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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

REPORT TO THE CASINO CONTROL COMMISSION ON THE PETITION OF CAESARS ENTERTAINMENT CORPORATION, CEOC LLC, CAESARS GROWTH PARTNERS, LLC, CAESARS RESORT COLLECTION, LLC, CAESARS INTERACTIVE ENTERTAINMENT NEW JERSEY, LLC, BALLY'S PARK PLACE, LLC, BOARDWALK REGENCY, LLC, HARRAH'S ATLANTIC CITY OPERATING COMPANY, LLC, ELDORADO RESORTS, INC. AND COLT MERGER SUB, INC. FOR APPROVAL OF THE MERGER OF CAESARS ENTERTAINMENT CORPORATION WITH COLT MERGER SUB, INC. AND RELATED RELIEF (PRN 2481902)

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JUNE 30, 2020

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I. INTRODUCTION

On September 3, 2019, Caesars Entertainment Corporation (CEC), CEOC, LLC (CEOC), Caesars Growth Partners, LLC (CGP), Caesars Resort Collection, LLC (CRC), Caesars Interactive Entertainment New Jersey, LLC (CIENJ) which is CEC's Internet affiliate casino licensee, Bally's Park Place, LLC (Bally's AC), Boardwalk Regency, LLC (Caesars AC), Harrah's Atlantic City Operating Company, LLC (Harrah's AC), Eldorado Resorts, Inc. (ERI) and Colt Merger Sub, Inc. (Colt Sub) filed PRN 2481902 seeking the following declaratory relief pursuant to the Casino Control Act (Act), *N.J.S.A.* 5:12-1.1 *et seq.*: (i) approval of the merger of CEC and Colt Sub, with CEC surviving as a new wholly-owned subsidiary of ERI (Merger); (ii) qualification of entity and natural person qualifiers, and (iii) other related relief.

On June 11, 2019, the Casino Control Commission (Commission) plenarily qualified ERI as the parent holding company of casino licensee Tropicana Atlantic City Corp. d/b/a Tropicana Casino and Resort (Trop AC). *See* Resolution No. 19-06-11-21. If the Commission approves the Merger, ERI will become the parent holding company for the following additional Atlantic City casino licensees: Bally's AC, Caesars AC, Harrah's AC, and CIENJ (collectively, Bally's AC, Caesars AC and Harrah's AC are referred to as the AC Licensees).[1]

As a matter related to the Merger transactions, on December 20, 2019, the AC Licensees, ERI, and VICI Properties, L.P. (VICI Properties), a subsidiary of the REIT VICI Properties, Inc. (VICI REIT), jointly filed PRN 3571901 seeking declaratory relief

[1] Non-CPLV Manager, LLC is a fifth casino licensee currently affiliated with CEC and is the entity that provides management services to the CEC operating tenant entities under the real estate investment trust (REIT) structure. *See* Resolution No. 17-07-11-11.

from the Commission related to the proposed sale of the real estate assets of Harrah's AC to VICI REIT. As the Commission is aware, the real estate assets of Bally's AC and Caesars AC are already owned by the VICI Properties subsidiary of VICI REIT as landlord and leased back to subsidiaries of casino licensees Bally's AC and Caesars AC as tenants and operators of the respective casino hotel facilities. Pursuant to the 2017 approval of the Chapter 11 reorganization plan of CEC subsidiary CEOC (Caesars Restructuring) and the implementation of the VICI REIT arrangements as to CEOC-owned properties, Call Right Agreements granted VICI REIT five-year options to purchase the real estate assets of Harrah's AC and two other Harrah's properties. As part of the Merger, relief is sought to now include the real estate assets of Harrah's AC in VICI REIT pursuant to the call right. Such request is subject to a licensure condition imposed by the Commission upon the Caesars Restructuring. *See* Resolution No. 17-07-11-10. The additional requested relief of PRN 3571901 seeks a determination as to the licensing status of the proposed Harrah's AC landlord entity as a casino service industry enterprise (csie) rather than a casino licensee and approval of the Non-CPLV master lease (Master Lease)[2] as amended to include the Harrah's AC real estate assets.

The Division of Gaming Enforcement (Division) has conducted an extensive investigation of the transactions involved in the pending Merger in order to address the matters arising under the Act. The primary matters to be considered include the critical components of financial stability and undue economic concentration, given the unprecedented size and scope of these transactions and their significant and abiding

[2] A subsidiary of VICI REIT is also the lessor of Caesars Palace Las Vegas pursuant to the 2017 lease regarding that Las Vegas property (CPLV Lease).

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effects on the Atlantic City market. The Division has completed a comprehensive financial stability analysis and has retained an expert to assist with the undue economic concentration review.[3] The Division's expert, Dr. Martin K. Perry, has studied and presented papers on various economic issues, and he has served as the Division's expert in two prior undue economic concentration cases: Park Place Entertainment, Inc.'s proposed acquisition of Claridge in 2000 and the merger of CEC and Harrah's Entertainment, Inc. in 2005. The Division's financial analysis and the topic of undue economic concentration are addressed in Sections V. and VI., respectively, below, and Dr. Perry's "Report on Undue Economic Concentration Analysis related to the Proposed Merger of Eldorado and Caesars in Atlantic City, New Jersey," dated May 27, 2020 has been submitted to the Commission under separate cover. The Division submits this Report on the proposed Merger for consideration by the Commission.

[3] That expert is Martin K. Perry, PhD., Professor of Economics and Head of the Department of Economics at the University of Illinois at Urbana-Champaign, and an academic affiliate of Bates White Economic Consulting.

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II. BACKGROUND

On June 24, 2019, ERI, CEC and Colt Sub entered into an Agreement and Plan of Merger (Merger Agreement). Pursuant to the Merger Agreement, ERI will acquire CEC following the merger of Colt Sub, a special purpose entity created to effectuate the transactions, with and into CEC. Certain equity transfer steps are required to complete the Merger, including the transfer by CEC of the equity interests in CEOC to CGP and the subsequent transfer of CEOC equity from CGP to CRC. These equity transfers will result in CEOC becoming a direct subsidiary of CRC.

Currently, CEC, CGP, CRC, and CEOC are qualified holding companies of the AC Licensees and CIENJ, and as previously mentioned, ERI is the qualified holding company of Trop AC. As explained above, pursuant to the Merger Agreement, ERI will ultimately acquire CEC and therefore following the Merger, Colt Sub will no longer exist. As a result, CEC will remain a qualified holding company of the AC Licensees and CIENJ and will become a wholly-owned subsidiary of ERI. At that point, ERI, a Nevada corporation, will convert into a Delaware corporation, as determined by the Merger Agreement and as anticipated by the approval obtained through a special shareholder meeting held on November 15, 2019, and will adopt the name Caesars Entertainment, Inc. (New Caesars). As a result, New Caesars will become the ultimate parent holding company of the AC Licensees, CIENJ, and Trop AC.

Pursuant to the Merger Agreement, ERI will acquire all outstanding shares of CEC for an initially-disclosed total consideration amount of $17.3 billion, subject to adjustments to that amount as a result of share price changes, since the total consists

of approximately 77 million common shares of ERI, $7.5 billion in cash, and the assumption of CEC outstanding debt. Generally, ERI is acquiring all of the outstanding shares of CEC at a value of $12.75 per share, consisting of $8.40 per share in cash and .0899 shares in ERI common stock for each CEC share. Under the original Merger Agreement, shareholders of ERI and CEC were expected to hold approximately 51% and 49%, respectively, of New Caesars' outstanding common stock shares. The Merger shall become effective upon the filing of a certificate of merger with the Delaware Secretary of State. Just prior to that effective date, CEC shares shall be converted automatically into cash and/or New Caesars shares at the election of the holder.

Under the Merger Agreement, a "ticking fee" applies in the event the waiting period under the Hart-Scott-Rodino Antitrust Act (HSR Act) had not expired or been terminated by a date certain of March 24, 2020 (Ticking Fee). Amendment No. 1 to the Merger Agreement entered on August 15, 2019 expanded the Ticking Fee condition to apply not just to the original requirement satisfaction for HSR Act expiration or termination but also to the receipt of all necessary gaming authority approvals. The parties did not satisfy those two conditions by March 24, so the Ticking Fee has been accruing since that date.[4]

The Merger Agreement sets forth several termination rights of the parties, including the right to terminate by any party if the Merger is not consummated on or prior to June 24, 2020, with the potential for extensions of the consummation date until

[4] Staff of the Federal Trade Commission (FTC) closed its investigation of the Atlantic City market, without any remedial actions recommended to address anti-competitive concerns, on March 6, 2020. As of June 26, 2020, the FTC voted in favor of the Merger, with three votes to approve, one dissent, and one abstention.

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September 24, 2020 and further to December 24, 2020 if certain conditions have been satisfied. If at the time of a termination under this consummation date provision there has been a negative ruling by a governmental authority as to approval of the Merger, or HSR Act expiration or termination has not occurred or all gaming approvals have not been obtained, but nevertheless other conditions precedent to the Merger have been satisfied or are capable of being satisfied, a substantial termination fee of over $800 million would be payable by ERI to CEC.

Also on June 24, 2019, ERI entered into a Master Transaction Agreement (Transaction Agreement) with VICI REIT. Pursuant to this $3.2 billion proposed transaction, VICI REIT would acquire the real estate assets of Harrah's AC, Harrah's Laughlin Hotel & Casino (Harrah's Laughlin) and Harrah's New Orleans Hotel & Casino (Harrah's New Orleans). The portion of the purchase price for the Harrah's AC real estate assets is just under $600 million. As indicated above, Harrah's AC as well as Harrah's Laughlin and Harrah's New Orleans were subject to Call Right Agreements executed in 2017 as part of the Caesars Restructuring and it is these call rights VICI REIT seeks to now exercise through the current transactions. Annual rent under the Master Lease will increase by approximately $154 million if all three Harrah's transactions close, with $51 million of the amount attributed to Harrah's AC at the time that potential sale transaction closes. The parties anticipate that the three Harrah's real estate transactions will close simultaneously and upon consummation of the Merger. If that does not occur, the Transaction Agreement is structured so that the closings on the real estate asset sales of Harrah's AC, Harrah's Laughlin and Harrah's New Orleans need not occur simultaneously with the Merger or with each other.

Upon the closing of the Merger, ERI will become guarantor of the rent payments and other obligations required under the Master Lease and the CPLV Lease and will additionally become guarantor of the separate lease regarding Harrah's Joliet in Illinois. Further, the VICI REIT lease regarding Harrah's Las Vegas will be terminated and that property will be added to the CPLV Lease. Moreover, the Transaction Agreement includes put-call rights regarding the real estate assets of two Indiana properties which CRC acquired from Centaur Holdings, LLC--Hoosier Park and Indiana Grand (Centaur Properties). If certain conditions exist, the put right agreement gives CRC the right to require VICI REIT to purchase the Centaur Properties and enter a leaseback arrangement with CRC. Similarly, the call right agreement gives VICI REIT the right to require CRC to sell the Centaur Properties to VICI REIT and likewise enter a leaseback arrangement with CRC. Finally, VICI REIT will have rights of first refusal with regard to potential sale and leaseback transactions regarding Horseshoe Baltimore and the first two Las Vegas strip properties ERI may elect to sell from among Flamingo Las Vegas, Paris Las Vegas, Planet Hollywood and Bally's Las Vegas.

Under the existing Master Lease, landlord entities Bally's Atlantic City LLC and Caesars Atlantic City LLC (AC PropCos) with regard to the VICI REIT leasing arrangements for Bally's AC and Caesars AC have previously been licensed as csie licensees. *See* Director Order Nos. 1783 and 1784, entered September 11, 2018. With PRN 3571901 and pursuant to *N.J.S.A.* 5:12-82, the AC Licensees, ERI and VICI REIT seek a ruling from the Commission, as was granted regarding the AC PropCos, that the newly-created landlord entity for Harrah's AC, Harrah's Atlantic City LLC (Harrah's Landlord), be designated as a csie applicant, rather than a casino license applicant.

The petition further seeks approval for the sale of the Harrah's AC real estate to VICI REIT, and approval of amendments to the Master Lease to include Harrah's AC, as well as Harrah's Laughlin and Harrah's New Orleans. Again, such proposal is subject to a specific licensure condition imposed by the Commission upon the Caesars Restructuring.

Thus, by the proposed Harrah's AC sale, CEC, ERI and VICI REIT seek to place the third of the AC Licensees into the REIT with VICI. As the Commission is further aware, the real estate assets of Trop AC are also subject to a REIT arrangement with GLP Capital, L.P., a subsidiary of Gaming and Leisure Properties, Inc. (GLPI). Accordingly, if the Merger is approved and the VICI REIT transaction as to Harrah's AC is approved, all of the New Caesars prospective casino licensees will be owned by REITs. Because the sale of these additional Harrah's AC real estate assets to VICI REIT is inextricably intertwined with the Division's overall review of the Merger and the concerns the Division has regarding the Merger, the Division's further discussion of PRN 3571901 is set forth in Section VII., below.

On April 24, 2020, Bally's AC entered an asset purchase agreement with a subsidiary of Twin River Worldwide Holdings Inc. (Twin River) for the sale of certain assets of Bally's AC. On the same date, Twin River and an affiliate of VICI REIT entered a purchase and sale agreement for the real estate assets of Bally's AC. The overall price for the sale is $25 million, with VICI REIT receiving $19 million of that sum and CEC receiving the remaining $6 million. The Bally's AC sale transactions exclude the Wild Wild West (Wild West) casino area and The Book sports wagering area, both of which will be integrated with Caesars AC. If the sale of Bally's AC to Twin River is

consummated, ERI ultimately would hold following the Merger as a result of the Bally's AC sale two, rather than three, casino hotel facilities in Atlantic City currently operated by CEC.

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III. QUALIFIERS

A. Entities

1. Colt Merger Sub, Inc.

Colt Sub is a Delaware corporation formed on June 20, 2019 for the purpose of effectuating the merger of ERI and CEC. Colt Sub's principal office is in Reno, Nevada. As an entity formed to facilitate the merger, Colt Sub is an entity qualifier in connection with the pending petition. This entity qualifier status will exist from the time of any approval of the Merger, if granted by the Commission, until closing of the Merger. In order to have the proper authorization to complete the Merger transactions, Colt Sub obtained a business registration certificate from the New Jersey Division of Revenue effective November 26, 2019.

2. Caesars Entertainment, Inc.

As set forth in the Petition and above, ERI, following the closing, will convert to a Delaware corporation and change its name to Caesars Entertainment, Inc. As New Caesars will be the parent holding company post-Merger, the provisions of *N.J.S.A.* 5:12-82d(7) and (9) and -105 require that its certificate of incorporation contain language regarding the divestiture of securities holdings in the event a holder is found disqualified and that upon any finding of disqualification, the interest holder may receive no benefits or remuneration from the interest, nor may the holder exercise any rights. The Division has reviewed the proposed certificate of incorporation for New Caesars and these requisite provisions are included.

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The current intermediary holding companies of the existing CEC properties will remain post-Merger if the transactions are approved, namely: CEC, CGP, CRC, and CEOC, and as to Caesars AC only, Caesars World, LLC and Caesars New Jersey, LLC. Similarly, Tropicana Entertainment, Inc. (TEI) will remain the intermediary holding company of Trop AC with New Caesars being its ultimate parent. All of these companies remain qualified pursuant to prior licensing proceedings related to CEC and ERI. *See* Resolution Nos. 17-07-11-10 and 19-06-11-21.[5]

3. <u>Entities Holding Shareholder Interests Over 5%</u>

As of the June 24, 2019 date of the Merger Agreement, Recreational Enterprises, Inc. (REI) held 14.37% of the issued and outstanding common stock shares of ERI. With the plenary qualification of ERI, the Commission qualified REI as a security holder pursuant to *N.J.S.A.* 5:12-85.1. *See* Resolution No. 19-06-11-21. As set forth in the Division's May 22, 2019 report on ERI's plenary qualification, REI, on December 18, 2018, had entered a margin loan agreement with JPMorgan Chase Bank, N.A. (Chase) for a loan secured by approximately 4.9%, or about one-third, of the 14.37% interest REI owned in ERI shares. Due to declines in the stock price of ERI shares, Chase issued a margin call notice to REI. In response, REI chose to allow the sale of ERI shares to address the margin call on the loan, with sales occurring on March 17 and March 18, 2020. As of March 18, 2020, the percentage of REI's holdings in ERI is 11.06%.

[5] Currently, casino license resubmissions are pending for the AC Licensees. In light of the CEOC bankruptcy reorganization, subsequent events including entities affiliated with Carl C. Icahn acquiring an over 5% interest in CEC, and the pending ERI-CEC merger, the Division will address the pending casino license resubmissions for the AC Licensees following determinations as to the Merger transactions.

As of August 8, 2019, Carl C. Icahn, and entities affiliated with or controlled by him (Icahn Group), held 17.55% of the issued and outstanding common stock shares of CEC. Mr. Icahn and most of the entities through which the CEC shares are held have been previously qualified. *See* Resolution Nos. 10-11-10-21 and 15-06-10-9 and the Division's 2016 Casino License Resubmission Report to the Commission regarding Trop AC following its investigation. High River Limited Partnership and Hopper Investments LLC, which collectively hold a small percentage of the total 17.55% CEC ownership, have not previously been qualified and will be addressed through the pending casino license resubmissions of the AC Licensees as described above. Business Entity Disclosure Forms and Personal History Disclosure Resubmission Forms for required entities and individuals of the Icahn Group will be filed with the Division by July 31, 2020.

Both ERI and CEC have various institutional investors owning over 5% of the respective companies' common stock. Waivers pursuant to *N.J.S.A.* 5:12-85.1g have been addressed previously by the Division as appropriate. Since the Merger will impact the holdings of the respective institutional investors as they relate to New Caesars, any further waivers will be addressed after the Merger in the event the Commission approves the transactions. To address these circumstances, the Division intends to recommend a Condition to require New Caesars to take all necessary steps with such institutional investors to ensure that within 60 days of any Merger closing that the appropriate certifications are filed to obtain waivers of the qualification requirement under Section 85.1g of the Act.

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B. Individuals

Regarding natural person qualifiers of ERI, the Director of the Division entered Order 1777 on August 21, 2018 designating the necessary officers and directors required to qualify. There were some slight changes to titles and executive management during the Division's plenary qualification investigation and thereafter, with the following list setting forth the current and already-qualified senior executives of ERI, who are to remain in place with New Caesars:

Anthony L. Carano	President and Chief Operating Officer
Gary L. Carano	Executive Chairman of the Board
Jeffrey P. Hendricks	Vice President Compliance
Stephanie Lepori	Chief Administrative Officer
Edmund L. Quatmann, Jr.	Executive Vice President, Chief Legal Officer and Secretary
Thomas R. Reeg	Chief Executive Officer and Director
Bret D. Yunker	Chief Financial Officer[6]

In addition to the above, Stephen Callender, Senior Vice President of Regional Operations, will be designated as Regional President post-Merger. Mr. Callender holds a current casino key employee license. Further, Ronald Ellis was plenarily qualified by the Commission as Senior Vice President Internal Audit for ERI on August 7, 2019. *See* Resolution No. 19-08-07-10. Mr. Ellis resigned effective February 21, 2020. Karin Brugler, Director of Internal Audit for ERI, is temporarily handling these duties. Ms. Brugler holds a casino key employee license as she fulfills the mandatory internal audit position for Trop AC as required by *N.J.A.C.* 13:69D-1.11. If the Merger is approved, ERI anticipates that Karl Stingily, Chief Internal Auditor for CEC, will assume these duties for New Caesars. Mr. Stingily is currently qualified as an executive of CEC.

[6] Mr. Yunker was plenarily qualified by the Commission on December 19, 2019 after ERI's plenary qualification on June 11, 2019. *See* Resolution No. 19-12-11-12.

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Finally, Anthony Rodio, Chief Executive Officer of CEC, is expected to remain with New Caesars for a period of time as a Strategic Advisor. Mr. Rodio is qualified as an executive of CEC and holds a current casino key employee license.

Regarding the Board of Directors, in addition to Mr. Reeg and Mr. Gary Carano, the following are the proposed New Caesars Directors:

Bonnie Biumi	Current Director, ERI
Frank J. Fahrenkopf, Jr.	Current Director, ERI
Michael E. Pegram	Current Director, ERI
David P. Tomick	Current Director, ERI
Janis Jones Blackhurst	Current Director, CEC
Keith Cozza	Current Director, CEC
Donald Kornstein	Current Director, CEC
Courtney Mather	Current Director, CEC
James L. Nelson	Current Director, CEC

The first four listed proposed board members were qualified in connection with ERI's plenary qualification as a holding company of Trop AC in June 2019. *See* Resolution No. 19-06-11-21. Messrs. Cozza and Nelson remain qualified pursuant to Division investigations conducted in connection with their previous positions within the corporate structure of casino licensee Trop AC. Mr. Kornstein has been a qualified Director of either CEC or its former affiliate Caesars Acquisition Company since 2014. Mr. Mather remains qualified pursuant to a Division investigation conducted in connection with his previous positions within the corporate structure of former casino licensee Trump Taj Mahal Associates, LLC. Ms. Blackhurst is a new CEC Director, and she was plenarily qualified by the Commission on May 6, 2020. *See* Resolution No. 20-05-06-10.

