

A RESOLUTION (A) MODIFYING LOCAL DEVELOPMENT AGREEMENT AND
(B) AUTHORIZING DISTRIBUTION OF HELD FUNDS

The Indiana Gaming Commission ("Commission") adopts the following resolution ("Resolution") pursuant to the authority granted to it under IC 4-33 and Title 68 of the Indiana Administrative Code. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in IC 4-33-2, IC 4-33-23, or 68 IAC 1-1.

A. Ameristar Casino East Chicago, LLC d/b/a Ameristar East Chicago ("Ameristar") is the Licensed Owner of the Riverboat casino located in East Chicago, Indiana (the "East Chicago Riverboat").

B. Showboat Marina Partnership ("Showboat") was the original Licensed Owner of the East Chicago Riverboat. In a letter dated April 8, 1994 (the "1994 Letter Agreement"), Showboat made a commitment to pay 3.75% of its Adjusted Gross Receipts ("AGR") from the casino to support local economic development, to be distributed as follows: 1% to the City of East Chicago (the "City"); 1% to Twin City Economic Development Foundation, Inc. ("TCEF"); 1% to East Chicago Community Development Foundation, Inc. ("ECCDF"); and 0.75% to East Chicago Second Century, Inc. ("Second Century"). The 1994 Letter Agreement is a Development Agreement within the meaning of IC 4-33-23.

C. Other documents may supplement or relate to the 1994 Letter Agreement, including a letter Showboat sent to the City dated April 18, 1995, a Showboat side agreement dated December 22, 1998, a Showboat confirmation agreement dated February 26, 1999, and a Memorandum of Understanding dated August 25, 2000 (the "Other Documents"). As used in this Resolution, the term East Chicago Development Agreement shall mean (i) the 1994 Letter Agreement, (ii) the Other Documents, and (iii) any other prior written or oral understanding, agreement, representation, directive, or obligation of any kind involving Ameristar, its predecessors or any other Licensed Owner of the East Chicago Riverboat on the one hand and the City, any other unit of government, and/or any Person on the other, including any for the benefit of any others such as TCEF, ECCDF, FEC (defined below) and/or Second Century, relating to any Economic Development Payment, any Development Agreement or the other matters addressed in this Resolution.

D. In or about February 2007, TCEF and ECCDF merged into Foundations of East Chicago, Inc. ("FEC"). Thereafter, FEC received the 2% of AGR formerly paid to TCEF and ECCDF under the East Chicago Development Agreement until those payments were held as described below.

E. The East Chicago Development Agreement has been the subject of administrative action by the Commission. The Commission, with the assistance of the Office of the Indiana Attorney General, commenced an investigation into the East Chicago Development Agreement which resulted in the Commission adopting Resolution 2006-58 ("Resolution 2006-58") on June 8, 2006. Among other things, the Commission, in Resolution 2006-58, disapproved of the payments to Second Century. On June 15, 2006, Ameristar (then

known as RIH Acquisitions IN, LLC d/b/a Resorts East Chicago), submitted to the Commission a proposed plan to comply with the Commission's disapproval of payments to Second Century in Resolution 2006-58 (the "Plan"). In accordance with the Plan, on June 15, 2006, Ameristar began depositing the 0.75% of its AGR formerly paid to Second Century into a separate interest-bearing US Bank account (the "0.75% Account"). Resolution 2006-58 and the Plan remain in effect.

F. The East Chicago Development Agreement has also been the subject of litigation, including but not limited to the following pending actions: *Second Century v. Resorts, et al.*, Cause No. 49D01-0504-PL-014394 (the "2005 Main Action"); *Second Century v. Indiana Gaming Commission, et al.*, Cause No. 49D01-0606-CC-025440; *Second Century v. Resorts, et al.*, Cause No. 49D01-0706-PL-022673; *Foundations of East Chicago, Inc. v. City of East Chicago*, Cause No. 49D13-0705-PL-019348 (the "2007 Statutory Challenge Action"); and appeals and/or other proceedings relating to these actions (collectively, the "Litigation").

