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REPRESENTATIVES FOR SWITZERLAND COUNTY ASSESSOR:
Jeffrey Bennett, Bingham Greenebaum Doll
Bradley Hasler, Bingham Greenebaum Doll

BEFORE THE
INDIANA BOARD OF TAX REVIEW

BELTERRA RESORT INDIANA, LLC, as taxpayer and lessee of WEBSTER FAMILY LIMITED PARTNERSHIP,	)	**Petition Nos. 78-008-09-1-4-90047-15 78-008-10-1-4-82876-15 78-008-11-1-4-82285-15 78-008-12-1-4-20142-15 78-008-13-1-4-20228-15 78-008-14-1-4-10296-15**
Petitioner,	)	
vs.	)	**Parcel No. 78-13-01-800-004.000-008**
	)	**County: Switzerland**
SWITZERLAND COUNTY ASSESSOR,	)	**Assessment Years: 2009 through 2014**
Respondent.	)	

Appeal of the 2009, 2010, 2011, 2012, 2013 and 2014 Assessments

FINAL DETERMINATION

The Indiana Board of Tax Review (the "Board"), having reviewed the facts and evidence, now finds and concludes as follows:

ISSUE

1. Petitioner, Belterra Resort Indiana, LLC, as taxpayer and lessee of Webster Family Limited Partnership, (the "Taxpayer"), challenges the assessed value for the subject property, and requests a reduction in the assessment. The Switzerland County Assessor (the "Assessor") seeks an increase in the assessment.

INTRODUCTION

2. This appeal determines the value of the real estate for a casino resort consisting of a riverboat, hotel, and golf course. Six assessment years are on appeal, but the parties presented evidence for only the 2009 and 2014 assessment years. The parties stipulated to a trending factor to calculate the value for the 2010, 2011, 2012 and 2013 assessment years based on the Board's determinations of value for the 2009 and 2014 years.

3. The specific assessment statute for casinos is a matter of first impression. The parties did not agree as to how a casino resort should be valued, neither under Indiana law nor under general appraisal principles. Casino resorts are uniquely difficult to value because the gaming industry's use of "comping" free or reduced hotel rooms, food, and entertainment to attract casino patrons complicates the use of traditional appraisal approaches. The parties presented the testimony of expert witnesses whose opinions were rigorously vetted over a 6-day trial. The Taxpayer presented separate valuations of the riverboat, hotel, and golf course. The Assessor presented a valuation of the resort as a whole. In the final analysis, the Board is left to sift through a collection of imperfect approaches, methodologies, and counterchecks. We find sufficient probative evidence to establish the value of the property in conformity with the law.

PROCEDURAL HISTORY

4. The Taxpayer timely filed Form 130 petitions with the Assessor contesting the assessed values on Parcel No. 78-13-01-800-004.000-008 (the "Subject Property") for the 2009 through 2014 assessments. The Switzerland County Property Tax Assessment Board of Appeals ("PTABOA") did not act on the Taxpayer's assessment appeals. Pursuant to Indiana Code § 6-1.1-15-1(o), the Taxpayer timely filed Form 131 Petitions for Review of Assessment for each of the assessments. The petitions were consolidated for purposes of a single hearing.

5. The consolidated hearing was held from May 10, 2016, through May 18, 2016, in Indianapolis, Indiana, before Commissioner Jonathan Elrod, the Board's designated Administrative Law Judge ("ALJ"). Neither the Board nor the ALJ inspected the subject property.

6. The following persons were sworn and presented testimony at the hearing:

<u>The Taxpayer</u>:
Robert Herman, MAI, Duff & Phelps
David Lennhoff, MAI, Altus Group US
Geoffrey Goodman, Pinnacle Entertainment, Inc.

<u>The Assessor</u>:
Joan Armstrong, Switzerland County Assessor
Michael Cahill, MAI, Hospitality Real Estate Counselors
Mark Lukens, MAI, LW Hospitality Advisors

7. The Taxpayer submitted the following exhibits:

Exhibit P-1:	Appraisal Report of Riverboat Casino Vessel and Golf Course prepared by Duff & Phelps for the 2009 assessment date - Volume I.
Exhibit P-2:	Appraisal Report of Riverboat Casino Vessel and Golf Course prepared by Duff & Phelps for the 2009 assessment date - Volume II.
Exhibit P-3:	Appraisal Report of Riverboat Casino Vessel and Golf Course prepared by Duff & Phelps for the 2014 assessment date - Volume I.
Exhibit P-4:	Appraisal Report of Riverboat Casino Vessel and Golf Course prepared by Duff & Phelps for the 2014 assessment date - Volume II.
Exhibit P-4-6.A1:	Revised Golf Course Income Approach prepared by Duff & Phelps.
Exhibit P-5:	Appraisal Report of Belterra Hotel (including restaurants, retail, spa, structured parking garage, surface parking, and adjacent land) prepared by Altus Group US for the 2009 and 2014 assessment dates.
Exhibit P-6:	Riverboat Valuation Statute, Ind. Code § 6-1.1-4-39.5.
Exhibit P-7:	Golf Course Valuation Statute, Ind. Code § 6-1.1-4-42.
Exhibit P-8:	Assessor, Appraiser, and Tax Representative Standards of Conduct Statute, Ind. Code §§ 6-1.1-35.7-1 to -7.
Exhibit PD-1:	Aerial Photograph of Horseshoe Hammond Casino.
Exhibit PD-2:	Aerial Photograph of Blue Chip Casino.
Exhibit PD-3:	Aerial Photograph of Hollywood Casino.
Exhibit PD-4:	Graph – Comparison of Casino Vessel Sale Prices and Duff & Phelps' Concluded Values.
Exhibit PD-5:	Graph – Comparison of Casino Vessel Sale Prices, HREC Concluded Values, and County Vessel Assessments.

Exhibit PD-6:	Graph – Belterra Casino – Competitive Set Win Per Unit Per Day ($WPUPD) – 3/1/09 Assessment Report.
Exhibit PD-7:	Graph – Belterra Casino – Competitive Set Slot Win Per Unit Per Day ($WPUPD) – 3/1/09 Assessment Report.
Exhibit PD-8:	Graph – Southern Indiana Gaming Market Adjusted Gross Revenues – 3/1/09 Assessment Report.
Exhibit PD-9:	Graph – Southern Indiana Gaming Market Win Per Unit Per Day ($WPUPD) – 3/1/09 Assessment Report.
Exhibit PD-10:	Graph – Historical Operating Statements Belterra – 3/1/09 Assessment Report.
Exhibit PD-11:	Graph – HREC Ten-Year Discounted Cash Flow Analysis – 3/1/09 Assessment Report.
Exhibit PD-12:	Graph – Belterra Casino – Competitive Set Win Per Unit Per Day ($WPUPD) – 3/1/14 Assessment Report.
Exhibit PD-13:	Graph – Belterra Casino – Competitive Set Slot Win Per Unit Per Day ($WPUPD) – 3/1/14 Assessment Report.
Exhibit PD-14:	Graph – Southern Indiana Gaming Market Adjusted Gross Revenues – 3/1/14 Assessment Report.
Exhibit PD-15:	Graph – Southern Indiana Gaming Market Win Per Unit Per Day ($WPUPD) – 3/1/14 Assessment Report.
Exhibit PD-16:	Graph – Historical Operating Statements Belterra – 3/1/14 Assessment Report.
Exhibit PD-17:	Graph – HREC Ten-Year Discounted Cash Flow Analysis – 3/1/14 Assessment Report.

8. The Assessor submitted the following exhibits:[1]

Exhibit R-1:	Property Record Card for Parcel No. 78-13-01-800-004.000-008 as of March 1, 2014.
Exhibit R-2:	Property Record Card for Parcel No. 78-13-01-800-004.000-008 as of March 1, 2009.
Exhibit R-3:	Appraisal Report of Belterra Casino Resort prepared by HREC for the 2009 assessment date.
Exhibit R-4:	Appraisal Report of Belterra Casino Resort prepared by HREC for the 2014 assessment date.
Exhibit R-5:	Excerpts from USPAP Standard 1, 2014-15 edition.
Exhibit R-6:	Letter prepared by LWHA regarding the Duff & Phelps and Altus Group US appraisals.

[1] Not all of the Assessor's labeled exhibits were offered into evidence.

Exhibit R-7:	File supplement prepared by LWHA regarding the Letter regarding the Duff & Phelps and Altus Group US appraisals.
Exhibit R-13:	Excerpt from USPAP Standard 1, 2014-15 edition.

9. The Board recognizes the following additional items as part of the record of proceedings: (1) Form 131 petitions and attachments; (2) all motions, briefs and/or post-hearing filings by the parties; (3) all orders and notices issued by the Board or its ALJ; and (4) the transcript of the hearing.[2]

10. For the 2008 assessment (the year preceding the first assessment date at issue), the assessed value of the Subject Property was $102,295,300. *Ex. R-2*. For the assessments at issue in these proceedings, the assessed values were: $109,276,900 for 2009; $108,755,300 for 2010; $108,226,700 for 2011; $92,505,200 for 2012; $95,843,400 for 2013; and $93,170,100 for 2014. *Ex. R-1, R-2*.

11. The Taxpayer contends that the assessed values should be $44,402,000 for 2009 and $48,675,000 for 2014. *Ex. P-1* at 7; *Ex. P-3* at 7; *Ex. P-4 (6.A.1)*; *Ex. P-5* at 1. The Assessor contends that the assessed values should be $134,300,000 for 2009 and $127,000,000 for 2014. *Ex. R-3* at 6; *Ex. R-4* at 6.

12. The parties waived the deadlines for the Board's issuance of the determination. *Tr.* at 1873. The ALJ informed the parties that the Board may take judicial notice of any treatises or articles referenced in the record. *Tr.* at 1880. A number of objections were made during the hearing. The Board affirms the ALJ's resolution of the objections. The Board notes that none of the objections were critical to the outcome of this matter.