Recently, ERI has been submitting information to the Division regarding further post-Merger plans for New Caesars executives and other management, which in some areas includes retention of CEC executive staff. As a result of such information and discussions with ERI, the following additional individuals have been designated as qualifiers in connection with the proposed Merger, given their job responsibilities and/or reporting relationships in connection with the AC Licensees or CIENJ:

Keith Causey	Senior Vice President Strategic Business Services & Information Technology
Brandi Ellis	Senior Vice President VIP Marketing
Kevin Fulmer	Vice President Digital Sports, Caesars Interactive Entertainment, Inc. and CIENJ
Eric Golebiewski	Vice President Security Operations
Josh Jones	Senior Vice President of Operations
Gregg Klein	Vice President of Operations

The Division has requested that ERI file the necessary applications and petitions for temporary qualification, and for temporary casino key employee licensure as well as qualification for Mr. Fulmer in connection with his CIENJ position, to proceed with such requests before the Commission no later than July 15, 2020, notwithstanding when a hearing regarding the Merger approval requests is held.

No changes have yet been proposed regarding casino key employee qualifiers or casino key employees of the AC Licensees. As executive and/or local management plans continue to develop, the Division will review such information and the Director will make necessary determinations of additional qualifiers or casino key qualifiers as appropriate. Given the potential for ongoing changes and if the Commission approves the Merger, the Division intends to recommend a Condition be imposed requiring New Caesars to submit to the Division for its review and approval no later than 30 days after

the closing of the Merger, if approved, an organizational plan addressing proposed changes to casino key employee and/or qualifier positions at any of the AC Licensees or Trop AC, and that no person may perform the duties and responsibilities of positions requiring casino key employee licensure or qualification without obtaining the necessary temporary or plenary authorization.

IV. OTHER CASINO LICENSING MATTERS

A. Audit Committee

ERI has represented to the Division that the New Caesars Board of Directors will select the members of the independent audit committee. It has further been represented that the audit committee will continue to be governed by the ERI audit committee charter which was previously approved by the Division. *See* Order PRN 2321801(a). As the intentions of ERI could change post-Merger, the Division will recommend a condition that within 60 days of any closing date of the Merger, if approved, New Caesars confirm that the existing ERI audit committee charter will continue to govern the operations of its independent audit committee. Further, since the composition of the audit committee will not be available at the time the Commission considers the pending Merger matters, the Division recommends that a condition be imposed requiring New Caesars to notify the Division regarding the committee membership within 30 days after any closing date of the Merger, if approved. In addition, the independent audit committee members will presumably be selected from the qualified independent directors who will serve on the New Caesars board. In the event that does not occur, the Division will further recommend that New Caesars be required to ensure that all members are temporarily or plenarily qualified prior to serving on the independent audit committee.

B. Compliance Committee

Similar to the membership of the independent audit committee, the New Caesars board will select the members of the requisite compliance committee. As set forth in the

Petition, ERI intends to retain and follow its Amended and Restated Gaming Compliance Plan (Compliance Plan) which was previously approved by the Division. *See* Order PRN 2321801(b). As the intentions of ERI could change post-Merger, the Division will recommend a condition that within 60 days of any closing date of the Merger, if approved, New Caesars confirm that the ERI Compliance Plan will continue to govern the operations of its compliance committee and program. Since the composition of the compliance committee will not be available at the time the Commission considers the pending Merger matters, the Division recommends that a condition be imposed requiring New Caesars to notify the Division regarding the committee membership within 30 days after any closing date of the Merger, if approved. In addition, the compliance committee members may be selected from the already-qualified directors who will serve on the New Caesars board. In the event that does not occur, the Division further recommends condition that New Caesars be required to ensure that all members are temporarily or plenarily qualified prior to serving on the compliance committee.

C. Equal Employment Business Opportunity Plan

As noted in the Petition, the AC Licensees of CEC each have an existing equal employment business opportunity plan (EEBOP) previously approved by the Division. Petitioners indicate that each approved EEBOP will remain in effect post-Merger. Trop AC has the most recently approved EEBOP of the prospective New Caesars' casino licensees, as it was reviewed by the Division during the casino license resubmission of Trop AC and approved by Director Order on March 28, 2017. *See* Order No. 1554. The respective EEBOPs for Bally's AC, Caesars AC and Harrah's AC would be

reviewed during the casino license resubmissions for the AC Licensees which remain pending and will proceed following the outcome of the Merger transactions. For continuity purposes, the Division will recommend a condition that within 60 days after any closing date of the Merger, if approved, that New Caesars submit to the Division for review and approval EEBOPs, which should be conformed to the previously and most-recently approved plan of Trop AC, to set forth uniform policies and procedures to be applied to each of the prospective New Caesars casino licensees.

D. Litigation

Within a few months of the Merger announcement, several complaints were filed against ERI and CEC, as well as their respective Directors and executives. A total of eight lawsuits were filed after the September 2019 Form S-4 Registration Statement submission by ERI and CEC with the United States (U.S.) Securities and Exchange Commission (SEC). Primarily, these lawsuits alleged that those SEC filings did not disclose certain information regarding financial projections for each company, and therefore the Registration Statements were "materially incomplete and misleading" in order to induce the respective boards and shareholders to vote in favor of the Merger. These complaints were generally filed in U.S. District Court, with one complaint filed in Nevada state court, as follows:

U.S. District Court, District of Delaware
Shiva Stein v. CEC, *et al.* filed September 5, 2019
Dennis Palkon, *et al.*, v. CEC, *et al.* filed September 9, 2019
Andrew Gershman, *et al.*, v. CEC, *et al.* filed September 12, 2019

U.S. District Court, District of New Jersey
Eldon Romaniuk v. CEC, *et al.* filed September 11, 2019

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U.S. District Court, Southern District of New York

Larry Biasi v. CEC, *et al.*	filed September 13, 2019
Marathon Capital LLC v. CEC, *et al.*	filed September 26, 2019
James Yarbrough v. CEC, *et al.*	filed October 18, 2019

State of Nevada District Court, Clark County

Joshua Cazer v. CEC and ERI*, et al.*	filed September 13, 2019

On October 4, 2019, ERI and CEC filed Amendment No. 1 to the Registration Statement, which included supplemental disclosures and thereafter yielded resolutions of the above-referenced complaints. As of the date of this Report, all the lawsuits listed above have been voluntarily dismissed.

On September 23, 2019, the additional complaint of Paul Elberts, *et al.* v. ERI, *et al.* was filed in the U.S. District Court for the District of New Jersey. That complaint did not contest the Merger specifically, but rather alleged that the ERI Form 10Q filed with the SEC on August 9, 2019 was "materially false and/or misleading" because that form failed to disclose that certain executives of ERI, namely Anthony Carano, Gary Carano, and Thomas Reeg, had received subpoenas from the SEC regarding an investigation of the securities of a company on which ERI Director James Hawkins also served on the board. This information was disclosed in ERI's Form S-4 Registration Statement filed September 3, 2019. The complaint alleged that as a result of the September 3 disclosures, the share price of ERI stock fell 8%, injuring shareholders. This complaint was voluntarily dismissed on March 17, 2020.

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E. Regulatory Matters

1. Regulatory Violations in Missouri

On May 15, 2018, ERI, a Class A riverboat gaming license holder in Missouri, and GLPI, a key business entity license holder in Missouri, filed a Petition for Change of Control with the Missouri Gaming Commission (MGC) to transfer ownership of the real estate assets of ERI's St. Louis casino property acquisitions to GLPI. To resolve certain concerns of the MGC as to market concentration in the St. Louis area by GLPI, ERI and GLPI entered into an Agreement to Restructure the Transaction (ART), whereby ERI would directly acquire Lumière Place with a financing loan from GLPI and use reasonable efforts to contribute a replacement property to GLPI within approximately 24 months. The parties filed the ART with an amended petition, attaching documents including a deed of trust, loan agreement, and promissory note (collectively, Loan Documents) for the MGC's review and approval.

On September 26, 2018, the MGC approved the ART, the petition and the Loan Documents subject to certain conditions in its Resolution No. 18-049. Importantly, the resolution ordered the parties to comply with the terms of the Loan Documents which prohibited the amendment or revision of any of those documents without the express written consent of the MGC. The MGC further ordered the parties to deliver copies of all final Loan Documents within three days of their execution or recording. The MGC learned that the transaction closed on October 1, 2018, but copies of the Loan Documents were not delivered to the MGC until October 23, 2018 when by condition they were due by October 4, 2018. This delay, along with discovery that the recorded

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Loan Documents contained amendments not authorized by the MGC, including the addition of options for extension of the loan term, resulted in the imposition of a fine against ERI of $35,000.[7] ERI did not challenge the findings of the September 25, 2019 Preliminary Order of Disciplinary Action by the MGC, so that order became final. ERI paid the $35,000 fine in full on October 30, 2019.

2. Regulatory Concerns Following Grant of Interim Casino Authorization to Eldorado Resorts, Inc.

Immediately after its October 1, 2018 acquisition of TEI and Trop AC, ERI implemented staffing changes without prior notice to or discussion with the Division as set forth in more detail below. The lack of communication, notice or discussion with the Division regarding these issues occurred despite the Division's specific questioning of ERI witnesses at the September 12, 2018 ICA hearing before the Commission regarding ongoing operations at Trop AC, including anticipated changes to staff after the TEI acquisition. The ERI staffing changes were the following:

- First, Trop AC notified the Division on October 2, 2018 that eight officers at Trop AC and/or TEI had been terminated, which included no context as to the circumstances or reasons for their terminations or whether the positions were eliminated.

- Second, Trop AC inquired of Division staff on October 3, 2018 how ERI's employees in Nevada could obtain casino employee registrations to allow them to perform Help Desk functions remotely for Trop AC, again with no explanation as to ERI's plans or soliciting any approval for consolidation of functions.

- Third, Trop AC notified the Division on October 11, 2018 that four ERI executives had been appointed officers of Trop AC and TEI in the titles of

[7] On September 25, 2019, the MGC also entered a Preliminary Order of Disciplinary Action against GLPI for the same alleged violations of Resolution No. 18-049. GLPI entered into a settlement agreement with the MGC to resolve its claims, agreeing to pay a $100,000 fine without any admission of liability or guilt. The MGC approved the settlement agreement on October 11, 2019.

Chief Executive Officer, President and Chief Financial Officer, Executive Vice President and Chief Operating Officer, and Executive Vice President and Chief Legal Officer, without any advance inquiry as to the licensing which may be required for these casino licensee officer appointments.

- Fourth, Trop AC notified the Division on October 15, 2018 that three ERI executives had been appointed as Directors of Trop AC and TEI, following a specific Division request.
- Finally, Trop AC submitted a post-closing table of organization (TO) on October 29, 2018 which, when compared with the prior TO, revealed that a total of 32 positions had been eliminated, including the Information Security Officer (ISO) which is a mandatory position under *N.J.A.C.* 13:69D-1.11b(3).

The Division set forth its concerns regarding ERI's failure to timely and fully vet the above staffing changes in a letter dated November 1, 2018. In its response of November 2, 2018, ERI submitted information, clarification, and its apologies regarding failures to adhere to certain regulatory requirements due to asserted inadvertence or a misunderstanding of those requirements. ERI further proposed weekly conference calls with Division staff to ensure any future concerns would be timely addressed.

The Division's concerns were mostly resolved by ERI's letter of November 2, 2018 as follows, as well as through weekly conference calls which were held thereafter from November 2018 through April 2019 to ensure ongoing necessary notifications in various areas:

- Regarding the first issue of staff terminations, ERI explained in its November 2, 2018 letter that the termination of Trop AC officers was meant to eliminate unnecessary or duplicative corporate positions.
- Regarding the second issue of the Help Desk, ERI explained in its November 2, 2018 letter that no plans with respect to the Help Desk had been implemented and it acknowledged that any such shared services arrangements would require Division approval. As of the date of this Report, no further action has been taken by ERI to centralize the Help Desk.

- Regarding the third and fourth issues of officer and director appointments, ERI advised it had understood these appointments to be consistent with the list of initial qualifiers submitted during the ICA process. Following a review of additional information submitted by ERI, the Division determined that it was not acceptable for out-of-state ERI executives to serve as officers for Trop AC in the contemplated titles and ERI agreed, recognizing that with its growth in recent years such positions held at each casino by ERI executives was no longer a workable or considered approach; however, it was determined that Edmund Quatmann, Jr. could serve as Secretary for Trop AC to facilitate the execution of corporate documents as needed.

- Regarding the final issue of the TO, ERI explained that 32 positions had not been eliminated; rather, Trop AC removed several positions from the TO which had been vacant for some time. Furthermore, the ISO had been erroneously deleted from the TO and had not been terminated. An explanation of all TO changes was submitted to the Division on November 5, 2018.

While the Division did not raise the above issues by way of any objection in its report on the plenary qualification of ERI filed with the Commission on May 22, 2019, these matters are listed here as background and as a foundation for Division concerns regarding certain additional matters which were either pending at the time of or arose during the period since the Merger was announced in June 2019. The Division is actively investigating or monitoring such matters as appropriate, which could result in necessary regulatory action against ERI as New Caesars and/or have an impact as to the individual qualification of certain officers or directors.

Finally, as set forth within this Report specifically in the Financial Review and Analysis, Section V., below, the above initial regulatory compliance issues support the overall heightened Division concerns as to ERI's ability to manage and comply with regulatory requirements post-Merger as a dramatically-larger company. ERI responded to information requests throughout the Division's investigation of the Merger, but up until early 2020 it communicated with a pattern of non-specific information as to

the impact of the Merger on the AC Licensees and Trop AC regarding the primary areas of capital expenditure improvements, proposed cost cuts and consolidation measures (Measures) referred to as synergies, and staffing changes, all of which negatively impacted the Division's initial ability to adequately evaluate the transaction and raise concerns as to the ability of ERI as New Caesars to satisfactorily meet and adhere to its regulatory responsibilities as a significantly-expanded operation.

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V. FINANCIAL REVIEW AND ANALYSIS

In order for the Merger to be approved, the Act requires ERI and CEC to produce such information, documentation and assurances as may be required to establish the financial stability of New Caesars by clear and convincing evidence. To assess financial stability, the Division evaluated ERI's and CEC's historical operating results, proposed combined debt structure and lease arrangements, and forecasts through December 31, 2022. At the request of the Division, the financial forecasts were updated on April 30, 2020 (April Forecasts) to reflect the anticipated financial impact of the COVID-19 health crisis. To the extent pertinent, the material changes between the April Forecasts and the projections previously submitted on February 14, 2020 (February Forecasts) are summarized within this analysis.

This report also addresses the anticipated impact of the Merger on the Atlantic City properties, particularly Caesars AC and Harrah's AC. As previously discussed, Twin River entered into an agreement to acquire Bally's AC, excluding the Wild West component of that property which will be integrated into Caesars AC. Accordingly, Bally's AC would not be a part of New Caesars upon the anticipated closing of that sale. As to Trop AC, the Merger will have no immediate or direct impact on that licensee, except in the context of undue economic concentration, future capital expenditure plans and the overall increased debt structure of New Caesars after the transaction.

A. Pre-Merger Financial Impact of Casino Closures

The March 2020 casino closures nationwide due to COVID-19 have had a dramatic financial impact on ERI and CEC to date and will have an impact on the future

operating results of New Caesars as well. As an initial step, both ERI and CEC borrowed essentially all available capacity on their revolvers to enhance their financial flexibility given the uncertainty in financial markets and the unknown length of operational disruption. Specifically, on March 16, 2020, CEC announced that it had fully drawn the remaining $1.15 billion in available capacity under its revolving credit facilities, increasing its cash balance to approximately $2.8 billion at that time. On the same day, ERI borrowed $465 million on its $500 million revolver (ERI Revolver) and maintained approximately $671 million in cash as of March 31, 2020.

With a disruption in business operations of this magnitude, additional liquidity becomes critical to address the operating losses that will be incurred during the shutdown period, as well as other cash requirements such as interest and lease payments. As shown in the table below, management is projecting a combined operating loss of $348 million between March and June 2020, a dramatic reduction from the $1.192 billion in property-level earnings before interest, taxes, depreciation and amortization (Property EBITDA)[8] for that same period in 2019:

Table 1
ERI and CEC
Combined Property EBITDA (Operating Loss)
For the Four Months Ending June 30, 2020
($ in Millions)

EBITDA (Operating Loss)	March (Actual)	April (Estimate)	May (Forecast)	June (Forecast)	Total
2019	$337	$273	$282	$300	$1,192
2020	(68)	(144)	(138)	2	(348)
Decrease	($405)	($417)	($420)	($298)	($1,540)

[8] Property EBITDA reflects the operating results of the casino properties before lease payments, synergy Measures, and corporate expenses.

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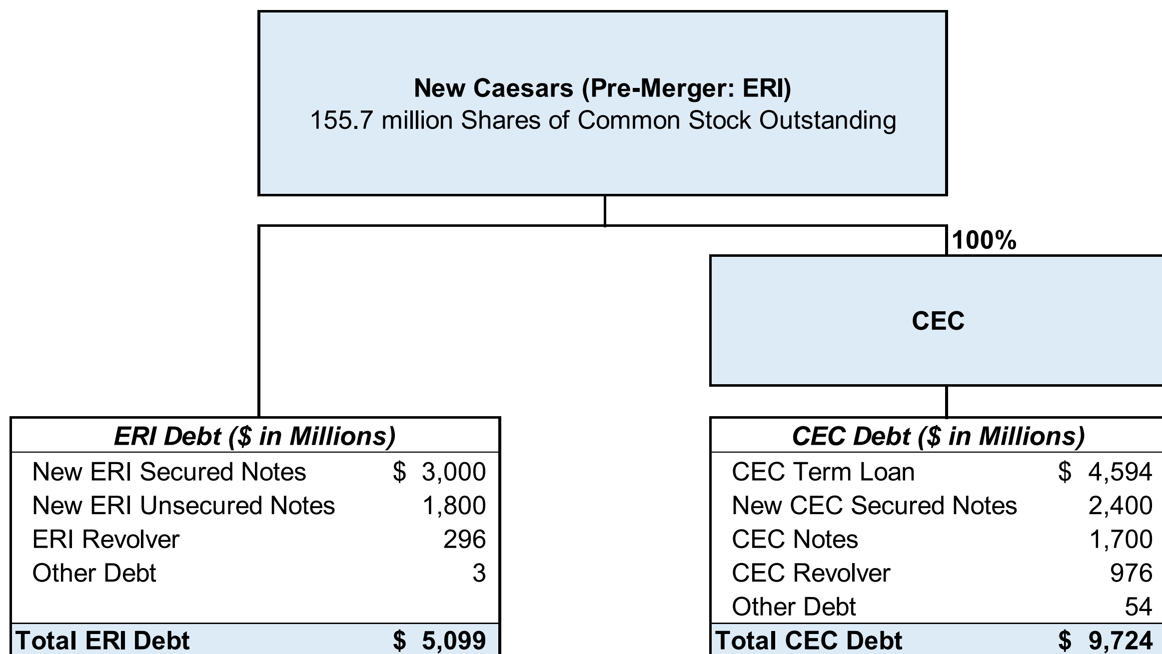
Given the $1.54 billion projected decrease in Property EBITDA prior to the Merger, the casino shutdown will impact the combined debt structure and projected financial flexibility upon a closing of the proposed transaction, which is discussed in Section B., Summary of the Merger, below. The health crisis also will have a significant impact on operating results and cash flows during the forecast period, which is addressed in Section E., April Forecasts, below.

B. Summary of the Merger

The condensed post-Merger ownership and debt structure of New Caesars is expected to be as follows:

Chart 1
Caesars Entertainment, Inc.
Post-Merger Condensed Capital Structure
Assuming a July 1, 2020 Closing Date



New Caesars is expected to have $14.823 billion in debt at a closing of the Merger, with $9.724 billion in debt at CEC[9] and $5.099 billion in ERI debt at New Caesars. With this type of ownership and debt structure, the financial stability of ERI and CEC must be considered individually, as well as on a consolidated basis through New Caesars. In this report, certain references to ERI reflect the properties and debt components associated with the ERI subsidiaries after the Merger.

