a superior technology platform, innovative product development,

skilled marketing teams and a plethora of promotions to capture customer attention, we are suitably confident that we are able absorb the unregulated betting activity and house this on the PointsBet platform. This conviction solidifies as we expand the options available to our teams across customer acquisition, retention and the scale at which we are able to reach sports bettors in New York.

Summary

PointsBet has proven its capabilities and judgment when it comes to brand building and customer acquisition. Without any database or brand loyalty upon arrival in the North American sports wagering market, PointsBet has been able to earn its way to award winning tier one status in a highly competitive market. It is a testament to a skilled team of experts who have constantly evolved and developed the advertising plans, many of which are covered in this section, and execute in a way that has driven brand and customer loyalty at a rapid pace. The breadth and depth of promotions, offerings and loyalty programs has ensured that customers are drawn to PointsBet and stay a customer of PointsBet, which is a critical factor when trying to convert bettors away from unregulated or illegal options they may have previously encountered. We will activate on exclusive and landmark partnerships, such as NBC Sports, and work alongside celebrated brand ambassadors. Our endeavors in this space will continue to be enhanced by regional and national synergies as well as a constant evolution as we become even more proficient. Our advertising and promotional plans for New York are well positioned and are backed by an accomplished team.

**Exhibit A – Evidence of Status
PointsBet New York, LLC**

Unvaccinated individuals are at greater risk of serious illness from COVID-19. Learn more about the COVID-19 vaccines.

[GET THE FACTS >](#)

Department of State Division of Corporations

Entity Information

[Return to Results](#)

[Return to Search](#)

Entity Details ^

ENTITY NAME: POINTSBET NEW YORK LLC	DOS ID: 5377895
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTION OF LAW: 203 LLC - LIMITED LIABILITY COMPANY LAW	ENTITY STATUS: Active
DATE OF INITIAL DOS FILING: 07/18/2018	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 07/18/2018	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: CURRENT
COUNTY: New York	NEXT STATEMENT DUE DATE: 07/31/2022
JURISDICTION: New York, United States	NFP CATEGORY:

[ENTITY DISPLAY](#) [NAME HISTORY](#) [FILING HISTORY](#) [MERGER HISTORY](#) [ASSUMED NAME HISTORY](#)

Service of Process Name and Address

Name: POINTSBET NEW YORK LLC
Address: 1331 17TH STREET, SUITE 900, DENVER, CO, United States, 80202

Chief Executive Officer's Name and Address

Name:
Address:

Principal Executive Office or Owner Name and Address

Name:
Address:

Registered Agent Name and Address

Name:
Address:

Entity Primary Location Name and Address

Name:

Address:

Farmcorpflag

Is The Entity A Farm Corporation: No

Stock Information

Share Value

Number Of Shares

Value Per Share

Exhibit B – PointsBet Table of Ownership

Exhibit B - PointsBet Table of Ownership

CONFIDENTIAL

Exhibit C – PointsBet Organization Chart

Exhibit C - PointsBet Organizational Chart

CONFIDENTIAL

Exhibit D – PointsBet Resumes

Brett Paton

Current PointsBet Title

Non-Executive Chairman of the Board

Professional Experience

Mr. Paton entered the finance industry in 1980 as a Chartered Accountant and after 23 years at UBS, retired from his role in 2008 as Vice Chairman, having run the UBS Equity Capital Markets business for 14 years.

Following his time at UBS, he was the Vice Chairman of the Institutional Clients Group for Australia and New Zealand at Citigroup Inc. for five years. Over his years at UBS and Citigroup, Brett's respective teams assisted and advised companies, governments, and government agencies on capital raisings totaling approximately \$230 billion of equity.

Having served as a Non-Executive Director of Tabcorp and Chair of Audit and Risk for its demerged entity, Echo Entertainment, he has gained significant experience and valuable insights into the functions expected of ASX boards and companies in the wagering Industry. Mr. Paton has also served as a Council member of RMIT University where he chaired the Risk and Audit Committee and was a foundation member of the ASX Capital Markets Advisory Panel.

Education and Training

Monash University – Bachelor of Economics

Chartered Accounts Australia and New Zealand – Post Graduate Diploma

Employment History

Company: PointsBet	Years from-to
Title: Non-Executive Chairman of the Board	
Company: Escala Partners	2012 - Present
Title: Chairman	
Company: Escala Partners	2010 - 2012
Title: Vice Chairman	
Company: The Star Entertainment Group	2011 - 2012
Title: Non-Executive Director	
Company: Tabcorp Holdings Limited	2008 - 2011
Title: Non-Executive Director	
Company: Palladio Partners	2009 - 2010
Title: Vice Chairman	
Company: UBS Asset Management	1989 - 2008
Title: Vice Chairman	

Manjit Gombra Singh

Current PointsBet Title

Executive Director and President, Global Technology and Product

Professional Experience

Manjit joined the Company as President, Product and Technology in July 2019. Mr. Singh provides strategic and execution direction for PointsBet global products and technology. A software engineer by training, Manjit has served for 20+ years as a senior software product executive with expertise in cloud computing, mobile commerce, mobile gaming, casino gaming, messaging platforms, cyber security, and systems management. He has worked for Silicon Valley start-ups as well as large companies. He is an expert in scaling software systems, running 24x7x365 e-commerce and gaming systems.

Education and Training

Master of Technology, Computer Science	University of Hyderabad, India
Strategic Leadership for Technology & Innovation (Executive Education)	Stanford Graduate School of Business
Certified Information Systems Security Professional	International Info. Systems Security Certification Consortium

Employment and Fiduciary Position History

Company: PointsBet Holdings Ltd Title: President, Product and Technology	2019 - Present
Company: Aristocrat Leisure Limited Title: Chief Technology Officer and Executive Vice President	2011-2016
Company: Metric Gaming Title: Board Director, Executive Leader	2018-2019
Company: Arete Security Inc. Title: Founder and Chairman of Board	2017 - Present
Company: University of Nevada Las Vegas Title: Advisory Board Member and Mentor, College for Engineering	2016 - Present
Company: Juniper Networks Title: Senior Director, Virtualization and Management Technologies	2011
Company: International Game Technology Title: Executive Director and General Manager	2008-2010
Company: Sun Microsystems, Inc. Title: Director of Software Engineering	1998-2007

Sam Swanell

Current PointsBet Title

CEO

Professional Experience

Mr. Swanell has substantial experience and expertise in the wagering industry, including successfully managing the start-up of both TomWaterhouse.com and PointsBet. For three years he was the National Sales Manager with TOTE Tasmania, responsible for all revenue channels including all retail and pub outlets. During his tenure, turnover and EBITDA increased 200%. This was followed by four years as Chief Operations Officer at TomWaterhouse.com, which involved responsibility for establishing and managing all functions of the business. TomWaterhouse.com grew rapidly to become a pre-eminent wagering brand in Australia prior to its sale to William Hill.

Mr. Swanell's experience also includes international consulting assignments across North America and Europe, which include related verticals such as online casino and poker. Mr. Swanell has a deep understanding of the critical areas required to produce and manage a successful sportsbook, which has been instrumental in the establishment and growth of PointsBet.

Education and Training

Monash University – Bachelor of Commerce

Securities Institute of Australia – Graduate Diploma in Finance and Investment

Employment History

Company: PointsBet Title: CEO	2016 - Present
Company: Independent Wagering Consultant Title: Consultant	2013 - 2017
Company: Tom Waterhouse Pty Title: COO	2009 - 2013
Company: Tote Tasmania Pty Ltd Title: National Sales Manager	2006 - 2009
Company: Lifeplan Fund Management Title: Business Development Manager	2005 - 2006
Company: AXA Corporate Solutions Title: Transitions Manager	2002 - 2005
Company: Anthony Doughty, VC Australia Title: Casual	2002 - 2005
Company: Macquarie Bank Title: National Service Manager	2002 - 2005

Peter McCluskey

Current PointsBet Title

Independent Non-Executive Director

Professional Experience

Peter has been an insolvency and corporate reconstruction professional for over 30 years. He has strong relationships within the Australian and International finance sectors, having managed the conflicting agendas of diverse parties in banking syndicates in some of the largest restructuring assignments in Australia. As Managing Partner at Ferrier Hodgson's Melbourne office for 12 years, Peter had exposure to a wide range of industries due to his engagement and oversight of several corporate restructuring and insolvency projects and is recognized for his ability to manage and resolve complex matters.

Education and Training

Peter received his undergraduate degree from Swinburne University of Technology in Melbourne, Australia.

Employment History

Company: PointsBet Holdings Limited	2017 - Present
Title: Independent Non-Executive Director	
Company: Ferrier Hodgson	1987 – Present
Title: Managing Partner	

Anthony Symons

Current PointsBet Title

Independent Non-Executive Director

Professional Experience

Anthony (Tony) possesses expertise from significant experience in public and private mergers and acquisitions (especially of a cross-border nature), joint ventures, equity offerings, private equity transactions, corporate law, and general commercial matters, having worked exclusively in these areas for over 20 years. Tony is a trusted adviser to a range of prominent Australian and International corporate and private clients.

Tony was admitted to law practice in 1996 and spent 4 years with Linklaters in Hong Kong from 2000 to 2004, where he focused on regional mergers, acquisitions, and capital raisings. During his time with Linklaters, Tony worked extensively throughout Asia and advised on some of Asia's largest and most innovative deals, many of which involved multiple jurisdictions.

Shortly after returning to Melbourne, Tony co-founded the predecessor firm to Clarendon Lawyers, whose clients now range from large listed and private companies (including many foreign companies), private equity funds, family office groups and professional service firms to SMEs and individuals. In the 2016 and 2017 Doyle's Guide in Australia, Tony was ranked as a "Pre-eminent" and "Leading Lawyer", respectively, placing him in the top 6 M&A lawyers in Melbourne. In MergerMarket's 2016 league tables, Tony was ranked 7th by volume of deals.

Tony's specialties include private M&A, corporate law, private equity, and joint ventures.

For more information, see <https://clarendonlawyers.com.au/leadership/tony-symons/>.

Education and Training

Tony holds a Bachelor of Commerce degree and a Bachelor of Laws degree from the University of Melbourne. He is admitted to practice in Victoria and Hong Kong.

Employment History

Company: PointsBet Holdings Limited Title: Independent Non-Executive Director	2016 – Present
Company: Clarendon Lawyers Pty Ltd Title: Founder and Managing Director	2007 – Present
Company: Finlayson Symons & Fernon Title: Director	2005 – 2007
Company: K&L Gates LLP (formerly Middletons Lawyers) Title: Senior Associate, M&A	2004 – 2005
Company: Linklaters LLP Title: Managing Associate	2000 – 2004
Company: Herbert Smith Freehills LLP Title: Senior Associate, M&A	1998 – 2000
Company: K&L Gates LLP (formerly Middletons Lawyers) Title: Lawyer	1995 – 1998

Andrew Mellor

Current PointsBet Title

Group Chief Financial Officer

Professional Experience

Prior to joining PointsBet in 2019, Andrew worked for global investment bank Credit Suisse for 20 years, across their offices in London, New York, and Hong Kong. Andrew's extensive experience at Credit Suisse included roles in Risk Management and Prime Services, in addition to serving as the Director and Head of APAC Convertible Bond Trading and Credit Flow team from 2006 to 2018.

Andrew's roles have required a deep understanding of and exposure to financial instruments, financing and investing across capital structures. Andrew has a wealth of knowledge in global financial markets and is a member of the Chartered Accountants of Australia.

Education and Training

Bachelor Of Economics (Accounting Major), Monash University, Australia

Member of Chartered Accountants of Australia

Employment History

Company: PointsBet Title: CFO	2018 - Present
Company: Credit Suisse Title: Director, Head of APAC Convertible Bond Trading and Credit Flow	1998 - 2018
Company: BDO Nelson Parkhill Title: Audit Supervisor	1994 - 1997

Becky Harris

Current PointsBet Title

Non-Executive Director

Professional Experience

Ms. Harris was appointed as the first female Chair of the Nevada Gaming Control Board. She was responsible for comprehensively regulating the multi-billion-dollar gaming industry in the State of Nevada, including day-to-day oversight and management of the Board and its 400+ employees located in 6 offices throughout the state, conducting monthly meetings concerning regulatory and licensure issues, engaging in international dialogue with respect to gaming issues, providing education and resources for regulatory bodies and legislatures throughout the world and determining appropriate disciplinary outcomes. During her years working in legislature, she was responsible for establishing and advocating for the Board's budgetary and legislative agenda.

As Chief Regulator, Becky led the Board through several controversial matters and challenges involving the legalization of recreational cannabis and its relationship to gaming regulation, the repeal of the Professional and Amateur Sports Protection Act (PASPA), the emergence of sports betting across the United States, and various Wire Act issues. She also has served as an ambassador to other gaming regulators from around the world.

Education and Training

LL.M. William S. Boyd School of Law, 2016

J.D. Brigham Young University, 1992

M.A. University of Nevada, Las Vegas, 2000

B.A. Brigham Young University, 1989

Employment History

Company: PointsBet 2020-Present
Title: Non-Executive Director

Company: UNLV International Gaming Institute Present
Title: Distinguished Fellow

Company: Boyd School of Law Present
Title: Adjunct Law Professor

Company: Nevada Gaming Control Board 2018
Title: Chairwoman

Nevada State Senator 2014 - 2018

Kosha Gada

Current PointsBet Title

Independent Non-Executive Director

Professional Experience

Kosha is currently the CEO and Managing Director of Recastled LLC, a media & tech incubator and advisory firm. Prior to Recastled, Kosha was the Corporate Executive Director of Strategy at the Comcast Corporation. She was previously a Principal at Kearney, advising senior executives at premier global corporations on strategic and operating objectives.

Kosha is a regular contributor on various business and news networks, including Sky News, CNBC, and BNN Bloomberg, as well as publications including Forbes, TechCrunch, Folio, HuffPo, and eMarketer, among others. She is also a regular keynote speaker at industry symposiums, focusing on the nexus of media, technology analysis, and digital business models and the cultural shift ignited by innovation in those sectors.

For more information, see <https://koshagada.com/about>.

Education and Training

Kosha earned her MBA from the University of Chicago Booth School of Business and B.S. in Computer Science from The Ohio State University, where she graduated Magna Cum Laude.

Employment History

Company: PointsBet Holdings Limited Title: Independent Non-Executive Director	2021 – Present
Company: Sky News Title: On-Air Contributor	2020 – Present
Company: Recastled LLC Title: Chief Executive Officer and Managing Director	2020 – Present
Company: Comcast Corporation Title: Executive Director of Strategy; Vice President	2015 – 2019
Company: A.T. Kearney Title: Principal; Media & Entertainment Practice Leader	2005 – 2015
Company: CNBC LLC Title: Guest Contributor (Television & Print)	2013 – 2014
Company: Accenture PLC Title: Technology Consultant (Media & Entertainment Practice)	2000 – 2003

Johnny Aitken

Current PointsBet Title

CEO, PointsBet USA

Professional Experience

Mr. Aitken has over 15 years' experience in the wagering industry with a deep understanding of operating within highly regulated commercial environments. Mr. Aitken joined TomWaterhouse.com in 2010, led its VIP business arm and managed the trading business. After the completion of the sale of TomWaterhouse.com to William Hill, Mr. Aitken was appointed Head of Risk before rising to Trading Director in mid-2015. As a member of the William Hill executive team, he also managed the Analytics, Publishing, and Customer Service departments with over 120 staff located in three operating locations.

Education and Training

Deakin University – Bachelor of Commerce, Majoring in Marketing and Sports Management

Harvard Business School – Decision Making and Negotiation Program, High Performance Leaderships Program

Employment History

Company: PointsBet CEO, PointsBet USA	2018-Present
Company: PointsBet Australia CEO, PointsBet USA	2018-2018
Company: William Hill Australia Trading Director	2014 - 2018
Company: TomWaterhouse.com Head of Trading	2010 - 2014
Company: Greyhound Racing NSW Head of Trading	2007 - 2010

**Exhibit E – PointsBet
Organizational Documents**

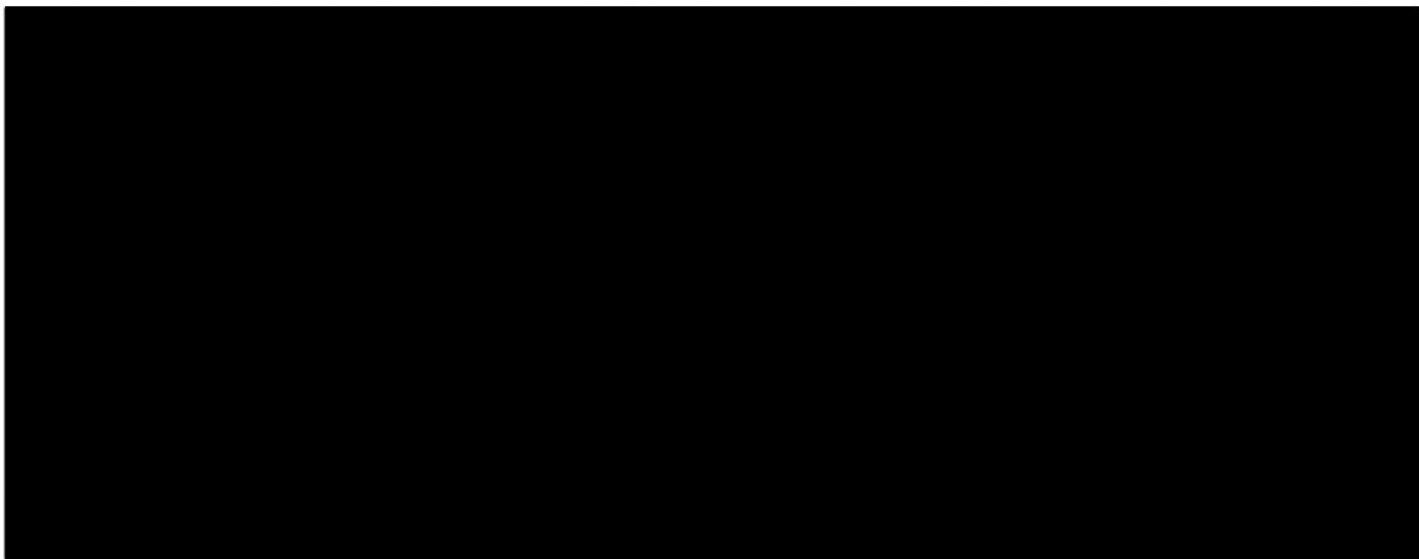
ONLINE FILING RECEIPT

ENTITY NAME: POINTSBET NEW YORK LLC

CONFIDENTIAL

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM. LLC)

COUNTY: NEW



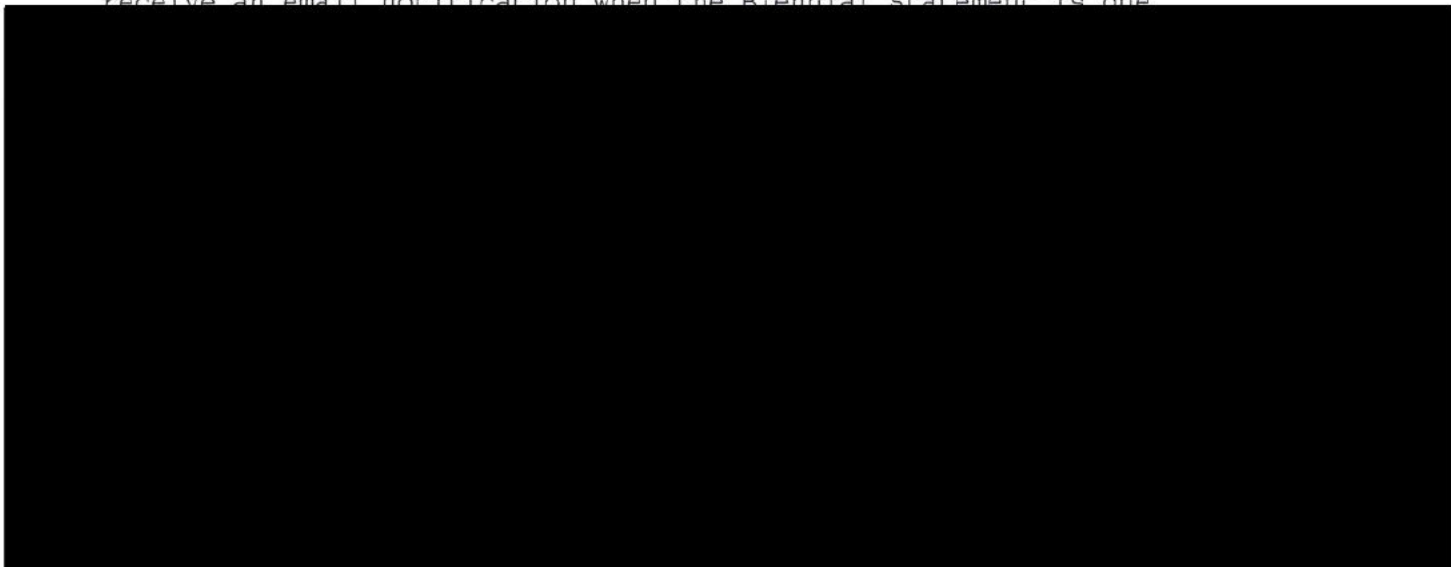
Pursuant to C.R.S. 24-21-505,
I certify that this is a true and
correct copy of the original.

ELIZABETH M BOTKIN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184032057
MY COMMISSION EXPIRES AUGUST 10, 2022

Elizabeth Botkin
8.3.2021



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the Biennial Statement is due will only be made via email. Please go to www.email.ebiennial.dos.ny.gov to provide an email address to receive an email notification when the Biennial Statement is due.



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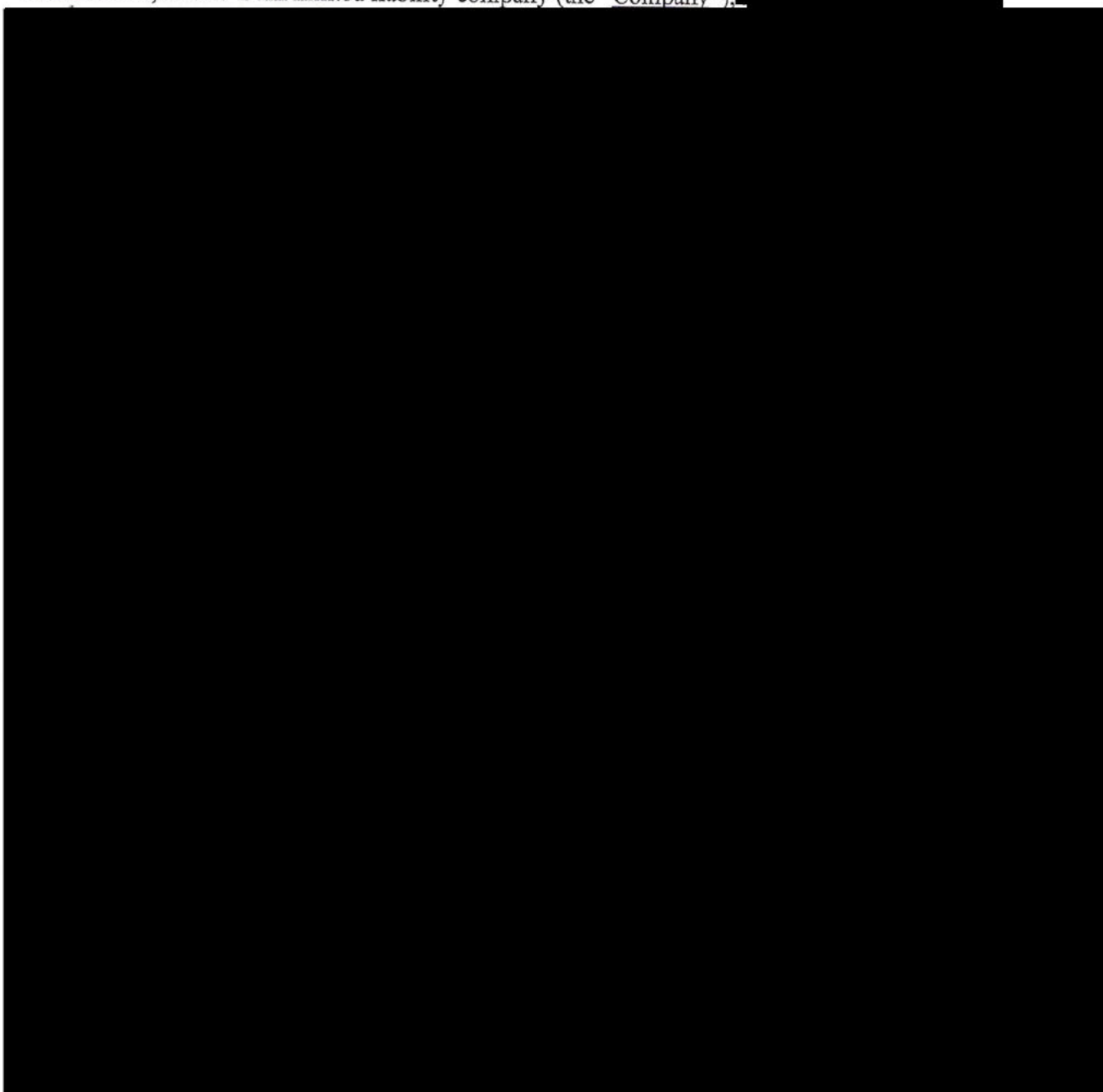
OPERATING AGREEMENT

OF

POINTSBET NEW YORK LLC

(a New York Limited Liability Company)

THIS OPERATING AGREEMENT (this "Agreement") of POINTSBET NEW YORK LLC, a New York limited liability company (the "Company").



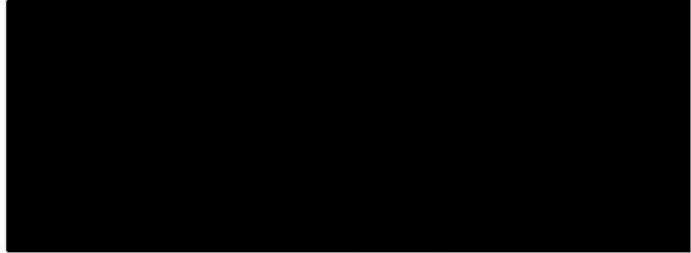
STATE OF COLORADO
NOTARY ID 20184032057
MY COMMISSION EXPIRES AUGUST 10, 2022

Elizabeth Koth
8.3.2021

CONFIDENTIAL

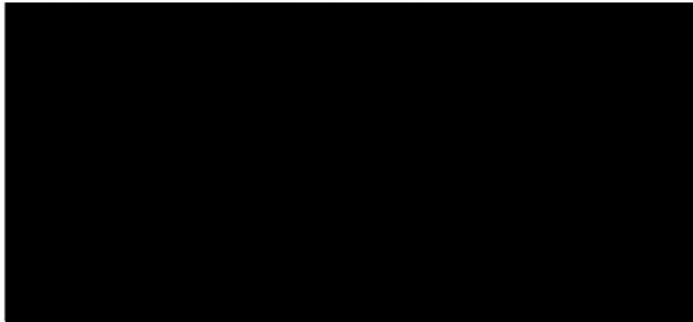
IN WITNESS WHEREOF, the undersigned has duly executed this Operating Agreement as of the date stated above.

MEMBER:



COMPANY:

POINTSBET NEW YORK LLC.





ASIC
 Australian Securities &
 Investments Commission

Commonwealth of Australia Gazette
 No. A02/19, Tuesday 15 January 2019

Published by ASIC

ASIC Gazette

Contents

Notices under Corporations Act 2001

18-1179	18-1199	18-1200	19-0001	19-0023
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Company/scheme deregistrations

Change of company type

Pursuant to C.R.S. 24-21-501
 I certify that this
 document is a true and
 correct copy of the original.

ELIZABETH M BOTKIN
 NOTARY PUBLIC
 STATE OF COLORADO
 NOTARY ID 20184032057
 MY COMMISSION EXPIRES AUGUST 10, 2022

Elizabeth Botkin
 8.3.2021

RIGHTS OF REVIEW

Persons affected by certain decisions made by ASIC under the *Corporations Act 2001* and the other legislation administered by ASIC may have rights of review. ASIC has published Regulatory Guide 57 *Notification of rights of review (RG57)* and Information Sheet *ASIC decisions – your rights (INFO 9)* to assist you to determine whether you have a right of review. You can obtain a copy of these documents from the ASIC Digest, the ASIC website at www.asic.gov.au or from the Administrative Law Co-ordinator in the ASIC office with which you have been dealing.

ISSN 1445-6060 (Online version)
 ISSN 1445-6079 (CD-ROM version)

Available from www.asic.gov.au
 Email gazette.publisher@asic.gov.au

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18-1179

**Australian Securities and Investments Commission
Corporations Act 2001 – Paragraphs 741(1)(a) and 741(1)(b) – Exemption and
Declaration**

Enabling legislation

1. The Australian Securities and Investments Commission makes this instrument under paragraphs 741(1)(a) and 741(1)(b) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is ASIC Instrument 18-1179.

Commencement

3. This instrument commences on the date it is signed.

Exemption

4. Invion Limited ACN 094 730 417 (*Invion*) does not have to comply with Parts 6D.2 and 6D.3 of the Act for an offer of securities in Chronic Airway Therapeutics Limited ACN 628 608 113 (*CAT*) to shareholders of Invion.

Declaration

5. Chapter 6D of the Act applies to shareholders of CAT as if section 707 were modified or varied by omitting subsections 707(3), (4), (5) and (6).

Where this instrument applies

6. The exemption in paragraph 4 applies to invitations by Invion to its shareholders to vote at a general meeting on a capital reduction of Invion and an in-specie transfer of ordinary shares in CAT to the shareholders of Invion (*Demerger Proposal*), in accordance with a notice of meeting that:
 - (a) is in substantially the same form as the draft notice of meeting given to ASIC on 14 December 2018; and
 - (b) includes a statement:
 - (i) describing the need for, and effect of, the relief contained in this instrument as it applies to shareholders; and
 - (ii) that the notice of meeting is in substantially the same form as the draft notice of meeting given to ASIC on 14 December 2018.

18-1179

7. The declaration in paragraph 5 applies where:

- (a) a CAT shareholder makes an offer of their ordinary shares in CAT (*Shares*) for sale;
- (b) the Shares were transferred to the CAT shareholder pursuant to the Demerger Proposal referred to in paragraph 6; and
- (c) the offer is not made within 12 months of a sale or transfer of the Shares by a person, other than Invion, who:
 - (i) controls CAT;
 - (ii) would have been required by subsection 707(2) of the Act to give disclosure to investors under Part 6D.2 of the Act but for section 708 or 708A of the Act; and
 - (iii) did not give disclosure to investors under Part 6D.2 of the Act because of section 708 or 708A of the Act.

Dated this 20th day of December 2018



Signed by Will Robertson
as a delegate of the Australian Securities and Investments Commission

18-1199

Australian Securities and Investments Commission
Corporations Act 2001 – Paragraph 601QA(1)(b) – Declaration

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 601QA(1)(b) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Instrument 18-1199.

Commencement

3. This instrument commences on the day it is signed.

Declaration

4. Chapter 5C of the Act applies to Infigen Energy RE Limited ACN 113 813 997 as the responsible entity of the Infigen Energy Trust ARSN 116 244 118 (*IET*) as if the following provisions of that Chapter were modified or varied as follows:
 - a) after subsection 601GAA(9) as notionally inserted into Chapter 5C by ASIC Corporations (Managed investment product consideration) Instrument 2015/847, insert:

“(9A) the responsible entity may set the issue price of interests in the scheme where all of the following apply:

 - (a) stapled securities are quoted on:
 - (i) the financial market of ASX; or
 - (ii) an approved foreign exchangeand the quotation of the stapled securities is not suspended;
 - (b) the constitution makes provision for the issue price of stapled securities;

- (c) the constitution provides that the responsible entity may allocate a proportion of the issue price of the stapled securities to the interests;
- (d) stapled securities are issued at the current market price, as defined in the scheme constitution;
- (e) any acquisition of an interest in the scheme by the responsible entity or an associate of the responsible entity does not disadvantage other members of the scheme; and
- (f) the sum of the price at which the interest and the other financial products are to be issued is to equal the current market price, as defined in the scheme constitution, for the stapled securities."

Where this instrument applies

5. This instrument applies where ordinary interests in IET must, on the terms on which they may be traded, only be transferred with shares in Infigen Energy Limited ACN 105 051 616.

Dated this 24th day of December 2018



Signed by Abramo Martinelli
as a delegate of the Australian Securities and Investments Commission

18-1200

**Australian Securities and Investments Commission
Corporations Act 2001 – Paragraph 601QA(1)(b) – Declaration**

Enabling legislation

1. The Australian Securities and Investments Commission (*ASIC*) makes this instrument under paragraph 601QA(1)(b) of the *Corporations Act 2001* (the *Act*).

Title

2. This instrument is ASIC Instrument 18-1200.

Commencement

3. This instrument commences on the day it is signed.

Declaration

4. Chapter 5C of the Act applies to Infigen Energy RE Limited ACN 113 813 997 as the responsible entity of the Infigen Energy Trust ARSN 116 244 118 (**IET**) as if the following provisions of that Chapter were modified or varied as follows:
 - (a) omit paragraph 601FC(1)(c) and substitute:

“(c) act in the best interests of members (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where the interests and shares are components of a stapled security) and, if there is a conflict between the members’ interests and its own interests, give priority to the members’ interests; and”;
 - (b) omit paragraph 601FC(1)(e) and substitute:

“(e) not make use of information acquired through being the responsible entity in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the members of the scheme (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security); and”;
 - (c) omit paragraph 601FD(1)(c), 601FD(1)(d) and 601FD(1)(e) and substitute:

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- “(c) act in the best interests of members (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security) and, if there is a conflict between the members’ interests and the interests of the responsible entity, give priority to the members’ interests; and
 - (d) not make use of information acquired through being an officer of the responsible entity in order to:
 - (i) gain an improper advantage for the officer or another person; or
 - (ii) cause detriment to the members of the scheme (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security); and
 - (e) not make improper use of their position as an officer to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security); and”;
- (d) omit paragraphs 601FE(1)(a) and 601FE(1)(b) and substitute:
- “(a) make use of information acquired through being an employee of the responsible entity in order to:
 - (i) gain an improper advantage for the employee or another person; or
 - (ii) cause detriment to the members of the scheme (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security); or
 - (b) make improper use of their position as an employee to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the members of the scheme (having regard to their interests as holders of interests in the scheme and as holders of shares in a company, where interests and shares are components of a stapled security).”;
- (e) insert after subsection 208(2) of the Act as notionally inserted by section 601LC:
- “(2A) Member approval is not required for the giving of a financial benefit and the benefit need not be given within 15 months if:
 - (a) the benefit either:

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- (i) is given out of the scheme property of a registered scheme; or
 - (ii) could endanger the scheme property; and
 - (b) all of the interests in the scheme, together with all of the shares in a company (each a *stapled entity*), are components of stapled securities; and
 - (c) the benefit is given by:
 - (i) the responsible entity of the scheme; or
 - (ii) an entity that the responsible entity controls; or
 - (iii) an agent of, or person engaged by, the responsible entity;
 - (d) the benefit is given to:
 - (i) an entity wholly owned, whether directly or indirectly, by the scheme; or
 - (ii) a stapled entity or an entity wholly owned, whether directly or indirectly, by a stapled entity; or
 - (iii) an entity wholly owned, whether directly or indirectly, jointly by the scheme and a stapled entity.
- (2B) For the purposes of this section:
- (a) an entity is wholly owned by another entity or entities if all of the shares or interests (as applicable) in the first-mentioned entity are held by, or held by a nominee for (in the case of the second-mentioned entity or entities being a company), or form part of the trust property of (in the case of the second-mentioned entity or entities being a trust), the second-mentioned entity or entities or a wholly owned entity of any of them; and
 - (b) a reference to the giving of a benefit to an entity which is a trust is a reference to the giving of a benefit to the trustee of the trust so as to form part of the trust property of the trust or for the benefit of the trust beneficiaries.”; and
- (f) insert after section 601PC:
- “601PD For the purposes of this Chapter:
- stapled security* means two or more financial products including at least one interest in a registered scheme where:

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- (a) under the terms on which each of the financial products are to be traded, they must be transferred together; and
- (b) there are no financial products in the same class as those financial products which may be transferred separately.”.

Where this instrument applies

- 5. This instrument applies where ordinary interests in IET must, on the terms on which they may be traded, only be transferred with shares in Infigen Energy Limited ACN 105 051 616.

Dated this 24th day of December 2018



Signed by Abramo Martinelli
as a delegate of the Australian Securities and Investments Commission



ASIC

Australian Securities & Investments Commission

19-0001

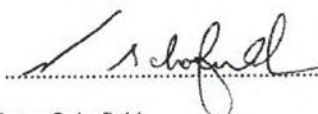
**Australian Securities and Investments Commission
Corporations Act 2001 Section 915B**

Notice of Cancellation of an Australian Financial Services Licence

TO: Peter G Cameron
ABN 65 463 877 348 ("the Licensee")
PO Box 1452
ARMIDALE NSW 2350

Pursuant to paragraph 915B(1)(e) of the **Corporations Act 2001**, the Australian Securities and Investments Commission hereby cancels Australian Financial Services Licence number 253100 held by the Licensee, with effect from the date on which this notice is given to the Licensee.

Dated 2 January 2019

Signed 

Peter Schofield
a delegate of the Australian Securities and Investments Commission

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Notice is given under section 915F of the Corporations Act 2001 that the Australian Securities and Investments Commission has made an order in the terms set out below, which order took effect on 8 January 2019.

**Australian Securities and Investments Commission
Corporations Act 2001 section 915B**

Notice of Suspension of Australian Financial Services Licence

To: Halifax Investment Services Pty Ltd ACN 096 980 522 (**Halifax**)

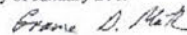
Under s915B(3)(b) of the Corporations Act 2001 (**Act**) the Australian Securities and Investments Commission (**ASIC**) suspends Australian financial services licence number 225973 (**Licence**) held by Halifax until 10 January 2020.

Under s915H of the Act ASIC specifies that the Licence continues in effect while suspended, as though the suspension had not happened for the purpose of:

- (a) Paragraphs 912A(1)(g) of the Act to the extent that it requires Halifax to have a disputes resolution system complying with s912A(2)(c) of the Act (which requires Halifax to be a member of the AFCA scheme);
- (b) Section 912B of the Act and regulations 7.6.02AAA and 7.6.02AA of the *Corporations Regulations 2001* (which require Halifax to have arrangements for compensating retail clients including the holding of professional indemnity insurance cover); and
- (c) Chapter 7 of the Act regarding the provision of a financial service to a person as a retail client or wholesale client if that person was a client immediately prior to the suspension taking effect and if the financial service concerns the termination of an existing arrangement with the client.

Dated this 7th day of January 2019

Signed



Graeme Darcy Plath
a delegate of the Australian Securities and Investments Commission

CORPORATIONS ACT 2001

Section 601CL(4)

ASIC will strike the foreign companies listed below off the register three months after the publication of this notice, unless given acceptable reason not to proceed.

Dated this eleventh day of January 2019

Rosanne Bell
DELEGATE OF
THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Name of Company	ARBN
BUNZL AUSTRALIA FOREX LLP	162 576 703
ICAP EUROPE LIMITED	101 624 953
NICE & NATURAL LIMITED	142 184 174
RTTECH SOFTWARE INC.	615 293 304
T-C 101 MILLER STREET LLC	602 945 657
T-C 699 BOURKE STREET LLC	168 903 946
VANDERLANDE INDUSTRIES B.V.	161 122 818

CORPORATIONS ACT 2001

Section 601CL(5)

ASIC has struck the foreign companies listed below off the register.

Dated this eleventh day of January 2019

Rosanne Bell

DELEGATE OF

THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Name of Company

ARBN

ASIA-PACIFIC MEDIA ALLIANCE FOR SOCIAL AWARENESS LTD.	605 369 819
BNP PARIBAS DEALING SERVICES ASIA LIMITED	155 996 035
FLEXIBLE LEARNING NETWORK LIMITED	155 963 250
GENESIS PERSONNEL LIMITED	620 081 950
HILITE EXPORTS LIMITED	615 760 006
WEIR POWER & INDUSTRIAL SINGAPORE PTE. LTD.	158 499 382

CORPORATIONS ACT 2001

Subsection 601PA(3)

ASIC may deregister the managed investment scheme(s) listed below two months after the publication of this notice, unless given acceptable reason not to proceed.

Dated this eleventh day of January 2019

Rosanne Bell
DELEGATE OF
THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Name of Company

ARDENT LEISURE TRUST

ARSN

093 193 438

Corporations Act 2001
Subsection 164(3)

Notice is hereby given that ASIC will alter the registration details of the following companies 1 month after the publication of this notice, unless an order by a court or Administrative Appeals Tribunal prevents it from doing so.

BISHOP RESOURCES LIMITED ACN 161 038 464 will change to a no liability public company. The new name will be BISHOP RESOURCES NL ACN 161 038 464.

HAWL HEALTHCARE LIMITED ACN 165 262 359 will change to a proprietary company limited by shares. The new name will be HAWL HEALTHCARE PTY LTD ACN 165 262 359.

PUNCH RESOURCES LIMITED ACN 160 022 793 will change to a proprietary company limited by shares. The new name will be PUNCH RESOURCES PTY LTD ACN 160 022 793.

SIGNOSTICS LIMITED ACN 081 578 378 will change to a proprietary company limited by shares. The new name will be SIGNOSTICS PTY LTD ACN 081 578 378.

23 STRANDS LTD. ACN 622 678 835 will change to a proprietary company limited by shares. The new name will be 23 STRANDS PTY LTD ACN 622 678 835.

CYPRESS LAKES GROUP LIMITED

ACN 003 621 136 will change to a proprietary company limited by shares. The new name will be CYPRESS LAKES GROUP PTY LIMITED ACN 003 621 136.

POINTSBET HOLDINGS PTY LTD ACN 621 179 351 will change to a public company limited by shares. The new name will be POINTSBET HOLDINGS LIMITED ACN 621 179 351.

S - CLAVE LTD ACN 619 606 932 will change to a proprietary company limited by shares. The new name will be S - CLAVE PTY LTD ACN 619 606 932.

STRATA MIXED REALITY LIMITED

ACN 615 343 032 will change to a proprietary company limited by shares. The new name will be STRATA MIXED REALITY PTY LTD ACN 615 343 032.



ASIC

Australian Securities & Investments Commission

Australian Company

POINTSBET HOLDINGS LIMITED
ACN 621 179 351

Extracted from ASIC's database at AEST 04:40:02 on 24/07/2021

Company Summary	
Name:	POINTSBET HOLDINGS LIMITED
ACN:	621 179 351
ABN:	68 621 179 351
Registration Date:	18/08/2017
Next Review Date:	18/08/2021
Former Name(s):	POINTSBET HOLDINGS PTY LTD
Status:	Registered
Type:	Australian Public Company, Limited By Shares
Locality of Registered Office:	CREMORNE VIC 3121
Regulator:	Australian Securities & Investments Commission

Further information relating to this organisation may be purchased from ASIC.

Pursuant to C.R.S. 24-21-505,
I certify that this document is
a true and correct copy of the
original.

ELIZABETH M BOTKIN
 NOTARY PUBLIC
 STATE OF COLORADO
 NOTARY ID 20184032057
 MY COMMISSION EXPIRES AUGUST 10, 2022

Elizabeth Botkin
8.3.2021

Appendix 1A

ASX Listing Application and Agreement

This form is required by listing rule 1.7 to be used by an entity seeking admission to the ⁺official list as an ASX Listing (for classification as an ASX Debt Listing use Appendix 1B and for classification as an ASX Foreign Exempt Listing use Appendix 1C).

All entity's seeking admission to the ⁺official list as an ASX Listing must also provide to ASX the information and documents referred to in the Information Form and Checklist (ASX Listing) published on the ASX website.

The Appendix 1A and the Information Form and Checklist (ASX Listing) given to ASX become ASX's property and will be made public by way of release on ASX Markets Announcement Platform. Supporting documents may also be made public. This may occur prior to admission of the entity and ⁺quotation of its ⁺securities. If it does, publication does not mean that the entity will be admitted or that its ⁺securities will be quoted.

Introduced 01/07/96 Origin: Appendix 1 Amended 01/07/97, 01/07/98, 01/09/99, 13/03/00, 01/07/00, 30/09/01, 11/03/02, 01/01/03, 24/10/05, 20/07/07, 01/01/12, 01/05/13, 02/11/15, 19/12/16


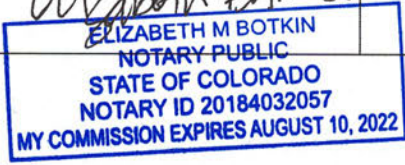
Name of entity

ABN/ARBN/ARSN

PointsBet Holdings Limited

621 179 351

We (the entity named above) apply for admission to the ⁺official list of ASX Limited (ASX) as an ASX Listing and for ⁺quotation of the following ⁺securities:

	Number to be quoted	⁺ Class
⁺ Main class of ⁺ securities	83,069,980 A total of 26,930,020 ordinary securities are classified as restricted securities and will not be quoted on admission to the official list.	Fully paid ordinary shares
Additional ⁺ classes of ⁺ securities to be quoted (if any) [Do not include ⁺ CDIs]	N/A	N/A
Pursuant to C.R.S. 24-21-505, I certify that this is a true and correct copy of the original.		
		
		

We agree:

- Our admission to the ⁺official list and classification as an ASX Listing is in ASX's absolute discretion. ASX may admit us on any conditions it decides. ⁺Quotation of our ⁺securities is in ASX's absolute discretion. ASX may quote our ⁺securities on any conditions it decides. Our

change in the category of our admission is in ASX's absolute discretion. ASX is entitled immediately to suspend ⁺quotation of our ⁺securities or remove us from the ⁺official list if we break this agreement, but the absolute discretion of ASX is not limited.

2. We warrant the following to ASX:
 - The issue of the ⁺securities to be quoted complies with the law and is not for an illegal purpose.
 - The ⁺securities to be quoted comply with listing rule 2.1 and there is no reason why the ⁺securities should not be granted ⁺quotation.
 - An offer of the ⁺securities for sale within 12 months after their issue will not require disclosure under section 707(3) or section 1012C(6) of the Corporations Act.
Note: An entity may need to obtain appropriate warranties from subscribers for the securities in order to be able to give this warranty
 - Section 724 and section 1016E of the Corporations Act do not apply to any applications received by us in relation to any ⁺securities to be quoted and that no-one has any right to return any ⁺securities to be quoted under sections 601MB(1), 737, 738, 992A, 992AA or 1016F of the Corporations Act at the time that we request that the ⁺securities be quoted.
 - If we are a trust, we warrant that no person has the right to return the ⁺securities to be quoted under section 1019B of the Corporations Act at the time that we request that the ⁺securities be quoted.
3. We will indemnify ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of the warranties in this agreement.
4. We give ASX the information and documents required by this form, including the information and documents referred to in the *Information Form and Checklist (ASX Listing)* published on the ASX website. If any information or document is not available now, we will give it to ASX before ⁺quotation of the ⁺securities begins. We acknowledge that ASX is relying on the information and documents. We warrant that they are (or will be) true and complete.
5. We will comply with the listing rules that are in force from time to time, even if ⁺quotation of our ⁺securities is deferred, suspended or subject to a ⁺trading halt.
6. The listing rules are to be interpreted:
 - in accordance with their spirit, intention and purpose;
 - by looking beyond form to substance; and
 - in a way that best promotes the principles on which the listing rules are based.
7. ASX has discretion to take no action in response to a breach of a listing rule. ASX may also waive a listing rule (except one that specifies that ASX will not waive it) either on our application or of its own accord on any conditions. ASX may at any time vary or revoke a decision on our application or of its own accord.
8. A document given to ASX by an entity, or on its behalf, becomes and remains the property of ASX to deal with as it wishes, including copying, storing in a retrieval system, transmitting to the public, and publishing any part of the document and permitting others to do so. The documents include a document given to ASX in support of the listing application or in compliance with the listing rules.
9. In any proceedings, a copy or extract of any document or information given to ASX is of equal validity in evidence as the original.
10. We acknowledge that this application also operates as an application to the ⁺approved CS facility for approval for the entity to act as an issuer under the operating rules of the ⁺approved CS facility and:


⁺ See chapter 19 for defined terms
19 December 2016

- In the case of an entity established in a jurisdiction whose laws have the effect that the entity's ⁺securities cannot be registered or transferred under the operating rules of the ⁺approved CS facility, to have CDIs issued over the entity's ⁺securities and to have those ⁺CDIs approved for participation in the ⁺approved CS facility.
 - In all other cases, for the approval of the entity's ⁺securities under those operating rules for participation in the ⁺approved CS facility.
11. Except in the case of an entity established in a jurisdiction whose laws have the effect that the entity's ⁺securities cannot be registered or transferred under the operating rules of the ⁺approved CS facility:
- The ⁺approved CS facility is irrevocably authorised to establish and administer a subregister in respect of the ⁺securities for which ⁺quotation is sought.
 - We will satisfy the ⁺technical and performance requirements of the ⁺approved CS facility and meet any other requirements the ⁺approved CS facility imposes in connection with the participation of our ⁺securities in the ⁺approved CS facility.
 - When ⁺securities are issued we will enter them in the ⁺approved CS facility's subregister holding of the applicant before they are quoted, if the applicant instructs us on the application form to do so.
12. In the case of an entity established in a jurisdiction whose laws have the effect that the entity's ⁺securities cannot be registered or transferred under the operating rules of the ⁺approved CS facility:
- We appoint CHES Depository Nominees Pty Ltd (CDN) to act as the depository nominee in respect of any ⁺CDIs issued over the ⁺securities for which ⁺quotation is sought and acknowledge the indemnity given by us to CDN as the depository nominee, and accept the power of attorney given to us by CDN as the depository nominee, under the operating rules of the ⁺approved CS facility.
 - The ⁺approved CS facility is irrevocably authorised to establish and administer a subregister in respect of ⁺CDIs over the ⁺securities for which ⁺quotation is sought.
 - We will satisfy the ⁺technical and performance requirements of the ⁺approved CS facility and meet any other requirements the ⁺approved CS facility imposes in connection with the participation of our ⁺CDIs in the ⁺approved CS facility.
 - When ⁺CDIs are issued we will enter them in the ⁺approved CS facility's subregister holding of the applicant before the ⁺securities they are over are quoted, if the applicant instructs us on the application form to do so.
 - We will make sure that ⁺CDIs are issued over ⁺securities if the holder of quoted ⁺securities asks for ⁺CDIs.

Dated: 20 May 2019

Executed as a deed:


SIGNED, SEALED AND DELIVERED by
PointsBet Holdings Limited in accordance
with the Corporations Act 2001 (Cth) by
being signed by the following officers:



Signature of director

TONY SYMONS

Name of director (please print)



Signature of director / company secretary

NICHOLAS J FAHEY

Name of director / company secretary
(please print)

You must complete, date and sign this agreement so that it takes effect as a deed. If the entity is an Australian company, the signatures of a director and a director/company secretary will be required. If the entity is an Australian trust, the signatures of a director and a director/company secretary of the responsible entity of the trust will be required. If the entity is established outside Australia, execution will have to comply with requirements for a deed in both the place of establishment of the entity and in Australia. If this agreement is signed under a power of attorney, please attach a copy of the power of attorney.

For personal use only

Information Form and Checklist

(ASX Listing)

Name of entity

ABN/ARBN/ARSN

PointsBet Holdings Limited

621 179 351

We (the entity named above) supply the following information and documents to support our application for admission to the official list of ASX Limited (ASX) as an ASX Listing.

Note: the entity warrants in its Appendix 1A ASX Listing Application and Agreement that the information and documents referred to in this Information Form and Checklist are (or will be) true and complete and indemnifies ASX to the fullest extent permitted by law in respect of any claim, action or expense arising from, or connected with, any breach of that warranty.

Any Annexures to this Information Form and Checklist form part of the Information Form and Checklist and are covered by the warranty referred to above.

Terms used in this Information Form and Checklist and in any Annexures have the same meaning as in the ASX Listing Rules.

Part 1 – Key Information

Instructions: please complete each applicable item below. If an item is not applicable, please mark it as "N/A".

All entities – corporate details¹

Place of incorporation or establishment	Victoria, Australia.
Date of incorporation or establishment	18 August 2017.
Legislation under which incorporated or established	Corporations Act 2001 (Cth).
Address of registered office in place of incorporation or establishment	155 Cremorne Street, Cremorne VIC 3121.
Main business activity	Wagering services operator.
Country where main business activity is mostly carried on	Australia.
Other exchanges on which the entity is listed	Not applicable.
Street address of principal administrative office	155 Cremorne Street, Cremorne VIC 3121.
Postal address of principal administrative office	155 Cremorne Street, Cremorne VIC 3121.
Telephone number of principal administrative office	+61 433 716 424 (Company Secretary).

¹ If the entity applying for admission to the official list is a stapled structure, please provide these details for each entity comprising the stapled structure.

E-mail address for investor enquiries	andrew.hensher@pointsbet.com
Website URL	www.pointsbet.com.au

All entities – management details²

Full name and title of CEO/managing director	Samuel John Swanell, Managing Director and Chief Executive Officer
Email address of CEO/managing director	sam.swanell@pointsbet.com
Full name and title of CFO	Nicholas James Fahey, Chief Financial Officer
Email address of CFO	nick.fahey@pointsbet.com
Full name and title of chairperson of directors	Brett William Fisher Paton, Chairman
Full names of all existing directors	Samuel John Swanell Anthony Peter Symons Peter Damien McCluskey Brett William Fisher Paton Nicholas James Fahey
Full names of any persons proposed to be appointed as additional or replacement directors	N/A
Full name and title of company secretary	Andrew Hensher, General Counsel & Company Secretary

All entities – ASX compliance contact details³

Full name and title of ASX contact(s)	Andrew Hensher, General Counsel & Company Secretary
Business address of ASX contact(s)	155 Cremorne Street, Cremorne VIC 3121.
Business phone number of ASX contact(s)	N/A
Mobile phone number of ASX contact(s)	+61 433 716 424
Email address of ASX contact(s)	andrew.hensher@pointsbet.com

² If the entity applying for admission to the official list is a trust, enter the management details for the responsible entity of the trust.

³ Under Listing Rule 1.1 Condition 13, a listed entity must appoint a person responsible for communication with ASX on listing rule matters. You can appoint more than one person to cater for situations where the primary nominated contact is not available.

All entities – investor relations contact details

Full name and title of person responsible for investor relations	Sam Swanell, Managing Director and Chief Executive Officer
Email address of person responsible for investor relations	sam.swanell@pointsbet.com
Business phone number of person responsible for investor relations	+61 400 541 268

All entities – auditor details⁴

Full name of auditor	RSM Corporate Australia Pty Ltd ACN 050 508 024
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All entities – registry details⁵

Name of securities registry	Computershare Investor Services Pty Limited ACN 078 279 277
Address of securities registry	452 Johnston Street, Abbotsford, VIC, 3067; or GPO Box 2975 Melbourne VIC 3000
Phone number of securities registry	+61 03 9415 5000
Fax number of securities registry	+61 03 9473 2500
Email address of securities registry	Yiori.Yi@computershare.com.au
Type of subregisters the entity will operate ⁶	CHESS and issuer sponsored subregisters

All entities – key dates

Annual balance date	30 June.
Month in which annual meeting is usually held (or intended to be held) ⁷	The annual general meetings are intended to be held in October or November.
Months in which dividends or distributions are usually paid (or are intended to be paid)	Not applicable. See the Company's dividend policy in section 4.10 of the Prospectus.

Trusts – additional details

Name of responsible entity	Not applicable.
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⁴ In certain cases, ASX may require the applicant to provide information about the qualifications and experience of its auditor for release to the market before quotation commences (see Guidance Note 1 section 2.10).

⁵ If the entity has different registries for different classes of securities, please indicate clearly which registry details apply to which class of securities.

⁶ Example: CHESS and issuer sponsored subregisters (see Guidance Note 1 section 3.20).

⁷ May not apply to some trusts.

Full names of the members of the compliance committee (if any)	Not applicable.
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Entities incorporated or established outside Australia – additional details

Name and address of the entity's Australian agent for service of process	Not applicable.
Address of registered office in Australia (if any)	Not applicable.

Entities listed or to be listed on another exchange or exchanges

Name of the other exchange(s) where the entity is or proposes to be listed	Not applicable.
Is the ASX listing intended to be the entity's primary or secondary listing	Not applicable.

For personal use only

Part 2 – Checklist Confirming Compliance with Admission Requirements

Instructions: please indicate in the "Location/Confirmation" column for each item below and in any Annexures where the information or document referred to in that item is to be found (eg in the case of information, the specific page reference in the Offer Document where that information is located or, in the case of a document, the folder tab number where that document is located). If the item asks for confirmation of a matter, you may simply enter "Confirmed" in the "Location/Confirmation" column. If an item is not applicable, please mark it as "N/A".

In this regard, it will greatly assist ASX and speed up its review of the application if the various documents referred to in this Checklist and any Annexures (other than the 5 copies of the applicant's Offer Document referred to in item 4) are provided in a folder separated by numbered tabs and if the entity's constitution and copies of all material contracts are provided both in hard copy and in electronic format.

Note that completion of this Checklist and any Annexures is not to be taken to represent that the entity is necessarily in full or substantial compliance with the ASX Listing Rules or that ASX will admit the entity to its official list. Admission to the official list is in ASX's absolute discretion and ASX may refuse admission without giving any reasons (see Listing Rule 1.19).

A reference in this Checklist and in any Annexures to the "Offer Document" means the listing prospectus, product disclosure statement or information memorandum lodged by the applicant with ASX pursuant to Listing Rule 1.1 Condition 3.

If the applicant lodges a supplementary or replacement prospectus, product disclosure statement or information memorandum with ASX, ASX may require it to update this Checklist and any Annexures by reference to that document.

All entities – key supporting documents

No	Item	Location/Confirmation
1.	A copy of the entity's certificate of incorporation, certificate of registration or other evidence of status (including any change of name)	Attachment 1 – Certificate of Incorporation. Attachment 2 – Certificate of Conversion.
2.	A copy of the entity's constitution (Listing Rule 1.1 Condition 2) ⁸	Attachment 3 - Constitution.
3.	Either: (a) confirmation that the entity's constitution includes the provisions of Appendix 15A or Appendix 15B (as applicable); or (b) a completed checklist that the constitution complies with the Listing Rules (Listing Rule 1.1 Condition 2) ⁹	Confirmed that the Company's Constitution includes the provisions of Appendix 15A.
4.	An electronic version and 5 copies of the Offer Document, as lodged with ASIC (Listing Rule 1.1 Condition 3)	Attachment 4 – Prospectus, as lodged with ASIC on 17 May 2019 (Prospectus) .
5.	Where in the Offer Document is the prominent statement that ASX takes no responsibility for the contents of the Offer Document (Listing Rule 1.1 Condition 3)?	The following sections of the Prospectus: <ul style="list-style-type: none"> • Important Notices (third paragraph); • Section 7.2 (Page 105, under the question "Will the Shares be listed?"); and • Section 7.12.1 (Page 110).
6.	Original executed ASX Online agreement confirming that documents may be given to ASX and authenticated electronically (Listing Rule 1.1	Attachment 5 – ASX Electronic Agreement.

⁸ It will assist ASX if the copy of the constitution is provided both in hard copy and in electronic format.

⁹ An electronic copy of the checklist is available from the ASX Compliance Downloads page on ASX's website.

N ^o Item Condition 14) ¹⁰	Location/Confirmation
7. If the entity's corporate governance statement ¹¹ is included in its Offer Document, the page reference where it is included. Otherwise, a copy of the entity's corporate governance statement (Listing Rule 1.1 Condition 16)	Section 6.4 (Page 97) of the Prospectus.
8. If the entity will be included in the S & P All Ordinaries Index on admission to the official list, ¹² where in its Offer Document does it state that it will have an audit committee (Listing Rule 1.1 Condition 17)?	Not applicable. However, an Audit, Risk and Compliance Committee has been established: see Section 6.4.4.1 (Page 99) of the Prospectus.
9. If the entity will be included in the S & P / ASX 300 Index on admission to the official list, ¹³ where in its Offer Document does it state that it will comply with the recommendations set by the ASX Corporate Governance Council in relation to composition and operation of the audit committee (Listing Rule 1.1 Condition 17)?	Not applicable. An Audit, Risk and Compliance Committee has been established but the composition of this committee does not comply with the ASX Corporate Governance Council Recommendations – see Sections 6.4.1 (Page 97) and 6.4.4.1 (Page 99) of the Prospectus.
10. If the entity will be included in the S & P / ASX 300 Index on admission to the official list, ¹⁴ where in its Offer Document does it state that it will have a remuneration committee comprised solely of non-executive directors (Listing Rule 1.1 Condition 18)	Not applicable. A Remuneration and Nomination Committee has been established but the composition of this committee does not comply with the ASX Corporate Governance Council Recommendations – see Sections 6.4.1 (Page 97) and 6.4.4.2 (Page 99) of the Prospectus.
11. If the entity's trading policy is included in its Offer Document, the page reference where it is included. Otherwise, a copy of the entity's trading policy (Listing Rule 1.1 Condition 19)	Attachment 6 – Securities Dealing Policy. See Section 6.5.3 (Page 100) of the Prospectus for a summary of the policy.
12. For each director or proposed director and the CEO or proposed CEO (together "relevant officers") of the entity, ¹⁵ a list of the countries in which they have resided over the past 10 years (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19) ¹⁶	All directors – Australia only.

¹⁰ An electronic copy of the ASX Online Agreement is available from the ASX Compliance Downloads page on ASX's website.

¹¹ The entity's "corporate governance statement" is the statement disclosing the extent to which the entity will follow, as at the date of its admission to the official list, the recommendations set by the ASX Corporate Governance Council. If the entity does not intend to follow all the recommendations on its admission to the official list, the entity must separately identify each recommendation that will not be followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it intends to adopt in lieu of the recommendation.

¹² If the entity is unsure whether they will be included in the S & P All Ordinaries Index on admission to the official list, they should contact ASX or S & P.

¹³ If the entity is unsure whether they will be included in the S & P / ASX 300 Index on admission to the official list, they should contact ASX or S & P.

¹⁴ See note 13 above.

¹⁵ If the entity applying for admission to the official list is a trust, references in items 12, 14, 15, 16 and 17 to a relevant officer mean a relevant officer of the responsible entity of the trust.

¹⁶ The information referred to in items 12, 13, 14, 15, 16 and 17 is required so that ASX can be satisfied that the relevant officers are of good fame and character under Listing Rule 1 Condition 20.

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N ^o Item	Location/Confirmation
13. For each relevant officer, ¹⁷ any other name which they have used or by which they have been known over the past 10 years (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19) ¹⁸	Not applicable.
14. For each relevant officer who is or has in the past 10 years been a resident of Australia, an original or certified true copy of a national criminal history check obtained from the Australian Federal Police, a State or Territory police service or a broker accredited by the Australian Criminal Intelligence Commission which is not more than 12 months old (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19)	Attachment 7 – Certified copies of National Police Certificates for: <ul style="list-style-type: none">• Samuel Swanell;• Nick Fahey;• Brett Paton;• Peter McCluskey; and• Anthony Symons.
15. For each relevant officer who is or has in the past 10 years been a resident of a country other than Australia, an original or certified true copy of an equivalent national criminal history check to that mentioned in item 14 above for each country in which the officer has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or, if such a check is not available in any such country, a statutory declaration from the officer confirming that fact and that he or she has not been convicted in that country of: (a) any criminal offence involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of their duties as an officer of an entity; or (b) any other criminal offence which at the time carried a maximum term of imprisonment of five years or more (regardless of the period, if any, for which he or she was sentenced), or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19)	Not applicable – Australia only.
16. For each relevant officer who is or has in the past 10 years been a resident of Australia, an original or certified true copy of a search of the Australian Financial Security Authority National Personal Insolvency Index which is not more than 12 months old (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19)	Attachment 8 – Certified copies of National Personal Insolvency Index searches for: <ul style="list-style-type: none">• Brett Paton;• Anthony Symons.• Peter McCluskey;• Samuel Swanell; and• Nick Fahey.
17. For each relevant officer who is or has in the past 10 years been a resident of a country other than Australia, an original or certified true copy of an equivalent national bankruptcy check to that mentioned in item 16 above for each country in which the officer has resided over the past 10 years (in English or together with a certified English translation) which is not more than 12 months old or if such a check is not available in any such country, a statutory declaration from the officer confirming that fact and that he or she has not been declared a bankrupt or been an insolvent under administration in that country or, if that is not the case, a statement to that effect and a detailed explanation of the circumstances involved (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19)	Not applicable.
18. A statutory declaration from each relevant officer confirming that: (a) the officer has not been the subject of any criminal or civil penalty	Attachment 9 – Statutory Declarations for:

¹⁷ See note 15 above.

¹⁸ See note 16 above.

Nº Item

- proceedings or other enforcement action by any government agency in which he or she was found to have engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
- (b) the officer has not been refused membership of, or had their membership suspended or cancelled by, any professional body on the ground that he or she has engaged in behaviour involving fraud, dishonesty, misrepresentation, concealment of material facts or breach of duty;
- (c) the officer has not been the subject of any disciplinary action (including any censure, monetary penalty or banning order) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with his or her obligations as an officer of a listed entity;
- (d) no listed entity of which he or she was an officer (or, in the case of a listed trust, in respect of which he or she was an officer of the responsible entity) at the time of the relevant conduct has been the subject of any disciplinary action (including any censure, monetary penalty, suspension of trading or termination of listing) by a securities exchange or other authority responsible for regulating securities markets for failure to comply with its obligations under the Listing Rules applicable to that entity; and
- (e) the officer is not aware of any pending or threatened investigation or enquiry by a government agency, professional body, securities exchange or other authority responsible for regulating securities markets that could lead to proceedings or action of the type described in (a), (b), (c) or (d) above,
- or, if the officer is not able to give such confirmation, a statement to that effect and a detailed explanation of the circumstances involved (Listing Rule 1.1 Condition 20 and Guidance Note 1 section 3.19)

Location/Confirmation

- Samuel Swanell;
- Nick Fahey;
- Brett Paton;
- Peter McCluskey; and
- Anthony Symons.

19. A specimen certificate/holding statement for each class of securities to be quoted or a specimen holding statement for CDIs (as applicable)

Attachment 10 – Specimen Holding Certificate.

20. Please either:

- (a) enter "Confirmed" in the column to the right to confirm that the entity has not previously applied for, and been refused or withdrawn its application for, admission to the official list of another securities exchange, or
- (b) attach a statement explaining the circumstances and state the location of that statement

Confirmed.

21. Please enter "Confirmed" in the column to the right to confirm that the entity has paid its initial listing fee¹⁹

The Company undertakes to pay the initial listing fee immediately on agreeing the amount with ASX.

All entities – group structure

22. Where in the Offer Document is there a diagram showing the group structure

Section 9.3.1 (Page 118) of the

¹⁹ See Guidance Notes 15 and 15A for the fees payable on the application. You can also use the ASX online equity listing fees calculator: <http://www.asx.com.au/prices/cost-listing.htm>. Payment should be made either by cheque made payable to ASX Operations Pty Ltd or by electronic funds transfer to the following account:

Bank: National Australia Bank
Account Name: ASX Operations Pty Ltd
BSB: 082 057
A/C: 494728375
Swift Code (Overseas Customers): NATAAU3202S

If payment is made by electronic funds transfer, please email your remittance advice to ar@asx.com.au or fax it to (612) 9227-0553, describing the payment as the "initial listing fee" and including the name of the entity applying for admission, the ASX home branch where the entity has lodged its application (ie Sydney, Melbourne or Perth) and the amount paid.

N ^o Item	Location/Confirmation
of the entity, identifying (where applicable) each material child entity and the nature and location of the business activities it undertakes?	Prospectus.
23. If the entity has child entities, where in the Offer Document is there a list of all material child entities stating, in each case, its name, where it is incorporated or established, the nature of its business and the entity's percentage holding in it?	Section 9.3.1 (Page 118) of the Prospectus.
24. If the entity has investments in associated entities for which it will apply equity accounting, where in the Offer Document is there a list of all associated entities stating, in each case, its name, where it is incorporated or established, the nature of its business and the entity's percentage holding in it?	Not applicable.
25. If the entity has a material interest in a joint venture, where in the Offer Document is there a description of the joint venture agreement, including the parties to the agreement and their respective rights and obligations under the agreement?	Not applicable.