[2] The transcript of the hearing is bound in eight volumes, but the pages are consecutively numbered from 1 to 1883. Citations herein are made without reference to the volume, but will instead be in the following format: *Tr. at (page number)*.

13. Because of the many acronyms commonly used in the record, an index is provided:

ADR:	Average Daily Rate (average rate of all hotel room sizes, suites)
AGR:	Adjusted Gross Revenue (a measure of gaming revenue: the "gaming handle" or "gaming drop" less payouts)
DCF:	Discounted Cash Flow
DLGF:	Department of Local Government and Finance
EBITDA:	Earnings Before Interest, Taxes, Depreciation, and Amortization (a measure of cash flow)
F&B:	Food and Beverage
FF&E:	Fixtures, Furniture, and Equipment
MAI:	Member of the Appraisal Institute
PKF:	PKF Consulting (a publisher of hotel and real estate data)
PMV:	Permanently Moored Vehicle (barge-style single level gaming facility)
PWC:	Price Waterhouse Cooper (a publisher of financial data)
REIT:	Real Estate Investment Trust
RERC:	Real Estate Research Corporation (a publisher of real estate data)
RevPAR:	Revenue Per Available Room (the ADR multiplied by the occupancy rate)
STR:	Smith Travel Research (a publisher of hotel and real estate data)
TAB:	Total Assets of Business (the value of a going concern, including real, personal, and intangible property)
USPAP:	Uniform Standards of Professional Appraisal Practice
WPUPD:	Wins Per Unit Per Day (the gaming revenue per machine or table)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Subject Property and Background Information

14. The subject property is a casino resort (the "Resort") in Florence, Indiana, consisting of a hotel (the "Hotel"), a riverboat (the "Riverboat"), and a golf course (the "Golf Course"). The Resort is on 315 acres across several tax parcels. *Ex. R-3* at 13. Only one parcel is on appeal. On this parcel are several tracts totaling 250.22 acres of land: a 206 acre tract consisting of the Golf Course, a 29 acre tract consisting of the Hotel, and three additional tracts totaling 15.22 acres. *Ex. R-1*. All of the improvements associated with the Resort are placed on this parcel, including the Hotel, Golf Course, and Riverboat. *Ex. R-1*.

15. The Riverboat, named the Miss Belterra, is a self-propelled gaming vessel, with 42,000 square feet of gaming space and a capacity of 3,132 passengers and crew. *Tr.* at 176. The Riverboat was placed in service in 2000. *Tr.* at 97.

16. The Hotel is 650,798 square feet. *Ex. P-5* at 1. It has 608 rooms (51 suites), 7 restaurants, 2 lounges, fitness center, spa, salon, 6 retail outlets, concert hall, meeting and ballroom event space, outdoor pool, and garage and lot parking. *Ex. R-3* at 14. The hotel rooms are significantly larger than a typical Holiday Inn or Hilton Garden Inn. *Ex. R-3* at 30; *Tr.* at 1003. In 2009, the Hotel's patrons occupied roughly 190,000 rooms a year. *Ex. R-3* at 140.

17. The Hotel is adjacent and connected to the Riverboat by two enclosed walkways: one for passengers and one for employees. *Tr.* at 371; *Ex. P-1* at 46. Casino patrons must walk through the Hotel to get to the Riverboat. *Tr.* at 354. The passageway is designed to be seamless and appear as a continuation of the Hotel. *Tr.* at 371-72. The Hotel contains amenities directly related to gaming, such as the membership services counter, located at the player entrance to the Riverboat. *Ex. R-3* at 37, 140.

18. The "supportive amenities to the casino such as the hotel, restaurants, retail, golf course, meeting space and back-of-house spaces are fully integrated." *Ex. R-3* at 131. The Hotel back-of-house space includes an underground tunnel with security, employee lockers, the finance department, and employee access to the parking lot and Riverboat. *Ex. R-3* at 43. Elsewhere in the Hotel is office space for administrative personnel and a laundry. *Ex. R-3* at 43. The Riverboat also contains back-of-house office space, kitchen areas, surveillance, the vault, and an employee break room. *Ex. R-3* at 43. The parking garage contains 1,224 parking spaces and is physically attached to the Hotel. *Ex. P-5* at 1. In addition, there are 1,304 surface parking spaces adjacent to the covered parking garage and the golf course. *Ex. P-5* at 1.

19. The Golf Course is a 206 acre 18-hole course designed by Tom Fazio. *Ex. P-5 at 2.* The course also includes a driving range, pro shop, café, and related improvements. *Ex. P-2 (Ex. 2.A)*; *Ex. P-4 (Ex. 2.A)*; *Tr.* at 243-45.

20. The original construction and development of the Resort was completed in 2000 at a cost of roughly $[redacted] and the second hotel wing was completed in 2004 at a cost of $[redacted] *Ex. R-3* at 14. In 2006-2008, an additional $[redacted] was spent in upgrading the suites and

expanding retail space. *Ex. R-3* at 14-15. A renovation or "refresh" of the Hotel was completed in 2013-14 at a cost of $[redacted] *Ex. R-4* at 14. The Riverboat was purchased at a cost of $35M. *Ind. Dep't of State Revenue v. Belterra Resort Ind., LLC*, 935 N.E.2d 174, 176 (Ind. 2010). Thus roughly $[redacted] in capital expenses have gone to construct and upgrade the real and personal assets of the Resort.

21. Indiana has authorized and issued licenses for eleven full casinos and two casino-racetracks "racinos" (which are limited to gaming machines). *Ex. R-3* at 21. Casino owners cannot move a license from the county where the casino is currently located. *Ex. R-3* at 22. Nine of the casinos are riverboats: three are on Lake Michigan, three are on the Ohio River in southeast Indiana near Cincinnati, one is on the Ohio River near Louisville, and one is on the Ohio River in Evansville. *Ex. R-3* at 21. The last casino is land-based in French Lick. *Ex. R-3* at 21. The racinos are land-based and located in the greater Indianapolis market in Shelbyville and Anderson. *Ex. R-3* at 21.

22. In the years at issue, roughly [redacted]% of the Resort's gross revenue came from gaming, [redacted]% from hotel rooms, [redacted]% from food and beverage, and the remaining [redacted]% from golf, retail, spa, and entertainment. *Ex. R-3* at 113.

B. The Taxpayer's Evidence

23. The Taxpayer presented the testimony of two appraisers. Robert Herman appraised the Golf Course and the Riverboat. David Lennhoff appraised the Hotel. Additionally, Geoffrey Goodman provided testimony regarding the casino industry.

1. Robert Herman's Appraisals of the Riverboat and Golf Course

24. Mr. Herman, an appraiser and MAI, is licensed in Indiana, Illinois, and New York. *Tr.* at 47. Mr. Herman has over 25 years of experience and has completed in excess of 1,000 appraisals. *Tr.* at 56. He has previously appraised gaming facilities including appraisals or consulting work on Indiana casinos. *Tr.* at 56-57. Mr. Herman physically inspected the subject property in January of 2016. *Tr.* at 64. The Taxpayer assigned Mr. Herman to appraise only the Riverboat and the Golf Course.

a. Appraisal of the Riverboat

25. Mr. Herman appraised the Riverboat under the cost and sales comparison approaches. He did not use an income approach because riverboats were "unlike office buildings or other types of real estate." *Tr.* at 77. There was no "discrete rental stream" or riverboat casino rental market. *Tr.* at 77. Mr. Herman conceded that an income approach could be applied to value the entire enterprise.[3] *Tr.* at 78. However, using the income approach for the going concern to value only the Riverboat would be reasonable only if the Riverboat formed a substantial portion of the total assets.

26. To determine the relative value of the Riverboat to the casino enterprise, Mr. Herman examined publicly reported casino sales. For 2009, Mr. Herman reviewed the sales of four Indiana casinos. *Ex. P-1* at 16; *Ex. P-2 (Ex. 3.D)*. The reported personal and real property allocations ranged from 26%-39% of total assets. *Tr.* at 81. Mr. Herman consulted on the Majestic Star sale, where only $5.5M of the $250M price was allocated to the riverboat.[4] *Tr.* at 84. For 2014, Mr. Herman reviewed four out-of-state casino sales, and "other business enterprise acquisitions."[5] *Ex. P-3* at 16. The reported personal and real property allocations ranged from 31%-53% of total assets. *Ex. P-3* at 16. Because the Riverboat was likely a "small portion" of the going concern value, Mr. Herman believed a valuation of the Riverboat under the income approach would be "less reliable than the other two approaches." *Tr.* at 80-81; *Ex. P-1* at 53.

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[3] However, he believed that the "process of allocating the going-concern income stream to isolate the value of discrete assets . . . is an error prone methodology that reduces the reliability of the appraisal." *Ex. P-1* at 15.

[4] When challenged whether the reported allocations might be inaccurate and motivated by tax considerations, Mr. Herman believed they were accurate. He stated that the values were based on appraisals, and the standard in SEC filings was "fair value" which "very much correlates with market value." *Tr.* at 360. He affirmed that the transactions he reviewed had appraisals prepared by licensed appraisers. *Tr.* at 361. After further examination, Mr. Herman admitted he had only reviewed the appraisals for the Majestic Star sale and had not reviewed any materials other than what he appended to his report. *Tr.* at 390. The Board is skeptical of Mr. Herman's suggestion that allocations of tangible assets in sales of businesses are based on objective valuations rather than negotiations over competing tax advantages. However, there is no evidence that these ranges understate (or overstate) the allocation to tangible property.

[5] Mr. Herman referred to the appendix (*Ex. P-3 (Ex. 3.D)*) for the details. The appendix did not include data for the Riverwalk or the Silver Slipper. It included data for the Majestic Star which he only referenced in his 2009 report. It also included another sale, the Amelia Bell (2009), which was not referenced in the report for either year. The Board notes the sale of the Grand Victoria, an Indiana casino, is conspicuously absent from Mr. Herman's analysis.

