



**Submit as Exhibit VIII.A.12. a description of any contract, loan agreement or commitment that any Applicant Party has breached or defaulted on during the past ten (10) years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default.**

As a matter of general policy, Empire, and its respective subsidiaries and affiliates, honor their contractual commitments, including payment obligations. Where disputes arise concerning an obligation to make a payment, such entities make every attempt to ensure that the positions they take are in good faith and justified in law and fact. Empire, and its respective subsidiaries and affiliates, do not believe that any failure to satisfy, meet or otherwise comply in any particular instance with a contractual obligation has been done intentionally. Where disputes cannot be resolved amicably, such entities may pursue contractual and other legal remedies to resolve such disputes.

Nonetheless, in the ordinary course of business, Empire, and its respective subsidiaries and affiliates, may be involved in lawsuits, administrative proceedings or other proceedings which may allege breach of contract based on the failure to pay amounts allegedly due, wrongful termination of contract, or other claims.

**Empire Resorts, Inc.**

Bryanston Group, Inc. v. Empire Resorts, Inc., No. 650881-2010 (N.Y. Sup. Ct., N.Y. County)

A complaint was filed against Empire in the Supreme Court of the State of New York, New York County on or about July 12, 2010. The lawsuit concerned a recapitalization agreement entered into on December 10, 2002 ("Recapitalization Agreement"), pursuant to which Empire issued Series E preferred stock to Bryanston Group, Inc. ("Bryanston Group") and Stanley Tollman, among others. The complaint was brought by Bryanston Group and Stanley Tollman alleging that Empire breached the terms of the



Recapitalization Agreement by failing to use the funds from Kien Huat's 2009 investment to redeem the Series E preferred shares and pay dividends on the shares, and by paying in excess of \$1 million per year in operating expenses (including paying the settlement to Empire's former Chief Executive Officer, Joseph Bernstein) while not redeeming the Series E preferred shares and paying dividends on the shares. The plaintiffs had sought a preliminary injunction to require Empire to put funds into escrow sufficient to pay the purchase price for the redemption of the Series E shares and the dividends. On July 10, 2012, plaintiffs filed and served an amended complaint. The amended complaint, in addition to the allegations from the original complaint, alleged that Empire breached the terms of the Recapitalization Agreement in two additional ways by failing to use the funds from the 2004 issuance of senior secured convertible notes to redeem the Series E preferred shares and pay dividends, and by failing to use the funds from Kien Huat's 2010 investment to redeem the Series E preferred shares and pay dividends. Effective June 30, 2013, the parties consummated the closing of a Settlement Agreement and Release. Further, the Recapitalization Agreement was terminated and ceased to have any further force and effect as between Bryanston Group, Stanley Tollman and Empire.

Bryanston Group, Inc. v. Kien Huat Realty III Limited, et al., Civ. No. 12-9396 (VM) (S.D.N.Y.)

On December 27, 2012, Bryanston Group, which holds Series E preferred shares of Empire, filed a complaint in the United States District Court for the Southern District of New York against Kien Huat and Colin Au, Joseph D'Amato and Emanuel Pearlman in their individual capacities and as Empire's directors. With respect to Empire's directors, the complaint alleged that Messrs. Au, D'Amato and Pearlman breached their fiduciary duties to Bryanston Group by approving a rights offering consummated on May 20, 2011, and not providing Bryanston Group with the right to participate in such rights offering. The complaint also sought a declaratory judgment stating that the Recapitalization Agreement gave Bryanston Group "priority over Defendants to the payment of dividends, redemption and/or satisfaction of shares" from Empire's Net Available Cash Flow, as defined in the Recapitalization Agreement. The complaint also asserted related claims against Kien Huat for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tortious

interference with contract, and declaratory judgment. On March 29, 2013, Bryanston Group filed an amended complaint against Kien Huat, Mr. Au and Mr. D'Amato, and Empire as a nominal defendant. The amended complaint alleged that Mr. Au breached his fiduciary duty to Bryanston Group by providing materials related to a corporate opportunity to Kien Huat, which allegedly aided Kien Huat in usurping a corporate opportunity from Empire, and that Mr. D'Amato breached his fiduciary duty to Bryanston Group by approving a bonus plan for Empire executives. In connection with these allegations, the amended complaint also asserted claims against Kien Huat for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tortious interference with contract, and declaratory judgment. Effective June 30, 2013, the parties consummated the closing of a Settlement Agreement and Release. Further, the Recapitalization Agreement was terminated and ceased to have any further force and effect as between Bryanston Group and Empire.