All entities – capital structure

<p>26. Where in the Offer Document is there a table showing the existing and proposed capital structure of the entity, broken down as follows:</p> <p>(a) the number and class of each equity security and each debt security currently on issue; and</p> <p>(b) the number and class of each equity security and each debt security proposed to be issued between the date of this application and the date the entity is admitted to the official list; and</p> <p>(c) the resulting total number of each class of equity security and debt security proposed to be on issue at the date the entity is admitted to the official list; and</p> <p>(d) the number and class of each equity security proposed to be issued following admission in accordance with material contracts or agreements?</p> <p>Note: This applies whether the securities are to be quoted on ASX or not. If the entity is proposing to issue a minimum, maximum or oversubscription number of securities, the table should be presented to disclose each scenario.</p>	<p>See the following sections of the Prospectus:</p> <ul style="list-style-type: none"> • Key Offer Information (Page 4); • Section 1.6 (Page 15); • Section 7.1.3 (Page 104); and • Section 9.3.2 (Page 119). <p>The Company may also be required to issue securities pursuant to the Mexico Wagering and Gaming Services Agreement – see Section 9.4.9 (Page 127).</p>
<p>27. If any of the securities referred to in the table mentioned in item 26 are not ordinary securities, where in the Offer Document does it disclose the terms applicable to those securities?</p> <p>Note: This applies whether the securities are to be quoted on ASX or not. For equity securities (other than options to acquire unissued securities or convertible debt securities), this should state whether they are fully paid or partly paid; if they are partly paid, the amount paid up and the amount owing per security; voting rights; rights to dividends or distributions; and conversion terms (if applicable). For options to acquire unissued securities, this should state the number outstanding, exercise prices; exercise terms and expiry dates. For debt securities or convertible debt securities, this should state their nominal or face value; rate of interest; dates of payment of interest; date and terms of redemption; and conversion terms (if applicable).</p>	<p>All shares on issue in the Company are ordinary securities.</p> <p>In relation to Options, see Sections 6.3.2.3 and 6.3.2.4 (Pages 93 – 94) of the Prospectus.</p>
<p>28. If the entity has granted, or proposes to grant, any rights to any person, or to any class of persons (other than through the holding of securities referred to in the table mentioned in item 26), to participate in an issue of the entity's securities, where in the Offer Document are details of those rights set out?</p>	<p>See Sections 6.3.2.3 and 6.3.2.4 (Pages 93 – 94) of the Prospectus for details of the grants of Options to Non-Executive Directors and certain employees.</p>
<p>29. Details of all issues of securities (in all classes) in the last 2 years and the consideration received by the entity for such issues</p>	<p>Section 9.3.2 (Page 119) of the Prospectus.</p>

N ^o Item	Location/Confirmation
30. A copy of every prospectus, product disclosure statement or information memorandum issued by the entity in connection with any issue of securities (in all classes) in the last 2 years	Nil.
31. Please either: (a) enter "Confirmed" in the column to the right to confirm that the entity has not undertaken a placement of securities in the last 2 years in which a related party or their associates, ²⁰ a promoter or their associates, or an adviser involved in the offer or their associates, have participated, or (b) attach a statement: (1) explaining the circumstances of the placement; (2) listing the names and addresses of the participants in the placement, the number of securities they received in the placement and the consideration they provided for those securities; and (3) identifying the participants in the placement who are a related party or associate of a related party, a promoter or associate of a promoter, or an adviser or an associate of an adviser, and state the location of that statement.	See Attachment 11 – PointsBet Escrow Analysis. See the following relevant tabs: Offer Structure; Pre-Restructure Entity; Company Shares; CNote Escrow.
32. A copy of any court order in relation to a reorganisation of the entity's capital in the last 2 years	Nil.
33. Where in the Offer Document does it confirm that the entity's free float at the time of listing will be not less than 20% (Listing Rule 1.1 Condition 7)?	See Key Offer Information section (Page 4) and Section 7.1 (Page 103) of the Prospectus.
34. Where in the Offer Document does it confirm that the issue/sale price of all securities for which the entity seeks quotation is at least 20 cents in cash (Listing Rule 2.1 Condition 2)?	See Key Offer Information (Page 4) of the Prospectus.
35. If the entity has or proposes to have any options on issue, where in the Offer Document does it confirm that the exercise price for each underlying security is at least 20 cents in cash (Listing Rule 1.1 Condition 12)?	See Sections 6.3.2.3 and 6.3.2.4 (Pages 93 – 94) of the Prospectus.
36. If the entity has any partly paid securities and it is not a no liability company, where in the Offer Document does it disclose the entity's call program, including the date and amount of each proposed call and whether it allows for any extension for payment of a call (Listing Rule 2.1 Condition 4)?	Not applicable.
37. If the entity has or proposes to have any debt securities or convertible debt securities on issue, a copy of any trust deed applicable to those securities	Not applicable.
38. Is the entity proposing to offer any securities by way of a bookbuild? If so, please enter "Confirmed" in the column to the right to indicate that the entity is aware of the disclosure requirements for bookbuilds in Annexure A to Guidance Note 1	Not applicable.

All entities – other information and documents

39. Where in the Offer Document is there a description of the history of the entity?	See Section 3.1.2 (Page 37) of the Prospectus.
40. Where in the Offer Document is there a description of the entity's existing and proposed activities?	See generally Section 3 of the Prospectus.

²⁰ Note that under the Listing Rules a person's related parties are deemed to be their associates unless the contrary is proven.

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Nº Item

Location/Confirmation

41. Where in the Offer Document is there a description of how the applicant holds or derives its interest in its material assets and business operations and, if it does not do so directly or through a child entity, an explanation of why that structure has been employed, as well as any risks arising from the fact that its assets or business operations are held in that way rather than being directly owned by the entity itself or a child entity?

See Sections 3.8 (Page 53) and 9.4.2 to 9.4.15 (inclusive) (commencing on Page 123) of the Prospectus.

42. Where in the Offer Document is there a description of the material business risks the entity faces?

See Section 5 (Page 77) of the Prospectus.

43. Where in the Offer Document is there a table setting out the proposed use of the proceeds of the offer?

See Sections 1.7 (Page 16) and 7.1.2 (Page 103) of the Prospectus.

44. Where in the Offer Document is there a description of the entity's proposed dividend/distribution policy?

See Section 4.10 (Page 76) of the Prospectus.

45. Does the entity have or propose to have a dividend or distribution reinvestment plan?

No

If so, where are the existence and main terms of the plan disclosed in the Offer Document?

Not applicable.

A copy of the terms of the plan

Not applicable.

46. Does the entity have or propose to have an employee incentive scheme?

Yes

If so, where are the existence and material terms of the scheme disclosed in the Offer Document?

See Section 6.3.2 (Page 91) of the Prospectus.

Where in the Offer Document is there a statement as to whether directors²¹ are entitled to participate in the scheme and, if they are, the extent to which they currently participate or are proposed to participate?

See Sections 6.3.1.2 (Page 90), 6.3.2.3 (Page 93) and 6.3.2.4 (Page 94) of the Prospectus.

A copy of the terms of the scheme

Attachment 12 – Employee Share Option Plan.

47. Has the entity entered into any material contracts (including any underwriting agreement relating to the securities to be quoted on ASX)?²²

Yes

If so, where are the existence and main terms of those material contracts disclosed in the Offer Document?

See Section 9.4 (Page 119) of the Prospectus.

Copies of all of the material contracts referred to in the Offer Document

Attachment 13 – Underwriting Agreement.
Attachment 14 – New Meadowlands Agreement.
Attachment 15 – Tioga Downs Option Agreement.
Attachment 16 – Catfish Bend Casino

²¹ If the entity applying for admission to the official list is a trust, references to a director mean a director of the responsible entity of the trust.

²² It will assist ASX if the material contracts are provided both in hard copy and in electronic format.

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Agreement

Attachment 17 – Colorado Casino Agreement

Attachment 18 – Illinois Agreement

Attachment 19 – Mexico Wagering And Gaming Services Agreement

Attachment 20 – SJC Systems Software Licence Deed.

Attachment 21 – Betgenius Wagering Platform Software Option Agreement.

Attachment 22 – Betgenius Data Feed Agreement.

Attachment 23 – Genius Sports Media Sportsbook Services Agreement.

Attachment 24 – Microsoft Azure Hosting Arrangements.

Attachment 25 – Continent8 Hosting Services Agreement.

We have not provided copies of the arrangements with racing and sporting controlling bodies outlined in Sections 9.4.2 and 9.4.3 (Pages 123 and 124) of the Prospectus. Please let us know if you would like copies of these documents.

48. If the following information is included in the Offer Document, the page reference where it is included. Otherwise, either a summary of the material terms of, or a copy of, any employment, service or consultancy agreement the entity or a child entity has entered into with:
- (a) its CEO or proposed CEO;
 - (b) any of its directors or proposed directors; or
 - (c) any other person or entity who is a related party of the persons referred to in (a) or (b) above (Listing Rule 3.16.4)

Note: if the entity applying for admission to the official list is a trust, references to a chief executive officer, director or proposed director mean a chief executive officer, director or proposed director of the responsible entity of the trust. However, the entity need not provide a summary of the material terms of, or a copy of, any employment, service or consultancy agreement the responsible entity or a related entity has entered into with any of the persons referred to in (a), (b) or (c) above if the costs associated with the agreement are borne by the responsible entity or the related entity from out of its own funds rather than from out of the trust.

See Sections 6.3.1.2 (Page 90), 6.3.2.3 (Page 93), 6.3.2.4 (Page 94), and 6.3.3 (Page 94) of the Prospectus.

49. Please enter "Confirmed" in the column to the right to indicate that the material contracts summarised in the Offer Document include, in addition to those mentioned in item 49, any other material contract(s) the entity or a child entity has entered into with:
- (a) its CEO or proposed CEO;
 - (b) any of its directors or proposed directors; or
 - (c) any other person or entity who is a related party of the persons referred to in (a) or (b) above

Confirmed.

N^o Item

50. If an adviser to the offer has a material interest in the success of the offer over and above normal professional fees for services rendered in connection with the offer, where in the Offer Document is there a clear and concise statement explaining in one location all of the interests that adviser has in the success of the offer, including (without limitation):
- (a) the number and type of securities in the entity in which the adviser and its associates²³ currently have a relevant interest;
 - (b) details of the consideration paid or provided by the adviser or its associates for the securities referred to in (a) above;
 - (c) the fees or other consideration the adviser or an associate may receive for services provided in connection with the offer;
 - (d) the fees or other consideration the adviser or an associate may receive under any ongoing mandate they may have with the entity post the offer;
 - (e) if the consideration in (c) or (d) above includes any convertible securities (including options, performance shares or performance rights), details of the number and terms of those securities, the percentage of the entity's issued capital at listing they will convert into if they are converted, the value the entity believes the convertible securities are worth and the basis on which the entity has determined that value;
 - (f) if the adviser or any of its associates have participated in a placement of securities by the entity in the preceding 2 years, full details of the securities they received in the placement and the consideration they paid or provided for those securities (Guidance Note 1 section 4.2).

Note: if there is an adviser who has a material interest in the success of the offer over and above normal professional fees for services rendered in connection with the offer, ASX expects this information to be clearly disclosed immediately after the "use of proceeds" section of the entity's listing prospectus or PDS.

51. Please enter "Confirmed" in the column to the right to indicate that all information that a reasonable person would expect to have a material effect on the price or value of the securities to be quoted is included in or provided with this Information Form and Checklist
52. A copy of the entity's most recent annual report

Entities that are trusts

53. Evidence that the entity is a registered managed investment scheme or has an exemption from ASIC from that requirement (Listing Rule 1.1 Condition 5(a))
54. If the entity is exempted from the requirement to be a registered managed investment scheme, evidence that its responsible entity is either an Australian company or registered as a foreign company carrying on business in Australia under the Corporations Act (Listing Rule 1.1 Condition 5(b))
55. Please enter "Confirmed" in the column to the right to indicate that the responsible entity is not under an obligation to allow a security holder to withdraw from the trust (Listing Rule 1.1 Condition 5(c))

Entities applying under the profit test (Listing Rule 1.2)

56. Evidence that the entity is a going concern or the successor of a going concern (Listing Rule 1.2.1)

Location/Confirmation

Tony Symons, a Director of the Company, is the founder, majority owner and managing director of the Company's Australian lawyers, Clarendon Lawyers. Clarendon Lawyers is a material services provider to the Company.

See Sections 6.3.3.4, 6.3.4.1 and 6.3.5 (Pages 95 – 96) of the Prospectus.

Confirmed.

Not applicable.

Not applicable.

Not applicable.

Not applicable.

Not applicable.

²³ See note 20 above.

Nº Item	Location/Confirmation
57. Evidence that the entity has been in the same main business activity for the last 3 full financial years (Listing Rule 1.2.2)	Not applicable.
58. Audited accounts for the last 3 full financial years, including the audit reports (Listing Rule 1.2.3(a))	Not applicable.
59. If the entity's last financial year ended more than 6 months and 75 days before the date of this application, audited or reviewed accounts for the last half year (or longer period if available), including the audit report or review (Listing Rule 1.2.3(b))	Not applicable.
60. A reviewed pro forma statement of financial position, including the review (Listing Rule 1.2.3(c)) ²⁴	Not applicable.
61. Evidence that the entity's aggregated profit from continuing operations for the last 3 full financial years has been at least \$1 million (Listing Rule 1.2.4)	Not applicable.
62. Evidence that the entity's profit from continuing operations in the past 12 months to a date no more than 2 months before the date of this application has exceeded \$500,000 (Listing Rule 1.2.5)	Not applicable.
63. A statement from all directors ²⁵ confirming that they have made enquiries and nothing has come to their attention to suggest that the entity is not continuing to earn profit from continuing operations up to the date of the application (Listing Rule 1.2.6)	Not applicable.

Entities applying under the assets test (Listing Rule 1.3)

<p>64. Evidence that the entity has:</p> <ul style="list-style-type: none"> (a) net tangible assets of at least \$4 million (after deducting the costs of fund raising) or a market capitalisation of at least \$15 million; or (b) if it is an investment entity other than pooled development fund, net tangible assets of at least \$15 million; or (c) if it is a pooled development fund, net tangible assets of at least \$2 million (Listing Rule 1.3.1 and 1.3.4) 	<p>See Key Offer Information (Page 4) and Section 4.6 (Page 66) in the Prospectus.</p> <p>Attachment 26 – Reviewed financial statements of the Company for the six month period ending 31 December 2018.</p>
<p>65. Evidence that:</p> <ul style="list-style-type: none"> (a) at least half of the entity's total tangible assets (after raising any funds) is not cash or in a form readily convertible to cash;²⁶ or (b) there are commitments to spend at least half of the entity's cash and assets in a form readily convertible to cash (Listing Rule 1.3.2) 	<p>See Sections 4.6 (Page 66) and 7.1.2 (Page 103) of the Prospectus.</p>
<p>66. Is there a statement in the Offer Document setting out the entity's stated objectives and that the entity has enough working capital to carry out its stated objectives?</p> <p>If so, where is it?</p> <p>If not, attach a statement by an independent expert confirming that the entity has enough working capital to carry out its stated objectives (Listing Rule 1.3.3(a))</p>	<p>Yes. See Section 7.1.5 (Page 104) of the Prospectus.</p>

²⁴ Note: the review must be conducted by a registered company auditor (or if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or independent accountant.

²⁵ If the entity applying for admission to the official list is a trust, the statement should come from all directors of the responsible entity of the trust.

²⁶ In deciding if an entity's total tangible assets are in a form readily convertible to cash, ASX would normally not treat inventories or receivables as readily convertible to cash.

Nº Item

Location/Confirmation

67. Evidence that the entity's working capital is at least \$1.5 million or, if it is not, that it would be at least \$1.5 million if the entity's budgeted revenue for the first full financial year that ends after listing was included in the working capital (Listing Rule 1.3.3(b))²⁷

See Sections 4.5 (Page 64), 4.6 (Page 66) and 7.1.2 (Page 103) of the Prospectus.

68. Audited accounts for the last 2 full financial years, including the audit reports (Listing Rule 1.3.5(a))

Attachment 27 – Audited consolidated financial statements of the Company for FY18.

Attachment 28 – Audited consolidated financial statement of the Company (in the form of financial statements of PointsBet Pty Ltd and PointsBet Australia Pty Ltd) for FY17.

69. If the entity's last financial year ended more than 6 months and 75 days before the date of this application, audited or reviewed accounts for the last half year (or longer period if available), including the audit report or review (Listing Rule 1.3.5(b))

See Attachment 26.

For comparison, see also Attachment 29 – Reviewed financial statements of the Company for the six month period ending 31 December 2017.

70. If the entity has in the 12 months before the date of this application acquired, or is proposing in connection with its application for admission to acquire, another entity or business that is significant in the context of the entity, audited accounts for the last 2 full financial years for that other entity or business, including the audit reports (Listing Rule 1.3.5(c) first bullet point)

Not applicable.

71. If the entity has in the 12 months before the date of this application acquired, or is proposing in connection with its application for admission to acquire, another entity or business that is significant in the context of the entity and the last full financial year for that other entity or business ended more than 6 months and 75 days before the date of this application, audited or reviewed accounts for the last half year (or longer period if available) from the end of the last full financial year for that other entity or business, including the audit report or review (Listing Rule 1.3.5(c) second bullet point)

Not applicable.

72. A reviewed pro forma statement of financial position, including the review (Listing Rule 1.3.5(d))²⁸

See Section 4.6 (Page 66) of the Prospectus.

Entities with restricted securities

73. A statement setting out a list of any person (either on their own or together with associates) who has held a relevant interest in at least 10% of the entity's voting securities at any time in the 12 months before the date of this application

See Attachment 11 – Escrow Spreadsheet.

74. A completed ASX Restricted Securities Table²⁹

See Attachment 11 – Escrow Spreadsheet.

²⁷ The amount must be available after allowing for the first full financial year's budgeted administration costs and the cost of acquiring any assets referred to in the entity's Offer Document, to the extent those costs are to be met out of working capital. The cost of acquiring assets includes the cost of acquiring and exercising an option over them.

²⁸ Note: the review must be conducted by a registered company auditor (or if the entity is a foreign entity, an overseas equivalent of a registered company auditor) or independent accountant.

²⁹ An electronic copy of the ASX Restricted Securities Table is available from the ASX Compliance Downloads page on ASX's website.

Nº Item

Location/Confirmation

[Empty box]

75. Copies of all restriction agreements (Appendix 9A) entered into in relation to restricted securities³⁰

Attachment 30 – Appendix 9A Restriction Agreements.

76. Copies of all undertakings issued by any bank, recognised trustee or the provider of registry services to the entity in relation to such restriction agreements

Not applicable.

Entities (other than mining exploration entities and oil and gas exploration entities) with classified assets³¹

77. Within the 2 years preceding the date of the entity's application for admission to the official list, has the entity acquired, or entered into an agreement to acquire, a classified asset? No.

If so, where in the Offer Document does it disclose:

- the date of the acquisition or agreement;
- full details of the classified asset, including any title particulars;
- the name of the vendor;
- if the vendor was not the beneficial owner of the classified asset at the date of the acquisition or agreement, the name of the beneficial owner(s);
- details of the relationship between the vendor (or, if the vendor was not the beneficial owner of the classified asset at the date of the acquisition or agreement, between the beneficial owner(s) and the entity or any related party or promoter of the entity; and
- details of the purchase price paid or payable and all other consideration (whether legally enforceable or not) passing directly or indirectly to the vendor.

Not applicable.

Is the vendor (or, if the vendor was not the beneficial owner of the classified asset at the date of the acquisition or agreement, are any of the beneficial owner(s)) a related party or promoter of the entity?

If so, please enter "Confirmed" in the column to the right to indicate that the consideration paid by the entity for the classified asset was solely restricted securities, save to the extent it involved the reimbursement of expenditure incurred by the vendor in developing the classified asset³² or the entity was not required to apply the restrictions in Appendix 9B under Listing Rule 9.1.3 (Listing Rule 1.1 Condition 11)

Not applicable.

If cash is being paid or proposed to be paid in connection with the acquisition of a classified asset from a related party or promoter, please provide

Not applicable.

³⁰ Note: ASX will advise which restricted securities are required to be escrowed under Listing Rule 9.1.3 as part of the admission and quotation decision. If properly completed restriction agreements and related undertakings have not been provided for all such securities advised by ASX, that will need to be rectified prior to admission occurring and quotation commencing.

³¹ A "classified asset" is defined in Listing Rule 19.12 as:

- (a) an interest in a mining exploration area or oil and gas exploration area or similar tenement or interest;
- (b) an interest in intangible property that is substantially speculative or unproven, or has not been profitably exploited for at least three years, and which entitles the entity to develop, manufacture, market or distribute the property;
- (c) an interest in an asset which, in ASX's opinion, cannot readily be valued; or
- (d) an interest in an entity the substantial proportion of whose assets (held directly, or through a controlled entity) is property of the type referred to in paragraphs (a), (b) and (c) above.

³² ASX may require evidence to support expenditure claims.

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<p>N^o Item</p> <p>supporting documentation to demonstrate that it was for the reimbursement of expenditure incurred by the vendor in developing the classified asset</p>	<p>Location/Confirmation</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
<p>Please provide a copy of the agreement(s) relating to the acquisition and any expert's report or valuation obtained by the entity in relation to the acquisition</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>

Mining entities

<p>78. A completed Appendix 1A Information Form and Checklist Annexure 1 (Mining Entities)³³</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Oil and gas entities

<p>79. A completed Appendix 1A Information Form and Checklist Annexure 2 (Oil and Gas Entities)³⁴</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Entities incorporated or established outside of Australia

<p>80. A completed Appendix 1A Information Form and Checklist Annexure 3 (Foreign Entities)³⁵</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Externally managed entities

<p>81. A completed Appendix 1A Information Form and Checklist Annexure 4 (Externally Managed Entities)³⁶</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Stapled entities

<p>82. A completed Appendix 1A Information Form and Checklist Annexure 5 (Stapled Entities)³⁷</p>	<p>Not applicable.</p> <div style="border: 1px solid black; height: 25px; width: 100%;"></div>
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Further documents to be provided before admission to the official list

Please note that in addition to the information and documents mentioned above, all entities will be required to provide the following before their admission to the official list and the quotation of their securities commences:

- A statement setting out the names of the 20 largest holders in each class of securities to be quoted, and the number and percentage of each class of securities held by those holders;
- A distribution schedule of each class of equity securities to be quoted, setting out the number of holders in the categories:
 - 1 - 1,000
 - 1,001 - 5,000
 - 5,001 - 10,000
 - 10,001 - 100,000
 - 100,001 and over
- The number of holders of a parcel of securities (excluding restricted securities or securities subject to voluntary escrow) with a value of more than \$2,000, based on the issue/sale price;
- Any outstanding restriction agreements (Appendix 9A) and related undertakings;³⁸ and

³³ An electronic copy of this Appendix is available from the ASX Compliance Downloads page on ASX's website.

³⁴ An electronic copy of this Appendix is available from the ASX Compliance Downloads page on ASX's website.

³⁵ An electronic copy of this Appendix is available from the ASX Compliance Downloads page on ASX's website.

³⁶ An electronic copy of this Appendix is available from the ASX Compliance Downloads page on ASX's website.

³⁷ An electronic copy of this Appendix is available from the ASX Compliance Downloads page on ASX's website.

- Any other information that ASX may require under Listing Rule 1.17.³⁹

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³⁸ See note 30 above.

³⁹ Among other things, this may include evidence to verify that an entity has met Listing Rule 1 Condition 8 and achieved minimum spread without using artificial means (see Guidance Note 1 section 3.8).

Market Announcement

11 June 2019

PointsBet Holdings Limited (ASX: PBH) – Admission and Commencement of Official Quotation

Description

PointsBet Holdings Limited ('PBH') was admitted to the Official List of ASX Limited ('ASX') today, Tuesday, 11 June 2019.

Official quotation of PBH's ordinary fully paid shares will commence at 11:00 AM AEST on Wednesday, 12 June 2019.

PBH raised \$75,000,000 pursuant to the offer under its replacement prospectus dated 23 May 2019 ('Replacement Prospectus') by the issue of 37,500,000 shares at an issue price of \$2.00 per share.

Quotation information

Quoted Securities:	83,069,980 fully paid ordinary shares
ASX Code:	PBH
Time:	11:00 AM AEST
Date:	Wednesday, 12 June 2019
ASX Trade Abbreviation:	PointsBet
ISIN:	AU0000047797
Home Branch:	Melbourne
Industry Classification:	Pending
Registered Office:	Address: 165 Cremorne Street, Cremorne VIC 3121 Phone: +61 433 716 424 Email: andrew.hensher@pointsbet.com
Company Secretary:	Andrew Hensher
Share Registry:	Computershare Investor Services Pty Limited Address: 452 Johnston Street, Abbotsford, VIC, 3067 Phone: +61 03 9415 5000 Email: Yiori.Yi@computershare.com.au
Balance Date:	30 June
CHES:	Participating. CHES and Issuer Sponsored.
Place of Incorporation:	Victoria
Dividend Policy:	See section 4.10 of the Replacement Prospectus
Activities:	Wagering services operator
Lead Manager:	Bell Potter Securities Ltd and Roth Capital Partners, LLC

*Pursuant to C.R.S. 24-21-505,
I certify that this is a true
and correct copy of the
original.*

Elizabeth Botkin 8.3.2019

**ELIZABETH M BOTKIN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184032057
MY COMMISSION EXPIRES AUGUST 10, 2022**

For personal use only

Underwriter: Bell Potter Securities Ltd

ASX Restricted Securities: 22,216,235 fully paid ordinary shares classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

2,074,131 fully paid ordinary shares classified by ASX as restricted securities and to be held in escrow until 6 August 2019, being 12 months from the date of issue.

2,639,654 fully paid ordinary shares classified by ASX as restricted securities and to be held in escrow until 31 October 2019, being 12 months from the date of issue.

450,216 options exercisable at \$0.89 on or before 1 November 2020, classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

349,232 options exercisable at \$1.07 on or before 29 June 2021, classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

2,263,653 options exercisable at \$1.61 on or before 30 January 2023, classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

1,194,706 options exercisable at \$1.61 on or before 30 January 2024, classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

1,194,706 options exercisable at \$1.61 on or before 30 January 2025, classified by ASX as restricted securities and to be held in escrow until 12 June 2021, being 24 months from the date of commencement of Official Quotation.

Other Securities Not Quoted: 3,274,118 options exercisable at various prices expiring on various dates

What do I need to do and by when?

Please refer to PBH's Replacement Prospectus.

Need more information?

For further information, please call the Offer information line on 1300 375 696 (within Australia) or +61 3 9415 4322 (outside Australia) from 9:00am to 5:00pm (Melbourne time) Monday to Friday.

Disclaimer

Please refer to the following [disclaimer](#).

Issued by

Andrew Black
Manager, Listings Compliance (Sydney)

CONFIDENTIAL

Certificate of Registration of a Company

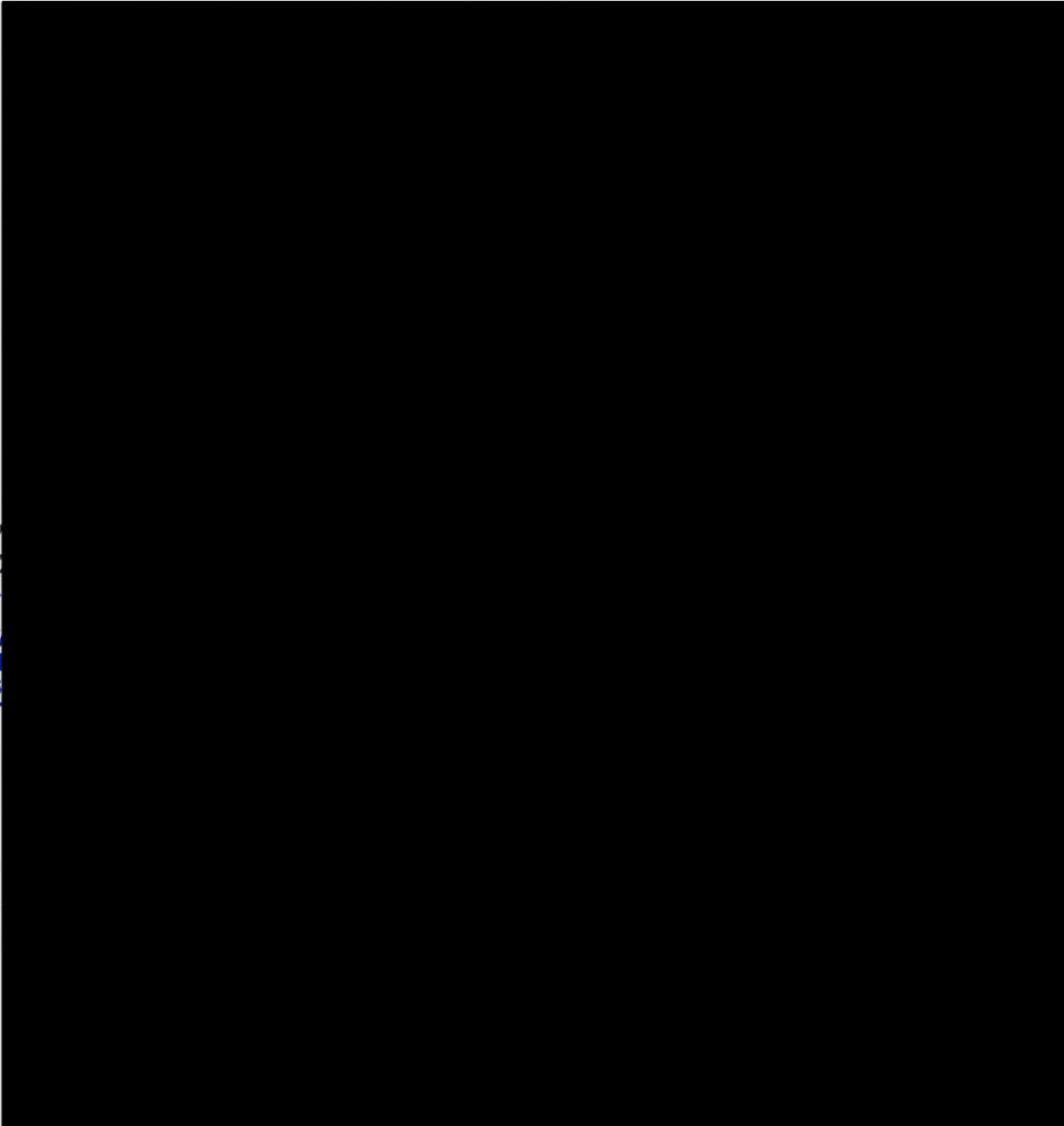
This is to certify that

POINTSBET HOLDINGS PTY LTD



ASIC

Australian Securities & Investments Commission



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MY COMMIS

CERTIFICATE

Pursuant to
I certify th
is a true an
of the origia

Constitution

PointsBet Holdings Limited
ACN 621 179 351

Pursuant to C.R.S. 24-21-505,
I certify that this document
is a true and correct copy
of the original.

ELIZABETH M BOTKIN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20184032057
MY COMMISSION EXPIRES AUGUST 10, 2022

Elizabeth Botkin
8.3.2021

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PointsBet Holdings Limited ACN 621 179 351

A public company limited by shares

1 Preliminary

1.1 Definitions and interpretation

(a) The meanings of the terms used in this constitution are set out below.

Defined term	Meaning
Act	<i>Corporations Act 2001</i> (Cth).
AGM	an annual general meeting of the company that the Act requires to be held.
ASX	means ASX Limited ABN 98 008 624 691 or the Australian Securities Exchange, as operated by ASX Limited (as the context requires).
ASX Settlement Operating Rules	the operating rules of ASX Settlement Pty Limited and, to the extent that they are applicable, the operating rules of the Exchange and the operating rules of ASX Clear Pty Limited.
Auditor	the appointed auditor of the company.
Board	the directors for the time being of the company or those of them who are present at a meeting at which there is a quorum.
Business Day	has the meaning given to that term in the Listing Rules.
Exchange	the Australian Securities Exchange or such other body corporate that is declared by the Board to be the company's primary stock exchange for the purposes of this definition.
Final Determination	means a determination of, or direction by, a Gaming Authority, court, tribunal or similar body or by any delegate, nominee, duly authorised officer, representative or appointee thereof, having jurisdiction in respect of the subject matter of the determination, which is not or is no longer the subject of an appeal.
Gaming Authority	any Government Authority (including, without limitation, a court), and the National Indian Gaming Commission of the United States, or other aboriginal or tribal authority, which issues or grants any Licence or approval, or admits persons to any roll or list, necessary or appropriate for the lawful operation of gaming, wagering, sports betting and related businesses now or at any

Defined term	Meaning
	time in the future engaged in by the company or its subsidiaries.
Gaming Law	the laws, regulations and administrative declarations in relation to gaming and relevant activities made by a government or Gaming Authority in any jurisdiction in which the company or any of its Subsidiaries operates from time to time or has lodged an application to operate which has not been withdrawn.
Government Authority	any government, governmental, semi-governmental administrative or judicial entity, body politic or statutory corporation whether federal state municipal or otherwise.
Licence	a licence or other regulatory approval (including without limitation admission to a roll or list) necessary or appropriate for the lawful operation of gaming, wagering, sports betting and related businesses now or in the future engaged in by the company or any subsidiary in any jurisdiction issued or given by a Gaming Authority.
Listing Rules	the listing rules of ASX as they apply to the company, and any other rules of ASX which are applicable while the company is admitted to the official list of ASX, each as amended or replaced from time to time (except to the extent of any express written waiver by or from ASX).
Proper ASTC Transfer	has the meaning given to that term in the <i>Corporations Regulations 2001</i> (Cth).
Record Time	<p>(a) in the case of a meeting for which the caller of the meeting has decided, under the Act, that shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and</p> <p>(b) in any other case, 48 hours before the relevant meeting, or, if this time would fall on a trading day, 7.00pm (Melbourne time) on that day.</p>
Representative	in relation to a member that is a body corporate means a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.
Seal	any common seal, duplicate seal or certificate seal of the company.
Subsidiary	has the meaning given in the Act.
Transmission Event	<p>(a) for a member who is an individual – the member's death, the member's bankruptcy, or a member becoming of unsound mind, or a person who, or whose estate, is liable to be dealt with in any way under the laws relating to mental health; and</p> <p>(b) for a member who is a body corporate – the dissolution of the member or the succession by another body corporate</p>

Defined term	Meaning
	to the assets and liabilities of the member.
URL	Uniform Resource Locator, the address that specifies the location of a file on the internet.
Volume Weighted Average Market Price	has the meaning given in the Listing Rules.

- (b) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (c) A reference in this constitution to an amount unpaid on a share includes a reference to any amount of the issue price which is unpaid.
- (d) A reference in this constitution to a call or an amount called on a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (e) A reference in this constitution to a member for the purposes of a meeting of members is a reference to a registered holder of shares as at the relevant Record Time.
- (f) A reference in this constitution to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Representative or, except in any rule that specifies a quorum or except in any rule prescribed by the Board, a member who has duly lodged a valid direct vote in relation to the general meeting under rule 6.8.
- (g) A chairperson or deputy chairperson appointed under this constitution may be referred to as chairman or chairwoman, or deputy chairman or chairwoman, or as chair, if applicable.
- (h) A reference in this constitution to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position.
- (i) A reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Act or any other method approved by the Board.
- (j) Unless the contrary intention appears, in this constitution:
- (i) the singular includes the plural and the plural includes the singular;
 - (ii) words that refer to any gender include all genders;
 - (iii) words used to refer to persons generally or to refer to a natural person include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);

- (iv) a reference to a person includes that person's successors and legal personal representatives;
 - (v) a reference to a statute or regulation, or a provision of any of them includes all statutes, regulations or provisions amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (vi) a reference to the Listing Rules or the ASX Settlement Operating Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any applicable waiver or exemption; and
 - (vii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (k) Specifying anything in this constitution after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.
 - (l) In this constitution, headings and bold type are only for convenience and do not affect the meaning of this constitution.

1.2 Application of the Act, Listing Rules, ASX Settlement Operating Rules and Gaming Laws

- (a) The rules that apply as replaceable rules to companies under the Act do not apply to the company except so far as they are repeated in this constitution.
- (b) Unless the contrary intention appears:
 - (i) an expression in a rule that deals with a matter dealt with by a provision of the Act, the Listing Rules, the ASX Settlement Operating Rules or the Gaming Laws has the same meaning as in that provision; and
 - (ii) subject to rule 1.2(b)(i), an expression in a rule that is used in the Act has the same meaning in this constitution as in the Act.
- (c) For so long as the company is admitted to the official list of ASX:
 - (i) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
 - (ii) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
 - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed not to contain that provision; and

- (v) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

1.3 Exercising powers

- (a) The company may, in any way the Act permits:
 - (i) exercise any power;
 - (ii) take any action; or
 - (iii) engage in any conduct or procedure,which, under the Act a company limited by shares may exercise, take or engage in.
- (b) Where this constitution provides that a person 'may' do a particular act or thing, the act or thing may be done at the person's discretion.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same way and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing, the power may be exercised from time to time and may be exercised subject to conditions.
- (e) Where this constitution confers a power to do a particular act or thing concerning particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing as to only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (f) Where this constitution confers a power to make appointments to an office or position (except the power to appoint a director under rule 7.1(b)), the power is, unless the contrary intention appears, to be taken to include a power:
 - (i) to appoint a person to act in the office or position until a person is formally appointed to the office or position;
 - (ii) to remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
 - (iii) to appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (g) Where this constitution gives power to a person to delegate a function or power:

- (i) the delegation may be concurrent with, or (except in the case of a delegation by the Board) to the exclusion of, the performance or exercise of that function or power by the person;
- (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
- (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
- (iv) the delegation may include the power to delegate; and
- (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

1.4 Currency

Any amount payable to the holder of a share, whether in relation to dividends, repayment of capital, participation in surplus property of the company or otherwise, may, with the agreement of the holder or under the terms of issue of the share, be paid in the currency of a country other than Australia. The Board may fix a time on or before the payment date as the time at which the applicable exchange rate will be determined for that purpose.

1.5 Transitional provisions

This constitution must be interpreted in such a way that:

- (a) every director, chief executive officer, managing director and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any Seal adopted by the company as a Seal immediately before this constitution is adopted is taken to be a Seal which the company has adopted under a relevant authority given by this constitution;
- (d) for the purposes of rule 4.1(p):
 - (i) a cheque issued under the predecessor of rule 4.1(k) is taken to have been issued under rule 4.1(k);
 - (ii) any money held at the date of adoption of this constitution for a member under the predecessor of rule 4.1(m) is taken to have been held in an account under rule 4.1(m); and
 - (iii) any money held at the date of adoption of this constitution for a member the company regards as uncontactable is taken to have been held in an account under rule 4.1(n); and

- (e) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted continue to have the same status, operation and effect after this constitution is adopted.

2 Share capital

2.1 Shares

Subject to this constitution, the Board may:

- (a) issue, allot or grant options for, or otherwise dispose of, shares in the company; and
- (b) decide:
 - (i) the persons to whom shares are issued or options are granted;
 - (ii) the terms on which shares are issued or options are granted; and
 - (iii) the rights and restrictions attached to those shares or options.

2.2 Preference shares

- (a) The company may issue preference shares including preference shares which are, or at the option of the company or holder are, liable to be redeemed or convertible into ordinary shares.
- (b) Each preference share confers on the holder a right to receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at the rate and on the basis decided by the Board under the terms of issue.
- (c) In addition to the preferential dividend and rights on winding up, each preference share may participate with the ordinary shares in profits and assets of the company, including on a winding up, if and to the extent the Board decides under the terms of issue.
- (d) The preferential dividend may be cumulative only if and to the extent the Board decides under the terms of issue, and will otherwise be non-cumulative.
- (e) Each preference share confers on its holder the right in a winding up and on redemption to payment in priority to the ordinary shares of:
 - (i) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
 - (ii) any additional amount specified in the terms of issue.
- (f) To the extent the Board may decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.

- (g) A preference share does not confer on its holder any right to participate in the profits or assets of the company except as set out above.
- (h) A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:
 - (i) during a period in which a dividend or part of a dividend on the share is in arrears;
 - (ii) on a proposal to reduce the share capital of the company;
 - (iii) on a resolution to approve the terms of a buy back agreement;
 - (iv) on a proposal that affects rights attached to the preference share;
 - (v) on a proposal to wind up the company;
 - (vi) on a proposal for the disposal of the whole of the property, business and undertaking of the company;
 - (vii) during the winding up of the company; or
 - (viii) in any other circumstances in which the Listing Rules require holders of preference shares to be entitled to vote.
- (i) The holder of a preference share who is entitled to vote in respect of that share under rule 2.2(h) is, on a poll, entitled to the greater of one vote per share or such other number of votes specified in, or determined in accordance with, the terms of issue for the share.
- (j) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, on receiving a redemption request under the terms of issue, pay to or at the direction of the holder the amount payable on redemption of the share.
- (k) A holder of a preference share must not transfer or purport to transfer, and the Board, to the extent permitted by the Listing Rules, must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

2.3 Alteration of share capital

Subject to the Act, the Board may do anything required to give effect to any resolution altering the company's share capital, including, where a member becomes entitled to a fraction of a share on a consolidation, by:

- (a) making cash payments;
- (b) determining that fractions may be disregarded to adjust the rights of all members;
- (c) appointing a trustee to deal with any fractions on behalf of members; and
- (d) rounding (or rounding up) each fractional entitlement to the nearest whole share.

2.4 Conversion or reclassification of shares

Subject to rule 2.5, the company may by resolution convert or reclassify shares from one class to another.

2.5 Variation of class rights

- (a) The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:
 - (i) with the written consent of the holders of 75% of the shares of the class; or
 - (ii) by a special resolution passed at a separate meeting of the holders of shares of the class.
- (b) The provisions of this constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings
- (c) The rights conferred on the holders of any class of shares are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

2.6 Joint holders of shares

Where 2 or more persons are registered as the holders of a share, they hold it as joint tenants with rights of survivorship, on the following conditions:

- (a) they are liable individually as well as jointly for all payments, including calls, in respect of the share;
- (b) subject to rule 2.6(a), on the death of any one of them the survivor is the only person the company will recognise as having any title to the share;
- (c) any one of them may give effective receipts for any dividend, bonus, interest or other distribution or payment in respect of the share; and
- (d) except where persons are jointly entitled to a share because of a Transmission Event, or where required by the Listing Rules or the ASX Settlement Operating Rules, the company may, but is not required to, register more than 3 persons as joint holders of the share.

2.7 Equitable and other claims

The company may treat the registered holder of a share as the absolute owner of that share and need not:

- (a) recognise a person as holding a share on trust, even if the company has notice of a trust; or
- (b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person, except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.

2.8 Restricted securities

If, at any time, any of the share capital of the company is classified by the Exchange as 'restricted securities', then despite any other provision of this constitution:

- (a) the restricted securities must not be disposed of during the escrow period except as permitted by the Listing Rules or the Exchange;
- (b) the company must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period except as permitted by the Listing Rules or the Exchange; and
- (c) during a breach of the Listing Rules relating to restricted securities or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

3 Calls, forfeiture, indemnities, lien and surrender

3.1 Calls

- (a) Subject to the terms on which any shares are issued, the Board may:
 - (i) make calls on the members for any amount unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times; and
 - (ii) on the issue of shares, differentiate between members as to the amount of calls to be paid and the time for payment.
- (b) The Board may require a call to be paid by instalments.
- (c) The Board must send members notice of a call at least 14 days (or such longer period required by the Listing Rules) before the amount called is due, specifying the amount of the call, the for payment and the manner in which payment must be made.
- (d) Each member must pay the amount called to the company by the time and in the manner specified for payment.
- (e) A call is taken to have been made when the resolution of the Board authorising the call is passed.
- (f) The Board may revoke a call or extend the time for payment.
- (g) A call is valid even if a member for any reason does not receive notice of the call.
- (h) If an amount called on a share is not paid in full by the time specified for payment, the person who owes the amount must pay:
 - (i) interest on the unpaid part of the amount from the date payment is due to the date payment is made, at a rate determined under rule 3.9; and

- (ii) any costs, expenses or damages the company incurs due to the failure to pay or late payment.
- (i) Any amount unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
 - (i) is treated for the purposes of this constitution as if that amount were payable under a call duly made and notified; and
 - (ii) must be paid on the date on which it is payable under the terms of issue of the share.
- (j) The Board may, to the extent the law permits, waive or compromise all or part of any payment due to the company under the terms of issue of a share or under this rule 3.1.

3.2 Proceedings to recover calls

- (a) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
 - (i) the name of the defendant is entered in the register as the holder or one of the holders of the share on which the call is claimed;
 - (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was given to the defendant complying with this constitution,

is conclusive evidence of the obligation to pay the call and it is not necessary to prove the appointment of the Board who made the call or any other matter.
- (b) In rule 3.2(a), defendant includes a person against whom the company alleges a set-off or counterclaim, and a proceeding to recover a call or an amount is to be interpreted accordingly.

3.3 Payments in advance of calls

- (a) The Board may accept from a member the whole or a part of the amount unpaid on a share even though no part of that amount has been called.
- (b) The Board may authorise payment by the company of interest on an amount accepted under rule 3.3(a), until the amount becomes payable, at a rate agreed between the Board and the member paying the amount.
- (c) The Board may repay to a member any amount accepted under rule 3.3(a).

3.4 Forfeiting partly paid shares

- (a) If a member fails to pay the whole of a call or an instalment of a call by the time specified for payment, the Board may serve a notice on that member:
 - (i) requiring payment of the unpaid part of the call or instalment, together with any interest that has accrued and all costs, expenses or damages that the company has incurred due to the failure to pay;

- (ii) naming a further time (at least 14 days after the date of the notice) by which, and the manner in which, the amount payable under rule 3.4(a)(i) must be paid; and
 - (iii) stating that if the whole of the amount payable under rule 3.4(a)(i) is not paid by the time and in the manner specified, the shares on which the call was made will be liable to be forfeited.
- (b) If a member does not comply with a notice served under rule 3.4(a), the Board may by resolution forfeit any share concerning which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) A forfeiture under rule 3.4(b) includes all dividends, interest and other amounts payable by the company on the forfeited share and not actually paid before the forfeiture.
- (d) Where a share has been forfeited:
 - (i) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under rule 3.4(d) does not invalidate the forfeiture.
- (f) A forfeited share becomes the property of the company and the Board may sell, reissue or otherwise dispose of the share as it thinks fit and, in the case of reissue or other disposal, with or without crediting as paid up any amount paid on the share by any former holder.
- (g) A person whose shares have been forfeited ceases to be a member as to the forfeited shares, but must, unless the Board decides otherwise, pay to the company:
 - (i) all calls, instalments, interest, costs, expenses and damages owing on the shares at the time of the forfeiture; and
 - (ii) interest on the unpaid part of the amount payable under rule 3.4(g)(i), from the date of the forfeiture to the date of payment, at a rate determined under rule 3.9.
- (h) The forfeiture of a share extinguishes all interest in, and all claims and demands against the company relating to, the forfeited share and, subject to rule 3.8(i), all other rights attached to the share.
- (i) The Board may:
 - (i) exempt a share from all or part of this rule 3.4;
 - (ii) waive or compromise all or part of any payment due to the company under this rule 3.4; and

- (iii) before a forfeited share has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions it decides.

3.5 Members' indemnity

- (a) If the company becomes liable for any reason under a law to make a payment:
 - (i) in respect of shares held solely or jointly by a member;
 - (ii) in respect of a transfer or transmission of shares by a member;
 - (iii) in respect of dividends, bonuses or other amounts due or payable or which may become due and payable to a member; or
 - (iv) in any other way for, on account of or relating to a member,rules 3.5(b) and 3.5(c) apply, in addition to any right or remedy the company may otherwise have.
- (b) The member or, if the member is dead, the member's legal personal representative must:
 - (i) fully indemnify the company against that liability;
 - (ii) on demand reimburse the company for any payment made; and
 - (iii) pay interest on the unpaid part of the amount payable to the company under rule 3.5(b)(ii), from the date of demand until the date the company is reimbursed in full for that payment, at a rate determined under rule 3.9.
- (c) The Board may:
 - (i) exempt a share from all or part of this rule 3.5; and
 - (ii) waive or compromise all or part of any payment due to the company under this rule 3.5.

3.6 Lien on shares

- (a) The company has a first lien on:
 - (i) each partly paid share for all unpaid calls and instalments due on that share; and
 - (ii) each share for any amounts the company is required by law to pay and has paid in respect of that share.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.

- (b) The company's lien on a share extends to all dividends payable on the share and to the proceeds of sale of the share.

- (c) The Board may sell a share on which the company has a lien as it thinks fit where:
 - (i) an amount for which a lien exists under this rule 3.6 is presently payable; and
 - (ii) the company has given the registered holder a written notice, at least 14 days before the date of the sale, stating and demanding payment of that amount.
- (d) The Board may do anything necessary or desirable under the ASX Settlement Operating Rules to protect any lien, charge or other right to which the company is entitled under this constitution or a law.
- (e) When the company registers a transfer of shares on which the company has a lien without giving the transferee notice of its claim, the company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (f) The Board may:
 - (i) exempt a share from all or part of this rule 3.6; and
 - (ii) waive or compromise all or part of any payment due to the company under this rule 3.6.

3.7 Surrender of shares

- (a) The Board may accept a surrender of a share by way of compromise of a claim.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed in the same manner as a forfeited share.

3.8 Sale, reissue or other disposal of shares by the company

- (a) A reference in this rule 3.8 to a sale of a share by the company is a reference to any sale, reissue or other disposal of a share under rule 3.4(f), rule 3.6(c) or rule 5.4.
- (b) When the company sells a share, the Board may:
 - (i) receive the purchase money or consideration given for the share;
 - (ii) effect a transfer of the share or execute or appoint a person to execute, on behalf of the former holder, a transfer of the share; and
 - (iii) register as the holder of the share the person to whom the share is sold.
- (c) A person to whom the company sells shares need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied. That person's title to the shares is not affected by any irregularity by the company in relation to the sale. A sale of the share by the company is valid even if a Transmission Event occurs to the member before the sale.

- (d) The only remedy of a person who suffers a loss because of a sale of a share by the company is a claim for damages against the company.
- (e) The proceeds of a sale of shares by the company must be applied in paying:
 - (i) first, the expenses of the sale;
 - (ii) secondly, all amounts payable (whether presently or not) by the former holder to the company,

and any balance must be paid to the former holder on the former holder delivering to the company proof of title to the shares acceptable to the Board.

- (f) The proceeds of sale arising from a notice under rule 5.4(b) must not be applied in payment of the expenses of the sale and must be paid to the former holder on the former holder delivering to the company proof of title to the shares acceptable to the Board.
- (g) Until the proceeds of a sale of a share sold by the company are claimed or otherwise disposed of according to law, the Board may invest or use the proceeds in any other way for the benefit of the company.
- (h) The company is not required to pay interest on money payable to a former holder under this rule 3.8.
- (i) On completion of a sale, reissue or other disposal of a share under rule 3.4(f), the rights which attach to the share which were extinguished under rule 3.4(h) revive.
- (j) A written statement by a director or secretary of the company that a share in the company has been:
 - (i) duly forfeited under rule 3.4(b);
 - (ii) duly sold, reissued or otherwise disposed of under rule 3.4(f); or
 - (iii) duly sold under rule 3.6(c) or rule 5.4,

on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the share, and of the right of the company to forfeit, sell, reissue or otherwise dispose of the share.

3.9 Interest payable by member

- (a) For the purposes of rules 3.1(h)(i), 3.4(g)(ii) and 3.5(b)(iii), the rate of interest payable to the company is:
 - (i) if the Board has fixed a rate, that rate; or
 - (ii) in any other case, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of the state or territory in which the company is registered.
- (b) Interest accrues daily and may be capitalised monthly or at such other intervals the Board decides.

4 Distributions

4.1 Dividends

- (a) The Board may pay any interim and final dividends that, in its judgment, the financial position of the company justifies.
- (b) The Board may rescind a decision to pay a dividend if it decides, before the payment date, that the company's financial position no longer justifies the payment.
- (c) The Board may pay any dividend required to be paid under the terms of issue of a share.
- (d) Paying a dividend does not require confirmation at a general meeting.
- (e) Subject to any rights or restrictions attached to any shares or class of shares:
 - (i) all dividends must be paid equally on all shares, except that a partly paid share confers an entitlement only to the proportion of the dividend which the amount paid (not credited) on the share is of the total amounts paid and payable (excluding amounts credited);
 - (ii) for the purposes of rule 4.1(e)(i), unless the Board decides otherwise, an amount paid on a share in advance of a call is to be taken as not having been paid until it becomes payable; and
 - (iii) interest is not payable by the company on any dividend.
- (f) Subject to the ASX Settlement Operating Rules, the Board may fix a record date for a dividend, with or without suspending the registration of transfers from that date under rule 5.3.
- (g) Subject to the ASX Settlement Operating Rules, a dividend in respect of a share must be paid to the person who is registered, or entitled under rule 5.1(c) to be registered, as the holder of the share:
 - (i) where the Board has fixed a record date in respect of the dividend, on that date; or
 - (ii) where the Board has not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,and a transfer of a share that is not registered, or left with the company for registration under rule 5.1(b), on or before that date is not effective, as against the company, to pass any right to the dividend.
- (h) When resolving to pay a dividend, the Board may direct payment of the dividend from any available source permitted by law, including:
 - (i) wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific members; and

- (ii) unless prevented by the Listing Rules, to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.
- (i) Subject to the ASX Settlement Operating Rules, where a person is entitled to a share because of a Transmission Event, the Board may, but need not, retain any dividends payable on that share until that person becomes registered as the holder of that share or transfers it.
- (j) The Board may retain from any dividend payable to a member any amount presently payable by the member to the company and apply the amount retained to the amount owing.
- (k) The Board may decide the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different members or groups of members (such as overseas members). Without limiting any other method of payment which the company may adopt, payment in respect of a share may be made:
 - (i) by such electronic or other means approved by the Board directly to an account (of a type approved by the Board) nominated in writing by the member or the joint holders; or
 - (ii) by cheque sent to the address of the member shown in the register of members or, in the case of joint holders, to the address shown in the register of members of any of the joint holders, or to such other address as the member or any of the joint holders in writing direct.
- (l) A cheque sent under rule 4.1(k):
 - (i) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs; and
 - (ii) is sent at the member's risk.
- (m) If the Board decides that payments will be made by electronic transfer into an account (of a type approved by the Board) nominated by a member, but no such account is nominated by the member or an electronic transfer into a nominated account is rejected or refunded, the company may credit the amount payable to an account of the company to be held until the member nominates a valid account.
- (n) Where a member does not have a registered address or the company believes that a member is not known at the member's registered address, the company may credit an amount payable in respect of the member's shares to an account of the company to be held until the member claims the amount payable or nominates a valid account.
- (o) An amount credited to an account under rules 4.1(m) or 4.1(n) is to be treated as having been paid to the member at the time it is credited to that account. The company will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the company until claimed, reinvested under rule 4.1(p) or disposed of in accordance with the laws relating to unclaimed monies.

- (p) If a cheque for an amount payable under rule 4.1(k) is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under rules 4.1(m) or 4.1(n) for at least 11 calendar months, the Board may reinvest the amount, after deducting reasonable expenses, into shares in the company on behalf of, and in the name of, the member concerned and may stop payment on the cheque. The shares may be acquired on market or by way of new issue at a price the Board accepts is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the member, as the Board decides. The company's liability to provide the relevant amount is discharged by an application under this rule 4.1(p). The Board may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 4.1(p). The Board may determine other rules to regulate the operation of this rule 4.1(p) and may delegate its power under this rule to any person.

4.2 Capitalising profits

- (a) Subject to:
- (i) the Listing Rules;
 - (ii) any rights or restrictions attached to any shares or class of shares; and
 - (iii) any special resolution of the company;
- the Board may capitalise and distribute to members, in the same proportions as the members are entitled to receive dividends, any amount:
- (iv) forming part of the undivided profits of the company;
 - (v) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the company;
 - (vi) arising from the realisation of any assets of the company; or
 - (vii) otherwise available for distribution as a dividend.
- (b) The Board may resolve that all or any part of the capitalised amount is to be applied:
- (i) in paying up in full, at an issue price decided by the Board, any unissued shares in or other securities of the company;
 - (ii) in paying up any amounts unpaid on shares or other securities held by the members;
 - (iii) partly as specified in rule 4.2(b)(i) and partly as specified in rule 4.2(b)(ii);
 - (iv) any other method permitted by law.

The members entitled to share in the distribution must accept that application in full satisfaction of their interest in the capitalised amount.

- (c) Rules 4.1(e), 4.1(f) and 4.1(g) apply, so far as they can and with any necessary changes, to capitalising an amount under this rule 4.2 as if references in those rules to:
 - (i) a dividend were references to capitalising an amount; and
 - (ii) a record date were references to the date the Board resolves to capitalise the amount under this rule 4.2.
- (d) Where the terms of options (existing at the date the resolution referred to in rule 4.2(b) is passed) entitle the holder to an issue of bonus shares under this rule 4.2, the Board may in determining the number of unissued shares to be so issued, allow in an appropriate manner for the future issue of bonus shares to options holders.

4.3 Ancillary powers

To give effect to any resolution to reduce the capital of the company, to satisfy a dividend as set out in rule 4.1(h)(i) or to capitalise any amount under rule 4.2, the:

- (a) Board may settle as it thinks expedient any difficulty that arises in making the distribution or capitalisation and, in particular:
 - (i) make cash payments in cases where members are entitled to fractions of shares or other securities;
 - (ii) decide that amounts or fractions of less than a particular value decided by the Board may be disregarded to adjust the rights of all parties;
 - (iii) fix the value for distribution of any specific assets;
 - (iv) pay cash or issue shares or other securities to any member to adjust the rights of all parties;
 - (v) vest any of those specific assets, cash, shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount; and
 - (vi) authorise any person to make, on behalf of all the members entitled to any specific assets, cash, shares or other securities as a result of the distribution or capitalisation, an agreement with the company or another person which provides, as appropriate, for the distribution or issue to them of shares or other securities credited as fully paid up or for payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised.
- (b) Any agreement made under an authority referred to in rule 4.3(a)(vi) is effective and binds all members concerned.
- (c) If a distribution, transfer or issue of specific assets, shares or securities to a particular member or members is, in the Board's discretion, considered impracticable or would give rise to parcels of securities that do not constitute a marketable parcel, the Board may make a cash payment to those members

or allocate the assets, shares or securities to a trustee to be sold on behalf of, and for the benefit of, those members, instead of making the distribution, transfer or issue to those members. Any proceeds receivable by members under this rule 4.3(c) will be net of expenses incurred by the company and trustee in selling the relevant assets, shares or securities.

- (d) If the company distributes to members (either generally or to specific members) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

4.4 Reserves

- (a) The Board may set aside out of the company's profits any reserves or provisions it decides.
- (b) The Board may appropriate to the company's profits any amount previously set aside as a reserve or provision.
- (c) Setting aside an amount as a reserve or provision does not require the Board to keep the amount separate from the company's other assets or prevent the amount being used in the company's business or being invested as the Board decides.

4.5 Carrying forward profits

The Board may carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

5 Transfer and transmission of shares

5.1 Transferring shares

- (a) Subject to this constitution and to any restrictions attached to a member's shares, a member may transfer any of the member's shares by:
 - (i) a Proper ASTC Transfer; or
 - (ii) a written transfer in any usual form or in any other form approved by the Board.
- (b) A transfer referred to in rule 5.1(a)(ii) must be:
 - (i) signed by or on behalf of the transferor and, if required by the company, the transferee;
 - (ii) if required by law, duly stamped; and
 - (iii) left for registration at the company's registered office, or at any other place the Board decides, with such evidence the Board requires to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.

- (c) Subject to rules 5.2(a) and 5.3, where the company receives a transfer complying with this rule 5.1, the company must register the transferee named in the transfer as the holder of the shares to which it relates.
- (d) A transferor of shares remains the holder of the shares until a Proper ASTC Transfer has been effected or the transferee's name is entered in the register of members as the holder of the shares.
- (e) The company must not charge a fee for registering a transfer of shares unless:
 - (i) the company is not listed on the Exchange; or
 - (ii) if the company is listed on the Exchange, the fee is permitted by the Listing Rules.
- (f) The company (or the company's securities registry) may put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.
- (g) The company may retain a registered transfer for any period the Board decides.
- (h) The Board may do anything that is necessary or desirable for the company to participate in any computerised, electronic or other system for facilitating the transfer of shares or operation of the company's registers that may be owned, operated or sponsored by the Exchange or a related body corporate of the Exchange.
- (i) The Board may, to the extent the law permits, waive any of the requirements of this rule 5.1 and prescribe alternative requirements instead, to give effect to rule 5.1(h) or for another purpose.

5.2 Power to decline to register transfers

- (a) The Board may decline to register, or prevent registration of, a transfer of shares or apply a holding lock to prevent a transfer in accordance with the Act or the Listing Rules where:
 - (i) the transfer is not in registrable form;
 - (ii) the company has a lien on any of the shares transferred;
 - (iii) registration of the transfer may breach a law of Australia;
 - (iv) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;
 - (v) the transfer is not permitted under the terms of an employee share plan; or

- (vi) the company is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the shares.
- (b) If the Board declines to register a transfer, the company must give notice of the refusal as required by the Act and the Listing Rules. Failure to give that notice will not invalidate the decision of the Board to decline to register the transfer.
- (c) The Board may delegate its authority under this rule 5.2 to any person.

5.3 Power to suspend registration of transfers

The Board may suspend the registration of transfers at any time, and for any periods, permitted by the ASX Settlement Operating Rules that it decides.

5.4 Selling non marketable parcels

- (a) The Board may sell shares that constitute less than a marketable parcel by following the procedures in this rule 5.4.
- (b) The Board may send a notice to a member who holds less than a marketable parcel of shares in a class of shares of the company, on a date decided by the Board, which:
 - (i) explains the effect of the notice under this rule 5.4; and
 - (ii) advises the holder that he or she may choose to be exempt from the provisions of this rule. A form of election for that purpose must be sent with the notice.
- (c) If, before 5.00pm Melbourne time on a date specified in the notice which is no earlier than 6 weeks after the notice is sent:
 - (i) the company has not received a notice from the member exempting them from this rule 5.4; and
 - (ii) the member has not increased his or her shareholding to a marketable parcel,

the member is taken to have irrevocably appointed the company as his or her agent to do anything in rule 5.4(e).
- (d) In addition to initiating a sale by sending a notice under rule 5.4(b), the Board may also initiate a sale if a member holds less than a marketable parcel at the time that the transfer document was initiated or, in the case of a paper-based transfer document, was lodged with the company. In that case:
 - (i) the member is taken to have irrevocably appointed the company as his or her agent to do anything in rule 5.4(e); and
 - (ii) if the holding was created after the adoption of this rule, the Board may remove or change the member's rights to vote or receive dividends in respect of those shares. Any dividends withheld must be sent to the former holder after the sale when the former holder delivers to the company such proof of title as the Board accepts.

- (e) The company may:
 - (i) sell the shares constituting less than a marketable parcel as soon as practicable;
 - (ii) deal with the proceeds of sale under rule 3.8; and
 - (iii) receive any disclosure document, including a financial services guide, as agent for the member.
- (f) The costs and expenses of any sale of shares arising from a notice under rule 5.4(b) (including brokerage and stamp duty) are payable by the purchaser or by the company.
- (g) A notice under rule 5.4(b) may be given to a member only once in a 12 month period and may not be given during the offer period of a takeover bid for the company.
- (h) If a takeover bid is announced after a notice is given but before an agreement is entered into for the sale of shares, this rule ceases to operate for those shares. However, despite rule 5.4(g), a new notice under rule 5.4(b) may be given after the offer period of the takeover bid closes.
- (i) The Board may, before a sale is effected under this rule 5.4, revoke a notice given or suspend or terminate the operation of this rule either generally or in specific cases.
- (j) If a member is registered in respect of more than one parcel of shares, the Board may treat the member as a separate member in respect of each of those parcels so that this rule 5.4 will operate as if each parcel was held by different persons.

5.5 Transmission of shares

- (a) Subject to rule 5.5(c), where a member dies, the only persons the company will recognise as having any title to the member's shares or any benefits accruing on those shares are:
 - (i) where the deceased was a sole holder, the legal personal representative of the deceased; and
 - (ii) where the deceased was a joint holder, the survivor or survivors.
- (b) Rule 5.5(a) does not release the estate of a deceased member from any liability on a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) The Board may register a transfer of shares signed by a member before a Transmission Event even though the company has notice of the Transmission Event.
- (d) A person who becomes entitled to a share because of a Transmission Event may, on producing such evidence as the Board requires to prove that person's entitlement to the share, choose:

- (i) to be registered as the holder of the share by signing and giving the company a written notice stating that choice; or
 - (ii) to nominate some other person to be registered as the transferee of the share by executing or effecting in some other way a transfer of the share to that other person.
- (e) The provisions of this constitution concerning the right to transfer shares and the registration of transfers of shares apply, so far as they can and with any necessary changes, to a notice or transfer under rule 5.5(d) as if the relevant Transmission Event had not occurred and the notice or transfer were executed or effected by the registered holder of the share.
- (f) Where 2 or more persons are jointly entitled to a share because of a Transmission Event they will, on being registered as the holders of the share, be taken to hold the share as joint tenants and rule 2.6 will apply to them.

6 General meetings

6.1 Calling general meetings

- (a) A general meeting may only be called:
- (i) by a Board resolution; or
 - (ii) as otherwise provided in the Act.
- (b) The Board may, by notice to the Exchange, change the venue for, postpone or cancel a general meeting, but:
- (i) a meeting that is called in accordance with a members' requisition under the Act; and
 - (ii) any other meeting that is not called by a Board resolution,
- may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

6.2 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice:
- (i) is a member, director or auditor of the company; or
 - (ii) is entitled to a share because of a Transmission Event and has satisfied the Board of this.
- (b) The content of a notice of a general meeting called by the Board is to be decided by the Board, but it must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) Unless the Act provides otherwise:

- (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (ii) except with the approval of the Board or the chairperson, no person may move any amendment to a proposed resolution or to a document that relates to such a resolution.
- (d) A person may waive notice of any general meeting by written notice to the company.
- (e) Failure to give a member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or resolution passed at the general meeting if:
- (i) the failure occurred by accident or inadvertent error; or
 - (ii) before or after the meeting, the person notifies the company of the person's agreement to that thing or resolution.
- (f) A person's attendance at a general meeting waives any objection that person may have to:
- (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

6.3 Admission to general meetings

- (a) The chairperson of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:
- (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
 - (v) who refuses to comply with a request to turn off a mobile telephone, personal communication device or similar device;
 - (vi) who behaves or threatens to behave or who the chairperson has reasonable grounds to believe may behave in a dangerous, offensive or disruptive way; or
 - (vii) who is not entitled to receive notice of the meeting.

The chairperson may delegate the powers conferred by this rule to any person he or she thinks fit.

- (b) A person, whether a member or not, requested by the Board or the chairperson to attend a general meeting is entitled to be present and, at the request of the chairperson, to speak at the meeting.
- (c) If the chairperson of a general meeting considers that there is not enough room for the members who wish to attend the meeting, he or she may arrange for any person whom he or she considers cannot be seated in the main meeting room to observe or attend the general meeting in a separate room. Even if the members present in the separate room are not able to participate in the conduct of the meeting, the meeting will nevertheless be treated as validly held in the main room.
- (d) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:
 - (i) gives the general body of members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place;
 - (ii) enables the chairperson to be aware of proceedings in the other place; and
 - (iii) enables the members in the separate meeting place to vote on a show of hands or on a poll,

a member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.

- (e) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in rule 6.3(d) is not satisfied, the chairperson may:
 - (i) adjourn the meeting until the difficulty is remedied; or
 - (ii) continue to hold the meeting in the main place (and any other place which is linked under rule 6.3(d) and transact business, and no member may object to the meeting or continuing.
- (f) Nothing in this rule 6.3 or in rule 6.6 is to be taken to limit the powers conferred on the chairperson by law.

6.4 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum is 5 or more members present at the meeting and entitled to vote on a resolution at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:

- (i) where the meeting was called at the request of members, the meeting must be dissolved; or
- (ii) in any other case, the meeting stands adjourned to the day, time and place the directors present decide or, if they do not make a decision, to the same day in the next week at the same time and place and if a quorum is not present at the adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.5 Chairperson of general meetings

- (a) The chairperson of the Board or, in the absence of the chairperson, the deputy chairperson of the Board is entitled, if present within 15 minutes after the time appointed for a general meeting and willing to act, to preside as chairperson at the meeting.
- (b) The directors present may choose one of their number to preside as chairperson if, at a general meeting:
 - (i) there is no chairperson or deputy chairperson of the Board;
 - (ii) neither the chairperson nor the deputy chairperson of the Board is present within 15 minutes after the time appointed for the meeting; or
 - (iii) neither the chairperson nor the deputy chairperson of the Board is willing to act as chairperson of the meeting.
- (c) If the directors do not choose a chairperson under rule 6.5(b), the members present must elect as chairperson of the meeting:
 - (i) another director who is present and willing to act; or
 - (ii) if no other director is present and willing to act, a member who is present and willing to act.
- (d) A chairperson of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (Acting Chairperson). Where an instrument of proxy appoints the chairperson as proxy for part of the proceedings for which an Acting Chairperson has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairperson for the relevant part of the proceedings.
- (e) Wherever the term 'chairperson' is used in this rule 6, it is to be read as a reference to the chairperson of the general meeting, unless the context indicates otherwise.