27. Mr. Herman reviewed the history of riverboat gaming. Illinois, Indiana, Iowa, Louisiana, Mississippi,[6] and Missouri all saw a similar trend of initial riverboat legislation in the early to mid-1990s followed by legislation authorizing permanently moored dockside gaming in the late 1990s, and conversion to "permanently moored vessels" (PMVs)[7] in the 2000s. *Ex. P-2 (Ex. 3.A).* He noted that 60 riverboats were put into operation since the 1990s, and roughly half were still in operation in 2009 and in 2014. *Tr.* at 105. By 2014, three Indiana riverboat casinos retired their riverboats and upgraded to barges: the Blue Chip, the Horseshoe, and the Hollywood. *Tr.* at 107.

28. Based on this industry trend, Mr. Herman considered a riverboat's propulsion, navigation, and steering to be super-adequate. *Tr.* at 93. Also, riverboats were necessarily constructed vertically with multiple levels for gaming, and Mr. Herman believed that multiple levels were less desirable than single level casinos because the high ceilings and open views were associated with higher gaming revenue, lower operating expenses, and lower capital expenses. *Tr.* at 95. He described these large "warehouse" barges as the "modern replacement" for riverboats. *Tr.* at 104. As casinos switched to barges, the supply of riverboats increased and the demand decreased. *Tr.* at 102. Accordingly, Mr. Herman expected the Riverboat to have significant obsolescence.

i. Mr. Herman's Sales Comparison Approach for the Riverboat

29. Mr. Herman presented a sales comparison approach based on generally accepted appraisal principles. He gathered his data from state gaming agencies, SEC reports, and other sources of public information. *Ex. P-1* at 56. He considered the value of the Riverboat in isolation of the gaming operation. Mr. Herman acknowledged that "there has to be some type of shoreside development that these boats will be used in conjunction

[6] Mississippi, unlike the other states, always permitted dockside gaming. Mr. Herman did not provide detailed information for Mississippi despite its 29 licenses. He stated that 40 of the 100 riverboats built in this period were Mississippi barges. *Tr.* at 487. But he also noted that Mississippi's legislation "enticed several riverboat casinos to relocate to Mississippi." *Ex. P-2 (Ex. 3.A).* Furthermore, 2014 Comp 7 was a sale of a riverboat for gaming in Mississippi. Data from Mississippi is relevant and might have been helpful.

[7] The Board notes that Mr. Herman's terminology is difficult to follow. He uses RB for "Riverboat," PMV-D for "Permanently Moored Vessel (Dockside)," and PMV-L for "Permanently Moored Vessel (Land Based)." *Ex. P-2 (Ex. 3.A)*; *Ex. P-4 (Ex. 3.A).* The term PMV-L, as evidenced by its designation beside the Indiana racinos, does not necessarily refer to "vessels" at all. Because Mr. Herman noted in the same exhibit that all "cruising-capable vessels" were at that time "operated as dockside gaming vessels," there must be some distinction between RB and PMV-D. The Board presumes that PMV-D refers to barges.

with." *Tr.* at 459. He conceded that riverboats were typically used in conjunction with a "land-based facility" that might include hotels, parking garages, and golf courses.[8] *Tr.* at 459. Mr. Herman's approach did not consider shoreside improvements or land-based facilities.

30. While the gaming market was southeast Indiana, Mr. Herman determined that the market for riverboats was national and international. *Tr.* at 97. He was unable to identify any sales that occurred in Indiana. *Tr.* at 401. Mr. Herman looked for sales of vessels that were designed for gaming and had the interior finish and other attributes necessary for a gaming operation. *Tr.* at 97. However, all of the vessels had terminated gaming operations prior to sale or listing. *Tr.* at 377. He also looked for sales where the buyer intended to use the vessel for a gaming operation. *Tr.* at 110-11, 349. Mr. Herman included in his analysis sales where the buyer did not intend to use the vessel for gaming. He noted that there did not appear to be "a premium being paid" for gaming vessels, and that buyers for alternative uses were not "paying any more or less than a gaming vessel [buyer]." *Tr.* at 376.

31. Mr. Herman conceded that the existence of only 60 riverboats resulted in a limited market for these vessels. *Tr.* at 422. This required a look at sales from a longer time period. *Tr.* at 421-22. Mr. Herman suggested the length of time marketing the properties was less a factor in the value than the changes in supply and demand. *Tr.* at 455. He believed it was the "legislative changes in design for these vessels [that] has had an impact on their pricing over time." *Tr.* at 456.

[8] Mr. Herman noted that the value of a hotel to a casino depends on "where the property is being used, how, and everything else . . . it depends on the specific circumstances." *Tr.* at 378. A casino may resist building a hotel if it would not "bring additional customers in" because it would just be an added expense. *Tr.* at 378. A hotel may have little value if there are "already lots of other hotels nearby." *Tr.* at 378-79. He agreed that would not apply to Florence, Indiana. *Tr.* at 379.

ii. **Mr. Herman's 2009 Sales Comparison Approach for the Riverboat**

32. Mr. Herman compared the sales based on two measurements of value: price per capacity and price per square foot of gaming space.[9] *Tr.* at 114. He considered differences in physical, functional, economic, and transactional characteristics. *Tr.* at 115. For 2009, Mr. Herman considered seven comparable sales ("comps"). Five of the comps were from Illinois gaming operations, and two were from Florida gaming operations. *Ex. P-1* at 57. All of the comps were multi-level vessels. *Tr.* at 120. Two of the comps were boats designed by the predecessor to the firm that designed the Riverboat. *Ex. P-1* at 56.

33. The comps were diverse in size, age, and date of sale. The gaming areas ranged from 15,000 to 30,000 s/f. *Tr.* at 162. Capacity ranged from 900 to 3,650. *Tr.* at 162. The ages ranged from 11 to 31 years. The sale dates ranged from 2003 to 2008. *Ex. P-1* at 57.

34. The end uses were also diverse. Five of the comps were intended for gaming purposes post-sale.[10] *Ex. P-1* at 56. Comp 2 was intended for conversion to an ocean-going casino operation. *Tr.* at 139. Comp 3 was acquired for use in the nation of India. *Tr.* at 142. Comp 6 was purchased to be used as a dock-side museum. *Tr.* at 155. Comp 7 was purchased to be used as a dinner cruise facility in New Jersey. *Tr.* at 160. The end use of Comp 1 was not clear.[11]

35. Mr. Herman noted transactional considerations. Comps 4 and 5 were sold through bankruptcy proceedings. *Ex. P-1* at 56; *Tr.* at 151. Comp 4 was marketed during bankruptcy for two years, and Comp 5 was marketed for one year. *Tr.* at 150, 152. Comp 3 was taken out of service in 2001 and not sold until 2007. *Tr.* at 143.

36. Mr. Herman valued the Riverboat through a qualitative analysis. A superior comp received a "-" or negative adjustment (decrease relative to actual sale price), to make it

[9] Mr. Herman noted that he measured gaming area based on the laws of the state under which it was previously licensed, which may be lower than potential gaming space. For the Illinois boats, the gaming area was based on Illinois state law limitations on the number of gaming units. *Tr.* at 156-57.

[10] The buyer of Comp 4 intended to use the boat for gaming, but did not place it in service. *Tr.* at 148.

[11] Data for Comp 1 in the appendix is for a different boat, the Horseshoe. *Ex. P-2 (Ex. 4.A)*. The Horseshoe, elsewhere identified as the Empress III, is Comp 1 in the 2014 appraisal. *See Ex. P-3*. Comp 1 in the 2009 report is also Comp 2 in the 2014 report, and the data is included in the 2014 report.

comparable to the subject property, an inferior comp received a "+" or positive adjustment (increase relative to actual sale price), and a similar comp received an "=" or no adjustment. *Ex. P-1* at 81. He considered each characteristic and applied it to the unit price, but he did not disclose the actual adjustments for any characteristic. *Tr.* at 171-72. Mr. Herman described it as a "directional approach" where he considered whether a property was generally superior, inferior, or similar. *Tr.* at 181. Due to the lack of comparables, he could not "come up with exacting type quantitative adjustments." *Tr.* at 181. This "bracketing technique" was in contrast to a quantitative analysis where a comparable sale would be mathematically adjusted to account for differences in value. *Tr.* at 181, 185.

37. As for physical differences, Mr. Herman adjusted for size, including an inverse relationship between size and unit price. *Tr.* at 162. Mr. Herman noted that "buyers for this property are in markets that don't require extremely large boats." *Tr.* at 166. He indicated that smaller vessels were "superior in terms of capacity generally, because smaller boats would have "greater market accessibility in a variety of settings." *Ex. P-1* at 79. Mr. Herman also concluded that "smaller gaming areas" would be more preferable for an Iowa, off-shore, or alternative use. *Ex. P-1* at 79. He adjusted for ocean hulls.[12] *Ex. P-1* at 81. The downward adjustment for ocean hulls was due to their "super-adequacy" for inland gaming. *Tr.* at 179. He also adjusted for coast guard certification. *Tr.* at 183; *Ex. P-1* at 81. He adjusted for boats 16 years or older, capacity 1,400 or less, and gaming area of 22,200 or less. *Ex. P-1* at 81.

38. Mr. Herman adjusted for transactional differences. He testified that the earlier sales, though remote from the 2009 assessment date, were affected by the same general market forces of casino operators moving from excursion to barge vessels. *Tr.* at 137. The mid-2007 and prior sales were considered superior. *Tr.* at 137-38. Mr. Herman also adjusted

[12] Mr. Herman noted that off-shore gaming typically took place on smaller vessels. *Tr.* at 486. Florida had an increase in land-based gaming that affected the off-shore gaming market. *Tr.* at 486-87.

for conditions of sale for the bankruptcy comps.[13] *Tr.* at 171. While warranting some adjustment, Mr. Herman concluded that typical sale prices were not "materially different" from non-bankruptcy sales. *Tr.* at 151.

39. He also adjusted for non-gaming uses, including a positive to the museum facility and a negative to the dinner cruise facility. *Tr.* at 174-75.