1. Sources and Uses of Cash

On an assumed closing date of July 1, 2020, ERI expects to need $13.93 billion to fund the Merger, consisting of the following sources of cash:

- $7.496 billion in new debt borrowings;
- $3.203 billion from real estate asset sales to VICI REIT;
- $1.728 billion from the issuance of ERI common stock based on the common stock price at the end of April 2020;
- $1.278 billion in cash contributions from ERI and CEC; and
- $225 million from pre-Merger asset sales.

As summarized in the following table, these sources of cash are expected to be used to acquire CEC's outstanding common stock, refinance a portion of CEC's outstanding debt, satisfy transaction fees and expenses, and pay the Ticking Fee to CEC shareholders:

[9] CEC's debt will be maintained at CRC, a wholly-owned subsidiary of CEC. After the closing of the Merger, CEC will change its name to Caesars Holdings, Inc.

Table 2
ERI and CEC Merger
Condensed Sources and Uses of Cash
Assuming a July 1, 2020 Closing Date
($ in Billions)

Sources of Cash		Uses of Cash	
New Debt Borrowings	$ 7.496	Acquire CEC Common Stock	$ 8.964
ERI Common Stock Proceeds	1.728	Refinance Existing Debt	4.181
VICI REIT Transactions Proceeds	3.203	Merger Fees and Expenses	0.509
ERI/CEC Cash Contributions - net	1.278	Ticking Fee	0.276
Pre-Merger Asset Sale Proceeds	0.225		
Total Sources of Cash	$13.930	Total Uses of Cash	$13.930

The Ticking Fee, debt transactions, VICI REIT transactions, and asset sales are discussed below.

2. Ticking Fee

Pursuant to the Merger Agreement, ERI was required to obtain HSR Act approval and all state gaming regulatory approvals by March 24, 2020 or pay the Ticking Fee thereafter. Since those approvals were not obtained by that date, the aggregate consideration paid by ERI to acquire CEC's common stock increased by $0.003333 per share for each day commencing March 25, 2020 until the closing date of the Merger. Based on an assumed closing date of July 1, 2020, the Ticking Fee is approximately $276 million.

3. Long-Term Debt

Immediately prior to the Merger, ERI is expected to maintain $2.807 billion in debt, consisting of $1.85 billion in senior unsecured notes (ERI Notes), a $489 million balance on a term loan (ERI Term Loan), the $465 million outstanding balance on the $500 million ERI Revolver, and $3 million in other debt. Under the April Forecasts, ERI

is expected to obtain $3 billion in new senior secured notes (New ERI Secured Notes) and $1.8 billion in new senior unsecured notes (New ERI Unsecured Notes) in connection with the Merger. Additionally, ERI intends to obtain a new $1 billion revolving credit facility (New ERI Revolver) to replace the existing ERI Revolver. The new borrowings will be used to repay ERI's existing debt (except for the $3 million in other debt) and fund other Merger cash needs.

CEC, meanwhile, is expected to maintain $8.54 billion in debt prior to the Merger, consisting of a $4.594 billion CEC term loan (CEC Term Loan), a $1.216 billion CEOC term loan (CEOC Term Loan), $1.7 billion in senior unsecured notes (CEC Notes), $976 million outstanding on a $1 billion revolving credit line (CEC Revolver), and $54 million in other debt. Under the April Forecasts, CEC expects to obtain $2.4 billion in new senior secured notes (New CEC Notes) and use the proceeds to repay the $1.216 billion CEOC Term Loan and fund other Merger cash needs. The $4.594 billion CEC Term Loan, $1.7 billion in CEC Notes, and the $976 million outstanding balance on the CEC Revolver are expected to remain in place after the Merger.[10]

Overall, New Caesars' long-term debt is expected to increase by $3.476 billion, or 31%, on a combined basis after the Merger, as shown in the following table:

[10] $1.1 billion of CEC convertible notes are expected to be converted into a mix of stock and cash similar to that received by CEC's common shareholders under the Merger.

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Table 3
New Caesars
Long-Term Debt
Pro Forma as of July 1, 2020 and Forecasted as of December 31, 2022
($ in Millions)

Debt Component	Pro Forma Pre- Merger at 7/1/20	Adjustments	Post-Merger at 7/1/20	Forecasted Balance at 12/31/22
ERI Debt:				
ERI Notes	$ 1,850	($1,850)	$ -	$ -
ERI Term Loan	489	(489)	-	-
New ERI Secured Notes	-	3,000	3,000	3,000
New ERI Unsecured Notes	-	1,800	1,800	1,800
ERI Revolver/New Revolver	465	(169)	296	537
Other	3	-	3	3
ERI Total	$ 2,807	$2,292	$ 5,099	$ 5,340
CEC Debt:				
CEC Term Loan	$ 4,594	$ -	$ 4,594	$ 4,486
CEOC Term Loan	1,216	(1,216)	-	-
CEC Notes	1,700	-	1,700	1,700
New CEC Notes	-	2,400	2,400	2,400
CEC Revolver	976	-	976	-
Other	54	-	54	54
Caesars Total	$ 8,540	$1,184	$ 9,724	$ 8,640
New Caesars Total	$11,347	$3,476	$14,823	$13,980

After the Merger, New Caesars expects to maintain $14.823 billion in debt. According to the April Forecasts, the individual components and interest rates associated with New Caesars' debt structure are expected to be as follows:

- $9.724 billion in debt at CEC:
  - $4.594 billion CEC Term Loan is expected to have an interest rate of approximately 3.1% at closing and matures in 2024. The Term Loan requires $48 million in annual principal repayments and is secured by substantially all of the assets of CEC and its subsidiaries.
  - $2.4 billion in 6% New CEC Notes maturing in 2025 – No annual principal repayments are required until maturity with the notes guaranteed by CEC and its major subsidiaries.

- $1.7 billion in 5.25% CEC Notes maturing in 2025 – No annual principal repayments are required until maturity with the notes guaranteed by CEC and its major subsidiaries.
- $976 million outstanding on the CEC Revolver
- $54 million in other debt.

- $5.099 billion in ERI debt at New Caesars:[11]
  - $3 billion in 6% New ERI Secured Notes expected to mature in 2027 – No annual principal repayments are required until maturity with the notes guaranteed by New Caesars and its major subsidiaries above CEC and are senior to the New ERI Unsecured Notes.
  - $1.8 billion in 8% New ERI Unsecured Notes expected to mature in 2028 – No annual principal repayments are required until maturity with the notes guaranteed by New Caesars and its major subsidiaries above CEC.
  - $296 million outstanding on the New ERI Revolver
  - $3 million in other debt.

Going forward, New Caesars plans to use the proceeds from post-Merger asset sales and excess cash flow to reduce outstanding revolver borrowings. For the three-year forecast period, management projects $843 million in debt repayments through year-end 2022, consisting of approximately $108 million in scheduled debt repayments and approximately $735 million in net repayments on the CEC Revolver and New ERI Revolver. Overall, New Caesars expects to reduce its consolidated debt balance from $14.823 billion immediately after the Merger to $13.980 billion at year-end 2022. Notably, the earliest debt maturity post-Merger is expected to be the CEC Term Loan in 2024.

[11] ERI also guarantees a $246 million note that was used to finance the acquisition of Lumière Place Casino & Hotels in St. Louis, Missouri as part of the TEI acquisition. ERI expects to satisfy the note by either obtaining regulatory approval in Missouri for a restructured sale of real estate to GLPI or by placing other real estate assets into the REIT with GLPI. For purposes of this report, this financing obligation is included in the GLPI lease payments.

It should be noted that New Caesars' sources and uses of cash in Table 2 and the post-Merger debt structure summarized in Table 3 have changed frequently since the Merger was first announced in June 2019, with significant adjustments occurring between the February Forecasts and the April Forecasts. In addition, ERI announced a number of financial transactions in mid-June 2020 that are not included in the April Forecasts, but which are discussed in Section G., Subsequent Events, below. Although the Division has seen some modifications to proposed transactions in the past, it has never experienced such dramatic changes to a merger proposal and financial projections while it is still pending regulatory approval. If the Commission approves the Merger, the Division recommends that a condition be imposed requiring ERI to submit updated April Forecasts to the Division (Updated April Forecasts), which should include the actual sources and uses of cash on the closing date, as well as the actual post-Merger debt structure and debt service requirements, no more than 30 days after the closing date of the Merger.

4. Revolver Capacity

New Caesars expects to have a total of $2 billion in revolver capacity after the Merger, consisting of the $1 billion New ERI Revolver and the existing $1 billion CEC Revolver (together, Revolvers). Under the April Forecasts, New Caesars expects to have $1.272 billion outstanding on the Revolvers and another $42 million pledged to support letters of credit, leaving around $686 million available for future borrowing. While the CEC Revolver is expected to be gradually repaid during the forecast period, the New ERI Revolver balance is expected to increase. Thus, it is important to evaluate each of the Revolvers to identify any potential issues for either ERI or CEC individually.

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For CEC, there are no projected repayments on the CEC Revolver at closing. Thus, CEC does not expect to have any borrowing capacity post-Merger, which is a concern for the Division. If the April Forecasts are achieved, however, the excess cash generated by the CEC properties are expected to be used to gradually repay the outstanding borrowings on the CEC Revolver by year-end 2022, as illustrated in the following table:

Table 4
ERI and CEC
Analysis of Revolvers
Forecasted as of July 1, 2020 and
As of December 31, 2020, 2021, and 2022
($ in Millions)

	Post-Merger 7/1/2020	Dec. 31, 2020	Dec. 31, 2021	Dec. 31, 2022
CEC Revolver:				
Total Capacity	$1,000	$1,000	$1,000	$1,000
Outstanding Borrowings	(976)	(894)	(553)	-
Letters of Credit	(24)	(24)	(24)	(24)
Available Capacity	$ -	$ 82	$ 423	$ 976
New ERI Revolver:				
Total Capacity	$1,000	$1,000	$1,000	$1,000
Outstanding Borrowings	(296)	(373)	(402)	(537)
Letters of Credit	(18)	(18)	(18)	(18)
Available Capacity	$ 686	$ 609	$ 580	$ 445
Combined Available Borrowing Capacity	$ 686	$ 691	$1,003	$1,421

ERI, meanwhile, expects to have $296 million outstanding on its $1 billion New ERI Revolver after the Merger. In contrast to CEC, the ERI properties are not expected to generate sufficient cash flows to fund ERI's planned cash needs in any year through 2022, which is another concern. To offset the shortfall, ERI expects to borrow on the New ERI Revolver in each year of the forecast period. As a result, ERI's remaining

borrowing capacity is expected to decline from $686 million post-Merger to $445 million as of year-end 2022.

Given the inherent uncertainties regarding the operating results after the casinos reopen, the Division advised ERI that it had serious concerns regarding the limited projected availability on the Revolvers under the April Forecasts. In early June 2020, ERI informed the Division that it was pursuing financial transactions that would enhance New Caesars' liquidity. Proceeds from these transactions would be used to reduce the outstanding balances on the Revolvers, which would then increase future available borrowing capacity. A discussion of recent steps taken by ERI to address post-Merger liquidity is discussed in Section G., Subsequent Events, below.

If the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to submit to the Division a schedule as of the last day of each quarter detailing the amounts borrowed, amounts committed to support letters of credit or other obligations, and remaining borrowing capacity on the New ERI Revolver and CEC Revolver. This submission would be due no more than 20 calendar days after the end of each quarter.

5. Impact of Casino Closures on Debt and Revolver Availability

As previously discussed, for the four months ended June 30, 2020, ERI and CEC are expected to incur a $1.54 billion combined reduction in Property EBITDA, which is their primary source of cash from operations. Accordingly, New Caesars will have a higher level of debt outstanding post-Merger than originally anticipated at the time of the Merger Agreement to offset the Property EBITDA decline. In the February Forecasts,

New Caesars expected to have $13.193 billion in debt outstanding post-Merger. In the April Forecasts, New Caesars now expects to maintain $14.823 billion in debt post-closing, which amount is $1.63 billion higher than the February Forecasts. In addition, the interest rates on certain components of the new debt borrowings are higher than the debt obligations that were incorporated into the February Forecasts, due in part to the associated risk, which interest payments are discussed in Section C., Debt Service Requirements and Lease Payments, below.

Moreover, going forward, lower projected EBITDA results are expected to limit New Caesars' ability to reduce debt compared to the February Forecasts, as illustrated in the following table:

Table 5
New Caesars
Long-Term Debt
Pro Forma as of July 1, 2020 and Forecasted as of December 31, 2022
($ in Billions)

Long-Term Debt	Post-Merger July 1, 2020	Forecast Dec. 31, 2022	Projected Debt Reduction
February Forecasts	$13.193	$10.482	$2.711
April Forecasts	14.823	13.980	843
Higher Debt Level	$ 1.630	$ 3.498	$1.868

Under the February Forecasts, New Caesars planned to use excess cash flow to reduce debt. Overall, management projected $2.711 billion in debt repayments through year-end 2022, which would have reduced New Caesars' debt balance from $13.193 billion immediately after the Merger to $10.482 billion at December 31, 2022. Under the April Forecasts, however, New Caesars is only expected to reduce debt by $843 million during the forecast period. Thus, the $13.980 billion projected debt level at year-end

2022 under the April Forecasts is $3.498 billion, or 33.4%, higher than the $10.482 billion balance under the February Forecasts.

In addition to higher debt levels, the post-Merger availability on the Revolvers under the April Forecasts is projected to be considerably lower than original expectations. Specifically, in the February Forecasts, the combined company expected to have access to $1.958 billion in Revolvers post-Merger, after accounting for $42 million in letters of credit. In the April Forecasts, New Caesars expects to have approximately $686 million in available revolver capacity after closing, reflecting a reduction of approximately $1.272 billion in availability entering the forecast period. This is a significant concern for the Division, given the uncertainty regarding future operating results and cash flows. As previously discussed, however, ERI is addressing this issue through various transactions, which are discussed in Section G., Subsequent Events, below.

6. VICI REIT Transactions

VICI REIT has entered into the Transaction Agreement with ERI, which is expected to provide $3.2 billion to partially fund the Merger, consisting of the following two components:[12]

- $1.8 billion from the proposed sale of the real estate assets of Harrah's AC, Harrah's Laughlin and Harrah's New Orleans to VICI REIT.
- $1.4 billion from an agreement between CEC and VICI REIT to amend the CPLV Lease that increases the annual fixed rent payment on Caesars Palace Las Vegas and Harrah’s Las Vegas by approximately $98.5 million per year.

[12] To obtain additional liquidity, ERI and VICI REIT have also agreed to a certain arrangement relating to a convention center in Las Vegas to mortgage it in advance of a potential sale to VICI REIT. This transaction is discussed in Section G., Subsequent Events, below.

The acquisition of the real estate assets associated with Harrah's AC, if approved, Harrah's Laughlin, and Harrah's New Orleans will add those assets to the Master Lease that currently includes Bally's AC and Caesars AC. The annual rent under the Master Lease is expected to increase by $154 million per year after this transaction. As the Commission is aware, the Master Lease is a triple-net lease, and thus, New Caesars will be responsible for the maintenance, repair, and real estate taxes for the three Harrah's properties to be added to the Master Lease, in addition to those obligations for the CEC properties already owned by VICI REIT. New Caesars will provide a guarantee of rent payments and the performance of the financial obligations under the Master Lease.

As far as capital expenditures, with the addition of Harrah's AC, Harrah's Laughlin, and Harrah's New Orleans to the Master Lease, as well as the removal of Harrah's Reno from the lease after the anticipated sale of that property (*see* Post-Merger Asset Sales, Section 8., below), New Caesars will be required to spend a minimum of approximately $120 million per year on building and improvement capital expenditures across all of the CEC properties under both the Master Lease and the CPLV Lease, with at least $595 million expended every three years.[13]

[13] The capital expenditure amounts are pro forma based on financial data around year-end 2019. The final capital expenditure requirements will incorporate all of the financial data for the period immediately preceding the closing of the Merger and any lease amendments. Notably, there is a pending request by CEC and VICI REIT for regulatory approval of a proposed amendment to the Master Lease to reduce even these minimal capital expenditure requirements for 2020 in light of the health crisis. *See* Section VII., below.

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The Master Lease does not require a specific level of reinvestment into any individual property.[14] Instead, the lease provides flexibility to New Caesars to determine the level of reinvestment across the asset portfolio. While this arrangement may be acceptable to New Caesars and VICI REIT, it does not provide any comfort to New Jersey regulators that even a proportionate share of capital expenditures will be made to Caesars AC and Harrah's AC, even assuming Bally's AC is sold. Later in this report, the Division will provide a comprehensive analysis of capital expenditures for the Atlantic City properties, particularly Bally's AC and Caesars AC which under CEC control have had a poor history and have failed to have sufficient capital improvements under the VICI REIT arrangement, despite conditions imposed on the Caesars Restructuring in 2017 that included the creation of VICI REIT.

7. Pre-Merger Asset Sales

During 2019, ERI sold three casinos to Century Casinos, Inc. (Century) for an aggregate consideration of $385 million, and CEC sold The Rio All-Suite Hotel & Casino (Rio) for approximately $516.3 million. In addition, ERI entered into definitive agreements to sell two other casinos to Twin River for $230 million. As illustrated in Table 2 above, ERI expects to use an estimated $225 million in net proceeds from the Twin River transaction to fund a portion of the cost of the Merger. The pre-Merger asset sale transactions are discussed below.

[14] The leases are expected to require at least $84 million of building and improvement capital expenditures for Caesars Palace Las Vegas every three years, subject to certain adjustments and reallocations.

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a. Century Casinos Transaction

On December 6, 2019, ERI sold (1) Mountaineer Casino Racetrack and Resort in West Virginia, (2) Isle Casino Cape Girardeau in Missouri, and (3) Lady Luck Casino Caruthersville in Missouri to Century for an aggregate consideration of $385 million. Under the agreements, Century acquired the operating assets of the three properties for approximately $107 million and VICI REIT acquired the land and real estate assets of the three properties for approximately $278 million.

b. Rio Transaction

On December 5, 2019, CEC sold Rio for approximately $516.3 million to a company controlled by Imperial Companies LLC (Imperial). At closing, CEC entered into an agreement under which Imperial will lease Rio to CEC for approximately $45 million per year for two years, with a one-time extension of up to 12 months at Imperial's option.[15] Thus, until the expiration or termination of the lease, CEC will continue to operate Rio in the ordinary course of business.

c. Isle of Capri Kansas City/Lady Luck Vicksburg Transaction

On July 11, 2019, ERI announced that it entered into a definitive agreement to sell Isle of Capri Casino Kansas City in Missouri and Lady Luck Casino Vicksburg in Mississippi to Twin River for $230 million, subject to a working capital adjustment. Notably, the Isle of Capri Casino Kansas City sale would address FTC concerns regarding competition in that market. The sale of these two properties is expected to

[15] The $45 million in temporary rent was deducted from Rio's Property EBITDA in the April Forecasts.

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close prior to the Merger around July 1, 2020 and is reflected as a source of cash in Table 2.

8. Post-Merger Asset Sales

In addition to the above-described dispositions, there are four asset sales with executed agreements that are expected to close after the Merger, with two of those dispositions also required to address FTC concerns regarding competition in Shreveport, Louisiana and Stateline, Nevada. First, on December 31, 2019, a subsidiary of CEC entered into an agreement to sell Harrah's Reno Hotel and Casino (Harrah's Reno) to a subsidiary of CAI Investments, LLC (CAI) for $50 million. Second, on April 24, 2020, following a terminated sale arrangement with Maverick Gaming LLC (Maverick),[16] ERI announced the sale of ERI Resort and Casino in Shreveport, Louisiana (ERI Shreveport) and MontBleu Casino Resort and Spa (MontBleu) in Stateline, Nevada to Twin River for $155 million. Finally, also on April 24, 2020, CEC announced that it entered into an agreement to sell Bally's AC to Twin River for $25 million. These sale transactions are discussed below.

a. Harrah's Reno Transaction

The real estate assets related to Harrah's Reno are owned by VICI REIT. Accordingly, CEC has agreed to distribute $37.5 million of the $50 million in sale proceeds to VICI REIT at a closing of that transaction, with CEC retaining the remaining $12.5 million. In connection with the Harrah's Reno sale, subsidiaries of CEC and VICI

[16] On January 10, 2020, ERI had announced that it had entered into an agreement to sell ERI Shreveport to Maverick for $230 million. On March 10, 2020, ERI had announced that it entered into an agreement to sell MontBleu to Maverick as well for approximately $8 million. Both sale agreements were eventually terminated by mutual agreement of the parties.

REIT expect to amend the Master Lease to include minor changes to capital expenditure requirements and the elimination of any lease provisions that are specific to Harrah's Reno. The Harrah's Reno sale will not alter the lease payments to VICI REIT under the Master Lease.