G. On December 3, 2007, the trial court in the 2007 Statutory Challenge Action entered an order ("Order I") requiring Ameristar to pay the 2% of its AGR formerly paid to FEC (as successor to TCEF and ECCDF) under the East Chicago Development Agreement into a separate, interest-bearing account and to hold the funds in that account until that or some other court of competent jurisdiction orders otherwise. Since then, Ameristar has paid the 2% of its AGR formerly paid to FEC into a separate account (the "2% Account") and has held the funds and all interest earned thereon in the 2% Account in accordance with Order I.

H. On December 10, 2007, the trial court in the 2005 Main Action entered an order ("Order II") requiring Ameristar to continue paying 0.75% of its AGR to the 0.75% Account until such time as that or some other court of competent jurisdiction orders otherwise. Since then, Ameristar has continued to pay the 0.75% of its AGR formerly paid to Second Century into the 0.75% Account and has held the funds and all interest earned thereon in the 0.75% Account in accordance with Order II.

I. On March 17, 2011, the Commission adopted Resolution 2011-81, in which the Commission adopted an emergency rule regarding Development Agreements ("Rule 11-157(E)"). Section 15 of Rule 11-157(E) provides that, if the Commission has disapproved all or part of a Development Agreement, the Development Provider is required to request a modification of that agreement by the Commission. The material provisions of Rule 11-157(E) have been codified in IC 4-33-23.

J. Also on March 17, 2011, the Commission adopted Resolution 2011-82 ("Resolution 2011-82"), in which the Commission, among other things, directed Ameristar to submit a request to the Commission asking the Commission to modify or terminate and replace the East Chicago Development Agreement.

K. In late 2010, Ameristar invited the parties in the Litigation to participate in good faith negotiations to resolve all disputes in the Litigation, agree upon distribution of the money held in the 2% Account and the 0.75% Account, and agree upon a new Development Agreement to replace the East Chicago Development Agreement. Ameristar arranged a

mediation of these matters conducted by a third-party neutral mediator in Indianapolis on April 25 and 26, 2011, and thereafter by telephone. To date, the parties in the Litigation have been unable to reach an agreement to settle and resolve these matters or to agree on terms of a new Development Agreement.

L. Pursuant to Rule 11-157(E), IC 4-33-23, and Resolution 2011-82, Ameristar on June 1, 2011, submitted to the Commission a Petition to Modify Development Agreement (“Petition”). In its Petition, Ameristar requested that the Commission adopt this Resolution (1) modifying the East Chicago Development Agreement by adopting the Modified Local Development Agreement attached as Exhibit 1 to the Petition (the “Modified Agreement”) and (2) authorizing Ameristar to withdraw and use \$10 million from the 0.75% Account to help fund Ameristar’s \$35 million contribution to the Cline Avenue bridge.

M. Under the Modified Agreement, Ameristar would be obligated to pay a total of 3.25% of its AGR, distributed equally between the City and FEC. This is more than the aggregate amount dedicated to the City and FEC’s predecessors in the 1994 Letter Agreement. The 1994 Letter Agreement allocated 0.75% to Second Century, a for-profit real estate venture. The Commission found in Resolution 2006-58 that the operation of this portion of the East Chicago Development Agreement undermined the integrity of the gambling industry in Indiana. The Commission finds that 3.25% of AGR is an appropriate and fair contribution by Ameristar for local economic development purposes.

N. In or about November 2009, the Indiana Department of Transportation (“INDOT”) condemned as unsafe and closed the Cline Avenue bridge in East Chicago, Indiana. The bridge had been a key access route for visitors to Ameristar and the other businesses in that area, especially visitors from the Chicago area. The bridge closure has materially adversely affected Ameristar’s revenue. INDOT has estimated that the cost of tearing down and replacing the bridge at over \$100 million. Ameristar has indicated that it is willing to contribute up to \$35 million to that project.

O. The Commission acknowledges that the Cline Avenue bridge reconstruction project would be a significant local economic development project for the City. The construction project will generate many high-paying jobs, and a new bridge will help local businesses by providing traffic from Chicago easy access to the area. The Cline Avenue bridge project falls within the scope of local development purposes contemplated by the 1994 Letter Agreement. It would serve the original intent and purpose of the 1994 Letter Agreement to use money held in the 0.75% Account to help fund the Cline Avenue bridge project.

P. At its June 2, 2011 meeting, the Commission considered Ameristar’s Petition and allowed Ameristar, FEC, the Office of the Indiana Attorney General, and the City an opportunity to submit any information they considered relevant to the proposed modification of the East Chicago Development Agreement.