40. Mr. Herman concluded that none of the comps was similar (designated as "="). *Tr.* at 185. He considered one inferior, and the remainder superior.[14] *Tr.* at 185. The gaming area value per s/f ranged from $47.50 to $206.67. *Ex. P-1* at 81. The passenger capacity value per passenger ranged from $685.00 to $4,429.00. *Ex. P-1* at 82. He selected $100 per s/f of gaming area and $1,500 per passenger as his baseline which resulted in values of $4,020,000 and $4,684,000 respectively. *Ex. P-1* at 83.

41. Mr. Herman reconciled those numbers at $4,500,000. He placed greater weight on passenger capacity because the amount of finished gaming space can change. *Tr.* at 188. He believed the Riverboat, if sold in 2009, would sell for $4,500,000. *Tr.* at 189.

iii. Mr. Herman's 2009 Cost Approach to the Riverboat

42. Mr. Herman presented a cost valuation based on his interpretation of I.C. § 6-1.1-4-39.5 (hereinafter referred to as the "Casino Assessment Statute"). The statute's definition of the "cost approach" references "base prices." *Id.* Mr. Herman presumed that "base prices" was a reference to the cost schedules found in Appendix G of the 2002 REAL PROPERTY ASSESSMENT GUIDELINES. *Tr.* at 69. He believed the reproduction costs in Appendix G were to be used to the exclusion of "a different cost manual, historical cost or some other source." *Tr.* at 69. Mr. Herman considered this a jurisdictional exception

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[13] Mr. Herman believed that bankruptcy sales were not distressed sales because the trustee was not under duress and had the same interest as an owner "in maximizing the value of the assets sold." *Tr.* at 398-99. Mr. Herman noted that the bankruptcies generally affected the off-shore vessels and were not components of the riverboat sales. *Tr.* at 457.

[14] Mr. Herman was vague as to which characteristics were most influential. *Tr.* at 419. He admitted that there was no "hidden math" behind his quantitative analysis. *Tr.* at 419. He admitted that Comp 6 for 2009 had three positives and no negatives, but received an overall negative adjustment, based on "overall sale price per square foot of gaming area." *Tr.* at 473.

and a deviation from generally accepted appraisal methodology. *Ex. P-1* at 13-14; *Tr.* at 74.

43. Based on a paper[15] from the Indiana Department of Local Government and Finance ("DLGF"), Mr. Herman learned that the Appendix G schedules were based on "actual cost comparables" from 1995 trended to 1999. *Tr.* at 194, 196. Based on the Appendix G schedule, Mr. Herman determined the 1999 cost for the Riverboat was $19,930,000. *Ex. P-1* at 88. He trended the 1999 costs to 2009 based on the *Bureau of Labor and Statistics Producer Price Index* under the category for "Ship Building and Repairing," to reach a 2009 reproduction cost new value of $27,404,000. *Ex. P-1* at 88-89.

44. Mr. Herman made a further adjustment to include "process wiring" as an "additional cost to the trended base price." *Tr.* at 200-201. Based on data from *Marshall & Swift*, he added $1,143,000 for process wiring, which increased the 2009 cost to $28,547,000. *Ex. P-1* at 90.

45. Mr. Herman looked to the GUIDELINES Appendix F to determine depreciation. *Ex. P-1* at 93. He interpreted this schedule to be the "estimate of physical depreciation before any type of obsolescence or abnormal obsolescence." *Tr.* at 205. Based on that schedule, he deducted 30%. *Tr.* at 206.

46. Mr. Herman believed additional obsolescence deductions were necessary because, based on his survey of gaming trends, the Riverboat was not the most current plan available, and the modern replacement would be a barge. *Tr.* at 207. He considered two methods for calculating "overall" obsolescence. Both were "lump sum" approaches that encapsulated all forms of depreciation and obsolescence. *Ex. P-1* at 95.

47. Mr. Herman first applied a market extraction technique. To determine the replacement cost of each of his seven comps from the sales comparison approach, he applied the same cost estimate procedures applied to the Riverboat. *Ex. P-2 (Ex. 5.E)*. He then subtracted

[15] Mr. Herman testified that he received the "paper" from Jim Hemming, a former employee with DLGF who helped develop the riverboat cost schedule. *Tr.* at 195. The paper was not included in Mr. Herman's appraisal, but Mr. Herman stated that it was part of his files and he provided it to the Assessor. *Tr.* at 427.

from the replacement cost the actual sale price to determine the "overall market derived depreciation" as a percentage of overall cost. *Tr.* at 211. Mr. Herman did not independently calculate physical depreciation for the seven comps.[16] The overall derived depreciation ranged from 67% to 93%. *Ex. P-1* at 94. Mr. Herman removed the highest and lowest as "outliers" and averaged the rest to reach 88% overall derived depreciation for the Riverboat. *Tr.* at 212. This resulted in an allocation of 30% for depreciation and 58% for functional and economic obsolescence. *Ex. P-1* at 95.

48. Mr. Herman next applied an "economic age" or "life depreciation" technique. He believed that the physical life of a riverboat was 35-40 years. *Tr.* at 214. However, he determined that "legislative changes" allowing dockside and land-based casinos "effectively reduced the economic life to approximately 15 years." *Tr.* at 215. This conclusion was based on a review of six riverboats that were placed in service in the 1990s and sold (or scrapped) at ages ranging from 9 to 16 years. *Ex. P-1* at 95. At a 15-year economic life, the 9 year old Riverboat in 2009 would have overall depreciation of 60%, with 30% for depreciation and 30% for functional and economic obsolescence. *Ex. P-1* at 96.

49. Mr. Herman weighted the market extraction technique more heavily. *Ex. P-1* at 96. He settled on 40% obsolescence and applied a combined 70% deduction to the reproduction cost new. *Ex. P-1* at 97. Mr. Herman rounded his final cost value to $8,600,000. *Ex. P-1* at 97.

iv. Mr. Herman's 2009 Riverboat Reconciliation

50. Mr. Herman's Riverboat values were $8,600,000 under the cost approach and $4,500,000 under the sales comparison approach. *Ex. P-1* at 99. Based on the Casino Assessment Statute, Mr. Herman chose the lowest value. *Ex. P-1* at 99. Accordingly, the value was reconciled at $4,500,000. *Tr.* at 223. Mr. Herman trended it back to January 1, 2008, the valuation date, based on the price index he used in the cost approach, which resulted in a final value of $4,327,000. *Ex. P-1* at 99.

[16] He applied the GUIDELINES Schedule F depreciation percentage from the "overall market derived depreciation" to determine the amount of functional economic obsolescence. *Ex. P-1* at 94.

v. Mr. Herman's 2014 Sales Comparison Approach for the Riverboat

51. Mr. Herman performed a similar sales comparison approach for 2014.[17] He noted the addition of the racinos in Anderson and Shelbyville and the expanded Hollywood barge casino. *Tr.* at 264. Additionally, Ohio legalized gaming, including a land casino in Cincinnati and video lottery terminals in Dayton. *Tr.* at 265. The disuse of the Argosy riverboat (replaced with Hollywood barge) also resulted in "another potential vessel for sale" and increased supply. *Tr.* at 267.

52. Mr. Herman looked to 12 sales (comps) and 4 listings. *Ex. P-3* at 57. Seven of the comps were the same sales used in the 2009 report. *Tr.* at 271. Four of the comps (three boats) were designed by the predecessor of the Riverboat's designer. *Ex. P-3* at 56.

53. The comps were diverse in size, age, and date of sale. The gaming areas ranged from 5,000 to 46,000 s/f. *Ex. P-3* at 106. Capacity ranged from 500 to 3,650. *Ex. P-3* at 106. The ages ranged from 9 to 38 years. *Ex. P-3* at 106. The sale dates ranged from 2003 to 2012. *Ex. P-3* at 106.

54. The end uses were also very diverse. Ten of the comps were purchased for gaming purposes. *Ex. P-3* at 56. Comps 1 and 4 were taken to India. *Ex. P-3* at 59, 68. Comp 3 and Comp 7 were the same boat, but refurbished at a cost of $25M for ocean-use in Palm Beach. *Ex. P-3* at 77. It was operated briefly in 2005, marketed for 5 years, and finally sold for use as a dockside casino in Mississippi. *Tr.* at 280-81. It was never placed in service in Mississippi. *Tr.* at 452. Comp 5 and Comp 9 were the same boat, intended to be refurbished for offshore gaming in New York but never put in service. *Ex. P-3* at 71, 82. Comp 10, an off-shore gaming boat, was originally from Georgia and purchased for use in Florida. *Ex. P-3* at 85. Comp 11 was purchased for use as a dinner cruise, and Comp 12 was purchased for use as a dockside museum. *Ex. P-3* at 87, 91. Listings 1, 2,

[17] Mr. Herman noted a change from 2009 in the Riverboat's gaming area as reported to the gaming commission. It was reported as 40,200 s/f for 2005-2010 and 2012-2013, but in 2011 it was reported as 47,201 s/f, and in 2014 and after at 48,000 s/f. *Ex. P-3* at 18. Mr. Herman "spoke with people at the property" and was unable to determine any change. *Tr.* at 261. Mr. Herman used the same square footage in both the 2009 and 2014 appraisals. *Tr.* at 261-62. This resulted in an extraordinary assumption regarding the size of the gaming area. *Ex. P-3* at 18. The Board notes that simply measuring the gaming area would have resolved this issue, which may undervalue the Riverboat by 20%.

and 3 were Midwestern riverboats no longer in service, and Listing 4 was a riverboat in West Virginia intended for gaming but never placed in service. *Ex. P-3* at 91-101.

55. Mr. Herman noted transactional considerations. Five of the comps were bankruptcy sales, and three of the sales occurred in the aftermath of the 2009-2010 financial crisis. *Ex. P-3* at 56. He concluded that increased inventory "had a dampening impact on vessel pricing." *Ex. P-3* at 56. Mr. Herman identified a change in market conditions based on the global recession and concurrent gaming market saturation. *Ex. P-3* at 104. As in 2009, Mr. Herman performed a similar qualitative analysis with pluses and minuses.