ERI expects the Harrah's Reno sale to close within six months after the Merger, or around year-end 2020. The April Forecasts were not updated to reflect the Harrah's Reno sale. Nevertheless, given the estimated $12.5 million in net proceeds to New Caesars from the sale, as well as the Property EBITDA estimates of only $2 million for 2021 and $3 million for 2022, the impact of the Harrah's Reno sale on the April Forecasts is immaterial.

b. ERI Shreveport and MontBleu Transaction

To satisfy FTC concerns regarding competition, as evidenced by a complaint, settlement, and order, ERI agreed to sell ERI Shreveport and MontBleu to Twin River for $155 million, subject to a working capital adjustment. Twin River will pay $140 million of the $155 million in aggregate consideration on the closing date, with the remaining $15 million to be paid within one year of the closing date. ERI expects the ERI Shreveport and MontBleu transaction to close in the first quarter of 2021.

c. Bally's AC Transaction

On April 24, 2020, Bally's AC and Twin River entered into an asset purchase agreement providing for the sale of Bally's AC, exclusive of the Wild West casino and sportsbook component which will be integrated into Caesars AC. Concurrent with the execution of the purchase agreement, Bally's AC, Twin River, and VICI REIT entered

into an agreement providing for the sale of certain real estate assets of Bally's AC from VICI REIT to Twin River. Pursuant to the two agreements, Bally's AC and VICI REIT will sell the real estate assets to Twin River for approximately $25 million in cash (subject to customary closing adjustments), of which VICI REIT will receive approximately $19 million from the sale and CEC will receive approximately $6 million.

In connection with the Bally's AC sale, subsidiaries of CEC and VICI REIT expect to amend the Master Lease to include minor changes to capital expenditure requirements and the elimination of any lease provisions that are specific to Bally's AC. The annual base rent payments under the Master Lease between CEC and VICI REIT will remain unchanged. In the April Forecasts, ERI assumes that the Bally's AC sale closes at the end of 2020.

Since the Bally's AC transaction was announced six days prior to the submission of the April Forecasts, that transaction is not included in the forecasts. Nevertheless, given the estimated $6 million in net proceeds to New Caesars from the sale and Property EBITDA estimates of only $12 million for 2021 and $15 million for 2022, the impact of the Bally's AC sale on the April Forecasts is not material.

9. Indiana Asset Sales

To satisfy concerns of the Indiana Gaming Commission (IGC) regarding market concentration in that state, ERI has represented to the IGC that it would commit to the sale of two Indiana properties within 18 months of the closing of the Merger. To date, the IGC has neither determined the number of required divestitures, nor the specific properties that need to be divested. Given the preliminary nature of the Indiana asset

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sales, they are not reflected in the April Forecasts. ERI management represented to the Division, however, that the net proceeds associated with any Indiana asset dispositions would likely be used to reduce CEC Revolver borrowings and increase flexibility.

C. Debt Service Requirements and Lease Payments

The combined pro forma interest expense and lease payments of ERI and CEC for the 12 months preceding the Merger are estimated at $1.533 billion. Due to the increase in lease payments and interest payments stemming primarily from the Merger and the higher interest rates associated with the new debt, ERI's pro forma cash outlays for these obligations are expected to rise to a total of approximately $1.991 billion for 2021, as illustrated in the following table:

Table 6
ERI and CEC
Cash Interest Expense and Lease Payments
Pro Forma for the 12 Months Ending March 31, 2020
Compared to the Year Ending December 31, 2021
($ in Millions)

	Pre-Merger	Merger Adjustments	Post-Merger 2021
Interest Payments	$ 612	$174	$ 786
Lease Payments	921	284	1,205
Total	$1,533	$458	$1,991

Interest payments are expected to be $174 million higher for 2021 compared to the 12 months preceding the Merger, primarily reflecting the increased debt level and overall higher interest rates on the new Merger debt. More significantly, New Caesars is expected to incur a $284 million increase in lease payments after the Merger, from $921 million to $1.205 billion, due primarily to the VICI REIT Transactions. Thus, in the aggregate, post-Merger annual interest expense and lease payments are estimated to

increase by $458 million, or 30%, from $1.533 billion pre-Merger to $1.991 billion for 2021. Notably, the increase in interest and lease payments is $174 million more than that estimated in the February Forecasts, which indicates the impact of the additional debt borrowings outstanding post-Merger, as well as the higher average interest rates on certain debt components.

D. New Caesars Post-Merger Gaming Properties

ERI owned and operated 23 gaming facilities at year-end 2019. After the asset dispositions discussed above and the completion of the Merger, New Caesars' portfolio at year-end 2020 is expected to consist of approximately 50 owned or leased domestic casino resorts with over 55,000 slot machines, approximately 2,800 table games, and in excess of 43,000 hotel rooms. In Atlantic City, New Caesars would operate three of the nine casino hotels if the sale of Bally's AC is completed and four of those facilities if that transaction does not close. In addition, New Caesars will manage Caesars Windsor in Canada and six domestic casinos located in Arizona, California, Maryland and North Carolina, as well as own other miscellaneous assets.

E. April Forecasts

On April 30, 2020, ERI submitted the most recent version of the forecasts to the Division, which reflects the anticipated impact of the COVID-19 health crisis on future operating results and cash flows. As previously discussed, the April Forecasts assume that the Merger closes on July 1, 2020 and that the sale of ERI Shreveport and MontBleu closes in the first quarter of 2021. The sale of Bally's AC, Harrah's Reno, and at least two properties in Indiana are not included in the forecasts. There are no other

asset sales included in the April Forecasts through 2022, though New Caesars may pursue additional transactions after the Merger closes, including the potential sale of a Las Vegas Strip property.

1. COVID-19 Operating Assumptions

From an operational standpoint, the April Forecasts assume that the COVID-19 health crisis causes a major disruption in casino operations for 2020. All of ERI's and CEC's casinos nationwide closed during the month of March 2020 and the April Forecasts assume that all casinos reopen in June 2020, except for certain markets that may have staggered openings, as outlined below:

- Las Vegas:
  - June 2020: Caesars Palace Las Vegas, Paris and Flamingo Las Vegas
  - July 2020: Harrah's Las Vegas, Planet Hollywood, The Linq, Promenade, Convention Center, and Bally's Las Vegas
  - August 2020: Rio and The Cromwell
- Atlantic City:
  - June 2020: Harrah's AC and Trop AC
  - July 2020: Bally's AC and Caesars AC
- Iowa:
  - June 2020: Horseshoe Casino
  - July 2020: Harrah's Council Bluffs

At the time of the forecast submission on April 30, 2020, ERI and CEC did not have guidance from the states regarding the potential casino reopening dates and any operating restrictions. In the April Forecasts, management assumed that 70% of the casino floor would be available to customers due to social distancing requirements until October 2020, when those restrictions are assumed to be removed. Management assumes no restrictions on available hotel rooms, except for the CEC property in Lake

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Tahoe, which is expected to be limited to 75% of capacity until August 2020. In actuality, many jurisdictions have current limitations based on 50% of gaming capacity and Atlantic City will have a capacity limitation of 25% upon reopening which is scheduled for July 2, 2020.

The April Forecasts assume that any economic slowdown due to COVID-19 will gradually dissipate over time and by the fourth quarter of 2021 operating results will essentially return to pre-shutdown levels. In addition, management assumes that there are no prolonged economic issues after the fourth quarter of 2021. Based on these assumptions, the April Forecasts assume the following average net revenue declines compared to the same period immediately preceding the health crisis (March 2019 through February 2020):

- March 2020 through June 2020: 78.4% decline in net revenue
- July 2020 through September 2020: 37.6% decline in net revenue
- October 2020 through February 2021: 19.5% decline in net revenue

With operations shut down for the bulk of the period, ERI assumes a 78.4% decline in net revenue from March through June 2020. As the expected impact of the health crisis dissipates over time, ERI believes revenues will recover fairly rapidly. In fact, from March 2021 through June 2021, net revenue is expected to be an average of 8.3% below the comparable 2019 period. Thereafter, revenues will approximate pre-shutdown levels starting in the third quarter of 2021, with moderate growth in the fourth quarter of 2021 and 4% projected revenue growth for calendar 2022.[17]

[17] The April Forecasts assume the utilization of the CARES Act provision that allows for payroll tax deferral and payroll tax credits in connection with wages and benefits paid to employees during the closure and re-opening periods. New Caesars expects to receive an estimated $100 million of payroll tax credits in 2020 and $70 million of deferred payroll taxes in 2020 as a result of the federal legislation.

If the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to submit to the Division a monthly schedule detailing any operating limitations or restrictions stemming from the COVID-19 health crisis on each property in New Caesars' portfolio, along with an estimate of the impact of those limitations or restrictions on net revenue results. This submission would be due no more than 20 calendar days after the end of each month and would end upon the full resumption of casino gaming activity with no restrictions at all of New Caesars' properties.

2. Property EBITDA

On a combined basis, New Caesars reported $3 billion in pro forma Property EBITDA for 2019, an increase of 3.2% compared to the $2.906 billion in pro forma EBITDA for 2018. For 2020, due to the casino closures and reduced revenue levels anticipated upon reopening, management estimates that Property EBITDA will decrease to $881 million, or by 71%. Over the next two years, ERI management projects significant improvements in EBITDA, reaching pre-shutdown levels for 2022, as illustrated in the following table:

Table 7
New Caesars
Property EBITDA
For the Four Years Ending December 31, 2022
($ in Millions)

	2019 Pro Forma Actual	2020 Forecast	2021 Forecast	2022 Forecast
CEC	$2,417	$687	$2,252	$2,427
ERI	583	194	528	567
New Caesars	$3,000	$881	$2,780	$2,994

During the forecast period, Harrah's Hoosier Park and Indiana Grand in Indiana are expected to generate incremental Property EBITDA due to the introduction of live table games in 2020. Also, a new convention center project in Las Vegas opened in April 2020 and is expected to generate additional revenues and Property EBITDA for CEC's Las Vegas Strip properties when it is available for business. For ERI, the two Black Hawk, Colorado properties and the three Reno properties are expected to generate improved Property EBITDA during the forecast period based primarily on the completion of room renovations in 2019.

If the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to submit to the Division a comparison of the actual monthly net revenue and Property EBITDA to the Updated April Forecasts no more than 20 calendar days after the end of each month, with an explanation of any variances in excess of 10% per property.

3. Projected Measures

The Property EBITDA forecasts above do not include anticipated synergy Measures related to the combination of ERI and CEC, which primarily consist of incremental revenues and cost savings associated with the consolidated operation of approximately 50 owned or leased domestic casino resorts and six managed domestic gaming facilities. In its original forecast submissions, ERI estimated Measures of approximately $500 million for the first 12 months after the Merger,[18] comprised of the following broad components:

[18] In its initial forecasts submitted to the Division, ERI projected Measures of $625 million in the second year and $750 million in the third year after the Merger.

- $156 million in cost reductions due to the elimination of duplicative corporate overhead and centrally managed costs;
- $95 million annual revenue improvements due primarily to the implementation of Caesars Rewards across the ERI property portfolio;
- $75 million in cost savings at the property level from the sharing of ERI's and CEC's best practices across the combined operations, as well as reductions in regional leadership for the combined company;
- $74 million in cost reductions related to elimination of duplicative professional services (audit, outside legal counsel, etc.), reduced Board of Director expenses, and a consolidation of information technology costs;
- $50 million of reduced slot lease expense through a higher investment in purchased slot machines; and
- $50 million in cost savings from company-wide contracts such as insurance and purchasing.

As indicated above, ERI believes that a significant reduction in CEC's corporate shared services and overhead will be a large driver of the expected Measures, along with revenue improvements due primarily to the implementation of the Caesars Rewards program across the ERI property portfolio. The Division has been advised that CEC has already instituted in excess of $200 million in annualized cost reductions since the Merger was announced, which has reduced the initial Measures to be attained by ERI post-Merger to around $300 million.

In the April Forecasts, management estimates Measures of $110 million for the last six months of 2020, $390 million for calendar 2021, and $400 million for calendar 2022. As the following table makes clear, the Measures will be a meaningful

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component of the anticipated company-wide EBITDA[19] growth during the Forecast period.

Table 8
New Caesars
EBITDA
For the Four Years Ending December 31, 2022
($ in Millions)

	2019 Estimated	2020 Forecast	2021 Forecast	2022 Forecast
Property EBITDA	$3,000	$881	$2,780	$2,994
Measures	-	110	390	400
EBITDA	$3,000	$991	$3,170	$3,394

In 2019, ERI and CEC reported a combined $3 billion in pro forma EBITDA. For the last two years of the forecast period, New Caesars projects EBITDA of $3.17 billion for 2021 and $3.394 billion for 2022, both of which exceed the EBITDA for 2019 when including the projected Measures.

Given the magnitude of the anticipated Measures, the Division cannot opine on the reasonableness of the amounts incorporated into the April Forecasts. The Division must highlight, however, that the scale of this Merger is unlike any of ERI's preceding acquisitions. As previously discussed, ERI operated 26 properties after the TEI Acquisition in 2018 and will nearly double its asset base to approximately 50 properties after the CEC Merger. Operationally, ERI reported Property EBITDA of $583 million for 2019, whereas CEC reported Property EBITDA that was over four times greater at $2.417 billion. Thus, it is unclear to the Division what impact, if any, the achievement of

[19] EBITDA reflects Property EBITDA plus synergy Measures. As used in this report, EBITDA is before lease payments.

the projected Measures would have on the operating results of the combined asset base.

In addition to the scale of the Merger, the different corporate operating strategies employed by ERI and CEC will need to be integrated. Specifically, ERI employs a “decentralized” operating model, which results in a smaller corporate staff and more operational responsibilities conducted at the property level. Conversely, CEC employs a “centralized” operating model with a much larger corporate, administrative, and support staff performing critical functions on behalf of the properties. Given the size of CEC and the centralized nature of its operations, the integration of CEC into ERI may be more complex and time-consuming than anticipated by ERI and may not yield the Measures incorporated into the April Forecasts.

Clearly, the Measures are a meaningful component of the projected operating results of New Caesars going forward. Thus, the Division recommends that ERI management be prepared to provide detailed testimony at the public hearing regarding the Measures, with particular emphasis on their impact on the Atlantic City properties and market. The Measures are further discussed in Section H., Impact of Merger on Atlantic City, below.

4. Forecasted Sources and Uses of Cash

For the last six months of 2020, New Caesars’ planned cash outlays are expected to be lower than normal, as capital spending will be significantly reduced and the timing of interest payments on certain new debt components related to the Merger are not expected to commence until early 2021. In this regard, capital expenditures

company-wide are projected to be only $142 million and interest payments are only $167 million for the six-month period. In fact, the most significant cash outlay for the last six months of 2020 is projected to be $593 million in lease payments. With lower interest payments temporarily and lessened capital expenditures, New Caesars' projected EBITDA of $880 million and other miscellaneous sources of cash are expected to be sufficient to satisfy its cash needs for the last six months of 2020, as illustrated in the following table:

Table 9
New Caesars
Forecasted Condensed Sources and Uses of Cash
For the Six Months Ending December 31, 2020 and
For the Two Years Ending December 31, 2022
($ in Millions)

	July-Dec. 2020	Calendar 2021	Calendar 2022
Sources of Cash:			
EBITDA	$880	$3,170	$3,394
Shreveport/MontBleu Proceeds	-	140	-
Other - net	50	-	-
Total Sources of Cash	$930	$3,310	$3,394
Uses of Cash:			
Lease Payments	$593	$1,205	$1,227
Capital Expenditures	142	822	813
Interest Payments	167	786	758
Revolver Repayments - Net	4	313	418
Scheduled Debt Repayments	24	48	48
Other – net	-	136	130
Total Uses of Cash	$930	$3,310	$3,394

If the EBITDA rebound in 2021 and 2022 is achieved, New Caesars' sources of cash are expected to exceed its lease payments, interest payments, capital expenditures, and other miscellaneous obligations. Any excess cash flows in those years are projected to be used to fund repayments on the Revolvers.

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a. Forecasted Capital Expenditures

New Caesars projects capital expenditures of $142 million for the last six months of 2020, $822 million for calendar 2021, and $813 million for calendar 2022, respectively. In addition to projects in Atlantic City, which are discussed below, the major growth projects incorporated into the April Forecasts include $325 million for a new hotel tower and additional amenities at Harrah's New Orleans expected to open in the middle of 2023 and $100 million for a recent expansion at the CEC properties in Indiana that included the introduction of table games in January 2020.

With regard to Atlantic City, the Division had repeatedly advised ERI that capital expenditures for Bally's AC and Caesars AC are a major concern that needs to be addressed. Notwithstanding the foregoing, there were no major projects for any of the four Atlantic City casino hotel facilities through 2022 in the forecast submissions prior to February 2020. After continued dialogue on this topic over subsequent months, which is comprehensively addressed in Section H., Impact of Merger on Atlantic City, below, ERI ultimately committed to spend $400 million in capital improvements for the Atlantic City casinos for the first three years after the Merger from October 2020 through September 2023. Significantly, ERI committed to expend $200 million of that amount in the first twelve-month period ending September 30, 2021.

b. Revolvers and Financial Flexibility

For the entire forecast period, management projects a total of $735 million in repayments on the Revolvers and New Caesars' cash balance is expected to remain

around $1.05 billion. Should there be material shortfalls from its forecasted operating results, ERI identified the following sources of financial flexibility:

- The Revolvers are projected to have between $686 million and $1.421 billion in availability between mid-2020 and year-end 2022. As discussed in Section G., Subsequent Events, below, ERI recently entered into financial transactions that would fully repay the outstanding balances on the Revolvers. Accordingly, the projected availability on the Revolvers will be higher than that incorporated into the April Forecasts.

- According to management, New Caesars expects to have between $155 million and $300 million in cash above that needed for working capital purposes for the remainder of 2020. For 2021 and 2022, however, New Caesars expects to have only $50 million in cash above that needed for working capital purposes, as all properties are assumed to be open and approaching normal operating conditions. As discussed in Section G., Subsequent Events, below, ERI has entered into financial transactions that would provide excess cash to New Caesars.

- New Caesars expects to sell two Indiana properties and at least one Las Vegas strip property, with the proceeds used to improve flexibility.[20] Other sources of financial flexibility include:
    - Additional casino property sales
    - Sale of real estate assets to a REIT
    - Sale and/or monetization of non-gaming real estate in Las Vegas
    - Sale of international gaming assets (London Clubs, South Africa and Korea)
    - Sale of CEC's live entertainment business in whole or in part

  As discussed in Section G., Subsequent Events, below, ERI entered into a land sale and debt transaction with VICI REIT that would provide additional liquidity to New Caesars.

- New Caesars is expected to be able to obtain additional debt proceeds. As discussed in Section G., Subsequent Events, below, ERI has finalized the Merger debt components, which include incremental debt proceeds that will provide additional liquidity to New Caesars.

- Arrangements to monetize sports wagering and Internet gaming assets through an initial public offering of stock or a transaction with an existing company could be entered.

[20] The Harrah's Reno and Bally's AC sales will not be a significant financial resource, as the proceeds to CEC at closing are projected at $12.5 million and $6 million, respectively.

- CEC income streams from contracts with large entities could be renegotiated to obtain upfront payments in exchange for reduced payments in subsequent years.

In light of the uncertainty moving forward, the additional sources of financial flexibility may be necessary if operating results do not rebound as quickly as the April Forecasts predict. Accordingly, ERI should be prepared to provide testimony regarding its access to liquidity at the public hearing on this matter, including the impact of the recently-announced financial transactions. Again, if the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to submit to the Division a comparison of the actual post-Merger sources and uses of cash to the Updated April Forecasts, with an explanation of any variances in excess of 10% per category. This submission would be due no more than 20 calendar days after the end of each quarter.