6.6 Conduct at general meetings

- (a) Subject to the provisions of the Act, the chairperson is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (b) The chairperson may, at any time the chairperson considers it necessary or desirable for the efficient and orderly conduct of the meeting:

- (i) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present;
 - (ii) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers; and
 - (iii) decide not to put to the meeting any resolution proposed in the notice convening the meeting (other than a resolution proposed by members in accordance with section 249N of the Act or required by the Act to be put to the meeting).
- (c) A decision by a chairperson under rules 6.6(a) or 6.6(b) is final.
- (d) Whether or not a quorum is present, the chairperson may postpone the meeting before it has started if, at the time and place appointed for the meeting, he or she considers that:
- (i) there is not enough room for the number of members who wish to attend the meeting; or
 - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (e) A postponement under rule 6.6(d) will be to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place will be taken to be the time and place for the meeting as if specified in the notice that called the meeting originally).
- (f) The chairperson may at any time during the course of the meeting:
- (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such period or periods as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chairperson otherwise allows.
- (g) The chairperson's rights under rules 6.6(d) and 6.6(f) are exclusive and, unless the chairperson requires otherwise, no vote may be taken or demanded by the members present concerning any postponement, adjournment or suspension of proceedings.
- (h) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (i) Where a meeting is postponed or adjourned under this rule 6.6, notice of the postponed or adjourned meeting must be given to the Exchange, but, except as provided by rule 6.6(k), need not be given to any other person.

- (j) Where a meeting is postponed or adjourned, the Board may, by notice to the Exchange, postpone, cancel or change the place of the postponed or adjourned meeting.
- (k) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

6.7 Decisions at general meetings

- (a) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes, a decision of the members.
- (b) If the votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to any deliberative vote.
- (c) Subject to rule 6.7(d) each question submitted to a general meeting is to be decided in the first instance by a show of hands of the members present and entitled to vote.
- (d) The chairperson may determine that any question to be submitted to a general meeting will be determined by a poll without first submitting the question to a show of hands.
- (e) A poll may be demanded by members in accordance with the Act (and not otherwise) or by the chairperson.
- (f) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (g) Unless a poll is duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (h) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairperson directs. The result of the poll as declared by the chairperson is the resolution of the meeting at which the poll was demanded.
- (i) A poll cannot be demanded at a general meeting on the election of a chairperson.
- (j) The demand for a poll may be withdrawn with the chairperson's consent.

6.8 Direct voting

- (a) Despite anything to the contrary in this constitution, the Board may decide that, at any general meeting or class meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the company by post or other electronic means approved by the directors.

- (b) The Board may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

6.9 Voting rights

- (a) Subject to this constitution and the Act and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every member present has one vote; and
 - (ii) on a poll, every member present has one vote for each share held as at the Record Time by the member entitling the member to vote, except for partly paid shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share. An amount paid in advance of a call is disregarded for this purpose.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member, on a show of hands the person is, subject to the Act, entitled to one vote only even though he or she represents more than one member.
- (c) A joint holder may vote at a meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant shares, the vote of the holder named first in the register who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.
- (d) The parent or guardian of an infant member may vote at any general meeting on such evidence being produced of the relationship or of the appointment of the guardian as the Board may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share because of a Transmission Event may vote at a general meeting in respect of that share in the same way as if that person were the registered holder of the share if, at least 48 hours before the meeting (or such shorter time as the Board determines), the Board:
 - (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) was satisfied of that person's right to be registered as the holder of, or to transfer, the share.Any vote duly tendered by that person must be accepted and the vote of the registered holder of those shares must not be counted.
- (f) Where a member holds a share on which a call or other amount payable to the company has not been duly paid:

- (i) that member is only entitled to be present at a general meeting and vote if that member holds, as at the Record Time, other shares on which no money is then due and payable; and
 - (ii) on a poll, that member is not entitled to vote in respect of that share but may vote in respect of any shares that member holds, as at the Record Time, on which no money is then due and payable.
- (g) A member is not entitled to vote on a resolution if, under the Act or the Listing Rules:
- (i) the member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the member must be disregarded for any purposes.
- If the member or a person acting as proxy, attorney or Representative of the member does tender a vote on that resolution, their vote must not be counted.
- (h) An objection to the validity of a vote tendered at a general meeting must be:
- (i) raised before or immediately after the result of the vote is declared; and
 - (ii) referred to the chairperson, whose decision is final.
- (i) A vote tendered, but not disallowed by the chairperson under rule 6.9(h), is valid for all purposes, even if it would not otherwise have been valid.
- (j) The chairperson may decide any difficulty or dispute which arises as to the number of votes that may be cast by or on behalf of any member and the decision of the chairperson is final.

6.10 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a general meeting may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a member of the company.
- (c) An instrument appointing a proxy is valid if it is in accordance with the Act or in any form approved by the Board.
- (d) For the purposes of this rule 6.10 a proxy appointment received at an electronic address specified in the notice of general meeting for the receipt of proxy appointment or otherwise received by the company in accordance with the Act is taken to have been signed or executed if the appointment:

- (i) includes or is accompanied by a personal identification code allocated by the company to the member making the appointment;
 - (ii) has been authorised by the member in another manner approved by the Board and specified in or with the notice of meeting; or
 - (iii) is otherwise authenticated in accordance with the Act.
- (e) A vote given in accordance with an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under rule 6.10(i).
- (f) Unless otherwise provided in the appointment of a proxy, attorney or Representative, an appointment will be taken to confer authority:
- (i) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions, to do any of the acts specified in rule 6.10(g); and
 - (ii) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled, adjourned or postponed to another time or changed to another venue, to attend and vote at the rescheduled, adjourned or postponed meeting or at the new venue.
- (g) The acts referred to in rule 6.10(f)(i) are:
- (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any motion before the general meeting, whether or not the motion is referred to in the appointment; and
 - (iii) to act generally at the meeting (including to speak, demand a poll, join in demanding a poll and to move motions).
- (h) A proxy form issued by the company must allow for the insertion of the name of the person to be primarily appointed as proxy and may provide that, in circumstances and on conditions specified in the form that are not inconsistent with this constitution, the chairperson of the relevant meeting (or another person specified in the form) is appointed as proxy.
- (i) A proxy or attorney may not vote at a general meeting or adjourned or postponed meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received by the company:
- (i) at least 48 hours, or such lesser time as specified by the Board in the notice of meeting, (or in the case of an adjournment or postponement of a meeting, any lesser time that the Board or the chairperson of the meeting decides) before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable; or

- (ii) where rule 6.10(j)(ii) applies, such shorter period before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable, as the company determines in its discretion.

A document is received by the company under this rule 6.10(i) when it is received in accordance with the Act, and to the extent permitted by the Act, if the document is produced or the transmission of the document is otherwise verified to the company in the way specified in the notice of meeting.

- (j) Where the company receives an instrument appointing a proxy or attorney in accordance with this rule 6.10 and within the time period specified in rule 6.10(i)(i), the company is entitled to:
 - (i) clarify with the appointing member any instruction in relation to that instrument by written or verbal communication and make any amendments to the instrument required to reflect any clarification; and
 - (ii) where the company considers that the instrument has not been duly executed, return the instrument to the appointing member and request that the member duly execute the instrument and return it to the company within the period determined by the company under rule 6.10(i)(ii) and notified to the member.
- (k) The member is taken to have appointed the company as its attorney for the purpose of any amendments made to an instrument appointing a proxy in accordance with rule 6.10(i)(i). An instrument appointing a proxy or attorney which is received by the company in accordance with rule 6.10(i) is taken to have been validly received by the company.
- (l) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting, but if the appointor votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.
- (m) Where a member appoints 2 proxies or attorneys to vote at the same general meeting:
 - (i) if the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half the member's votes;
 - (ii) on a show of hands, neither proxy or attorney may vote if more than one proxy or attorney attends; and
 - (iii) on a poll, each proxy or attorney may only exercise votes in respect of those shares or voting rights the proxy or attorney represents.
- (n) Unless written notice of the matter has been received at the company's registered office (or at another place specified for lodging an appointment of a proxy, attorney or Representative for the meeting) within the time period specified under rule 6.10(i), a vote cast by a proxy, attorney or Representative is valid even if, before the vote is cast:
 - (i) a Transmission Event occurs to the member; or

- (ii) the member revokes the appointment of the proxy, attorney or Representative or revokes the authority under which a third party appointed the proxy, attorney or Representative.
- (o) The chairperson may require a person acting as a proxy, attorney or Representative to establish to the chairperson's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy the requirement, the chairperson may:
 - (i) exclude the person from attending or voting at the meeting; or
 - (ii) permit the person to exercise the powers of a proxy, attorney or Representative on the condition that, if required by the company, he or she produce evidence of the appointment within the time set by the chairperson.
- (p) The chairperson may delegate his or her powers under rule 6.10(o) to any person.

6.11 Decisions without general meetings

- (a) If the company is not listed on the Exchange and has more than one member, the company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document.
- (b) If a share is held jointly, each of the joint members must sign the document.
- (c) For the purposes of rule 6.11(a):
 - (i) the resolution is passed when the last person signs the document; and
 - (ii) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (d) The passage of the resolution in accordance with this rule 6.11 satisfies any requirement in the Act, or in this constitution, that the resolution be passed at a general meeting.

7 Directors

7.1 Appointment and retirement of directors

- (a) The number of directors (not including alternate directors) shall:
 - (i) not be less than 3; and
 - (ii) not be more than 9,
 unless the company resolves otherwise at a general meeting.

- (b) The Board may appoint any eligible person to be a director, either as an addition to the existing directors or to fill a casual vacancy, but so that the total number of directors does not exceed the maximum number fixed under this constitution.
- (c) A director appointed by the Board under rule 7.1(b), who is not a chief executive officer, holds office until the conclusion of the next AGM following his or her appointment.
- (d) No director who is not the chief executive officer may hold office without re-election beyond the third AGM following the meeting at which the director was last elected or re-elected.
- (e) If there is more than one chief executive officer, only one of them, nominated by the Board, is entitled not to be subject to vacation of office under rule 7.1(c) or retirement under rule 7.1(d) or 7.1(f).
- (f) To the extent that the Listing Rules require an election of directors to be held and no director would otherwise be required (by rules 7.1(c) or 7.1(d)) to submit for election or re-election the director to retire is any director who wishes to retire (whether or not he or she intends to stand for re-election), otherwise it is the director who has been longest in office since their last election or appointment (excluding the chief executive officer). As between directors who were last elected or appointed on the same day, the director to retire must be decided by lot (unless they can agree among themselves).
- (g) A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice calling the AGM but before the meeting closes.
- (h) The members may by resolution at a general meeting appoint an eligible person to be a director, either as an addition to the existing directors or to fill a casual vacancy, but so that the total number of directors does not exceed the maximum number fixed under this constitution.
- (i) The retirement of a director from office under this constitution and the re-election of a director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (j) A person is eligible for election to the office of a director at a general meeting only if:
 - (i) the person is in office as a director immediately before that meeting;
 - (ii) the person has been nominated by the Board for election at that meeting;
 - (iii) in any other case, not less than the number of members specified in the Act as being required to give notice of a resolution at a general meeting of the company have:
 - (A) at least 45 Business Days; or

- (B) in the case of a general meeting that the directors have been duly requested by members under the Act to call, at least 30 Business Days,
 - but, in each case, no more than 90 Business Days, before the meeting given the company:
 - (C) a notice signed by the relevant members stating their intention to nominate the person for election; and
 - (D) a notice signed by the person nominated stating his or her consent to the nomination.
- (k) A partner, employer or employee of an auditor of the company may not be appointed or elected as a director.

7.2 Vacating office

In addition to the circumstances prescribed by the Act and this constitution, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the Board does not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend meetings of the Board for more than 3 consecutive months without leave of absence from the Board and a majority of the other directors have not, within 14 days of having been given a notice by the secretary giving details of the absence, resolved that leave of absence be granted; or
- (e) resigns by written notice to the company.

7.3 Remuneration

- (a) The Board may decide the remuneration from the company to which each director is entitled for his or her services as a director but the total aggregate amount provided, to all non-executive directors of the company for their services as directors must not exceed in any financial year the amount fixed by the company in general meeting.
- (b) When calculating a non-executive director's remuneration for the purposes of rule 7.3(a), any amount paid by the company or related body corporate:
 - (i) to a superannuation, retirement or pension fund for a director is to be included;
 - (ii) as fees for acting as a director of the company or any child entity (including attending and participating in any board committee

meetings where the Board has not made a determination under rule 7.7(c) is to be included;

- (iii) as securities, issued with the approval of members under the Listing Rules, are to be excluded; and
 - (iv) for any insurance premium paid or agreed to be paid for a director under rule 9.4 is to be excluded.
- (c) Remuneration under rule 7.3(a) may be provided in such manner that the Board decides, including by way of non cash benefit, such as a contribution to a superannuation fund.
 - (d) The remuneration is taken to accrue from day to day.
 - (e) The remuneration of a director (who is not a chief executive officer or an executive director) must not include a commission on, or a percentage of, profits or operating revenue.
 - (f) The directors are entitled to be paid all travelling and other expenses they incur in attending to the company's affairs, including attending and returning from general meetings of the company or meetings of the Board or of committees of the Board. Such amounts will not form part of the aggregate remuneration permitted under rule 7.3(a).
 - (g) Any director who performs extra services, makes any special exertions for the benefit of the company or who otherwise performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of a non-executive director, may be remunerated for the services (as determined by the Board) out of the funds of the company. Any amount paid will not form part of the aggregate remuneration permitted under rule 7.3(a).
 - (h) If a director is also:
 - (i) an officer (other than a director); or
 - (ii) an executive,

of the company or of a related body corporate, any remuneration that director may receive for acting in their capacity as that officer or executive may be either in addition to or instead of that director's remuneration under rule 7.3(a).

- (i) The Board may:
 - (i) at any time after a director dies or ceases to hold office as a director for any other reason, pay or provide to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 7.3(a), a pension or benefit for past services rendered by that director; and
 - (ii) cause the company to enter into a contract with the director or a legal personal representative, spouse, relative or dependant of the director to give effect to such a payment or provide for such a benefit.

- (j) Any director may be paid a retirement benefit, as determined by the Board, in accordance with the Act. The Board may make arrangements with any director with respect to the payment of retirement benefits in accordance with this rule 7.3(j).
- (k) The Board may establish or support, or assist in the establishment or support, of funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors and grant pensions and allowances to those persons or their dependants either by periodic payment or a lump sum.

7.4 Director need not be a member

- (a) A director is not required to hold any shares in the company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings and at meetings of the holders of a class of shares, even if he or she is not a member or a holder of shares in the relevant class.

7.5 Directors may contract with the company and hold other offices

- (a) The Board may make regulations requiring the disclosure of interests that a director, and any person deemed by the Board to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (b) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 7.5(a).
- (c) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (d) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (e) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements applicable to the director under rule 7.5(a) and under the Act regarding that interest.
- (f) A director may hold any other office or position (except auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or position on terms (including remuneration and tenure) the Board decides.
- (g) A director may be or become a director or other officer of, or interested in, any related body corporate or any other body corporate promoted by or

associated with the company, or in which the company may be interested as a vendor, and, with the consent of the Board, need not account to the company for any remuneration or other benefits the director receives as a director or officer of, or from having an interest in, that body corporate.

- (h) A director who has an interest in a matter that is being considered at a meeting of the Board may, despite that interest, vote, be present and be counted in a quorum at the meeting, unless that is prohibited by the Act. No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a director fails to comply with that prohibition.
- (i) The Board may exercise the voting rights given by shares in any corporation held or owned by the company in any way the Board decides. This includes voting for any resolution appointing a director as a director or other officer of that corporation or voting for the payment of remuneration to the directors or other officers of that corporation. A director may, if the law permits, vote for the exercise of those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other corporation and, in that capacity, may be interested in the exercise of those voting rights.
- (j) A director who is interested in any contract or arrangement may, despite that interest, participate in the execution of any document by or on behalf of the company evidencing or otherwise connected with that contract or arrangement.

7.6 Powers and duties of directors

- (a) The business and affairs of the company are to be managed by or under the direction of the Board, which (in addition to the powers and authorities conferred on it by this constitution) may exercise all powers and do all things that are:
 - (i) within the power of the company; and
 - (ii) are not by this constitution or by law directed or required to be done by the company in general meeting.
- (b) The Board may exercise all the powers of the company:
 - (i) to borrow or raise money in any other way;
 - (ii) to charge any of the company's property or business or any of its uncalled capital; and
 - (iii) to issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (c) Debentures or other securities may be issued on the terms and at prices decided by the Board, including bearing interest or not, with rights to subscribe for, or exchange into, shares or other securities in the company or a related body corporate or with special privileges as to redemption, participating in share issues, attending and voting at general meetings and appointing directors.
- (d) The Board may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn,

accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

- (e) The Board may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (f) The Board may:
 - (i) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (those vested in or exercisable by the Board), for any period and on any other conditions they decide;
 - (ii) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iii) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (g) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the Board decides.
- (h) Nothing in this rule 7.6 limits the general nature of rule 7.6(a).

7.7 Delegation by the Board

- (a) The Board may delegate any of its powers to one director, a committee of the Board, or any person or persons.
- (b) A director, committee of the Board, or person to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.
- (c) The acceptance of a delegation of powers by a director may, if the Board so resolves, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 7.3(g).
- (d) The provisions of this constitution applying to meetings and resolutions of the Board apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of the Board, except to the extent they are contrary to any direction given under rule 7.7(b).

7.8 Proceedings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the Board. All the provisions in this constitution relating to meetings of the Board apply, as far as they can and with any necessary changes, to meetings of the Board by telephone or other electronic means.

- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the chairperson of the meeting is or at such other place the chairperson of the meeting decides, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting and all directors participating in the meeting will (unless there is a specific statement otherwise) be taken to have consented to the holding of the meeting by the relevant electronic means.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

7.9 Calling meetings of the Board

- (a) A director may, whenever the director thinks fit, call a meeting of the Board.
- (b) A secretary must, if requested by a director, call a meeting of the Board.

7.10 Notice of meetings of the Board

- (a) Notice of a meeting of the Board must be given to each person who is, at the time the notice is given:
 - (i) a director, except a director on leave of absence approved by the Board; or
 - (ii) an alternate director appointed under rule 7.15 by a director on leave of absence approved by the Board.
- (b) A notice of a meeting of the Board:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting;
 - (iv) may be given in person or by post or by telephone or other electronic means, or in any other way consented to by the directors from time to time; and
 - (v) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of a meeting of the Board by giving notice to that effect in person or by post or by telephone or other electronic means.
- (d) Failure to give a director or alternate director notice of a meeting of the Board does not invalidate anything done or any resolution passed at the meeting if:

- (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director or alternate director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of the Board waives any objection that person may have to a failure to give notice of the meeting.

7.11 Quorum at meetings of the Board

- (a) No business may be transacted at a meeting of the Board unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the Board decides differently, 2 directors constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

7.12 Chairperson and deputy chairperson of the Board

- (a) The Board must elect a director to the office of chairperson of the Board and may elect one or more directors to the office of deputy chairperson of the Board. The Board may decide the period for which those offices will be held.
- (b) The chairperson of the Board is entitled (if present within 10 minutes after the time appointed for the meeting and willing to act) to preside as chairperson at a meeting of the Board.
- (c) If at a meeting of the Board:
 - (i) there is no chairperson of the Board;
 - (ii) the chairperson of the Board is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson of the Board is present within that time but is not willing or declines to act as chairperson of the meeting,

the deputy chairperson, if any, is entitled to be chairperson of the meeting. In the absence of a deputy chairperson, or if the deputy chairperson is unwilling or declines to act as chairperson of the meeting, the directors present must elect one of themselves to chair the meeting.

- (d) A director elected to the office of chairperson in accordance with rule 7.12(a) may be removed from that office by a resolution of all of the directors (except for the chairperson), provided that notice of the resolution was given to all of the directors at least 14 days prior to the date of the resolution.

7.13 Decisions of the Board

- (a) The Board, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the Board under this constitution.

- (b) Questions arising at a meeting of the Board must be decided by a majority of votes cast by the directors present entitled to vote on the matter.
- (c) Subject to rule 7.13(d), if the votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to his or her deliberative vote.
- (d) Where only 2 directors are present or entitled to vote at a meeting of the Board and the votes are equal on a proposed resolution:
 - (i) the chairperson of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as lost.

7.14 Written resolutions

- (a) If:
 - (i) all of the directors (other than any director on leave of absence approved by the Board, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
 - (ii) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of the Board held to consider that resolution,then the resolution is taken to have been passed by a meeting of the Board when the last director consents to the resolution.
- (b) A director may consent to a resolution by:
 - (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the company a written notice (including by electronic means) addressed to the secretary or to the chairperson of the Board signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (iii) telephoning the secretary or the chairperson of the Board and signifying assent to the resolution and clearly identifying its terms.

7.15 Alternate directors

- (a) A director may, with the approval of a majority of the other directors, appoint a person to be the director's alternate director for such period as the director decides.
- (b) An alternate director may, but need not, be a member or a director of the company.
- (c) One person may act as alternate director to more than one director.

- (d) In the absence of the appointor, an alternate director may exercise any powers (except the power to appoint an alternate director) that the appointor may exercise.
- (e) An alternate director is entitled, if the appointor does not attend a meeting of the Board, to attend and vote in place of and on behalf of the appointor.
- (f) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (g) An alternate director, when acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.
- (h) The office of an alternate director is vacated if and when the appointor vacates office as a director.
- (i) The appointment of an alternate director may be terminated or suspended at any time by the appointor or by a majority of the other directors.
- (j) An appointment, or the termination or suspension of an appointment of an alternate director, must be in writing and signed and takes effect only when the company has received notice in writing of the appointment, termination or suspension.
- (k) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed or the rotation of directors under this constitution.
- (l) In determining whether a quorum is present at a meeting of the Board, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (m) An alternate director is not entitled to receive any remuneration as a director from the company otherwise than out of the remuneration of the director appointing the alternate director but is entitled to travelling, hotel and other expenses reasonably incurred for the purpose of attending any meeting of the Board at which the appointor is not present.

7.16 Validity of acts

An act done by a meeting of the Board, a committee of the Board or a person acting as a director is not invalidated by:

- (a) a defect in the appointment of a person as a director or a member of a committee; or
- (b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person when the act was done.

7.17 External professional advice

- (a) A director may, whether individually or with other directors, engage professional advisers to assist the director in carrying out his or her duties as a director of the company, in accordance with any relevant policies adopted by the Board from time to time.
- (b) The company must pay all reasonable expenses incurred by a director in relation to a professional adviser engaged under rule 7.17(a), provided that the professional adviser has been engaged by the director for the purposes of, or in connection with, the proper discharge of the director's duties as a director of the company and not for any other purpose personal to the director, and provided the director has complied with any relevant policies adopted by the Board from time to time.

8 Executive officers

8.1 Chief executive officers and executive directors

- (a) The Board may appoint one or more of the directors to the office of chief executive officer or other executive director.
- (b) Unless the Board decides otherwise, a managing director's or other executive director's employment terminates if the managing director or other executive director ceases to be a director.
- (c) A chief executive officer or other executive director may be referred to by any title the Board decides on.

8.2 Secretary

- (a) The Board must appoint at least one secretary and may appoint additional secretaries.
- (b) The Board may appoint one or more assistant secretaries.

8.3 Provisions applicable to all executive officers

- (a) A reference in this rule 8.3 to an executive officer is a reference to a chief executive officer, deputy chief executive officer, executive director, secretary or assistant secretary appointed under this rule 8.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the Board decides.
- (c) The remuneration payable by the company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (d) The Board may:
 - (i) delegate to or give an executive officer any powers, discretions and duties it decides;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and

- (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (e) Unless the Board decides differently, the office of a director who is employed by the company or by a Subsidiary of the company automatically becomes vacant if the director ceases to be so employed.
- (f) An act done by a person acting as an executive officer is not invalidated by:
 - (i) a defect in the person's appointment as an executive officer;
 - (ii) the person being disqualified to be an executive officer; or
 - (iii) the person having vacated office,if the person did not know that circumstance when the act was done.

9 Indemnity and insurance

9.1 Persons to whom rules 9.2 and 9.4 apply

Rules 9.2 and 9.4 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 8.3(a)) of the company; and
- (b) to such other officers or former officers of the company or of its related bodies corporate as the Board in each case determines,

(each an **Officer** for the purposes of this rule).

9.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

9.3 Extent of indemnity

The indemnity in rule 9.2:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the company or its related bodies corporate; and
- (c) applies to Liabilities incurred both before and after the adoption of this constitution.

9.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer against any liability incurred by the Officer as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending or responding to proceedings, whether civil or criminal and whatever their outcome.

9.5 Savings

Nothing in rule 9.2 or 9.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into prior to the adoption of this constitution.

9.6 Deed

The company may enter into a deed with any Officer to give effect to the rights conferred by this rule 9 or the exercise of a discretion under this rule 9 on such terms as the Board thinks fit which are not inconsistent with this rule 9.

10 Winding up

10.1 Distributing surplus

Subject to this constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the company is wound up and the property of the company available for distribution among the members is more than sufficient to pay:
 - (i) all the debts and liabilities of the company; and
 - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in rule 10.1(a), any amount unpaid on a share is to be treated as property of the company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 10.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and

- (d) if the effect of the reduction under rule 10.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

10.2 Dividing property

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
 - (i) divide among the members the whole or any part of the company's property; and
 - (ii) decide how the division is to be carried out as between the members or different classes of members.
- (b) A division under rule 10.2(a) need not accord with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 10.2(a) does not accord with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If any of the property to be divided under rule 10.2(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may, within 10 days after the passing of the special resolution referred to in rule 10.2(a), by written notice direct the liquidator to sell the person's proportion of the securities and account for the net proceeds. The liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 10.2 takes away from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 4.3 applies, so far as it can and with any necessary changes, to a division by a liquidator under rule 10.2(a) as if references in rule 4.3 to:
 - (i) the Board were references to the liquidator; and
 - (ii) a distribution or capitalisation were references to the division under rule 10.2(a).

11 Inspection of and access to records

- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law, or this constitution, or as authorised by the Board, or by resolution of the members.
- (b) The company may enter into contracts with its directors or former directors agreeing to provide continuing access for a specified period after the director ceases to be a director to board papers, books, records and documents of the company which relate to the period during which the director or former director was a director on such terms and conditions as the Board thinks fit and which are not inconsistent with this rule 11.

- (c) The company may procure that its subsidiaries provide similar access to board papers, books, records or documents as that set out in rules 11(a) and 11(b).
- (d) This rule 11 does not limit any right the directors or former directors otherwise have.

12 Seals

12.1 Manner of execution

Without limiting the ways in which the company can execute documents under the Act and subject to this constitution, the company may execute a document if the document is signed by:

- (a) 2 directors;
- (b) a director and a secretary; or
- (c) any other person authorised by the Board for that purpose.

12.2 Common seal

The company may have a common seal. If the company has a common seal, rules 12.3 to 12.7 apply.

12.3 Safe custody of Seal

The Board must provide for the safe custody of the Seal.

12.4 Using the Seal

Subject to rule 12.7 and unless a different procedure is decided by the Board, if the company has a common seal any document to which it is affixed must be signed by:

- (a) 2 directors;
- (b) by a director and a secretary; or
- (c) a director and another person appointed by the Board to countersign that document or a class of documents in which that document is included.

12.5 Seal register

- (a) The company may keep a Seal register and, on affixing the Seal to any document (other than a certificate for securities of the company) may enter in the register particulars of the document, including a short description of the document.
- (b) The register, or any details from it that the Board requires, may be produced at meetings of the Board for noting the use of the Seal since the previous meeting of the Board.
- (c) Failure to comply with rules 12.5(a) or 12.5(b) does not invalidate any document to which the Seal is properly affixed.

12.6 Duplicate seals and certificate seals

- (a) The company may have one or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept. Each duplicate seal must be a facsimile of the common seal of the company with the addition on its face of the words 'duplicate seal' and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal, or a certificate seal as provided in rule 12.7, is to be taken to have been sealed with the common seal of the company.

12.7 Sealing and signing certificates

The Board may decide either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the company by some mechanical or other means.

13 Notices

13.1 Notices by the company to members

- (a) Without limiting any other way in which notice may be given to a member under this constitution, the Act or the Listing Rules, the company may give a notice to a member by:
 - (i) delivering it personally to the member;
 - (ii) sending it by prepaid post to the member's address in the register of members or any other address the member supplies to the company for giving notices; or
 - (iii) sending it by electronic means (including providing a URL link to any document or attachment) to the address the member has supplied to the company for giving notices.
- (b) The company may give a notice to the joint holders of a share by giving the notice in the way authorised by rule 13.1(a) to the joint holder named first in the register of members for the share.
- (c) The company may give a notice to a person entitled to a share as a result of a Transmission Event by delivering it or sending it in the manner authorised by rule 13.1(a) addressed to the name or title of the person, to:
 - (i) the address that person has supplied to the company for giving notices to that person; or
 - (ii) if that person has not supplied an address, to the address to which the notice might have been sent if that Transmission Event had not occurred.
- (d) A notice given to a member under rules 13.1(a) or 13.1(b) is, even if a Transmission Event has occurred and whether or not the company has notice of that occurrence:

- (i) duly given for any shares registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficiently served on any person entitled to the shares because of the Transmission Event.
- (e) A notice given to a person who is entitled to a share because of a Transmission Event is sufficiently served on the member in whose name the share is registered.
- (f) A person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member, is taken to have received every notice which, before that person's name and address is entered in the register of members for those shares, is given to the member complying with this rule 13.1.
- (g) A signature to any notice given by the company to a member under this rule 13.1 may be printed or affixed by some mechanical, electronic or other means.
- (h) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:
- (i) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and
 - (ii) served at the commencement of that period,
- unless and until the member informs the company of the member's address.

13.2 Notices by the company to directors

The company may give a notice to a director or alternate director by:

- (a) delivering it personally to him or her;
- (b) sending it by prepaid post to his or her usual residential or business address, or any other address he or she has supplied to the company for giving notices; or
- (c) sending it by electronic means to the address he or she has supplied to the company for giving notices.

13.3 Notices by directors to the company

A director or alternate director may give a notice to the company by:

- (a) delivering it to the company's registered office;
- (b) sending it by prepaid post to the company's registered office; or
- (c) sending it by electronic means to the address at the company's registered office.

13.4 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am Melbourne time on the day after the date it is posted.
- (b) A certificate signed by a secretary or officer of the company to the effect that a notice was duly posted under this constitution is conclusive evidence of that fact.
- (c) Where the company sends a notice by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the facsimile transmission report produced by the sender's fax machine.
- (d) Where the company sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is sent.
- (e) Where the company gives a notice to a member by any other means permitted by the Act relating to the giving of notices and electronic means of access to them, the notice is taken as given at 10.00am Melbourne time on the day after the date on which the member is notified that the notice is available.
- (f) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

13.5 Other communications and documents

Rules 13.1 to 13.4 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

13.6 Written notices

A reference in this constitution to a written notice includes a notice given by fax or other electronic means. A signature to a written notice need not be handwritten.

14 General

14.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

14.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

15 Gaming Regulation and Limitation on Ownership

15.1 Protection of the company's business

The company and the members acknowledge that the regulation of the holding of shares, securities or other interests in the company as provided by this rule 15 is required in order to protect the business of the company and of any Subsidiary in respect of which a Licence is obtained, held or maintained or proposed to be obtained, held or maintained, which includes ensuring that certain persons do not become or do not remain a member, or do not remain eligible to be or become a member.

15.2 Ineligible members

- (a) A person is not eligible to hold or continue to hold shares, securities or other interests in the company if, because of a matter the subject of a Final Determination, including the holding of those shares, securities or other interests and any other relevant circumstance:
- (i) the company or any Subsidiary would contravene or continue to contravene a Gaming Law or any requirement imposed by a Gaming Authority; or
 - (ii) a Licence would be revoked, suspended, not granted or made subject to a condition or conditions that would have, or would, in the opinion of the directors, be likely to have, a material adverse effect on the operations of the company or any Subsidiary or on the prospects of the company or any of its Subsidiaries to acquire, maintain, apply or operate under a Licence on terms and conditions satisfactory to the company.
- (b) If it is a requirement of a Gaming Authority or a Licence that the acquisition of any share, security or other interest in the company or any Subsidiary by any person ("**Acquirer**"), whether that person has acquired an existing share, security or other interest or not, be approved by that Gaming Authority prior to such acquisition:
- (i) the Acquirer must not acquire the share, security or other interest until the relevant Gaming Authority approval has been given in respect of the Acquirer; and
 - (ii) the Acquirer must not directly or indirectly exercise or be permitted to exercise any rights in respect of the share, security or other interest, unless, in the meantime, that Gaming Authority permits the acquisition of the share, security or other interest, subject to the satisfaction of any condition prescribed by that Gaming Authority ("**Conditional Acquisition**"). A Conditional Acquisition may only occur in accordance with the conditions authorised by the relevant Gaming Authority; and
 - (iii) an Acquirer must be notified to that Gaming Authority prior to the completion of that acquisition (including any Conditional Acquisition), and the provisions of rule 15.2(b) are applicable to the Acquirer until all material and prescribed particulars of the Acquirer and such acquisition have been notified in writing to that Gaming Authority, and

if applicable all conditions forming part of the Conditional Acquisition, have been unconditionally performed to the satisfaction of, or waived by, the relevant Gaming Authority.

- (c) If a required approval from a relevant Gaming Authority or a condition imposed by a relevant Gaming Authority is not obtained or satisfied, as the case may be, on terms and conditions acceptable to the company, within:
 - (i) the period required by the directors; or
 - (ii) where applicable, the period, if any, specified in the conditions forming part of the Conditional Acquisition, whichever occurs earliest,

then the Conditional Acquisition shall thereupon lapse.

15.3 Directors not liable

- (a) The company and the members acknowledge and accept that, notwithstanding that the exercise of the powers given to the company by the constitution may cause individual members material financial disadvantage, such a result is necessary, appropriate and reasonable to preserve the value of the Licences or investments in the company and any Subsidiary or other corporation or person that holds or may hold a Licence.
- (b) In exercising the powers under this rule 15, the company is entitled to have sole regard to the interests of the company and its Subsidiaries and may disregard any loss or disadvantage that may be suffered by individual members affected by the exercise of those powers. Members acknowledge that they have no claim, entitlement or right of action against the company, any Subsidiary or any of their respective officers for any loss or disadvantage incurred by them as a result, whether directly or indirectly, of the company, or any of its officers on behalf of the company, exercising the powers under the constitution.

15.4 Right to request information

- (a) The company may give notice to a member requiring the member to provide to the company information, as specified in the notice, which in the reasonable opinion of the company is necessary to determine the eligibility of the member to continue to hold any share, security or interest in the company having regard to the Gaming Laws, the conditions attached to any Licence, the maintenance in good standing of all Licences and the provisions of rule 15.3(b), and to verify the information by statutory declaration or such other evidence as the company reasonably requests ("**Information Request Notice**").
- (b) A member who has been given an Information Request Notice must furnish to the company the information and material (including a statutory declaration, if requested), in the form requested under the Information Request Notice within 28 days (or such longer time as the directors notify) of receiving the Information Request Notice ("**Information Response**").

15.5 Disposal Notice

If:

- (a) an Information Response is not received by the company within the nominated time in accordance with rule 15.4(b), and the directors form the view that the member is or is likely to be or become, ineligible to hold some or any of the shares, securities or other interests in the company that are registered, or proposed to be registered, in its name, within the meaning of rule 15.2(a);
- (b) an Information Response is received by the company within the nominated time in accordance with rule 15.4(b) and that member is, or is likely to be or to become, ineligible to hold some or any of the shares, securities or other interests in the company that are registered, or proposed to be registered, in its name, within the meaning of rule 15.2(a);
- (c) shares, securities or other interests were acquired in breach of rule 15.2(b);
- (d) a Conditional Acquisition lapses in accordance with rule 15.2(c); or
- (e) a person becomes ineligible to hold or continue to hold shares, securities or other interests in the company pursuant to rule 15.2(a),

the company may give a written notice to that member ("**Disposal Notice**") which:

- (f) sets out the rule of this constitution under which the notice is given;
- (g) sets out particulars of the grounds on which the notice is given; and
- (h) states that, unless the member satisfies the company within 14 days of the date of the giving of the notice (or such longer period as stated in the notice) that the company should not give effect to the notice, the company may dispose of the member's shares, securities or other interests in the company, or such number of them as are specified in the notice, unless the member within 30 days of the date of the giving of the notice, or such longer period as stated in the notice ("**Disposal Period**"), has:
 - (i) disposed of those shares, securities or other interests; and
 - (ii) given a statutory declaration to the company and such other evidence as the company reasonably requests, that confirms the occurrence of such disposal and discloses all material particulars of the disposal including the identity of the person or persons who acquired those shares, securities or other interests and any current or proposed relationship, interest or association between the member and any such transferee.

15.6 Company may sell or buy-back

If the member who has been given a Disposal Notice does not comply with the Disposal Notice within the Disposal Period ("**Disposing Member**"), then the company may dispose of all or any of the shares, securities or other interests the subject of the Disposal Notice ("**Disposal Securities**") by selling the Disposal Securities, or by buying-back the Disposal Securities in accordance with the Act. For that purpose, the directors may appoint such persons as they determine, on behalf of the Disposing Member, to execute any documents, carry out and give effect to the sale or buy-back and transfer of the Disposal Securities and to receive and to give good discharge for the purchase price of the Disposal Securities.

15.7 Sale of Disposal Securities quoted on ASX

- (a) If the company decides that any of the Disposal Securities are to be sold pursuant to rule 15.6 and if the Disposal Securities are quoted on ASX at the time of their disposal, until those Disposal Securities have been sold, such Disposal Securities may be sold on market or off market as the company in its sole discretion decides, but in any event in accordance with the following rules:

Sale on market

- (i) if the Disposal Securities are sold on market then they must be sold in the ordinary course of trading having regard to the number of Disposal Securities (at such times as the directors may decide in their absolute discretion) on ASX within 30 trading days following expiry of the Disposal Period or within such longer period, if any, as the directors may determine having regard to the number of Disposal Securities and any unusual circumstances including but not limited to volatility, any suspension of the shares in the company, lack of turnover on ASX or such other special circumstances, if any, as the broker appointed to give effect to the sale of the Disposal Securities may notify to the company in writing provided that the selling price on any day will not be less than 95% of the Volume Weighted Average Market Price of a share in the company sold on ASX during the 5 days on which sales of the company's shares were recorded preceding the relevant sale of any of the Disposal Securities; or

Sale off market

- (ii) if the Disposal Securities are sold off market, then the purchase price will not be less than the Volume Weighted Average Market Price of a share in the company sold on ASX during the Disposal Period. In that case, the Disposal Securities may be disposed within 30 trading days following expiry of the Disposal Period or within such longer period, if any, as the directors may determine having regard to the number of Disposal Securities and any unusual circumstances including but not limited to volatility, any suspension of the shares in the company, lack of turnover on ASX or such other special circumstances, if any, to such persons as the directors in their sole discretion decide.

15.8 Sale of Disposal Securities not quoted on ASX

- (a) If the company decides that any of the Disposal Securities are to be sold pursuant to rule 15.6 and if the Disposal Securities are not quoted on ASX at the time of their disposal, until those Disposal Securities have been sold, such Disposal Securities may be sold as the company in its sole discretion decides, but in any event in accordance with the following rules:

Private treaty

- (i) by private treaty to such third parties as the company decides in which event the price for the Disposal Securities shall be the price determined in accordance with rules 15.10(a) to 15.10(d), and the Disposal Securities must be sold within 30 days following determination of the price, or within such longer period, if any, as the directors may determine having regard to the number of Disposal

Securities and any other matters that the directors wish to consider;
or

Auction

- (ii) by auction in which event the price and procedure for sale shall be determined as follows:
 - (A) the Disposal Securities must be offered for sale by public auction not more than 10 weeks after expiry of the Disposal Period;
 - (B) the sale must be advertised not less than 14 and not more than 21 days before the day appointed for the sale in a daily newspaper circulating generally in Australia;
 - (C) the directors may fix a reserve price being not less than the amount calculated by them in the manner described in rules 15.10(a) to 15.10(d);
 - (D) if a bid at least equal to the reserve price so fixed is not received, then the Disposal Securities may be withdrawn from sale;
 - (E) a Disposal Security so withdrawn from sale or for which no bid is received at the sale may, at the discretion of the directors:
 - (1) be disposed of in such manner and for such price as the directors in their sole discretion decided provided that the price is no less than the amount calculated by them in the manner described in rules 15.10(a) to 15.10(d); and
 - (2) may be bought-back by the company within a reasonable time following the date fixed for the auction for a price equal to the reserve price referred to in rule 15.8(a)(ii)(C) if fixed.

15.9 Buy-back procedure

- (a) If the company decides that any of the Disposal Securities are to be bought-back pursuant to rule 15.6, then:
 - (i) if the Disposal Securities are quoted on ASX at the time they are to be bought-back, the purchase price for the Disposal Securities to be bought-back will be the Volume Weighted Average Market Price of a share in the company sold on ASX during the Disposal Period; or
 - (ii) if the Disposal Securities are not quoted on ASX at the time they are to be bought-back, the purchase price for the Disposal Securities to be bought-back will be the price calculated in accordance with rules 15.10(a) to 15.10(d).

- (b) The company must buy-back the Disposal Securities in compliance with the Act within a reasonable period following determination of the buy-back price determined under rule 15.9(a).

15.10 Price to be determined by Auditor

- (a) If rules 15.8(a) or 15.9(a)(ii) applies, the company must request the Auditor to determine the price of the Disposal Securities in accordance with rule 15.10(b).

- (b) The price of the Disposal Securities shall be the greater of the following:

Fair Market Value

- (i) the value determined by the Auditor as the fair market value of the Disposal Securities which are to be sold or bought-back, on the basis of what a hypothetical, prudent, willing, but not anxious informed purchaser would be prepared to pay to a willing, but not anxious, informed vendor. The Auditor shall have regard to such factors as it believes are necessary to determine the fair market value including, but not limited to, the future maintainable earnings of the company, the nature and timing of future cash inflows and outflows and the discount factor to be applied to those cash flows, the price and quantity at which shares have been traded and the number of Disposal Securities to be sold; or

Based on Members' Funds

- (ii) in relation to ordinary shares, the number of Disposal Securities to be sold, multiplied by Members' Funds, divided by the total number of shares on issue as determined by the Auditor.

- (c) For the purposes of rule 15.10(b)(ii) **Members' Funds** means the aggregate of:

- (i) the amount paid up or credited as paid up on the issued share capital of the company (excluding the amount paid up or credited as paid up on any shares or other security issued by the company which give an entitlement to the holder to require their repurchase or redemption by the company); and
- (ii) the amount standing to credit (or debit) of the capital and revenue reserves of the company (including but not limited to amounts standing to the credit of capital reserves and revenue reserves and retained profits or losses),

less the value of all intangible assets (including goodwill, trade names, patents, future income tax benefits, underwriting and formation expenses, and other items of like nature).

- (d) The Auditor must determine the purchase price within 14 days following receipt of the request in rule 15.10(a). The determination of the Auditor, who shall act as an expert and not as an arbitrator, shall be final and binding on the company and the member.

15.11 Sale proceeds

The proceeds of the sale or buy-back of the Disposal Securities must be applied as follows:

- (a) first, in meeting all and any reasonable expenses of the sale or buy-back including, but not limited to, brokers' fees, legal costs of the sale and the costs of determining the price of the Disposal Securities; and
- (b) the balance (if any) must be paid to the member whose Disposal Securities have been sold or bought-back.

15.12 Suspension of dividend and voting rights

- (a) All dividend and voting rights and any rights of participation or any right to compensation or remuneration in respect of any Disposal Securities shall be suspended immediately upon the issue of a Disposal Notice and shall remain suspended until the relevant Disposal Securities are sold or the reason for the giving of the Disposal Notice ceases to exist, as the case may be.
- (b) Any purchaser of the Disposal Securities shall not be entitled to any dividend which may have been declared unless the consideration for the sale takes account of the dividend (whether before or after the Disposal Notice) on the Disposal Securities but which has not been paid to the Disposing Member by reason of this rule 15.12.
- (c) Any such dividend shall be paid to the selling member unless the payment would contravene a Gaming Law or a Gaming Authority has, exercising a discretion under a Gaming Law, prohibited such payment in which event such dividend shall be deemed to be cancelled.

15.13 Position of purchaser

A person to whom Disposal Securities are sold or otherwise disposed of in accordance with this rule 15 is not bound to see to the regularity or validity of or to the application of the purchase money or consideration for any Disposal Securities and the title of such person to the Disposal Securities is not affected by any irregularity or invalidity in the exercise of any of the powers referred to in this rule 15 by the company.

15.14 Overriding provisions

The provisions of this rule 15 and rule 16 apply notwithstanding any other provision of the constitution, other than rule 1.2(c). All other provisions of this constitution are to be read subject to this rule 15 and rule 16, other than rule 1.2(c).

16 Gaming Authority Requirements – Directors

- (a) If it is a requirement of a Gaming Authority or a Licence that the appointment or election of:
 - (i) any person ("**Applicant**") to the office ("**Office**") of director, secretary or any other officer of the company or of a Subsidiary must be approved by that Gaming Authority prior to such appointment or election:

- (A) the Applicant must not be appointed or elected to that Office;
- (B) the Applicant must not occupy or act in the position of that Office;
- (C) the Applicant must not directly or indirectly exert or be permitted to exert influence as if appointed or elected to that Office; and
- (D) the Applicant, if proposed to be appointed or elected a director of the company or of any of its Subsidiaries, shall have no standing with the board of directors of the company or the relevant Subsidiary,

until the relevant Gaming Authority approval has been given in respect of the Applicant unless, in the meantime, that Gaming Authority permits the conditional appointment or election of the Applicant to that Office. In the case of a conditional appointment or election:

- (E) the Applicant is only appointed or elected on the conditions (if any) prescribed by the relevant Gaming Authority; and
 - (F) the Applicant may be paid a consultancy fee as remuneration for their services, the amount of which is to be determined by the directors, but, if the Applicant is intended to be a non-executive director, the amount may not, when added to the amounts payable to all other directors, exceed the sum determined by the company in general meeting for the purposes of rule 7.3(a); and
- (ii) an Applicant to an Office must be notified to that Gaming Authority prior to such appointment or election, the provisions of rule 16(a)(i)(A) to 16(a)(i)(D) (inclusive) are applicable to the Applicant until such appointment or election has been notified to that Gaming Authority.
- (b) If a required approval from a relevant Gaming Authority or a condition imposed by a relevant Gaming Authority is not obtained or satisfied, as the case may be, on terms and conditions satisfactory to the company, within:
 - (i) the period required by the directors; or
 - (ii) where applicable, the period, if any, specified in the conditions forming part of the conditional appointment, whichever occurs earliest,

then the conditional appointment or election shall thereupon lapse.

- (c) If any person ("**Officer**") is appointed or elected to any Office (including, without limitation, a conditional appointment or election as envisaged in rule 16(a)(i), that appointment immediately terminates and the relevant Office immediately and automatically becomes vacant, without any obligations on the company or any Subsidiary to compensate the Officer for that loss of Office, if and when:

- (i) the company or a Subsidiary receives a written notice from any Gaming Authority, which constitutes a Final Determination of that matter, to the effect that the Officer is:
 - (A) required to resign from the relevant Office;
 - (B) not a fit or proper person to hold the relevant Office;
 - (C) not a person who is suitable for licensing, registration or qualification by that Gaming Authority; or
 - (D) not a person who is suitable for association with the company or a Subsidiary; or
 - (ii) directors form the opinion that the Officer would or may:
 - (A) jeopardise the grant, issue, maintenance, holding or continuation to or by the company or any Subsidiary of any Licence, registration or qualification;
 - (B) cause the imposition or amendment of any term, condition or requirement of a Licence or to the grant or issue of a Licence that is, in the opinion of the directors, materially adverse to the interests of the company or any Subsidiary;
 - (C) jeopardise the satisfaction of any conditions attaching to any Licence, registration or qualification; or
 - (D) cause a Licence, registration or qualification, or the continued validity of a Licence, registration or qualification, to be revoked, suspended, not issued or otherwise adversely affected.
- (d) Following a termination under rule 16(c):
- (i) the Officer must not be re-appointed to that or any other Office;
 - (ii) the Officer must not occupy or act in the position of that or any other Office;
 - (iii) the Officer must not directly or indirectly exert or be permitted to exert influence as if appointed or elected to that or any other Office,
- unless and only to the extent that the relevant notice from the Gaming Authority has been withdrawn, revoked or overturned on terms satisfactory to the directors.
- (e) An Officer must immediately resign his or her Office if the Officer's appointment or position as an Officer, in the reasonable opinion of the directors, will or is reasonably likely to cause:
- (i) a contravention or a continuation of a contravention of any of the provisions of the Gaming Laws;

- (ii) the company or any Subsidiary to be denied the ability or right to apply for or be granted a Licence on terms and conditions that are acceptable to the company;
 - (iii) a Licence being revoked, suspended or not issued; or
 - (iv) the terms or conditions, rights or entitlements attaching to a Licence to be suspended, qualified or varied in any manner adverse to the current or prospective interests of the company or of any of its Subsidiaries.
- (f) Any appointment or election, or confirmation of appointment or election, of an Officer to any Office will be ineffective unless and until the Officer provides to the company an undated signed resignation by the Officer in respect of the Office in a form which acknowledges that that Officer will not have or acquire any right to compensation or benefit as a result of the loss of his Office for any of the reasons contemplated in this rule 16.
- (g) By providing the resignation to the company under rule 16, and without the need for any further authorisation, consent or permission of the relevant Officer, that Officer authorises the company to lodge that resignation at ASIC, any Gaming Authority and any other appropriate Government Authority in the circumstances set out in this rule 16.

New York State
Gaming Commission

Request for Applications for Mobile Sports
Wagering Platform Providers

PART 5 – OPERATORS

Empire Resorts, Inc.



August 2021

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The Applicant shall include a separate subdivision within Sub-Binder 1 for each Operator to be hosted, comprised of material required to be submitted in response to each section contained within this Part.

5.1 OPERATOR

The responsibilities, duties and requirements of an Operator are defined and determined, by context, in the draft regulation Part 5330, which has been included as Appendix A: Draft Regulation Part 5330.

The Operator acknowledges the obligations of the draft regulation Part 5330.

5.2 NUMBER OF OPERATORS TO BE HOSTED

The Applicant shall identify the number of Operators the Applicant proposes to host on the Applicant's Platform.

The Applicant will be using PointsBet to Host its platform and the PointsBet platform.

5.3 OPERATOR ORGANIZATION

For each Operator the Applicant proposes to host as part of this Application, the Applicant shall provide the full name of the Operator as it appears on such Operator's certificate of incorporation, charter or other official formation document, along with any D/B/A or trade names.

The Application shall include for each proposed Operator, information on the Operator consistent with that required for the Applicant pursuant to Sections 4.3 through 4.14 of Part 4 of this RFA.

Please see Exhibit A for Sections 4.3 through 4.14.

5.4 APPLICANT AS AN OPERATOR

If the Applicant intends also to be an Operator tied to the Application, the Applicant must identify itself as such.

The Applicant intends to be an Operator.

5.5 LICENSURE

Each Operator must be licensed as a Mobile Sports Wagering Licensee, separate from the Mobile Sports Wagering License issued to the Platform Provider. The standard for licensing shall be equivalent to that of a Casino Vendor Enterprise pursuant to PML Article 13 Title 4 – Enterprise and Vendor Licensing and Registration.

The Operator acknowledges its licensing obligations. All officers, directors or persons requiring a Key License have either been found suitable or have current Commercial Key Licenses.

5.6 ADVERTISING AND PROMOTIONAL PLANS

The Applicant shall provide detailed information demonstrating the marketing and promotion efforts proposed by its Operators, including:

- **estimated marketing budget;**
- **promotion and player loyalty programs;**
- **advertising plans;**

- **player acquisition models; and**
- **efforts to be undertaken to convert customers from wagering through unlicensed channels to wagering legally in the State.**

The Applicant shall provide examples and samples of marketing, advertising, and promotional activities recently undertaken in other jurisdictions by each of the proposed Operators in the Application.

Resorts World owns at least [REDACTED] of the commercial gaming and VLT market in New York State, and projects to be a competitive force in the mobile sports betting market share sector. Partnering with PointsBet who already operate the world's fastest mobile betting experience further solidifies Resorts World's ability to be fast to market. PointsBet is highly experienced and uniquely positioned in the sports betting market as its online mobile sportsbook platform is a proprietary managed technology across all elements, both front and back end. This makes for easy integration to Resorts World marketing systems and existing customer loyalty programs.

We will be integrating our loyalty scheme into the online offering to allow us to drive value and increase retention rates which will facilitate high levels of digital spend as we envisage best in class return on acquisition spend within the state.

We will also leverage our retail footprint in New York to host sports events and invite brand ambassadors to the property to promote the brand and drive online acquisition.

Bonus and Marketing tools available on the PointsBet Platform that we will look to deploy:

- **Promotions: Free Bets which are configurable by market, event, and customer segment group**
- **We offer these types of promotions which are configurable on a promotion by promotion basis.**
- **Odds Boosts configurable by market, event, and customer segment group.**
- **There are a wide range of bonuses available, with further functionalities being developed continuously, all of which are designed to address specific KPI's.**
 - Free Bet - Customer has not yet deposited money into his account, but instead is allowed to place a bet at the operator's expense.
 - Risk-free bet - Customer places a bet with his own money, but in case the bet is lost, the initial stake is refunded.
 - Multiplier (Win boost) - Net winnings can be boosted by a fixed percentage.
 - Our system makes it possible to use the above bonuses only on specific bet types and on specific odds ranges.
 - Bonus money - By making a deposit the customer can be rewarded with instant bonus money, that can be freely used in any product based on the pre-defined wagering requirements.
 - Pending bonuses allow to set certain criteria for getting any bonus automatically (e.g. wager X amount in order to get reward Y)
 - Campaign tools enable to set up:
 - Last man standing and suicide mechanic betting competitions
 - Highest odds competition where the person winning with the highest odds wins
 - Free-to-play Sports League where customers predict the outcomes of matches collect points, and get bonuses as rewards.
- **Free-to-play quiz where customers are rewarded with bonuses**
- **On-site features include:**
 - Incoming bets - Live feed of all incoming bets which can further be filtered by country, sports, bet type and so on. If a customer sees a bet that he likes, it can easily be translated to his or her bet slip with 1 simple click.
 - Game of the Day - A daily highlighted game which also has a Boring Game guarantee. If it ends in overtime or a tie, the initial stake (up to a predefined amount) is returned to the player in case the bet was lost. This mechanic can easily be configured to accommodate low scoring games.

- Winners feed - showcases live all sports bets & wins on a map.
- Daily Winners Leaderboard

Player Acquisition Models

Resorts World will pursue a granular and comprehensive segmentation strategy in not only acquiring new customers but managing them effectively over the entire life-cycle. Customer and Product Segmentation will inform the narrative to ensure relevancy around the customer's product segmentation.



Conversion to licensed channels in New York

Resorts World Bet will have clear and consistent language regarding responsible gaming. There will be a responsible gaming section allowing mobile bettors to set play limits, close account, and temporarily and permanently exclude oneself. Resorts World Bet will also educate sports gamblers about the risks associated with unlicensed/unregulated betting. All direct and external media advertising for Resorts World Bet will contain the New York State gaming messaging. For example:

DON'T TAKE THE UNDER.*

*Underground gambling establishments are a high security risk. This format is running on a secure platform and regulated by the state of New York.



The intention is to become the safest and most trusted brand to play with. Resorts will allow online customers 24/7 customer support and the ability to come into one of its properties to speak to its sports team and use any method of depositing and withdrawing from their account. By using the most reliable payment technologies and coupling this with our physical presence, we believe customers will prefer the Resorts brand to unlicensed options.



RESORTS WORLD BET

MARKETING PLAN

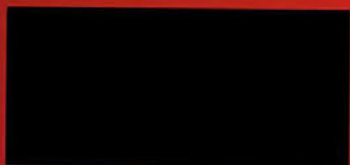


THE VIEW FROM OUR STADIUM

It's almost game time for Resorts World Bet. Whether you prefer slots, table games, sports betting or mobile betting, Resorts World is the place to play.

Everyone wins at Resorts World and team members are encouraged to treat all players as winners. Resorts World New York State is better than ever as we offer a diversified platform, whether you game by plane, train, automobile, sea or at home on your mobile phone.

OUR STATS



6,000

square feet land-based
Sportsbook 360

30

Sports betting kiosks on
the casino gaming floor

THE PLAYBOOK

1ST



VLT property
10 years of experience

2ND BASE



Commercial gaming
3 years of experience

3RD BASE



VLT property
Coming soon

HOME RUN

Resorts World Bet: On deck

WE KNOW:

Those who reside in the state of New York have a long life admiration for sports and wagering.

New Yorkers participate in mobile wagering while visiting other surrounding states such as New Jersey and Pennsylvania and 15 others across the nation.

Resorts World has operated the largest VLT casino in New York for ten years and has a three year history of operating a commercial gaming facility with a combined database of guests who play table games, slots, poker, and place bets at Sportsbook 360.

Resorts World New York City and Catskills own a [REDACTED] that reside in and around the state of New York. The new Hudson Valley property is projected to have [REDACTED] after the first year.

There are cross market synergies between table games, poker, racing, and sports wagering at land-based properties which would support a Resorts World Bet.

Resorts World Bet will complement the already established 6,000 square foot land-based Sportsbook 360 with thirty-two jumbo flat screen TVs and a 9' x 16' high-definition screen, two teller windows, and thirty sports betting kiosks across the gaming floor at Resorts World Catskills.

Resorts World has contributed over \$3 billion to the state education fund and having another form of gaming would further contribute to the state of New York and the local community.



WE MUST:

Utilize our [REDACTED] to make New Yorkers aware that Resorts World now offers mobile sports betting (Resorts World Bet) in addition to already offering on site betting at the Resorts World Catskills property through direct mail, eblasts, on the existing Resorts World app, text messaging, and in house signage. Resorts World will integrate technology and key marketing strategy to keep New York at the forefront of innovation

when it comes to mobile sports betting.

Educate all New Yorkers that they no longer need to leave their state in order to participate in mobile sports betting. Resorts World Bet will do this through a very robust media campaign and budget to include digital, social, outdoor, newsprint, radio, print, and TV advertising.

Directly target known sports betting database customers to let them know that they can also utilize our new Resorts World Bet app when bettors are unable to make a trip to the land- based Sportsbook 360 at Resorts World Catskills.

Resorts World will create interesting marketing calendars, promotions, and reinvestment strategies as well as a dedicated loyalty program to encourage frequent visits to Resorts World Bet.

Let it be known that Genting is an 18 billion dollar global conglomerate company that thrives in the leisure, entertainment, and hospitality sector. As the world's leading luxury provider, Genting has earned more "World's Best" awards than any other company in history. The enterprise is hyper focused on expanding its already robust digital strategy globally. Our New York location remains at the core of our organization and therefore Genting will heavily invest in New York State to ensure Resorts World Bet is a monumental success.

Genting highly respects the position and work of the New York State Lottery and Gaming Commission. Complying with these regulatory bodies has always been a top priority. Genting will continue to coordinate and communicate with the Gaming Commission to ensure adherence as it relates to Responsible Gambling and our Responsible Play Partnership.



VISION



Resorts World is a well-established and known entertainment and lifestyle brand and by connecting mobile online experiences with land-based experiences (hotel stays, concert, shows and sports event attendance, fine dining, nightlife etc.)

Resorts World Bet will have the foundation for quick growth and success.



RESORTS WORLD NEW YORK STATE

3 IS BETTER THAN 1

Our three properties in New York (Resorts World New York City, Catskills, and soon to open Hudson Valley) will leverage all three databases and cross market to solidify our position

as being the place where gamers play. Resorts World Bet will be able to leverage trip frequencies and visitation patterns with both mobile bettors and land-based players.



ABOUT RESORTS WORLD BET

Resorts World will partner with PointsBet on Resorts World Bet app development and sports betting management to leverage the customer experience with proprietary technology to offer the worlds fastest betting experience.

Resorts World Bet will showcase all of the leading sports teams, college teams and live highlights. For instance, during Super Bowl, the banner will feature Big Game Day specific messaging.

Resorts World Bet will offer simple instructions for how to place your bets for new users, including parlays, fiddle in the middle, straight bets, top line bets, teasers, etc.

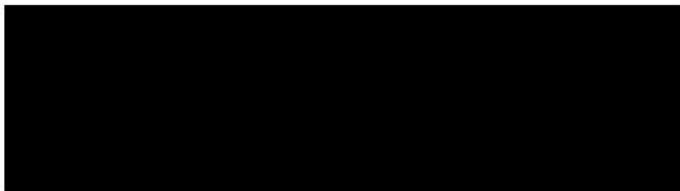
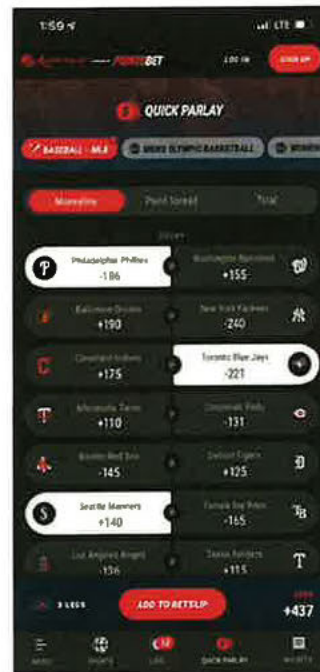
Resorts World Bet will offer easy functionality to build player profiles and fund accounts through bank accounts or credit cards.

Player profile will include personal details, active bets, settled bets, and transaction history.

Mobile bettors will be able to set up notification preferences, change passwords, verify email and phone (for security purposes), and be able to receive W2G forms electronically.

The layout will be organized by favorites based on previous betting, by location (NY), all sports and then broken out by teams, schedules and odds.

A page will be dedicated to results and stats.



ABOUT POINTSBET

SPORTS BETTING PLATFORM

PointsBet is uniquely positioned in the sports betting market, as its online and mobile sportsbook platform. The platform employs a modern code base and is a proven technology in the US sports betting marketplace including across peak days such as the Superbowl in high volume markets. PointsBet's technology and development teams facilitate agile, custom, quick to market innovation, including all technical regulatory requirements. PointsBet's mobile products include Apple iOS and Android apps, tablet, desktop, as well mobile sign up, in-person account registration (where required), and

deposit/withdrawal software. PointsBet offers cutting-edge Cloud based services, with no third-party software dependencies.

PointsBet offers multi-lingual support, and is one of the only US sportsbook operators to offer a full Spanish language version. Single app sign on is the optimal experience for users who may travel between states where PointsBet operates and is inclusive of single wallet functionality.

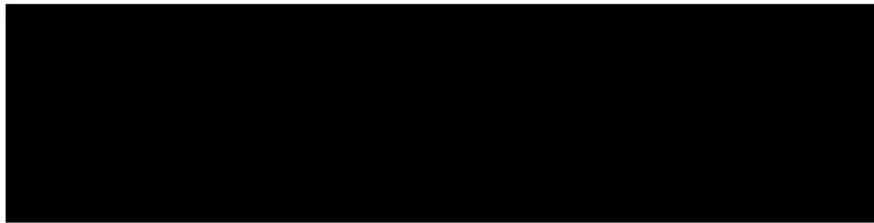
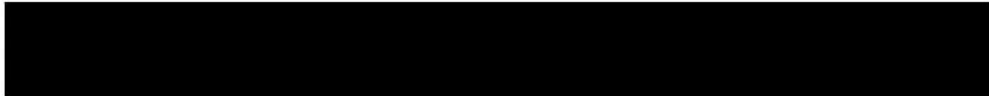
The PointsBet Product & Technology team are continually developing enhancements and features to bring bettors the fastest betting experience in the market. Recent online and mobile platform improvements include an easily accessible bet slip at bottom menu bar, a quick parlay builder feature, pending & settled bets in one location for ease of player review.

PointsBet's sportsbook platform consists of multiple application engines, data engines, and databases across a physical data center and the Azure cloud. All critical pieces of the system, including data engines, databases (for players, wallet, transactions) and feeds data reside in a physical data center.

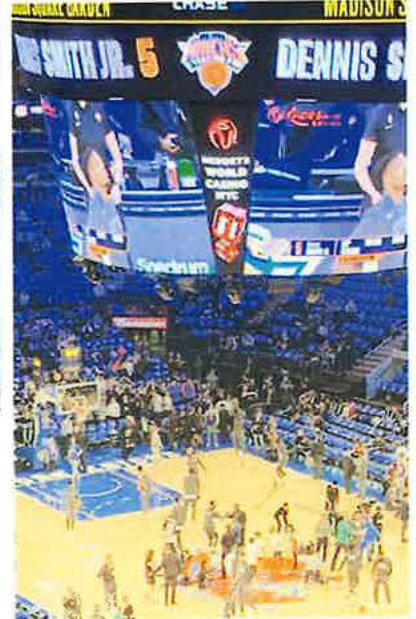


AWARENESS THROUGH MEDIA ADVERTISING

Genting is highly invested in the state of New York and has spent [REDACTED] in dedicated media advertising to support gaming and hospitality in the Empire state.



**AWARENESS THROUGH MEDIA
ADVERTISING**



AWARENESS THROUGH DIGITAL ADVERTISING



SPORTSBOOK 360 **BET ON SPORTS**
LEARN MORE
Resorts World CATSKILLS
GAMBLING PROBLEM? CALL 877-8-HOPENY OR TEXT HOPENY (467369) MUST BE 21 OR OVER TO GAMBLE.

SPORTSBOOK 360 You can bet on it!
GET YOUR GAME ON
Resorts World CATSKILLS
GAMBLING PROBLEM? CALL 877-8-HOPENY OR TEXT HOPENY (467369) MUST BE 21 OR OVER TO GAMBLE.

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SPORTSBOOK 360
YOU BET. GAME ON.
With Incredible Odds!
VIEW OUR ODDS
Resorts World CATSKILLS
GAMBLING PROBLEM? CALL 877-8-HOPENY OR TEXT HOPENY (467369) MUST BE 21 OR OVER TO GAMBLE.

Hudson Valley's Only
SPORTS BETTING
SPORTSBOOK 360
LEARN MORE
Resorts World CATSKILLS
GAMBLING PROBLEM? CALL 877-8-HOPENY OR TEXT HOPENY (467369) MUST BE 21 OR OVER TO GAMBLE.





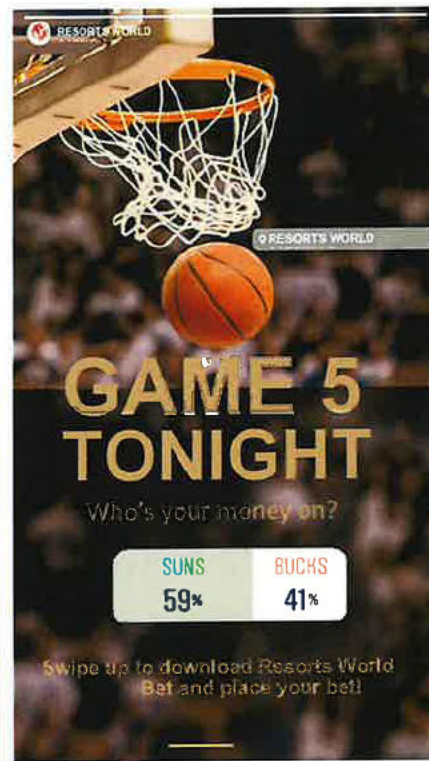
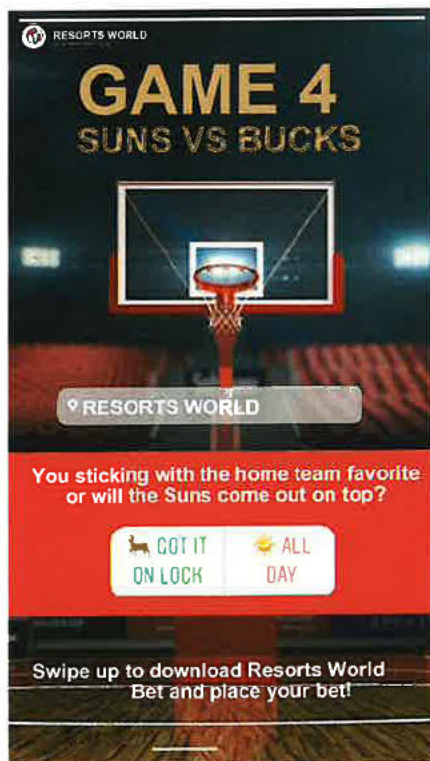
SOCIAL MEDIA STRATEGY

BE SOCIAL.

Engage our audience around large sporting events.

Talk about odds, Resorts World Bet promotions and offers.

Strengthen brand image and generate Resorts World Bet advocacy. Drive traffic to Resorts World Bet, convert new app downloads.



PUBLIC RELATIONS STRATEGY

MAKE NEW FRIENDS.

Media alerts, press releases, wire releases (cool catchy creative that can be easily pulled to run as an ad).

Interviews with on property sports betting experts.

Explore broadcast integrations like NBC and PIX11.