56. Mr. Herman adjusted for physical attributes. Because he considered the smaller boats to have greater market accessibility, all but two of the Comps were considered superior as to capacity. *Ex. P-3* at 104. Mr. Herman believed that smaller gaming areas were "more ideal for the Iowa markets, offshore gaming markets, or as an alternative use vessel." *Ex. P-3* at 105. He adjusted for off-shore hulls. *Ex. P-3* at 105. Boats with capacity of 1,500 or less received a negative adjustment. *Ex. P-3* at 106. Boats 21 years and older received a positive adjustment, and the 9 year old boat received a negative adjustment. *Ex. P-3* at 106. Boats with 20,200 s/f or less gaming capacity receive a negative adjustment. *Ex. P-3* at 106. Positive adjustments were made for coast guard certified boats, a change from 2009, because the Riverboat was no longer certified. *Tr.* at 310.

57. Mr. Herman adjusted for transactional differences. Mr. Herman noted that bankruptcy sales represented a "significant portion of the market transactions since 2007." *Ex. P-3* at 103. However he still considered the bankruptcy sales inferior and adjusted their unit values. *Ex. P-3* at 103. Sale dates of October 2008 and earlier received negative adjustments. *Ex. P-3* at 106. He adjusted for non-gaming use: positive for the museum and negative for the dinner cruise. *Ex. P-3* at 105.

58. Mr. Herman concluded that two of the comps were inferior, one was similar, and the remainder were superior. *Ex. P-3* at 106. Based on the unadjusted sale prices, gaming area ranged from $47.50 to $340.00 per s/f, and passenger capacity ranged from $685 to $4,489 per person. *Ex. P-3* at 107. Mr. Herman chose $75 per s/f for gaming area and

$1,200 per person for passenger capacity, which resulted in $3,015,000 and $3,748,000 respectively. *Ex. P-3* at 108. He weighted capacity more heavily. *Tr.* at 321. Mr. Herman reconciled those values at $3,500,000 and testified that the Riverboat would probably sell for that amount as of the 2014 assessment date. *Tr.* at 322.

vi. Mr. Herman's 2014 Cost Approach for the Riverboat

59. Mr. Herman followed the same cost method as in the 2009 appraisal. *Tr.* at 326. He started with the 1999 cost schedules in the GUIDELINES and then trended to 2014, using the same index, which resulted in $29,317,000. *Ex. P-3* at 113-14. He again added a cost component for process wiring in the amount of $1,222,000. *Tr.* at 329. The 2014 reproduction cost new totaled $30,539,000. *Ex. P-3* at 115.

60. Mr. Herman calculated depreciation based on the GUIDELINES which was 40%. *Ex. P-3* at 118. Mr. Herman expected increased obsolescence in 2014 due to increased gaming competition. *Tr.* at 331. He applied the same obsolescence techniques as in 2009. *Ex. P-3* at 119.

61. Under market extraction, Mr. Herman considered additional comps. *Tr.* at 332. After calculating the reproduction cost new for the comps, he divided the sales price by the cost to determine the obsolescence as a percentage. *Ex. P-3* at 119. The percentages ranged from 67% to 93%. *Tr.* at 333. Mr. Herman removed the highest and the lowest and averaged the remainder, which resulted in 89% obsolescence. *Tr.* at 334. Deducting the 40% GUIDELINES depreciation from overall obsolescence resulted in obsolescence of 49%. *Ex. P-3* at 120.

62. Under economic life, Mr. Herman considered additional sales. *Ex. P-3* at 120. The ages ranged between 9 and 21 years, and he determined, as in 2009, that the useful life of a riverboat was 15 years. *Ex. P-3* at 120. At 14 years, the Riverboat would be at 93% of its useful life. *Tr.* at 338. Deducting the 40% GUIDELINES depreciation from overall obsolescence resulted in obsolescence of 53%. *Ex. P-3* at 121.

63. Mr. Herman settled on 48% and applied a combined 88% deduction to the reproduction cost new. *Ex. P-3* at 121. He rounded his final cost value to $3,700,000. *Ex. P-3* at 121.

vii. Mr. Herman's 2014 Riverboat Reconciliation

64. Based on the Casino Assessment Statute, Mr. Herman chose the lowest of the approaches ($3,700,000 under the cost approach and $3,500,000 under the comparable sales approach) and reached a final value of $3,500,000. *Ex. P-3* at 124.

b. Mr. Herman's Appraisal of the Golf Course

65. Mr. Herman valued the Golf Course under the cost approach for 2009 and the income approach for 2014.

i. Mr. Herman's 2009 Golf Course Valuation

66. For 2009, Mr. Herman believed that the 2002 MANUAL and 2002 GUIDELINES "prescribed" the cost approach as a specific methodology. *Ex. P-1* at 14, 17. Mr. Herman conceded that if he were valuing the golf course for 2009, outside of the context of Indiana property tax law, he would have applied a standard income approach. *Tr.* at 439.

67. Mr. Herman picked "grade A" which corresponded to $118,000 a hole. *Tr.* at 227-28. At 18 holes, the reproduction cost was $2,124,000. *Tr.* at 228; *Ex. P-2 (Ex. 6.A)*. He applied the "prescribed land value for golf courses of $1,050 per acre." *Tr.* at 228; *Ex. P-2 (Ex. 6.A)*. At 206 acres, the land value totaled $216,300. *Tr.* at 228-29. The land value was subtracted from the per hole value, resulting in $1,907,000. *Tr.* at 229. He applied 10% depreciation pursuant to the "good" rating under Appendix F. *Tr.* at 230-31. The depreciated value was $1,716,930. *Tr.* at 231. Mr. Herman used *Marshall & Swift* cost tables to value the "other improvements" (maintenance buildings and pro shop), and he used the GUIDELINES to value the range. *Tr.* at 233-35. The golf course and land ($1,933,230), "other improvements" ($597,677), and driving range ($8,400) totaled $2,539,307, and Mr. Herman reconciled them at $2,500,000.[18]

[18] The value was not trended because between January 1, 2008, and March 1, 2009, the Cincinnati metropolitan area had no change in the general CPI index. *Tr.* at 236.

ii. Mr. Herman's 2014 Golf Course Valuation

68. Mr. Herman relied on the statutory provisions of I.C. § 6-1.1-4-42, the Golf Course Statute, and a series of memoranda from the DLGF to value the golf course for 2014. *Tr.* at 240-41. He projected income from "department-type" statements for 2011, 2012, and 2013. *Tr.* at 344. He excluded from income club rental and pro shop (merchandise) revenue.[19] *Tr.* at 245. He deducted expenses, including salaries. *Tr.* at 245-46. He based personal property values on the personal property tax return from the Taxpayer. *Tr.* at 249.

69. Pursuant to the Golf Course Statute, Mr. Herman used a three year average of $[redacted] for income and $[redacted] for expenses, which resulted in $[redacted] in net operating income. *Ex. P-4 (Ex. 6.A.1).* The base capitalization rate, pursuant to DLGF guidelines for Switzerland County, was 11.91%, and he loaded it with the effective tax rate of 1.16% which totaled 13.07%. *Tr.* at 247. At that rate, the enterprise value was $[redacted] and, after personal property of $[redacted] was deducted, Mr. Herman valued the Golf Course at $3,000,000 (rounded).[20] *Tr.* at 347; *Ex. P-4 (Ex. 6.A.1).*

2. Mr. Lennhoff's Appraisal of the Hotel

70. The Taxpayer assigned David Lennhoff to value the Hotel. Mr. Lennhoff, an appraiser and MAI, is licensed in 13 states, including Indiana. *Tr.* at 490. In his 40 years of appraisal practice, he has collected numerous designations and acronyms from national and international organizations related to the field of appraisal. *Tr.* at 490-500. He has a BA in English from the University of Kentucky. He has served in leadership roles in the Appraisal Institute and Appraisal Foundation, including editor of its journal, president of education committees, and teacher and developer of its coursework. *Tr.* at 503-5. He has also taught as an adjunct professor at George Washington University. *Tr.* at 504. Mr. Lennhoff has edited and authored sections of THE APPRAISAL OF REAL ESTATE, including the section on separating assets from a going concern. *Tr.* at 513-14. He has also

[19] While the statute required income from the golf carts to be excluded, the cart rental was not separated from green fees. *Tr.* at 244. The value of the carts was deducted later as personal property. *Tr.* at 244.
[20] Mr. Herman originally presented his appraisal and testimony using income expenses for years 2012-2014 and realized that it should have been for years 2011-2013. *Tr.* 342-347. He re-ran the numbers with the corrected information and increased the value from $2,900,000 to $3,000,000.

published over 30 articles and significantly contributed to books and guides used in appraisal courses. *Tr.* at 515-16. He considers himself to be known nationally as a hotel appraiser and has appraised 16-18 hotels in the last five months. *Tr.* at 529, 532. Mr. Lennhoff was qualified as an expert without objection. *Tr.* at 536.

71. Mr. Lennhoff presented an Appraisal Report intended to comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). He described the Hotel, under a highest and best use analysis, as a "608 room-key, 12 to 15-story (including lobby level) full-service hotel." *Ex. P-5* at 53. He noted that the property was of "very, very high quality, and much more high quality than the competitors." *Tr.* at 642. Because the Resort was the farthest from metropolitan centers, he noted that it "must offer a higher amenity level in order to attract customers." *Ex. P-5* at 49. However, he also believed that the Hotel had "super adequate facilities that are *atypical of a full-service hotel.*" *Ex. P-5* at 54 (emphasis added). He further explained that while the Hotel has "an attractive design suitable for its immediate casino/resort environment," he believed that "its amenities are super adequate compared with its market segment and business purpose." *Ex. P-5* at 30. He described its highest and best use as a "casino operation" and "casino hotel." *Tr.* at 592.

72. Mr. Lennhoff's valuation was based on the hypothetical scenario of the Hotel and Riverboat being "owned/operated independently."[21] *Ex. P-5* at 42. Under this valuation premise, the Hotel would be "dependent on the casino as a demand generator" but operated much like any other full-service hotel. *Ex. P-5* at 42. He explained:

> The reason the real estate [casino hotel] exists is as a supporting function for the casino. Even if it was separately occupied, the primary demand for this hotel, this casino hotel, comes from the demand generated by the gaming business.