F. Financial Covenants

The existing credit agreement for the CEC Term Loan and CEC Revolver includes a senior secured leverage ratio (Leverage Ratio) calculated as the ratio of: (1) CEC's "First Lien Net Debt" to (2) CEC's trailing four quarter EBITDA, as both terms are defined in the agreement. The CEC financial covenant is set at 6.35 to 1.00 for the term of both loans and is tested at the end of each quarter when the CEC Revolver balance is $250 million or higher (excluding up to $170 million of letters of credit). Due primarily to the dramatic reduction in EBITDA, CEC does not expect to comply with this ratio beginning with the quarter ending June 30, 2020. Accordingly, CEC negotiated with its lenders to waive compliance with the Leverage Ratio through the second quarter of

2021, subject to certain conditions. CEC expects to comply with the requirement thereafter, as illustrated in the following table:

Table 10
CEC
Compliance With Leverage Ratio
As of June 30, 2020 and 2021, and as of December 31, 2021 and 2022
($ in Millions)

	June 30, 2020	June 30, 2021	Dec. 31, 2021	Dec. 31, 2022
CEC Leverage Ratio	17.28x	11.73x	5.76x	4.62x
Maximum Leverage Ratio	6.35x	6.35x	6.35x	6.35x
In Compliance	N/A	N/A	Yes	Yes

Similar to CEC, the New ERI Revolver is expected to include a Leverage Ratio calculated as the ratio of: (1) ERI's First Lien Net Debt to (2) ERI's trailing four quarter adjusted EBITDA, as both terms are defined in the agreement. The ERI financial covenant level is expected to be set at 6.35 to 1.00 for the term of the New ERI Revolver. Similar to the CEC covenant, the ERI financial covenant test is expected to occur at the end of each quarter when the outstanding balance on the ERI Revolver is $250 million or higher (excluding up to $170 million of letters of credit), commencing with the first full fiscal quarter ending after the closing of the merger.

ERI does not expect to be able to comply with the Leverage Ratio initially and has negotiated with its lenders to waive compliance with the ratio through the second quarter of 2021, subject to certain conditions, including New Caesars maintaining minimum liquidity of $850 million[21] and limitations on the incurrence of certain

[21] Minimum liquidity is calculated as the sum of unrestricted cash at ERI and CEC, plus the available borrowing capacity on the New ERI Revolver and CEC Revolver.

indebtedness, investments, dividends, and stock repurchases. After the waiver period, ERI expects to comply with the requirement, as illustrated below:

Table 11
ERI
Compliance With Leverage Ratio
As of June 30, 2020 and 2021, and as of December 31, 2021 and 2022
($ in Millions)

	June 30, 2020	June 30, 2021	Dec. 31, 2021	Dec. 31, 2022
ERI Leverage Ratio	14.73x	8.75x	5.07x	4.38x
Maximum Leverage Ratio	6.35x	6.35x	6.35x	6.35x
In Compliance	N/A	N/A	Yes	Yes

If the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to submit to the Division a comparison of the CEC and ERI Leverage Ratio to the Updated April Forecasts no more than 30 calendar days after the Merger.

G. Subsequent Events

As discussed above, under the April Forecasts, the remaining borrowing capacity on the Revolvers immediately after the Merger is projected to be limited, and thus, may not be sufficient to address unanticipated cash needs. Given that situation, on June 15, 2020, ERI announced steps to bolster its liquidity by, most significantly: (1) the sale of common stock, (2) an increase in the borrowing capacity on the Revolvers, and (3) a transaction with VICI REIT that contemplates a mortgage loan on the new CEC Las Vegas convention center and the sale of adjacent land. Further, on June 19, 2020, ERI finalized the debt borrowings associated with the Merger, which will provide additional financial resources beyond that incorporated into the April Forecasts. These

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transactions are discussed below, along with their anticipated impact on New Caesars' post-Merger liquidity.

1. Sale of Common Stock

On June 18, 2020, ERI finalized the public offering of 20.7 million shares of its common stock, which resulted in net proceeds of approximately $772 million. Notably, this stock sale may have a dilutive effect on the ownership interests in New Caesars.

2. Increase in Borrowing Capacity on Revolvers

On June 15, 2020, ERI entered into an agreement with its lenders to increase the New ERI Revolver commitment from $1 billion to $1.185 billion and the CEC Revolver commitment from $1 billion to $1.025 billion. Together, the available borrowing capacity on the Revolvers would increase by $210 million, from $2 billion under the April Forecasts to $2.210 billion after the increase.

3. VICI REIT Transaction

On June 15, 2020, ERI announced that it had entered into a non-binding letter of intent with VICI REIT, whereby VICI REIT would: (1) fund a new 5-year $400 million mortgage loan (Convention Center Mortgage Loan) to New Caesars and (2) purchase approximately 23 acres of land in Las Vegas in the vicinity of The LINQ, Bally's, Paris and Planet Hollywood for $4.5 million per acre from New Caesars, resulting in approximately $103.5 million in total proceeds (Las Vegas Land Sale). Together, the gross proceeds from these transactions are expected to total approximately $503.5 million.

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The Convention Center Mortgage Loan will have an initial interest rate of 7.7%, which will result in $30.1 million in interest expense due in the first year after the transaction. The loan is expected to be secured by the real property, improvements and other assets constituting the Caesars Forum Convention Center, including the approximately 28 acres of land on which the convention center was built. The Convention Center Mortgage Loan and the Las Vegas Land Sale are expected to close concurrently in the third quarter of 2020.

4. Merger Debt Borrowings

On June 19, 2020, ERI announced the finalization of its debt borrowings in connection with the Merger, which is summarized below:

Table 12
New Caesars
New Debt Borrowings
Pro Forma as of Merger Closing on July 1, 2020
($ in Millions)

New Debt Component	April Forecasts	Updated	Increase (Decrease)
New ERI Secured Notes	$3,000	$3,400	$ 400
New ERI Unsecured Notes	1,800	1,800	-
New CEC Notes	2,400	1,000	(1,400)
New CEC Term Loan	-	1,800	1,800
Total	$7,200	$8,000	$ 800

Overall, New Caesars will obtain $8 billion in new debt borrowings in connection with the Merger, compared to $7.2 billion under the April Forecasts. The incremental $800 million in debt proceeds will be used to reduce the balance on the Revolvers, thereby providing a corresponding increase in borrowing capacity. While this transaction will not result in an increase in borrowings compared to the April Forecasts

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on the closing date of the Merger, debt would increase if there is a need to borrow on the Revolvers in the future.

5. Impact on Post-Merger Liquidity

As a result of the preceding transactions, New Caesars' post-Merger liquidity is expected to be enhanced compared to the April Forecasts, as illustrated below:

Table 13
New Caesars
Updated Summary of Post-Merger Liquidity
Pro Forma as of Merger Closing on July 1, 2020
($ in Millions)

	April Forecasts	Impact of Transactions	Updated
Total Revolver Capacity	$2,000	$ 210	$2,210
Outstanding Borrowings	(1,272)	1,272	-
Letters of Credit	(42)	-	(42)
Available Capacity	$ 686	$1,482	$2,168
Cash Balance	$1,050	$ 803	$1,853

Collectively, the $772 million common stock sale, the $210 million in incremental capacity on the Revolvers, the $503.5 million transaction with VICI REIT, and the $800 million in incremental debt proceeds are expected to provide a much-needed $2.285 billion improvement in New Caesars' liquidity. Thus, New Caesars now expects to have $2.168 billion in borrowing capacity on the Revolvers, compared to only $686 million under the April Forecasts. In addition, New Caesars expects to have an additional $803 million in cash after the Merger compared to the April Forecasts. As a result of the foregoing, the risk associated with New Caesars' post-Merger liquidity has been reduced.

H. Impact of Merger on Atlantic City

To render a decision as to the Merger, it is critical to understand how the transaction will impact Caesars AC, Harrah's AC, Trop AC, and the Atlantic City market as a whole. In addition to assessing undue economic concentration, the Division has identified the following financial areas that warrant further discussion and analysis:

1. Impact of the Merger on financial statements;
2. Potential allocation of lease payments;
3. Potential allocation of debt obligations;
4. Property EBITDA;
5. Impact of the Merger on employees;
6. Impact of the proposed synergy Measures;
7. Capital expenditure plans;
8. Potential for a property divestiture; and
9. Deed restrictions associated with former CEC properties.

For each area noted above, the Division requested formal responses from ERI, which are contained herein. If the Merger is to be approved, the Division will recommend conditions in an attempt to ensure that the Merger does not have a substantially adverse impact on the Atlantic City properties or the market as a whole.

As a preview to the following discussion, during a seven-month period between the commencement of the Division's investigation in July 2019 through the end of January 2020, many of ERI's responses to the Division's inquiries were deficient or nonresponsive, particularly in the areas of Atlantic City employment, capital

expenditures, and Measures. In order to comprehensively address these areas in its report to the Commission, the Division provided multiple opportunities for ERI to formally respond to these core issues during that timeframe, but ERI chose not to do so.

Ultimately coming to a realization that these unresolved issues would have a direct impact on the Division's recommendations regarding the Merger, Chief Financial Officer (CFO) Bret Yunker, beginning in February 2020, directly engaged in a dialogue with Division staff in an attempt to provide clarity in critical areas such as employment, capital expenditures, Measures, deed restrictions, and potential property divestitures. In order to set forth a context for the entire investigative process, this section includes the responses to the Division provided by ERI through January 2020 where relevant, as well as those provided by CFO Yunker in February as further refined thereafter to reflect any changes to ERI's position. Each of the preceding areas is addressed below.

1. Financial Statements

The Merger and the potential transfer of the real estate assets of Harrah's AC to VICI REIT will impact the financial statements of Caesars AC and Harrah's AC, as well as Bally's AC if it is not sold.[22] After the Merger, the CEC properties will undergo a purchase accounting revaluation of their assets, which is a process similar to that undertaken by other casino licensees after an acquisition. In addition, the VICI REIT transaction related to Harrah's AC would result in additional financial reporting changes, which are normal in this type of transaction.

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[22] It is unclear what changes, if any, will be made to the CIENJ financial statements. Meanwhile, since Trop AC is already operated by ERI, the Merger is not expected to have a direct impact on that licensee's financial statements.

If the Commission approves the Merger, the Division recommends the imposition of a condition requiring submission to the Division of a draft of the first quarterly financial report due from the AC Licensees and CIENJ after the transaction, along with a detailed summary of the changes stemming from the Merger, at least 15 days prior to the due date under the Division's regulations.

2. Lease Payments

New Caesars may allocate the Master Lease payments among the properties subject to that lease, including the AC Licensees, based on Property EBITDA or another financial metric. The allocation of the Master Lease payments, however, is not expected to be finalized until after the Merger.

Accordingly, if the Commission approves the Merger, the Division recommends that a condition be imposed requiring ERI to submit to the Division the methodology and proposed allocation of lease payments to AC Licensees, and every other property subject to the Master Lease at least 10 days prior to implementation.

3. Potential Debt Allocations

ERI management has not determined whether any of the post-Merger debt obligations will be allocated to the AC Licensees. Accordingly, if the Commission approves the Merger, the Division recommends that a condition be imposed requiring ERI to submit to the Division the methodology and proposed allocation of any debt obligations to the AC Licensees at least 10 days prior to implementation. The Division will review any debt allocation in accordance with the material debt regulations contained in *N.J.A.C.* 13:69C-4.3 and take whatever action is appropriate.

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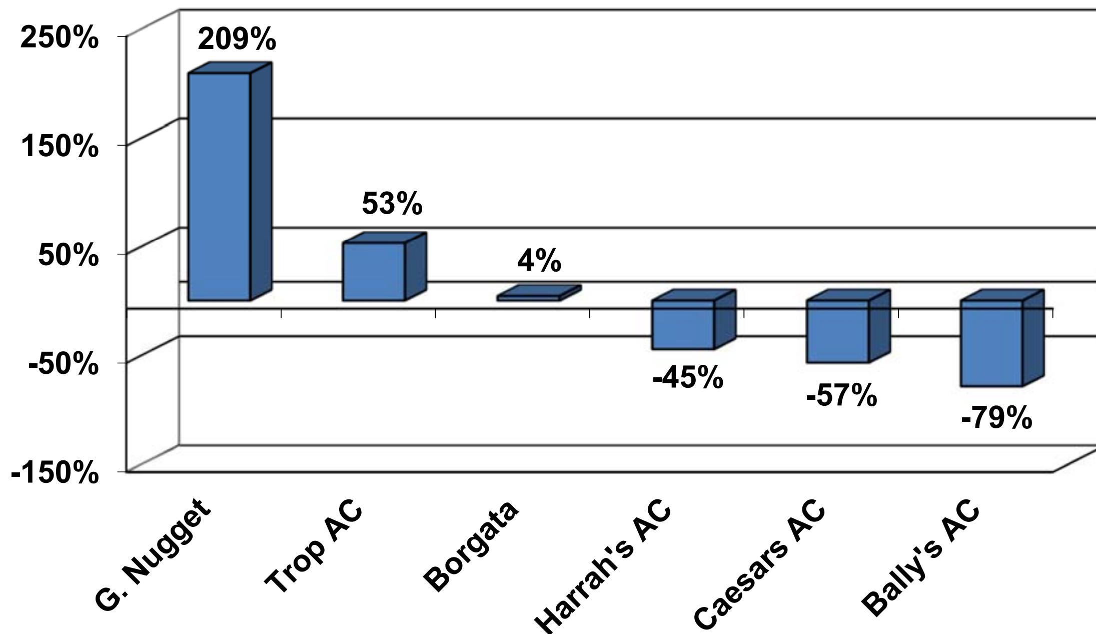
4. Property EBITDA

In its 2017 Caesars Restructuring report (Restructuring Report), the Division focused upon the impact that a lack of capital expenditures and other factors had on the operating performance of Bally's AC and Caesars AC compared to the other casinos (AC Competitors).[23] The following chart updates that operational comparison based on the calendar 2019:

Chart 2
Current Atlantic City Casino Operators
Percentage Change in EBITDA
For the Year Ended December 31, 2019 vs. 2008



For presentation purposes, it is noted that Resorts has been omitted from the preceding chart, as that property generated EBITDA growth of 526% during the period.

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[23] In this report, the term AC Competitors reflects the four properties that were open between 2007 and 2019: Borgata, Trop AC, Golden Nugget, and Resorts. The AC Competitors do not include Hard Rock Hotel & Casino (Hard Rock) and Ocean Casino Resort (Ocean), both of which were under different ownership and closed for a period of time prior to reopening in mid-2018.

Between 2008 and 2013, there was a significant increase in gaming options in the northeast corridor, which, along with a widespread economic recession, negatively impacted EBITDA[24] results for the 12 casinos operating in Atlantic City at that time. With a seven-casino market in 2017 and a nine-casino market beginning in mid-2018, however, there was an opportunity for all casinos to attract new customers, recover lost revenues, and improve EBITDA. As discussed in more detail below, Trop AC, Borgata, Golden Nugget, and Resorts made considerable capital improvements to their properties over the 11-year period. In addition, those properties enhanced their marketing efforts to attract the former customers of the closed casinos and the CEC properties. Largely as a result, the AC Competitors reported EBITDA for 2019 that was 31% higher on average compared to 2008.

In stark contrast to those operators, the most recent EBITDA of Bally's AC, Caesars AC, and Harrah's AC was 79%, 57% and 45% below that generated in 2008, respectively.[25] Of particular note, the poor EBITDA performance of Harrah's AC occurred despite an industry-leading level of capital expenditures, which is discussed later in this report. One of the properties that closed in 2014 was Showboat, which was owned by CEC and a profitable casino at that time.[26] One of the reasons provided by CEC management to justify the closure was an expectation that the majority of Showboat's revenues would be redistributed to and held by the other CEC properties. Clearly, that plan failed, and such expectation did not materialize.

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[24] EBITDA for the Atlantic City casinos is based on gross operating profit (GOP) as reported on the Division's Statement of Income.

[25] Collectively, the AC Licensees and CIENJ reported EBITDA of $198.4 million for 2019, a 55.6% decrease compared to 2008.

[26] Showboat generated net revenue of $197.2 million and gross operating profit of $34 million for 2013, which is the last full calendar year prior to the property's closure.

As summarized below, due to the impact of COVID-19, ERI is projecting essentially break-even operating results for 2020 for the Atlantic City properties, excluding Bally's AC, with a dramatic rebound in 2021 and 2022 consistent with the company-wide forecasts:

Table 14
Caesars AC, Harrah's AC, and Trop AC
Property EBITDA
For the Four Years Ending December 31, 2022
($ in Millions)

	2019 Actual	2020 Estimate	2021 Forecast	2022 Forecast
Caesars AC	$ 47	$ (11)	$ 49	$ 53
Harrah's AC	64	(8)	55	61
Trop AC	82	20	59	65
Total	$193	$ 1	$163	$179

For 2019, Caesars AC, Harrah's AC, and Trop AC reported combined Property EBITDA of $193 million. For 2022, the collective Property EBITDA is expected to be $179 million, only 7% below 2019.

In light of the performance of the CEC properties in recent years, ERI's plans to improve the operating results of Caesars AC and Harrah's AC need to be fully explored through testimony at the proceeding to be held in this matter. The Division recognizes, however, that ERI will need some time to fully assess the operational needs of these properties after the Merger. Accordingly, if the Commission approves the Merger, the Division recommends that a condition be imposed requiring the submission of a detailed operational improvement plan for Caesars AC, Harrah's AC, Trop AC, and Bally's AC if it is not sold, to the Division no later than 90 days after the Merger. In addition, the

Division recommends that ERI submit quarterly reports to the Division detailing its progress toward meeting the operational improvement plan goals.

5. Employees

The Division has expressed concerns to CEC executives over the years regarding the overall staffing levels at Bally's AC and Caesars AC. As background, the TPG and Apollo investment funds, along with other investors, acquired CEC's predecessor, Harrah's Entertainment, Inc. in January 2008 (2008 Acquisition). As the following table clearly illustrates, the employee reductions at Bally's AC and Caesars AC subsequent to the 2008 Acquisition have been disproportionately higher than their AC Competitors.

Table 15
Atlantic City Casino Operators
Percentage Change in Employees
As of December 31, 2019 vs. 2007

	Decrease in Number of Employees	Percentage Change in Employees
Bally's AC	(3,291)	(61.1%)
Caesars AC (a)	(1,475)	(36.6%)
Harrah's AC	(659)	(17.6%)
AC Competitors (average)	(692)	(18.1%)

(a) includes employees of CIENJ

As illustrated in Table 14, Bally's AC and Caesars AC had 3,291 and 1,475 less employees at year-end 2019, respectively, compared to year-end 2007, which immediately preceded the 2008 Acquisition. On a percentage basis, Bally's AC reduced the number of employees by 61.1% and Caesars AC reduced its employees by 36.6%. Comparably, Harrah's AC had a much lower reduction numbering 659 employees

during that timeframe, which was more in line with the AC Competitors average of 692 fewer employees.[27]

In response to the Division's concerns regarding employment levels at Bally's AC and Caesars AC over the years, CEC management continually relied upon the magnitude of its pre-bankruptcy debt service requirements, the numerous debt transactions to remain viable under its debt structure, the prolonged bankruptcy process, and reduced revenue levels to justify reductions in staffing. The emergence from bankruptcy in October 2017, however, addressed many of the financial issues and provided CEC with an opportunity to address the disproportionate reductions in employees at Bally's AC and Caesars AC. Instead of increasing employment levels, however, CEC *further reduced* the average number of employees by an additional 395 employees per property (including Harrah's AC) between year-end 2017 and 2019. This decrease was more than double the average 171 employee reduction at the AC Competitors between 2017 and 2019.

After the Merger, ERI executives will manage New Caesars and be responsible to address the impact that reduced employee levels have had in Atlantic City. Accordingly, the Division asked ERI whether it has any plans to change the number of employees at the CEC properties after the Merger. In all responses through January 2020, management represented that ERI had no plans to change staffing levels. In February 2020, Division staff advised CFO Yunker of its concerns regarding employees at Bally's AC and Caesars AC and provided him with data regarding the CEC properties

[27] The employment data is derived from the Employment and Payroll Reports filed with New Jersey regulators on an annual basis.

referenced in Table 15. On February 24, 2020 and largely reaffirmed on April 15, 2020, CFO Yunker represented to the Division that ERI is committed to maintaining the current number of employees at each property and that planned property upgrades could result in the addition of employees. CFO Yunker also indicated his willingness to address this critical area of Division concern through a condition imposed as part of any Merger approval.

In the Division's strong opinion, the significant employee reductions by CEC over the years have negatively impacted the operating performance of its properties. When combined with the Measures that are incorporated into the April Forecasts, the Division has significant concerns that New Caesars may seek to further reduce the number of employees in Atlantic City in an to attempt to attain the projected Measures. While CFO Yunker's recent representations address a *decrease* in employment levels, it is the Division's opinion that ERI should focus on *increasing* employment to levels that are more in line with the AC Competitors, once the recent health crisis abates and there is a normalized operating environment. Given the importance of employment levels to customer service and the maintenance of a first-class facility under the Act, the Division intends to seek detailed testimony at the public hearing regarding employee levels at Caesars AC, Harrah's AC, and Trop AC.