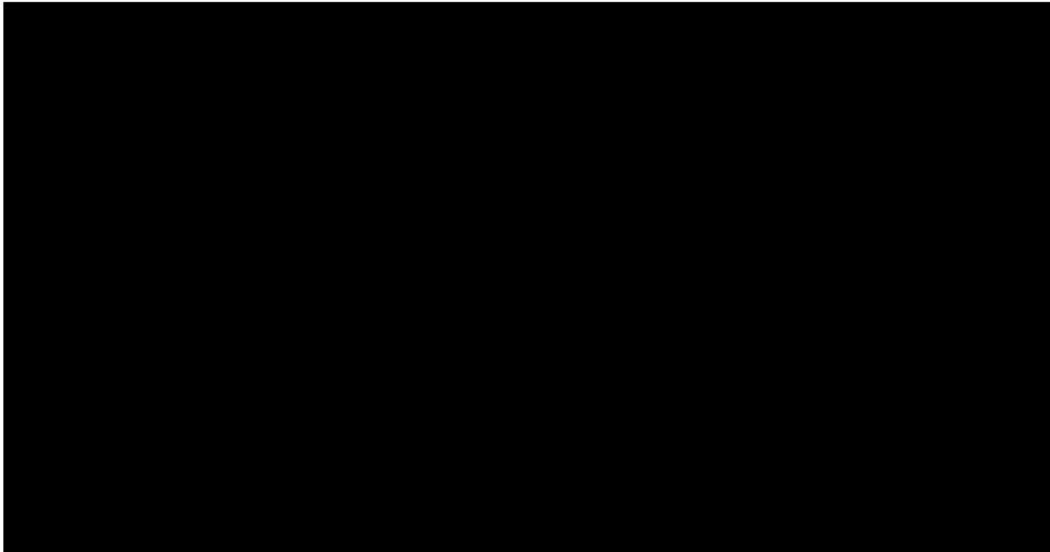
Live remotes through radio stations, in studio interviews, talk sports podcasts.



CORE TARGET CONSUMERS

Leveraging the omni channel position and massive footprint in New York, Resorts World Bet will build real, scalable customer retention through emotional connection with prospective and existing customers. Winning fair share of market will require focus and distinction not participation in the race to the promotional bottom driven by never- ending battles over competitor offers.

Both prospective customer awareness and existing customer engagement will be achieved through sports sponsorship and activation. Television creative in tight synchronization with paid social, display, and content marketing campaigns will develop the Resorts World experience narrative to build brand consideration. SEM, SEO, paid social, and re-targeting efforts will drive successful conversion.



GROWING THE MARKET SHARE

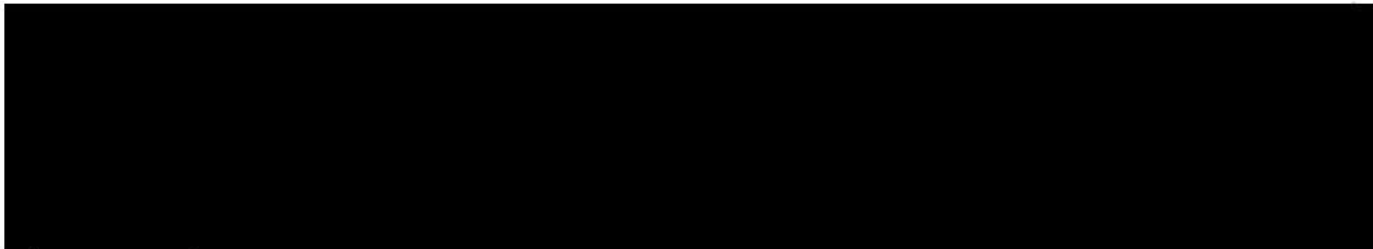
NEW YORK STATE ELIGIBLE GAMBLERS

We are the hometown team with over 3,000 current employees on the ground. Resorts World is uniquely positioned to dominate the New York City & New York State markets, due in part to being the only competitor in New York State with three gaming properties.

AGE	MALE	FEMALE	TOTAL ELIGIBLE GAMBLERS IN NY
21+	6,873,115	7,607,476	14,480,591
	47%	53%	

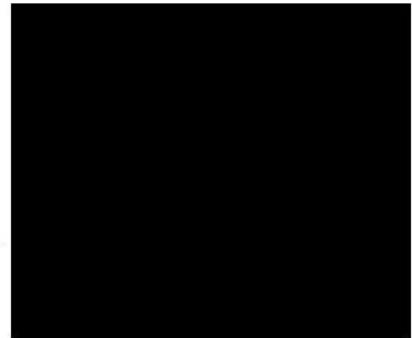


MARKET SHARE PROJECTIONS



INCREASING DATABASE GROWTH AND REVENUE PROJECTIONS.

Resorts World estimates a growth of [redacted] [redacted] over a four year period.

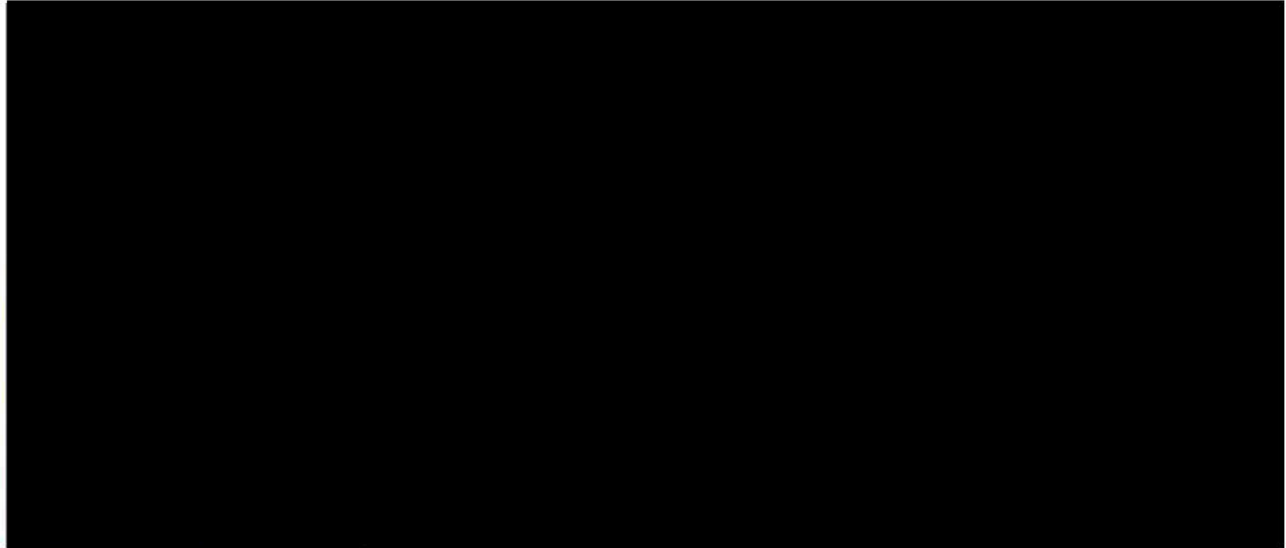


SEGMENTATION STRATEGY

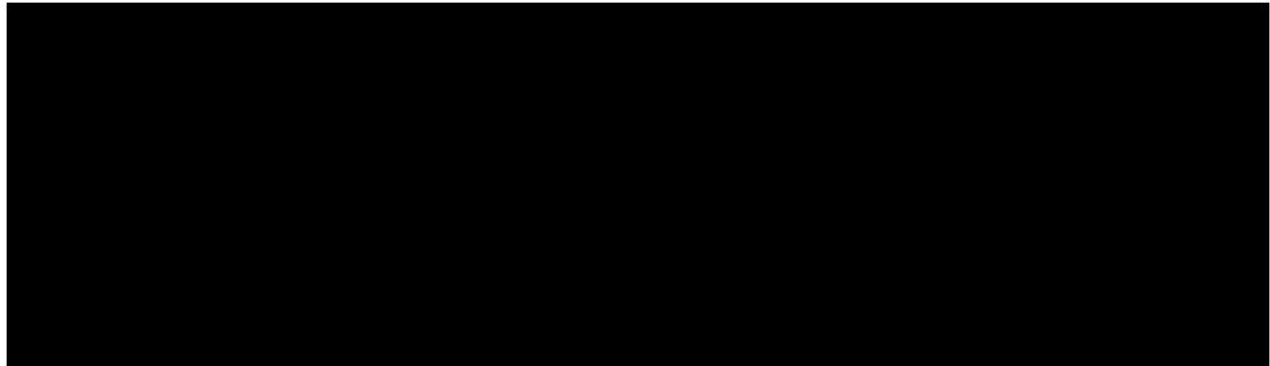
PRODUCT SEGMENTATION



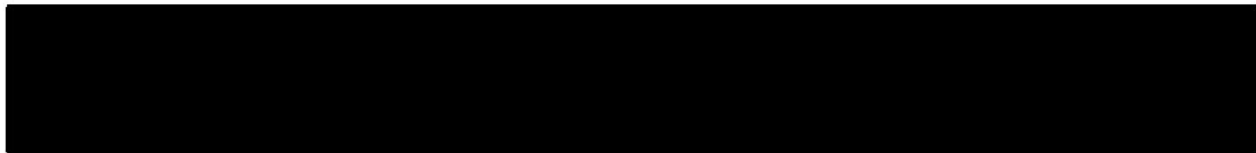
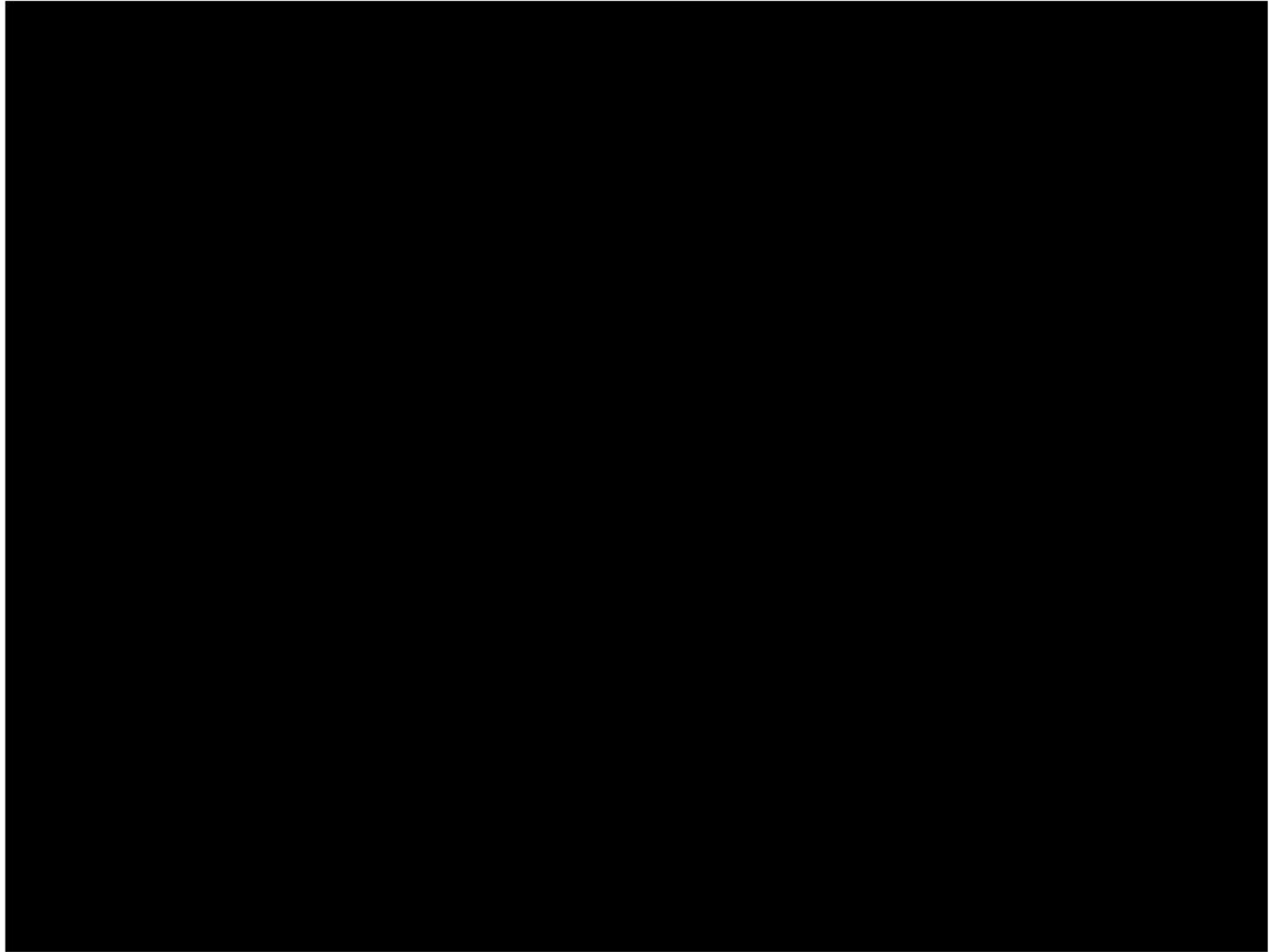
CUSTOMER LIFE CYCLE SEGMENTATION



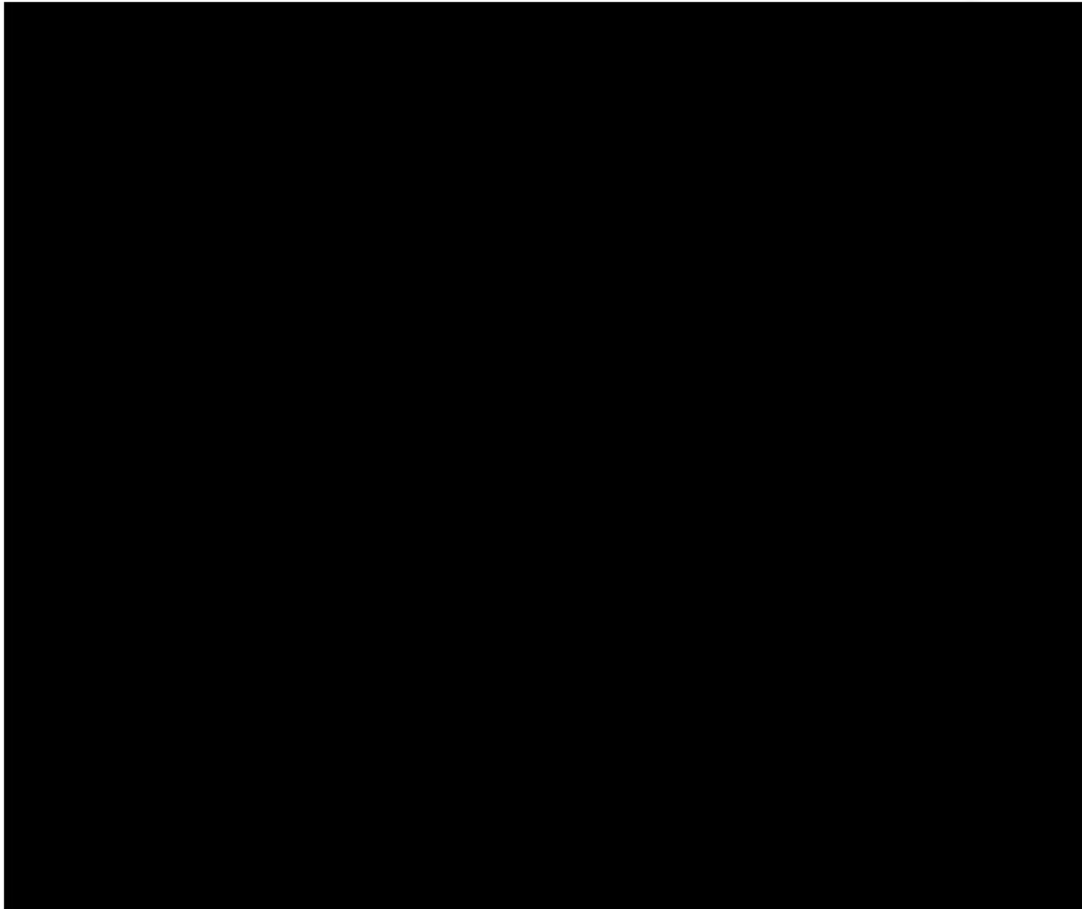
BEHAVIORAL MODELING



RFM MODEL



CAMPAIGN SEGMENTATION BY LIFE CYCLE





GENTING REWARDS

Resorts World Bet will offer enrollment to the Genting Rewards loyalty program to all digital customers.

REWARDS POINTS

Mobile bettors will have the ability to earn points that will be redeemable for land-based food and beverage offers.

TOKENS

Mobile bettors can earn tokens that can be utilized towards gaming on Resorts World Bet.

CARD LEVEL

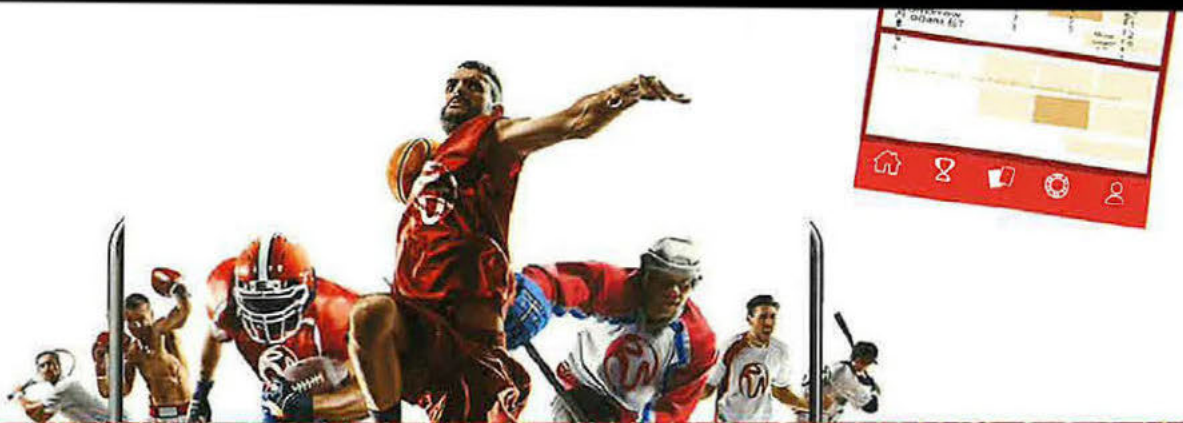
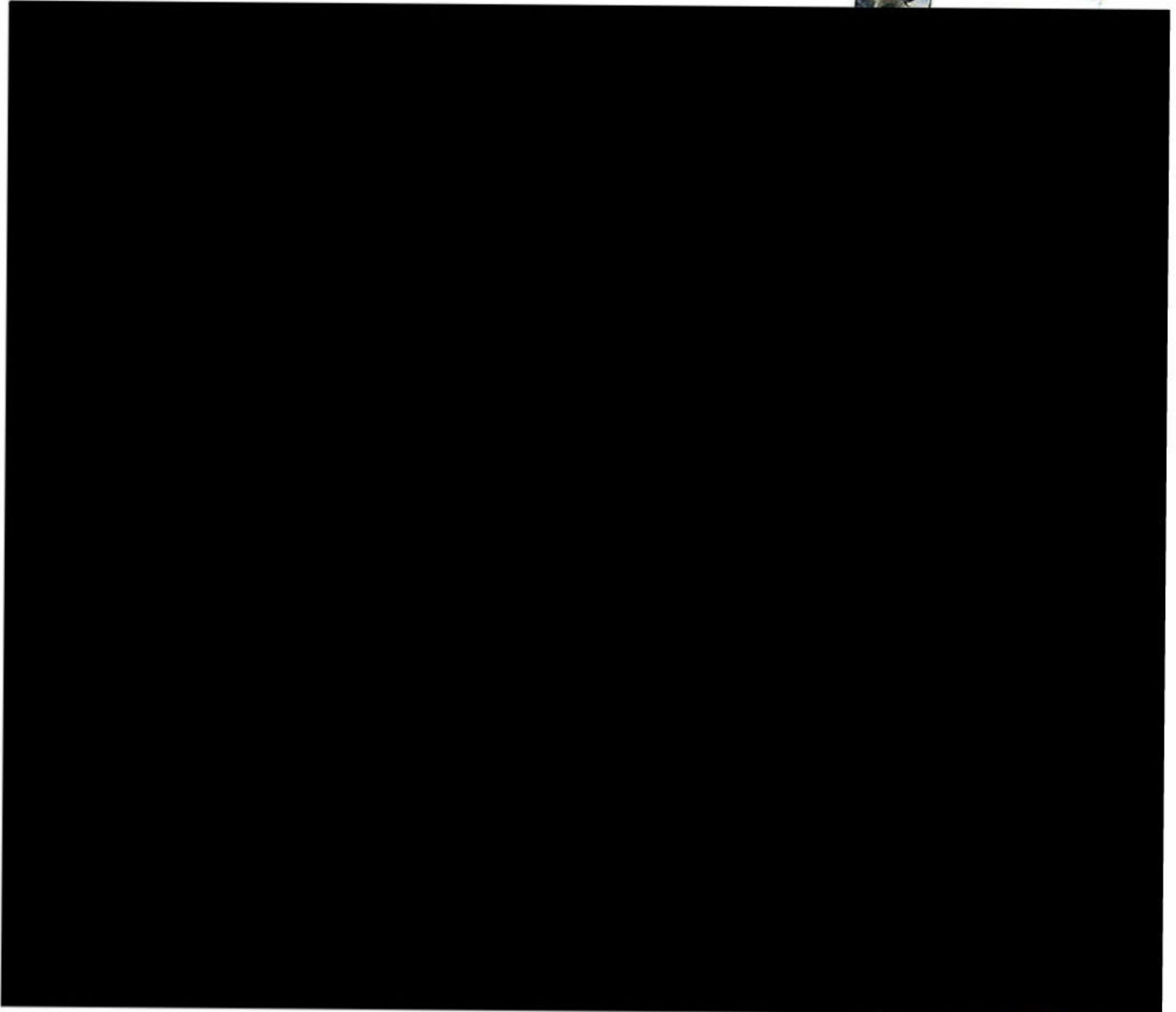
By playing on Resorts World Bet, mobile bettors will be able to earn towards their status that will lead to room offers, special event invites, and more.

CREATE VALUE

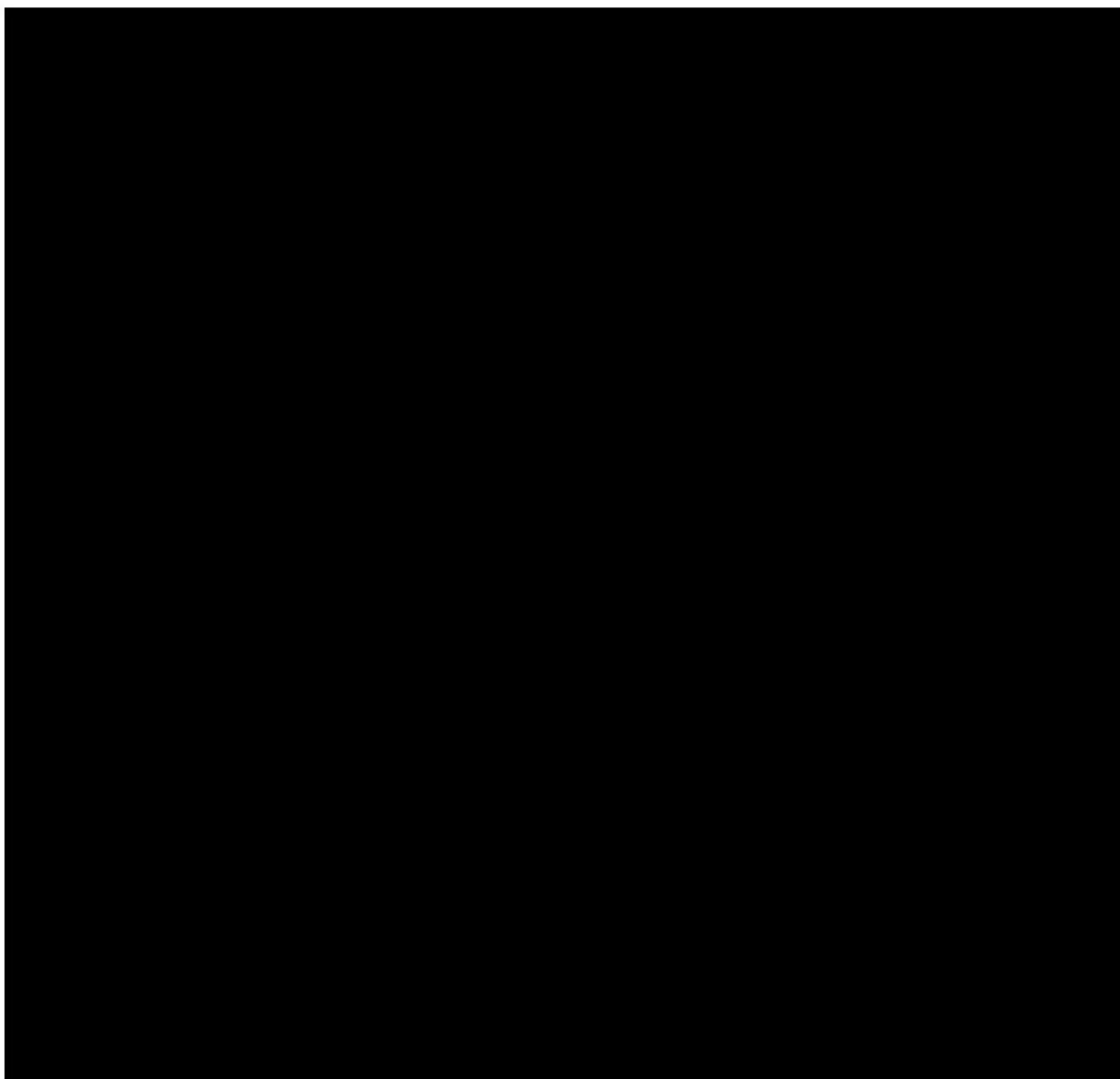
An exclusive mobile referral program where mobile sports bettors can introduce new mobile bettors to Resorts World Bet for introductory token offers.



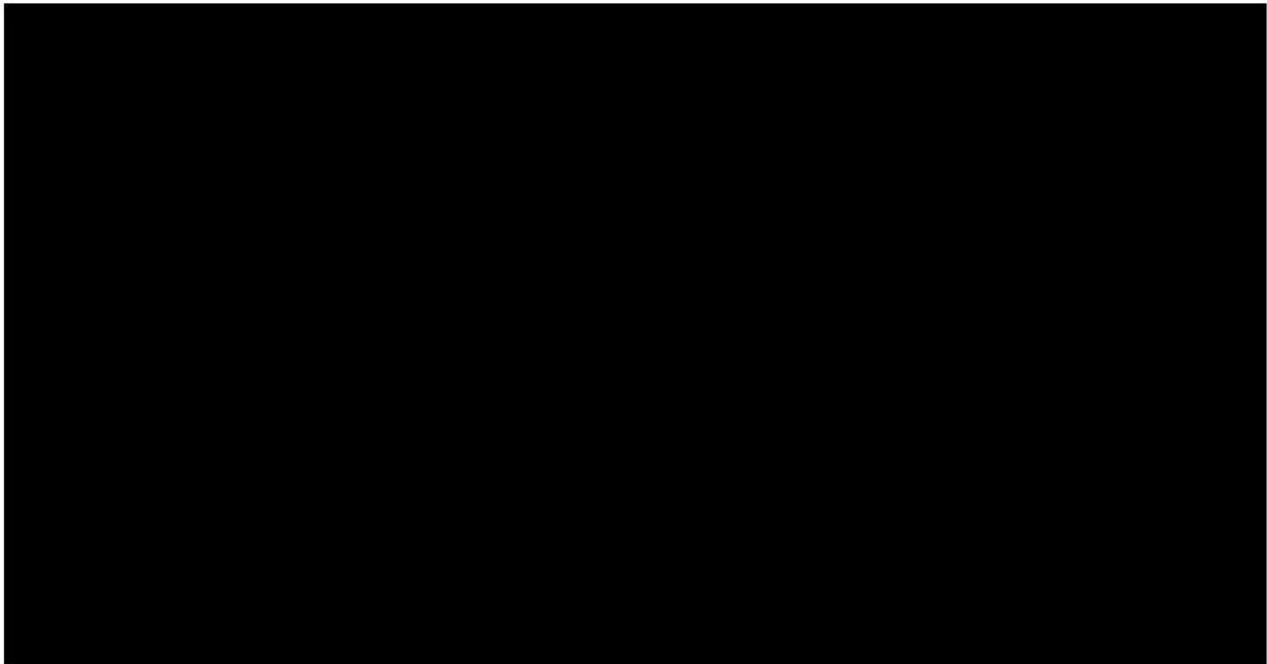
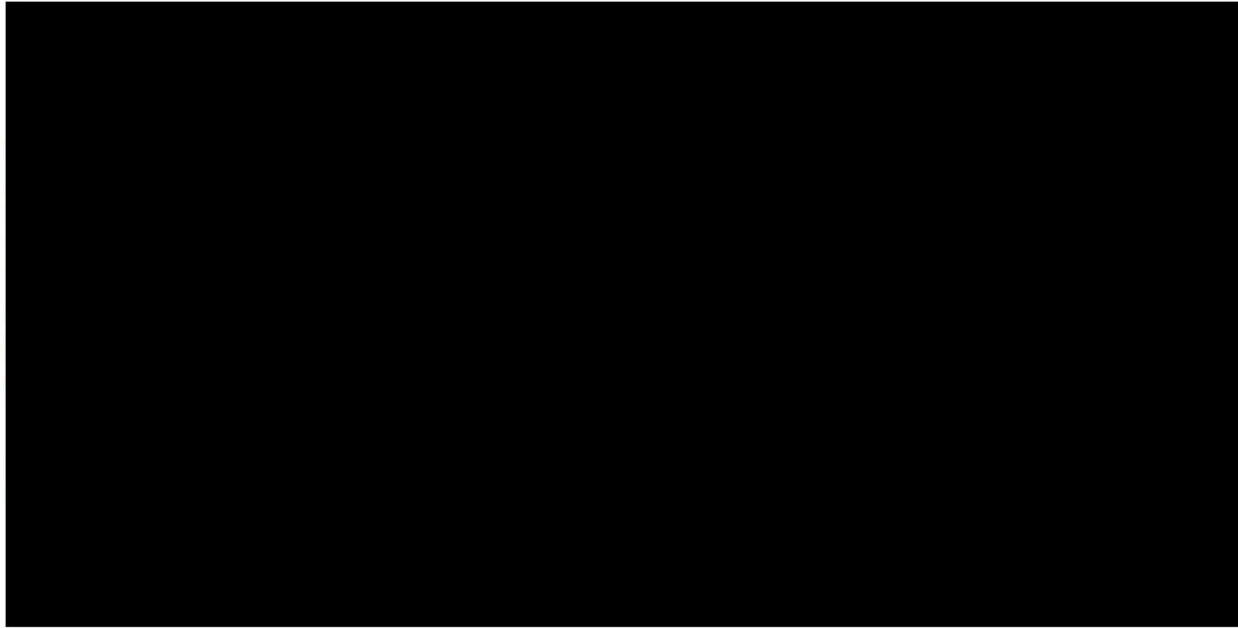
PROMOTIONS



PROMOTIONAL CALENDAR



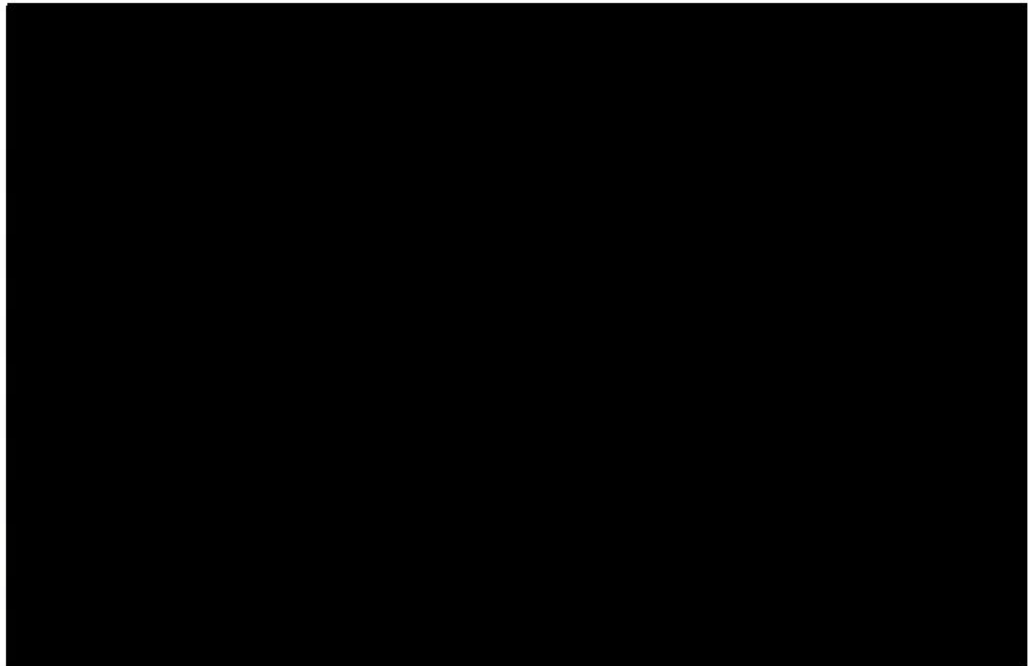
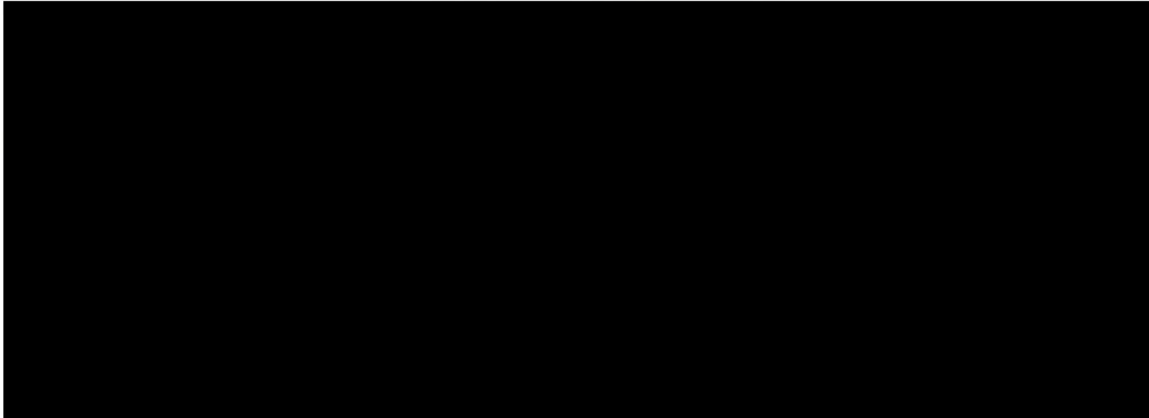
MOBILE SPORTS BETTING MEDIA BUDGET



YEAR ONE TOTAL:



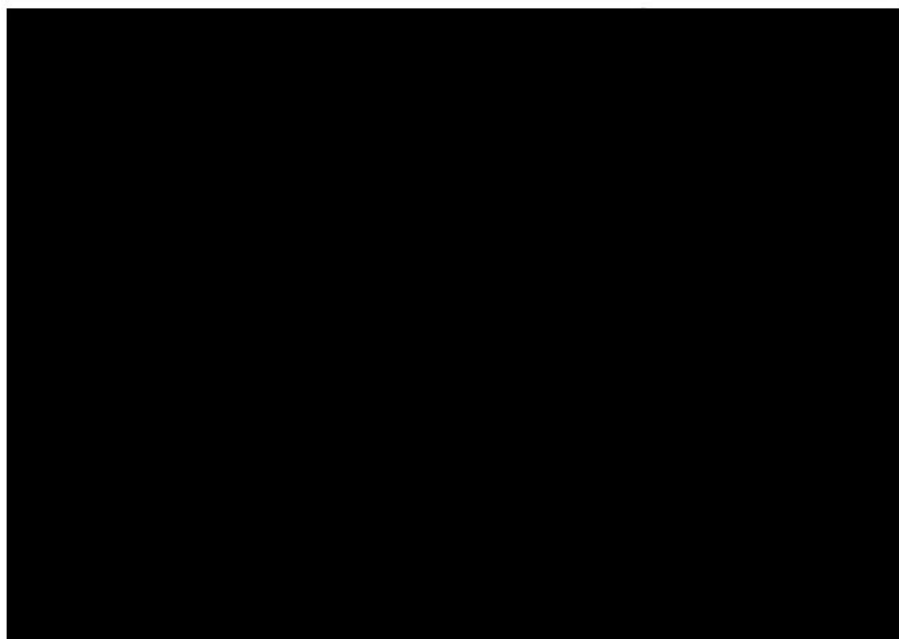
PROMOTIONAL BUDGET



YEAR ONE:

MOBILE MARKETING BUDGET

Resorts World estimates the first year's mobile marketing budget to be over [REDACTED] including all advertising, player reinvestment rewards, and land-based redeemed comps.



SPORTSBOOK 360 AT RESORTS WORLD CATSKILLS

THE FUTURE DOESN'T HAPPEN ON IT'S OWN.

Resorts World had the insight to build a sophisticated sportsbook at its resort, knowing that New York State would eventually approve mobile sports betting. Having this establishment puts us ahead of the competition, just like all major baseball teams kick off their season with spring training.

In 2021, due to increased growth, Resorts World Catskills increased their betting kiosks from 10 to 30 throughout the casino.

Live entertainment and stadium style food at Sportsbook 360 makes for a complete sports betting experience.



BY THE NUMBERS

6,000 square feet Sportsbook 360

32 flat screen TVs

30 sports betting kiosks across the gaming

floor 9' x 16' high definition flat screen TV

2 teller windows



SPORTSBOOK THE DAWG HOUSE RESORTS WORLD LAS VEGAS

THE NEWEST SPORTSBOOK IN THE WORLD.

With an original location on Nashville's Music Row, Dawg House Saloon is a classic Nashville sports bar situated adjacent to Resorts World Las Vegas's sportsbook features live music and dancing, an array of draft beers, creative cocktails and classic American pub fare with a Southern twist.

Dawg House music venue with a sports addiction. State of the art all digital sound system is big stage capable, with an intimate feel. When it comes to sports, Dawg House doesn't have a single spot in the bar that you can't see the game on one of the big screens.



DIVERSITY, EQUITY & INCLUSION

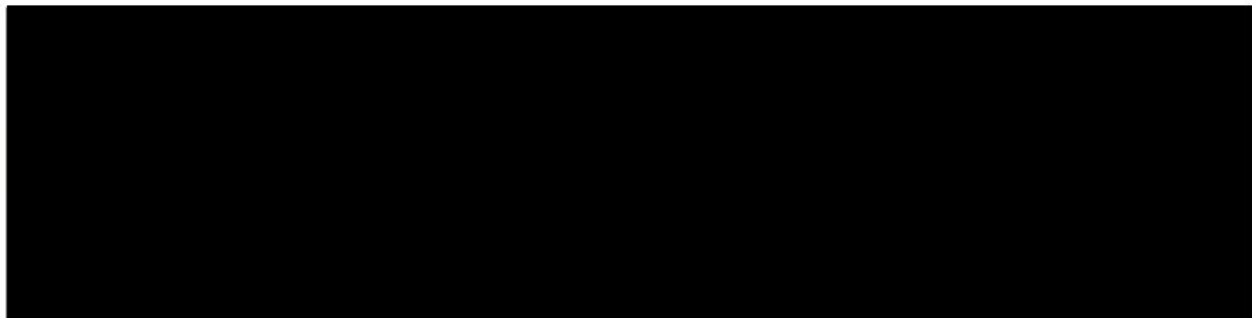
Resorts World emphasizes the value of creating a culture of diversity, equity and inclusion in the workplace and in society; and stresses the importance to both leadership and staff.

Diversity in Gaming means providing opportunity for advancement to a broad array of individuals or groups. These individuals or groups bring different characteristics that include race, ethnicity, gender, culture, sexual orientation, age, disability, creed, geography, education, socioeconomic status, skills, background, experiences, and perspectives.

The company plans to enhance its diversity and inclusion platform with specific strategies and measurable outcomes by increasing vendor participation in procurement offerings, provide training opportunities for staff to increase upwards mobility, and provide scholarships to outstanding students in the community, including children

of our team members.

SOCIAL DISCLOSURE (AS OF 2020)



CALENDAR TO CELEBRATE CULTURAL DIVERSITY

Special events intended to celebrate cultural diversity and community.

JANUARY

Lunar New Year, MLK Day

FEBRUARY

Black History Month

MARCH

Women's History Month

APRIL

World Health Day

MAY

Asian American and Pacific Islander Heritage Month

JUNE

Pride Month, Juneteenth

AUGUST

Women's Equality Day

SEPTEMBER

Hispanic Heritage Month

OCTOBER

Columbus Day, Disability Employment Awareness Month

NOVEMBER

American Indian & Alaska Native Heritage Month, Transgender Day of Remembrance, Veterans Day

DECEMBER

Christmas, Hanukkah, Kwanzaa



DIVERSITY OUTREACH

MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE

MWBE Outreach through strategic partnerships with the Greater Jamaica Development Corporation, Queens Chamber, Queens Economic Development Corporation and The Arc Sullivan-Orange Counties of New York.

MWBE COMMITMENT: All Capital Projects which include constructions costs over [REDACTED] will include MWBE vendors in the bid process with the anticipated spend to meet the goal amount of [REDACTED]

TEAM MEMBER LEADERSHIP TRAINING

Using Microsoft Teams, we create specific groups formed around their interests to bring discussion points to the organization as a whole. These groups will report quarterly to provide transparency and accountability.

EDUCATIONAL PARTNERSHIPS

We have partnered with [REDACTED] to offer certificate training programs toward the advancement of career opportunities for employees.

YOUTH LEADERSHIP TRAINING

Pairing Resorts World executives and community civic leaders with college freshman for a web-based two-year mentorship program to develop human capital for the gaming industry. The goal is to award twenty scholarships bi-annually.

COLLEGE-BOUND STEM SCHOLARSHIP

Awarded to rising college freshman majoring in Science, Technology, Engineering, and Math.



TOGETHER, WE ARE ONE

Operating in the most diverse county in the country, diversity is innate to our company culture. Resorts World values diversity, equity, and inclusion in our workforce, policies, and practices.

LEADERSHIP FROM THE TOP

A cross-property DEI Council, comprised of executives in various fields representative of our organization and its members, implements initiatives fostering community.

RECRUITING DIVERSE CANDIDATES

We seek to hire a workforce as culturally rich as the community we operate in. We host outreach programs with local colleges to develop interest in the gaming industry among underrepresented groups.

ASSESSING INEQUALITY

To ensure the efficacy of our diversity initiatives, we release an annual Diversity Audit Report, based on collection of employee feedback and evaluation of current policies.

INCREASING SUPPLIER DIVERSITY

As part of our commitment to equity, we will work with at least [REDACTED] MWBE licensed vendors for goods and services. All capital projects over [REDACTED] must include a MWBE in the bid process.

RW ACADEMY

Recognizing mutual respect as the foundation of our team culture, we are developing a learning curriculum that teaches inclusion, sensitivity, and appropriate behaviors. This curriculum is mandatory for all employees.

INTERNAL MOBILITY

We provide opportunities for advancement among qualified internal candidates, regardless of race, sex, and other categories. To us, what matters is work ethic and heart.



CONVERTING NON-LICENSED PLAY

Resorts World Bet will have clear and consistent language regarding responsible gaming. There will be a responsible gaming section allowing mobile bettors to set play limits, close account, and temporarily and permanently exclude oneself. Resorts World Bet will also educate sports gamblers about the risks associated with unlicensed/unregulated betting.

All direct and external media advertising for Resorts World Bet will contain the New York State gaming messaging. For example:

*DON'T TAKE THE UNDER.**

*Underground gambling establishments are a high security risk. This format is running on a secure platform and regulated by the state of New York.

RESPONSIBLE GAMING

Empire Resorts recognizes that while gaming is an enjoyable leisure and entertaining activity for most, there is a small percentage of the population that cannot game responsibly. Responsible gaming is part of the culture of Resorts World. Therefore, Empire Resorts will implement its existing Responsible Gaming Plan at the project, the chief goal of which is to make sure that those people who cannot game responsibly get the help they need and to make sure that people who can game responsibly understand the importance of gaming responsibly.



New York State
Gaming Commission

Request for Applications for Mobile Sports
Wagering Platform Providers

EXHIBIT A

Empire Resorts, Inc.



August 2021

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4.12 PUBLIC OFFICIALS	5
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4.2 NAME OF THE APPLICANT

The Applicant's full name as it appears on the Applicant's certificate of incorporation, charter or other official formation document (as amended), as well as any D/B/A or trade names.

Empire Resorts, Inc.

4.3 CONTACT PERSON

The name, title, email address and telephone number of the individual to be contacted for the Applicant in reference to the Application.

Karen M. Cho, General Counsel, [REDACTED]

4.4 LOCATION OF THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS

The street address, city, state, zip code and telephone number for the Applicant's principal place of business, as well as the URL for any website maintained by or for the Applicant.

204 Route 17B, Monticello, New York 12701, 833-586-9358, <http://rwcatskills.com>

4.5 TYPE OF BUSINESS FORMATION

The type of business entity under which the Applicant is formed (e.g., corporation, limited liability company, partnership), the state (or other jurisdiction) of formation and the Federal Tax Identification Number (also known as the Federal Employer Identification Number). Attach evidence of the entity's current ability to conduct business (e.g., certificate of good standing, certificate of status) from the state (or other jurisdiction) of formation as of a date not earlier than 10 days prior to the submission of the Application.

The name of the Applicant is Empire Resorts, Inc., which is incorporated in the State of Delaware. The Federal Tax Identification Number is [REDACTED] Please see Exhibit A Certificate of Good Standing.

4.6 TABLE OF OWNERSHIP

A full and complete ownership chart for the Applicant and its affiliates including percentage ownership interests in the Applicant by its respective direct and indirect owners, illustrating the ultimate beneficial owners. For a publicly held company, disclosure of owners may be limited to owners owning five percent or more of the publicly held company.

Please see Exhibit B for a full and complete ownership chart of the Operator and its affiliates including ownership interests in the Applicant by its respective direct and indirect owners illustrating the ultimate beneficial owners. Empire Resorts, Inc. is not a publicly traded company.

4.7 ORGANIZATIONAL CHART

An organizational chart of the Applicant including all key employees anticipated to be licensed as such pursuant to Appendix A: Draft Regulation Part 5330 of the Commission's regulations, when adopted.

Please see Exhibit C reflecting the proposed organizational chart. All key employees or those required to be found suitable hold commercial casino Key Licenses.

4.8 NAMES, ADDRESSES AND EXPERIENCE OF DIRECTORS AND OFFICERS

The name, address, and title of each Director or General Partner of the Applicant and each officer and proposed key employee of the Applicant, within the meaning of Appendix A: Draft Regulation Part 5330 and resumes or C.V.s of all principals and known individuals who will perform executive management duties or oversight of the Applicant.

Please see Exhibit D containing the name, address, and title of each Director of the Applicant, each officer and proposed key employee of the Applicant.

4.9 LOBBYIST REGISTRATION REQUIREMENT

PML Section 1329 requires each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission to first register with the secretary

of the Commission. While this obligation falls to the lobbyist, Applicant identification of its lobbyists is requested.

The Applicant currently engages the following companies to lobby on its behalf:

Albany Strategic Advisors, LLC, 111 Washington Avenue, 2nd Floor, Albany, NY 12210
Cordo & Company, LLC, 119 Washington Avenue, #2C, Albany, NY 12210
Dickinson & Avella, LLC, 111 Washington Avenue, Suite 702, Albany, NY 12210

Please see the NYSGC Lobbyist Registration Forms at Exhibit E.

4.10 NAMES, ADDRESSES AND OWNERSHIP AND OTHER INTERESTS

The name and business address of each person or entity who or that has a direct or indirect ownership or other proprietary interest (financial, voting or otherwise) in five percent or more in the Applicant.

Please see Exhibit F for the name and business address of each person or entity who or that has a direct or indirect ownership or other proprietary interest (financial, voting or otherwise) in five percent or more in the Applicant.

4.11 CONFLICTS OF INTEREST

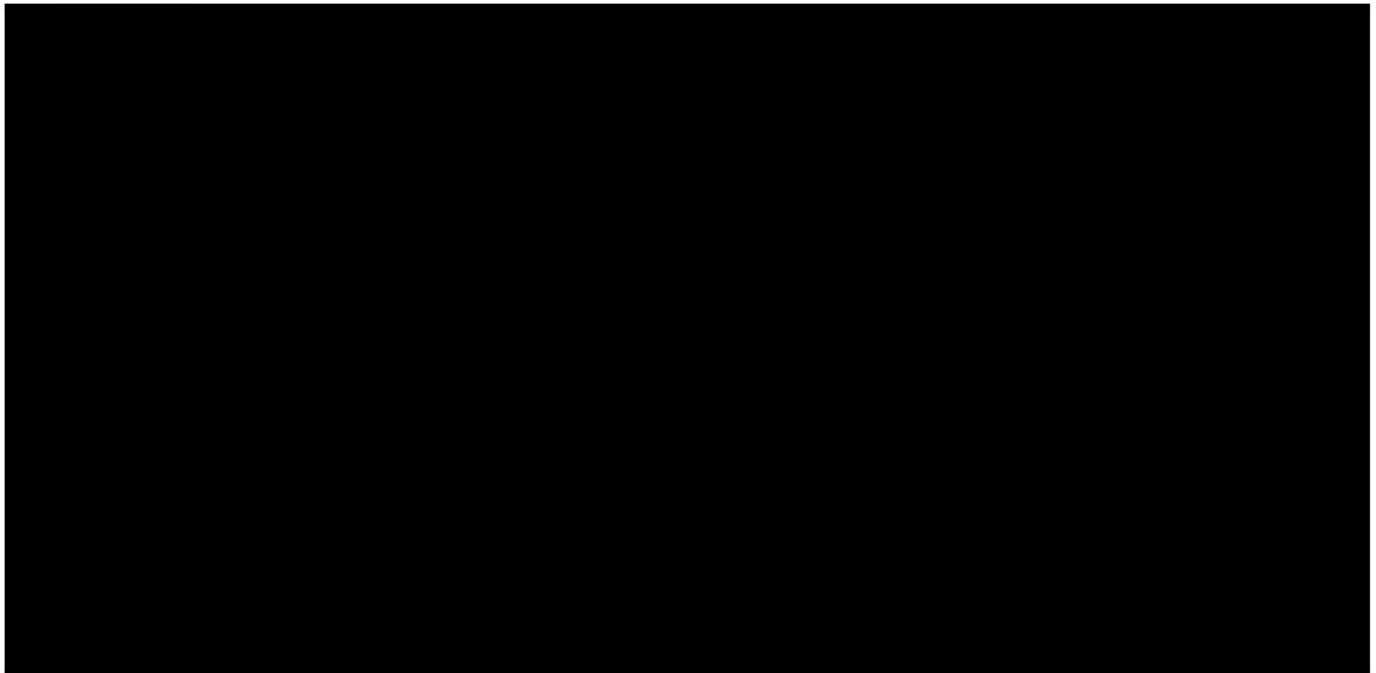
A description of any relationship or affiliation of the Applicant or any of the Applicant's affiliates that currently exists or existed in the past five years with any member, employee, consultant or agent of the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process. Further, if any such conflict should arise during the term of the RFA process, the Applicant shall notify immediately the Commission, in writing, of such conflict.

The Applicant has no relationship no past relationship within the last five years and no affiliate of the Applicant currently exists or existed in the past five years with any member, employee, consultant or agent of the Commission that is a conflict of interest or may be perceived as a conflict of interest during the RFA process.

4.12 PUBLIC OFFICIALS

Submit a list of names, titles, addresses and telephone numbers of any public officials or officers or employees of any governmental entity, and immediate family members of any such public officials, officers or employees, to the extent known, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant or their Affiliates. Also submit a statement listing all persons and entities not listed in the immediately preceding sentence who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or the process of obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

To the knowledge of the Operator, no public officials or officers or employees of any governmental entity, immediate family members of any such public official, officers or employees, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have any interest, indirect, direct or indirect in any contractual or service relationship with the Operator.



No other persons shall receive any compensation in connection with this Application from the Applicant Resorts World.

The Operator has engaged [REDACTED] to assist Operator on its RFA Application. Flat fee in the amount of [REDACTED]

4.13 CONTRACTS WITH THE STATE OF NEW YORK

Submit a list of any current or previous contracts that the Applicant or its affiliates has had with, and any current or previous licenses that the Applicant has been issued by or under, any department or agency of the State. Include the contract or license name and number and a concise explanation of the nature of the contract or license.

The Applicant's affiliate Genting New York LLC has a lease for the land upon which its sister property Resorts World New York City sits. The arrangement is structured as follows: First Amended and Restated Facilities and Ground Lease Agreement dated as of the 13th of September, 2010 by and between The People of the State of New York Acting By and Through the State Franchise Oversight Board (as Lessor) and Genting New York LLC (as Lessee). The Lessor and New York State Racing Association (NYRA) entered into a Facilities Ground Lease dated September 12, 2008. On August 3, 2010 the New York State Lottery Division ("Lottery") recommended Lessee as a Video Lottery Agent ("VLG") to develop and operate a VLG facility at Aqueduct Racing. The Governor, Temporary President of the Senate, Speaker of the Assembly and Lessee executed an MOU with an initial term and an option to extend. NYRA and Lessee executed an Assignment and Assumption Agreement of Facilities Ground Lease Agreement and a Sublease Agreement both of which were effective when the MOU was approved and filed. The First Amended and Restated Facilities and Ground Lease dated 9/13/10 modified certain terms.

4.14 ORGANIZATIONAL DOCUMENTS

Submit, as applicable, copies of the following documents that apply to the Applicant or the Applicant's owners:

New York State Gaming Commission
Request for Applications for Mobile Sports Wagering Platform Providers
PointsBet and Resorts World

- A. **certified copy of each relevant certificate of incorporation, articles of incorporation or corporate charter;**
- B. **by-laws as amended through the date of the Application;**
- C. **certified copy of its certificate of formation or articles of organization of a limited liability company;**
- D. **limited liability company agreement or operating agreement as amended through the date of the Application;**
- E. **certified copy of each relevant certificate of partnership;**
- F. **partnership agreement as amended through the date of the Application;**
- G. **certified copy of each relevant certificate of limited partnership;**
- H. **limited partnership agreement as amended through the date of the Application;**
- I. **other legal instruments of organization;**
- J. **joint venture agreement;**
- K. **trust agreement or instrument, each as amended through the date of the Application;**
- L. **voting trust or similar agreement; and**
- M. **stockholder, member or similar agreement.**

Please see Exhibit G for all applicable formation documentation of the Applicant, Empire Resorts, Inc.

New York State Gaming Commission
Request for Applications for Mobile Sports Wagering Platform Providers
PointsBet and Resorts World

EXHIBIT A

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "EMPIRE RESORTS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

THE FOLLOWING DOCUMENTS HAVE BEEN FILED:

CERTIFICATE OF INCORPORATION, FILED THE NINETEENTH DAY OF MARCH, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-THIRD DAY OF AUGUST, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE THIRTEENTH DAY OF DECEMBER, A.D. 1995, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:20 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:30 O`CLOCK P.M.



2329793 8310

SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 203849335

Date: 08-05-21

Delaware

Page 2

The First State

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SIXTH DAY OF
DECEMBER, A.D. 1996, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-FOURTH DAY OF
JULY, A.D. 1998, AT 9 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SEVENTH DAY OF
SEPTEMBER, A.D. 1999, AT 9 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTH DAY OF FEBRUARY,
A.D. 2000, AT 9 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9 O`CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE
AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-SIXTH DAY OF JUNE,
A.D. 2001.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9:01 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TENTH DAY OF DECEMBER,
A.D. 2002, AT 6 O`CLOCK P.M.



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SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JWB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 203849335

Date: 08-05-21

Delaware

The First State

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "ALPHA HOSPITALITY CORPORATION" TO "EMPIRE RESORTS, INC.", FILED THE FIFTEENTH DAY OF MAY, A.D. 2003, AT 1:14 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-FIRST DAY OF MAY, A.D. 2003.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:56 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:57 O`CLOCK P.M.

CERTIFICATE OF REVIVAL, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:57 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:58 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINETEENTH DAY OF AUGUST, A.D. 2009, AT 12:58 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TENTH DAY OF NOVEMBER, A.D. 2009, AT 1:46 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

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SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203849335

Date: 08-05-21

Delaware

The First State

RESTATED CERTIFICATE, FILED THE SIXTEENTH DAY OF FEBRUARY, A.D.
2011, AT 2:22 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF DECEMBER,
A.D. 2011, AT 10:22 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FIRST DAY OF
DECEMBER, A.D. 2015, AT 12:31 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE
AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-THIRD DAY OF
DECEMBER, A.D. 2015 AT 12:01 O`CLOCK A.M.

RESTATED CERTIFICATE, FILED THE FIRST DAY OF NOVEMBER, A.D.
2016, AT 12:21 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE FIFTH DAY OF NOVEMBER,
A.D. 2018, AT 2:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINTH DAY OF NOVEMBER,
A.D. 2018, AT 10:10 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF SEPTEMBER,
A.D. 2019, AT 11:20 O`CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE FIFTEENTH DAY OF NOVEMBER,
A.D. 2019, AT 10:15 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

2329793 8310

SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203849335

Date: 08-05-21

Delaware

Page 5

The First State

CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF MARCH,
A.D. 2020, AT 3:59 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF MARCH,
A.D. 2020, AT 4:03 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF MARCH,
A.D. 2020, AT 1:11 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:40 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF SEPTEMBER,
A.D. 2020, AT 1:41 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF SEPTEMBER,
A.D. 2020, AT 1:42 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE EIGHTEENTH DAY OF MARCH,
A.D. 2021, AT 12:25 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE
AFORESAID CORPORATION, "EMPIRE RESORTS, INC.".

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE
BEEN FILED TO DATE.



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SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 203849335

Date: 08-05-21

Delaware

The First State

**AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES
HAVE BEEN PAID TO DATE.**




Jeffrey W. Bullock, Secretary of State

2329793 8310

SR# 20212897316

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203849335

Date: 08-05-21

EXHIBIT B

**Empire Resorts, Inc.
Ownership Structure**

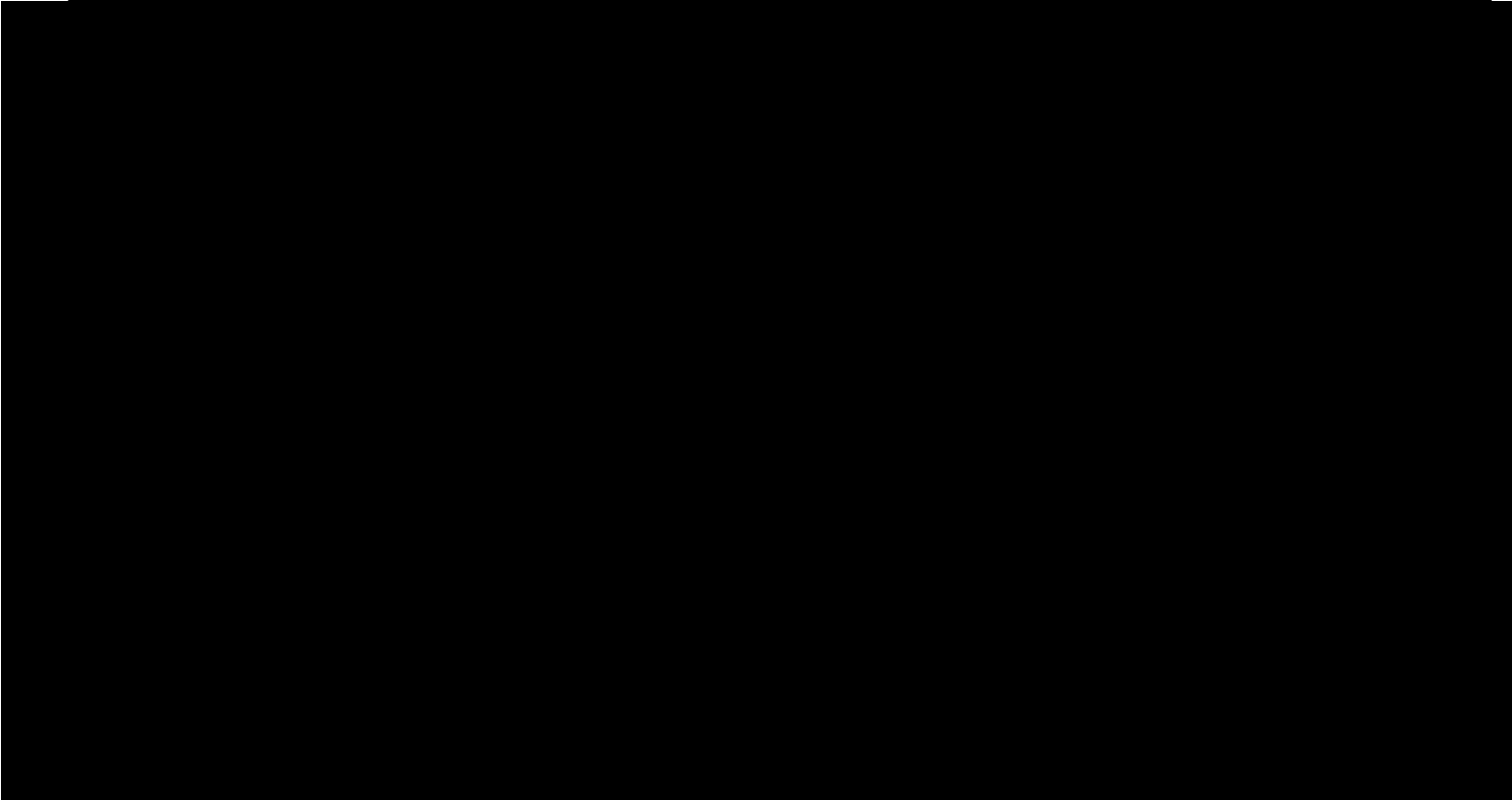
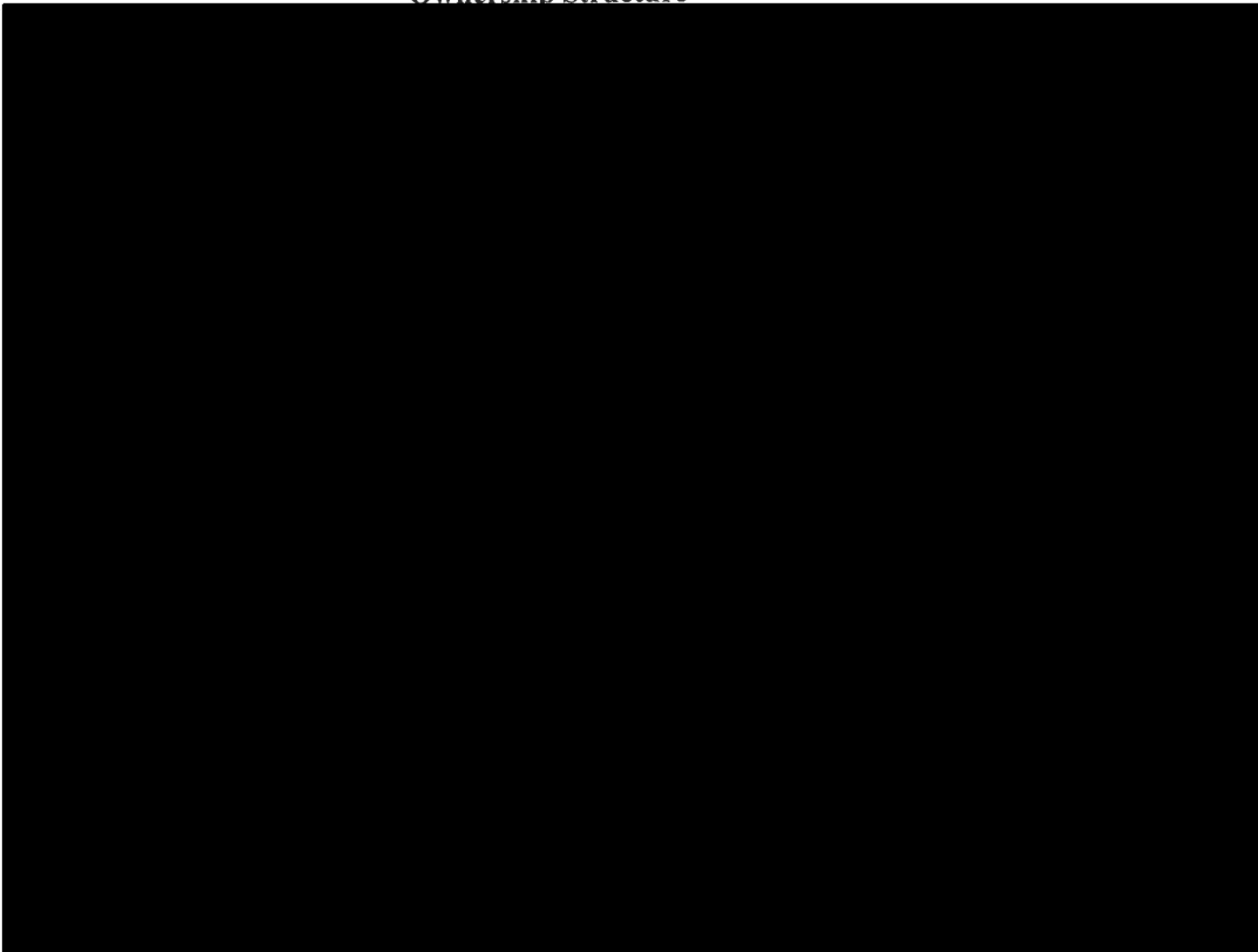


EXHIBIT C



MOBILE SPORTS BETTING
ORGANIZATIONAL CHART

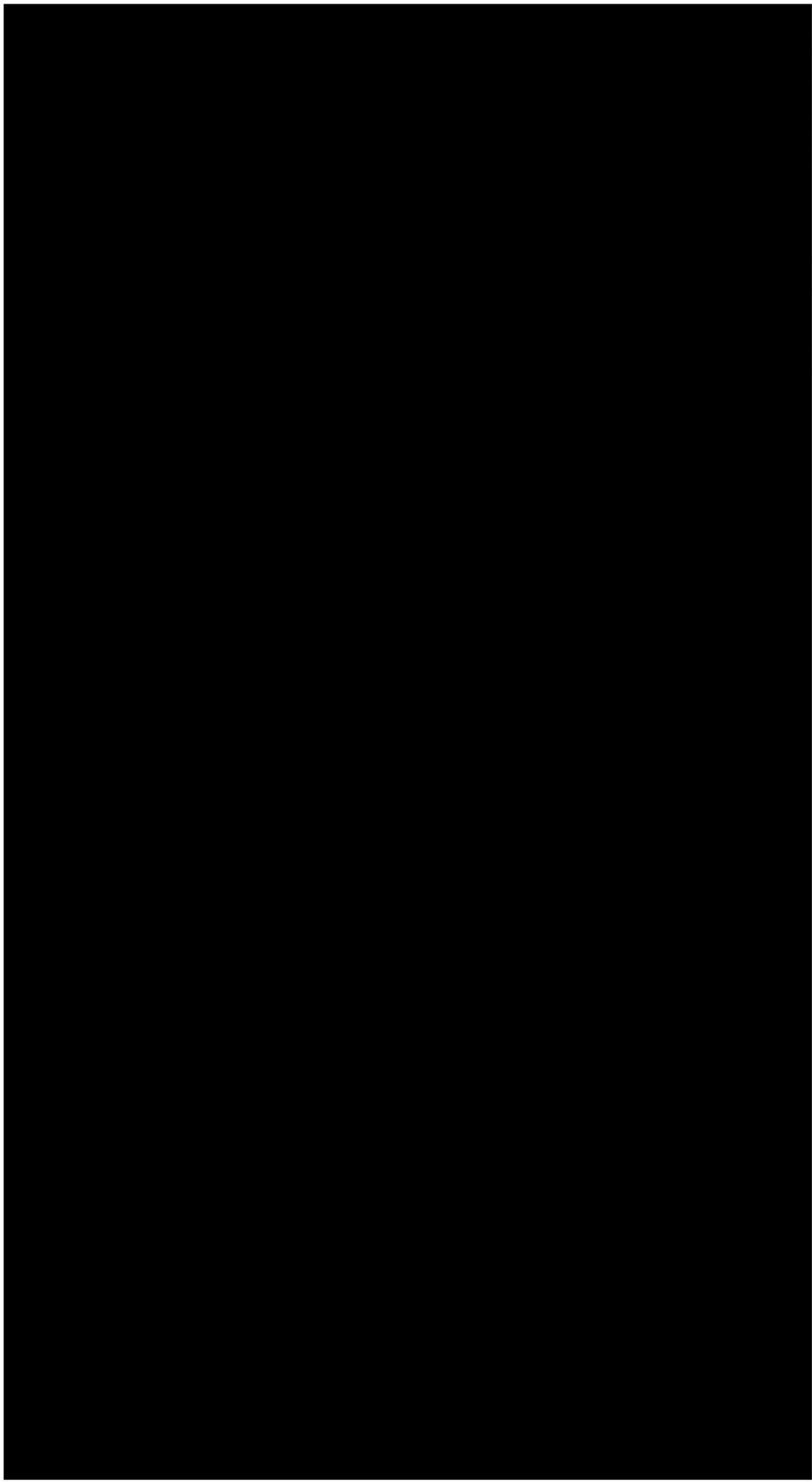


EXHIBIT D

4.8 Names, Addresses and Experience of Directors and Officers:

EMPIRE RESORTS, INC. DIRECTORS		
NAME	ADDRESS	TITLE
Dato' Sri Lee Choong Yan		President & Chief Operating Officer and Executive Director
Gerard Ewe Keng Lim		Director, Empire Resorts Inc.
Yap Chong Chew		Director, Empire Resorts Inc.