Tr. at 565. Likewise, Mr. Lennhoff's valuation considered the Riverboat and Golf Course in regard to "their existence as demand generators for the hotel." *Ex. P-5* at 2.

73. Mr. Lennhoff's decision to value the Hotel separate from the casino was based on the fact that the Hotel was operated as a "loss leader" that comps "65% of the occupancy for

[21] He described this scenario as "absent the integration of ownership between the hotel and casino." *Ex. P-5* at 43.

free." *Tr.* at 591. He noted he could not "value it as a casino hotel" to the casino because, "as a loss leader it would probably be worth nothing." *Tr.* at 591. Mr. Lennhoff also tangentially justified his independent Hotel valuation on the fact that "some casinos don't want a hotel."[22] However, he conceded that "the business in the casino makes [the comping at the Hotel] okay." *Tr.* at 601.

74. Based on his hypothetical premise of an independently operated Hotel, Mr. Lennhoff placed no value on services above those offered by a typical operator of a "market-based full-service hotel." *Ex. P-5* at 42-43. He explained:

> As the overwhelming majority of overall property revenues are derived from the casino operation, the hotel and its amenities (restaurants, retail, salon/spa) are essentially operated as the primary marketing tool, second only to the casino itself. . . . The subject casino/hotel operates numerous restaurants, an entertainment venue, a retail arcade, and a salon/spa as **a benefit** to the casino.

Ex. P-5 at 42 (emphasis in original). Because a typical full-service hotel would only operate one restaurant/bar, coffee kiosk, and small retail store, Mr. Lennhoff believed the Hotel's multiple restaurants, stores, spa, and entertainment venue were super-adequate. *Ex. P-5* at 42. He believed a typical buyer would likely "shutter non-performing amenities, or choose to lease such facilities." *Ex. P-5* at 42-43. Mr. Lennhoff affirmed this premise formed "the basis" of his valuation. *Tr.* at 617.

75. Mr. Lennhoff considered all three approaches to valuing a Hotel, but he only applied the income approach. "Unless distressed, hotels almost always trade as the total assets of the business (TAB) . . . because there is virtually no market for their individual component parts sold separately."[23] *Ex. P-5* at 55. The sales approach has limited use for hotels except "to bracket a value or check the value derived by the income capitalization approach." *Ex. P-5* at 55. Because hotels are typically valued by investors under the income approach, and depreciation and obsolescence are difficult to quantify, he concluded that "the cost approach is not an applicable valuation technique for the [Hotel];

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[22] He used a Mulvane, Kansas casino as an example where the casino did not want to build a hotel, because there were other "sort of low price hotels" nearby, "so the last thing this owner wants to do is spend a lot of money on a loss leader when he doesn't need a loss leader." *Tr.* at 601-602.

[23] TAB or MVTAB "Market value of the total assets of the business" refers to all tangible and intangible assets of a business in aggregate if sold as a going concern. *Ex. P-5* at 8.

is not necessary, is not applied." *Ex. P-5* at 56. He applied the income approach because most practitioners and authorities considered it the preferred method for valuing an operating hotel property. *Ex. P-5* at 56.

76. Mr. Lennhoff applied an income approach suited to properties where the income is not a pure real estate income.[24] The purpose of a TAB approach is to make deductions to income such that the residual income reflects the value of the real property only.[25] *Ex. P-5* at 58. The real property may be a small portion of the TAB. *Tr.* at 582.

77. While Mr. Lennhoff considered the actual 2007-2014 operating history, he placed "heavy weight on published industry benchmarks." *Ex. P-5* at 61. He believed a potential buyer would likewise consider actual performance but also utilize industry benchmarks and pro forma projections. *Ex. P-5* at 61. Because the Hotel offered comped rooms, the actual data was not based on "arm's length information" and could not be used. *Tr.* at 615-16.

78. Mr. Lennhoff described the issue with comping as an "appraisal problem" for determining "the average daily rate the hotel could command and the occupancy rate the hotel could command." *Tr.* at 566-67. Mr. Lennhoff engaged in a "preliminary analysis" to determine whether there was "demand for a casino hotel above and beyond demand for a hotel with another demand generator." *Tr.* at 567. He sought to determine whether the Hotel was likely to "perform in a typical fashion to another hotel in the general area that's not a casino but that has a different demand generator." *Tr.* at 660.

a. Mr. Lennhoff's "Preliminary Analysis"

79. The "preliminary analysis," which he also referred to as an "incremental analysis," was difficult to follow. Mr. Lennhoff started with a qualitative analysis of the Resort's

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[24] Mr. Lennhoff noted that theoretically a hotel is best defined as a "real estate-related investment because 'rent' (to the investor) is completely dependent upon the business operated at the real estate." *Ex. P-5* at 57. In contrast, "a 'pure' real estate investment involves rent that is unrelated to the tenant's business." *Ex. P-5* at 57.

[25] Particularly in the context of hotel valuations, this process is commonly called the "Rushmore" method. The Rushmore method refers to the adjustments necessary to extract business value from the income of a going concern to determine the value of the real estate under the theory that if all assets except the real estate have been deducted, the remainder must be the real estate. *See Chesapeake Hotel LP v. Saddle Brook Tp.*, 22 N.J. Tax 525, 527 (N.J. Tax 2005) ("Rushmore is the author of Hotels, Motels, and Restaurants: Valuations and Market Studies (1983). He has established a national reputation in hotel valuation, and the procedure he employed is often described as the Rushmore method."). For reasons unclear, Mr. Lennhoff did not describe his approach as the Rushmore method.

"competitive set." *Ex. P-5* at 50. The set was comprised of three southeastern Indiana riverboat casinos, (the Rising Star, the Hollywood, and the Horseshoe Southern Indiana), and he considered them the primary competition and alternatives to the subject property.[26] *Ex. P-5* at 44. All of these were integrated hotel-casinos. *Tr.* at 624. Mr. Lennhoff concluded from his personal inspection that the Hotel was superior to these in terms of amenities offered, hotel design, and room quality. *Tr.* at 626; *Ex. P-5* at 49. The analysis of the competitive set was intended to reveal whether the Hotel was "outperforming the competitive set" due to the business or "better real estate." *Tr.* at 629. However, Mr. Lennhoff stated that this analysis did not have "much of a play in this report." *Tr.* at 629.

80. In addition to the competitive set, Mr. Lennhoff considered the Sparta Ramada and the Kansas Star Hampton Inn. The Sparta Ramada was a hotel adjacent to the Kentucky Speedway, which was 5 miles from the Hotel. *Ex. P-5* at 51. The Kansas Star Hampton Inn was adjacent to the Kansas Star Casino in Mulvane, Kansas. *Ex. P-5* at 51. These were both "limited service" hotels. *Ex. P-5* at 51. Mr. Lennhoff surveyed the "asking hotel rates" of the Hotel, the Competitive Set, the Sparta Ramada, and the Kansas Star Hampton Inn. *Ex. P-5* at 51. The Hotel and Competitive Set were listed as full-service hotels. *Ex. P-5* at 51. The asking rates for rooms ranged from \$57-\$109 for weekdays, and \$100-\$199 for weekends, while suites ranged from \$139-\$169 for weekdays and \$169-\$239 for weekends. Neither the report nor Mr. Lennhoff's testimony explained the relevance of this part of the analysis.

81. Mr. Lennhoff then looked particularly at the Sparta Ramada. It was a "typical limited-service hotel, featuring a low-level of on-site amenities," and it did not have an on-site restaurant. *Ex. P-5* at 51. In his testimony, Mr. Lennhoff noted that the Sparta Ramada was "certainly not similar in quality" to the Hotel and explained:

> I mean, if you went to it and you looked at the subject, you would go, oh, my goodness, this isn't anything like it.

[26] Later in his income analysis, Mr. Lennhoff considered 7 "regional casino hotels" that could also be considered alternatives to the Hotel. *Ex. P-5* at 64. It is unclear why the regional casino hotels were not considered part of the competitive set.

Tr. at 630. However, Mr. Lennhoff noted that the Sparta Ramada charged a room rate similar to the Hotel on weekdays. *Ex. P-5* at 51. Based on this survey of "Asking Hotel Rates," Mr. Lennhoff projected that the Hotel "would likely be able to charge a room rate similar to the Sparta Ramada." *Ex. P-5* at 51. Mr. Lennhoff's projected market rates are reflected below:

	Weekday	Weekend	Suite Weekday	Suite Weekend
Actual Asking Hotel	$99-109	$169-$199	$139-$149	$219-$239
Actual Asking Sparta Ramada	$100	$100	$160	$169-$189
Lennhoff Rates for Hotel	$100	$139	$160	$200

Ex. P-5 at 51.

82. Mr. Lennhoff compared his projected market rate to regional survey data for full service hotels in 2008 and 2014. *Ex. P-5* at 51-52. He admitted his projected rates were much lower than typical full-service hotels, but he also noted that the Hotel was "not located in an area with a natural hotel demand." *Ex. P-5* at 51. He also reviewed regional survey data for the Competitive Set and two Marriott hotels (one in Louisiana and one in North Dakota). *Ex. P-5* at 52. Mr. Lennhoff looked at the actual performance of the Hotel in this analysis, including occupancy, but he could not "draw conclusions about what the [Hotel] performance would be." *Tr.* at 636. However, he did decide "the meaningful thing" which is the Hotel did not "outperform the broader area, their broader areas." *Tr.* at 636.