If the Commission approves the Merger, the Division recommends the imposition of a condition requiring New Caesars to obtain Division approval for any reduction in the number of full-time and part-time equivalent employees by more than 50 employees at any of the three Atlantic City casino properties, as well as Bally's AC if it is not sold, from that reported to the Commission in the corresponding month of the 12 months

immediately preceding the March 2020 closure of casinos, which would be March 2019 through February 2020. In light of the industry shutdown and operating restrictions, however, it is likely that business volumes will not return to prior levels immediately. Therefore, the Division proposes that compliance with this condition be deferred until the earlier of: (1) 12 months from the reopening date of each property or (2) the first calendar month after gross casino revenue at each property is at least 90% of that reported for the corresponding month between March 2019 through February 2020. ERI represented that it will abide by such requirement if the Merger is approved and such condition is imposed.

6. Measures

As previously discussed, ERI set an initial synergy Measures target of $500 million per year post-Merger, of which CEC has already realized in excess of $200 million in annualized cost reductions since the Merger was announced. Thus, the remaining initial Measures to be attained by ERI post-Merger are currently around $300 million. As part of its analysis of the Merger, the Division asked ERI to provide a breakdown of the anticipated Measures that are expected to be derived from the Atlantic City market. In response to Division inquiries through January 2020, ERI represented that none of the Measures were specific to any property or market, and accordingly, there are no Measures that are unique to Atlantic City. In a February 2020 update on this topic, however, CFO Yunker represented that ERI has no plans to extract Measures from Atlantic City, other than those which may emanate from [redacted] [redacted].

Given the magnitude of the Measures, the Division is concerned that ERI would seek to further reduce expenses at the Atlantic City properties, especially at Caesars AC and Bally's AC if it is not sold, both of which have already been decimated by cost reductions. Given the financial significance of the Measures, as well as the disproportionate employment reductions that have already occurred at Bally's AC and Caesars AC, the potential impact of the Measures on the Atlantic City market is of considerable importance and relevance to New Jersey gaming regulators. Accordingly, the Division intends to seek detailed testimony at the public hearing regarding the potential impact of the Measures on the Atlantic City market.

If the Commission approves the Merger, the Division recommends the imposition of a condition requiring ERI to submit, within 90 days of any closing date of the Merger, a detailed plan to the Division identifying any synergy Measures that will impact any of the Atlantic City licensees or corporate staff that may work in Atlantic City, and obtain Division approval for any aspects of such plan that could have regulatory implications.

7. Capital Expenditures

In the 2017 Restructuring Report, the Division assessed capital expenditures related to the CEC properties. Based on its analysis, the Division concluded that the extremely limited capital expenditures at Bally's AC and Caesars AC over an extended period of time contributed to the poor financial performance of those two properties when compared to their competitors. The following discussion summarizes the capital expenditures undertaken by CEC before and after the bankruptcy, as well as ERI's

responses to Division inquiries regarding its capital expenditure plans after the Merger. Finally, this section provides the Division's position regarding capital expenditures.

a. Pre-Bankruptcy Capital Expenditures

The 2008 Acquisition coincided with the beginning of the economic recession. In light of economic conditions, CEC's main subsidiary CEOC began to experience declining EBITDA results and had difficulty generating sufficient cash flows to fund its debt service requirements and other cash needs, including capital expenditures. Largely as a result, there were very limited cash flows available to reinvest in the CEOC properties, which included Bally's AC and Caesars AC. In contrast, CEC's other subsidiaries were in a better financial position than CEOC, and the properties owned by those entities, including Harrah's AC, were the beneficiaries of a higher level of capital spending.

Due in part to the financial difficulties encountered by CEOC, the total capital expenditures at Bally's AC and Caesars AC subsequent to the 2008 Acquisition have been well below every other casino property that operated in Atlantic City, including the smaller properties in the market. The following chart reflects the total capital expenditures for all of the Atlantic City properties that were open between 2009 and 2019:

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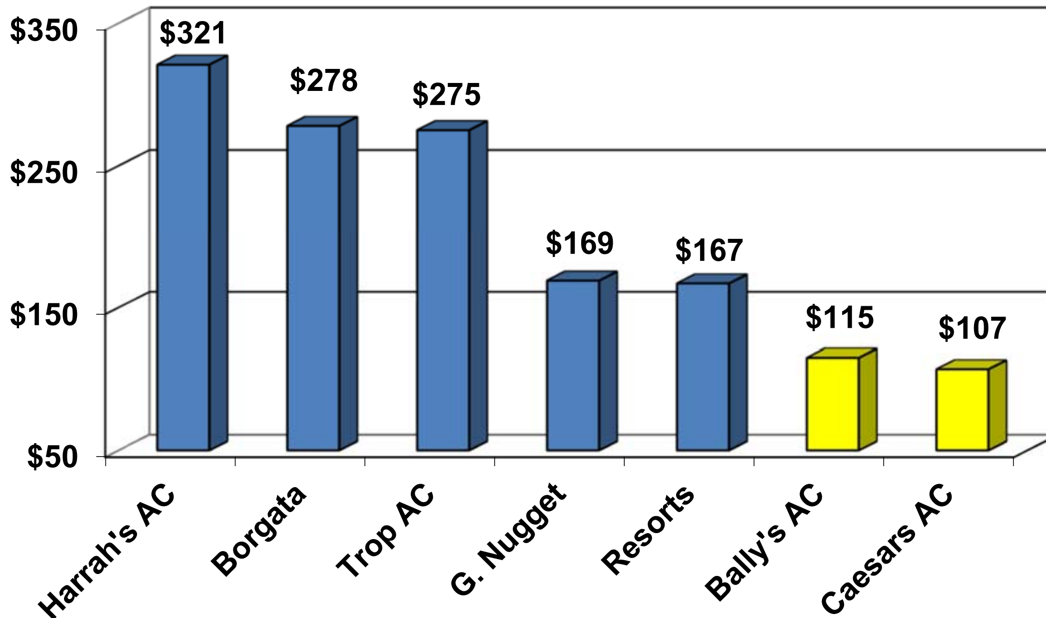
Chart 3
Atlantic City Casino Operators
Total Capital Expenditures
For the 11 Years Ended December 31, 2019
($ in Millions)



For the 11-year period noted above, a total of $321 million was invested in capital expenditures related to Harrah's AC, including a $126 million conference center project that opened in 2015.[28] Excluding the conference center, Harrah's AC invested an average of approximately $18 million per year into its facility. Borgata, Trop AC,[29] Golden Nugget, and Resorts expended between $167 million and $278 million on capital improvements each, or an average of between $15 million and $25 million per year. Comparably, Bally's AC and Caesars AC, which are much larger properties than Resorts and Golden Nugget, invested an average of approximately $111 million in

[28] Of the total $126 million conference center project cost, $45 million was provided by the Casino Reinvestment Development Authority and $81 million was provided by subsidiaries of CEC. Excluding the conference center, Harrah's AC invested a total of $195 million in capital expenditures over the 11-year period.
[29] The bulk of the capital expenditures associated with Trop AC occurred under Icahn ownership prior to ERI's October 2018 acquisition of TEI. Under ERI ownership, Trop AC reported $16 million in capital expenditures for 2019.

capital expenditures per property, which is only an average of $10 million per year. Over the entire 11-year period, the total capital expenditures at Bally's AC and Caesars AC were approximately half of the average annual amount invested by the AC Competitors.

b. Post-Bankruptcy Capital Expenditures

CEC executives touted the Caesars Restructuring as the means to move forward with its operations, reinvest in its properties, and succeed. Notwithstanding these representations, in its 2017 Restructuring Report, the Division took the position that capital expenditures for Bally's AC and Caesars AC needed to be significantly increased in order to improve their competitive position. Accordingly, the Division recommended, and the Commission imposed, conditions requiring the submission of: (1) a detailed capital expenditure plan for Bally's AC and Caesars AC to the Division within 60 days of the effective date and (2) a quarterly report to the Division detailing CEC's progress toward meeting the capital expenditure plan. CEC filed the initial plan in December 2017 (CEC CapEx Plan) and has updated that plan on a quarterly basis with actual expenditures and projected expenditures for at least two years going forward.

Subsequent to CEOC's emergence from bankruptcy, the need for capital reinvestment at Bally's AC and Caesars AC became even more critical. By late 2017, it became clear that both Ocean and Hard Rock would be entering the Atlantic City market during 2018, which would dramatically alter the competitive landscape. Ocean operates the former Revel casino hotel that was originally built at a cost of approximately $2.4 billion and was open from April 2, 2012 through September 1, 2014.

Hard Rock, meanwhile, was a $565 million project that consisted of the $50 million purchase cost of the former Taj Mahal casino hotel facility and an approximate $515 million renovation project that transformed the property into a "Hard Rock" branded resort.

Together, Ocean and Hard Rock reflect approximately $3 billion in combined investment that added around 250,000 square feet of gaming space and 3,370 hotel rooms. Given an estimated 30% increase in market-wide gaming capacity and the relatively low revenue growth rates at the time, it was clear to the Division that the majority of Ocean's and Hard Rock's revenues would come at the expense of existing operators, as reflected in the Division's casino licensing reports placed into evidence at those proceedings. Given the persistent lack of capital reinvestment and disproportionate employee reductions, Bally's AC and Caesars AC were particularly vulnerable to revenue declines after the new casino openings, unless those two areas were addressed in immediate and meaningful ways.

Around the time that the initial CEC CapEx plan was due in December 2017, CEC estimated $149 million in deferred capital expenditures associated with Bally's AC and Caesars AC.[30] When combined with the impending dramatic increase in competition from Ocean and Hard Rock, the initial CEC CapEx Plan should have included significant investments at Bally's AC and Caesars AC. Instead, CEC effectively made clear to the Division that there were no plans for a material investment in those properties until 2020 at the earliest, as it determined to devote its available

[30] The deferred capital expenditures were estimated by CEC management in a presentation dated March 2018. In subsequent submissions, the deferred capital expenditures associated with Bally's AC and Caesars AC were increased to approximately $118 million and approximately $89 million, respectively.

resources to properties that CEC believed had higher potential returns on investment and opportunities for growth, which included Harrah's AC. To illustrate, the following table summarizes the initial CEC CapEx Plan for Bally's AC and Caesars AC that was submitted in December 2017:

Table 16
Bally's AC and Caesars AC
Initial CEC CapEx Plan
For the Three Years Ending December 31, 2020
($ in Millions)

	2018 (Forecast)	2019 (Forecast)	2020 (Forecast)	Total
Bally's AC	$5.1	$ 4.2	$27.6	$36.9
Caesars AC	4.4	11.2	4.4	20.0
Total	$9.5	$15.4	$32.0	$56.9

As indicated above, despite an estimated $149 million in deferred capital expenditures at that time, the initial CEC CapEx Plan only included $56.9 million in capital improvements, which is less than 40% of the deferred amount. For Bally's AC, instead of beginning to address the approximate $70 million in deferred capital expenditures, the CEC CapEx Plan included no major projects until a proposed $20 million room renovation that was then not scheduled to commence until 2020. Similarly, despite an estimated $79 million in deferred capital expenditures, no major projects were planned for Caesars AC other than a proposed $6.9 million renovation of 75 rooms and eight suites that was then not scheduled to begin until 2019. Essentially, other than the relatively minor room renovation projects, the planned capital expenditures at both properties were insignificant beyond gaming equipment and primarily related to no more than the minimum maintenance expenses. Moreover, instead of front-loading the long-delayed and much-needed capital expenditures to meet

increased competition, CEC back-loaded the improvements in an apparent strategy to not only delay, but to potentially avoid, implementing them at all.

In the Division's opinion, the initial CEC CapEx Plan for Bally's AC and Caesars AC reflected the continuation of CEC's historical practice of severely underfunding those properties. Worse yet, as the Division suspected, the room renovation projects that were "planned" for 2019 at Caesars AC and for 2020 at Bally's AC have been continually postponed to later years in subsequent CEC CapEx Plan submissions to the Division. Specifically, in the CEC CapEx Report filed in January 2020, the more substantive room renovation expenditures are now "scheduled" for 2021 for Caesars AC and 2022 for Bally's AC. Thus, no room renovations have occurred to date at either property and none is planned to occur in the near term under CEC ownership. For these reasons, the CEC CapEx Plan has no credibility as far as Bally's AC and Caesars AC are concerned, and the Division has not relied on the validity of this submission for some time.

Based largely on the deferral of any project of substance such as room renovations, capital expenditures for Bally's AC and Caesars AC for 2018 actually *declined* to its lowest combined level for the past seven years, as illustrated in the following chart:

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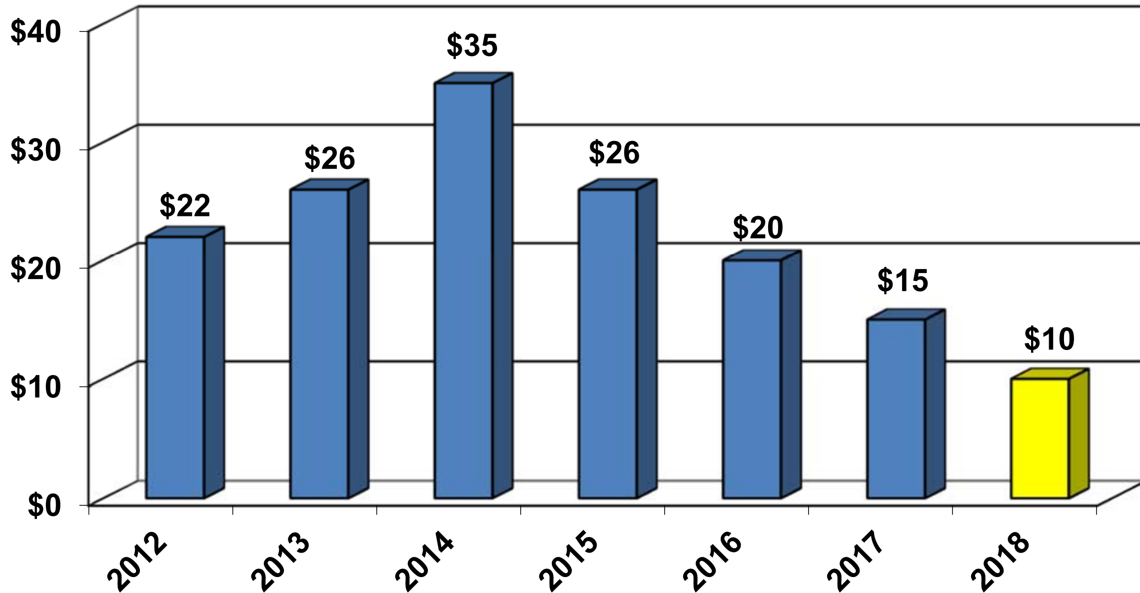
Chart 4
Bally's AC and Caesars AC
Total Capital Expenditures
For the Seven Years Ended December 31, 2018
($ in Millions)



For 2018, Bally's AC and Caesars AC reported capital expenditures of only $5.3 million and $4.5 million, respectively. For 2019, Bally's AC reported capital expenditures of approximately $15 million, although $7 million of that investment was necessary in order to be able to open its sports wagering facility, and only $8 million was spent elsewhere in the facility. Caesars AC, meanwhile, reported capital expenditures of approximately $7 million, as no sports wagering facility was built there. Under the Bally's AC sale agreement, the sports wagering facility located in the Wild West would be retained and operated by Caesars AC.

c. ERI Capital Expenditure Submissions

To be clear, the issues regarding the severe lack of capital investment at Bally's AC and Caesars AC were a direct result of decisions made by CEC executives over more than 11 years. After the Merger, ERI executives will manage New Caesars and be responsible for developing its capital expenditure strategy, although as an operator and not an owner of the Atlantic City properties, the Division has raised questions regarding ERI's incentive to do so.

In the initial financial information request in August 2019, the Division asked ERI to provide its capital expenditure plans for the Atlantic City licensees through 2022, with specific projects and completion dates. In addition, the Division requested an assessment of necessary maintenance projects at Bally's AC and Caesars AC that have been deferred and how those capital needs would be addressed. Instead of providing the requested information, ERI provided the following response in September 2019:

> [A]s [ERI] has not yet obtained [HSR Act] approval, it is precluded from completing extensive operational reviews at the property level. Once [ERI] is permitted to conduct operational reviews, [ERI] will meet with the leadership teams at each of [CEC's] Atlantic City properties and conduct in depth operational and financial reviews of [CEC's] Atlantic City properties. These meetings will lead to specific capital expenditure plans and target dates for completion.

Upon receipt of this response, the Division notified ERI that, at a minimum, it needed a preliminary capital expenditure plan for the Atlantic City properties based on the due diligence performed and facts already known to ERI management when they were negotiating the terms of the Merger. In response to the follow-up request, ERI

provided a document that contained "directional views" on the areas where management believed capital improvements are needed, which is summarized below.

Bally's AC: Before the sale transaction, ERI management indicated that Bally's AC benefits from its center boardwalk and beach location, millennial appeal of the "reinvented" Wild West space, value pricing of its hotel rooms, new sportsbook, branded food and beverage offerings, and VIP lounge. ERI also believed that the operating performance of Bally's AC continues to decrease due to its dated hotel product, limited casual dining options, decline in Asian table game business and eroding bus business.

In order to better compete in the Atlantic City gaming market, ERI originally identified the following areas of potential capital investment at Bally's AC:

- Refresh the hotel lobby bar
- Modernize the hotel room product
- Activate the pool, spa and deck area through the addition of casual dining and new bar concepts
- Make new investments in under-utilized space

ERI originally expected maintenance capital expenditures and slot machine additions at Bally's AC to be approximately $10 million per year. Assuming that Bally's AC is sold, ERI set forth that it would be Twin River's responsibility to formulate a capital expenditure plan to improve the competitive position of that property.

Caesars AC: ERI stated that Caesars AC benefits from an excellent location on the boardwalk, dedicated Asian gaming space with a noodle bar, a full complement of spa and salon services, VIP lounges and competitive suites. Notwithstanding those attributes, ERI sees that the current product offering is inconsistent with customer and

brand expectations, due in part to a "dated" gaming floor and hotel product, a lack of desirable non-gaming amenities, and its linkage to the Pier, which has a very low occupancy rate and is underutilized. ERI's position is that these weaknesses have allowed competing properties to aggressively market to Caesars AC customers and divert them to their properties.

In light of the foregoing, ERI stated that targeted growth capital expenditures post-closing will be critical to ensuring the long-term success of Caesars AC. ERI identified the following opportunities to improve Caesars AC:

- Conversion of the Gordon Ramsay Pub to new restaurant concept
- Conversion of the Dusk nightclub space into a new lounge/entertainment concept
- Need for a reevaluation of the master plan for the casino and Toga bar
- Room renovations of Centurion and Ocean Towers

Similar to Bally's AC, ERI envisioned a similar level of ongoing maintenance capital expenditures and slot machine additions at Caesars AC at approximately $10 million per year.

Harrah's AC: ERI supported CEC's plan to renovate 416 rooms in the Marina Tower at a projected cost of $23 million. CEC commenced this project in first quarter of 2020 and expects to complete it by June 30, 2020. In addition, growth projects that are under consideration by ERI and subject to more detailed due diligence, included: (1) the addition of an Asian noodle bar concept, (2) refurbishment of the retail outlets, and (3) changes to some of the restaurant outlets. As far as maintenance capital expenditures,

similar to Bally's AC and Caesars AC, ERI envisioned maintenance capital expenditures and slot machine additions at Harrah's AC of approximately $10 million per year.

Based on the foregoing, ERI recognizes many of the key issues facing the CEC properties in Atlantic City and has identified various potential capital expenditure projects that could be pursued. However, in all submissions through January 2020, ERI made no formal commitment to the Division regarding specific capital expenditure projects that would be implemented at any of the CEC properties post-Merger. With the proposed sale of Bally's AC, New Caesars would effectively shift the responsibility for the long overdue, broad and extensive capital expenditure needs of that property to Twin River.

d. Tropicana Atlantic City Capital Expenditure Plans

Trop AC has been the beneficiary of significant capital investment under Icahn ownership. Specifically, Trop AC expended approximately $275 million on capital improvements between 2008 and 2019, which includes $16 million under ERI ownership for 2019. According to ERI, it plans to continue to invest capital into Trop AC to further improve its amenities. Going forward, ERI is budgeting approximately $8 million to $10 million for annual maintenance capital expenditures at Trop AC. ERI is also considering remodeling the West Tower with its 604 rooms, the Chelsea Tower with its 219 rooms and the Chelsea Annex with its 113 rooms at an aggregate cost of between $30 million and $40 million from 2021 through 2023. None of these potential hotel room projects under consideration, however, were actually included in any forecast submission through January 2020.

e. February and April 2020 Capital Expenditure Update

On multiple occasions between the commencement of the Division's investigation in July 2019 and the end of January 2020, the Division had made clear to ERI management and ERI's New Jersey counsel that it has significant concerns regarding the lack of capital expenditures at Bally's AC and Caesars AC. During that timeframe, ERI chose not to make any commitment to the Division that New Caesars would substantially increase capital spending on those two properties after the Merger.