Empire Resorts, Inc. v. the Bank of New York Mellon Corporation and the Depository Trust Company

On August 5, 2009, Empire filed a declaratory judgment action against the beneficial owners of senior notes, as well as the Depository Trust Company ("DTC") and the Bank of New York Mellon Corporation (the "Trustee," and together with DTC, the "defendants"). In the complaint, Empire sought a judicial determination that: (1) no "holder," as defined under the applicable Indenture, delivered a put notice to the office of the Trustee within the lawfully mandated time for exercise of a holder's put rights under the Indenture, and (2) the three entities that gave the purported notice of default may not and have not accelerated the senior notes or invoked certain other consequences of a default. On April 8, 2010, the Supreme Court of New York, Sullivan County granted the defendants' motion for summary judgment. The Court's decision provided that the defendants properly exercised the option requiring Empire to repurchase the senior notes, that Empire was in default under the senior notes with respect to its failure to repurchase the senior notes, and that Empire was obligated to repurchase the senior notes. On May 11, 2010, Empire filed a notice of appeal with the Third Judicial Department of the Appellate Division of the Supreme Court of the State of New York. Through settlement discussions with the holders of the senior notes, Empire redeemed a \$5 million principal amount of the senior notes on July 30, 2010 and an additional \$5 million principal amount of the senior notes on August 12, 2010. On September 23, 2010, Empire entered into a Settlement Agreement with the Trustee and the beneficial owners of approximately 93.7% of the outstanding principal amount of the senior notes.

Empire Resorts, Inc. v. Joseph E. Bernstein, Civ. No. 10-00110 (SHS) (S.D.N.Y.)

On January 7, 2010, Empire filed a complaint in the United States District Court for the Southern District of New York against Joseph E. Bernstein, its former Chief Executive Officer. In the complaint, Empire sought injunctive relief, unspecified monetary damages and a judgment declaring that Mr. Bernstein is bound by the non-competition restrictions in his employment agreement. Prior to the expiration of his employment agreement, Mr. Bernstein had made numerous financial demands upon Empire. After Empire refused his demands, Mr. Bernstein issued a 17-page letter to the New York State Racing and Wagering Board ("RWB") making numerous accusations against Empire and certain of its directors (the "R&W Letter"), which Empire maintained were false and baseless. In the R&W Letter, Mr. Bernstein revealed Empire's confidential and proprietary information and disclosed confidential attorney-client privileged communications. Empire cooperated fully with the RWB with respect to their investigation into the matter. Empire sought relief from Mr. Bernstein for the alleged: (1) breach of Mr. Bernstein's employment agreement caused by his dissemination of Empire's confidential information through the R&W Letter, (2) breach of Mr. Bernstein's fiduciary duties to

Empire caused by his improper use of and dissemination of the R&W Letter, (3) violation of Mr. Bernstein's good faith and loyalty obligations to Empire as a result of, among other things, disclosing confidential information and attorney-client privileged information through the dissemination of the R&W Letter, and (4) tortious interference with prospective business relations caused by Mr. Bernstein's attempted interference with Empire's business relations with the St. Regis Mohawk Tribe. Prior to the issuance of the R&W Letter, Empire received a letter from Mr. Bernstein's counsel alleging that Empire breached Mr. Bernstein's employment agreement and summarizing Mr. Bernstein's claims against Empire. Mr. Bernstein filed a third party complaint against Empire, Kien Huat and certain third party defendants in April 2010, alleging claims for tortious interference with contract based on alleged actions to prevent Mr. Bernstein from fulfilling his management duties as Chief Executive Officer of Empire. The third party complaint was never served on Kien Huat and related third party defendants. On May 13, 2010, Mr. Bernstein, Empire, Kien Huat and the third party defendants entered into a settlement agreement providing for the dismissal of all claims with prejudice.

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

While Kien Huat has been involved in litigation matters, as described in Exhibit VIII. A.10., Kien Huat has not breached or defaulted on any contract, loan agreement or commitment during the past ten (10) years, and accordingly, Kien Huat has not been involved in any lawsuit, administrative proceeding or other proceeding related to their breach or default of a contract, loan agreement or commitment.

### **Montreign Operating Company, LLC**

Montreign Operating Company, LLC has not breached or defaulted on any contract, loan agreement or commitment during the past ten (10) years, and accordingly, Montreign has not been involved in any lawsuit, administrative proceeding or other proceeding related to a breach or default of a contract, loan agreement or commitment.

### **Casino Key Employees**

None of Joseph D'Amato, Laurette Pitts, Nanette L. Horner, or Charles Degliomini have breached or defaulted on any contract, loan agreement or commitment during the past ten (10) years, and accordingly, none of these individuals have been involved in any lawsuit, administrative proceeding or other proceeding related to a breach or default of a contract, loan agreement or commitment.