NAME	ADDRESS	TITLE
Robert DeSalvio		President
Darlene Monzo		Chief Marketing Officer
Kevin Jones		Chief Strategy & Legal Officer
Aviv Laurence		Chief Financial Officer
Jack Kennedy		Senior Vice President of Gaming Operations
Richard Glisson		Vice President of Database Strategy and Marketing Operations
Karen Cho		General Counsel
Meghan Taylor		Vice President of Government Affairs and Public Relations
Shane Pomeroy		Executive Vice President of Finance
Angelina Santangelo		Director of Internal Audit
Tyler Prutzman		Director of Sportsbook
Sandie Barrera		Director of Compliance



TAN SRI LIM KOK THAY

Chairman and Chief Executive Non-Independent Executive Director

Tan Sri Lim Kok, appointed on 17 August 1976, was redesignated as the Chairman and Chief Executive of Genting Group on 1 July 2007. He is also the Chairman and Chief Executive of Genting Malaysia, the Chief Executive and a Director of Genting Plantations until he relinquished his position of Chief Executive and assumed the position of Deputy Chairman and Executive Director of Genting Plantations on 1 January 2019; and the Executive Chairman of Genting Singapore and Genting UK Plc. He has served in various positions within the Group since 1976. He is a Founding Member and a Permanent Trustee of The Community Chest, Malaysia. In addition, he sits on the Boards of other Malaysian and foreign companies as well as the Boards of Trustees of several charitable organisations in Malaysia.

Tan Sri Lim holds a Bachelor of Science in Civil Engineering from the University of London. He attended the Programme for Management Development of Harvard Business School, Harvard University in 1979. He is an Honorary Professor of Xiamen University, China.

Tan Sri Lim is the Chairman and Chief Executive Officer of Genting Hong Kong Limited ("Genting Hong Kong"), a company listed on the Main Board of The Stock Exchange of Hong Kong Limited. He is also a Director of Travellers International Hotel Group, Inc., which is an associate of Genting Hong Kong and was listed on the Main Board of The Philippine Stock Exchange, Inc. until its voluntary delisting in October 2019. He has an interest in the securities of Genting Hong Kong. Genting Hong Kong's subsidiaries are principally engaged in the business of cruise and cruise-related operations, ship operations and leisure, entertainment and hospitality activities.

Tan Sri Lim is a beneficiary of a discretionary trust which ultimately owns Golden Hope Unit Trust ("GHUT"), of which Golden Hope Limited ("GHL") is the trustee. GHL as the trustee of GHUT, indirectly owns 51% of the common stock in Empire Resorts, Inc., ("Empire Resorts"), a company with various subsidiaries engaged in the hospitality and gaming industries. GHL as the trustee of GHUT also indirectly owns 100% of the Series F Convertible Preferred Stock and 51% of the Series H Convertible Preferred Stock in Empire Resorts. Genting Malaysia indirectly owns the remaining 49% of the common stock in Empire Resorts. Genting Malaysia also indirectly owns 100% of the Series G Convertible Preferred Stock and the remaining 49% of the Series H Convertible Preferred Stock in Empire Resorts.

For his leadership excellence and significant contributions to the leisure and travel industry, he was named the "Travel Entrepreneur of the Year 2009" by Travel Trade Gazette (TTG) Asia, "The Most Influential Person in Asian Gaming 2009" by Inside Asian Gaming, "Asian Leader for Global Leisure and Entertainment Tourism 2011" by Seagull Philippines Inc., and "Lifetime Achievement Award for Corporate Philanthropy 2013" by World Chinese Economic Forum.



MR LIM KEONG HUI

Deputy Chief Executive and Executive Director Non-Independent Executive Director

Mr Lim Keong Hui was appointed as a Non-Independent Non-Executive Director on 15 June 2012 and was redesignated as a Non-Independent Executive Director, following his appointment as the Senior Vice President (“SVP”) - Business Development of the Company on 1 March 2013. Subsequently, he was redesignated as the Executive Director – Chairman’s Office on 1 June 2013 and assumed additional role as the Chief Information Officer (“CIO”) of the Company on 1 January 2015. On 1 January 2019, Mr Lim has been redesignated as the Deputy Chief Executive and Executive Director of the Company.

Mr Lim holds a Bachelor of Science (Honours) Degree in Computer Science from the Queen Mary University of London, United Kingdom and a Master’s Degree in International Marketing Management from Regent’s Business School London, United Kingdom.

Mr Lim is a son of Tan Sri Lim Kok Thay, who is the Chairman and Chief Executive of the Company. Both Tan Sri Lim Kok Thay and Mr Lim Keong Hui are major shareholders of the Company. On 1 January 2019, Mr Lim was redesignated as the Deputy Chief Executive and Executive Director of Genting Malaysia and Genting Plantations. He was a NonIndependent Non-Executive Director of Genting Malaysia and Genting Plantations until he was redesignated as a NonIndependent Executive Director, following his appointment as the CIO of Genting Malaysia and Genting Plantations on 1 January 2015. On 5 May 2017, Mr Lim was redesignated as a Non-Independent Non-Executive Director of Genting Plantations, following his resignation as the CIO of Genting Plantations. He is also a director of Genting UK Plc and a member of the Board of Trustees of Yayasan Lim Goh Tong.

Mr Lim is the Deputy Chief Executive Officer and Executive Director of Genting Hong Kong. Prior to his appointment as the SVP – Business Development of the Company, he was the SVP – Business Development of Genting Hong Kong until he was redesignated as the Executive Director – Chairman’s Office of Genting Hong Kong following his appointment as an Executive Director of Genting Hong Kong on 7 June 2013. He had taken up additional role of CIO of Genting Hong Kong since 1 December 2014. On 28 March 2019, Mr Lim has been appointed as the Deputy Chief Executive Officer of Genting Hong Kong and has been redesignated to Deputy Chief Executive Officer and Executive Director of Genting Hong Kong. Prior to joining Genting Hong Kong in 2009, he had embarked on an investment banking career with The Hongkong and Shanghai Banking Corporation Limited. He has deemed interest in the shares of Genting Hong Kong. Genting Hong Kong’s subsidiaries are principally engaged in the business of cruise and cruise-related operations, shipyard operations and leisure, entertainment and hospitality activities.

Mr Lim is a beneficiary of a discretionary trust which ultimately owns Golden Hope Unit Trust (“GHUT”), of which Golden Hope Limited (“GHL”) is the trustee. GHL as the trustee of GHUT, indirectly owns 51% of the common stock in Empire Resorts, Inc., (“Empire Resorts”), a company with various subsidiaries engaged in the hospitality and gaming industries. GHL as the trustee of GHUT also indirectly owns 100% of the Series F Convertible Preferred Stock and 51% of the Series H Convertible Preferred Stock in Empire Resorts. Genting Malaysia indirectly owns the remaining 49% of the common stock in Empire Resorts. Genting Malaysia also indirectly owns 100% of the Series G Convertible Preferred Stock and the remaining 49% the Series H Convertible Preferred Stock in Empire Resorts.



 Resorts World™
DATO' SRI LEE

CHOONG YAN

**President and Chief Operating Officer
and Executive Director**

Dato' Sri Lee Choong Yan was appointed as an Executive Director on 1 January 2020 and redesignated as the President and Chief Operating Officer and Executive Director of the Company. Prior to his appointment as an Executive Director of the Company, he was the President and Chief Operating Officer of Genting Malaysia Berhad since 1 August 2006. He is responsible for the development and implementation of corporate strategies as well as management of the operations of the Company and its subsidiaries.

Dato' Sri Lee is also the Chief Executive Officer of Genting UK Plc, a subsidiary in the United Kingdom, where the Group owns and operates over forty casinos together with an integrated resort, Resorts World Birmingham. In addition, he oversees Genting Malaysia Group's businesses in the United States and Bahamas. His responsibilities also include directorships in other companies within the Genting Malaysia Berhad Group, including GENM Capital Berhad which is a public company.

Dato' Sri Lee trained as a chartered accountant in London with an international accounting firm following which he joined their offices in Hong Kong and worked in their audit and corporate advisory practices. He subsequently embarked on a career in investment banking where he specialised in the areas of corporate finance and the equity capital markets before joining the Genting Group in 1997.

He holds a Bachelor of Science (Honours) degree in Business Economics and Accounting from the University of Southampton, England and is a Fellow of the Institute of Chartered Accountants in England and Wales.





YAP CHONG CHEW (PETER)

Director, Empire Resorts Inc.

Yap Chong Chew (Peter) has served as a director of ERI since April 2020. Mr. Yap has been with KHR SB since October 1991 and his current designation is the Financial Controller of KHR SB. He sits on the board of various companies within KHR SB. He oversees the investment, finance and treasury of KHR SB and GHL. He was involved in the initial start-up of Genting Hong Kong Limited in financing/ acquisition of vessels and corporate development in 1993, and also assisted in financing certain Native American tribal casino ventures (for initial construction and operation), including Mashantucket (Western) Pequot Tribe (Foxwoods Resort Casino) in 1991 and Seneca Nation of Indians (Seneca Niagara Falls Casino) in 2002. Prior to joining KHR SB, he was with Coopers and Lybrand (now known as PricewaterhouseCoopers) in the corporate care services department experience in financial management, financial studies and receivership. He has a Master of Business Administration degree from University of Birmingham.



GERARD EWE KENG LIM

Director, Empire Resorts Inc.

Gerard Ewe Keng Lim has served as a director of Empire Resorts, Inc ("ERI") since September 2017. Mr. Lim serves as a director of Kien Huat Realty III Limited ("Kien Huat"), a company which indirectly owns a majority of the common stock of ERI. Mr. Lim has Served as General Manager of Kien Huat Realty Sdn Bhd ("KHRSB"), a holding company that is a 43.0% shareholder of Genting Berhad, since February 2009 and was also appointed as a director of KHRSB in September 2017. Genting Berhad is the holding company for the Genting Group, a multi-national conglomerate that includes, among other things, hospitality and casino holdings worldwide. Mr. Lim also serves as director of Golden Hope Limited ("GHL"), which acts as trustee for the Golden Hope Unit Trust, a private unit trust primarily involved in investment holding. GHL, as trustee of the unit trust, is an affiliate of Kien Huat and a substantial shareholder of Genting Hong Kong Limited (formerly known as Star Cruises Limited) which is publicly traded in Hong Kong. In his position as General Manager and director of KHRSB and in his positions as director of GHL and various subsidiaries and affiliates of KHRSB and GHL, Mr. Lim oversees the investments of KHRSB and GHL in various concerns, including a ski resort, casino resorts, genomics and real estate. Mr. Lim also serves as a director of Resorts World Inc Pte. Ltd., an affiliate of the Genting Group and the parent entity of Resorts World Services Pte. Ltd., from which ERI licenses the "ResortsWorld" and "Genting" brand names. Mr. Lim also serves as a director of Grand Banks Yachts Limited, a company publicly traded in Singapore with significant subsidiaries in the business of manufacturing and selling luxury yachts worldwide. Prior to joining KHRSB and GHL, from 1997 to 2007, Mr. Lim held various positions with Genting Hong Kong Limited and was its Chief Financial Officer from 2004 to 2007. Mr. Lim holds a Bachelor of Science in Chemical Engineering from the University of Birmingham and a Master's degree in Business Administration from the University of Aston.



ROBERT DESALVIO

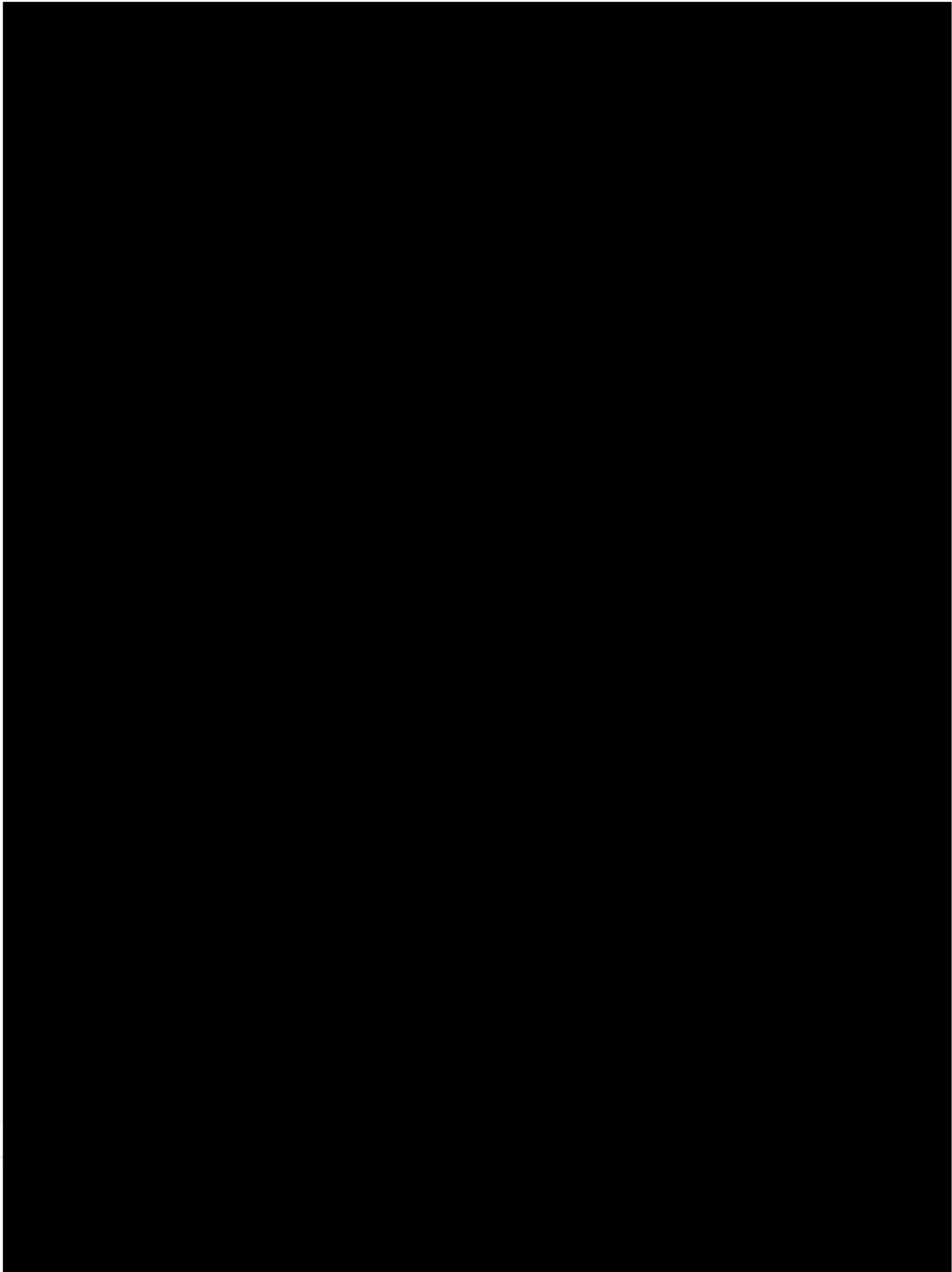
President of Genting Americas East, Genting New York State

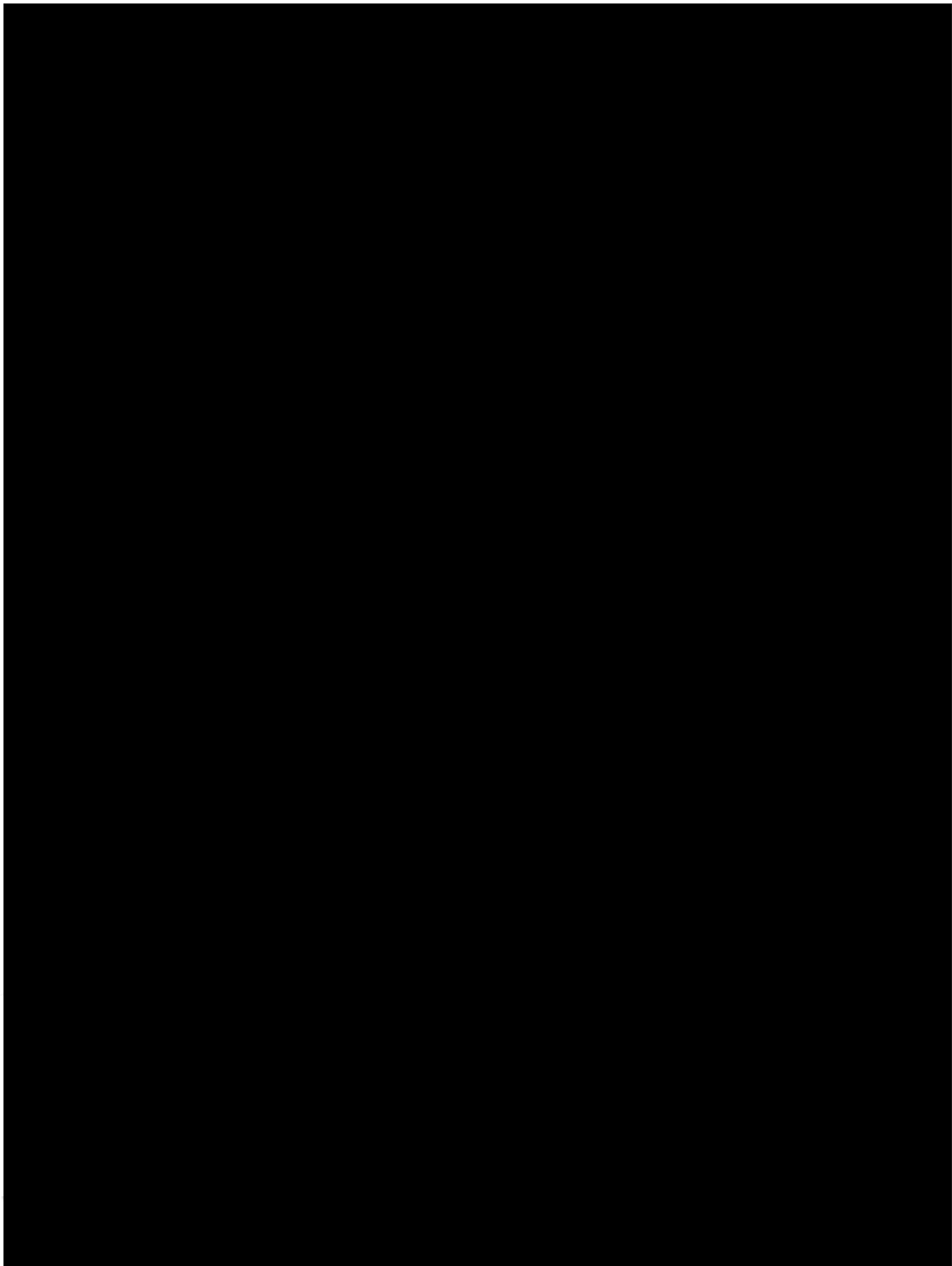
Bob DeSalvio currently serves as the President of Genting America's East. He joined the Genting team in December 2019. In this role, Mr. DeSalvio leads operations for Resorts World New York City and Resorts World Catskills and assumed responsibility in 2020 for Resorts World Bimini, a luxury Gaming Resort in the Bahamas and the Hilton Miami Downtown. In addition, he is leading the design/development for Resorts World Hudson Valley, a new VLT facility located in Newburgh, New York.

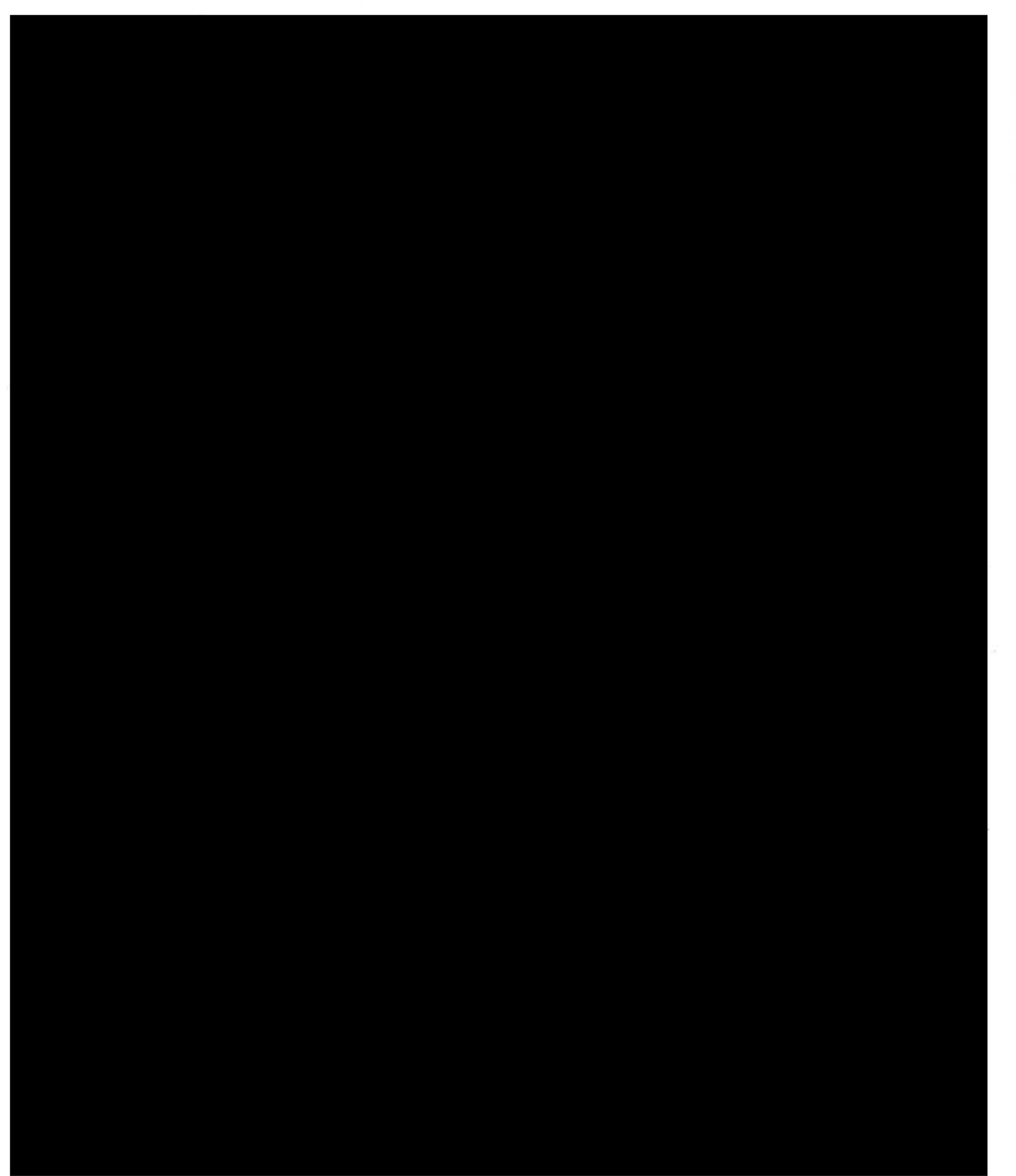
Mr. DeSalvio has over 40 years of cross-functional experience in the gaming and hospitality industries with a proven track record of creating and implementing successful marketing and growth strategies.

Most recently, DeSalvio served as President of Encore Boston Harbor, where he led the design, development, and opening of the largest development project in Massachusetts history with a total project cost of \$2.6 billion. Previously, DeSalvio spent eight years as President of Sands Casino Resort Bethlehem. He joined the Las Vegas Sands Corporation team in 2006 when the Pennsylvania Gaming Control Board awarded the license for the property and led the design, development, opening and growth of this highly profitable \$840 million project. In 2019, the Las Vegas Sands Corporation sold the property for \$1.3 billion.

In addition to his recent leadership positions, DeSalvio also served in executive marketing roles for more than 20 years. He spent nearly 10 years at Foxwoods Resort Casino in Mashantucket, Connecticut where he was responsible for all aspects of marketing the resort destination with revenue exceeding \$1 billion. Prior to joining Foxwoods, DeSalvio worked in various roles at Sands Atlantic City for 14 years where he implemented marketing strategies, which resulted in the highest return on invested capital for Atlantic City properties at that time.









DARLENE MONZO

Chief Marketing Officer

Darlene Monzo currently serves as Chief Marketing Officer for Genting New York. Darlene joined the Genting team in February 2020.

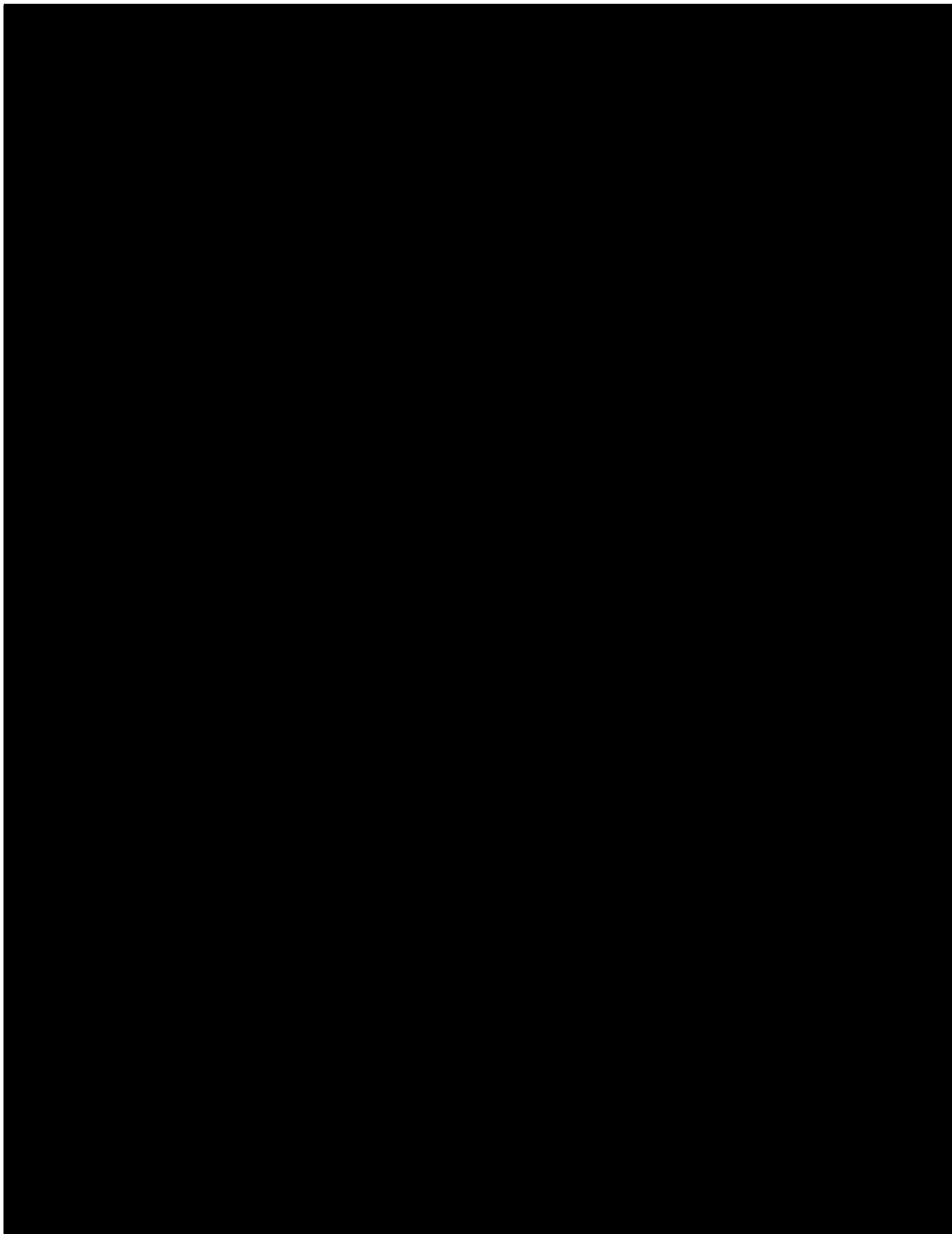
In her role, Darlene oversees all marketing for Genting America East properties including Resorts World New York City, Catskills, Bimini, Hilton Miami and soon to be Hudson Valley New York. She is responsible for setting the overall marketing strategies and reinvestment to drive maximum profit for Genting and tax revenues for the states where Genting resides.

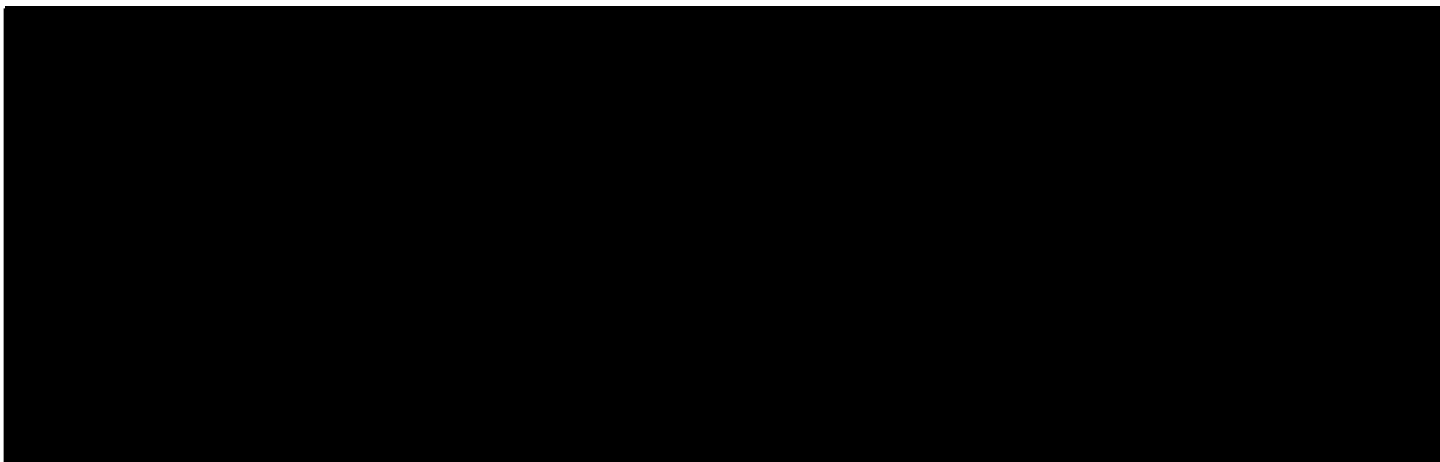
In addition, she manages the day to day operations of centralized shared services teams including; player development, international casino marketing, database strategy, media advertising, creative design, social media, audio visual teams, entertainment and marketing operations across all properties.

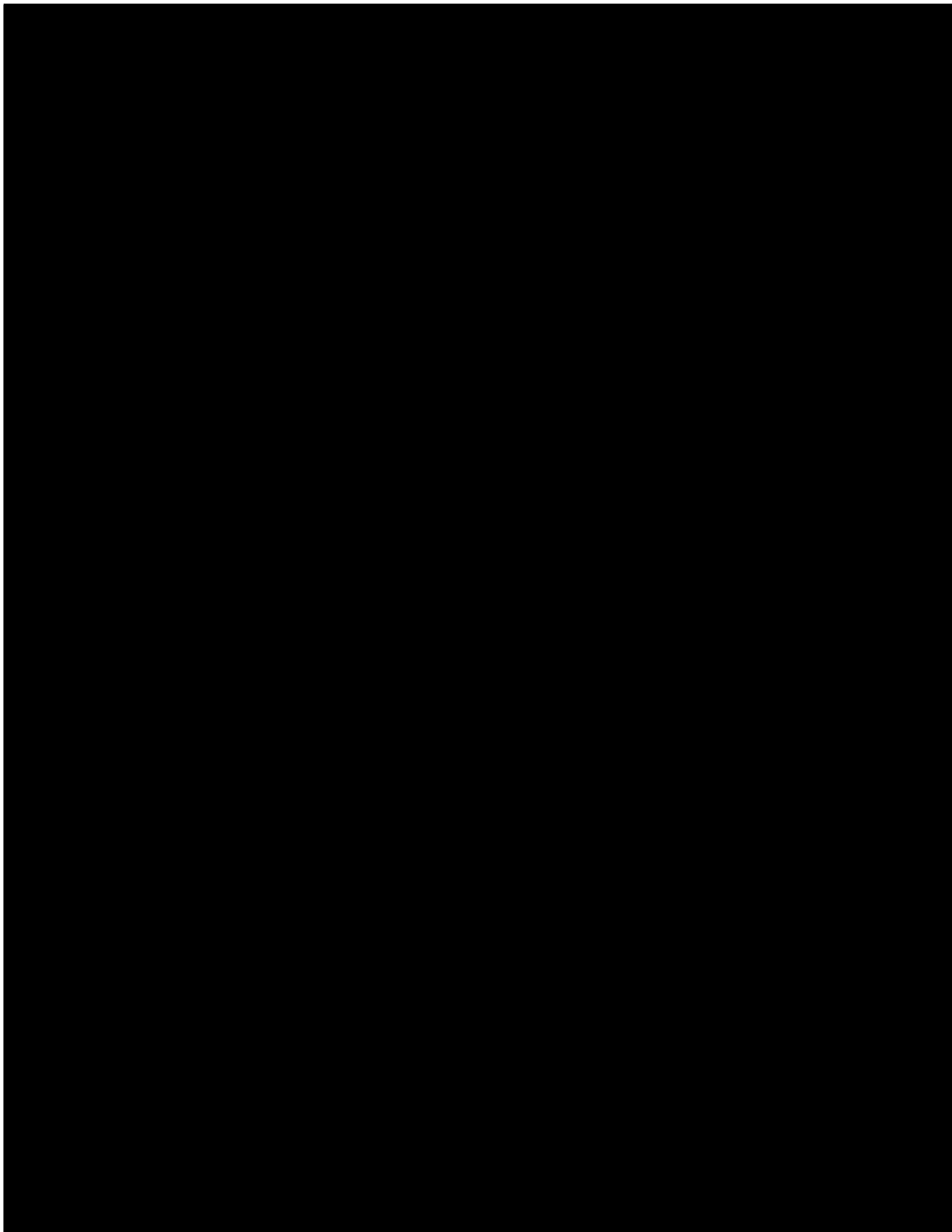
Previously as Chief Marketing Officer of Jack Entertainment, Darlene developed the JACK Entertainment name and positioning over a four-year period and led the effort of transitioning all of the core properties into one cohesive and strong brand. In addition, Darlene built out all of the property and corporate marketing and operational teams from the ground up including a centralized shared services marketing, database and communications in-house advertising creative agency and mobile gaming platform.

For over 30 years, Darlene has been responsible for bringing bold brands to life in the gaming sector and helping companies embrace design, technology and innovation that empower the guest experience and create positive net impact. Darlene has held key licenses and executive positions in the states of New York, New Jersey, Pennsylvania, Michigan, Ohio, and Nevada and Ohio.

She has been recognized as WYMCA's 2010 Woman Who Made a Difference Award, Pennsylvania's 2012 Best-in Brand Award, Recipient of four Tally awards and 2018 Global Gaming Lifetime Achievement nominee.







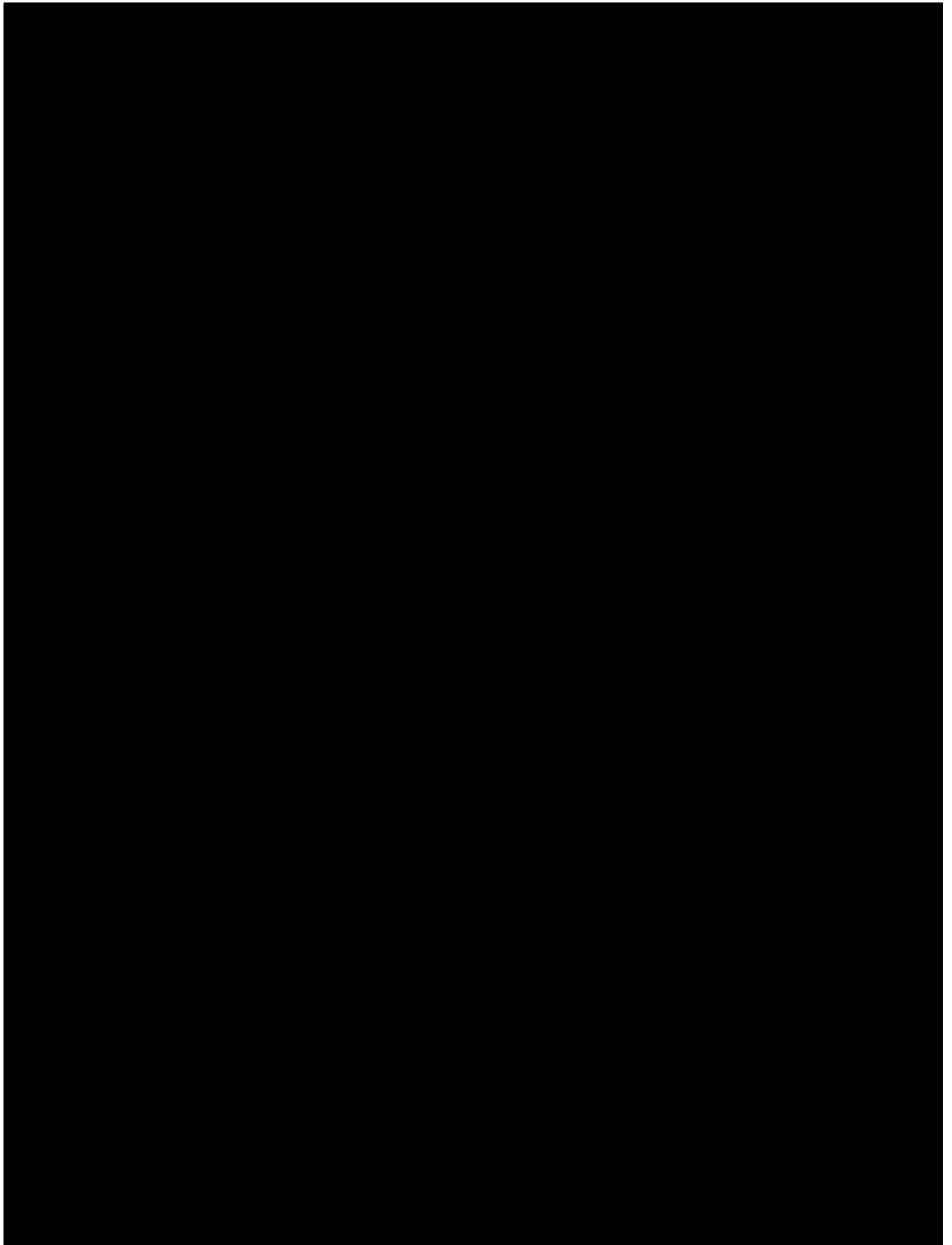


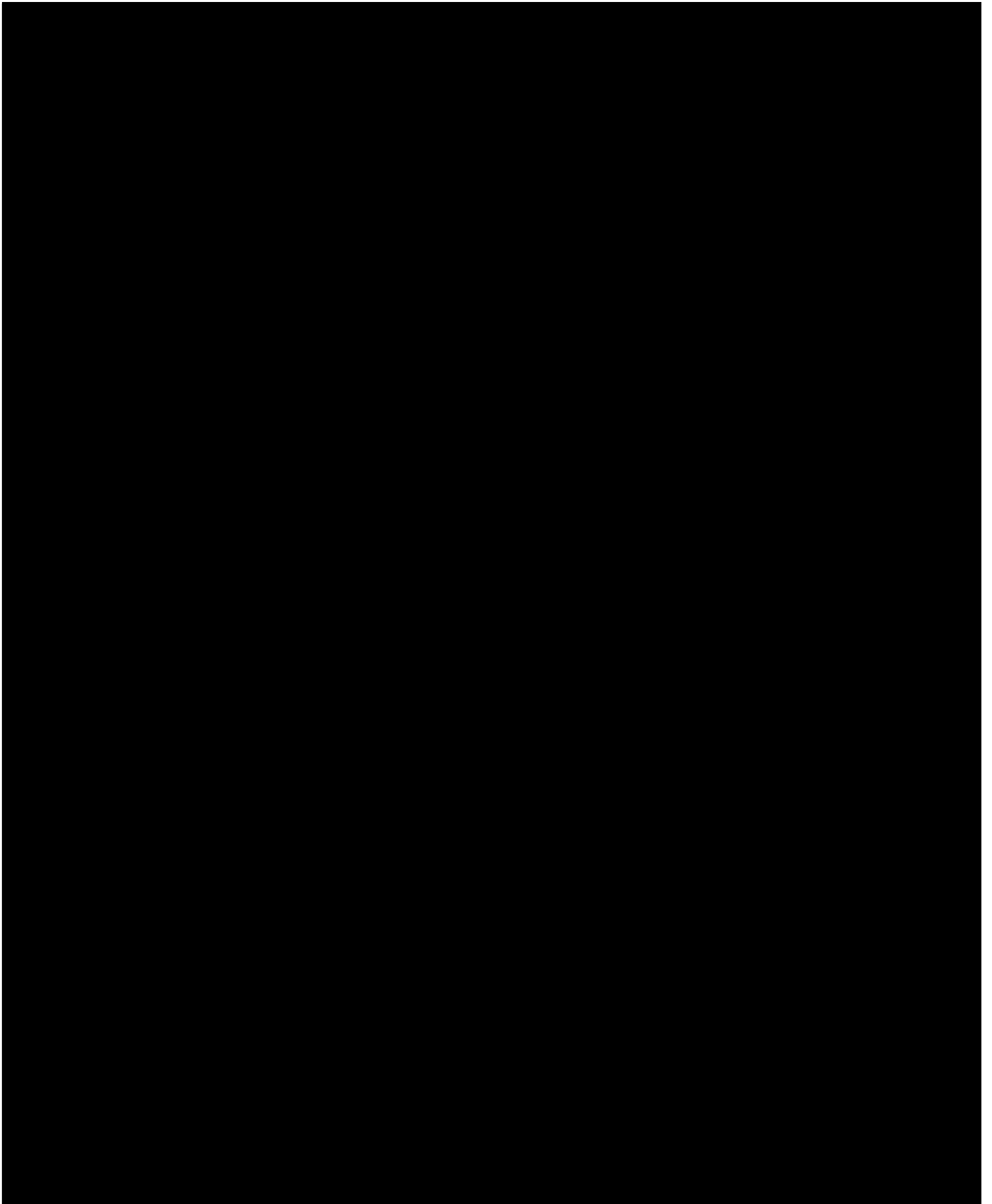
KEVIN JONES

Chief Strategy & Legal Officer

Kevin C. Jones serves as the Chief Strategy & Legal Officer and Secretary at Genting Americas Inc. Mr. Jones oversees all legal, corporate compliance, risk management and strategic corporate development matters for the North American operations of Genting Malaysia Berhad including: Empire Resorts, Resorts World Bimini, Resorts World Massachusetts, Resorts World Miami, the Downtown Miami Omni Hilton, the Resorts World aviation and yacht operations, Resorts World New York City, and other Genting developments in North America. Mr. Jones also serves as President of Resorts World Massachusetts.

Mr. Jones practiced law at Cleary Gottlieb Steen & Hamilton LLP, serving as counsel for multibillion dollar companies in a broad range of general corporate and real estate transactions. Mr. Jones has a Master's of Theological Studies Degree from Boston University's School of Theology, a Juris Doctorate Degree from Harvard Law School, a dual Master's of Public Affairs Degree and Master's of Urban and Regional Planning Degree from Princeton University, and a Bachelor's of Political Science Degree from Clark Atlanta University.









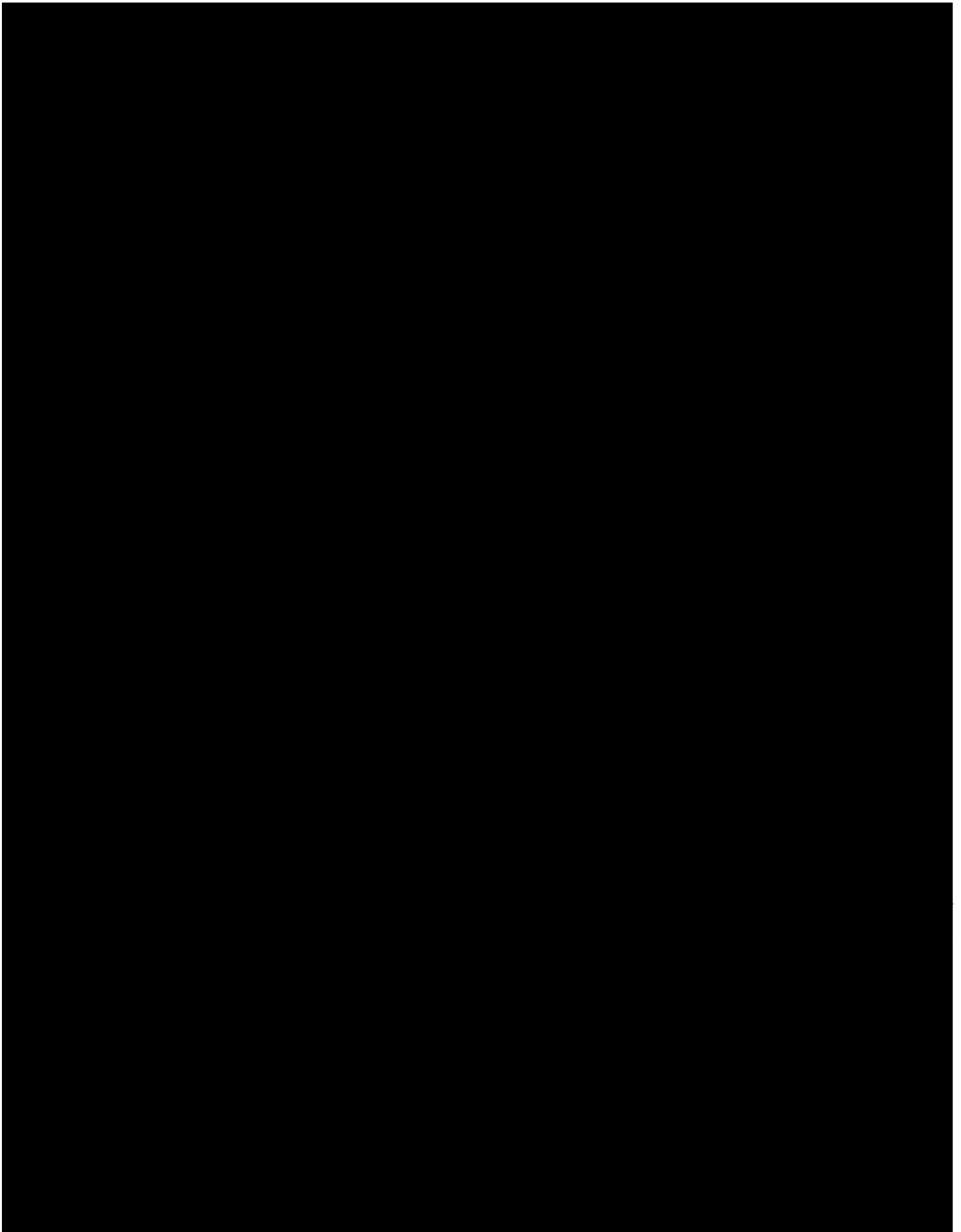
AVIV LAURENCE

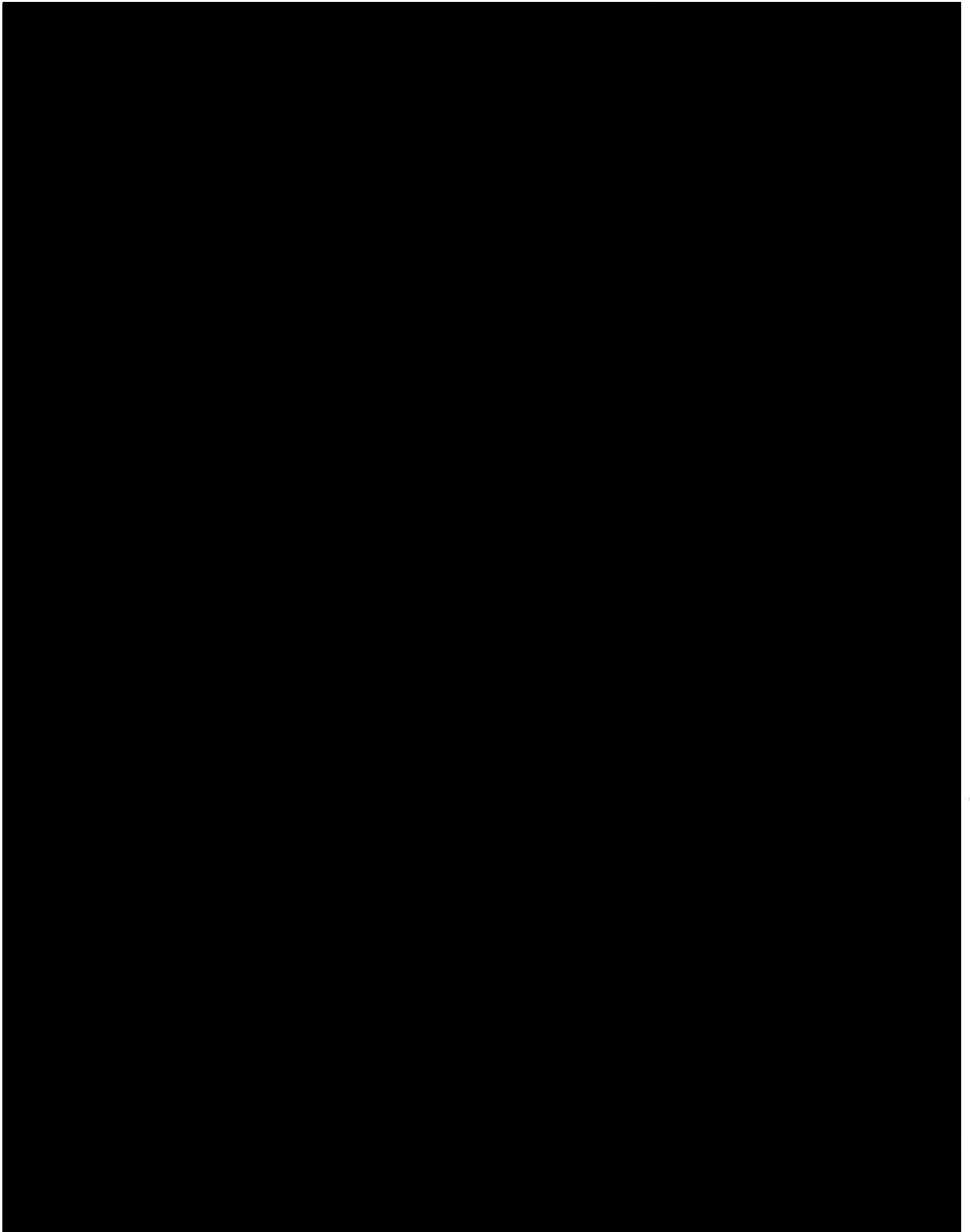
Chief Financial Officer

Aviv Laurence currently serves as the Chief Financial Officer for Genting Americas Inc. and is responsible for leading the financing efforts and overseeing the Finance Departments for the North American operations of the Genting Group. Mr. Laurence has over 30 years of Investment Banking, Finance and Accounting experience. Mr. Laurence joined Genting Americas Inc. in 2015 as Senior Vice President of Corporate Finance. Prior to joining Genting Americas Inc., Mr. Laurence spent over 15 years as an Investment Banker with various Wall Street firms including Salomon Smith Barney, Citigroup, Merrill Lynch, Bank America Merrill Lynch, Citadel Securities and Wells Fargo Securities. Mr. Laurence is a licensed Certified Public Accountant, and was employed in both the Audit and Tax Departments during his tenure at Deloitte & Touche.

Mr. Laurence has a broad range of financial advisory, capital raising and accounting experience for casino, cruise, restaurant, hotel, real estate, travel, entertainment, retail, restaurant, banking, private equity, healthcare, furniture and media companies throughout the world. He has structured and led more than 150 investment banking transactions worth over USD65 billion and completed more than 25 construction related financings worth over USD10 billion.

Mr. Laurence received a bachelor's degree in Economics from Vassar College and an MBA in Finance from Columbia Business School.







JACK KENNEDY

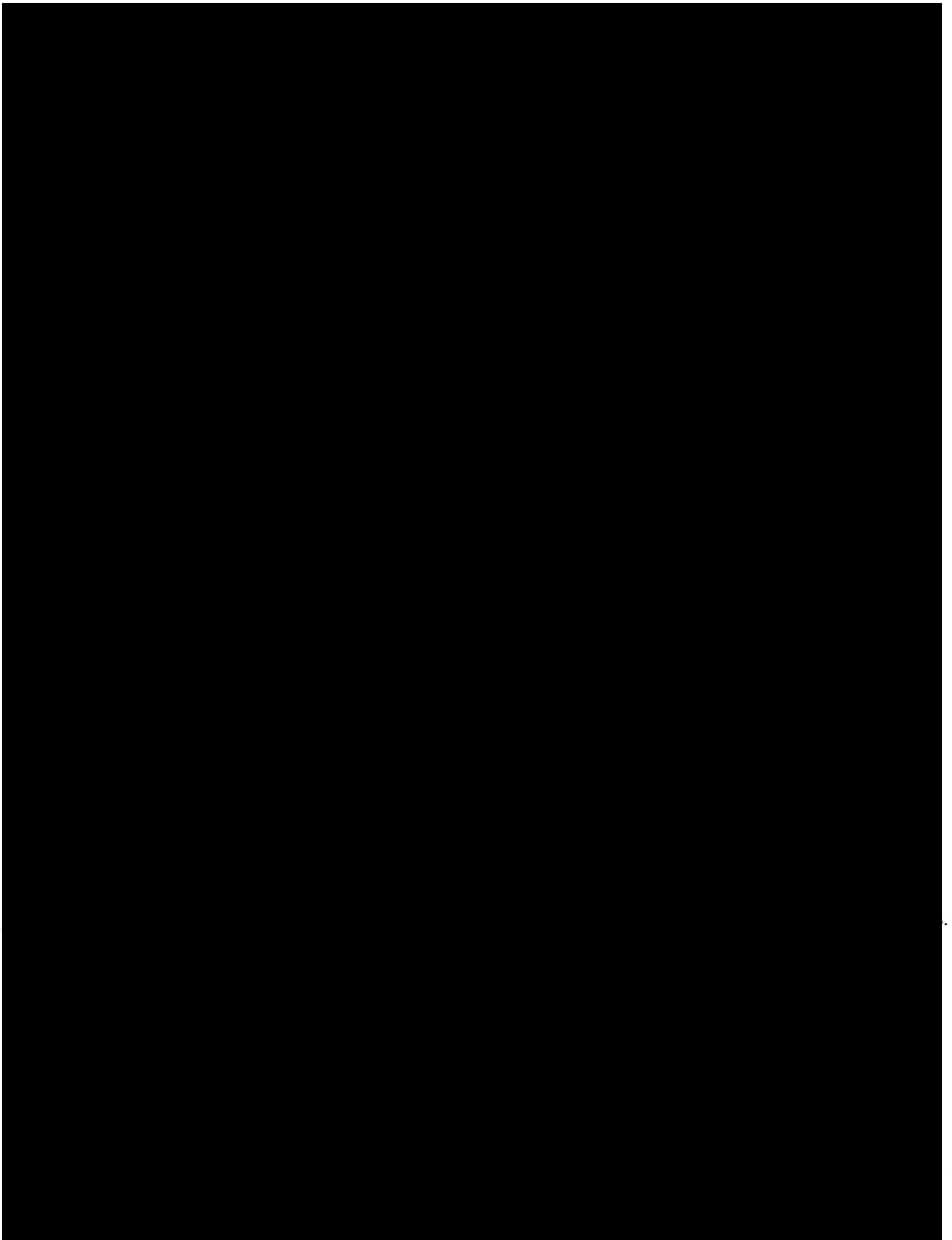
Senior Vice President Gaming Operations

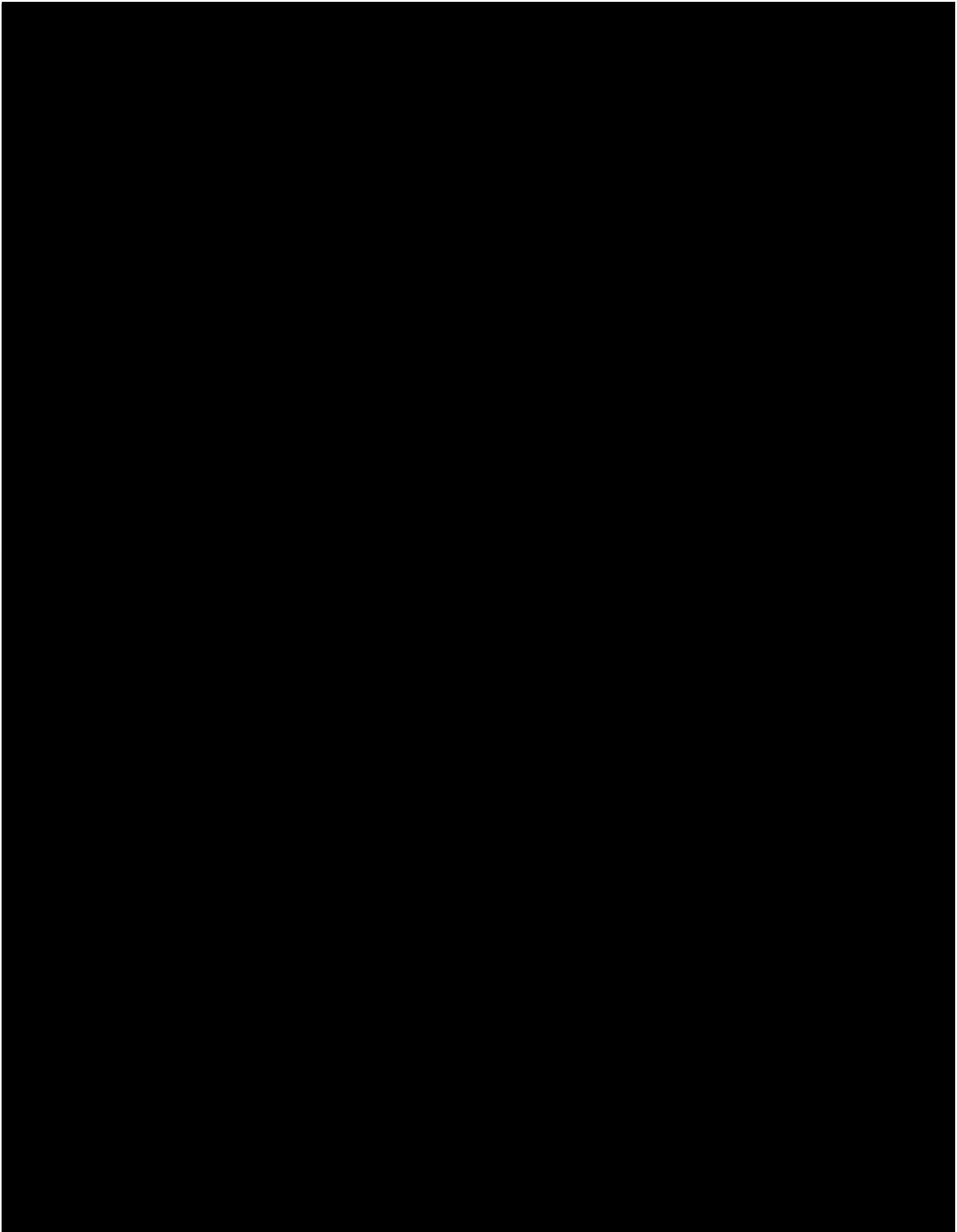
Jack Kennedy currently serves as the Senior Vice President of Gaming Operations at Resorts World Catskills. Jack joined the Genting team in December 2016, with over 20 years of Casino Management experience with an emphasis on table games.

In his role, Jack leads daily operations in Table Games, Slots, Poker Room, and Sportsbook. He was instrumental in the opening of Resorts World Catskills, leading the recruitment and training of 250+ loyal experienced dealers, planning the layout of the casino floor during early stages of development, and collaborating with all design and construction teams during pre-opening and opening. In addition, Jack developed, designed and opened Sportsbook 360 after New York State legislation passed allowing brick and mortar sports betting.

Previously, as the Director of Table Games for Sands Bethlehem, Jack created an Asian-centric Table Games Department. This included multicultural training; recruitment and training of a diverse group of managers and dealers; working with the Asian Marketing team to develop a strong relationship with the Asian communities in Manhattan, Brooklyn, and Flushing; and the ability to expand the operation as needed. Upon his departure from Sands Bethlehem, the Table Games Department consisted of over 200 live table games and 150 dealer-assisted ETGs.

In addition, as the Director of Table Games for Las Vegas Sands Corporation, Jack assisted with the development and implementation of the Table Games Department operation and worked with the Asian Marketing team to build an international business model. With the successful opening of The Venetian/Palazzo, Jack was enlisted to develop best business practices for gaming operations with Sands China Limited in Macau and Marina Bay Sands in Singapore.







The remainder of the page is mostly blank white space with some minor scanning artifacts and faint, illegible marks scattered throughout.



RICHARD GLISSON

Vice President, Database Strategy & Marketing Operations

Richard Glisson currently serves as the Vice President of Database Strategy & Marketing Operations for Resorts World New York State under the Genting global brand. In this role, Richard manages marketing reinvestment and programming strategy for the most successful gaming operations in New York. This tenure includes the opening of Resorts World Catskills which reimagined the gaming landscape and economy of upstate New York and is the home of Sportsbook 360.

Richard joined Empire Resorts at Monticello Casino and Raceway in 2010 to drive the transformation of the storied racetrack and VLT operation. Monticello Casino and Raceway led the state VLTs in leveraging technology to create outstanding player experiences.

Richard has a fascination for data interpretation and analytical storytelling that fuels a passion for gaming. His scorecard is one of achievement in the management of Class II and Class III marketing departments in highly competitive environments.

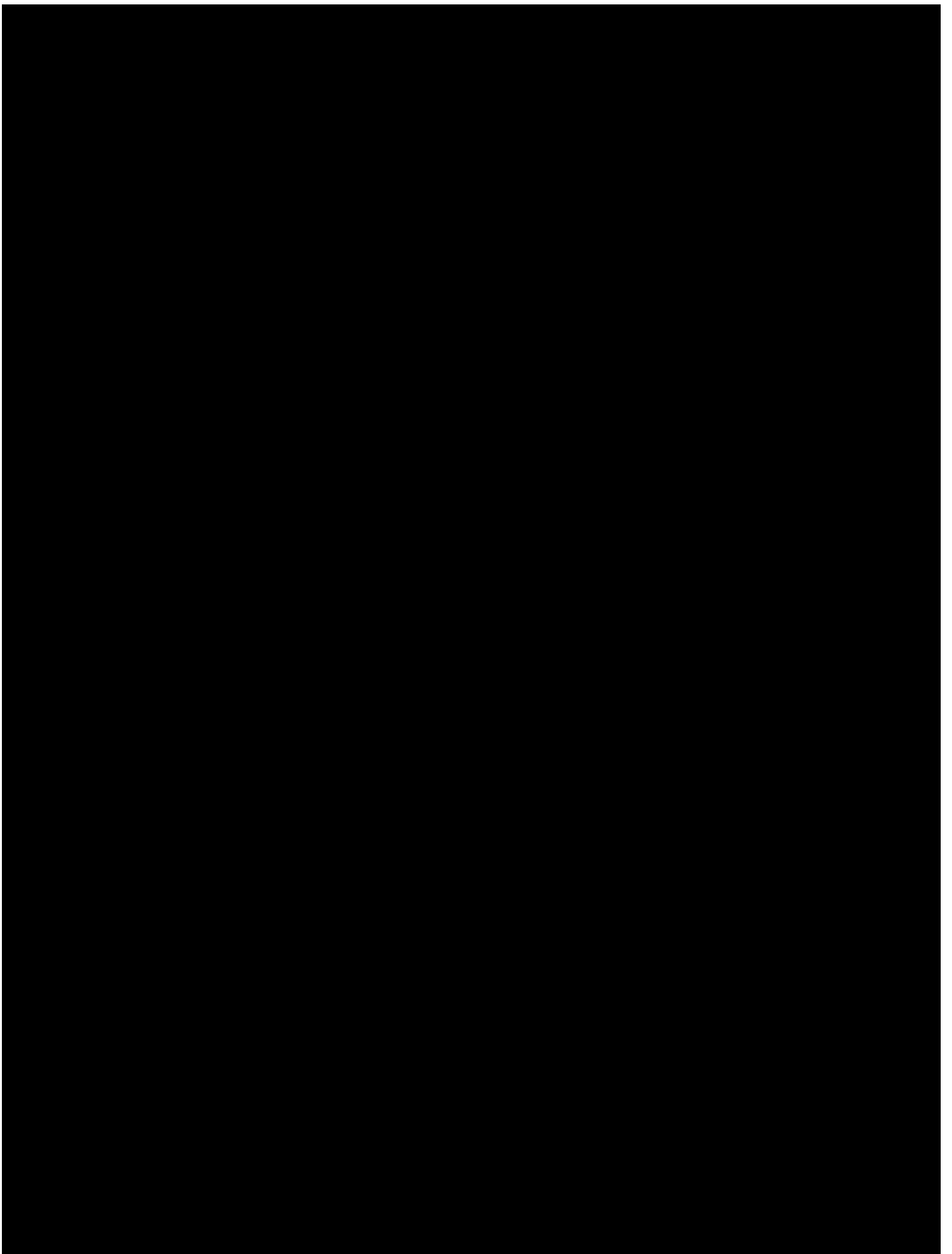
Under Richard's leadership, Monticello was the first in the state to print free slot play on demand, the first to implement promotional

kiosks and the first racetrack to implement a combined racing and casino rewards program. New York state designated Monticello as the pilot track for the free play program, a testament to the recognition of excellence and cooperation between the operation and the state. Richard led the marketing efforts when Monticello competed for and won a coveted commercial license, beating out nineteen other competitors.

Before joining Resorts World, Richard was on the Rush Street team, tapped to open Rivers Casino Pittsburgh. At Rivers, Richard was responsible for all direct marketing efforts.

Richard is a cultural historian by trade with a BA in Southern Studies and an MA in Public Policy from the University of Mississippi and attended Concord Law School. He believes in sustainable communities and giving back. As such, he serves as a Planning Board Member for the Township of Mamakating, is a member of the Yankee Lake Preservation Association, the Basha Kill Area Association, and a Policy Advisor for Sustainable Equity, LLC.







KAREN CHO

General Counsel

Karen M. Cho currently serves as the General Counsel for Genting New York. Ms. Cho joined the Genting team in July 2020.

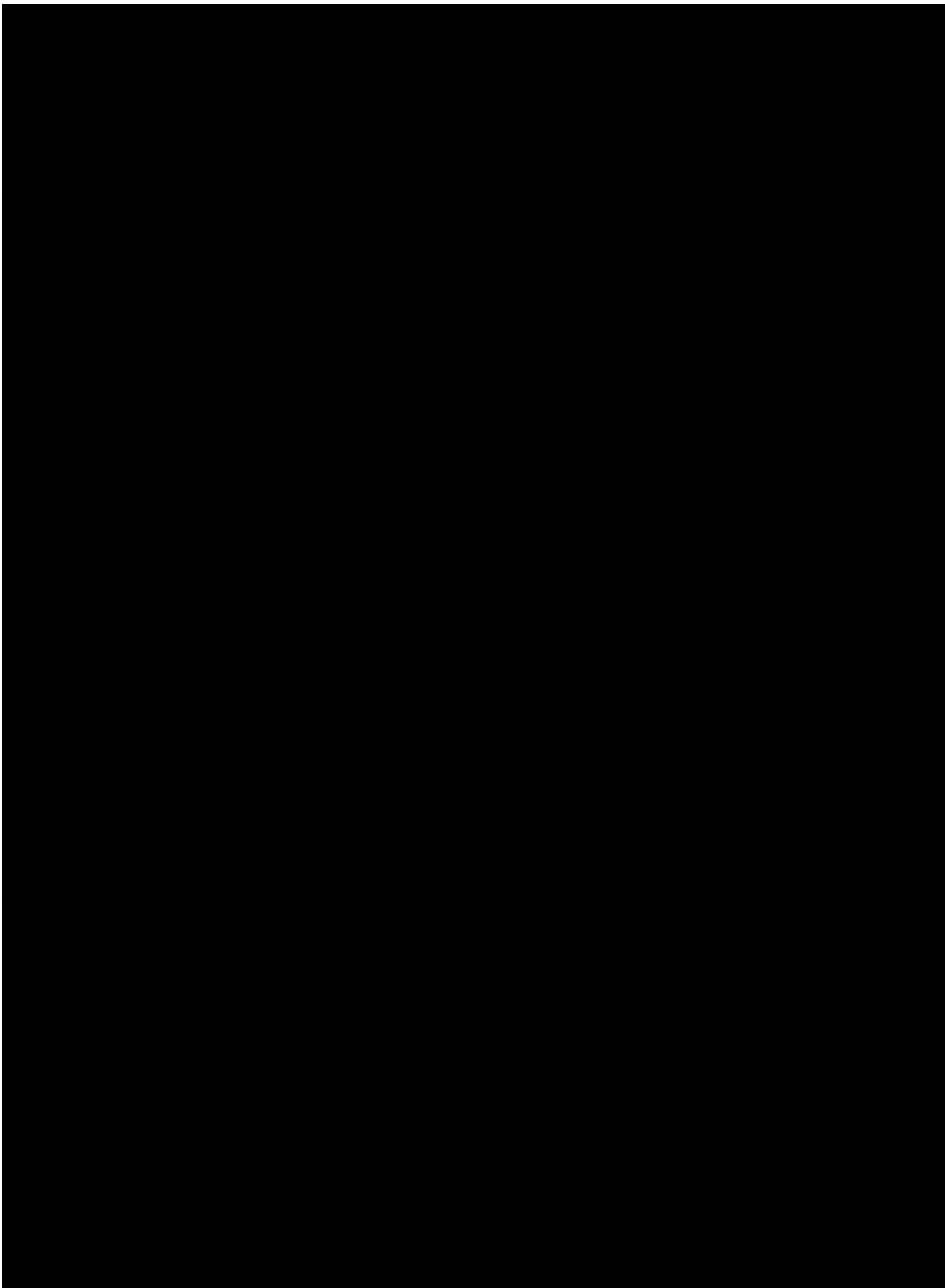
In her role, she leads licensing and regulatory compliance, human resources, gaming operations and risk management for Genting's New York State properties which includes, Resorts World NYC (VGM facility), Resorts World Catskills (commercial casino) and the proposed Resorts World Hudson Valley (VGM facility). Karen is the primary contact with the New York State Gaming Commission for all New York properties. In addition, she assists the construction teams with all regulatory requirements for the proposed Resorts World Hudson Valley.