As the Division was finalizing its financial review, CFO Yunker reached out to the Division in early February 2020 to discuss its concerns. In an attempt to address the capital expenditure component, CFO Yunker submitted an email to the Division on February 7, 2020 supporting the CEC CapEx Plan that was submitted by CEC in January 2020 and previously referenced herein. In addition, CFO Yunker represented that ERI would commit to increasing the capital budget across Bally's AC, Caesars AC, and Harrah's AC to $100 million per year in 2021 and 2022.

In response, the Division advised CFO Yunker that ERI's attention to capital improvements was a positive first step. With regard to the CEC CapEx Plan, however, the Division informed CFO Yunker of the history of that document and, more importantly, the substantial deficiencies of that "plan" and its failures in execution as they relate to Bally's AC and Caesars AC, which were previously discussed in Section 7.b., Post-Bankruptcy Capital Expenditures, above. The Division also advised CFO Yunker that, in light of the continued deferral of capital expenditures to future years and the demonstrated lack of near-term investment in those two properties, the CEC CapEx

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Plan remains wholly inadequate. CFO Yunker indicated that he was unaware of the issues surrounding the CEC CapEx Plan and understood the Division's position.

In light of the foregoing, the Division requested a formal capital expenditure plan created by ERI to include any firm commitment that ERI was prepared to make with regard to each Atlantic City CEC property and Trop AC during the first three years after the Merger. On February 24, 2020 and April 30, 2020, CFO Yunker provided the following three-year capital expenditure commitment that assumes the closing of the Merger with a capital expenditure plan to be implemented by September 30, 2020 (Initial ERI CapEx Commitment):

Table 17
New Caesars
Atlantic City Initial Capital Expenditure Commitment
For the Three Years After the Merger
($ in Millions)

	Year 1 (10/20-9/21)	Year 2 (10/21-9/22)	Year 3 (10/22-9/23)	Total
Caesars AC	$ 55	$ 40	$16	$111
Harrah's AC	23	27	41	91
Trop AC	14	40	18	72
Bally's AC	13	33	5	51
Total	$105	$140	$80	$325

For the three years after the Merger, the Initial CapEx Commitment across all four properties totaled $325 million and consisted of the following:

- $111 million at Caesars AC, consisting of approximately $60 million for room renovations, $16 million in food and beverage renovations, $12 million for gaming equipment and $23 million for other smaller projects;
- $91 million at Harrah's AC, including approximately $63 million for room renovations, $10 million for gaming equipment, $5 million for pool area upgrades, and $13 million for other projects;

- $72 million at Trop AC, consisting of approximately $36 million for room renovations, $9 million for gaming equipment and $27 million for other smaller projects, including physical plant upgrades; and
- $51 million at Bally's AC, including approximately $30 million for room renovations, $10 million for gaming equipment and $11 million for other smaller projects.

Notably, approximately 75% of the Initial CapEx Commitment was projected to be expended in the first two years, with near-term commitments to Bally's AC and Caesars AC.

As part of the Initial CapEx Commitment, CFO Yunker expressed his willingness to address the reporting and tracking of these capital commitments. In this regard, CFO Yunker set forth that ERI is open to the imposition of "escrow conditions" wherein the capital expenditure requirements would be prefunded into an escrow account, with those funds and their timely expenditure being monitored by the Division in accordance with an approved reporting process.

In even more recent discussions with, and correspondence to, the Division, ERI ultimately set forth a commitment totaling $400 million over the three-year period immediately following the Merger (Updated CapEx Commitment), along with the following key requirements if the Merger is approved by the Commission. First, the entire Updated CapEx Commitment would be prefunded under a trust agreement in an escrow account under the control of an independent trustee. Second, the capital expenditure trust account must be bankruptcy proof. Third, the spending commitment is to be front loaded, with at least $200 million expended in the first year and at least $325 million expended by the end of the second year. Lastly, if the escrow requirements are not fully funded by the closing date of the Merger, the approval of the transaction will be

automatically rescinded by a condition subsequent imposed by the Commission in conjunction with the Merger.

f. Division Position Regarding Capital Expenditures

It is the Division's position that Bally's AC and Caesars AC continue to have extreme difficulties competing in the Atlantic City market due in large part to the decisions made by CEC executives over the years. Thus, the Division must reiterate the position it took in the 2017 Restructuring Report that the rationale and approach taken by CEC regarding the lack of capital improvements, the deferral of maintenance, and continuous reductions in staffing levels are unacceptable. This situation will no longer be countenanced. Clearly, ERI's executives will need to provide considerable testimony regarding the area of capital expenditures at the proceeding to be held in this matter to address these issues as it falls to ERI under the proposed Merger to attend to them and to satisfy the regulatory concerns connected with them.

Assuming that Bally's AC is sold, it will be Twin River's responsibility to formulate a capital expenditure plan to improve the competitive position of that property. The current condition of that property is apparently reflected by its $25 million sale price. With regard to Caesars AC, it is the Division's position that the level of investment should be increased from the Initial CapEx Commitment, especially given the lack of funding for approximately 11 years and the resulting magnitude of the deferred capital expenditure needs. As indicated in Chart 3 above, Borgata and Trop AC invested $278 million and $275 million in capital expenditures, respectively, over the 11-year period between 2009 and 2019, whereas Caesars AC invested only $107 million over that

period, which was the lowest by far in the industry other than Bally's AC. In the Division's view, Caesars AC remains at an estimated $170 million disadvantage to its closest peers in terms of capital improvements as of year-end 2019. Moreover, based on a recent CEC submission to the Division, there are now an estimated $89 million in deferred capital expenditure needs associated with Caesars AC.

Based on the Division's financial review, a dramatic capital expenditure initiative is critical for Caesars AC to reverse its declining EBITDA trend and begin to return to the EBITDA levels that this once top-tier property was generating prior to the 2008 Acquisition. As previously discussed, Caesars AC reported EBITDA for 2019 that was 57% below that generated in 2008, while the four AC Competitors reported EBITDA that was 31% higher on average compared to 2008.

If the Commission approves the Merger, it is the Division's position that the minimum capital expenditure requirement for Caesars AC be $150 million for the first three years after the Merger, which would be a start toward addressing the lack of investment over the past 11 years, as well as account for a more appropriate level of capital spending for the next three years. The Division has advised ERI of its position in this regard. ERI has represented it will invest a minimum of $150 million into the Caesars AC facility over the next three years if the Merger is approved.

With regard to Harrah's AC and Trop AC, those two properties benefited from higher capital spending historically, such that the Division is comfortable providing ERI management with the discretion to determine the capital expenditure projects that can produce the best return on investment at those facilities. While the Division does not

recommend a specific minimum level of capital expenditures for Harrah's AC and Trop AC, the Division does recommend a minimum total capital expenditure requirement across Caesars AC, Harrah's AC, and Trop AC for the first three years after the Merger that totals $400 million in accordance with ERI's Updated CapEx Commitment. In the event that Bally's AC is not sold, the Division recommends a condition requiring New Caesars to invest an additional minimum amount of $125 million for capital expenditures on that property for the first three years after the Merger. The Division has advised ERI of its position with regard to Bally's AC as well. ERI has represented that it will invest $400 million into Caesars AC, Harrah's AC, and Trop AC over the three-year period post-Merger and will invest an additional $125 million into Bally's AC over the three-year period if that property is not sold.

After the initial three-year period, it is the Division's position that a minimum level of capital expenditures be required on an ongoing basis. Specifically, if the Commission approves the Merger, the Division recommends a condition requiring Caesars AC, Harrah's AC, Trop AC, and Bally's AC if it is not sold, to invest at least 5% of their net revenue on capital expenditures annually after the three-year period covered by the Updated CapEx Commitment. The Division has advised ERI of its position in this area. ERI has represented it will invest a minimum of 5% of its net revenues into each facility after the initial three-year period.

In conclusion, if the Commission approves the Merger, it is the Division's position that stringent conditions need to be imposed regarding capital expenditures as outlined above. These conditions must: (1) quantify the minimum amount of capital expenditures to be invested into Caesars AC for the first three years after the Merger,

(2) quantify the minimum amount of capital expenditures to be invested among all New Caesars' Atlantic City properties over the first three years subsequent to the Merger, (3) quantify the minimum amount of capital expenditures to be completed by the end of the first and second years, (4) require the escrow of funds, (5) quantify the minimum amount of capital expenditures to be invested into Bally's AC if that property is not sold, and (6) provide for a minimum reinvestment requirement on an ongoing basis thereafter. More particularly, these requirements must be in accordance with the recent representations and commitments made by ERI as described above.

8. Potential Property Divestiture

If the Merger is approved, New Caesars may determine in the future to further reduce its holdings in Atlantic City beyond Bally's AC. If New Caesars decides to sell another property, the Division will review that transaction in the normal course, including any necessary adjustments to the proposed capital expenditure conditions. With regard to a potential closure, CFO Yunker stated that ERI has no intention of closing any Atlantic City property and that ERI will commit to that position as a condition in connection with the Merger.

If the Commission approves the Merger, the Division recommends the imposition of a condition prohibiting a closure of any property within five years of the closing date of the Merger. If, after the five-year period, New Caesars decides to close a property, New Caesars must conduct at least an 18-month sale process, during which the casino property must stay fully operational, be maintained in first class condition in accordance with the Act, and remain in compliance with the capital expenditure requirements.

9. Deed Restrictions

On February 24, 2014, a subsidiary of CEC sold the Claridge hotel then associated with Bally's AC (Claridge) to TJM Atlantic City, LLC (TJM). The sale included a restrictive covenant prohibiting Claridge from being used as a casino or obtaining an Internet gaming permit. The covenant runs with the land in perpetuity. Through another subsidiary, CEC imposed a similar restrictive covenant on the former Atlantic Club Hotel Casino (Atlantic Club) in conjunction with the sale of that property on April 3, 2014. The Atlantic Club covenant runs with the land for fifteen years, or until 2029. The Claridge and Atlantic Club Declarations of Restrictive Covenants do not have early release provisions, however, their terms can be waived by CEC.

On November 18, 2014, another CEC subsidiary entered a Declaration of Restrictive Covenants (Showboat Declaration) which prohibited certain land parcels of Showboat from being used for casino gaming or obtaining an Internet gaming permit. The Showboat Declaration allowed for an early release from the restrictive covenants in return for an $80 million payment. The Showboat Declaration can be modified by CEC. Unless released or modified, the Showboat Declaration is for 10 years and terminates on November 18, 2024.

As part of its review of the Merger, the Division requested that ERI executives provide their plans, if any, with regard to the deed restrictions on the three former casino hotel properties associated with CEC, as discussed above. In all responses through January 2020, ERI advised the Division that it did not intend to make any changes with respect to the deed restrictions if the Merger was finalized, meaning that all three deed

restrictions would remain in place under their current terms. In a subsequent response to the Division on February 24, 2020 and reaffirmed on April 15, 2020, CFO Yunker represented that New Caesars would be willing to release the deed restrictions that encumber the Atlantic Club and Showboat properties, but not the restriction imposed on Claridge.

It is the Division's position that deed restrictions increase the barriers to entry for new entrants and reduce competition. This position is supported by the Division's expert in the undue economic concentration report filed with the Commission. If the Commission approves the Merger, the Division recommends that a condition be imposed requiring New Caesars to eliminate all three of the deed restrictions at no cost and in accordance with terms approved by the current owners within 60 days of the closing of the Merger. Based on more recent discussions, ERI has represented that it will remove the deed restrictions on Claridge, Atlantic Club, and Showboat under the above terms.

In addition, if the Commission approves the Merger, the Division recommends that a condition be imposed to prohibit New Caesars or VICI REIT from imposing a deed restriction on any property they own or control in Atlantic City. Lastly, the Division recommends that a condition be imposed requiring New Caesars to report all land parcels it owns or leases outside of the footprint of Bally's AC, Caesars AC, Harrah's AC, and Trop AC within 60 calendar days after the Merger closing. To the extent those land parcels are needed for the construction of a new casino hotel, or the expansion of an existing casino hotel, the Division recommends a condition requiring those land parcels to be sold by New Caesars on commercially reasonable terms as determined by

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an independent expert. These conditions are intended to ensure that New Caesars does not impede future growth and competition, and they are consistent with a recommendation that has been included in the Division's expert report regarding undue economic concentration.

I. Financial Stability Discussion and Opinion

In order for the Merger to be approved, ERI and CEC must present clear and convincing evidence to New Jersey regulators that New Caesars will be financially stable after the Merger. Prior to the COVID-19 health crisis, the Merger was a challenging and difficult transaction, but the financial stability issues facing New Caesars then were not insurmountable. The Division's analysis of the February Forecasts indicated that New Caesars maintained sufficient financial flexibility to address unforeseen cash needs through 2022. Most significantly, New Caesars had the ability to reduce or eliminate approximately $2.5 billion in discretionary debt repayments that were funded with excess cash flow. In addition, New Caesars expected to have access to $2 billion in Revolvers, neither of which was expected to be borrowed upon to fund the Merger or thereafter at any point during the forecast period.

The COVID-19 health crisis and resulting casino industry shutdown have had a devastating impact on the operating results and cash flows of ERI and CEC, as well as casinos nationwide. Based on the Division's analysis, the financial and economic ramifications of the health crisis raise concerns regarding the viability of New Caesars after the Merger. Most significantly, according to the April Forecasts, New Caesars expects to: (1) have a post-Merger debt level that is $1.63 billion higher than originally

anticipated, (2) incur a $458 million increase in annual debt service obligations and lease payments compared to pre-Merger requirements, and (3) have only $686 million in remaining available borrowing capacity on the Revolvers entering the forecast period.

If New Caesars had a stable Property EBITDA base following the proposed Merger in 2020 that was consistent with 2019, the combined entity would be able to withstand the financial impact of the temporary but lengthy industry shutdown and remain financially stable after the Merger. Unfortunately, this is not the case given the impact of the current health crisis and potentially severe economic downturn, both of which could persist for an extended period of time. As of now, it is impossible for the Division to determine whether the April Forecasts are reasonable and attainable.

To be clear, the Division's evaluation of the April Forecasts is unlike any other major transaction in the history of gaming in Atlantic City. In preceding cases, the Division would analyze historical operating results, evaluate key assumptions and capital expenditure plans, and assess financial flexibility in the event that cash flows fall short of expectation. That analysis simply cannot be undertaken in this case with any degree of certainty or confidence. In many respects, the financial success of the proposed Merger, designed to create the largest gaming company nationally based on the number of properties, will be determined by events and circumstances that are beyond the control of management and cannot be accurately predicted at this time.

An assessment of ERI's assumptions is critical in this case. ERI management assumes that most casinos reopen in June 2020, with properties in certain markets opening in July and August 2020. From July 2020 through September 2020,

management assumes that net revenue will be approximately 38% below 2019 due largely to anticipated operating restrictions, the staggered opening of certain properties, and reduced customer visitation. From October 2020 through February 2021, all properties are expected to be open and the operating restrictions are assumed to be largely eliminated. During that period, net revenues are projected to be around 20% below the prior year.

From March 2021 through June 2021, the operational recovery is expected to continue, with net revenues only 8% lower than the comparable period in 2019. By the end of 2021, ERI management assumes that the health crisis will essentially be over and there will be no lingering economic issues. If all of these assumptions materialize, New Caesars' net revenue is expected to return to pre-shutdown levels within approximately 18 months of when most casinos reopened in May and June 2020.

At the public hearing on this matter, ERI must demonstrate to the Commission that the preceding assumptions are reasonable and that the EBITDA results are attainable. Further, ERI must convince the Commission that it maintains adequate financial flexibility to withstand unanticipated shortfalls in EBITDA. For its part, the Division does not share ERI management's optimism that New Caesars' operating performance will return to pre-shutdown levels by the end of 2021. As of the date of this report, the Division does not know: (1) the length of time and the nature and extent of restrictions and limitations in place on casinos and customers, (2) the business volumes and customer visitation trends subsequent to reopening, particularly in the Las Vegas market that relies heavily on air travel, (3) the length of time it will take for revenues to return to pre-closure levels, (4) the incremental costs incurred by casinos to protect the

health of patrons and employees, (5) the economic conditions that will exist post-Merger and through 2022, and (6) any potential future COVID-19 medical and health matters that could impact continuing casino operations.

Based on the uncertainties noted above, the projected net revenues and EBITDA subsequent to reopening, as well as a complete operational recovery by the end of 2021, may not materialize to the extent forecasted. In the event that EBITDA levels fall well below the April Forecasts, New Caesars would need to have access to sufficient financial resources to address the potential cash flow shortfalls.

According to the April Forecasts, the flexibility in New Caesars' cash balance and Revolvers immediately after the Merger is projected to be limited and thus may not be sufficient to address unanticipated cash needs. However, the Division was advised in early June 2020 that ERI was taking additional steps to bolster its liquidity profile. In this regard, on June 15, 2020, ERI announced the sale of additional common stock, an increase in the borrowing capacity on the Revolvers, and a transaction with VICI REIT that contemplates a mortgage loan on the new CEC Las Vegas convention center and proceeds from the sale of adjacent land. Additionally, June 19, 2020, ERI finalized the debt borrowings associated with the Merger, which will provide additional financial resources beyond that incorporated into the April Forecasts.

Collectively, these additional transactions are expected to provide a much-needed $2.285 billion improvement in New Caesars' financial resources. Thus, New Caesars now expects to have $2.168 billion in available borrowing capacity on the Revolvers post-Merger, instead of $686 million under the April Forecasts. In addition,

New Caesars expects to have an additional $803 million in excess cash after the Merger compared to the April Forecasts. ERI has also represented to the Division that New Caesars expects in the upcoming years to sell two Indiana properties and a Las Vegas strip property and will consider other transactions to enhance liquidity and reduce debt. As a result of the foregoing, the risk associated with New Caesars' financial stability and post-Merger liquidity has been reduced.

With regard to the impact of the Merger on Atlantic City, the Division highlighted nine areas that warranted further discussion and analysis. While certain of those matters can be adequately addressed through the imposition of the recommended conditions and are not controversial, the following major areas of concern need to be further explored at the public hearing:

- ERI's plans with regard to management structure, casino key employees, and overall employment levels at Caesars AC, Harrah's AC, and Trop AC.
- ERI's capital expenditure plans, particularly at Caesars AC, and the impact of REIT ownership on the decision-making process.
- The impact of the proposed Measures on the operations of New Caesars, and particularly on the Atlantic City properties.

For each topic above, ERI has been offered multiple opportunities to formally address the Division's concerns between July 2019 and January 2020. In its original responses, ERI management did not provide clear plans or commitments for many of these critical Atlantic City areas of concern.

In early February 2020, the Division provided another opportunity for ERI to respond to each critical Atlantic City matter noted above. On February 24, 2020 and in

subsequent communications, the Division received responses from CFO Yunker that included the following:

- *Capital Expenditures*: For the three years after the Merger, ERI made an original commitment to spend $325 million in capital expenditures. In light of the critical needs associated with its properties, however, ERI has recently committed to invest $400 million in capital improvements for the three Atlantic City properties after the sale of Bally's AC, with at least $150 million of that amount invested in Caesars AC. Additionally, ERI has committed that the entirety of the capital expenditure funds will be placed under trust agreement into an escrow account under the control of an independent trustee no later than the closing date of the Merger. Further, if Bally's AC is not divested, ERI has consented to a condition requiring capital expenditures of at least $125 million for that property over a three-year period.

- *Employees*: In February 2020, ERI committed that each Atlantic City property will maintain at least the then current number of employees and that planned property upgrades could result in the addition of employees going forward. However, in view of the casino closures, ERI requested on April 15, 2020 that there be a downward adjustment in employee levels until such time as revenues returned to pre-shutdown levels. Based on subsequent discussions, compliance with this condition could be deferred until the earlier of 12 months after reopening or until revenues are 90% of pre-shutdown levels, whichever occurs earlier.

- *Measures*: ERI represented that other than with regard to an ongoing review relating to [REDACTED], ERI has no plans to extract cost savings from Atlantic City to attain the projected synergy Measures. ERI understands that any Measures that impact the Atlantic City properties cannot be implemented without Division review and approval.

- *Deed Restrictions*: In February 2020, ERI was willing to release the deed restrictions that encumber the Atlantic Club and Showboat properties, but not Claridge. ERI advised that, in accordance with the Division's position, and its expert's recommendation, all three deed restrictions will be eliminated if the Merger is approved.

- *Potential Property Closure*: ERI has represented that it has no intention to close any Atlantic City property, and ERI will commit to that position as a condition to the Merger.

Clearly, the above representations and commitments largely address these critical areas and they formed the basis for many of the Division's recommended

conditions regarding the Atlantic City properties. Nevertheless, there remains a considerable level of uncertainty regarding the impact of the Merger upon Atlantic City, especially if New Caesars encounters financial difficulties.