83. The bulk of Mr. Lennhoff's "preliminary analysis" revolved around three hotels that were adjacent to casinos, but independently operated: The Kansas Star Hampton Inn[27] and the Louisiana and South Dakota Marriotts.[28] *Ex. P-5* at 52. He noted that these hotels were not "identical . . . by any stretch" and not as "luxurious" as the Hotel. *Tr.* at 618-19. The purpose in looking at these three hotels was to address a fundamental issue: whether Mr. Lennhoff could "look at broader data to come up with an average daily rate of occupancy, or would that not be applicable to a casino hotel?" *Tr.* at 619. Thus the question was not

[27] Mr. Lennhoff was familiar with this hotel because he previously appraised it. *Tr.* at 617.
[28] Mr. Lennhoff learned of these hotels from a "guy" he golfs with who works in the Marriott hotel tax department. *Tr.* at 618.

comparability, but "how do those hotels perform relative to other hotels in the area that are not casino hotels?" *Tr.* at 619. He wanted to "compare it to the non-casino competition to see if there was an increment." *Tr.* at 632.

84. Based on his analysis of these three hotels, Mr. Lennhoff concluded that they performed "just the way anybody else was." *Tr.* at 619. The Kansas Star Hampton Inn performed the same as the "other hotels next to other demand generators." *Tr.* at 630. Mr. Lennhoff did not present data regarding the "other hotels." As for the South Dakota and Louisiana Marriotts, the only reference in the appraisal report was their occupancy (74%, 77%) and room rates ($132, $96) for 2013. *Ex. P-5* at 52.

85. Mr. Lennhoff also returned to the Sparta Ramada, where Mr. Lennhoff considered its location next to the Kentucky Motor Speedway and whether there might an "increment attributable to the same sort of business synergy." *Tr.* at 630. He explained:

> So I looked at that, and I looked at other hotels that aren't next to a racetrack, and there wasn't a difference.

Tr. at 630. This analysis of "other hotels" was not found in Mr. Lennhoff's appraisal report and was not further elucidated in his testimony.

86. In his income approach calculations, Mr. Lennhoff briefly considered 7 regional casinos. He suggested that this analysis impacted his "conclusion about whether the casino hotel might command some increment above another hotel in the same area." *Tr.* at 659; *Ex. P-5* at 64-65. Neither his testimony nor his report shed light on this analysis.

87. The ALJ gave Mr. Lennhoff an open opportunity to walk him through his "preliminary analysis" at the close of his testimony, but Mr. Lennhoff did not provide additional light on his data or calculations. *Tr.* at 827-28.

b. Mr. Lennhoff's Hotel Income Approach

88. Mr. Lennhoff began his income projections with a review of 2008 and 2013 data for full-service hotels from two publications. The *Smith Travel Research* ("STR") data covered Illinois, Indiana, Michigan, Ohio, and Wisconsin, and the *PKF Consulting* ("PKF") data covered those states plus an additional 7 states in the Great Plains. *Ex. P-5* at 61-63.

89. Mr. Lennhoff next noted the RevPAR[29] for the Hotel. *Ex. P-5* at 64. Mr. Lennhoff also reviewed seven "regional casino hotels" that could be considered alternatives to the Hotel. *Ex. P-5* at 64. Mr. Lennhoff decided he could not look to the data of casino hotels because of comping. *Tr.* at 659. He concluded that the survey data was "all you can do." *Tr.* at 659.

90. Mr. Lennhoff turned to three additional charts of survey data. The first was titled "Southern Indiana Revenue Data," which was "courtesy of STR." *Ex. P-5* at 65. It provided data for 2006-13. The second chart was titled "Regional Hotel Data 2012 and 2013" and had data for Cincinnati, Columbus, and Indianapolis. *Ex. P-5* at 65. There was no attribution as to its source. Finally, a chart titled "Greater Cincinnati Hotel Revenue Data -2013" was sourced to the Cincinnati USA Convention and Visitors Bureau. *Ex. P-5* at 65. It included details for Cincinnati, Downtown, and Greater Cincinnati. These data sets were not limited to full-service hotels and included an aggregated mix of "full-service, limited service, and suite hotels." *Ex. P-5* at 66.

91. Mr. Lennhoff noted that the Hotel's revenue would likely be higher than "the aggregated regional data." *Ex. P-5* at 66. He placed emphasis on "the more micro-specific data." *Ex. P-5* at 66. Mr. Lennhoff characterized his final conclusions of room and occupancy rates as "slightly above the micro-specific data . . . but below the regional . . . data." *Ex. P-5* at 66. He believed that the city centers (Columbus, Cincinnati, and Indianapolis) would command higher "metrics" because the population was stronger. *Tr.* at 654. In regard to the micro data, he tried "to stay away" from values reflecting the low and high ends of the range and downtown Cincinnati. *Tr.* at 658.

92. Mr. Lennhoff projected the same room rate ($115) for 2009 and 2014. *Ex. P-5* at 66. For 2009, his projections of occupancy (60%) and room rate ($115), resulted in room revenue of $15,312,500.[30] *Ex. P-5* at 66. For 2014, his projections of occupancy (65%) and room rate ($115) resulted in room revenue of $16,588,500. *Ex. P-5* at 66.

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[29] Revenue per available room (RevPAR) is the average daily room rate multiplied by the occupancy rate. *Tr.* at 610.

[30] This was based on 608 room keys and 221,920 room nights.

93. For other revenues, Mr. Lennhoff used a "proxy rent analysis." *Tr.* at 661. Based on "long established" principles that retailers (restaurants, shops, spa, etc.) can only afford a certain range of rent as a percentage of revenues, he estimated rent (Hotel income) as a percentage of gross revenues. *Tr.* at 662. He surmised that the retail operations were largely part of the "casino operation" and had a "high intangible value" that should be removed from the income to the Hotel. *Ex. P-5* at 67. Mr. Lennhoff's report described this analysis as considering retail income as if the retail space "was leased" to an operator. *Ex. P-5* at 67-68. On cross-examination, Mr. Lennhoff denied he was "estimating food and beverage revenue as though the real estate was leased to a real estate or restaurant operator," because that "misunderstands what I'm doing." *Tr.* at 664-65. Rather than an estimate of rent, he described it as "a proxy for the occupancy cost for that space." *Tr.* at 665. Mr. Lennhoff did not clarify the distinction.

94. The revenue from food and beverage sales (F&B) included restaurants, quick-service, conference, and banquet facilities. *Ex. P-5* at 66. Mr. Lennhoff calculated F&B as a percentage of room revenue because in a typical hotel "the rooms revenue is the primary source of the food and beverage revenue." *Tr.* at 669. Mr. Lennhoff looked at gross sales and noted that [redacted]% of food was comped, but only [redacted]%-[redacted]% of beverages. *Ex. P-5* at 67. Mr. Lennhoff disregarded actual paid F&B sales, and selected gross sales based on a percentage of estimated room revenue: 50% ($7,565,300) for 2009, and 45% ($7,464,800) for 2013. *Ex. P-5* at 67. These estimates were below historical F&B gross revenues (a high of $[redacted] and a low of $[redacted]). *Ex. P-5* at 67. Mr. Lennhoff estimated that typical rental rates for restaurants ranged from 6%-8% of gross sales.[31] *Ex. P-5* at 67. Mr. Lennhoff applied 6%, and estimated Hotel F&B rental revenue of $459,378 for 2009 and $447,888 for 2014. *Ex. P-5* at 67.

95. The income from the concert hall was estimated "as if the venue was leased to an entertainment operator." *Ex. P-5* at 67. Historical revenue was volatile and ranged from

[31] Mr. Lennhoff based this range on "publications such as Dollars & Cents of Shopping Centers," which was last published in 2008. *Tr.* at 665. While he noted that STR tracks F&B, it is not apparent he incorporated that data in his estimated F&B rent revenue. *Tr.* at 663. He noted that most hotel restaurants are loss leaders, but others, including a restaurant at a resort, could be a "huge profit center." *Tr.* at 664. Mr. Lennhoff agreed that the Hotel, like most resorts, had a captive clientele. *Tr.* at 667.

[redacted] to [redacted] *Ex. P-5* at 67. Mr. Lennhoff estimated gross income for 2009 at $535,900 (3.5% of estimated room revenue), and for 2014 at $1,327,100 (8% of room revenue).[32] *Ex. P-5* at 67. He opined that "typical rental rates for cinemas and entertainment venues range from 12%-16%," and he chose 15%.[33] *Ex. P-5* at 67. Thus, he estimated Hotel entertainment rent revenue of $80,835 for 2009 and $199,065 for 2014. *Ex. P-5* at 67.

96. The income from the shops was estimated "as if the real estate was leased to a retail operator." *Ex. P-5* at 68. Historical revenue showed a peak in 2008 and steady decline over 2009-2013. *Ex. P-5* at 68. Mr. Lennhoff estimated income for 2009 at $2,832,800 (which was 18.5% of estimated room revenue), and for 2014 at $2,488,300 (which is 15% of room revenue). *Ex. P-5* at 68. He opined that "typical rental rates for retail venues were 15% of gross sales," and he estimated Hotel retail rent revenue of $424,920 for 2009 and $373,245 for 2014.[34] *Ex. P-5* at 68. For the Spa and Salon, Mr. Lennhoff estimated income based on 6% of room income, a number below historical figures. *Ex. P-5* at 68. He opined that typical rental rates for salons and spas ranged from 10%-15% of gross sales, and he estimated Hotel salon/spa rent revenue of $119,444 for 2009 and $129,389 for 2014.[35] *Ex. P-5* at 68.

97. As for the supplemental/other income, which included ATM fees, space rental, and miscellaneous income, historical revenue peaked at [redacted] and decreased to [redacted] *Ex. P-5* at 69. Mr. Lennhoff chose 5% of room rates ($765,000) for 2009 and 1% of room rates ($165,900) for 2014. *Ex. P-5* at 69. The rate for 2014 was largely based on the loss of income from "Jeff Ruby's Steakhouse" which vacated in 2014. *Ex. P-5* at 69. Mr. Lennhoff did not believe "a private operator would open this restaurant," because the casino used it as a loss leader. *Tr.* at 677.