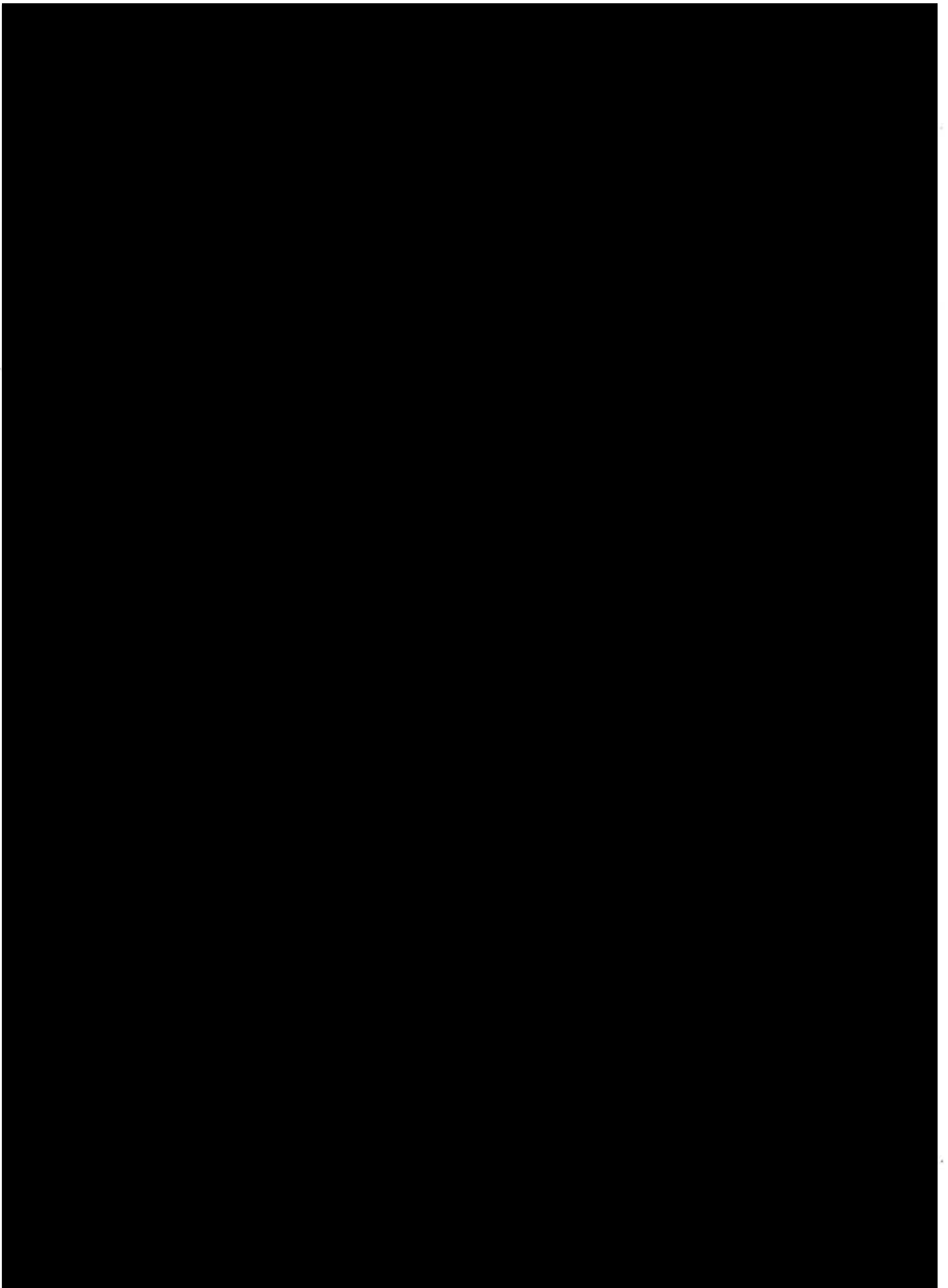
Previously, Karen was the Vice President of Legal and Regulatory Compliance for the Cordish Gaming Group where she provided all pre-opening guidance to executive management regarding licensing and regulatory compliance, human resources, gaming operations and risk management. Karen was the primary contact with the Pennsylvania Gaming Control Board for all pre-opening requirements for Live! Casino & Hotel Philadelphia and Live! Casino Pittsburgh and was an integral part of the team preparing to launch on-line gaming operations in Pennsylvania.

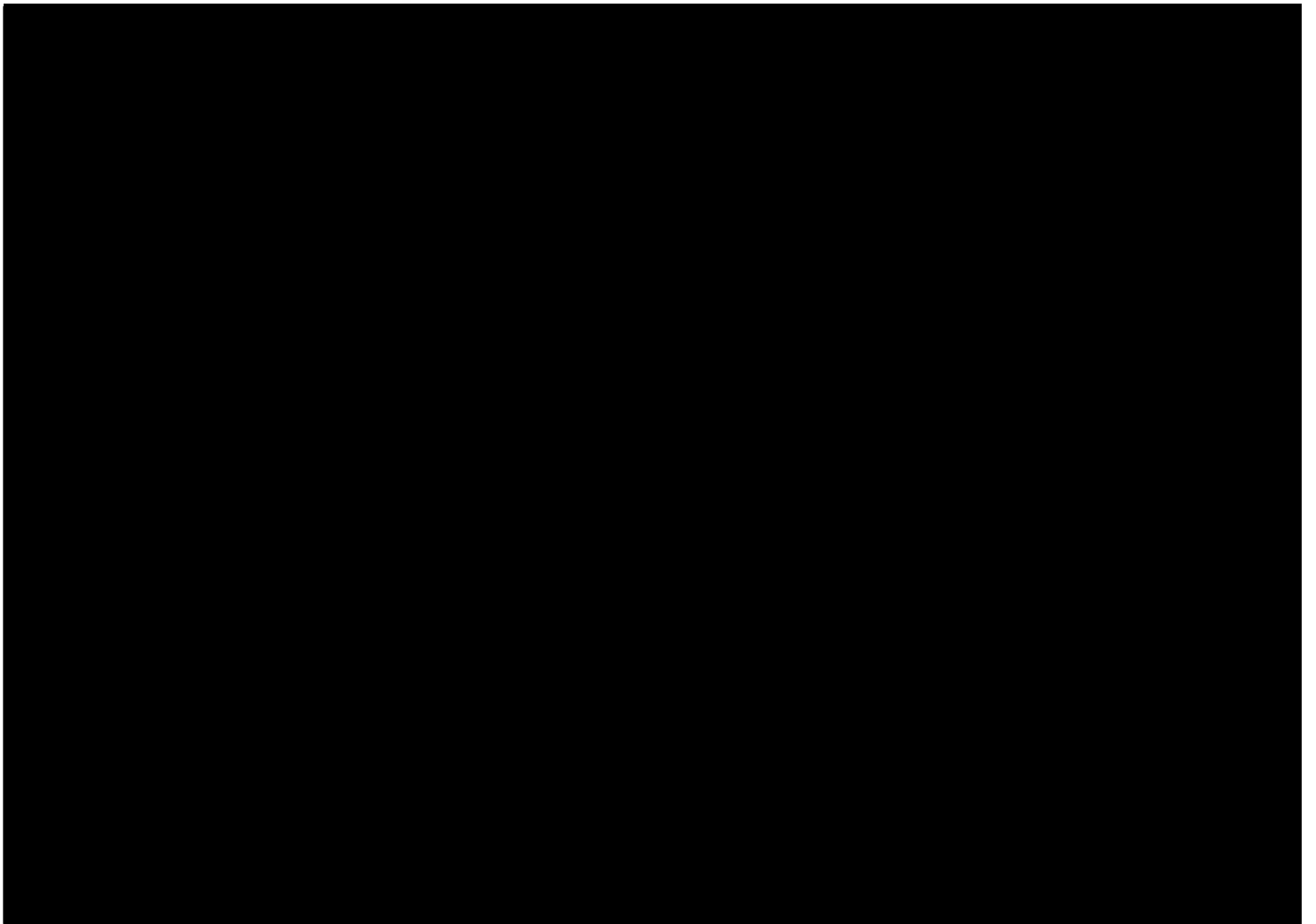
Ms. Cho has held several executive level positions in the gaming industry including Vice President and General Counsel of The Atlantic Club Casino Hotel (formerly The Atlantic City Hilton) in Atlantic City, NJ. With over 20 years in the gaming industry, Karen has worked in eight U.S. jurisdictions as well as the Bahamas. Karen began her career working for a publicly traded riverboat casino operator that was later acquired by Caesars Entertainment. During her time with Caesars, Karen was a member of the Eastern Division, handling regulatory matters for six properties, including one Native American property. Her experience includes opening properties in St. Louis, Missouri; Chester, Pennsylvania as well as Resorts World Catskills.

Karen has also held the position of Assistant General Counsel for Parx Casino & Racing in Bensalem, PA and Vice President of Legal and Regulatory Affairs for Resorts International Casino & Hotel in Atlantic City, NJ. Karen received her Juris Doctor degree from The Catholic University of America in Washington, D.C.











MEGHAN TAYLOR

Vice President, Government Affairs & Public Relations

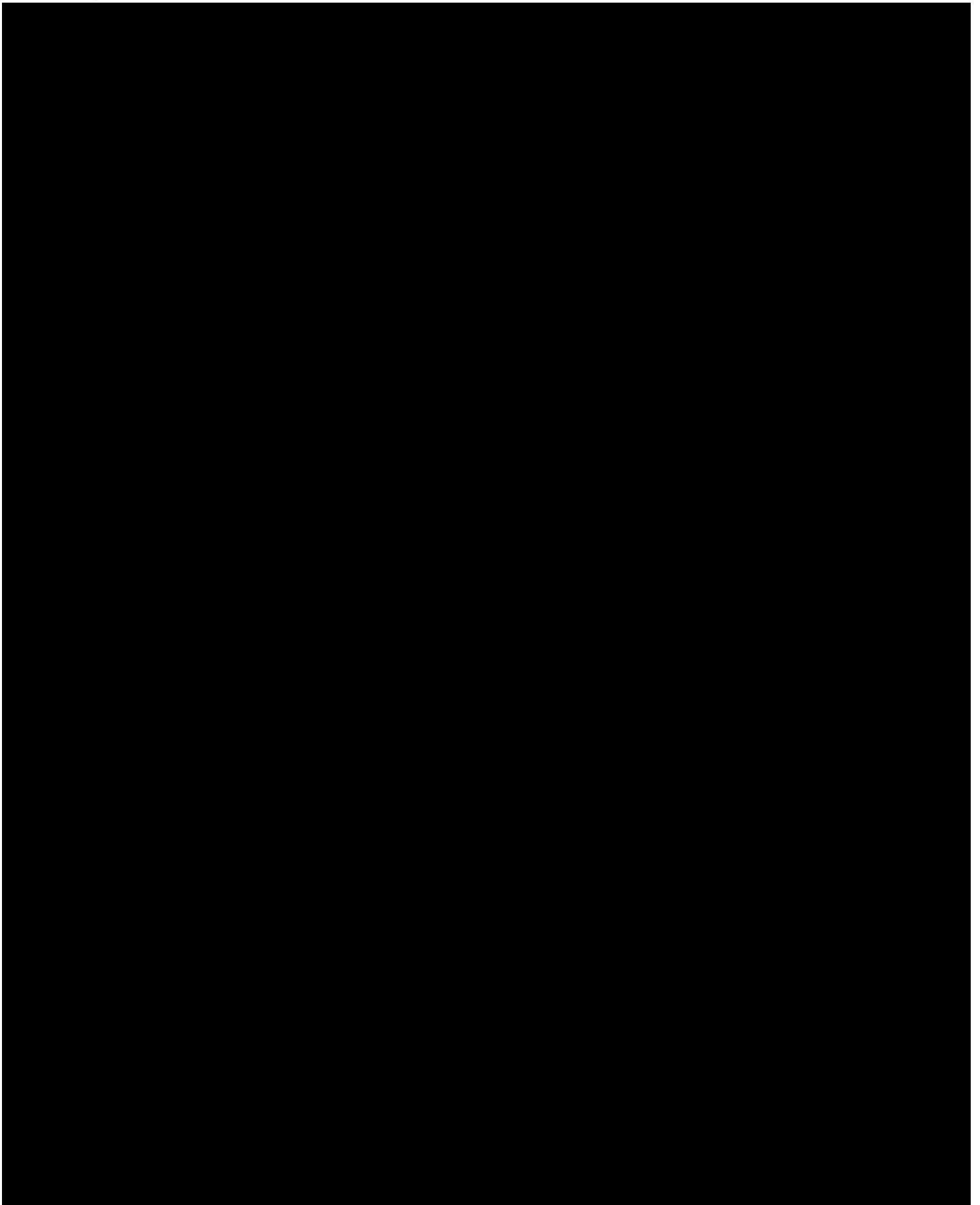
Meghan A. Taylor currently serves as the Vice President of Government Affairs & Public Relations at Genting New York. Meghan joined the Genting team in May 2020.

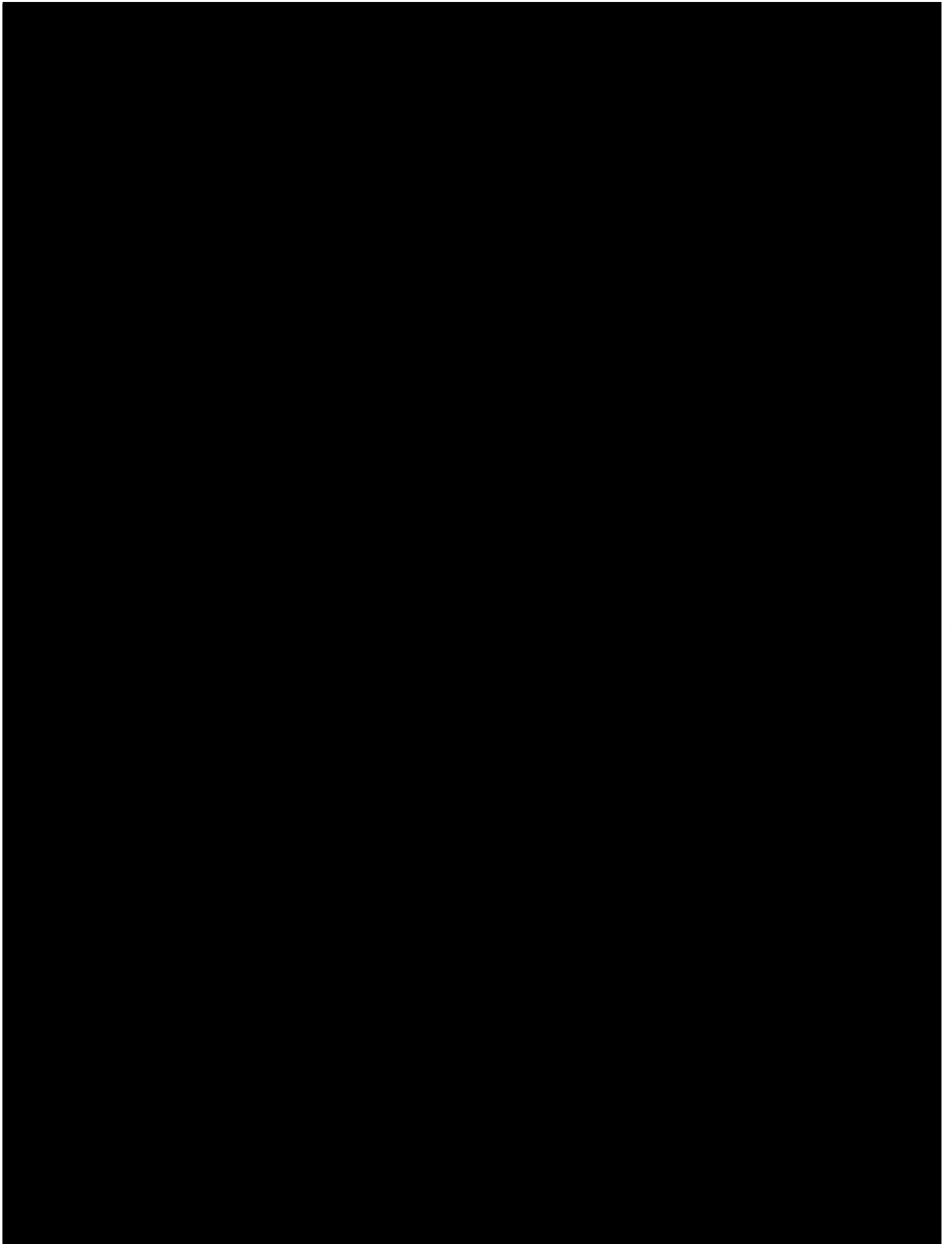
In her role, Meghan directs Resorts World's government affairs strategy, lobbying and advocacy on issues of strategic importance at the state and local levels for Resorts World Catskills, Resorts World New York City and the proposed Resorts World Hudson Valley. In addition, Meghan manages all aspects of public relations for Genting's New York State properties. She is responsible for establishing and maintaining open lines of communication between Resorts World and the public, including government officials, and increasing awareness of Resorts World through local news and media.

Previously, as the Vice President and Regional Director of Empire State Development's (ESD) Mid-Hudson Regional Office, Meghan lead the State's implementation of economic development programs and initiatives for the seven county Hudson Valley Region. She oversaw sourcing, originating, developing and guiding new projects to promote the economic vitality of the region, attracting significant private investment and supporting job creation. In addition, Meghan established and maintained lines of communication and strong relationships with all local and state elected officials, corporate executives, nonprofit leaders and community groups.

Meghan has over a decade of leadership experience in government affairs and public relations. Prior to joining ESD, she served as President of the Putnam County Economic Development Corporation and Director of Business Attraction at the Orange County Partnership.

Meghan holds a Master of Business Administration from Mount Saint Mary College and a Bachelor of Finance from SUNY Binghamton









SHANE POMEROY

Executive Vice President of Finance

Shane Pomeroy currently serves as the Executive Vice President of Finance for Genting Americas. Shane joined the Genting Americas team in November 2015.

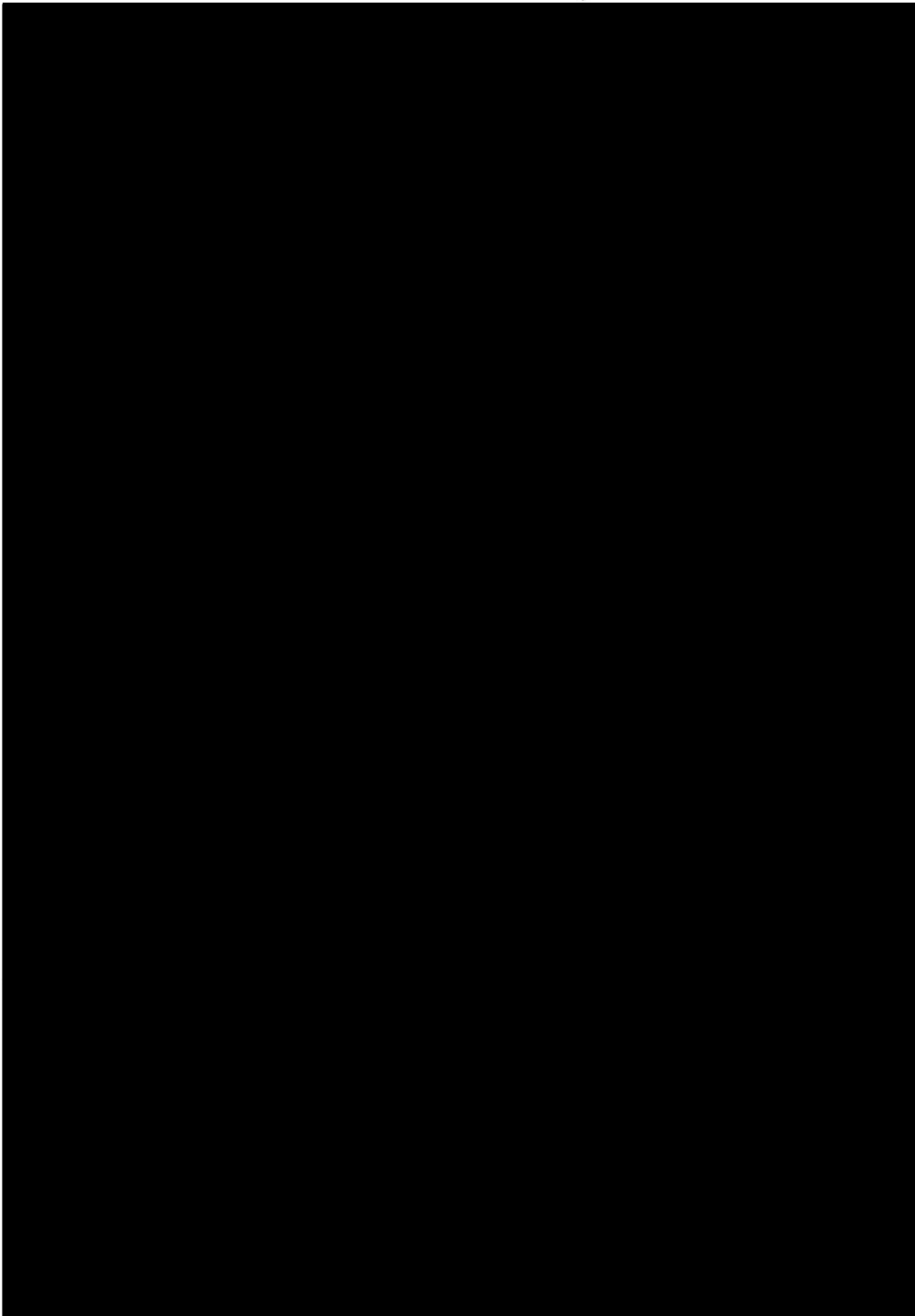
In his current role, Shane is responsible for overseeing the financial operations of all properties in the Genting Americas portfolio, including Resorts World New York, Resorts World Catskills, Resorts World Miami, Resorts World Bimini, and the proposed Resorts World Hudson Valley. This includes directing all financial and fiscal management activities; including providing leadership and coordination in business planning, accounting, and budgeting efforts.

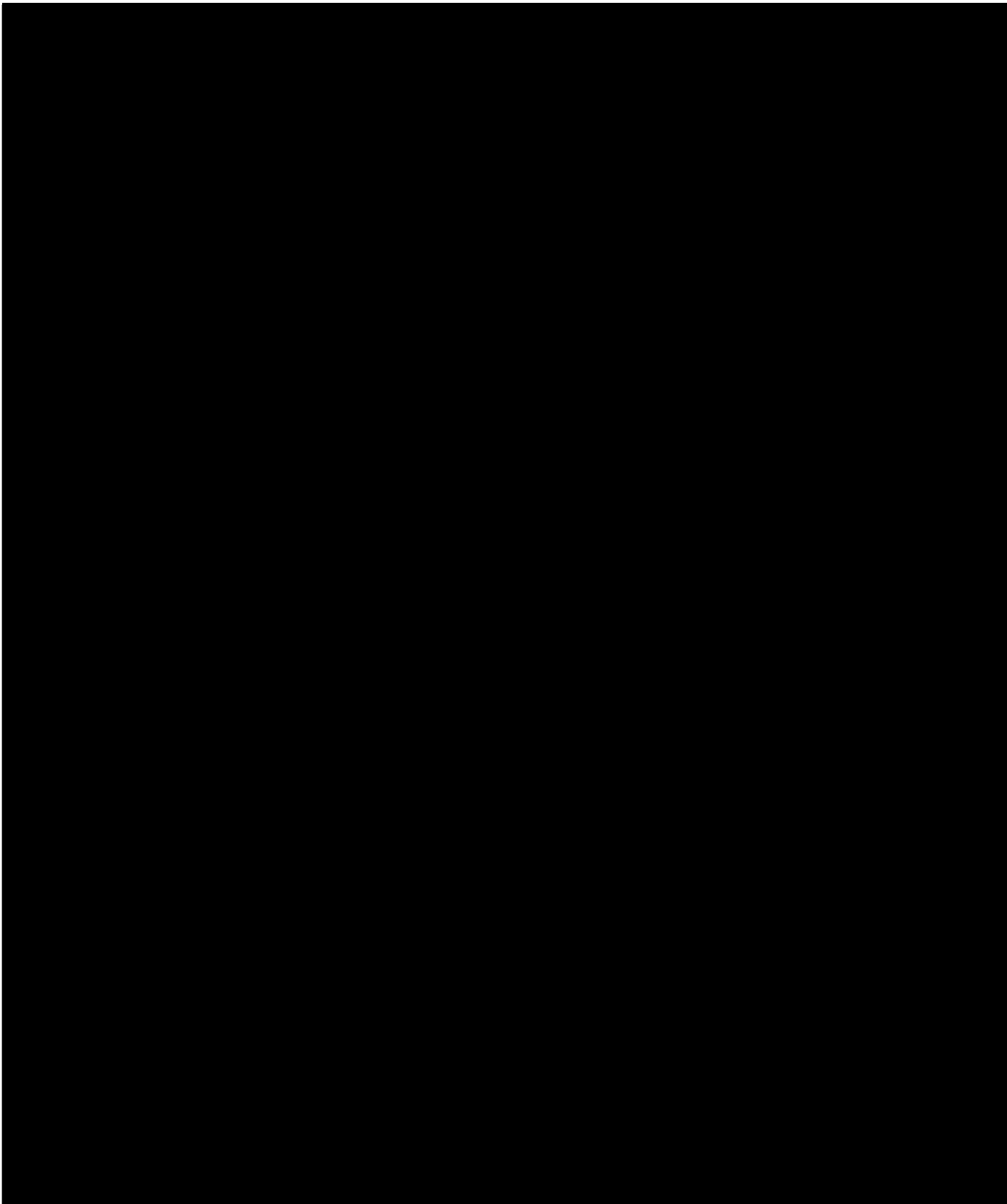
Previously, Shane was the Senior Vice President / Vice President of Planning and Analysis (P&A) for Genting Americas. He was responsible for directing all planning, analysis, budgeting, and reporting for all properties in the Genting Americas portfolio.

Shane has 23+ years of experience in the Hospitality and Gaming industries. Prior to joining the team at GAI, Shane spent 7+ years with Wind Creek Hospitality. While with Wind Creek, Shane managed the Corporate P&A team, overseeing the development of financial forecasts, budgets, and management reports for six properties (three integrated casino resorts, three pari-mutuel/ poker) and associated corporate operations.

Shane spent 10 years with Harrah's Entertainment / Caesars Entertainment starting his career as a Bartender, then F&B Supervisor, switching to Operations Analysis and advancing thru Finance working his way up to Regional Manager of Planning & Analysis for the Lake Tahoe and Reno properties.

Shane has a Master's in Engineering Management (a cross between an MBA and a Master's in Engineering with an IT systems emphasis) from the University of Kansas and a Bachelor's in Physics with a minor in Math from William Jewell College.







ANGELINA SANTANGELO

Director of Internal Audit

Angelina Santangelo currently serves as the Director of Internal Audit at Genting America's East. Angelina joined the Genting team in October of 2020.

In her role, Angelina leads Resorts World's New York State Internal Audit initiatives covering Resorts World Catskills, Resorts World New York City and the proposed Resorts World Hudson Valley. She is responsible for the Internal Audit functions for the eastern region of the US, including developing an annual audit plan and all audit programs for the properties, executing audits, identifying issues, risks, and corrective actions, and building the internal audit department by hiring and training staff.

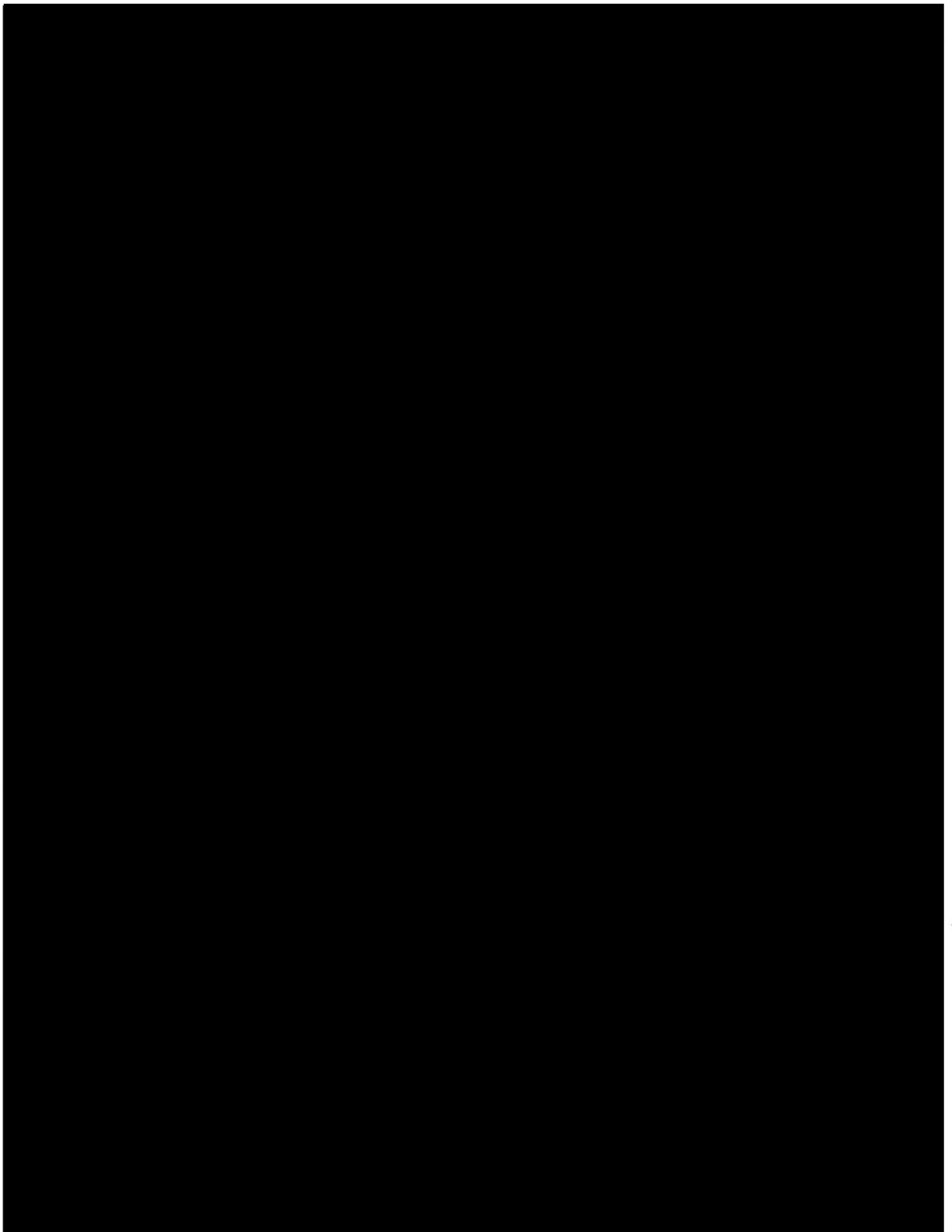
Previously, as the Director of Internal audit at Empire City Casino in Yonkers, NY, Angelina developed a strong understanding of New York State gaming regulations. She then supported Empire City Casino management during the transition upon the sale of the property and integrated into the new management team, collaborated with new leadership to implement system changes and provided guidance to the new operators ensuring compliance with state requirements.

In addition, Angelina was previously part of the Internal Audit team at the Borgata Hotel, Casino and Spa in Atlantic City, NJ where she developed a firm and in depth understanding of all aspects of casino gaming operations including live table games, slots, sports book, casino cage operations and the processes and internal controls therein.

For over 18 years, Angelina has been a noteworthy leader in the gaming space, specifically Internal Audit for Casino Gaming, Hotel and Resort Operations.

Angelina holds a Master's of Business Administration from Rutgers University Camden Campus and a Bachelor's of Science in Accounting and Business Administration from the University of Kansas. She maintains a Certified Internal Auditor designation (CIA) from the Institute of Internal Auditors (IIA) and is an avid participant in training and learning opportunities to stay current on auditing techniques, standards and industry trends.









TYLER PRUTZMAN

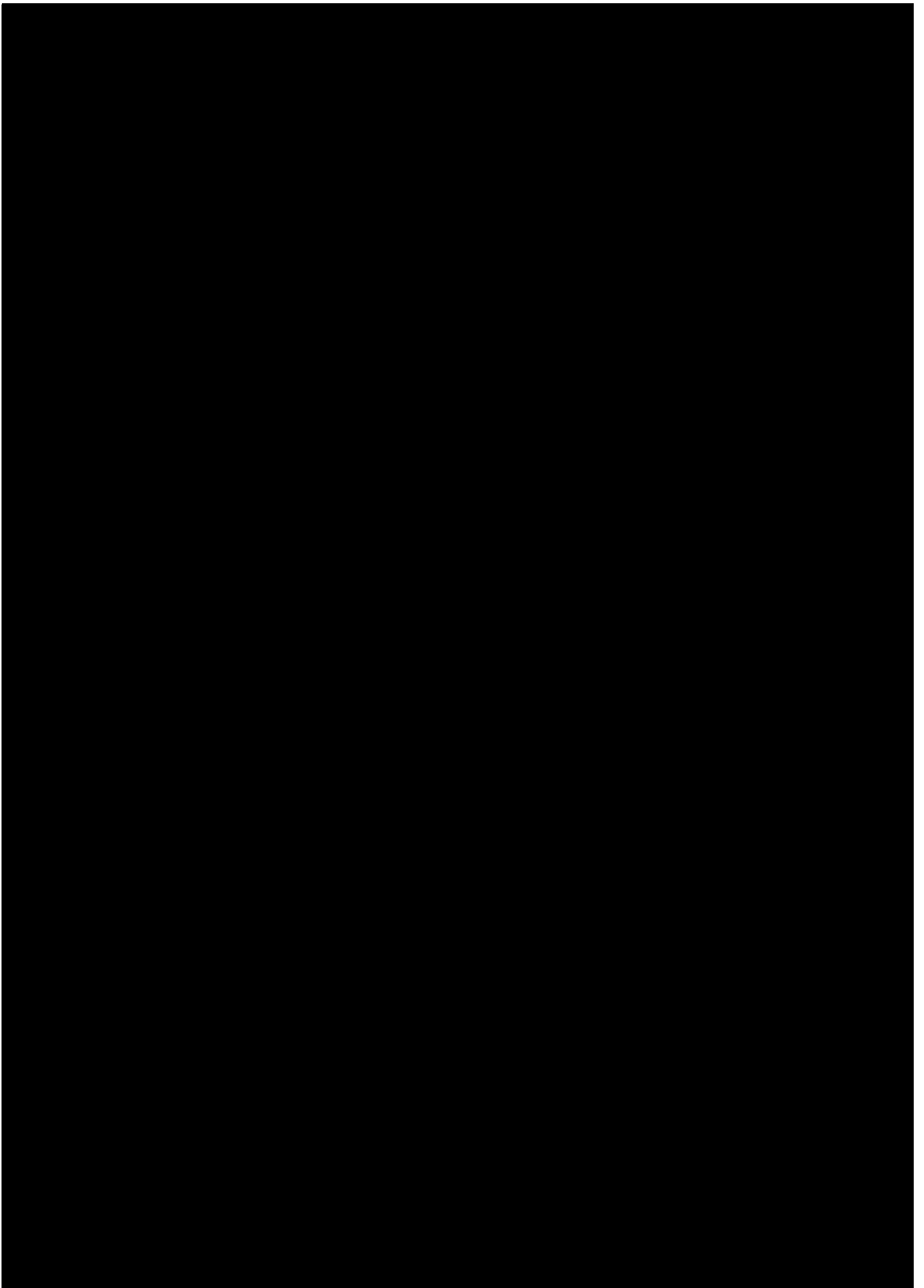
Director of Sportsbook Operations

Tyler Prutzman currently serves as the Director of Sportsbook Operations at Resorts World Catskills. He joined the Genting team in August 2017.

In this role, Tyler leads all operations of Sportsbook 360 and manages the daily operations of sports wagering. He monitors current sports offerings to ensure accuracy and adherence to New York State Gaming Commission regulations, coordinates with regulators for league and wager approval, and facilitates interdepartmental cooperation in regards to sportsbook projects and company goals.

Previously as the Assistant Shift Manager of Table Games, Tyler oversaw daily operations and ensure compliance of all federal, state and local laws related to table games, as well as adherence to all New York State Gaming Commission gaming regulations at an operations level. In addition, he was instrumental in helping launch table games at Resorts World Catskills.

For 12 years, Tyler has been a noteworthy leader in the gaming industry, helping in the opening of five properties in various states and jurisdictions.





SANDRA BARRERA

Director of Compliance

Sandra Barrera is an experienced casino finance and compliance professional with a passion for casino compliance, regulations, and operations for Class II and Class III environments. Sandra has extensive knowledge of high tax, highly regulated casino environments in New York specifically, and through the United States spanning her fourteen-year career in casino finance and compliance roles. Sandra opened four new commercial properties in the Midwest and on the East Coast as the quarterback for the operational teams. In these roles, Sandra was responsible for the creation and implementation of Casino operational policies and procedures, including the AML Compliance Program.

In her previous role as Casino Controller for Resorts World Catskills, Sandra had oversight of Revenue Audit, Drop and Count, and the AML Compliance Program. As Director of Compliance for Resorts World Catskills Sandra is instrumental in the development of the Internal Controls, property procedures, and the AML policy. As the leader of compliance program Sandra maintains an active role in the implementation of new revenue streams and processes to ensure audit integrity. As an example, Resorts World Catskills launched Sportsbook 360 in August 2019.

Sandra holds a BS in Business Management from Mount Mercy University and a AS in Accounting from Hawkeye Community College. She maintains an active role in her community through sports coaching and involvement in her church.

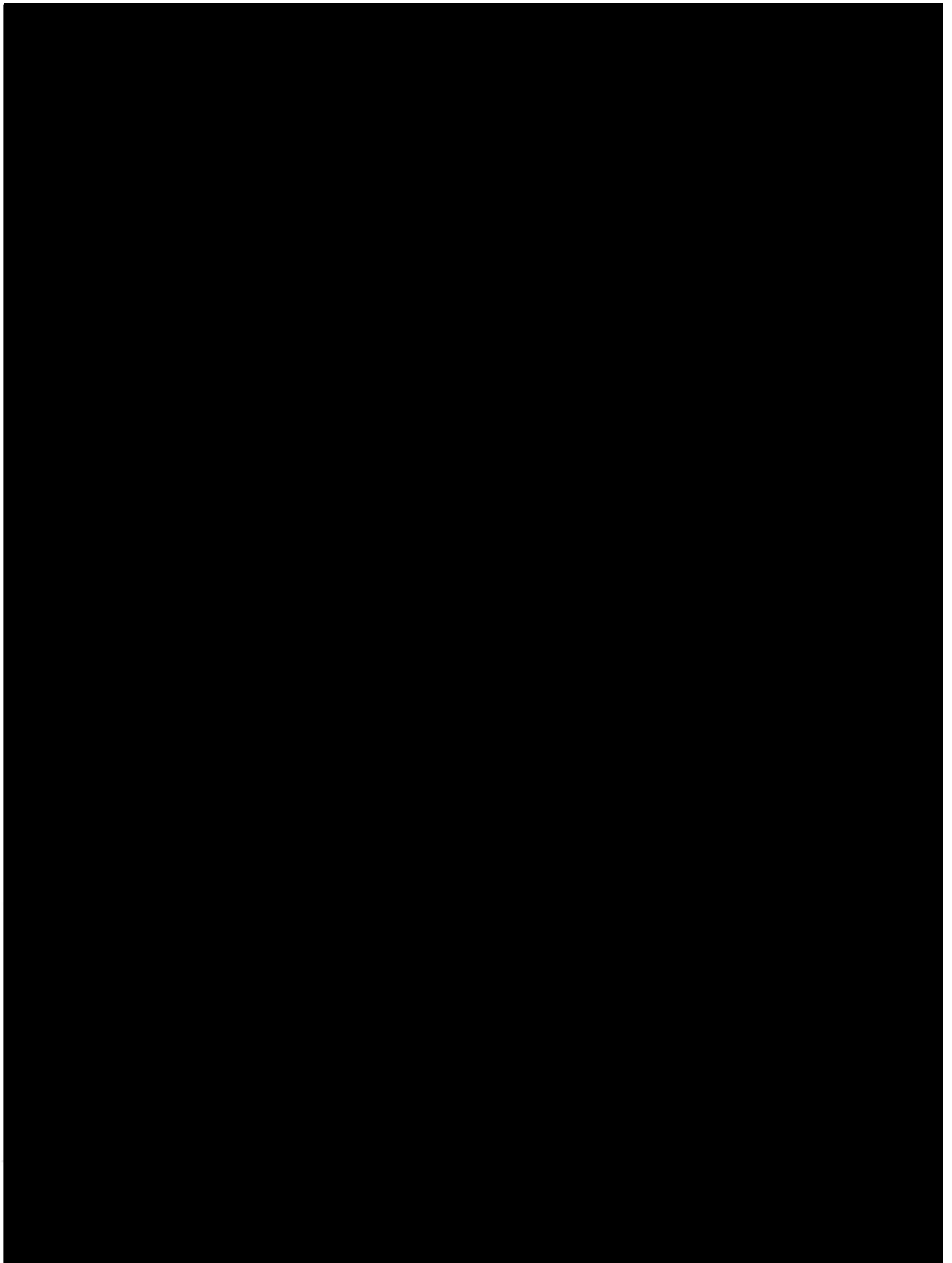




EXHIBIT E



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500

www.gaming.ny.gov

LOBBYIST REGISTRATION FORM

Section 1329 of the Racing, Pari-Mutuel Wagering and Breeding Law requires each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the N.Y.S. Gaming Commission to first register with the Secretary of the Commission. This requirement is in addition to any other registration and reporting required by law, such as the Lobbying Act, Article 1-A of the Legislative Law.

Please provide the following information:

Firm or Principal Lobbyist Name:	Dickinson & Avella, PLLC
Work Address:	111 Washington Ave, Suite 702, Albany, NY 12210
Telephone Number:	(518) 599-0579
Mobile Telephone Number:	(518) 859-5179
Email Address	michael@dickinsonavella.com
Additional Lobbyist(s): (List each individual associated with the principal lobbyist who will be lobbying for the named principal, regardless of whether lobbying is a significant part of their duties)	Michael A. Avella
Client Name:	Genting New York, LLC

The firm or person named above has registered with the N.Y.S. Joint Commission on Public Ethics, pursuant to the Lobbying Act, Legislative Law Article 1-A.

Signature	<i>Michael A Avella</i>
Printed Name	Michael A. Avella
Date	8/3/2021



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500
www.gaming.ny.gov

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Please provide the following information:

Firm or Principal Lobbyist Name:	Albany Strategic Advisors, LLC
Work Address:	111 Washington Avenue, 2 nd Floor, Albany NY 12210
Telephone Number:	518-813-4832
Mobile Telephone Number:	
Email Address	danv@asagovtaffairs.com ; jill@asagovtaffairs.com
Additional Lobbyist(s): (List each individual associated with the principal lobbyist who will be lobbying for the named principal, regardless of whether lobbying is a significant part of their duties)	Paul Zuber Jill Scalzo
Client Name:	Resorts World Catskills & Resorts World New York City

The firm or person named above has registered with the N.Y.S. Joint Commission on Public Ethics, pursuant to the Lobbying Act, Legislative Law Article 1-A.

Signature	
Printed Name	Justin Birzon, VP at Albany Strategic Advisors
Date	August 3, 2021



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500
www.gaming.ny.gov

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Please provide the following information:

Firm or Principal Lobbyist Name:	Cordo & Company, LLC
Work Address:	119 Washington Avenue Albany NY 12210
Telephone Number:	518-445-25354
Mobile Telephone Number:	
Email Address	jcordo@cordolaw.com
Additional Lobbyist(s): (List each individual associated with the principal lobbyist who will be lobbying for the named principal, regardless of whether lobbying is a significant part of their duties)	Steve Harris Adam Richardson Nora Boyle Amy Folger
Client Name:	Everi Gaming Draft Kings Fan Duel. Jackpocket, Inc.

The firm or person named above has registered with the N.Y.S. Joint Commission on Public Ethics, pursuant to the Lobbying Act, Legislative Law Article 1-A.

Signature

Printed Name	John Cordo
Date	7/28/21

EXHIBIT F

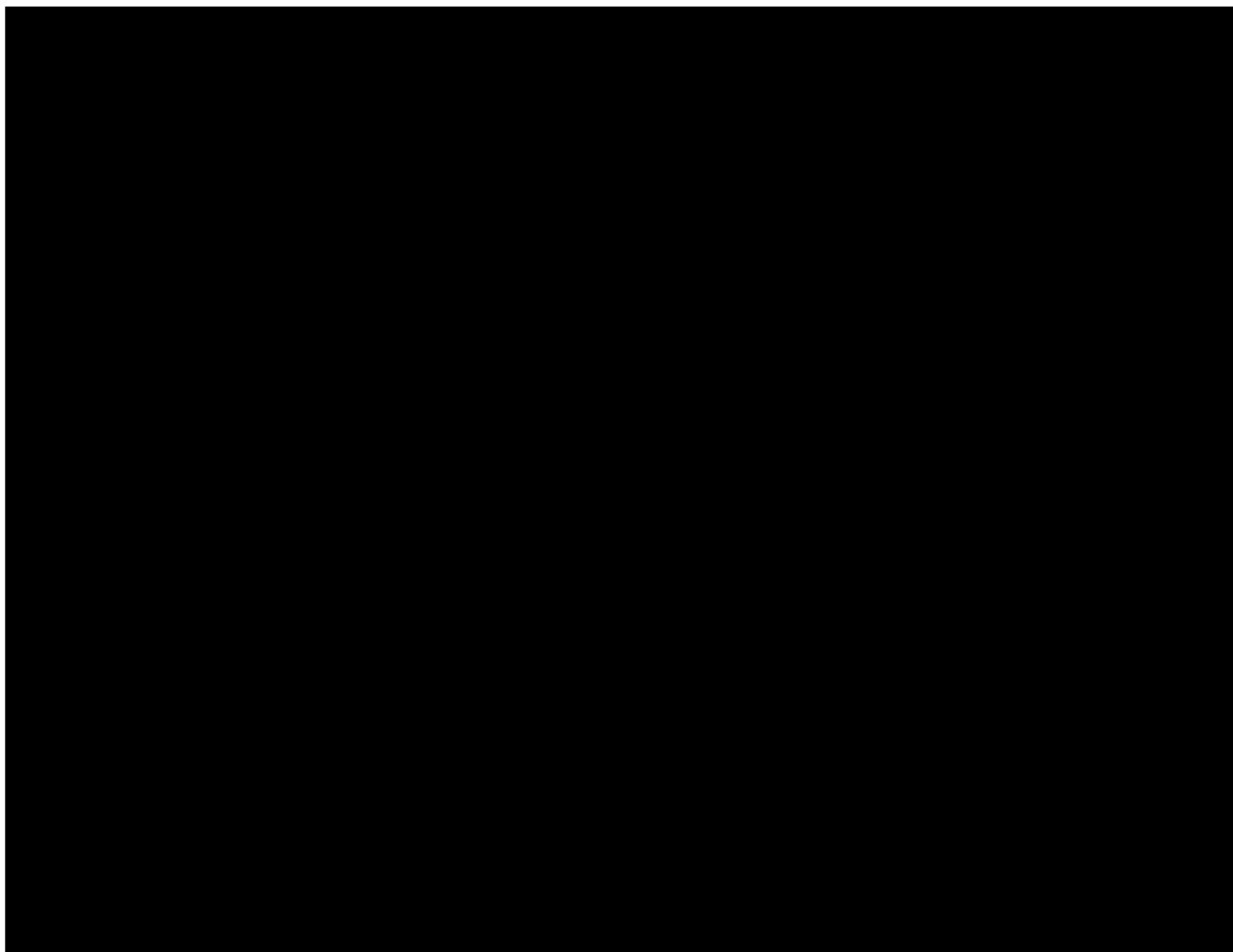


EXHIBIT G

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "EMPIRE RESORTS, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE NINETEENTH DAY OF MARCH, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-THIRD DAY OF AUGUST, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE THIRTEENTH DAY OF DECEMBER, A.D. 1995, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:20 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:30 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203848758
Date: 08-05-21

Delaware

The First State

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SIXTH DAY OF
DECEMBER, A.D. 1996, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-FOURTH DAY OF
JULY, A.D. 1998, AT 9 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SEVENTH DAY OF
SEPTEMBER, A.D. 1999, AT 9 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTH DAY OF
FEBRUARY, A.D. 2000, AT 9 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9 O`CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-SIXTH DAY
OF JUNE, A.D. 2001.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9:01 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TENTH DAY OF DECEMBER,
A.D. 2002, AT 6 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

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Authentication: 203848758
Date: 08-05-21

Delaware

The First State

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "ALPHA HOSPITALITY CORPORATION" TO "EMPIRE RESORTS, INC.", FILED THE FIFTEENTH DAY OF MAY, A.D. 2003, AT 1:14 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-FIRST DAY OF MAY, A.D. 2003.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:56 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:57 O`CLOCK P.M.

CERTIFICATE OF REVIVAL, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:57 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:58 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINETEENTH DAY OF AUGUST, A.D. 2009, AT 12:58 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TENTH DAY OF NOVEMBER, A.D. 2009, AT 1:46 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

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Authentication: 203848758
Date: 08-05-21

Delaware

Page 4

The First State

RESTATED CERTIFICATE, FILED THE SIXTEENTH DAY OF FEBRUARY,
A.D. 2011, AT 2:22 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF
DECEMBER, A.D. 2011, AT 10:22 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FIRST DAY OF
DECEMBER, A.D. 2015, AT 12:31 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-THIRD DAY
OF DECEMBER, A.D. 2015 AT 12:01 O`CLOCK A.M.

RESTATED CERTIFICATE, FILED THE FIRST DAY OF NOVEMBER, A.D.
2016, AT 12:21 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE FIFTH DAY OF NOVEMBER,
A.D. 2018, AT 2:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINTH DAY OF NOVEMBER,
A.D. 2018, AT 10:10 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF
SEPTEMBER, A.D. 2019, AT 11:20 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203848758
Date: 08-05-21

Delaware

The First State

*CERTIFICATE OF MERGER, FILED THE FIFTEENTH DAY OF NOVEMBER,
A.D. 2019, AT 10:15 O`CLOCK A.M.*

*CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF
MARCH, A.D. 2020, AT 3:59 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF
MARCH, A.D. 2020, AT 4:03 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF
MARCH, A.D. 2020, AT 1:11 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:40 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:41 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:42 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE EIGHTEENTH DAY OF MARCH,
A.D. 2021, AT 12:25 O`CLOCK P.M.*




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

Authentication: 203848758
Date: 08-05-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

*AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE
AFORESAID CORPORATION, "EMPIRE RESORTS, INC.".*




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

Authentication: 203848758
Date: 08-05-21

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Certificate of Incorporation

of

Alpha Hospitality Corporation

FIRST: The name of the Corporation is: Alpha Hospitality Corporation (the "Corporation").

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 32 Lockerman Square, Suite L-100 in the City of Dover, County of Kent. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The aggregate number of shares of stock which the Corporation shall have authority to issue is Six Million (6,000,000) with a par value of one cent (\$.01) per share, all of which shall be designated "Common Stock".

FIFTH: The name and mailing address of the Incorporator is:

Spencer McAdams
c/o Olshan Grundman Frome & Rosenzweig
505 Park Avenue
New York, New York 10022

SIXTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of

a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation, as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "EMPIRE RESORTS, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE NINETEENTH DAY OF MARCH, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-THIRD DAY OF AUGUST, A.D. 1993, AT 4:30 O`CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE THIRTEENTH DAY OF DECEMBER, A.D. 1995, AT 10 O`CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:20 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1996, AT 4:30 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203848758
Date: 08-05-21

Delaware

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The First State

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SIXTH DAY OF
DECEMBER, A.D. 1996, AT 10 O`CLOCK A.M.*

*CERTIFICATE OF DESIGNATION, FILED THE TWENTY-FOURTH DAY OF
JULY, A.D. 1998, AT 9 O`CLOCK A.M.*

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SEVENTH DAY OF
SEPTEMBER, A.D. 1999, AT 9 O`CLOCK A.M.*

*CERTIFICATE OF DESIGNATION, FILED THE EIGHTH DAY OF
FEBRUARY, A.D. 2000, AT 9 O`CLOCK A.M.*

*CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9 O`CLOCK A.M.*

*AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-SIXTH DAY
OF JUNE, A.D. 2001.*

*CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF JUNE,
A.D. 2001, AT 9:01 O`CLOCK A.M.*

*CERTIFICATE OF DESIGNATION, FILED THE TENTH DAY OF DECEMBER,
A.D. 2002, AT 6 O`CLOCK P.M.*




Jeffrey W. Bullock, Secretary of State

2329793 8100H
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Delaware

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CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "ALPHA HOSPITALITY CORPORATION" TO "EMPIRE RESORTS, INC.", FILED THE FIFTEENTH DAY OF MAY, A.D. 2003, AT 1:14 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-FIRST DAY OF MAY, A.D. 2003.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:56 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWELFTH DAY OF JANUARY, A.D. 2004, AT 1:57 O`CLOCK P.M.

CERTIFICATE OF REVIVAL, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:57 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-SEVENTH DAY OF MARCH, A.D. 2008, AT 11:58 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINETEENTH DAY OF AUGUST, A.D. 2009, AT 12:58 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TENTH DAY OF NOVEMBER, A.D. 2009, AT 1:46 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

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The First State

RESTATED CERTIFICATE, FILED THE SIXTEENTH DAY OF FEBRUARY,
A.D. 2011, AT 2:22 O`CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF
DECEMBER, A.D. 2011, AT 10:22 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FIRST DAY OF
DECEMBER, A.D. 2015, AT 12:31 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF AMENDMENT IS THE TWENTY-THIRD DAY
OF DECEMBER, A.D. 2015 AT 12:01 O`CLOCK A.M.

RESTATED CERTIFICATE, FILED THE FIRST DAY OF NOVEMBER, A.D.
2016, AT 12:21 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE FIFTH DAY OF NOVEMBER,
A.D. 2018, AT 2:10 O`CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE NINTH DAY OF NOVEMBER,
A.D. 2018, AT 10:10 O`CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF
SEPTEMBER, A.D. 2019, AT 11:20 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

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MARCH, A.D. 2020, AT 3:59 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE SIXTEENTH DAY OF
MARCH, A.D. 2020, AT 4:03 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE TWENTY-FOURTH DAY OF
MARCH, A.D. 2020, AT 1:11 O`CLOCK P.M.*

*CERTIFICATE OF DESIGNATION, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:40 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:41 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE ELEVENTH DAY OF
SEPTEMBER, A.D. 2020, AT 1:42 O`CLOCK P.M.*

*CERTIFICATE OF AMENDMENT, FILED THE EIGHTEENTH DAY OF MARCH,
A.D. 2021, AT 12:25 O`CLOCK P.M.*




Jeffrey W. Bullock, Secretary of State

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AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID
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AFORESAID CORPORATION, "EMPIRE RESORTS, INC."




Jeffrey W. Bullock, Secretary of State

2329793 8100H
SR# 20212896789

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203848758
Date: 08-05-21

Certificate of Incorporation

of

Alpha Hospitality Corporation

FIRST: The name of the Corporation is: Alpha Hospitality Corporation (the "Corporation").

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 32 Lockerman Square, Suite L-100 in the City of Dover, County of Kent. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The aggregate number of shares of stock which the Corporation shall have authority to issue is Six Million (6,000,000) with a par value of one cent (\$.01) per share, all of which shall be designated "Common Stock".

FIFTH: The name and mailing address of the Incorporator is:

Spencer McAdams
c/o Olshan Grundman Frome & Rosenzweig
505 Park Avenue
New York, New York 10022

SIXTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of

a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation, as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

(2) If a claim under paragraph (1) of this Paragraph B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the GCL for the Corporation to indemnify the claimant for the amount claimed but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Paragraph B shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(4) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

(5) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation for the expenses incurred in defending any proceeding in advance of its final disposition, to any agent of the Corporation to the fullest extent of the provisions of this Paragraph B with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

SEVENTH: In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), the interests of creditors, customers, employees and other constituencies of the Corporation and its subsidiaries and the effect upon communities in which the Corporation and its subsidiaries do business.

EIGHTH: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the Board of Directors (and any committee of the Board of Directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the Board or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the Board of Directors and management of the Corporation with respect to any transaction which may result in a change in control of the Corporation which is proposed or initiated by such person or (B) contest or oppose any such transaction which the Board of Directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the Corporation and its business, assets or properties or the stockholders of the Corporation, including, without limitation, the adoption of plans or the issuance of rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the Corporation, which rights, options, capital stock, notes, evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the Board or such committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the Board of Directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof.

NINTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, subject to the limitations set forth in this Certificate of Incorporation and in the manner now or hereafter provided herein by statute, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this

Certificate of Incorporation in its present form or as amended
are granted subject to the rights reserved in this Article NINTH.

IN WITNESS WHEREOF, I have hereunto set my hand this
19th day of March, 1993.



Spencer McAdams
Sole Incorporator

Certificate of Amendment

of

Certificate of Incorporation

of

ALPHA HOSPITALITY CORPORATION

(Pursuant to Sections 228 and 242 of the General Corporation Law of the State of Delaware)

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is Alpha Hospitality Corporation.

2. The Certificate of Incorporation of the Corporation is hereby amended by striking out Article FOURTH thereof and by substituting in lieu of said Article the following new Article FOURTH, as follows:

"FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is eighteen million (18,000,000), consisting of seventeen million (17,000,000) shares of Common Stock, each such share having a par value of \$.01, and one million (1,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock, without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the GCL."

3. The Certificate of Incorporation of the Corporation is hereby amended by adding a new Article TENTH, as follows:

"TENTH: The stock or securities of the Corporation shall be held, and the transfer thereof shall be, subject to the provisions, conditions and requirements of the Mississippi

Gaming Control Act and the Regulations promulgated thereunder until such time as the Corporation and its subsidiaries shall cease to be subject to the jurisdiction of the Mississippi Gaming Commission."

4. The amendment of the Certificate of Incorporation herein certified has been duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15th day of August, 1993.


Marty D. Hundley, President

ATTEST:


Sanford Freedman, Secretary

CERTIFICATE OF CHANGE OF REGISTERED AGENT

AND

REGISTERED OFFICE

Alpha Hospitality Corporation, a corporation organized
and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES

HEREBY CERTIFY:

The present registered agent of the corporation is The Prentice-Hall Corporation System, Inc
and the present registered
office of the corporation is in the county of New Castle.

The Board of Directors of Alpha Hospitality Corporation
adopted the following resolution on the fifth day of December, 19 95.

Resolved, that the registered office of Alpha Hospitality Corporation

in the state of Delaware be and it hereby is changed to Corporation Trust Center, 1209 Orange Street,
in the City of Wilmington, County of New Castle, and the authorization of the present registered agent
of this corporation be and the same is hereby withdrawn, and THE CORPORATION TRUST
COMPANY, shall be and is hereby constituted and appointed the registered agent of this corporation at
the address of its registered office.

IN WITNESS WHEREOF, Alpha Hospitality Corporation has caused
this statement to be signed by Sanford Freedman, its
Vice President/Secretary, this fifth day of December, 19 95.



Vice President/Secretary
(Title)

*Any authorized officer or the chairman or Vice-Chairman of the Board of Directors may execute this certificate.

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS
OF PREFERRED STOCK OF
ALPHA HOSPITALITY CORPORATION**

Alpha Hospitality Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of Delaware, and whose Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on March 19, 1993,

DOES HEREBY CERTIFY:

That pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, as amended, of the Corporation, and pursuant to the provisions of Section 151 of Title 8 of the Delaware Code of 1953, said Board of Directors adopted as resolution providing for the issuance of a series of 625,222 shares of preferred stock of the Corporation ("Series A"), which resolutions are as follows:

RESOLVED, that there be created a series of Preferred Stock, to be designated as Series A, the number of shares of such series to be 625,222, which the Corporation may issue, and which (1) shall have a dividend rate of 2% per annum payable quarterly if, as and when declared before any dividend may be declared on the Common Stock, but otherwise be non-cumulative; (2) be non-redeemable; (3) shall not be entitled to the benefits of any sinking fund; and (4) shall be entitled to any conversion into two shares of Common stock for each share of Preferred Stock, at any time, at the option of the holder and (5) have a preferential liquidation right of \$.10 per share.

That the said resolution of the Board of Directors, and creation and authorization of issuance thereby of said Series A of Preferred Stock and the determination of the terms and conditions thereof in accordance with the designation of such terms aforesaid were duly made by the Board of Directors pursuant to authority as aforesaid and in accordance with section 151 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, that Alpha Hospitality Corporation has caused this
Stanley S. Tollman
certificate to be signed by _____, in his capacity as Chairman of the
Corporation, this 31st day of July, 1996.

ALPHA HOSPITALITY CORPORATION

By:  _____

TITLE: Chairman and Chief Executive Officer

[iv:wp51\client\alpha\minutes\cert-des.nl

**CERTIFICATE OF ELIMINATION OF SHARES DESIGNATED
AS SERIES A PREFERRED STOCK OF
ALPHA HOSPITALITY CORPORATION**

Alpha Hospitality Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of Delaware, and whose Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on March 19, 1993,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, by unanimous written consent of its members, filed with the minutes of the Board duly adopted resolutions setting forth the proposed elimination of the Series A Preferred Stock as set forth herein:

RESOLVED, that no shares of the Series A Preferred Stock are outstanding and none will be issued, and it is further

RESOLVED, that a Certificate of Elimination be executed, which shall have the effect when filed and recorded in Delaware of eliminating from the Certificate of Incorporation all matters set forth in the Certificate of Designation with respect to the Series A Preferred Stock.

SECOND: None of the authorized shares of the Series A Preferred Stock are outstanding and none will be issued.

THIRD: In accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Certificate of Incorporation is hereby amended to eliminate all reference to the Series A Preferred Stock.

IN WITNESS WHEREOF, the Alpha Hospitality Corporation has caused this certificate to be signed by Stanley S. Tollman, in his capacity as Chairman of the Corporation, this 31st day of July, 1996.

ALPHA HOSPITALITY CORPORATION



By: Stanley S. Tollman

Title: Chairman and Chief Executive Officer

[jv:wp51\client\alpha\minutes\cert.eli]

**CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS
OF PREFERRED STOCK OF
ALPHA HOSPITALITY CORPORATION**

Alpha Hospitality Corporation (the "Corporation"), a corporation organized and existing under the General Corporation Law of Delaware, and whose Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on March 19, 1993,

DOES HEREBY CERTIFY:

That pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation, as amended, of the Corporation, and pursuant to the provisions of Section 151 of Title 8 of the Delaware Code of 1953, said Board of Directors adopted as resolution providing for the issuance of a series of 738,163 shares of preferred stock of the Corporation ("Series B"), which resolutions are as follows:

RESOLVED, that there be created a series of Preferred Stock, to be designated as Series B, the number of shares of such series to be 738,163, which the Corporation may issue, and each share of which (1) shall entitle the holder to one vote; (ii) has a liquidation value of each share of \$29.00 per share which shall be paid prior to any distribution in liquidation being made on the Common Stock; (iii) has a cash dividend rate of 10% of liquidation value, which dividend shall be paid prior to any dividend being paid on the Common Stock, which increases to 13% of liquidation value if the cash dividend is not paid within 30 days of the end of each fiscal year and in such event is payable in Common Stock valued at the then market price; and (iv) is convertible into eight shares of Common Stock.

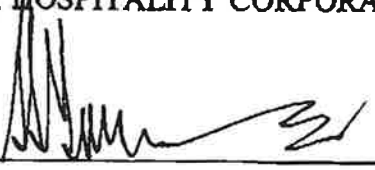
That the said resolution of the Board of Directors, and creation and authorization of issuance thereby of said Series B of Preferred Stock and the determination of the terms and conditions thereof in accordance with the designation of such terms aforesaid were duly made

by the Board of Directors pursuant to authority as aforesaid and in accordance with section 151 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, that Alpha Hospitality Corporation has caused this certificate to be signed by Stanley S. Tollman in his capacity as Chairman of the Corporation, this 31st day of July, 1996.

ALPHA HOSPITALITY CORPORATION

By: _____



TITLE: Chairman and Chief Executive Officer

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**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ALPHA HOSPITALITY CORPORATION**

* * * * *

Alpha Hospitality Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That at a meeting of the Board of Directors of Alpha Hospitality Corporation ("Corporation"), resolutions were duly adopted setting forth a proposed amendment to the Amended Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and calling an annual meeting of the stockholders of the Corporation for consideration of, among other things, said amendment. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that it being in the best interests of the Corporation, the Board of Directors hereby approves, ratifies and confirms that the Corporation's Certificate of Incorporation be amended by deleting the Fourth article of the Certificate of Incorporation in its entirety and substituting in lieu thereof the following:

"**FOURTH:** The total number of shares of stock that the Corporation shall have the authority to issue is twenty-six million (26,000,000), consisting of twenty-five million (25,000,000) shares of Common Stock, each such share having a par value of \$.01, and one million (1,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to

issue Preferred Stock, without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the GCL."


RESOLVED, that except as expressly amended, the Fourth Article of the Restated Certificate of Incorporation of the Corporation shall hereby remain in effect as heretofore set forth and shall be unchanged in any respect by any provision thereof.

SECOND: That thereafter, pursuant to resolution of its Board of Directors, an annual meeting of the stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.


THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of the Corporation shall not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be signed by Stanley S. Tollman, its Chief Executive Officer and President and attested to by Sanford Freedman, its Secretary, this 18th day of December, 1996

By: 
Stanley S. Tollman
Chief Executive Officer and President

ATTEST:

By: 
Sanford Freedman
Secretary

CERTIFICATE OF DESIGNATION
SETTING FORTH THE PREFERENCES, RIGHTS
AND LIMITATIONS OF SERIES B PREFERRED STOCK
AND SERIES C PREFERRED STOCK
OF ALPHA HOSPITALITY CORPORATION

ALPHA HOSPITALITY CORPORATION, a Delaware Corporation (the "Corporation"), certifies that, pursuant to the authority contained in Article FOURTH of its Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, its Board of Directors has adopted the following resolutions creating a series of its preferred stock to be designated "Series C Preferred Stock", and clarifying the preferences, rights and limitations of the Corporation's existing Series B Preferred Stock originally established by a resolution of the Board of Directors as contained in a Certificate of Designations, Preferences and Rights of Preferred Stock filed with the Secretary of State on July 31, 1996 and to correct the number of shares so designated ("Series B Preferred Stock").