Q. The Commission acknowledges the following decisions by the Indiana Supreme Court in the Litigation: *Zoeller v. E. Chicago Second Century, Inc.*, 904 N.E. 2d 213

(Ind. 2009); *City of E. Chicago v. E. Chicago Second Century, Inc.*, 908 N.E.2d 611, 615 (Ind. 2009); *Foundations of East Chicago, Inc. v. City of East Chicago*, 927 N.E.2d 900 (Ind. 2010); and *Foundations of East Chicago, Inc. v. City of East Chicago*, 933 N.E.2d 874 (Ind. 2010). The Commission has relied on these decisions in considering the Petition and adopting this resolution.

R. Pursuant to Resolution 2006-58, Rule 11-157(E), IC 4-33-23 and other applicable laws, the Commission maintains continuous jurisdiction over the East Chicago Development Agreement and the operation thereof, including the flow of local development funds provided for in the East Chicago Development Agreement as well as modifications to the East Chicago Development Agreement. The Commission has the authority to decide the ultimate use or disposition of the funds held in the 0.75% Account.

NOW, THEREFORE, for the foregoing reasons, the Commission resolves and orders the following:

1. The Commission grants Ameristar's Petition and hereby modifies the East Chicago Development Agreement by adopting the Modified Agreement in whole that Ameristar submitted as Exhibit 1 to Petition. As of the Effective Date (defined below), Ameristar is relieved of all promises, commitments and/or obligations under the 1994 Letter Agreement, the Other Documents, and any other agreement, directive or obligation relating to the East Chicago Development Agreement. The Modified Agreement contains all the terms of the East Chicago Development Agreement, and Ameristar shall comply only with the terms of the Modified Agreement, subject to the following modifications to the method of payment terms in Section 4.2 of the Modified Agreement:

(a) Until the full and final resolution of all the Litigation and any judicial review and/or related appeals of this Resolution, Ameristar shall pay the amounts required under Section 4.1 of the Modified Agreement by (i) continuing to pay 2% of its AGR into the 2% Account in accordance with Order I, (ii) continuing to pay 0.75% of its AGR into the 0.75% Account in accordance with Order II, and (iii) paying 0.50% directly to the City's Designated Account in accordance with Section 4.1 and subject to the other terms of the Modified Agreement (the "0.50% Payment").

(b) The above modifications to Section 4.2 of the Modified Agreement do not affect in any way the payment percentages or amounts credited to the City and FEC under Section 4.1 of the Modified Agreement. Upon the Effective Date, the City and FEC are each allocated 1.625% of Licensee's AGR under Section 4.1 of the Modified Agreement. The City's 1.625% share shall be (i) the 0.50% Payment and (ii) the amounts paid to the 0.75% Account after the Effective Date and 0.375% of AGR paid into the 2% Account after the Effective Date, along with any interest earned on those amounts. FEC's share shall be 1.625% of AGR paid into 2% Account after the Effective Date, along with any interest earned on that amount.

(c) Ameristar shall continue making monthly payments into the 2% Account and the 0.75% Account as described in paragraph 1(a) above until there is a full and final

resolution of all the Litigation and any judicial review and/or related appeals of this Resolution or until such time as a court of competent jurisdiction orders otherwise.

(d) Ameristar shall not disburse any of the money it pays into the 2% Account or the 0.75% Account after the Effective Date to itself or to any other Person until there is a full and final resolution of all the Litigation and any judicial review and/or related appeals of this Resolution or until such time as a court of competent jurisdiction orders otherwise.

(e) Ameristar shall provide the Commission with balance and activity information on the 2% Account and the 0.75% Account, as requested in writing from time to time by the Commission staff.

2. Ameristar is authorized to withdraw and use \$10 million from the 0.75% Account to help pay for its contribution to the Cline Avenue bridge project, as that project may be designed and/or managed by INDOT. The Commission authorizes and directs Ameristar to seek from the court that issued Order II a modification of Order II for this purpose.

IT IS SO RESOLVED, ORDERED AND DIRECTED effective as of 12:01 a.m. Eastern Time on the date immediately following the date the Commission adopts this resolution (the "Effective Date").

THE INDIANA GAMING COMMISSION:



Timothy Murphy, Chair

ATTEST:



Marc Fine, Secretary