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[32] Mr. Lennhoff explained that the change in percentage of room revenue was based on the recovery after the recession. *Tr.* at 671.
[33] Mr. Lennhoff did not provide data in support of this range. When asked to further explain his 12%-16% range, he stated "that's the way it works." *Tr.* at 672.
[34] Mr. Lennhoff stated that his 15% figure is based on an "Appraisal Institute seminar on valuing retail property" that suggested "14% in occupancy costs." *Tr.* at 674. The 1% variance was not explained. When asked to clarify, Mr. Lennhoff responded: "it's cited almost always in a retail valuation analysis, and this percentage is, that's what it is." *Tr.* at 675.
[35] Mr. Lennhoff did not provide data in support for his salon/spa rental rate.

98. Mr. Lennhoff next turned to expenses. For rooms, he looked at the STR and PKF data and chose 27% for 2009 and 2014. *Ex. P-5* at 70. He applied a 50% expense of "other departmental expenses" based on the survey data. *Ex. P-5* at 70. He noted that the Hotel did not "account for any expenses in the 'other' category, showing them as all income." *Ex. P-5* at 70. For undistributed expenses, Mr. Lennhoff looked at the STR and PKF data under the categories of General & Administrative, Sales & Marketing, Repairs & Maintenance, and Utilities. Those categories collectively totaled 26.5% for 2008 and 25% for 2013. *Ex. P-5* at 71. Across the two years, Mr. Lennhoff's estimates were higher than the published averages in three categories, and at the high end for the remaining categories. *Ex. P-5* at 71.

99. Based on the preceding income and expense estimates, Mr. Lennhoff totaled "Gross Operating Profits to Going Concern" at $8,097,037 for 2009 and $8,866,090 for 2014. *Ex. P-5* at 72.

100. Mr. Lennhoff estimated a deduction for a management fee. He stated that a management fee was usually a percentage of gross revenue of 3%-5%. *Tr.* at 688. He reviewed Price Waterhouse Cooper ("PWC"), STR, and PKF publications and selected 3% of total revenue for 2009 and 2014.[36] *Ex. P-5* at 72-73.

101. Mr. Lennhoff deducted a franchise fee because the survey data included mostly franchised hotels. *Ex. P-5* at 73. He explained that "you can't use one source for the revenue and then fail to deduct the expense that would be necessary to achieve that revenue in the other case." *Tr.* at 692. Based on PKF, STR, and Hotel Green Book data, he selected 5% for both 2009 and 2014.[37] *Ex. P-5* at 73; *Tr.* at 695. He noted that resort hotels were 4.4% and "the more amenity properties" had a lower percentage franchise fee. *Tr.* at 695.

[36] For reasons unclear, the PKF and STR full-service hotel management fees recited in the analysis did not correlate to the PKF and STR benchmarks data found in *Ex. P-5* at 62-63. Mr. Lennhoff offered a difficult to follow explanation of what was listed there and in "the back of the book." *Tr.* at 694.

[37] As with the management fees, the PKF and STR full-service franchise fees recited in the analysis did not correlate to the PKF and STR benchmarks data found in *Ex. P-5* at 62-63.

102. Mr. Lennhoff deducted fixed expenses. The reserve for replacement of fixed assets was an allowance that provided for periodic replacement of building components, and furniture, fixtures, and equipment ("FF&E"). *Ex. P-5* at 74. Based on STR, PFK and PWC, he estimated a reserve range of 3% to 5%.[38] *Tr.* at 700. He chose 4% as "an appropriate rate." *Ex. P-5* at 74. Personal property taxes were based on the actual tax bills. *Ex. P-5* at 74. Based on STR and PKF data, Mr. Lennhoff chose 1% for insurance.

103. Mr. Lennhoff considered the replacement reserve to be an operating expense that did not remove the value of FF&E from the going concern value. *Tr.* at 702-3. He made an additional deduction for the return of and on FF&E. Based on a life insurance survey of hotel mortgage rates and a rule of thumb for distinguishing chattel and real property, he used an 8 year amortization rate applied to the range of "costs new" found in the Marriott franchise disclosure document for a 300 room hotel. *Ex. P-5* at 76. He "felt this would be an appropriate proxy." *Tr.* at 713. He stated that he "checked it for reasonableness," but did not explain his check. *Tr.* at 715. Mr. Lennhoff discounted the actual costs to 40% of "costs new" to account for the "as is contribution." *Ex. P-5* at 76. He concluded that an "annual payment" of $1,663,478 for 2009 and $2,065,300 for 2014 was necessary to deduct FF&E. *Ex. P-5* at 76.

104. Mr. Lennhoff also deducted business start-up costs. Based on his rate for FF&E plus another 100 basis points, he used a 20 year amortization rate applied to the start-up costs found in the Marriott franchise disclosure documents for a 300 room hotel. *Ex. P-5* at 77. He concluded that an "annual payment" of $643,500 for 2009 and $676,800 for 2014 was necessary to deduct business start-up costs. *Ex. P-5* at 77.

105. In addition to the franchise fee, Mr. Lennhoff deducted the value of a presumed franchise to "effectively convert the income to a 'no flag' independent hotel." *Ex. P-5* at 79. He believed a franchise "flag" typically contributed revenue of "25% or more against non-name hotels." *Tr.* at 721. He reduced the contribution to 10% because he had already

[38] The STR replacement reserves recited in the analysis did not correlate to the STR benchmarks data found on *Ex. P-5* at 62-63.

removed business startup and a return on FF&E, and he was "left with about 10%."[39] *Tr.* at 722. For reasons unclear, Mr. Lennhoff declined to make a deduction from income, but decided to "load the real property tax rate to account for these remaining residual intangibles," by 10% or approximately 90 basis points. *Ex. P-5* at 80.

106. For capitalization rates, Mr. Lennhoff looked to survey data from PWC, Real Estate Research Corporation ("RERC"), and IRR Viewpoint. *Ex. P-5* at 81. These surveys included hotel and other real property types. *Ex. P-5* at 81. The surveys reflected a rate for the going concern (not just the real estate), and some data was based on "purchase criteria" rather than actual sales. *Ex. P-5* at 81. Citing his own article, Mr. Lennhoff noted that the "use of surveys can be quite valid and credible but they must be used properly." *Ex. P-5* at 81. Mr. Lennhoff's report stated that he chose a cap rate for the Hotel as a "specialized full-service lodging property." *Ex. P-5* at 84. In testimony, he explained:

> I sort of zeroed in on what would be the most representative for what I have, which is a luxury quality casino hotel in between Louisville and Cincinnati.

Tr. at 731. He testified that he placed the most reliance on the RERC surveys for Cincinnati. *Tr.* at 729. He looked first to going concern hotel rates and selected a capitalization rate of 10.25% for 2009[40] and 9.5% for 2014.[41] *Ex. P-5* at 84. In selecting a real estate capitalization rate, Mr. Lennhoff considered the Hotel a "second tier" property due to its location. *Ex. P-5* at 85. He listed the ranges of certain categories of retail and suburban office rates and chose a cap rate of 9.25% for 2009[42] and 8.5% for

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[39] Mr. Lennhoff did not provide an explanation of how these concepts are correlated.

[40] Mr. Lennhoff chose a number at the higher end of the range of rates. The RERC 4th quarter 2008 midwest first and second tier hotels cap rates were as low as 6.5%. *Ex. P-5* at 82. National luxury hotels ranged from 4% to 10.5%, with an average of 7.67% for PWC 2008 3rd quarter.

[41] Mr. Lennhoff chose a number at the higher end of the range of rates. The RERC 4th quarter 2013 midwest first and second tier hotels cap rates were as low as 6.0%-7.8%. *Ex. P-5* at 82. National luxury hotels ranged from 4% to 10%, with an average of 7.24% for PWC 2013 3rd quarter.

[42] He chose a rate at the higher end of ranges from 8.4% to 9.25%. *Ex. P-5* at 85.

2014.[43] *Ex. P-5* at 85. These rates were exactly 100 basis points lower than his cap rate as an ongoing business, which he considered a "reasonable discount."[44] *Ex. P-5* at 85.

107. Mr. Lennhoff then turned to what he described as "residual intangibles." Because of the existence of "innovations," and other undisclosed forms of intangible personal property, Mr. Lennhoff made an "upward adjustment in the cap rate for that element." *Ex. P-5* at 79. He adjusted the cap rates upward by 90 basis points which resulted in 10.15% for 2009 and 9.4% for 2014. *Ex. P-5* at 85.

108. Mr. Lennhoff loaded the cap rates with the effective tax rate which resulted in cap rates of 11.2461% for 2009 and 10.5563% for 2014. *Ex. P-5* at 86.

109. Finally, Mr. Lennhoff made another adjustment that he described as something "most appraisers" would not include. *Tr.* at 734-35. He believed that there were included "residual intangibles not specifically quantified," and therefore he made "necessary calculations that adjust the tax rate load for this intangible item." *Ex. P-5* at 86. Evidently his income stream, as he calculated it, still included 10% intangibles which were not subject to real estate tax, and that required a further deduction from the cap rate.[45] *Tr.* at 735. The tables show that he used cap rates for brand-affiliated and non-brand affiliated hotels, of unknown origination, to determine "applicable R_o without residual intangibles." *Ex. P-5* at 86. As a practical matter, it very slightly lowered the 2009 cap rate to 11.148909%[46] and the 2014 cap rate to 10.445590.[47] *Ex. P-5* at 86.

110. Based on those rates, Mr. Lennhoff valued the Hotel at $30,500,000 for 2009. Based on *Marshall & Swift* cost schedules, he trended the value to 2008, which resulted in a final 2009 valuation of $29,625,000. He valued the Hotel at $34,700,000 for 2014.

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[43] He chose a rate at the higher end of ranges from 7.4% to 9.5%. *Ex. P-5* at 85.
[44] The disparity in the ranges of capitalization rates between hotel (going-concern) and non-hotel (real estate only) did not reflect a consistent spread of 1%.
[45] While Mr. Lennhoff described the residual intangibles as "not specifically quantified," he quantified them in his testimony at 10%, and he implicitly quantified them in his report in order to deduct the real property taxes from his cap rates.
[46] That is 11.2461-11.148909= 0.097191.
[47] That is 10.5563-10.445590= 0.110705.