WHEREAS, the Corporation desires to create a new series of its Preferred Stock to be designated as "Series C Preferred Stock" which is contemplated to be issued for new consideration to the holder of all of the outstanding shares of the Corporation's existing Series B Preferred Stock (the "Holder"); and

WHEREAS, the Corporation and the Holder deem it appropriate to amend and restate the preferences and rights of the Series B Preferred Stock so as to conform the provisions relating thereto to the provisions of the newly created Series C Preferred Stock and so as to correct an error in the Certificate of Designations, Preferences and Rights of Preferred Stock filed with the Secretary of State on July 31, 1996 so as to state the correct number of Series B shares designated by the Board of Directors and to provide that each share of Series B Preferred Stock shall have voting rights equal to the voting rights of the shares of common stock into which such Series B Preferred Stock is convertible;

NOW THEREFORE, it is hereby

RESOLVED, that the amount, the voting powers, preferences and relative, participating, optional and other special rights of the shares of Series B Preferred Stock, and the qualifications, limitations and restrictions thereof, shall be amended and restated in their entirety, effective upon the filing with the Secretary of State of this Certificate of Designation, as set forth in Section A below; and it is further

RESOLVED, that a new series of the class of authorized preferred stock of the Corporation be hereby created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof shall be as set forth in Section B below:

A. Amendment and Restatement of Preferences, Rights and Limitations of Series B Preferred Stock

Section 1. Designation and Amount: Par Value.

The shares of such series shall be designated as "Series B Preferred Stock" (the "Series B Preferred Stock") and the number of shares constituting such series shall be 821,496. The par value of each share of the series shall be \$.01.

Section 2. Dividends on Series B Preferred Stock

2.1 General Dividend Obligations. The Corporation shall pay to the holders of the Series B Preferred Stock out of the assets of the Corporation, at any time available for the payment of dividends under the provisions of the General Corporation Law of the State of Delaware, preferential dividends at the times and in the amounts provided for in this Section 2.

2.2 Accrual of Dividends. Dividends on each share of Series B Preferred Stock shall be cumulative from the date of issuance of such share of Series B Preferred Stock, whether or not at the time such dividend shall accrue or become due or at any other time there shall be profits, surplus or other funds of the Corporation legally available for the payment of dividends. Dividends shall accrue on each share of Series B Preferred Stock (at the rate and in the manner prescribed by this Section 2.2 and Section 2.3 hereof) from and including the date of issuance of such share to and including the date on which such share shall be converted into shares of Common Stock, as set forth in Section 4 hereof. For purposes of this Section 2.2, the date on which the Corporation shall initially issue any share of Series B Preferred Stock shall be deemed to be the "date of issuance" of such share regardless of how many times transfer of such share shall be made on stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share (whether by reason of transfers of such share or for any other reason).

2.3 Payment of Dividends. Dividends shall accrue on each share of Series B Preferred Stock (computed on a daily basis on the basis of a 360 day year) at the rate of 10% per annum of the Liquidation Value (as defined in Section 5.1 hereof). Dividends shall be payable on Series B Preferred Stock quarterly on the first day of each January, April, July and October, and each such day is herein called a "Dividend Payment Date". On each Dividend Payment Date all dividends which shall have accrued on each share of Series B Preferred Stock then outstanding during the quarter year ending upon the day immediately preceding such Dividend Payment Date shall be deemed to become "due" for all purposes of this Section regardless of whether the Corporation shall be able or legally permitted to pay such dividend on such Dividend Payment Date. If any dividend on any share shall for any reason not be paid at the time such dividend shall become due, such dividend in arrears shall be paid as soon as payments of same shall be permissible under the provisions of the General Corporation Law of the State of Delaware.

2.4 Payment of Dividend in Shares of Common Stock. Notwithstanding the provisions of Section 2.3 hereof, any dividend payment which is not made by the Corporation on or before January 30 of the following calendar year shall be payable in the form of shares of Common Stock, in such number of shares as shall be determined by dividing (A) the product of (x) the amount of the unpaid dividend multiplied by (y) 1.3, by (B) the Fair Market Value of the Common Stock. Fair Market Value shall mean, with respect to the Common Stock, the daily closing prices for the Common Stock of the Corporation for the twenty (20) consecutive trading days preceding the applicable January 30 date, with the closing price for each day being the closing price reported on the principal securities exchange upon which the Common Stock of the Corporation is traded or, if it is not so traded, then the average of the closing bid and asked prices as reported by the National Association of Securities Dealers Automated Quotation System or if not quoted thereon, in the interdealer market on the "Pink Sheets" of the National Quotation Bureau (excluding the highest and lowest bids on each day that there are four (4) or more market makers).

2.5 Distribution of Partial Dividend Payments. If at any time the Corporation shall pay less than the total amount of dividends due on outstanding Series B Preferred Stock, at the time of such payment, such payment shall be distributed among the holders of Series B Preferred Stock so that an equal amount shall be paid with respect to each outstanding share of Series B Preferred Stock.

Section 3. Intentionally Omitted

Section 4. Conversion

4.1 Right to Convert.

(a) At any time from and after the date hereof, the shares of Series B Preferred Stock, at the option of the respective holders thereof, may at any time, and from time to time, be converted into fully paid and nonassessable shares of Common Stock of the Corporation at the "Conversion Rate" provided for in subsection 4.1(g) below.

(b) So long as any shares of Series B Preferred Stock shall be outstanding, the Corporation will not make any share distribution on its shares of Common Stock unless the Corporation, by proper legal action, shall have authorized and reserved an amount of shares equal to the amount thereof which would have been declared upon the shares of Common Stock into which such shares of Series B Preferred Stock might have been converted, and the Corporation shall, out of such additional shares so authorized and reserved on account of such share distribution, upon the conversion of any shares of Series B Preferred Stock, deliver with any shares of Common Stock into which shares of Series B Preferred Stock are converted, but without additional consideration therefor, such number of shares of Common Stock as would have been deliverable to the holders of the Common Stock into which such shares of Series B Preferred Stock had been so converted had such shares of Common Stock been outstanding at the time of such share distribution. For the purpose of this Section 4.1, a share distribution shall be a dividend payable only in shares of Common Stock of the Corporation of the same class as the present authorized shares of Common Stock. This shall not limit the right of the Corporation, however, to declare and pay any dividends whether in cash, shares, or otherwise, except as specifically otherwise provided herein.

(c) In case of any combination or change of the shares of Series B Preferred Stock or of the shares of Common Stock into a different number of shares of the same or any other class or classes, or in case of any consolidation or merger of the Corporation with or into another corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, the Conversion Rate shall be appropriately adjusted so that the rights of the holders of shares of Series B Preferred Stock will not be diluted as a result of such combination, change, consolidation, merger, sale or conveyance. Adjustments in the rate of conversion shall be calculated to the nearest one-tenth of a share.

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

(e) Any dividends accrued on any shares of Series B Preferred Stock from the preceding Dividend Payment Date to the date of conversion shall be payable to the holder of record of such shares immediately prior to its conversion. In the event that any dividends on the outstanding shares of Common Stock shall have been declared prior to, and shall be payable subsequent to, the conversion of such shares of Series B Preferred Stock, such dividends shall not be payable on any shares of Common Stock into which such shares of Series B Preferred Stock shall have been converted.

(f) In the event that the Corporation shall at any time or from time to time offer to the holders of the shares of Common Stock any rights to subscribe for shares or any other securities of the Corporation, each holder of record of the shares of Series B Preferred Stock at the time at which the record is taken of the holders of shares of Common Stock entitled to receive such rights shall be entitled to subscribe for and purchase, at the same price at which such shares or other securities are offered to the holders of the shares of Common Stock and on the same terms, the number of such shares or the amount of such other securities for which such holder would have been entitled to subscribe if he had been the holder of record at that time of the number of shares of Common Stock into which his shares of Series B Preferred Stock were convertible (pursuant to the provisions hereof) at such record time.

(g) The initial "Conversion Rate", subject to adjustment as provided above, shall be 8 shares of Common Stock for each share of Series B Preferred Stock.

4.2 Surrender of Certificates. Any holder of shares of Series B Preferred Stock desiring to exercise the right of conversion herein provided shall surrender to the Corporation at one of its share transfer agencies, or in the event that at that time there is no such agency, then at the principal office of the Corporation, the certificate or certificates representing the shares of Series B Preferred Stock so to be converted, duly endorsed in blank for transfer or accompanied by properly executed instruments for the transfer thereof, together with a written request for the conversion thereof. The Corporation shall execute and deliver, at the Corporation's expense, a new certificate or certificates representing the shares of Common Stock into which the shares of Series B Preferred Stock have been converted and, if applicable, a new certificate or certificates representing the balance of the shares of Series B Preferred Stock formerly represented by the surrendered certificate or certificates which, at the holder's request, shall not have been converted into shares of Common Stock.

Section 5. Liquidation

5.1 Rights of Holders of Series B Preferred Stock. In the event of any voluntary or involuntary liquidation (whether complete or partial), dissolution or winding up of the Corporation, the holders of Series B Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, an amount in cash equal to the sum of \$29 per share (the "Liquidation Value"), plus all unpaid dividends accrued thereon to the date of final distribution. No distribution shall be made on any Junior Securities (as defined in Section 6.1) by reason of any voluntary or involuntary liquidation (whether complete or partial), dissolution or winding up of the Corporation unless each holder of any share of Series B Preferred Stock shall have received all amounts to which such holder shall be entitled under this Section 5.1.

5.2 Allocation of Liquidation Payments Among Holders of Series B Preferred Stock. If upon any dissolution, liquidation (whether complete or partial), or winding up of the Corporation, the assets of the Corporation available for distribution to holders of Series B Preferred Stock (hereinafter in this Section 5.2 called the "Total Amount Available") shall be insufficient to pay the holders of outstanding Series B Preferred Stock the full amounts to which they shall be entitled under Section 5.1, each holder of Series B Preferred Stock shall be entitled to receive an amount equal to the product derived by multiplying the Total Amount Available by a fraction, the numerator of which shall be the number of shares of Series B Preferred Stock held by such holder and the denominator of which shall be the total number of shares of Series B Preferred Stock then outstanding.

Section 6. Additional Provisions Governing Series B Preferred Stock

6.1 Seniority Over Junior Securities. No dividend shall be paid on any Junior Securities, no distribution of cash or property of any kind (other than Junior Securities) shall be made for any reason (including but not limited to any voluntary or involuntary dissolution, winding up, or complete or partial liquidation of the Corporation) by the Corporation or any subsidiary with respect to any Junior Securities, and no redemption or other

acquisition of any Junior Securities shall be made directly or indirectly by the Corporation if, when the payment of any such dividends, distribution, redemption or acquisition is to be made: (a) any dividend which shall have become due on any share of Series B Preferred Stock shall remain unpaid (except unpaid dividends added to the Liquidation Value of Series B Preferred Stock pursuant to Section 3.4), or (b) any other payment or distribution on or with respect to any shares of Series B Preferred Stock under the terms hereof which shall have been due from the Corporation at such time shall not have been made in full. The term "Junior Securities" shall mean any equity security of any kind which the Corporation shall at any time issue or be authorized to issue other than Series B Preferred Stock.

6.2 Voting Rights. The holders of Series B Preferred Stock shall be entitled to notice of all stockholders' meetings in accordance with the By-laws of the Corporation and to vote on all matters submitted to the vote of the holders of Common Stock; provided, that each share of Series B 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.

6.3 Method of Payments. Any payment at any time due with respect to any share of Series B Preferred Stock (including but not limited to any payment of any dividend due on such share, the payment of the Redemption Price for such share, and any payment due on such share under Section 5) shall be made by means of a check to the order of the record holder shown on the Corporation's records, mailed by first class mail.

6.4 Amendment and Waiver. No change affecting any interests of the holders of shares of Series B Preferred Stock, including without limitation the amendment of any rights or preferences of the Series B Preferred Stock or the establishment of any class of stock ranking as to distribution of assets prior to the Series B Preferred Stock, shall be binding or effective unless such change shall have been approved in writing by the holders of at least 51% of the shares of Series B Preferred Stock outstanding at the time such change shall be made.

6.5 Registration of Transfer of Series B Preferred Stock. The Corporation will keep at one of its share transfer agencies, or in the event that at that time there is no such agency, then in its principal office, a register for the registration of the Series B Preferred Stock. Upon the surrender of any certificate representing shares of Series B Preferred Stock at such agency or the Corporation's principal office, the Corporation will, at the request of the registered holder of such certificate, execute and deliver, at the Corporation's expense, a new certificate or certificates in exchange representing the number of shares of Series B Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall be substantially identical in form to the surrendered certificate, and the shares of Series B Preferred Stock represented by such new certificate shall earn cumulative dividends from the date to which dividends shall have been paid on the shares represented by the surrendered certificate or certificates.

6.6 Replacement. Upon receipt by the Corporation of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of Series B Preferred Stock (an affidavit of the registered holder without bond being satisfactory for this purpose) the Corporation, at its expense, will execute and deliver in lieu of such certificate, a new certificate of like kind, representing the number of shares of Series B Preferred Stock which shall have been represented by such lost, stolen, destroyed or mutilated certificate, dated and earning cumulative dividends from the date to which dividends shall have been paid on such lost, stolen, destroyed or mutilated certificate.

B. Establishment of Series C Preferred Stock

Section 1. Designation and Amount; Par Value.

The shares of such series shall be designated as "Series C Preferred Stock" (the "Series C Preferred Stock") and the number of shares constituting such series shall be 137,889. The par value of each share of the series shall be \$.01.

Section 2. Dividends on Series C Preferred Stock

2.1 General Dividend Obligations. The Corporation shall pay to the holders of the Series C Preferred Stock out of the assets of the Corporation, at any time available for the payment of dividends under the provisions of the General Corporation Law of the State of Delaware, preferential dividends at the times and in the amounts provided for in this Section 2.

2.2 Accrual of Dividends. Dividends on each share of Series C Preferred Stock shall be cumulative from the date of issuance of such share of Series C Preferred Stock, whether or not at the time such dividend shall accrue or become due or at any other time there shall be profits, surplus or other funds of the Corporation legally available for the payment of dividends. Dividends shall accrue on each share of Series C Preferred Stock (at the rate and in the manner prescribed by this Section 2.2 and Sections 2.3 and 3.4 hereof) from and including the date of issuance of such share to and including the date on which either (a) payment equal to the Redemption Price of such share (as defined in Section 3.4 hereof) shall have been paid in the manner prescribed in Section 6.3 hereof or (b) such share shall be converted into shares of Common Stock, as set forth in Section 4 hereof. For purposes of this Section 2.2, the date on which the Corporation shall initially issue any share of Series C Preferred Stock shall be deemed to be the "date of issuance" of such share regardless of how many times transfer of such share shall be made on stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such share (whether by reason of transfers of such share or for any other reason).

2.3 Payment of Dividends. Dividends shall accrue on each share of Series C Preferred Stock (computed on a daily basis on the basis of a 360 day year) at the rate of 8% per annum of the Liquidation Value (as defined in Section 5.1 hereof). Dividends shall be payable on Series C Preferred Stock quarterly on the first day of each January, April, July and October, and each such day is herein called a "Dividend Payment Date". On each Dividend Payment Date all dividends which shall have accrued on each share of Series C Preferred Stock then outstanding during the quarter year ending upon the day immediately preceding such Dividend Payment Date shall be deemed to become "due" for all purposes of this Section regardless of whether the Corporation shall be able or legally permitted to pay such dividend on such Dividend Payment Date. If any dividend on any share shall for any reason not be paid at the time such dividend shall become due, such dividend in arrears shall be paid as soon as payments of same shall be permissible under the provisions of the General Corporation Law of the State of Delaware. Until such dividend in arrears is paid, dividends shall continue to accrue on shares of Series C Preferred Stock but the percentage rate expressed herein shall be applied to the Liquidation Value thereof plus all dividends in arrears thereon (including dividends computed pursuant to this sentence).

2.4 Distribution of Partial Dividend Payments. If at any time the Corporation shall pay less than the total amount of dividends due on outstanding Series C Preferred Stock, at the time of such payment, such payment shall be distributed among the holders of Series C Preferred Stock so that an equal amount shall be paid with respect to each outstanding share of Series C Preferred Stock.

Section 3. Optional Redemption

3.1 Time of Election. The Corporation may, within 120 days of the occurrence of a "Capital Event", as defined below, elect, by written notice (the "Redemption Notice") to the holders of the Series C Preferred Stock, to redeem all or a portion of the outstanding shares of Series C Preferred Stock. A "Capital Event" shall be defined as a sale of assets of the Corporation which results in the excess of cash proceeds received by the Corporation in consideration for such assets exceeds the Corporations basis in such assets by at least \$5,000,000.

The Redemption Notice shall set forth the number of shares of Series C Preferred Stock to be redeemed, the date upon which such redemption will be effected, and the procedure for payment of the Redemption Price and the surrender of Certificates representing the redeemed Series C Preferred Stock.

3.2 Redeemed Series C Preferred Stock to be Cancelled. The Corporation shall cancel each share of Series C Preferred Stock which it shall redeem or for any other reason acquire, and no shares of Series C Preferred Stock which shall be redeemed or otherwise acquired by the Corporation shall thereafter be reissued, sold or transferred by the Corporation to any person. The number of shares of Series C Preferred Stock which the Corporation shall be authorized to issue shall be deemed to be reduced by the number of shares of Series C Preferred Stock which the Corporation shall redeem or otherwise acquire.

3.3 Determination of Number of Each Holder's Shares to be Redeemed. If the Corporation does not redeem all of the outstanding shares of Series C Preferred Stock on the Redemption Date, the number of shares of Series C Preferred Stock to be redeemed from each holder thereof shall be determined by multiplying the total number of shares of Series C Preferred Stock to be redeemed by a fraction, the numerator of which shall be the total number of shares of Series C Preferred Stock held by such holder and the denominator of which shall be the total number of shares of Series C Preferred Stock outstanding, except that in situations to which Section 3.4(b) hereof applies, the Corporation shall not, as set forth in such Section, repurchase the last share of Series C Preferred Stock held by any holder.

3.4 Redemption Price.

(a) For each share of Series C Preferred Stock which shall be redeemed by the Corporation pursuant to this Section 3, the Corporation shall be obligated to pay to the holder of such share an amount (herein called the "Redemption Price") for such share equal to \$72 per share. The Corporation shall be obligated to pay on any Redemption Date both the Redemption Price for each share and all dividends which shall have accrued (computed on a daily basis) on each share to and including the Redemption Date and which shall not previously have been paid. Such payments which the Corporation shall be obligated to make on any Redemption Date shall be deemed to become "due" for all purposes of this Section 3 regardless of whether paid on such Redemption Date.

(b) If for any reason the Corporation is prohibited from paying accrued unpaid dividends on shares of Series C Preferred Stock being redeemed from any holder, then such accrued unpaid dividends shall be added in equal amounts per share to the Liquidation Value of the shares of Series C Preferred Stock remaining outstanding in the hands of such holder; provided, that in no event shall the Corporation redeem the last share of Series C Preferred Stock (the "Last Share") held by any holder until the Corporation shall have paid to such holder all accrued unpaid dividends on all Series C Preferred Stock held by such holder at any time. The shares of Series C Preferred Stock remaining outstanding after any redemption (including the Last Share), and including the accrued unpaid dividends thereon, shall continue to earn cumulative dividends at the rate and in the manner prescribed in Section 2.3 hereof.

(c) Each holder of Series C Preferred Stock shall be entitled to receive on or at any time after any Redemption Date the full Redemption Price, plus accrued unpaid dividends, for each share of Series C Preferred Stock held by such holder which the Corporation shall be obligated to redeem on the Redemption Date upon surrender by such holder to the Corporation of the certificate representing such share of Series C Preferred Stock duly endorsed in blank or accompanied by an appropriate form of assignment duly endorsed in blank. The holder shall surrender such certificate at one of its share transfer agencies, or in the event that at that time there is no such agency, then at the Corporation's principal office. After the payment by the Corporation in the manner required by Section 6.3 hereof of the full Redemption Price for any Series C Preferred Stock, plus accrued unpaid dividends except as otherwise provided in Section 3.4(b) hereof, all rights of the holder of such stock shall (whether

or not the certificate representing such share of Series C Preferred Stock shall have been surrendered for cancellation) cease and terminate with respect to such share of Series C Preferred Stock.

Section 4. Conversion

4.1 Right to Convert.

(a) At any time from and after the filing by the Corporation of a Certificate of Amendment to its Certificate of Incorporation which increases the number of authorized shares of Common Stock of the Corporation by at least 5,000,000 shares (the "Certificate of Amendment"), the shares of Series C Preferred Stock, at the option of the respective holders thereof, may at any time, and from time to time, be converted into fully paid and nonassessable shares of Common Stock of the Corporation at the "Conversion Rate" provided for in subsection 4.1(g) below. The Corporation shall, within 365 days after the date hereof, submit to the stockholders of the Corporation a proposal to increase the number of authorized shares of Common Stock by at least 5,000,000 shares.

(b) So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation will not make any share distribution on its shares of Common Stock unless the Corporation, by proper legal action, shall have authorized and reserved an amount of shares equal to the amount thereof which would have been declared upon the shares of Common Stock into which such shares of Series C Preferred Stock might have been converted, and the Corporation shall, out of such additional shares so authorized and reserved on account of such share distribution, upon the conversion of any shares of Series C Preferred Stock, deliver with any shares of Common Stock into which shares of Series C Preferred Stock are converted, but without additional consideration therefor, such number of shares of Common Stock as would have been deliverable to the holders of the Common Stock into which such shares of Series C Preferred Stock had been so converted had such shares of Common Stock been outstanding at the time of such share distribution. For the purpose of this Section 4.1, a share distribution shall be a dividend payable only in shares of Common Stock of the Corporation of the same class as the present authorized shares of Common Stock. This shall not limit the right of the Corporation, however, to declare and pay any dividends whether in cash, shares, or otherwise, except as specifically otherwise provided herein.

(c) In case of any combination or change of the shares of Series C Preferred Stock or of the shares of Common Stock into a different number of shares of the same or any other class or classes, or in case of any consolidation or merger of the Corporation with or into another corporation, or in case of any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, the Conversion Rate shall be appropriately adjusted so that the rights of the holders of shares of Series C Preferred Stock will not be diluted as a result of such combination, change, consolidation, merger, sale or conveyance. Adjustments in the rate of conversion shall be calculated to the nearest one-tenth of a share.

(d) From and after the filing of a Certificate of Amendment and so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall reserve and keep available out of its duly authorized but unissued shares for the purpose of effecting the conversion of the shares of Series C Preferred Stock such number of its duly authorized shares of Common Stock and other securities as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series C Preferred Stock.

(e) Any dividends accrued on any shares of Series C Preferred Stock from the preceding Dividend Payment Date to the date of conversion shall be payable to the holder of record of such shares immediately prior to its conversion. In the event that any dividends on the outstanding shares of Common Stock shall have been declared prior to, and shall be payable subsequent to, the conversion of such shares of Series C Preferred Stock, such dividends shall not be payable on any shares of Common Stock into which such shares of Series C Preferred Stock shall have been converted.

(f) In the event that the Corporation shall at any time or from time to time offer to the holders of the shares of Common Stock any rights to subscribe for shares or any other securities of the Corporation, each holder of record of the shares of Series C Preferred Stock at the time at which the record is taken of the holders of shares of Common Stock entitled to receive such rights shall be entitled to subscribe for and purchase, at the same price at which such shares or other securities are offered to the holders of the shares of Common Stock and on the same terms, the number of such shares or the amount of such other securities for which such holder would have been entitled to subscribe if he had been the holder of record at that time of the number of shares of Common Stock into which his shares of Series C Preferred Stock were convertible (pursuant to the provisions hereof) at such record time.

(g) The initial "Conversion Rate", subject to adjustment as provided above, shall be 24 shares of Common Stock for each share of Series C Preferred Stock.

4.2 Surrender of Certificates. Any holder of shares of Series C Preferred Stock desiring to exercise the right of conversion herein provided shall surrender to the Corporation at one of its share transfer agencies, or in the event that at that time there is no such agency, then at the principal office of the Corporation, the certificate or certificates representing the shares of Series C Preferred Stock so to be converted, duly endorsed in blank for transfer or accompanied by properly executed instruments for the transfer thereof, together with a written request for the conversion thereof. The Corporation shall execute and deliver, at the Corporation's expense, a new certificate or certificates representing the shares of Common Stock into which the shares of Series C Preferred Stock have been converted and, if applicable, a new certificate or certificates representing the balance of the shares of Series C Preferred Stock formerly represented by the surrendered certificate or certificates which, at the holder's request, shall not have been converted into shares of Common Stock.

Section 5. Liquidation

5.1 Rights of Holders of Series C Preferred Stock. In the event of any voluntary or involuntary liquidation (whether complete or partial), dissolution or winding up of the Corporation, the holders of Series C Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, an amount in cash equal to the sum of \$72 per share plus any amounts payable pursuant to Section 3.4(b) (the "Liquidation Value"), plus all unpaid dividends accrued thereon to the date of final distribution. No distribution shall be made on any Junior Securities (as defined in Section 6.1) by reason of any voluntary or involuntary liquidation (whether complete or partial), dissolution or winding up of the Corporation unless each holder of any share of Series C Preferred Stock shall have received all amounts to which such holder shall be entitled under this Section 5.1.

5.2 Allocation of Liquidation Payments Among Holders of Series C Preferred Stock. If upon any dissolution, liquidation (whether complete or partial), or winding up of the Corporation, the assets of the Corporation available for distribution to holders of Series C Preferred Stock (hereinafter in this Section 5.2 called the "Total Amount Available") shall be insufficient to pay the holders of outstanding Series C Preferred Stock the full amounts to which they shall be entitled under Section 5.1, each holder of Series C Preferred Stock shall be entitled to receive an amount equal to the product derived by multiplying the Total Amount Available by a fraction, the numerator of which shall be the number of shares of Series C Preferred Stock held by such holder and the denominator of which shall be the total number of shares of Series C Preferred Stock then outstanding.

Section 6. Additional Provisions Governing Series C Preferred Stock

6.1 Seniority Over Junior Securities. No dividend shall be paid on any Junior Securities, no distribution of cash or property of any kind (other than Junior Securities) shall be made for any reason (including but not limited to any voluntary or involuntary dissolution, winding up, or complete or partial liquidation of the Corporation) by the Corporation or any subsidiary with respect to any Junior Securities, and no redemption or other

acquisition of any Junior Securities shall be made directly or indirectly by the Corporation if, when the payment of any such dividends, distribution, redemption or acquisition is to be made: (a) any dividend which shall have become due on any share of Series C Preferred Stock shall remain unpaid (except unpaid dividends added to the Liquidation Value of Series C Preferred Stock pursuant to Section 3.4), or (b) any other payment or distribution on or with respect to any shares of Series C Preferred Stock under the terms hereof which shall have been due from the Corporation at such time shall not have been made in full. The term "Junior Securities" shall mean any equity security of any kind which the Corporation shall at any time issue or be authorized to issue other than Series C Preferred Stock and Series B Preferred Stock that the Corporation heretofore authorized.

6.2 Voting Rights. The holders of Series C Preferred Stock shall be entitled to notice of all stockholders' meetings in accordance with the By-laws of the Corporation and to vote on all matters submitted to the vote of the holders of Common Stock; provided, that each share of Series C 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.

6.3 Method of Payments. Any payment at any time due with respect to any share of Series C Preferred Stock (including but not limited to any payment of any dividend due on such share, the payment of the Redemption Price for such share, and any payment due on such share under Section 5) shall be made by means of a check to the order of the record holder shown on the Corporation's records, mailed by first class mail.

6.4 Amendment and Waiver. No change affecting any interests of the holders of shares of Series C Preferred Stock, including without limitation the amendment of any rights or preferences of the Series C Preferred Stock or the establishment of any class of stock ranking as to distribution of assets prior to the Series C Preferred Stock, shall be binding or effective unless such change shall have been approved in writing by the holders of at least 51% of the shares of Series C Preferred Stock outstanding at the time such change shall be made.

6.5 Registration of Transfer of Series C Preferred Stock. The Corporation will keep at one of its share transfer agencies, or in the event that at that time there is no such agency, then in its principal office, a register for the registration of the Series C Preferred Stock. Upon the surrender of any certificate representing shares of Series C Preferred Stock at such agency or the Corporation's principal office, the Corporation will, at the request of the registered holder of such certificate, execute and deliver, at the Corporation's expense, a new certificate or certificates in exchange representing the number of shares of Series C Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall be substantially identical in form to the surrendered certificate, and the shares of Series C Preferred Stock represented by such new certificate shall earn cumulative dividends from the date to which dividends shall have been paid on the shares represented by the surrendered certificate or certificates.

6.6 Replacement. Upon receipt by the Corporation of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of Series C Preferred Stock (an affidavit of the registered holder without bond being satisfactory for this purpose) the Corporation, at its expense, will execute and deliver in lieu of such certificate, a new certificate of like kind, representing the number of shares of Series C Preferred Stock which shall have been represented by such lost, stolen, destroyed or mutilated certificate, dated and earning cumulative dividends from the date to which dividends shall have been paid on such lost, stolen, destroyed or mutilated certificate.

IN WITNESS WHEREOF, ALPHA HOSPITALITY CORPORATION has caused this Certificate of Designation to be executed by its President and attested to by its Secretary this 29th day of May, 1998.

ALPHA HOSPITALITY CORPORATION

/s/ Stanley S. Tollman
Stanley S. Tollman, Chairman and President

ATTEST:

/s/ Herbert F. Kozlov
Herbert F. Kozlov, Secretary

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**CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
ALPHA HOSPITALITY CORPORATION**

The undersigned corporation, in order to amend its Certificate of Incorporation, hereby certifies as follows:

FIRST: The name of the corporation is ALPHA HOSPITALITY CORPORATION.

SECOND: The corporation hereby amends its Certificate of Incorporation as follows:

Article FOURTH of the Certificate of Incorporation is hereby amended to read as follows:

"FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is eighty million (80,000,000), consisting of seventy-five million (75,000,000) shares of Common Stock, each such share having a par value of \$.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law."

Article ELEVENTH of the Certificate of Incorporation is hereby amended to read as follows:

"ELEVENTH: The Corporation's Board of Directors (by a majority vote thereof) shall have the right, power and authority to adopt any new by-law and/or amend or repeal any then-existing by-law; provided, however, that the Corporation's Board of Directors may not amend or repeal any by-law that, by its very terms, is not subject to amendment or repeal except by or upon approval of the Corporation's stockholders or any class, series or other group or portion thereof."

THIRD: The amendments effected herein were authorized by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon at a special meeting of the stockholders of the corporation which was duly called and held, upon notice in accordance with Sections 222 and 242 of the General Corporation Law of the State of Delaware.

FOURTH: The undersigned hereby acknowledges that the capital of said corporation shall not be reduced under or by reason of the amendments effected herein.

IN WITNESS WHEREOF, I hereunto sign my name and affirm that the statements made herein are true under the penalties of perjury, this 22nd day of September, 1999.

/s/ Thomas W. Aro
THOMAS W. ARO, Secretary

**CERTIFICATE OF DESIGNATIONS
SETTING FORTH THE PREFERENCES, RIGHTS
AND LIMITATIONS OF SERIES D PREFERRED STOCK
OF ALPHA HOSPITALITY CORPORATION**

The undersigned officers of ALPHA HOSPITALITY CORPORATION (the "Corporation"), a Delaware corporation, DO HEREBY CERTIFY that, pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware:

1 The name of the Corporation is Alpha Hospitality Corporation and the Corporation is validly existing and incorporated.

2. On February 7, 2000, pursuant to authority vested in the Board of Directors by Article FOURTH of the Corporation's Certificate of Incorporation, the Board of Directors established a series of up to 4,000 shares of Series D Preferred Stock of the Corporation, par value \$.01 per share, and adopted the following preambles and resolutions with respect to the Certificate of Designations of the Series D Preferred Stock:

WHEREAS, the Corporation desires to create a new series of its Preferred Stock to be designated as "Series D Preferred Stock";

NOW THEREFORE, it is hereby

RESOLVED, that a new series of the class of authorized preferred stock of the Corporation, designated "Series D Preferred Stock," be hereby created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof shall be as set forth below:

Section 1. Designation and Amount; Par Value.

The shares of such series shall be designated as "Series D Preferred Stock" and the number of shares constituting such series shall be 4,000. The par value of each share of the series shall be \$.01. Each share of the Series D Preferred Stock shall have a stated value of \$1,000.

Section 2. Dividends on Series D Preferred Stock.

The Corporation shall pay dividends on the stated value of each share of the Series D Preferred Stock at the rate of 7 % per annum, computed based on a 360-day year consisting of twelve 30-day months; provided that the applicable dividend rate will permanently increase to 15% per annum upon the occurrence of the events described in the second paragraph of Section 4(a) below. Dividends shall be cumulative with respect to each share of the Series D Preferred Stock while such share is outstanding. Dividends shall be payable in arrears on the earlier to occur of (i) the date of conversion of a share of

the Series D Preferred Stock into Common Stock (as defined in Section 4 below) as provided herein and (ii) the Redemption Date (as defined below). At the option of the Corporation, dividends may be payable to the holder of shares of the Series D Preferred Stock registered on the books of the Corporation (the "Holder") in the form of either (i) such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts or (ii) provided, and to the extent, that the Maximum Share Issuance (as defined in Section 4(a) below) shall not have occurred in respect of the shares of Series D Preferred Stock held by such Holder, the number of full shares of Common Stock that the amount of accrued dividends payable would entitle such Holder to acquire based upon a price per share equal to the Conversion Price (as defined in Section 4(a) below) determined as if the Conversion Date were the date on which such dividends became payable. The Corporation shall notify the Holder in writing within two (2) business days of the date Notice of Conversion by the Holder is received by the Corporation or five (5) business days prior to the Redemption Date, as applicable, of the form in which the Corporation elects to pay accumulated dividends. In the event the Corporation fails to timely provide such notice, payments of dividends shall be in Common Stock.

Section 3. Redemption.

(a) Redemption Date: Mandatory Redemption Date.

(1) The "Redemption Date" shall mean, (i) in the case of a mandatory redemption, the Mandatory Redemption Date, (ii) in the case of redemption upon a Redemption Event (as defined below), the date a demand for redemption is made following such Redemption Event, or (iii) in the case of an elective redemption in the event of a Change of Control (as defined below), the time immediately prior to the consummation of the Change of Control Transaction (as defined below).

(2) The "Mandatory Redemption Date" shall mean February 8, 2005.

(3) The "Default Redemption Date" shall mean the date a demand for redemption is made or deemed to be made following a Redemption Event.

(b) Mandatory Redemption. On the Mandatory Redemption Date, upon surrender to the Corporation of the Holder's stock certificate representing then outstanding shares of the Series D Preferred Stock (the "Series D Stock Certificates"), the Corporation shall deliver to the Holder, subject to, and only to the extent such conversion is within the limits of, the Maximum Share Issuance and the 9.9% Limitation (as defined in Section 4(a) below), the number of shares of Common Stock determined pursuant to Section 4(a) as if such Mandatory Redemption Date were the Date of Conversion. In the event the Maximum Share Issuance prevents any shares of Series D Preferred Stock from being converted in full, the dividend rate payable on any such remaining outstanding Shares of Series D of Preferred Stock shall permanently increase to 15% per annum, payable in cash in arrears, semi-annually on June 30 and December 31 of each year to the extent such payments in cash are lawful.

(c) Other Redemption Provisions. The Series D Preferred Stock may also be redeemed prior to a Change of Control Transaction or following a Redemption Event, as provided elsewhere herein.

Section 4. Conversion.

(a) Conversion Price; Amount; Maximum Share Issuance. Subject to this Section 4, a Holder has the right to convert shares of the Series D Preferred Stock, in whole or from time to time in part, into shares of common stock, par value \$.01 per share, of the Corporation (the "Common Stock"). The price at which the Holder may convert shares of the Series D Preferred Stock (or any portion thereof) into shares of Common Stock (the "Conversion Price") shall be the lesser of (i) \$6.00 (the "Maximum Conversion Price") and (ii) the average of the two lowest Closing Prices (as defined below) of the Common Stock during the 30 consecutive trading days immediately preceding (but excluding) the Date of Conversion (as defined below) (the "Variable Conversion Price"). The "Closing Price" with respect to the per-share price of Common Stock on any day means the last reported bid price regular way on NASDAQ Small Cap Market (or the NASDAQ National Market, the New York Stock Exchange or American Stock Exchange in the event any such market or exchange constitutes the principal market on which the Common Stock is quoted or listed or admitted to trading) (such four markets and exchanges, the "Approved Markets") or, if not quoted or listed or admitted to trading on any such Approved Market, the closing bid price in the over-the-counter market as furnished by any New York Stock Exchange member firm that is selected from time to time by the Corporation for that purpose. In lieu of any fractional share of Common Stock to which the Holder would otherwise be entitled upon conversion of shares of the Series D Preferred Stock, the number of shares of Common Stock issuable upon conversion thereof shall be rounded up to the nearest whole number. In the case of a dispute as to the calculation of the Conversion Price, the Holder's calculation shall be deemed conclusive absent manifest error.

The maximum number of shares of Common Stock (the "Maximum Share Issuance") issuable upon conversion of all or any shares of the Series D Preferred Stock (including shares of Common Stock that (x) the Corporation elects to issue in payment of dividends as provided in Section 2 hereof and (y) the Holder elects to receive in the form of Common Stock, if any, pursuant to the Registration Rights Agreement (as from time to time amended, supplemented, restated or otherwise modified, the "Registration Rights Agreement"), dated as of the Initial Issuance Date, between the Corporation and the original purchaser of the Series D Preferred Stock) is 3,300,000 (subject to adjustment for stock splits, stock dividends, reclassification or other similar events). In the event there is more than one Holder of Series D Preferred Stock, the unused portion of the Maximum Share Issuance shall be allocated on a pro rata basis among the Holders based upon the aggregate outstanding shares of Series D Preferred Stock. As of the date on which the Maximum Share Issuance has occurred in respect of a Holder's entire position of shares of the Series D Preferred Stock (and accordingly, such Holder is unable to convert its remaining Series D Preferred Stock into shares of Common Stock), the dividend rate payable on the remaining shares of the Series D Preferred Stock held by such Holder shall permanently increase to 15% per annum and shall be payable in arrears in cash on June 30 and December 31 of each year, to the extent payment in cash shall be lawful (regardless of whether the allocable

Maximum Share Issuance applicable to such Holder's shares of the Series D Preferred Stock subsequently increases as a result of conversions by other Holders or otherwise).

Except as otherwise provided herein, the Holder shall be entitled to convert shares of the Series D Preferred Stock into Common Stock as follows: (i) during calendar days 1 through 75 following the Initial Issuance Date, up to 25% of the Holder's original position in shares of the Series D Preferred Stock; (ii) during calendar days 76 through 150 following the Initial Issuance Date, an amount that, when added to that previously converted, does not exceed 50% of the Holder's original position in shares of the Series D Preferred Stock; (iii) during calendar days 151 through 225 following the Initial Issuance Date, an amount that, when added to that previously converted, does not exceed 75% of the Holder's original position in shares of the Series D Preferred Stock; and (iv) at any time on or after the 226th calendar day following the Initial Issuance Date, all the remaining outstanding shares of the Series D Preferred Stock. In the event of any transfer of the Series D Preferred Stock prior to the 226th day following the Initial Issuance Date, the transferring Holder and the transferee shall agree (and notify the Corporation in writing) as to the limitation on their respective ability to convert shares of Series D Preferred Stock (giving effect to conversion which have already accrued) in order to effectuate the purpose of the foregoing sentence. The last date on which shares of the Series D Preferred Stock may be converted is three (3) business days prior to the Redemption Date. The foregoing limitation on conversion shall not apply to any conversion to the extent the Closing Price on the trading day immediately preceding the Date of Conversion is at least \$10.00 per share (the "Minimum Release Price").

Notwithstanding any other provision of this Section 4, as of any date prior to the Redemption Date, (i) the aggregate number of shares of Common Stock into which all shares of the Series D Preferred Stock (inclusive of shares of Common Stock issuable in payment of accrued dividends) and all other securities convertible into Common Stock held by a Holder and its affiliates shall be convertible, together with the shares of Common Stock then beneficially owned (as defined in the Securities Exchange Act of 1934, as amended (the "Exchange Act")) by such Holder and its affiliates (excluding shares of Common Stock otherwise deemed beneficially owned as a result of the convertibility of the shares of the Series D Preferred Stock held by the Holder or its affiliates), shall not exceed 4.9% of the total outstanding shares of Common Stock as of such date. In addition, notwithstanding any other provision of this Section 4, during any consecutive 61-day period no Holder (together with its affiliates) may (x) convert its Series D Preferred Stock into a number of shares of Common Stock exceeding 9.9% of the Corporation's issued and outstanding shares of Common Stock as of the first day of such 61-day period or sell shares of Common Stock (whether acquired upon conversion of the Series D Preferred Stock or otherwise in excess of 9.9% of the Corporation's issued and outstanding shares of Common stock as of the first day of such 61-day period) (the "9.9% Limitation"). Notwithstanding any other provision of this Certificate of Designations, the foregoing limitations on conversion may not be waived, amended or modified. The Corporation shall have no obligation to monitor compliance with the foregoing limitations on conversion.

(b) Mechanics of Conversion. To convert shares of the Series D Preferred Stock, the Holder must (i) complete and sign a Notice of Conversion in form acceptable to the Corporation (the "Notice of Conversion") and deliver the Notice of Conversion to the Corporation as herein provided and (ii) prior to the date on which delivery of Common Stock is required to be made hereunder, (x) duly endorse and deliver to the Corporation the Series D Stock Certificate(s) representing the shares of the Series D Preferred Stock being converted and

(y) pay any transfer or similar tax with respect to the delivery of such Series D Stock Certificate(s) if required. The Holder shall surrender such Series D Stock Certificate(s) and the Notice of Conversion to the Corporation (with an advance copy by facsimile of the Notice of Conversion). The date on which Notice of Conversion is given (the "Date of Conversion") shall be deemed to be the date of receipt by the Corporation of the facsimile of the Notice of Conversion, provided that such Series D Stock Certificate(s) are received by the Corporation within five (5) business days thereafter. The Corporation shall not be obligated to cause the transfer agent for the Common Stock (the "Transfer Agent") to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless either such Series D Stock Certificate has been received by the Corporation or, if such Series D Stock Certificate(s) have been lost, stolen or destroyed, the Holder has executed and delivered to the Corporation an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with the shares of the Series D Preferred Stock represented by such Series D Stock Certificate(s).

If the Transfer Agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer ("FAST") program, the Corporation shall cause the Transfer Agent to transmit electronically the shares of Common Stock issuable to the Holder upon conversion of shares of the Series D Preferred Stock by crediting the account of the Holder's prime broker with DTC through DTC's Deposit Withdrawal Agent Commission ("DWAC") system, within three (3) business days after delivery to the Corporation of the Holder's Series D Stock Certificate(s). In the event the Holder otherwise elects in writing, however, the Corporation shall cause the Transfer Agent to issue and deliver (within such three (3) business day period) to the address of the Holder on the books of the Corporation, as contemplated by the purchase agreement pursuant to which the shares of the Series D Preferred Stock being converted were issued (the "Securities Purchase Agreement"), or as otherwise directed pursuant to the Notice of Conversion, a certificate or certificates for the number of shares of Common Stock to which such Holder shall be entitled as aforesaid. In the event the Corporation fails to complete such delivery as aforesaid, it shall be responsible for actual damages incurred by the Holder as a result thereof. The person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Notwithstanding that the Holder is required to deliver the Series D Stock Certificate(s), duly endorsed, within five (5) business days after the Date of Conversion, if such Series D Certificate(s) are not received by the Corporation within ten (10) business days after the Date of Conversion, the Corporation may at its option elect, by written notice given to the Holder within fifteen (15) business days after the Date of Conversion, elect (A) to treat Notice of Conversion as null and void or (B) to treat the Notice of Conversion as binding and require the Holder to deliver the applicable Series D Stock Certificate(s). In the event the Corporation elects to treat the Notice of Conversion as binding, the shares of Series D Preferred Stock with respect to which such Notice of Conversion was given shall thereafter no longer be deemed outstanding and the Holder thereof shall not be entitled to any voting or other rights attendant thereto, excepting only the right to receive, upon the delivery to the Corporation of the applicable Series D Stock Certificate(s), the share of Common Stock upon the conversion thereof as contemplated above.

Following conversion of a share of the Series D Preferred Stock, such share will no longer be outstanding and may not be reissued. In the event of the conversion of less than all of the shares of the Series D Preferred Stock represented by a Series D Stock Certificate, the Corporation or its Transfer Agent will issue to the Holder a new stock certificate representing the

number of shares of the Series D Preferred Stock not converted or shall endorse the Series D Stock Certificate to reflect such conversion.

(c) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock or shares of Common Stock held in treasury, or both, solely for the purpose of effecting the conversion of the Series D Preferred Stock, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of the Series D Preferred Stock and all other securities of the Corporation convertible or exchangeable into Common Stock.

(d) Adjustment to Fixed Conversion Price, Variable Conversion Price, Maximum Share Issuance, Minimum Trigger Price and Minimum Release Price.

(i) If, prior to the conversion of all shares of the Series D Preferred Stock, the number of outstanding shares of Common Stock is increased by a stock split, stock dividend of shares of Common Stock or other shares of capital stock, reclassification or other similar event, the Maximum Conversion Price, if applicable, and the Variable Conversion Price (together, the "Conversion Prices") shall be proportionately reduced, or if the number of outstanding shares of Common Stock is decreased by a combination or reclassification of shares or other similar event, the Conversion Prices shall be proportionately increased, in each case, such that a Holder will have the right to receive upon conversion of shares of the Series D Preferred Stock the number of shares of Common Stock (or other shares of capital stock) of the Corporation (notwithstanding the limitation set forth in the fourth paragraph of Section 4(a)) that such Holder would have been entitled to receive had the Holder converted such shares of the Series D Preferred Stock immediately prior to such action. The Maximum Share Issuance, the Minimum Trigger Price (as defined in clause (iv) below) and the Minimum Release price shall likewise be proportionately adjusted upon any increase in the number of outstanding shares of Common Stock on account of any stock split, stock dividend of shares of Common Stock or other shares of capital stock, reclassification or other similar event or upon any decrease in number of outstanding shares of Common Stock on account of any combination or reclassification of shares or other similar event.

(ii) If, prior to the conversion of all shares of the Series D Preferred Stock, there shall be any merger, consolidation, exchange of shares, recapitalization, reorganization or other similar event (a "Conversion Reclassification Event"), as a result of which shares of Common Stock shall be changed into the same or a different number of shares of the Corporation or the same or another class or classes of stock or securities of the Corporation or another entity, then the Holder shall thereafter have the right to receive upon conversion of shares of the Series D Preferred Stock, upon the basis and the terms and conditions specified herein, such shares of stock and/or securities as may be issued or payable with respect to or in exchange for the number of shares of Common Stock immediately theretofore receivable upon the conversion of such shares of the Series D Preferred Stock (irrespective of the limitations set forth in Section 4(a)) had such Conversion Reclassification Event not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of the Holder such that the provisions hereof (including, without limitation, provisions for adjustment of the Conversion Price and of the number of shares issuable upon conversion of shares of the Series D Preferred Stock) shall thereafter be applicable, as nearly as may be practicable in relation to any shares of stock or securities thereafter deliverable upon the conversion of shares of the Series D Preferred Stock. The Corporation shall not effect any Conversion

Reclassification Event unless the resulting successor or acquiring entity (if not the Corporation) assumes by written instrument the obligation to deliver to the Holder such shares of stock and/or securities as the Holder is entitled to receive upon conversion in accordance with the foregoing.

(iii) In addition to the adjustments set forth above, if the Corporation distributes to all holders of its Common Stock any of its assets or debt securities or any rights or warrants to purchase securities other than Common Stock, then the Conversion Prices shall be adjusted in such a manner as shall be agreed to by the Corporation and the Holders of a majority of the outstanding shares of Series D Preferred Stock as shall fairly preserve the economic rights and benefits of each Holder as contemplated by this Certificate of Designations. In the event that within 15 days of any such event, the Corporation and such Holders do not reach an agreement as to the appropriate adjustment, the Corporation shall retain, and pay for, a nationally recognized investment bank or accounting firm to determine the appropriate adjustment as soon as possible, but in any event not later than 45 days, after the date of such event.

No adjustment to the Conversion Prices pursuant to any of the events or circumstances set forth herein shall be made unless such adjustment shall be in an amount of at least five cents (\$0.05); provided, however, that any adjustment that would otherwise be required to be made hereunder but for the fact that it is less than five cents (\$0.05) shall be carried forward and made part of any subsequent adjustment that (a) when aggregated with prior adjustment(s) that have not been made because it was (or each of them was) less than five cents (\$0.05) or (b) is in excess of five cents (\$0.05).

(iv) In the event that, after the Initial Issuance Date, the Corporation shall (other than upon the exercise, exchange or conversion of any securities of the Corporation that are exercisable or exchangeable for, or convertible into, shares of Common Stock and that are outstanding as of the Initial Issuance Date (including, without limitation, the right granted to Stanley Tollman to convert deferred compensation into shares of Common Stock), upon the exercise of stock options granted under or pursuant to any stock option plan approved by shareholders of the Corporation, upon the conversion of any shares of Series D Preferred Stock or Parallel Preferred Stock (as defined in Section 11 below) or any shares of preferred stock issued by the Corporation prior to the Initial Issuance Date or upon the issuance of shares of Common Stock in lieu of cash dividends on any shares of preferred stock of the Corporation) at any time while any shares of the Series D Preferred Stock are outstanding (A) issue shares of Common Stock without consideration (other than in the form of a dividend) or at a price per share less than the Closing Price on the Initial Issuance Date (such Closing Price, the "Minimum Trigger Price") (B) issue options, rights or warrants to subscribe for or purchase Common Stock that provide for (upon the exercise thereof) the issuance of shares of Common Stock without consideration or at a price per share, which when added to the price or other consideration received for such options, rights or warrants, is less than the Minimum Trigger Price or (C) issue securities convertible into Common Stock having a conversion price less than the Minimum Trigger Price, the Conversion Prices to be in effect after the date of such issuance shall be adjusted by multiplying the Conversion Prices in effect immediately prior to the date of any such issuances referenced above by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding on the date of such issuance plus the number of shares of Common Stock that the aggregate offering price of the total number of shares of Common Stock so to be issued (or the aggregate issue price of the convertible securities so to be issued)

would purchase at the Minimum Trigger Price and of which the denominator shall be the number of shares of Common Stock outstanding on the date of such issuance plus the number of additional shares of Common Stock to be issued (or into which the convertible securities so to be issued are initially convertible). In case the price for such securities may be paid in a consideration part or all of which shall be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Corporation, whose determination shall be conclusive. Such adjustment shall be made successively whenever the date of such issuance is fixed and, in the event that such options, rights, warrants or convertible securities (or portions thereof) expire or are otherwise discharged or redeemed without being exercised or converted, any adjustment in the Conversion Prices on account of the issuance of the same shall be reversed.

(v) Adjustments to the Maximum Conversion Price pursuant to this Section 4, subject to subsection (i) above and the last sentence of subsection (ii) above, shall be permanent. Adjustment to the Variable Conversion Price pursuant to this Section 4 shall be made only to the extent an event requiring adjustment occurs during the period that the Variable Conversion Price is required to be calculated to determine the Conversion Price by making adjustments to the applicable Closing Prices within such period.

(vi) If any adjustment under this Section 4(d) would create a fractional share of Common Stock or a right to acquire a fractional share of Common Stock, such fractional share shall be disregarded and the number of shares of Common Stock issuable upon conversion shall be the next higher number of shares.

(e) Adjustments or Additions to Rights Attendant to Series D Preferred Stock.

If at any time after the Initial Issuance Date, the Corporation shall issue a class or series of preferred stock that is convertible into Common Stock at varying prices based upon the market price of the Common Stock at the time of conversion ("New Preferred Stock"), which new class or series contains terms which the Holder determines are more favorable than the terms of the Series D Preferred Stock, each Holder may elect to have all, but not less than all, of such terms replace the applicable provisions set forth herein. In the event such election is not made, the antidilution provisions of Section 4(d) shall apply. The Corporation shall advise each Holder of the terms of any New Preferred Stock within five (5) business days of the issuance thereof, and each Holder shall have thirty (30) business days after receipt of such notice to make such election; such election to be effective immediately upon notice by such Holder to the Corporation.

Section 5. Redemption Events.

(a) A "Redemption Event" occurs if:

(1) the Corporation defaults in effecting a conversion of shares of the Series D Preferred Stock in accordance with the provisions hereof (provided such default was (i) voluntarily caused or permitted by the Corporation, (ii) not due to some legal inability and (iii) otherwise within the Corporation's reasonable control) and such default continues for a period of 10 days; or

(2) the Corporation defaults in the payment of the stated value of or dividends on the Series D Preferred Stock when due (provided such default was (i) voluntarily caused or permitted by the Corporation, (ii) not due to some legal inability and (iii) otherwise within the Corporation's reasonable control) and any such default continues for a period of 10 days.

(b) If a Redemption Event occurs and is continuing, the Holder of shares of the Series D Preferred Stock may demand that the Corporation redeem its shares in cash at a price equal to 125% of (i) the stated value plus (ii) dividends accumulated thereon until such date of redemption.

Section 6. Change of Control.

A "Change of Control Transaction" shall mean, (i) the sale, conveyance or disposition of all or substantially all of the assets of the Corporation, (ii) a consolidation or merger of the Corporation with or into any other "Person" (as defined in the Exchange Act) (whether or not the Corporation is the surviving Person, but other than a merger or consolidation whereby the stockholders of the Corporation immediately preceding the merger or consolidation continue to own greater than 50% of the voting power attributable to the capital stock of the surviving Person in such merger or consolidation that is normally entitled to vote in the election of directors, managers or trustees, as applicable) or, (iii) any Person or any "group" (as such term is used in Section 13(d) of the Exchange Act), becomes the beneficial owner or is deemed to beneficially own (as described in Rule 13d-3 under the Exchange Act without regard to the 60-day exercise period) in excess of 50% of the Corporation's voting power of the capital stock of the Corporation normally entitled to vote in the election of directors of the Corporation (other than (A) any Person or any such group that held such voting power as of the Initial Issuance Date or (B) any group that holds such voting power subsequent to the Initial Issuance Date, provided that the Persons that constitute such group include the Person or a majority of the members of, and at least 50% of the voting power held by, a group referenced in the foregoing clause (A)).

Upon the notice or occurrence of, or announcement of the Corporation's intent (or a third party's or parties' intent in the case of Change of Control Transaction of the type set forth in clause (iii) of the definition of a Change of Control Transaction) to engage in, a Change of Control Transaction, then, the Series D Preferred Stock shall thereupon be convertible in full, notwithstanding any limitations set forth in Section 4 hereof other than the 9.9% Limitation; provided that the Holder's ability to convert the Series D Preferred Stock shall cease three (3) trading days prior to the consummation of a Change of Control Transaction of the type set forth in clauses (i) and (ii) of the definition thereof. In addition, upon either the notice of, or the announcement of the Corporation's intent to engage in, a Change of Control Transaction (of the type set forth in clauses (i) and (ii) of the definition thereof), the Holder shall have the right, up to and including the third trading day prior to the date of effectiveness of such Change of Control Transaction, to elect to convert the Series D Preferred Stock (subject to the 9.9% Limitation) into a number of shares equal to 125% of the amount into which such Series D Preferred Stock would otherwise be convertible, which conversion, in the case of such Change of Control Transaction, shall be conditioned upon and shall be effective immediately prior to consummation of such Change of Control Transaction. If the Holder does not make such an election, the outstanding shares of Series D Preferred Stock shall be deemed automatically converted into shares of Common Stock immediately prior to the consummation of such Change of Control Transaction, and the Holder shall receive the same consideration that a holder of Common Stock is entitled to

receive in connection with such Change of Control Transaction as if it held shares of Common Stock as of such date.

The Corporation shall promptly mail written notice to the Holder of either the occurrence of, or the announcement of the Corporation's intent to engage in, a Change of Control Transaction (with a copy sent by facsimile), but in any event such notice (other than, if applicable, in the case of a Change of Control Transaction of the type set forth in clause (iii) of the definition of a Change of Control Transaction) shall not be given less than twenty (20) days prior to the effective date of such Change of Control Transaction.

Section 7. Reacquired Shares.

Any shares of the Series D Preferred Stock redeemed, purchased, converted or otherwise acquired by the Corporation in any manner whatsoever shall not be reissued as part of the Series D Preferred Stock and shall be retired promptly after the acquisition thereof. All such shares of the Series D Preferred Stock upon their retirement and the filing of any certificate required in connection therewith pursuant to the Delaware General Corporation Law shall become authorized but unissued shares of Preferred Stock.

Section 8. Equality.

All Holders of Series D Preferred Stock shall be subject to the same terms and conditions as set forth herein. No Holders of Series D Preferred Stock shall be entitled to or receive terms that are more favorable than those given to any other Holder of Series D Preferred Stock. In the event a Holder of Series D Preferred Stock is given by the Corporation or receives from the Corporation terms more favorable than those given by the Corporation or received from the Corporation by any other Holder of Series D Preferred Stock, then in such event all Holders of Series D Preferred Stock shall be given and entitled to those more favorable terms.

Section 9. Registered Holder.

The Corporation may for all purposes treat the holder of shares of the Series D Preferred Stock registered on the books of the Corporation as the Holder, notwithstanding any notice or claim by any other Person with respect to any interest in such shares.

Section 10. Voting Rights.

(a) Prior to conversion thereof, Holders of the Series D Preferred Stock shall not be entitled to any of the rights of a holder of Common Stock, including without limitation, the right to vote or to attend any meetings of common stockholders or any other proceedings of the Corporation and shall only be entitled to such voting rights as are provided by Delaware law and as set forth in clause (b) below.

(b) So long as any shares of Series D Preferred Stock are outstanding, the Corporation shall not, without first obtaining the approval of the Holders of majority of the outstanding shares of Series D Preferred Stock; (A) alter or change the rights, preferences or privileges of the Series D Preferred Stock; (B) alter or change the rights, preferences or privileges of any capital stock of the Corporation so as to affect adversely the Series D Preferred Stock; (C) create or issue any Senior Securities (except as provided in Section 11 below); (D)

create or issue any *Pari Passu* Securities (as defined in Section 11 below) other than any additional series of preferred stock that has terms (other than the amount of the maximum conversion price) identical or substantially identical to the terms of the Series D Preferred Stock and the outstanding shares of which shall not have an aggregate stated value in excess of three million dollars (\$3,000,000) and a maximum conversion price which is not set at a discount to the Closing Price of the Common Stock as the trading date immediately preceding the date of issuance thereof above the discount that the Maximum Conversion Price bears to the Closing Price on the trading day immediately preceding the Initial Issuance Date (such additional series of preferred stock, the "Parallel Preferred Stock"); (E) increase the authorized number of shares of Series D Preferred Stock; (F) do any act or thing not authorized or contemplated by this Certificate of Designation that would result in any taxation with respect to the Series D Preferred Stock under Section 305 of the Internal Revenue Code of 1986, as amended, or any comparable provision of the Internal Revenue Code as hereafter from time to time amended, (or otherwise suffer to exist any such taxation as a result thereof). Notwithstanding the foregoing, any Holder (and all of its, his or her successors and assigns) shall be bound by any waiver or other amendment, modification or other agreement set forth in writing and signed by such Holder or otherwise obtained in accordance with the immediately preceding sentence.

Section 11. Rank.

All shares of the Series D Preferred Stock shall rank (i) prior to the Common Stock; (ii) prior to any class or series of capital stock of the Corporation hereafter created other than the Senior Preferred Stock, the Parallel Preferred Stock and any other series or class of capital stock of the Corporation (A) that has been consented to by the Holders of a majority of the outstanding shares of Series D Preferred Stock, and (B) that specially, by its terms, ranks senior to or *pari passu* with the Series D Preferred Stock) (the Common Stock and any other class or series of capital stock of the Corporation hereafter created (other than the Senior Preferred Stock and the Parallel Preferred Stock) that does not specifically, by its terms, rank senior to or *pari passu* with the Series D Preferred Stock being hereinafter referred to collectively as "Junior Securities"); (iii) *pari passu* with the Parallel Preferred Stock and any other class or series of capital stock of the Corporation hereafter created (A) that has been consented to by the Holders of a majority of the outstanding shares of Series D Preferred Stock and (B) that, specifically by its terms, ranks on parity with the Series D Preferred Stock (the "Pari Passu Securities"); and (iv) junior to the Corporation's Series B and Series C Preferred Stock, the Senior Preferred Stock and any other class or series of capital stock of the Corporation hereafter created, (A) that has been consented to by the Holders of a majority of the outstanding shares of Series D Preferred Stock and (B) that specifically, by its terms, ranks senior to the Series D Preferred Stock (all of the foregoing, collectively, the "Senior Securities"), in each case as to distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. In the event the Board of Directors of the Corporation, in order to raise funding or financing all or substantially all of the net proceeds of which are to be applied or used in the development of the proposed casino and related projects of the Corporation and/or its subsidiaries and other affiliates in the Monticello, New York region deems it in the best interests of the Corporation and its shareholders that the Corporation issue one or more series of preferred stock (which shall not be convertible into Common Stock based on a variable market price) ranking senior to the Series D Preferred Stock, the Corporation shall be entitled to do so and the Holders of the Series D Preferred Stock, shall be deemed to have consented to the issuance of each such series and that such series shall rank senior to the Series D Preferred Stock (any such series of preferred stock, "Senior Preferred Stock").

Section 12. Liquidation Preference.

A. LIQUIDATION OF THE CORPORATION. If the Corporation shall commence a voluntary case under the U.S. Federal bankruptcy laws or any other applicable bankruptcy, insolvency or similar law, or consent to the entry of an order for relief in an involuntary case under any law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or make an assignment for the benefit of its creditors, or admit in writing its inability to pay its debts generally as they become due, or if a decree or order for relief in respect of the Corporation shall be entered by a court having jurisdiction in the premises in an involuntary case under the U.S. Federal bankruptcy laws or any other applicable bankruptcy, insolvency or similar law resulting in the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order shall be unstayed and in effect for a period of sixty (60) consecutive days and, on account of any such event, the Corporation shall liquidate, dissolve or wind up, or if the Corporation shall otherwise liquidate, dissolve or wind up (a "Liquidation Event"), no distribution shall be made to the holders of any shares of capital stock of the Corporation (other than Senior Securities and, together with the Holders of Series D Preferred Stock, the Pari Passu Securities) upon liquidation, dissolution or winding up unless prior thereto the Holders shall have received the Liquidation Preference (as hereinafter defined) with respect to each share of Series D Preferred Stock. If, upon the occurrence of a Liquidation Event, the assets and funds available for distribution among the Holders and holders of Pari Passu Securities shall be insufficient to permit the payment to such Holders of the preferential amounts payable thereon, then the entire assets and funds of the Corporation legally available for distribution to the Series D Preferred Stock and the Pari Passu Securities shall be distributed ratably among such shares in proportion to the ratio that the Liquidation Preference payable on each such share bears to the aggregate Liquidation Preference payable on all such shares.

B. CERTAIN ACTS NOT A LIQUIDATION. The purchase or redemption by the Corporation of stock of any class or series, in any manner permitted by law, shall not, for the purposes hereof, be regarded as a liquidation, dissolution or winding up of the Corporation. Neither the consolidation or merger of the Corporation with or into any other entity nor the sale or transfer by the Corporation of less than substantially all of its assets shall, for the purposes hereof, be deemed to be a liquidation, dissolution or winding up of the Corporation.

C. DEFINITION OF LIQUIDATION PREFERENCE. The "Liquidation Preference" with respect to a share of Series D Preferred Stock means an amount equal to the stated value thereof plus any other amounts that may be due from the Corporation with respect thereto pursuant to this Certificate of Designation, the Securities Purchase Agreement or the Registration Rights Agreement. The Liquidation Preference with respect to any Pari Passu Securities shall be as set forth in the Certificate of Designation filed in respect thereof and, as applicable, any other agreements related thereto.

Section 13. Lost or Destroyed Certificates.

If a Series D Stock Certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of such mutilated Series D Stock Certificate, or in lieu of or in substitution for a lost, stolen or

destroyed Series D Stock Certificate, a new Series D Stock Certificate for the Series D Stock Certificate so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Series D Stock Certificate, and of the ownership thereof, and indemnity, if requested, all reasonably satisfactory to the Corporation.

Section 14. Certain Definitions.

(a) Business Day. For purposes hereof, the term "business day" shall mean any day on which banks are generally open for business in the City of New York.

(b) Trading Day. For purposes hereof, the term "trading day" shall mean any day on which the principal market on which the Common Stock is traded is open for business.

(c) Person. For purposes hereof, the term "Person" means an individual or a corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, governmental authority or other entity of any kind.

Section 15. Waiver.

Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designations shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of the Series D Preferred Stock. The failure of the Corporation or the Holder to insist upon strict adherence to any term of this Certificate of Designations on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designations of the Series D Preferred Stock. Any waiver must be in writing.

Section 16. Unenforceable Provisions.

If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the remaining provisions of thereof shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

Section 17. Copies of Agreements, Instruments, Documents.

Copies of any of the agreements, instruments or other documents referred to in this Certificate of Designations shall be furnished to any Holder of Series D Preferred Stock upon written request to the Corporation at its principal place of business.

Section 18. Notices.

All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or that are given with respect to the Series D Preferred Stock shall be in writing and shall be personally served or deposited in the mail, registered or certified, return receipt requested, postage prepaid, or delivered by reputable air courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below: (i) if to the Corporation, to: Alpha Hospitality Corporation, 12 East 49th Street, New York, New York 10017, Attention: Thomas Aro,

Secretary, Facsimile No.: (212) 750-5171 (or to such other address of which notice has been given as herein provided, with copies (which shall not constitute notice) to: Parker Duryee Rosoff & Haft, 529 Fifth Avenue, New York, New York 10017, Attention: Herbert F. Kozlov, Esq., Facsimile No.: (212) 972-9487; and (ii) if to the Holder, to the address of the registered holder according to the books and records of the Corporation or its transfer agent. Notice shall be deemed given on the date so served, deposited for mailing, transmitted by hand delivery, telegram, telex or facsimile or delivered to a reputable air courier for delivery as contemplated above and shall be deemed received on the date so served, if served or transmitted by hand delivery, telegram, telex or facsimile, one business day after being so delivered to a reputable air courier for delivery as contemplated above or three business days after being so mailed as contemplated above.

IN WITNESS WHEREOF, ALPHA HOSPITALITY CORPORATION has caused this Certificate of Designations to be executed by its Chairman and President and attested to by its Secretary this 7th day of February, 2000.

ALPHA HOSPITALITY CORPORATION



Stanley S. Tollman, Chairman and President

ATTEST:



Thomas W. Aro, Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF ALPHA HOSPITALITY CORPORATION**

Pursuant to Section 242 of the General Corporation Law of the State of Delaware

ALPHA HOSPITALITY CORPORATION, (the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law (the "DGCL"), does hereby certify as follows:

FIRST: By unanimous written consent, the Board of Directors of the Corporation adopted resolutions setting forth a proposed amendment to the Corporation's Certificate of Incorporation, declaring such amendment to be advisable and calling a meeting of the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

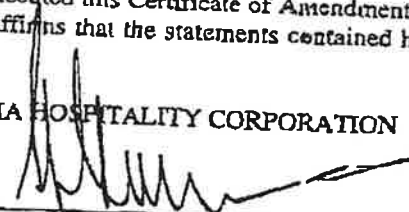
RESOLVED, that immediately following the close of business on June 26, 2001, a reverse stock split (the "Reverse Stock Split") of the Corporation's common stock, (the "Old Common Stock") par value \$.01 per share, shall take place without any further action on the part of the holders thereof, whereby each ten (10) shares of Old Common Stock shall be combined into one validly issued share of new common stock (the "New Common Stock"), the par value of which shall remain unchanged. Fractional shares will be rounded up to the nearest whole number.

SECOND: That thereafter, pursuant to resolution of the Board of Directors of the Corporation, an annual meeting of the stockholders of the Corporation was duly called and held, upon notice in accordance with Section 222 of the DGCL, at which meeting the necessary number of votes as required by statute was cast in favor of the amendment.

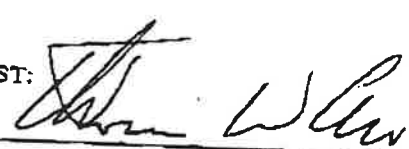
THIRD: That this Amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of the Certificate of Incorporation on the 13th day of June, 2001 and affirms that the statements contained herein are true under the penalty of perjury.

ALPHA HOSPITALITY CORPORATION

By: 
Stanley S. Tollman
Chairman and President

ATTEST:

By: 
Thomas W. Aro
Secretary

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF DESIGNATION
SETTING FORTH THE PREFERENCES, RIGHTS
AND LIMITATIONS OF SERIES B PREFERRED STOCK
AND SERIES C PREFERRED STOCK
OF ALPHA HOSPITALITY CORPORATION

ALPHA HOSPITALITY CORPORATION (the "Corporation"), a Delaware corporation, certifies that, pursuant to the authority contained in Article FOURTH of its Certificate of Incorporation, and in accordance with the provisions of Section 151 of the General Corporation Law (the "GCL") of the State of Delaware, its Board of Directors has adopted the following preambles and resolutions, which the stockholders have approved at a duly called and held meeting, upon notice in accordance with Section 222 of the GCL, at which meeting the necessary number of votes as required by statute were cast in favor of the amendment, amending and clarifying the preferences, rights and limitations of the Corporation's existing Series C Preferred Stock, originally established by a Certificate of Designation Setting Forth the Preferences, Rights and Limitations of Series B Preferred Stock and Series C Preferred Stock of Alpha Hospitality Corporation (the "Certificate of Designation"), filed with the Secretary of State on July 24, 1998.

WHEREAS, the Corporation desires to have the option to pay dividends for the Series C Preferred Stock with shares of Common Stock in lieu of cash; and

WHEREAS, the Corporation deems it appropriate to amend the preferences and rights of the Series C Preferred Stock to include a provision whereby the Corporation can issue shares of Common Stock in lieu of the cash dividend accrued on its Series C Preferred Stock; and

NOW THEREFORE, it is hereby

RESOLVED, that Part B of the Certificate of Designation be amended to include a new Section 2.4, setting forth the terms and conditions for payment of dividends on Series C Preferred Stock in shares of Common Stock, effective upon the filing of an appropriate amendment to the Certificate of Designation with the Secretary of State, to read as set forth below, and the original Section 2.4 be renumbered to Section 2.5:

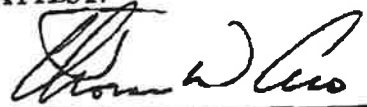
2.4 Payment of Dividend in Shares of Common Stock. Notwithstanding the provisions of Section 2.3 hereof, commencing in the year 2002, any dividend payment that is not made by the Corporation on or before January 30 of the calendar year following the calendar year for which such dividend accrued may, at the option of the Corporation's Board of Directors, be payable in the form of shares of Common Stock, in such number of shares as shall be determined by dividing (A) the product of (x) the amount of the unpaid dividend multiplied by (y) 1.3 by (B) the Fair Market Value of the Common Stock. For this purpose, "Fair Market Value" shall mean, with respect to the Common Stock, the average of the daily closing prices for the Common Stock of the Corporation for the twenty (20) consecutive trading days preceding the applicable January 30 date, with the closing price for each day being the closing price reported on the principal securities exchange upon which the Common Stock of the Corporation is traded or, if it is not so traded, then the average of the closing bid and asked prices as reported by the National Association of Securities Dealers Automated Quotation System or, if not quoted thereon, in the interdealer market on the "Pink Sheets" of the National Quotation Bureau (excluding the highest and lowest bids on each day that there are four (4) or more market makers).

IN WITNESS WHEREOF, ALPHA HOSPITALITY CORPORATION has caused this Certificate of Amendment to the Certificate of Designation to be executed by its President and attested to by its Secretary this 13th day of June, 2001.

ALPHA HOSPITALITY CORPORATION


Stanley S. Tollman, Chairman and President

ATTEST:



Thomas W. Aro, Secretary

**CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND RIGHTS
OF THE
SERIES E PREFERRED STOCK
(\$0.01 par value per share)**

of

**ALPHA HOSPITALITY CORPORATION
a Delaware Corporation**

**Pursuant to Section 151 of the
General Corporation Law of the State of Delaware**

**ALPHA HOSPITALITY CORPORATION, a corporation organized and existing under the
General Corporation Law of the State of Delaware (the "Corporation"),**

DOES HEREBY CERTIFY:

FIRST: That, pursuant to authority conferred upon the Board of Directors of the Corporation (the "Board") by the Certificate of Incorporation of said Corporation, and pursuant to the provisions of Section 151 of the Delaware General Corporation Law, there hereby is created, out of the 5,000,000 shares of Preferred Stock of the Corporation authorized in Article FOURTH of the Certificate of Incorporation (the "Preferred Stock"), a series of the Preferred stock consisting of 1,730,697 shares, \$0.01 par value per share, to be designated "Series E Preferred Stock," and to that end the Board adopted a resolution providing for the designations, powers, preferences and rights, and the qualifications, limitations and restrictions, of the Series E Preferred Stock, which resolution is as follows:

RESOLVED, that the Certificate of the Designations, Powers, Preferences and Rights of the Series E Preferred Stock ("Certificate of Designation") be and is hereby authorized and approved, which Certificate of Designation shall be filed with the Delaware Secretary of State in the form as follows:

1. **Designations and Amount.** One Million Seven Hundred Thirty Thousand Six Hundred Ninety Seven (1,730,697) shares of the Preferred Stock of the Corporation, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series E Preferred Stock" (the "Series E Preferred Stock").

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STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
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2. Dividends.

(a) The holders of shares of Series E Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors of the Corporation (the "Board") out of assets of the Corporation legally available for payment, a cash dividend at the rate of 8% of the Liquidation Value (or \$.80) per annum per share of Series E Preferred Stock (the "Preferred Dividend"), payable only as provided in Section 2(b) hereof. The Preferred Dividend shall accrue and shall be cumulative from the date of initial issuance of such share of Series E Preferred Stock. The amount of the Preferred Dividend that shall accrue for the initial dividend period and for any period shorter than a full dividend period shall be computed on the basis of a 360-day year of twelve 30-day months.

(b) The Preferred Dividend shall be payable (whether or not declared by the Board) upon the effective date of the earliest of a (i) redemption of the Series E Preferred Stock in accordance with Section 6 hereof or (ii) Liquidation (as hereinafter defined).

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 all be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the holders of the Series E Preferred Stock unless, prior thereto, the holders of such shares of Series E Preferred Stock shall have received \$10.00 per share (the "Liquidation Value"), plus an amount equal to all accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment. For purposes of this Certificate of Designation, each of (1) the sale, conveyance, exchange or transfer of all or substantially all of the property and assets of the Corporation or (2) the consolidation or merger of the Corporation with or into any other corporation, in which the stockholders of the Corporation immediately prior to such event do not own a majority of the outstanding shares of the surviving corporation shall be deemed to be a liquidation, dissolution or winding up of the Corporation.

4. Rank. The Series E Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, senior to all series of any other class of the Corporation's Preferred Stock.

5. Voting Rights. The holders of Series E Preferred Stock shall not be entitled to vote on any matter except as required by law.

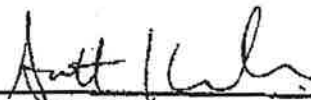
6. Redemption. The Corporation, at the option of the Board, may redeem the whole or any part of the Series E Preferred Stock at any time outstanding, at any time or from time to time, by paying the redemption price of \$10.00 per share, plus accrued dividends, in cash or, in its sole discretion, by delivery of a Note in the form attached hereto as Exhibit A, for each share of Series E Preferred Stock so to be redeemed plus dividends accrued thereon at the date fixed for redemption. In the case of the redemption of only a part of the Series E Preferred Stock at the time

outstanding, the Corporation shall select by lot or in such other manner as the Board may determine the shares to be redeemed. The Board shall have full power and authority, subject to the limitations and provisions contained herein, to prescribe the manner in which and the terms and conditions upon which the Series E Preferred Stock shall be redeemed from time to time. If the Board has elected to redeem such Series E Preferred Stock by paying cash and on or before the date fixed by the Board for redemption the funds necessary for such redemption shall have been set apart so as to be and continue to be available therefor, then, notwithstanding that any certificates for the shares of Series E Preferred Stock so called for redemption shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding, the right to receive dividends thereon shall cease to accrue from and after the date of redemption so fixed, and all rights with respect to such shares of Series E Preferred Stock so called for redemption shall immediately on such redemption date cease and terminate, except only the right of the holders thereof to receive the redemption price therefor, but without interest. None of the Series E Preferred Stock acquired by the Corporation by redemption or otherwise shall be reissued or disposed of but shall from time to time be retired in the manner provided by law.

7. No Pre-emptive Rights. No holder of shares of Series E Preferred Stock will possess any preemptive rights to subscribe for or acquire any unissued shares of capital stock of the Corporation (whether now or hereafter authorized) or securities of the Corporation convertible into or carrying a right to subscribe to or acquire shares of capital stock of the Corporation.

IN WITNESS WHEREOF, Alpha Hospitality Corporation has caused this Certificate of Designation to be executed this 10th day of December, 2002.

ALPHA HOSPITALITY CORPORATION

By: 
Name: Scott Karwanski
Title: CFO

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
ALPHA HOSPITALITY CORPORATION**

**Pursuant to Section 242 of the
General Corporation Law of the State of Delaware**

ALPHA HOSPITALITY CORPORATION (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the corporation is Alpha Hospitality Corporation.
2. Paragraph First of the Certificate of Incorporation of the Corporation is hereby amended in its entirety to read as follows:

"FIRST: The name of the corporation is Empire Resorts, Inc. (the "Corporation")"

3. This Amendment to the Certificate of Incorporation shall be effective as of May 21, 2003.

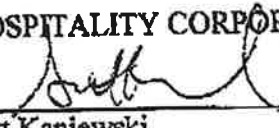
4. The Amendment to the Certificate of Incorporation of the Corporation effected by this Certificate was duly authorized by the Board of Directors of the Corporation in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware, and by the affirmative vote of the holders of all of the Corporation's outstanding capital stock entitled to vote thereon by written consent in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed and acknowledged by its Chief Financial Officer on this 15th day of May, 2003.

ALPHA HOSPITALITY CORPORATION

By: _____


Scott Kaniewski
Chief Financial Officer

EMPIRE RESORTS, INC.
CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND OTHER RIGHTS AND QUALIFICATIONS
OF THE
SERIES E PREFERRED STOCK

Empire Resorts, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware, hereby certifies as follows:

I. Name. The name of the corporation is:

Empire Resorts, Inc.

II. Resolution to Adopt Certificate of Amendment of Certificate of Designations of Series E Preferred Stock. The Board of Directors of the Corporation has duly adopted a resolution proposing the approval and adoption by the Corporation of this Certificate of Amendment of Certificate of the Designations, Powers, Preferences and Other Rights and Qualifications of the Series E Preferred Stock (this "Certificate"), declaring the adoption of this Certificate to be advisable, and directing that this Certificate be submitted for approval by the stockholders of the corporation in accordance with the requirements of the General Corporation Law of the State of Delaware and this Certificate and the resolution set forth herein has been duly adopted in accordance with the provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware. The resolution setting forth the proposed amendment is as follows:

WHEREAS, Section 303 of the New York Racing, Pari-Mutuel Wagering and Breeding Law provides that if the New York Racing and Wagering Board, which licenses Monticello Raceway Management, Inc. ("MRMI") to operate Monticello Raceway, determines that it is inconsistent with the public interest, convenience or necessity, or with the best interests of racing generally, that any person continue to be a stockholder of record or the beneficial owner of any association or corporation licensed to conduct pari-mutuel wagering and harness horse racing in New York, or which owns 25% or more of the stock of such licensee, the board may order or direct each such stockholder or beneficial owner, irrespective of the time when such stockholder or beneficial owner acquired his stock or beneficial interest, to dispose of such stock or interest within a prescribed period of time to be specified by the Board;

WHEREAS, as the Corporation will own 100% of MRMI pursuant to that certain Amended and Restated Securities Contribution Agreement, dated as of December 12, 2003, by and among the Corporation, Alpha Monticello, Inc., a Delaware corporation, Catskill Development, L.L.C., a New York limited liability company, Monticello Realty L.L.C., a Delaware limited liability company, Americas Tower Partners, a New York general partnership, Watertone Holdings, LP, a Delaware limited partnership, New York Gaming, LLC, a Georgia

limited liability company, Fox-Hollow Lane, LLC, a New York limited liability company, Shamrock Strategies, Inc., a Delaware corporation, Kaniewski Family Limited Partnership, a Georgia limited partnership, KFP Trust, an Illinois Trust, BKB, LLC, a New York limited liability company, Clifford A. Ehrlich, Robert A. Berman, Philip B. Berman and Scott A. Kaniewski (together, the "Consolidation"), Section 303 of the New York Racing, Pari-Mutuel Wagering and Breeding Law will be applicable to the Corporation's stockholders upon the Consolidation's closing;

WHEREAS, there are presently 1,730,697 shares of non-voting Series E Preferred Stock of the Corporation issued and outstanding, 1,704,030 of which are owned by Stanley Tollman and The Bryanston Group, Inc.;

WHEREAS, in April 2002, each of Stanley Tollman, Brett Tollman and Monty Hundley were indicted by a federal grand jury on 44 counts of tax fraud and bank fraud, and on September 5, 2003, Brett Tollman pleaded guilty to tax fraud and admitted failing to report \$2.7 million in income to the Internal Revenue Service;

WHEREAS, each of Stanley Tollman, Brett Tollman and Monty Hundley is an affiliate of The Bryanston Group, Inc.;

WHEREAS, these events may have increased the likelihood, however small, that the New York Racing and Wagering Board may deem both Stanley Tollman and The Bryanston Group, Inc. to be unsuitable stockholders of the Corporation and demand that they immediately liquidate their interests in the Corporation;

WHEREAS, the board of directors believes that as the Series E Preferred Stock currently has no voting rights, liquidation of these equity interests would be difficult, and that an inability of Stanley Tollman or The Bryanston Group, Inc. to liquidate their respective holdings of Series E Preferred Stock would place MRMI's gaming license in jeopardy; and

WHEREAS, the board of directors believes that by attaching certain voting rights to the Series E Preferred Stock, the Series E Preferred Stock would be more marketable in the event of a forced liquidation.

NOW, THEREFORE, BE IT:

RESOLVED, an amendment of the Series E Certificate of Designations be and hereby is authorized and approved, and a certificate embodying such amendment relating to the series of preferred stock of the Corporation designated as "Series E Preferred Stock" is hereby approved and, upon approval thereof in accordance with the General Corporation Law of the State of Delaware, is directed to be filed with the Delaware Secretary of State, as follows:

1. Section 5 is hereby amended and restated in its entirety to read as follows:

"5. Voting Rights. The holders of shares of Series E Preferred Stock shall be entitled to vote on all matters on which holders of Common Stock shall be entitled to vote, casting such number of votes equal to a fraction, the numerator of which is the number of shares of Series E Preferred Stock then held, and the denominator of which is four (4), voting together

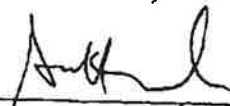
as one class with, and in the same manner and with the same effect as, such holders of Common Stock.”

2. Continued Effectiveness. The Series E Certificate of Designations is not amended hereby except as set forth herein and, as so amended, continues in full force and effect.

[Signature appears on the following page.]

THE UNDERSIGNED, a duly authorized officer of the Corporation, in accordance with the provisions of the General Corporation Law of the State of Delaware, does make this certificate, and declare and certify that it is the act and deed of the Corporation and the facts herein stated are true, and signs this Certificate this 12th day of January, 2004.

EMPIRE RESORTS, INC.

By: 
Name: Scott A. Karcuska
Title: CFO

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
EMPIRE RESORTS, INC.

Pursuant to Section 242 of the
General Corporation Law of the State of Delaware

EMPIRE RESORTS, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the corporation is Empire Resorts, Inc.
2. The Certificate of Incorporation of the Corporation is hereby amended by adding a new Article TWELFTH, as follows:

TWELFTH: A. Number of Directors. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

B. Election and Terms of Directors. Directors shall be elected by a plurality of votes cast, and the directors of this Corporation shall be divided into three classes, with respect to the time that they severally hold office, as nearly equal in number as possible, with the initial term of office of the first class of directors to expire at the 2004 annual meeting of stockholders of the Corporation and until their respective successors are elected and qualified, the initial term of office of the second class of directors to expire at the 2005 annual meeting of stockholders of the Corporation and until their respective successors are elected and qualified and the initial term of office of the third class of directors to expire at the 2006 annual meeting of stockholders of the Corporation and until their respective successors are elected and qualified. Commencing with the 2004 annual meeting of stockholders of the Corporation, directors elected to succeed those directors whose terms have thereupon expired shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders of the Corporation after their election and until their respective successors are elected and qualified

C. Newly Created Directorships and Vacancies.

(1) If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain or attain, if possible, the equality of the number of directors in each class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. If such equality is not possible, the increase or decrease shall be apportioned among the classes in such a way that the difference in the number of directors in any two classes shall not exceed one.

(2) Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause (other than a vacancy resulting from removal by the stockholders, in which case such vacancy shall be filled by the stockholders) shall be filled only by a majority vote of the directors then in office, though less than a quorum, and a director so chosen shall hold office for the unexpired portion of the term of the class in which such director was chosen to serve and until his successor is elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

D. Amendments to Article Twelfth Section 12(B) and 12(C)(1). The affirmative vote of the holders of eighty percent (80%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Twelfth Sections 12(B) and 12(C)(1) unless approved by at least seventy-five percent (75%) of the Whole Board. In the event that at least seventy-five percent (75%) of the Whole Board approves any such provision, then the affirmative vote of the holders of outstanding stock representing at least a majority of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Twelfth Sections 12(B) and 12(C)(1).

E. Removal. Subject to the rights of the holders of Preferred Stock, and unless this Certificate of Incorporation otherwise provides, where the Board of Directors is classified as provided in GCL Section 141(d), any director or the entire Board of Directors may be removed by stockholders only for cause, and the affirmative vote of eighty percent (80%) of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, or the affirmative vote of at least a majority of the Whole Board, shall be required to effect such removal."

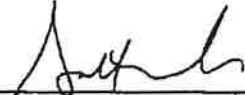
3. The Amendment to the Certificate of Incorporation of the Corporation effected by this Certificate was duly authorized by the Board of Directors of the Corporation in accordance with the provisions of Section 242 of the General Corporation

Law of the State of Delaware, and by the affirmative vote of the holders of a majority of the Corporation's outstanding capital stock entitled to vote thereon by written consent in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed and acknowledged by its Chief Financial Officer on this 12th day of January, 2004.

EMPIRE RESORTS, INC.

By: 
Name: Scott A. Kaniowski
Title: CFO

STATE OF DELAWARE CERTIFICATE FOR RENEWAL AND REVIVAL OF CHARTER

The corporation organized under the laws of Delaware, the charter of which was voided for non-payment of taxes, now desires to procure a restoration, renewal and revival of its charter, and hereby certifies as follows:

1. The name of this corporation is Empire Resorts, Inc.
2. Its registered office in the State of Delaware is located at The Corporation Trust Center, 1209 Orange Street (street), City of Wilmington
Zip Code 19801 County of New Castle the name of its registered agent is The Corporation Trust Company
3. The date of filing of the original Certificate of Incorporation in Delaware was March 19, 1993
4. The date when restoration, renewal, and revival of the charter of this company is to commence is the 28th day of February, 2007 same being prior to the date of the expiration of the charter. This renewal and revival of the charter of this corporation is to be perpetual.
5. This corporation was duly organized and carried on the business authorized by its charter until the 1st day of March A.D. 2007, at which time its charter became inoperative and void for non-payment of taxes and this certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

IN TESTIMONY WHEREOF, and in compliance with the provisions of Section 312 of the General Corporation Law of the State of Delaware, as amended, providing for the renewal, extension and restoration of charters the last and acting authorized officer hereunto set his/her hand to this certificate this 25th day of March A.D. 2008.

By: Ronald J. Radcliffe
Authorized Officer
Name: RONALD J. RADCLIFFE
Print or Type
Title: CFO

CERTIFICATE OF DESIGNATION, PREFERENCES AND

RIGHTS OF SERIES A JUNIOR PARTICIPATING PREFERRED STOCK

of

EMPIRE RESORTS, INC.

**Pursuant to Section 151 of the General Corporation Law
of the State of Delaware**

We, the undersigned officers of Empire Resorts, Inc., a Delaware corporation (hereinafter called the "Corporation"), pursuant to the provisions of Sections 103 and 151 of the General Corporation Law of the State of Delaware, do hereby make this Certificate of Designation and do hereby state and certify that pursuant to the authority expressly vested in the Board of Directors of the Corporation by the Certificate of Incorporation, the Board of Directors duly adopted the following resolutions:

RESOLVED, that, pursuant to Article Fourth of the Certificate of Incorporation, as amended, (which authorizes 5,000,000 shares of preferred stock, \$0.01 par value per share ("Preferred Stock") of which 1,774,955 shares are currently outstanding), the Board of Directors hereby fixes the powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions, of a series of preferred stock;

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Certificate of Incorporation, as amended, a series of preferred stock of the Corporation be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be 40,000.

Section 2. Dividends and Distributions.

(a) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series A Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the 1st day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$0.10 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the

aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non cash dividends or other distributions other than a dividend payable in shares of the common stock, par value \$0.01 per share (the "Common Stock"), of the Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock of the Corporation since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. In the event the Corporation shall at any time after March 24, 2008 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on the Series A Junior Participating Preferred Stock as provided in Paragraph (a) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.10 per share on the Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share by share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to one thousand (1,000) votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(a) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or

upon dissolution, liquidation or winding up) to the Series A Junior Participating Preferred Stock;
or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up.

(a) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount equal to \$1,000 per share of Series A Participating Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series A Liquidation Preference"). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph (c) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(b) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(c) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Junior Participating Preferred Stock shall not be redeemable.

Section 9. Ranking. The Series A Junior Participating Preferred Stock shall rank junior to all other series of the Corporation's preferred stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. At any time when any shares of Series A Junior Participating Preferred Stock are outstanding, the Certificate of Incorporation, as amended, of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to

affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

IN WITNESS WHEREOF, we have executed and subscribed this Certificate and do affirm the foregoing as true under the penalties of perjury this March 24, 2008.

/s/ David P. Hanlon

David P. Hanlon President

Attest:

/s/ Robert H. Friedman

Robert H. Friedman

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND OTHER RIGHTS AND QUALIFICATIONS
OF THE**

**SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
(\$0.01 PAR VALUE PER SHARE)**

OF

EMPIRE RESORTS, INC.

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

Empire Resorts, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that pursuant to the authority conferred upon the Board of Directors of the Corporation (the "Board") by Article FOURTH of the Certificate of Incorporation of the Corporation, and in accordance with the provisions of Section 151 of the Delaware General Corporation Law, the Board has adopted the following resolutions:

RESOLVED, that an amendment to the Certificate of Designations, Powers, Preferences and Other Rights and Qualifications of the Series A Junior Participating Preferred Stock (the "Series A Junior Participating Preferred Stock Certificate of Designation") be, and hereby is, authorized and approved, and a certificate embodying such amendment relating to the series of preferred stock of the corporation designated as "Series A Junior Participating Preferred Stock" is hereby approved and the appropriate officer is directed to be filed with the Delaware Secretary of State, as follows:

FIRST, Section 1 of the Series A Junior Participating Preferred Stock Certificate of Designation is hereby amended and restated in its entirety to read as follows:

"Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Preferred Stock" and the number of shares constituting such series shall be 95,000."

SECOND, the Series A Junior Participating Preferred Stock Certificate of Designation is not amended hereby except as set forth herein and, as so amended, continues in full force and effect.

[Signature appears on the following page]

IN WITNESS WHEREOF, Empire Resorts, Inc. has caused this Certificate of Amendment to the Series A Junior Participating Preferred Stock Certificate of Designation to be executed this 19th day of August, 2009.

EMPIRE RESORTS, INC.

A handwritten signature in black ink, appearing to be 'JB', written over a horizontal line.

By: _____
Name: Joseph Bernstein
Title: Chief Executive Officer

[Signature page to Certificate of Amendment to Certificate of Designation]

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
EMPIRE RESORTS, INC.

Pursuant to Section 242 of the
General Corporation Law of the State of Delaware

EMPIRE RESORTS, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The name of the corporation is Empire Resorts, Inc.
2. The Certificate of Incorporation of the Corporation is hereby amended so that Article FOURTH of the Certificate of Incorporation reads as follows:

"FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is one hundred million (100,000,000), consisting of ninety-five million (95,000,000) shares of Common Stock, each such share having a par value of \$.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law."

3. The Amendment to the Certificate of Incorporation of the Corporation effected by this Certificate was duly authorized by the Board of Directors of the Corporation in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware, and by the affirmative vote of the holders of a majority of the Corporation's outstanding capital stock entitled to vote thereon by written consent in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed on this 10th day of November, 2009.

EMPIRE RESORTS, INC.

By:

A handwritten signature in black ink, appearing to be 'J.E. Bernstein', written in a cursive style.

Name: Joseph E. Bernstein
Title: Chief Executive Officer

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
EMPIRE RESORTS, INC.

Pursuant to Sections 242 and 245 of the Delaware General Corporation Law

Empire Resorts, Inc. (hereinafter referred to as the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

- 1) the present name of the corporation is "Empire Resorts, Inc.";
- 2) the name under which the Corporation was originally incorporated is "Alpha Hospitality Corporation"; and
- 3) the date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of Delaware was March 19, 1993.

The Certificate of Incorporation of the Corporation are hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is "Empire Resorts, Inc."

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, county of New Castle. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000), consisting of one hundred fifty million (150,000,000) shares of Common Stock, each such share having a par value of \$.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights

and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law.

FIFTH: The name and mailing address of the Incorporator is:

Spencer McAdams
c/o Olshan Grundman Frome & Rosenzweig
505 Park Avenue
New York, New York 10022

SIXTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which this director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation, as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys fees,) judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final

disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

(2) If a claim under paragraph (1) of this Paragraph B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the act for the Corporation to indemnify the claimant for the amount claimed but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Paragraph B shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(4) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

(5) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation for the expenses incurred in defending any proceeding in advance of its final disposition, to any agent of the Corporation to the fullest extent of the provisions of this Paragraph B with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

SEVENTH: In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), the interests of creditors, customers, employees and other constituencies of the Corporation and its subsidiaries and the effect upon communities in which the Corporation and its subsidiaries do business.

EIGHTH: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the Board of Directors (and any committee of the Board of Directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the Board or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the Board of Directors and management of the Corporation with respect to any transaction which may result in a change in control of the Corporation which is proposed or initiated by such person or (B) contest or oppose any such transaction which the Board of Directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the Corporation and its business, assets or properties or the stockholders of the Corporation, including, without limitation, the adoption of plans or the issuance of rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the Corporation, which rights, options, capital stock, notes, evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the Board or such Committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the Board of Directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof,

NINTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the state of Delaware at the time in force may be added or inserted, subject to the limitations set forth in this Certificate of Incorporation and in the manner now or hereafter provided herein by statute, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this certificate of incorporation in its present form or as amended are granted subject to the rights reserved in this Article NINTH.

TENTH: The stock or securities of the Corporation shall be held, and the transfer thereof shall be, subject to the provisions, conditions and requirements of the Mississippi Gaming Control Act and the Regulations promulgated thereunder until such time as the Corporation and its subsidiaries shall cease to be subject to the jurisdiction of the Mississippi Gaming Commission.

ELEVENTH: The Corporation's Board of Directors (by a majority vote thereof) shall have the right, power and authority to adopt any new by-law and/or amend or repeal any then-existing by-law; provided, however, that the Corporation's Board of Directors may not amend or repeal any by-law that, by its very terms, is not subject to amendment or repeal except by or

upon approval of the Corporation's stockholders or any class, series or other group or portion thereof.

TWELFTH:

A. NUMBER OF DIRECTORS. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

B. ELECTION AND TERMS OF DIRECTORS. Directors shall be elected by a plurality of votes cast. At the 2011 annual meeting of stockholders of the Corporation and thereafter each director shall be elected for a one-year term expiring at the next annual meeting of stockholders of the Corporation and until such director's successor shall have been elected and qualified.

C. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause (other than a vacancy resulting from removal by the stockholders, in which case such vacancy shall be filled by the stockholders) shall be filled only by a majority vote of the directors then in office, though less than a quorum, and a director so chosen shall hold office until the next stockholders' meeting at which directors are elected and until his successor is elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

D. AMENDMENTS TO ARTICLE TWELFTH SECTION 12(B). The affirmative vote of the holders of eighty percent (80%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Twelfth Sections 12(B) unless approved by at least seventy-five percent (75%) of the Whole Board. In the event that at least seventy-five percent (75%) of the Whole Board approves any such provision, then the affirmative vote of the holders of outstanding stock representing at least a majority of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Twelfth Sections 12(B).

E. REMOVAL. Subject to the rights of the holders of Preferred Stock, and unless this Certificate of Incorporation otherwise provides, any director or the entire Board of Directors may be removed by stockholders only for cause, and the affirmative vote of eighty percent (80%) of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, or the affirmative vote of at least a majority of the Whole Board, shall be required to effect such removal.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by the undersigned this 16th day of February, 2011.

Empire Resorts, Inc.

By: /s/ Joseph A. D'Amato

Name: Joseph A. D'Amato

Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF EMPIRE RESORTS, INC.**

The undersigned, for the purposes of amending the Amended and Restated Certificate of Incorporation of Empire Resorts, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that:

FIRST: The Board of Directors of the Corporation (the "Board") duly adopted in accordance with Section 141(b) of the DCGL, at a meeting of the Board held on September 30, 2011, a resolution proposing and declaring advisable the following amendment to Article FOURTH of the Amended and Restated Certificate of Incorporation of said Corporation:

ARTICLE FOURTH

Upon the effectiveness of the amendment to the certificate of incorporation containing this sentence (the "Split Effective Time") each share of the Common Stock issued and outstanding immediately prior to the date and time of the filing hereof with the Secretary of State of the State of Delaware shall be automatically changed and reclassified into a smaller number of shares such that each three shares of issued Common Stock immediately prior to the Split Effective Time is reclassified into one share of Common Stock. Notwithstanding the immediately preceding sentence, there shall be no fractional shares issued and, in lieu thereof, a holder of Common Stock on the Split Effective Time who would otherwise be entitled to a fraction of a share as a result of the reclassification, following the Split Effective Time, shall be issued scrip in registered uncertificated form which shall entitle the holder to receive a full share of Common Stock upon the surrender of such scrip aggregating a full share and subject to such other conditions as the Board of directors may impose provided, however, such scrip shall be void if not exchanged for certificates representing uncertificated full shares on or before the 30th day following the Split Effective Time. No stockholders will receive cash in lieu of fractional shares.

SECOND: The holders of a majority of the issued and outstanding voting stock of the Corporation have voted in favor of said amendment pursuant to Section 242 of the DGCL.

THIRD: The aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Amendment to the Amended and Restated Certificate of Incorporation of Empire Resorts, Inc. to be duly executed by the undersigned this 13th day of December, 2011.

EMPIRE RESORTS, INC.

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: Chief Executive Officer

**CERTIFICATE OF AMENDMENT TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF EMPIRE RESORTS, INC.**

The undersigned, for the purposes of amending the Amended and Restated Certificate of Incorporation of Empire Resorts, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that:

FIRST: This Certificate of Amendment to the Amended and Restated Certificate of Incorporation shall be effective at 12:01 a.m., Eastern Time, on December 23, 2015.

SECOND: The Board of Directors of the Corporation (the "Board") duly adopted in accordance with Section 141(b) of the DCGL, at a meeting of the Board held on September 30, 2015, a resolution proposing and declaring advisable the following amendment to Article FOURTH of the Amended and Restated Certificate of Incorporation of said Corporation:

ARTICLE FOURTH:

Upon the effectiveness of the amendment to the certificate of incorporation containing this sentence (the "Split Effective Time") each share of the Common Stock issued and outstanding immediately prior to the date and time of the filing hereof with the Secretary of State of the State of Delaware shall be automatically changed and reclassified into a smaller number of shares such that each five shares of issued Common Stock immediately prior to the Split Effective Time is reclassified into one share of Common Stock. Notwithstanding the immediately preceding sentence, there shall be no fractional shares issued and, in lieu thereof, a holder of Common Stock on the Split Effective Time who would otherwise be entitled to a fraction of a share as a result of the reclassification, following the Split Effective Time, shall be issued scrip in registered uncertificated form which shall entitle the holder to receive a full share of Common Stock upon the surrender of such scrip aggregating a full share and subject to such other conditions as the Board of directors may impose provided, however, such scrip shall be void if not exchanged for certificates representing uncertificated full shares on or before the 30th day following the Split Effective Time. No stockholders will receive cash in lieu of fractional shares

THIRD: The holders of a majority of the issued and outstanding voting stock of the Corporation have voted in favor of said amendment pursuant to Section 242 of the DGCL.

FOURTH: The aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Amendment to the Amended and Restated Certificate of Incorporation of Empire Resorts, Inc. to be duly executed by the undersigned this 21st day of December, 2015.

EMPIRE RESORTS, INC.

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: Chief Executive Officer

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
EMPIRE RESORTS, INC.**

Pursuant to Sections 242 and 245 of the Delaware General Corporation Law

Empire Resorts, Inc. (hereinafter referred to as the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

- 1) the present name of the corporation is "Empire Resorts, Inc.";
- 2) the name under which the Corporation was originally incorporated is "Alpha Hospitality Corporation"; and
- 3) the date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of Delaware was March 19, 1993.

The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is "Empire Resorts, Inc."

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, county of New Castle. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000), consisting of one hundred fifty million (150,000,000) shares of Common Stock, each such share having a par value of \$.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law.

FIFTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which this director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or officer of the Corporation as a trustee of an employee benefit plan, or is or was serving at the request of the Corporation, as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended against all expense, liability and loss (including attorneys fees,) judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

(2) If a claim under paragraph (1) of this Paragraph B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and the claimant shall be entitled to be paid also the expense of prosecuting such claim to the fullest extent permitted by the GCL. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the act for the Corporation to indemnify the claimant for the amount claimed but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such

applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Paragraph B shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(4) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

(5) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation for the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Paragraph B with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

SIXTH: In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), the interests of creditors, customers, employees and other constituencies of the Corporation and its subsidiaries and the effect upon communities in which the Corporation and its subsidiaries do business.

SEVENTH: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the Board of Directors (and any committee of the Board of Directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the Board or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the Board of Directors and management of the Corporation with respect to any transaction which may result in a change in control of the Corporation which is proposed or initiated by such person or (B) contest or oppose any such transaction which the Board of Directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the Corporation and its business, assets or properties or the stockholders of the Corporation, including, without limitation, the adoption of plans or the issuance of rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the Corporation, which rights, options, capital stock, notes, evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the Board or such Committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the Board of Directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the state of Delaware at the time in force may be added or inserted, subject to the limitations set forth in this Certificate of Incorporation and in the manner now or hereafter provided herein by statute, and all rights,

preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this certificate of incorporation in its present form or as amended are granted subject to the rights reserved in this Article EIGHTH.

NINTH: So long as the Corporation holds (directly or indirectly) a license or franchise from a government agency to conduct its business, which license or franchise is conditioned upon some or all of the holders of the Corporation's stock possessing prescribed qualifications, any and all shares of the Corporation's stock shall be held subject to the condition that if a holder thereof does not possess the prescribed qualifications ("Disqualified Holder"), such Disqualified Holder shall dispose of his interest in the Corporation's securities within 120 days or such other time period required by the relevant government agency following the Corporation's receipt of notice (the "Notice Date") of such Disqualified Holder from a government agency. Promptly following the Notice Date, the Corporation shall personally deliver a copy of such written notice to the Disqualified Holder, mail it to such Disqualified Holder at the address shown on the Corporation's books and records, or use any other reasonable means of delivering a copy of such written notice to the Disqualified Holder. Failure of the Corporation to provide notice to a Disqualified Holder after making reasonable efforts to do so shall not preclude the Corporation from exercising its rights under this paragraph 9. In addition, the Corporation, at its sole option and in its sole discretion, may redeem the stock of a Disqualified Holder to the extent necessary to prevent the loss of such license or franchise or to reinstate it. Any shares of the Corporation's stock redeemable pursuant to this paragraph 9 may be called for redemption immediately for cash, property or rights, including securities of the Corporation or another corporation, on not less than five (5) days' notice to the Disqualified Holder at a redemption price equal to the average closing price of such stock on a national securities exchange for the 45 trading days immediately preceding the date of the redemption notice; or if such stock is not so traded, then the average of the high and low closing bid price of the stock as quoted by the National Association of Securities Dealers Automated Quotation system for such 45 trading day period; or if such stock is not so quoted, the redemption price shall be determined in good faith by the Corporation's Board of Directors. A Disqualified Holder shall reimburse the Corporation for all expenses incurred by the Corporation in performing its obligations and exercising its rights under this paragraph 9.

TENTH: The Corporation's Board of Directors (by a majority vote of the directors then in office) shall have the right, power and authority to adopt any new by-law and/or amend or repeal any then-existing by-law; provided, however, that the Corporation's Board of Directors may not amend or repeal any by-law that, by its very terms, is not subject to amendment or repeal except by or upon approval of the Corporation's stockholders or any class, series or other group or portion thereof.

ELEVENTH:

A. NUMBER OF DIRECTORS. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

B. ELECTION AND TERMS OF DIRECTORS. Directors shall be elected by a plurality of votes cast. Each director shall be elected for a one-year term expiring at the next annual meeting of stockholders of the Corporation and until such director's successor shall have been elected and qualified.

C. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of

Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause (other than a vacancy resulting from removal by the stockholders, in which case such vacancy shall be filled by the stockholders) shall be filled only by a majority vote of the directors then in office, though less than a quorum, and a director so chosen shall hold office until the next stockholders' meeting at which directors are elected and until his successor is elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

D. AMENDMENTS TO ARTICLE ELEVENTH SECTION 11(B). The affirmative vote of the holders of eighty percent (80%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B) unless approved by at least seventy-five percent (75%) of the Whole Board. In the event that at least seventy-five percent (75%) of the Whole Board approves any such provision, then the affirmative vote of the holders of outstanding stock representing at least a majority of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B).

E. REMOVAL. Subject to the rights of the holders of Preferred Stock, and unless this Certificate of Incorporation otherwise provides, any director or the entire Board of Directors may be removed with or without cause by the affirmative vote of eighty percent (80%) of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class.

TWELFTH: Internal Corporate Claims shall be brought solely and exclusively in the courts of the State of Delaware; provided, however, that an internal corporate claim may be brought in another forum if the courts of the State of Delaware cannot exercise personal jurisdiction over all necessary parties or lack subject matter jurisdiction over the claim. "Internal Corporate Claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which the General Corporation Law of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by the undersigned this 1st day of November, 2016.

Empire Resorts, Inc.

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: Chief Executive Officer

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:

That 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"), the Board of Directors authorized the series of preferred stock hereinafter provided for and established the voting powers thereof and has adopted the following resolution creating a series of 1,500 shares of preferred stock designated as "Series F Convertible Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Certificate of Incorporation, a new series of preferred stock of the Corporation is hereby created and designated as Series F Convertible Preferred Stock, \$0.01 par value per share (the "Series F Preferred Stock").

The designation and amount and the voting powers, preferences and relative, participating, optional and other special rights of the shares of Series F Preferred Stock, and the qualifications, limitations or restrictions thereof are as set forth below in this Certificate of Designations, Preferences and Rights of Series F Convertible Preferred Stock (the "Certificate"):

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 "NYNY <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

(IV) 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.

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 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 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 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 Certificate of Designations, Preferences and Rights to be signed in its name and on its behalf on this 5th 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

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 "NYYN <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

**CERTIFICATE OF AMENDMENT
OF
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 242 OF THE
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE**

Empire Resorts, Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The 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 the Corporation is hereby amended by:

a. Replacing the words "One Thousand Five Hundred (1,500)" in Section 1 thereof with the words "One Thousand Six Hundred (1,600)"; and

b. Adding a new Subsection 4(b)(iv) to provide in full as follows:

"(iv) Notwithstanding anything to the contrary herein, neither (i) the acquisition of shares of capital stock of the Corporation by Kien Huat Realty III Limited ("Kien Huat"), Genting (USA) Limited ("Gen USA") or any of their respective affiliates or any Person that is a "group" of which Kien Huat, Gen USA or their respective affiliates is a member (including the Purchase and the Contributions pursuant to that certain Term Sheet, dated as of August 5, 2019, entered into by Kien Huat, Genting Malaysia Berhad and Gen USA) nor (ii) the consummation of a merger pursuant to that certain Agreement and Plan of Merger, dated August 18, 2019 (as it may be amended from time to time), by and between Hercules Topco LLC, Hercules Merger Subsidiary Inc. and the Corporation shall constitute a Change of Control Transaction."

2. The foregoing amendment was duly adopted in accordance with the provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed by its duly authorized officer on this 30th day of September, 2019.

EMPIRE RESORTS, INC.

By: /s/ Ryan Eller

Name: Ryan Eller

Title: President and Chief Executive Officer

CERTIFICATE OF MERGER
OF
HERCULES MERGER SUBSIDIARY INC.
WITH AND INTO
EMPIRE RESORTS, INC.

November 15, 2019

Pursuant to Title 8, Section 251(c) of the General Corporation Law of the State of Delaware (the "DGCL"), it is hereby certified that:

1. The name and state of incorporation of each of the constituent corporations (the "Constituent Corporations") to the merger are as follows:

<u>Name</u>	<u>State of Incorporation</u>
Empire Resorts, Inc.	Delaware
Hercules Merger Subsidiary Inc.	Delaware

2. The Agreement and Plan of Merger, dated as of August 18, 2019 (the "Merger Agreement"), by and among Hercules Topco LLC, a Delaware limited liability company ("Parent"), Hercules Merger Subsidiary Inc., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub") and Empire Resorts, Inc., a Delaware corporation (the "Company") has been approved, adopted, executed and acknowledged by each of the Constituent Corporations in accordance with Section 251 of the DGCL.

3. Merger Sub shall be merged with and into the Company, with the Company surviving the merger, and the name of the surviving corporation following the merger shall be "Empire Resorts, Inc." (the "Surviving Corporation").

4. The certificate of incorporation of the Company, as in effect immediately prior to the merger, shall be the certificate of incorporation of the Surviving Corporation.

5. The merger shall become effective immediately upon the filing of this Certificate of Merger with the Secretary of State of the State of Delaware.

6. The executed Merger Agreement is on file at an office of the Surviving Corporation, the address of which is c/o Monticello Casino and Raceway, 204 state Route 17B, P.O. Box 5013, Monticello, NY 12701.

7. A copy of the Merger Agreement will be furnished by the Surviving Corporation on request and without cost, to any stockholder of either of the Constituent Corporations.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Merger to be signed by an authorized officer as of the date first written above.

Empire Resorts, Inc.

By: /s/ Ryan Eller
Name: Ryan Eller
Title: President

CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND RIGHTS
OF THE
SERIES G 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:

That pursuant to the authority conferred upon the Corporation's Board of Directors (the "Board of Directors") by the Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), the Board of Directors authorized the series of preferred stock hereinafter provided for and established the voting powers thereof and has adopted the following resolution creating a series of 400 shares of preferred stock designated as "Series G Convertible Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors in accordance with the provisions of its Certificate of Incorporation, a new series of preferred stock of the Corporation is hereby created and designated as Series G Convertible Preferred Stock, \$0.01 par value per share (the "Series G Preferred Stock").

The designation and amount and the voting powers, preferences and relative, participating, optional and other special rights of the shares of Series G Preferred Stock, and the qualifications, limitations or restrictions thereof are as set forth below in this Certificate of Designations, Powers, Preferences and Rights of Series G Convertible Preferred Stock (the "Certificate"):

1. DESIGNATIONS AND AMOUNT. Four Hundred (400) shares of the Preferred Stock of the Corporation, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series G Preferred Stock" (the "Series G Preferred Stock"). The Series G 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 G Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series G 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") or on shares of the Series F Convertible Preferred Stock, \$0.01 par value per share (the "Series F Preferred Stock") or shares of the Series H Convertible Preferred Stock, \$0.01 par value per share (the "Series H Preferred 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 G 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 G 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 on or after December 31, 2030 and prior to December 31, 2038 (the "Maturity Date"), the Series G Preferred Stock is convertible in whole or in part, at the option of the holder of the Series G Preferred Stock, into shares (the "Conversion Shares") of Common Stock upon surrender of the Series G 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 G 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 G Preferred Stock being converted. In the event the Series G 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 G Preferred Stock after giving effect to such partial conversion. Following any conversion of the Series G 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 G 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 G Preferred Stock by the Base Conversion Price.

(ii) In the event of a Change of Control Transaction, each share of Series G 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 G 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 G 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.

(iv) Notwithstanding anything to the contrary herein, the acquisition of shares of capital stock of the Corporation by Kien Huat Realty III Limited ("Kien Huat"), Genting (USA) Limited ("Gen USA") or any of their respective affiliates or any Person that is a "group" of which Kien Huat, Gen USA or their respective affiliates is a member shall not constitute a Change of Control Transaction.

(c) Share Reserve. So long as any shares of Series G 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 G Preferred Stock.

(d) Issuance Limitations. Notwithstanding anything herein to the contrary, the number of Conversion Shares following a conversion pursuant to Section 4(a) shall be limited to the extent necessary to ensure that, following such conversion, the total number of shares of Common Stock then beneficially owned by such holder and its affiliates and any other persons whose beneficial ownership of Common Stock would be aggregated with the holder's for purposes of Section 13(d) of the Securities and Exchange Act of 1934, as amended, does not exceed 49.00% of the total number of issued and outstanding shares of Common Stock (including for such purpose the shares of Common Stock issuable upon such conversion).

5. CERTAIN ADJUSTMENTS; ADDITIONAL RIGHTS.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series G 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 G 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 G 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 G 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 G Preferred Stock shall rank, with respect to the rights, preferences and privileges, including but not limited to the distribution of assets, (i) junior to the Series H Preferred Stock, (ii) *pari passu* with the Series F Preferred Stock and (iii) senior to all other classes or series of equity securities of the Corporation (the "Junior Securities").

7. VOTING RIGHTS. The holders of Series G 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 G 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. 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 G Preferred Stock, voting together as a single class and without a separate vote of the holders of Common Stock: (i) amend its Certificate of Incorporation, this 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 powers, preferences or rights of the holders of the Series G 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 G 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 G 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 G 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 G 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 G 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 G 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 Certificate of Designations, Powers, Preferences and Rights to be signed in its name and on its behalf on this 16th day of March, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

By: /s/Robert DeSalvio
Name: Robert DeSalvio
Title: President

CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND RIGHTS
OF THE
SERIES H 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:

That pursuant to the authority conferred upon the Corporation's Board of Directors (the "Board of Directors") by the Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), the Board of Directors authorized the series of preferred stock hereinafter provided for and established the voting powers thereof and has adopted the following resolution creating a series of 2,100 shares of preferred stock designated as "Series H Convertible Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors in accordance with the provisions of its Certificate of Incorporation, a new series of preferred stock of the Corporation is hereby created and designated as Series H Convertible Preferred Stock, \$0.01 par value per share (the "Series H Preferred Stock").

The designation and amount and the voting powers, preferences and relative, participating, optional and other special rights of the shares of Series H Preferred Stock, and the qualifications, limitations or restrictions thereof are as set forth below in this Certificate of Designations, Powers, Preferences and Rights of Series H Convertible Preferred Stock (the "Certificate"):

1. DESIGNATIONS AND AMOUNT. Two Thousand One Hundred (2,100) shares of the Preferred Stock of the Corporation, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series H Preferred Stock" (the "Series H Preferred Stock"). The Series H 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 H Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series H 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") or on shares of the Series F Convertible Preferred Stock, \$0.01 par value per share or shares of the Series G Convertible Preferred Stock, \$0.01 par

value per share, when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of Series H 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 H 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 on or after December 31, 2030 and prior to December 31, 2038 (the "Maturity Date"), the Series H Preferred Stock is convertible in whole or in part, at the option of the holder of the Series H Preferred Stock, into shares (the "Conversion Shares") of Common Stock upon surrender of the Series H 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 H 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 H Preferred Stock being converted. In the event the Series H 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 H Preferred Stock after giving effect to such partial conversion. Following any conversion of the Series H 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 H 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 H Preferred Stock by the Base Conversion Price.

(ii) In the event of a Change of Control Transaction, each share of Series H 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 H 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 H 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.

(iv) Notwithstanding anything to the contrary herein, the acquisition of shares of capital stock of the Corporation by Kien Huat Realty III Limited ("Kien Huat"), Genting (USA) Limited ("Gen USA") or any of their respective affiliates or any Person that is a "group" of which Kien Huat, Gen USA or their respective affiliates is a member shall not constitute a Change of Control Transaction.

(c) Share Reserve. So long as any shares of Series H 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 H Preferred Stock.

5. CERTAIN ADJUSTMENTS; ADDITIONAL RIGHTS.

(a) Redemption at Option of Corporation. At any time and from time to time prior to the Maturity Date, the Series H Preferred Stock is redeemable in whole or in part, at the option of the Corporation. The Series H Preferred Stock shall be redeemable at the redemption price equal to (1) the Stated Value, plus (2) any dividends that were declared but unpaid at the time of such redemption if and to the extent that such holder would have been entitled to receive such dividend under Section 2 had the redemption not occurred.

(b) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series H 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 H 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(b) 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.

(c) 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 H 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 H 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 H Preferred Stock shall rank, with respect to the rights, preferences and privileges, including but not limited to the distribution of assets, senior to all other classes or series of equity securities of the Corporation (the "Junior Securities").

7. VOTING RIGHTS. The holders of Series H 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 H 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. 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 H Preferred Stock, voting together as a single class and without a separate vote of the holders of Common Stock: (i) amend its Certificate of Incorporation, this 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 powers, preferences or rights of the holders of the Series H 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 H 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 H 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 H 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 H 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 H 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 H 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 Certificate of Designations, Powers, Preferences and Rights to be signed in its name and on its behalf on this 16th day of March, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

By: /s/Robert DeSalvio
Name: Robert DeSalvio
Title: President

CERTIFICATE OF AMENDMENT
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 242 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.
3. The Amended and Restated Certificate of Designations, Powers, 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 9, 2018 (as amended by the Certificate of Amendment filed with the Secretary of State of the State of Delaware on September 30, 2019, the "First Amended and Restated Certificate").
5. The Corporation's Board of Directors, in accordance with the provisions of the Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), Section 242 of the General Corporation Law of the State of Delaware and other applicable law and with the unanimous consent of the Corporation's common stockholders and of the sole holder of issued and outstanding shares of the Series F Convertible Preferred Stock, hereby restates and amends the provisions of the First Amended and Restated Certificate.
6. This Certificate of Amendment shall become effective on the date of filing with Secretary of State of Delaware. Prior to such filing, 1,450 shares of Series F Convertible Preferred Stock have been issued.
7. The text of the First Amended and Restated Certificate is hereby restated and amended in its entirety to read as follows:

1. DESIGNATIONS AND AMOUNT. One Thousand Six Hundred (1,600) 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") or on shares of the Series G Convertible Preferred Stock, \$0.01 par value per share (the "Series G Preferred Stock") or shares of the Series H Convertible Preferred Stock, \$0.01 par value per share (the "Series H Preferred 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 on or after December 31, 2030 and 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 Base Conversion Price.

(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.

(iv) Notwithstanding anything to the contrary herein, the acquisition of shares of capital stock of the Corporation by Kien Huat Realty III Limited ("Kien Huat"), Genting (USA) Limited ("Gen USA") or any of their respective affiliates or any Person that is a "group" of which Kien Huat, Gen USA or their respective affiliates is a member shall not constitute a Change of Control Transaction.

(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.

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, (i) junior to the Series H Preferred Stock, (ii) *pari passu* with the Series G Preferred Stock and (iii) senior to all other classes or series of equity securities of the Corporation (the "Junior Securities").

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. 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 Second

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 powers, preferences or rights 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 Certificate of Amendment to be signed in its name and on its behalf on this 24th day of March, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

By: /s/Robert DeSalvio
Name: Robert DeSalvio
Title: President

CERTIFICATE OF THE DESIGNATIONS, POWERS,
PREFERENCES AND RIGHTS
OF THE
SERIES L 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:

That pursuant to the authority conferred upon the Corporation's Board of Directors (the "Board of Directors") by the Certificate of Incorporation of the Corporation, as amended (the "Certificate of Incorporation"), the Board of Directors authorized the series of preferred stock hereinafter provided for and established the voting powers thereof and has adopted the following resolution creating a series of 1,500 shares of preferred stock designated as "Series L Convertible Preferred Stock":

RESOLVED, that pursuant to the authority vested in the Board of Directors in accordance with the provisions of its Certificate of Incorporation, a new series of preferred stock of the Corporation is hereby created and designated as Series L Convertible Preferred Stock, \$0.01 par value per share (the "Series L Preferred Stock").

The designation and amount and the voting powers, preferences and relative, participating, optional and other special rights of the shares of Series L Preferred Stock, and the qualifications, limitations or restrictions thereof are as set forth below in this Certificate of Designations, Powers, Preferences and Rights of Series L Convertible Preferred Stock (the "Certificate"):

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 L Preferred Stock" (the "Series L Preferred Stock"). The Series L 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 L Preferred Stock shall be entitled to receive, and the Corporation shall pay, dividends on shares of Series L 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") or on shares of the Series F Convertible Preferred Stock, \$0.01 par value per share (the "Series F Preferred Stock") or shares of the Series G Convertible Preferred Stock, \$0.01 par value per shares (the "Series G Preferred Stock") or shares of the

Series H Convertible Preferred Stock, \$0.01 par value per share (the “Series H Preferred 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 L 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 L 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 on or after the earliest of (i) receipt of a notice with respect to a proposed Change of Control Transaction specified in 4(b)(i) (provided that if the proposed Change of Control Transaction described in such notice is terminated prior to its consummation, the Corporation shall promptly provide the Series L Holders notice of such termination and the Series L Holders ability to convert pursuant to this subclause 4(a)(i) as a result of receipt of the notice describing such terminated Change of Control Transaction shall also terminate) and (ii) December 31, 2030 and prior to December 31, 2038 (the “Maturity Date”), the Series L Preferred Stock is convertible in whole or in part, at the option of the holder of the Series L Preferred Stock, into shares (the “Conversion Shares”) of Common Stock upon surrender of the Series L 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 L Preferred Stock shall be convertible at any time into shares of Common Stock in such amount equal to (a) the Stated Value divided by \$10.00 (the “Base Conversion Price”) (subject to the adjustments as provided for in Section 5 herein), multiplied by (b) the number of shares of Series L Preferred Stock being converted. In the event the Series L 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 L Preferred Stock after giving effect to such partial conversion. Following any conversion of the Series L 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) **Change of Control.**

(i) The Corporation shall provide the holder of the Series L Preferred Stock with notice of any such proposed Change of Control Transaction prior to the record date for any vote or other action by stockholders’ of the Corporation with respect to such proposed Change of Control Transaction, if applicable (or the effective date of the Change of Control Transaction, if there is no such vote or other action by stockholders) for such transaction.

(ii) 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.

(iii) Notwithstanding anything to the contrary herein, the acquisition of shares of capital stock of the Corporation by Kien Huat Realty III Limited ("Kien Huat"), Genting (USA) Limited ("Gen USA") or any of their respective affiliates or any Person that is a "group" of which Kien Huat, Gen USA or their respective affiliates is a member shall not constitute a Change of Control Transaction.

(c) Share Reserve. So long as any shares of Series L 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 L Preferred Stock.

5. CERTAIN ADJUSTMENTS; ADDITIONAL RIGHTS.

(a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Series L 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 L 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 L 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 L 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 L Preferred Stock shall rank, with respect to the rights, preferences and privileges, including but not limited to the distribution of assets, (i) junior to the Series H Preferred Stock, and (ii) senior to all other classes or series of equity securities of the Corporation (the "Junior Securities").

7. VOTING RIGHTS.

(a) The holders of Series L 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, provided, however, that the holders of the Series L Preferred Stock shall not be entitled to vote on any matter presented to the stockholders of the Corporation for their action or consideration except, as set forth in Section 7(b) hereof or as required by applicable law.

(b) 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 L Preferred Stock, voting together as a single class and without a separate vote of the holders of Common Stock: (i) amend its Certificate of Incorporation, this 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 powers, preferences or rights of the holders of the Series L 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 L 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 L 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 L 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 L 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 L 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 L 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 Certificate of Designations, Powers, Preferences and Rights to be signed in its name and on its behalf on this 11th day of September, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

DocuSigned by:

Robert DeSalvio

By: _____

19BCA1744B8A478...

Name: Robert DeSalvio

Title: President

**CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS
OF SERIES F PREFERRED STOCK (\$0.01 PAR VALUE PER SHARE)**

OF

EMPIRE RESORTS, INC.

**PURSUANT TO SECTION 242 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 Designation, Preferences and Rights of Series F Preferred Stock of this Company (the "Series F Certificate") was filed with the Secretary of State of the State of Delaware on November 5th, 2018.
3. The First Amended and Restated Certificate of Designations, Powers, 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 9, 2018 (as amended by the Certificate of Amendment filed with the Secretary of State of the State of Delaware on September 30, 2019, the "First Amended and Restated Series F Certificate").
4. The Second Amended and Restated Certificate of Designations, Powers, 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 March 25, 2020 (the "Second Amended and Restated Series F Certificate").
5. The Corporation's Board of Directors, in accordance with the provisions of the Certificate of Incorporation of the Corporation, as amended, Section 242 of the General Corporation Law of the State of Delaware and other applicable law and with the consent of the sole holder of issued and outstanding shares of the Series F Convertible Preferred Stock, hereby amends the provisions of the Second Amended and Restated Series F Certificate by deleting Section 6 in its entirety and replacing it with the following:

"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, (i) junior to the Series H Preferred Stock and Series L Convertible Preferred Stock, \$0.01 par value per share, (ii) *pari passu* with the Series G Preferred Stock and (iii) senior to all other classes or series of equity securities of the Corporation (the "Junior Securities")."

6. This Certificate of Amendment shall become effective on the date of filing with Secretary of State of Delaware. Prior to such filing, 1,510 shares of Series F Convertible Preferred Stock have been issued.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Series F Certificate to be executed in its name and on its behalf on this 11th day of September, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

DocuSigned by:
Robert DeSalvio
By: 19BCA1744BBA478
Name: Robert DeSalvio
Title: President

**CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF DESIGNATION, PREFERENCES AND RIGHTS
OF SERIES G PREFERRED STOCK (\$0.01 PAR VALUE PER SHARE)**

OF

EMPIRE RESORTS, INC.

**PURSUANT TO SECTION 242 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 Designation, Preferences and Rights of Series G Preferred Stock of this Company (the "Series G Certificate") was filed with the Secretary of State of the State of Delaware on March 16th, 2020.
3. The Corporation's Board of Directors, in accordance with the provisions of the Certificate of Incorporation of the Corporation, as amended, Section 242 of the General Corporation Law of the State of Delaware and other applicable law and with the consent of the sole holder of issued and outstanding shares of the Series G Convertible Preferred Stock, hereby amends the provisions of the Series G Certificate by deleting Section 6 in its entirety and replacing it with the following:

"6. RANK. The Series G Preferred Stock shall rank, with respect to the rights, preferences and privileges, including but not limited to the distribution of assets, (i) junior to the Series H Preferred Stock and Series L Convertible Preferred Stock, \$0.01 par value per share, (ii) pari passu with the Series F Preferred Stock and (iii) senior to all other classes or series of equity securities of the Corporation (the "Junior Securities")."
4. This Certificate of Amendment shall become effective on the date of filing with Secretary of State of Delaware. Prior to such filing, 400 shares of Series G Convertible Preferred Stock have been issued.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Series G Certificate to be executed in its name and on its behalf on this 11th day of September, 2020 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

DocuSigned by:
Robert DeSalvio
By: 19BCA1744B8A478
Name: Robert DeSalvio
Title: President

**CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF DESIGNATION, POWERS, PREFERENCES AND RIGHTS
OF SERIES L CONVERTIBLE PREFERRED STOCK (\$0.01 PAR VALUE PER SHARE)**

OF

EMPIRE RESORTS, INC.

**PURSUANT TO SECTION 242 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 Designation, Powers, Preferences and Rights of Series L Convertible Preferred Stock of this Company (the "Series L Certificate") was filed with the Secretary of State of the State of Delaware on September 11th, 2020.
3. The Corporation's Board of Directors, in accordance with the provisions of the Certificate of Incorporation of the Corporation, as amended, Section 242 of the General Corporation Law of the State of Delaware and other applicable law and with the consent of the sole holder of issued and outstanding shares of the Series L Convertible Preferred Stock, hereby amends the provisions of the Series L Certificate by deleting Section 1 in its entirety and replacing it with the following:

"DESIGNATIONS AND AMOUNT. Three Thousand Five Hundred (3,500) shares of the Preferred Stock of the Corporation, \$0.01 par value per share, shall constitute a class of Preferred Stock designated as "Series L Preferred Stock" (the "Series L Preferred Stock"). The Series L 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").

4. This Certificate of Amendment shall become effective on the date of filing with Secretary of State of Delaware. Prior to such filing, 1,500 shares of Series L Preferred Stock have been issued.

[SIGNATURE PAGE FOLLOWS]

State of Delaware
Secretary of State

Division of Corporations

Delivered 12:25 PM 03/18/2021

FILED 12:25 PM 03/18/2021

SR 20210955635 - File Number 2329793

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Designations, Powers, Preferences and Rights of Series L Convertible Preferred Stock to be executed in its name and on its behalf on this 18th day of March 2021 by a duly authorized officer of the Corporation.

EMPIRE RESORTS, INC.

DocuSigned by:
By: Robert DeSalvio
Name: Robert DeSalvio
Title: President

Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "EMPIRE RESORTS, INC.", FILED IN THIS OFFICE ON THE FIRST DAY OF NOVEMBER, A.D. 2016, AT 12:21 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

2329793 8100
SR# 20212895471

Authentication: 203847301
Date: 08-05-21

You may verify this certificate online at corp.delaware.gov/authver.shtml

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
EMPIRE RESORTS, INC.**

Pursuant to Sections 242 and 245 of the Delaware General Corporation Law

Empire Resorts, Inc. (hereinafter referred to as the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

- 1) the present name of the corporation is "Empire Resorts, Inc.";
- 2) the name under which the Corporation was originally incorporated is "Alpha Hospitality Corporation"; and
- 3) the date of filing of the original certificate of incorporation of the Corporation with the Secretary of State of Delaware was March 19, 1993.

The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the Corporation is "Empire Resorts, Inc."

SECOND: The registered office of the corporation and registered agent in the State of Delaware is to be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, county of New Castle. The name of its registered agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business, and the objects and purposes proposed to be transacted, promoted and carried on, are to do any and all things herein mentioned, as fully and to the same extent as natural persons might or could do, and in any part of the world, viz:

To do any lawful act or thing for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "GCL").

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000), consisting of one hundred fifty million (150,000,000) shares of Common Stock, each such share having a par value of \$.01, and five million (5,000,000) shares of Preferred Stock, each such share having a par value of \$.01. The Board of Directors is expressly authorized to issue Preferred Stock without stockholder approval, in one or more series, and to fix for each such series such voting powers, full or limited, and such designations, preferences and relative, participating, optional or special rights and such qualifications, limitations or restrictions thereof as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such series and as may be permitted by the Delaware General Corporation Law.

FIFTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors' duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL, or (iv) for any transaction from which this director derived an improper personal benefit. If the GCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of this Paragraph A shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. (1) Each person who was or is made a party or is threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or officer of the Corporation as a trustee of an employee benefit plan, or is or was serving at the request of the Corporation, as a director or officer of another corporation or of a partnership, joint venture, trust or other enterprise shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the GCL as the same exists or may hereafter be amended against all expense, liability and loss (including attorneys fees,) judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in paragraph (2) of this Paragraph B with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that if the GCL requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity) in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Paragraph B or otherwise.

(2) If a claim under paragraph (1) of this Paragraph B is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and the claimant shall be entitled to be paid also the expense of prosecuting such claim to the fullest extent permitted by the GCL. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the act for the Corporation to indemnify the claimant for the amount claimed but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the GCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the claimant has not met such

applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(3) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Paragraph B shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, By-Laws, agreement, vote of stockholders or disinterested directors or otherwise.

(4) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

(5) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation for the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Paragraph B with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

SIXTH: In addition to any other considerations which the Board of Directors may lawfully take into account, in determining whether to take or to refrain from taking corporate action on any matter, including proposing any matter to the stockholders of the Corporation, the Board of Directors may take into account the long-term as well as short-term interests of the Corporation and its stockholders (including the possibility that these interests may be best served by the continued independence of the Corporation), the interests of creditors, customers, employees and other constituencies of the Corporation and its subsidiaries and the effect upon communities in which the Corporation and its subsidiaries do business.

SEVENTH: In furtherance and not in limitation of the powers conferred by law or in this Certificate of Incorporation, the Board of Directors (and any committee of the Board of Directors) is expressly authorized, to the extent permitted by law, to take such action or actions as the Board or such committee may determine to be reasonably necessary or desirable to (A) encourage any person to enter into negotiations with the Board of Directors and management of the Corporation with respect to any transaction which may result in a change in control of the Corporation which is proposed or initiated by such person or (B) contest or oppose any such transaction which the Board of Directors or such committee determines to be unfair, abusive or otherwise undesirable with respect to the Corporation and its business, assets or properties or the stockholders of the Corporation, including, without limitation, the adoption of plans or the issuance of rights, options, capital stock, notes, debentures or other evidences of indebtedness or other securities of the Corporation, which rights, options, capital stock, notes, evidences of indebtedness and other securities (i) may be exchangeable for or convertible into cash or other securities on such terms and conditions as may be determined by the Board or such Committee and (ii) may provide for the treatment of any holder or class of holders thereof designated by the Board of Directors or any such committee in respect of the terms, conditions, provisions and rights of such securities which is different from, and unequal to, the terms, conditions, provisions and rights applicable to all other holders thereof.

EIGHTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the state of Delaware at the time in force may be added or inserted, subject to the limitations set forth in this Certificate of Incorporation and in the manner now or hereafter provided herein by statute, and all rights,

preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this certificate of incorporation in its present form or as amended are granted subject to the rights reserved in this Article EIGHTH.

NINTH: So long as the Corporation holds (directly or indirectly) a license or franchise from a government agency to conduct its business, which license or franchise is conditioned upon some or all of the holders of the Corporation's stock possessing prescribed qualifications, any and all shares of the Corporation's stock shall be held subject to the condition that if a holder thereof does not possess the prescribed qualifications ("Disqualified Holder"), such Disqualified Holder shall dispose of his interest in the Corporation's securities within 120 days or such other time period required by the relevant government agency following the Corporation's receipt of notice (the "Notice Date") of such Disqualified Holder from a government agency. Promptly following the Notice Date, the Corporation shall personally deliver a copy of such written notice to the Disqualified Holder, mail it to such Disqualified Holder at the address shown on the Corporation's books and records, or use any other reasonable means of delivering a copy of such written notice to the Disqualified Holder. Failure of the Corporation to provide notice to a Disqualified Holder after making reasonable efforts to do so shall not preclude the Corporation from exercising its rights under this paragraph 9. In addition, the Corporation, at its sole option and in its sole discretion, may redeem the stock of a Disqualified Holder to the extent necessary to prevent the loss of such license or franchise or to reinstate it. Any shares of the Corporation's stock redeemable pursuant to this paragraph 9 may be called for redemption immediately for cash, property or rights, including securities of the Corporation or another corporation, on not less than five (5) days' notice to the Disqualified Holder at a redemption price equal to the average closing price of such stock on a national securities exchange for the 45 trading days immediately preceding the date of the redemption notice; or if such stock is not so traded, then the average of the high and low closing bid price of the stock as quoted by the National Association of Securities Dealers Automated Quotation system for such 45 trading day period; or if such stock is not so quoted, the redemption price shall be determined in good faith by the Corporation's Board of Directors. A Disqualified Holder shall reimburse the Corporation for all expenses incurred by the Corporation in performing its obligations and exercising its rights under this paragraph 9.

TENTH: The Corporation's Board of Directors (by a majority vote of the directors then in office) shall have the right, power and authority to adopt any new by-law and/or amend or repeal any then-existing by-law; provided, however, that the Corporation's Board of Directors may not amend or repeal any by-law that, by its very terms, is not subject to amendment or repeal except by or upon approval of the Corporation's stockholders or any class, series or other group or portion thereof.

ELEVENTH:

A. NUMBER OF DIRECTORS. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies (the "Whole Board").

B. ELECTION AND TERMS OF DIRECTORS. Directors shall be elected by a plurality of votes cast. Each director shall be elected for a one-year term expiring at the next annual meeting of stockholders of the Corporation and until such director's successor shall have been elected and qualified.

C. NEWLY CREATED DIRECTORSHIPS AND VACANCIES.

Subject to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the authorized number of directors or any vacancies on the Board of

Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause (other than a vacancy resulting from removal by the stockholders, in which case such vacancy shall be filled by the stockholders) shall be filled only by a majority vote of the directors then in office, though less than a quorum, and a director so chosen shall hold office until the next stockholders' meeting at which directors are elected and until his successor is elected and qualified. No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

D. AMENDMENTS TO ARTICLE ELEVENTH SECTION 11(B). The affirmative vote of the holders of eighty percent (80%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B) unless approved by at least seventy-five percent (75%) of the Whole Board. In the event that at least seventy-five percent (75%) of the Whole Board approves any such provision, then the affirmative vote of the holders of outstanding stock representing at least a majority of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with Article Eleventh Sections 11(B).

E. REMOVAL. Subject to the rights of the holders of Preferred Stock, and unless this Certificate of Incorporation otherwise provides, any director or the entire Board of Directors may be removed with or without cause by the affirmative vote of eighty percent (80%) of the voting power of all of the then outstanding shares of Voting Stock, voting together as a single class.

TWELFTH: Internal Corporate Claims shall be brought solely and exclusively in the courts of the State of Delaware; provided, however, that an internal corporate claim may be brought in another forum if the courts of the State of Delaware cannot exercise personal jurisdiction over all necessary parties or lack subject matter jurisdiction over the claim. "Internal Corporate Claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which the General Corporation Law of Delaware confers jurisdiction upon the Court of Chancery of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by the undersigned this 1st day of November, 2016.

Empire Resorts, Inc.

By: /s/ Joseph A. D'Amato
Name: Joseph A. D'Amato
Title: Chief Executive Officer