In conclusion, the Division has concerns regarding New Caesars' post-Merger financial position in light of the considerable uncertainty regarding future operating results, as well as the impact of the Merger on Caesars AC, Harrah's AC, Trop AC, and Bally's AC if that sale does not proceed, as well as the Atlantic City market as a whole. Therefore, the Division cannot recommend the approval of the Merger at this time. Instead, the Division looks toward to the testimony to be provided by ERI at the public hearing and will make a final recommendation to the Commission upon completion of the hearing.

If, after hearing the testimony in this matter and receipt of the Division's recommendation, the Commission is convinced that ERI and CEC have met their burden of clear and convincing evidence and that the Merger transaction may be approved, the Division has outlined throughout this report a number of conditions. Those conditions could form the requisite basis for any approval and the Division could work with ERI and the Commission to finalize those requirements. As made clear in this report, a key goal to be achieved if the Merger is approved is to severely limit New Caesars' ability to implement many of the disastrous steps taken by CEC after the 2008 Acquisition that decimated employment, ended major reinvestment in Bally's AC and Caesars AC, reduced competition through deed restrictions, and closed a profitable Showboat property.

In this regard, the Division's concern is greatly amplified and informed by other experiences, especially the similarities between the 2008 Acquisition and the proposed Merger in terms of the issues related to those transactions themselves and the major events intervening between execution of the agreement and the closing of the deal which seriously affected the financial position of the entities after the transaction. The Division is endeavoring to ensure that the interests of the Atlantic City casino industry with its patrons, employees, and vendors, the City itself, the region and the State of New Jersey are not harmed by the proposed Merger and that those interests are protected to the extent possible. While there can be no guarantee that New Caesars will succeed, the imposition of stringent conditions should help to accomplish those goals.

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VI. UNDUE ECONOMIC CONCENTRATION

As set forth in the public policies of Section 1b of the Act, the State's interest is to ensure the continued viability, integrity and economic strength of the Atlantic City casino industry and its role as an economic engine of southern New Jersey. Under *N.J.S.A.* 5:12-82e, no person can be issued, or be the holder of, a casino license if the issuance of such license or its holding results in undue economic concentration in the Atlantic City casino market. Currently, CEC operates three casinos in Atlantic City, *i.e.*, Bally's AC, Caesars AC and Harrah's AC, and ERI operates Trop AC. As referenced above, there is a pending sale of Bally's AC to Twin River. If the Merger is approved and the Bally's AC sale is completed, New Caesars would control three of the nine casino hotel facilities in Atlantic City. In the event that the Bally's AC sale is not consummated, New Caesars would control four of the nine Atlantic City facilities.

Thus, the proposed transactions raise the issue of whether the Merger would concentrate undue economic dominance in New Caesars to such an extent that competition in the Atlantic City gaming industry would be negatively impacted and New Caesars could exercise undue and unfair influence and control over that market. A key factor in this analysis is that New Caesars, like CEC, would be the only multi-casino operator, as the remaining five casino gaming properties in Atlantic City are held individually. If the sale of Bally's AC proceeds and Twin River is granted ICA, it would ultimately become an additional independent operator. In every undue economic concentration determination until 2014, there were at least two multi-casino owners,

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such as CEC and its predecessor entities and Trump Entertainment Resorts, Inc. (TER) and its predecessor entities.[31] Such is not the case here.

A. Market Share Statistical Factors

In determining whether the issuance or holding of a casino license by a person will result in undue economic concentration, *N.J.S.A.* 5:12-82e requires the Commission to consider the changes in market share which could result from the transaction under 11 statistical categories. Those 11 statistical categories can be separated into six "Facility Statistics" and five "Operating Statistics" which differentiate the factors in those categories from those which relate to the size of the casino hotel and those which relate to operating performance:

Facility Statistics	Operating Statistics
Number of licensed casinos Total gaming space Number of guest rooms Number of slot machines Number of table games Number of employees	Slot machine handle Table game drop Slot machine win Table game win Net revenue

Although not required by the Act, experts in prior cases also have relied upon the Herfindahl-Hirschman Index (HHI), which is a guideline adopted by the U.S. Department of Justice (DOJ) and the FTC to assess under the HSR Act the impact of mergers and acquisitions on competition. The HHI is calculated by summing the squares of the individual market shares. For example, an entity with a 10% market share would contribute 100 points to the industry HHI, while an entity with a 30% market share would contribute 900 points to the industry HHI. By summing the squares of the market

[31] TER and its predecessor entities owned two or three casino licensees from 1985 to 2014, namely Trump Plaza, Trump Taj Mahal and Trump Castle/Trump Marina.

shares, greater weight is placed on those entities that hold more than one casino license.

Under the 2010 Horizontal Merger Guidelines by the DOJ and FTC (2010 Guidelines) which remain in effect, an industry with an HHI below 1,500 is considered not concentrated, between 1,500 and 2,500 is considered moderately concentrated, and above 2,500 is classified as highly concentrated. For the 11 statistical categories contained in Table 11, the average HHI for the Atlantic City casino industry is approximately 1,944 as of September 30, 2019, which is about the midpoint of the moderately-concentrated range. If the Merger is approved and if the sale of Bally's AC is finalized, the average HHI in these same categories would rise slightly to approximately 2,064, remaining within the moderately-concentrated range. If the Merger is approved and the sale of Bally's AC is not consummated, the average HHI would be 2,641, and the Atlantic City casino industry would be a highly concentrated market. The outcome of the proposed Bally's AC sale will not be known at the time of the Merger proceeding.

For those reasons, and even if the pending divestiture of Bally's AC proceeds resulting in an estimated modest increase in the average HHI, the effect of the proposed Merger on competition in Atlantic City under the statutory criteria mandated in Subsection 82e of the Act needs to be examined closely and with care due to the effects it will have on the industry and market. Notably, the average HHI following a divestiture of Bally's AC under the agreement with Twin River cannot be quantified with precision given that the proposed sale does not include the Wild West casino and the sportsbook components, as indicated above. Additionally, while CEC owned three of

seven Atlantic City casino hotel facilities in 2017 prior to the opening of Hard Rock and Ocean in 2018, that level of dominance in the market was caused by casino closures and not the affirmative approval of a transaction. Moreover, the control of Caesars AC, Harrah's AC and Trop AC, rather than Bally's AC in its current condition along with Caesars AC and Harrah's AC, creates a different dynamic both in view of the upper tier presence of Harrah's AC in the market and the depressed condition of Bally's AC.

While the market share statistical factors and HHI changes are starting points, all relevant factors impacting competition need to be evaluated to determine if the economic concentration stemming from the Merger of ERI with CEC would be "undue," and inconsistent with the policies in the Act. The additional relevant factors include:

- The current and projected financial condition of the casino industry;
- Current market conditions, including level of competition, consumer demand, market concentration, any consolidation trends in the industry and any other relevant characteristics of the market;
- Whether the licensed casinos held or to be held by the person have separate organizational structures or other independent obligations;
- The potential impact of licensure on the projected future growth and development of the casino industry and Atlantic City;
- The barriers to entry into the casino industry, including the licensure requirements of the Act, and whether the issuance or holding of a casino license by the person will operate as a barrier to new companies and individuals desiring to enter the market;
- Whether the issuance or holding of the license by the person will adversely impact consumer interests, or whether such issuance or holding is likely to result in enhancing the quality and customer appeal of products and services offered by casino licensees in order to maintain or increase their respective market shares;

- Whether a restriction on the issuance or holding of an additional license by the person is necessary in order to encourage and preserve competition and to prevent undue economic concentration in casino operations; and

- Any other evidence deemed relevant by the Commission.

To assist in the overall analysis of these complex matters, the Division, as noted above, retained Dr. Martin K. Perry as its expert. Dr. Perry's "Report on Undue Economic Concentration Analysis related to the Proposed Merger of Eldorado and Caesars in Atlantic City, New Jersey," dated May 27, 2020, has been submitted to the Commission and provided to the other parties under separate cover.

Dr. Perry's report addresses competition in the Atlantic City market considering a variety of factors such as industry concentration, industry performance, potential sites for entry of new market participants, deed restrictions, and the growth of gaming. He also expresses his views regarding future competition. Dr. Perry concludes his report by setting forth a number of options the Commission can consider with regard to economic concentration and he offers his analyses and thoughts as to each.

In brief, and subject to the fuller explanation in Dr. Perry's report and testimony at the hearing in this matter, Dr. Perry does not recommend outright approval or disapproval of the Merger on undue economic concentration grounds alone. Instead, he recommends that if the Merger is to be approved, the Commission should impose conditions designed to preserve or enhance competition, certain of which would affect principal components in the Merger deal.

Based on the submitted reports and testimony to be provided at the hearing on the Merger, the Commission must evaluate the potential impact of the Merger and

determine the optimal competitive scenario for the Atlantic City casino industry, the south New Jersey region, and the State of New Jersey as a whole. That determination must be reached in accordance with the aims and public policies of Section 1b of the Act referenced above, as well as the specific provisions of Section 82e of the Act. From a statistical perspective, the Division recognizes both the impact that the proposed Merger would have on market shares under the 11 statistical criteria in the Act, as well as industry HHI, with a sale of Bally's AC and more importantly without that proposed sale. Here, the Bally's AC sale, which is only proposed at this point, relates to the property that is the worst performer in the Atlantic City market, and thus its partial divestiture without Wild West, even if consummated, would have the least effect on the average HHI when accounting for its divestiture among the three CEC properties. As past Commission decisions rightfully have indicated, a determination cannot and should not be made solely on statistics.

B. <u>Federal Trade Commission Review</u>

With regard to the federal review of the Merger, the HSR Act established the federal premerger notification program, which provides the DOJ and FTC with information regarding certain mergers and acquisitions before they occur. On July 16, 2019, ERI and CEC each voluntarily filed a "Notification and Report Form for Certain Mergers and Acquisitions" regarding the proposed Merger with information about each company's business. Both ERI and CEC provided vast documentation for the FTC's review, copies of which were made available to the Division. The Division also had an arrangement with the FTC regarding Merger matters. In part, the FTC held investigative interviews with certain individuals from ERI and CEC related to Atlantic City, which

Division staff attended virtually and then reviewed in document form with relevant exhibits.

The FTC thoroughly reviewed the Merger as a result of the number of markets impacted by the properties in those markets owned or controlled by both ERI and CEC and the competitive concerns which the proposed Merger caused as to some of those markets. On March 6, 2020, the FTC staff closed its investigation of the Atlantic City gaming market without recommending any remedial action based on anti-competitive concerns from the Merger. As of June 26, 2020, a majority of the five-member FTC, with a dissent and an abstention, approved the Merger, subject to its settlement and order which incorporated the allegations of a complaint and mandated the disposition of Eldorado Shreveport in Louisiana, Isle of Capri Casino Kansas City in Missouri, and MontBleu in Stateline, Nevada. Nevertheless, a separate statutory mandate and criteria control the determination of this matter in New Jersey. Despite the outcome of the federal review, if the Commission determines its action is warranted under the undue economic concentration criteria of the Act, this would not be the first time that the New Jersey regulatory process will secure competition in the Atlantic City casino industry and protect it from the damage that results from undue economic concentration. Our standards and processes are different under the Act and unique to the Atlantic City gaming industry and must be served.

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C. Summary

Given the number of issues and concerns identified in the Division's Report, in connection with those raised by Dr. Perry in his report, the Division does not submit a recommendation regarding undue economic concentration at this time. The Division again looks toward the testimony to be adduced at the hearing, especially from the experts, as well as the testimony of other witnesses to be produced on behalf of proposed New Caesars. The Division will provide its final position to the Commission at the conclusion of the public hearing on this matter.

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VII. IMPACT OF REIT OWNERSHIP ON ATLANTIC CITY PROPERTIES

Pursuant to the guiding public policy principles of the Act, the Atlantic City gaming industry is a "critical component of [the State's] economic structure," *N.J.S.A.* 5:12-1b(1), and Atlantic City is "critically important" to the "continued viability and economic strength" of the State's hospitality industry. *N.J.S.A.* 5:12-1b(2). The Act exists to expand and encourage New Jersey's hospitality industry, *N.J.S.A*. 5:12-1b(3), and to "attract new investment capital to New Jersey in general and to Atlantic City in particular." *N.J.S.A.* 5:12-1b(4). *See also N.J.S.A.* 5:12-1b(13).

As recognized in the July 2010 Report of the Governor's Advisory Commission in New Jersey Gaming, Sports, and Entertainment and confirmed by later legislative proceedings, the 2011 amendments to the Act were intended to "modernize and streamline" regulation but at the same time "maintain strict integrity" in regulation. *See also N.J.S.A.* 5:12-1b(18). In part, the 2011 amendments to the Act were meant to provide some flexibility to the then very restrictive provisions of Subsections 82b and 82c with regard to individual casino hotel matters. The concerns with a proposed structure in which three or four casino hotels could be operated by a casino entity with no ownership interest in the Atlantic City gaming industry, while those same facilities are owned by a REIT, are inextricably intertwined with the other major issues implicated by the proposed Merger as discussed in this Report. Not the least of those concerns is the "economic stability of casino operations," the "power and duty to regulate, control and prevent economic concentration in the casino operations and the ancillary industries," and "to encourage and preserve competition." *N.J.S.A.* 5:12-1b(12). Those regulatory responsibilities pertain to not only ERI and CEC but to VICI REIT as well.

In addressing this part of the requested Merger relief, there are two major considerations: (1) should the sale of Harrah's AC to VICI REIT be approved and (2) if so, what should VICI REIT's status be under the Act. The various factors relevant to determinations of those matters are as follows.

As set forth above in this Report, the Division has raised major issues regarding the lack of capital expenditures at Bally's AC and Caesars AC. ERI has attempted to address those concerns by committing to $400 million in capital expenditures to be spent among the three prospective New Caesars' casino licensees, Caesars AC, Harrah's AC and Trop AC, within 36 months of any Merger approval.[32] As indicated, for the Harrah's AC component of the Merger transactions, ERI, CEC and VICI REIT, pursuant to PRN 3571901, additionally seek the Commission's approval for the sale of Harrah's AC to VICI REIT.[33] This request for sale approval heightens not only long-standing capital expenditure concerns, which are intended to be addressed by ERI's expressed commitment to provide significant funding for such improvements, but also financial viability concerns.[34]

[32] If Bally's AC is not sold, further funds for capital expenditures would need to be committed there.

[33] With the sought sale of Harrah's AC to VICI REIT, the majority of Atlantic City casino hotels would be owned by REITs, absent the proposed Bally's AC sale.

[34] In addition to the joint requests of PRN 3571901, counsel for CEC, on May 27, 2020, submitted PRN 1542001 requesting the approval of an amendment to the Master Lease related to downward adjustments of minimal capital expenditure amounts required in 2020 given the COVID-19 pandemic and casino closures. On June 1, 2020, the Division advised the Commission and the parties that this matter should be considered within the global review of the Merger and not as a standalone request, given that the amendment is not merely technical in nature in light of substantial capital expenditure concerns addressed throughout this Report and is crucial to the review of the transactions. While the Division generally understands the impacts that recent casino closures have had on parties to the Master Lease which may warrant amendments to their obligations for the remainder of the year in other jurisdictions than here, it would have been imprudent to address approval of that amendment in a vacuum and prior to consideration of this Merger as a whole. Further, although a formal request for approval has not yet been filed, ERI announced within a Form 8K filed with the SEC on June 15, 2020 that TEI entered on that date an amendment to the master lease with GLPI which includes relief under the capital expenditure

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Regarding capital expenditures, Bally's AC and Caesars AC are currently part of the VICI REIT structure and only under the operational management of CEC. Within the VICI REIT and as shown by the above detailed data included in Section V., Bally's AC and Caesars AC have received no capital improvements of any significance outside of maintenance expenditures and any projects of substance have been repeatedly deferred. Trop AC is part of the separate GLPI REIT structure, and since its acquisition by ERI in 2018 at which time the real estate assets were acquired by GLPI, Trop AC has not been the beneficiary of any substantial capital expenditure projects. Primarily, and as has been witnessed under the above circumstances, the overall concern is that capital expenditures in entities that are wholly owned by New Caesars will be significantly greater than in those that are only operated by New Caesars but owned by a REIT, *i.e.*, as proposed, the Atlantic City properties going forward. The incentive to reinvest in the REIT-owned properties which are merely operated by New Caesars is naturally less than in those which are owned and operated by New Caesars. It is clear, and has been demonstrated, that absent a manager owned and controlled REIT structure, REIT-owned properties, at least in Atlantic City, suffer from a lack of commitment and improvements. The minimal overall nature of REIT-required capital expenditures provides no comfort whatsoever and in the Atlantic City context has been shown to be woefully deficient.

Through the petition to add Harrah's AC, the premier performer of the AC Licensees, to VICI REIT, the Division's concerns as to how the operator-only status of New Caesars within the leasing structure affects capital expenditure determinations are

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provisions of the lease in the event of facility closures due to pandemics or other governmental restrictions. That lease amendment is subject to receipt of applicable regulatory approvals.

greatly exacerbated, especially now accompanied by current conditions and economic uncertainty. As stated, if the sale of Harrah's AC to VICI REIT is approved, New Caesars will be an operator of at least three casino hotels but would no longer have any ownership interest in the Atlantic City gaming market. In view of serious concerns expressed by the Division, ERI recently has provided a commitment to dedicate and escrow $400 million in funds for capital expenditures at Caesars AC, Harrah's AC and Trop AC over a three-year period.

It is important to set forth that a condition imposed by the Commission prevents the sale of Harrah's AC without approval because of regulatory concerns pertaining to REITs, and in particular placing Harrah's AC as an upper-tier, better-performing property into a REIT. Here, CEC is requesting relief from the Harrah's AC sale condition despite its continued failure to adequately abide by the other licensure conditions imposed upon the approval of the Caesars Restructuring, including the establishment of the VICI REIT, particularly in the area of capital expenditures.[35]

Moreover, it must be emphasized that ERI, after using Trop AC sale proceeds to finance its overall TEI acquisition without then bringing improvements to Trop AC, now is looking to utilize the proceeds from a Harrah's AC sale in order to fund and close the Merger. If ERI accomplishes that end, it, as stated, would have no ownership remaining in Atlantic City. In that regard, but for the Division's concerns and the conditions it would recommend, ERI's plans did not include the critically-needed capital expenditures.

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[35] Even with CEC's course of conduct as detailed in this Report, it has not put forth any basis justifying why such relief should be granted.

If after review of and a hearing on this matter the Commission determines that the Merger should be approved as well as that the proposed sale of Harrah's AC should be granted, the Division would recommend that stringent Conditions be imposed to adequately protect the casino properties, implement the commitment made by ERI, and closely monitor compliance with that commitment.

In addition, given the current economic difficulties created by the COVID-19 health crisis which amplify the uncertainties as addressed in detail above in Section V., there is the possibility of severe financial stresses impacting not only New Caesars but also VICI REIT as the owner of the real estate of the AC Licensees. Generally, if casino results do not return to pre-existing levels due to capacity limitations, use restrictions, patron health concerns, or a recessionary atmosphere, the ability to satisfy rent requirements will be adversely affected, in turn limiting a REIT's ability to address its debt structure in light of dependence on rent payments. Problematically, REITs divide operations from ownership, with ownership unable to be involved in or to operate facilities. Various accommodations already have been required between operators and REITs to avoid the economic consequences of the current COVID-19 pandemic.

Again, if after consideration of all matters in accordance with the provisions of the Act, in particular its public policies and anti-concentration provisions, and hearing testimony the Commission determines that the Merger will be approved and that the proposed sale of Harrah's AC to VICI REIT will also be granted, the Division could concur in a determination that the licensure status of Harrah's Landlord, similar to the other AC PropCos, be as a csie. Such determination, however, could only be reached with additional conditions, especially as to enhanced financial stability requirements.

The imposition of increased financial stability requirements upon VICI REIT and its related entities may become critical in the coming months of economic uncertainty, as well as over future years of ownership under a REIT structure. As an entity entirely dependent on rental income through its leasing arrangements, under which its tenants may experience financial hardships and become unable to make such payments, the financial stability of VICI REIT as the parent owner of at least two Atlantic City casino hotel facilities becomes essential to protecting within the Atlantic City market Caesars AC, Bally's AC until and unless sold, and Harrah's AC if it is permitted to be acquired by the REIT.

If the sale of Harrah's AC to VICI REIT is approved, and even in the event the sale of Bally's AC is completed, VICI REIT will remain the largest real estate owner of Atlantic City casino hotel facilities and will then own one of the upper-tier performers in that market while having sold one of the lower-tier performers. Thus, VICI REIT's role in the Atlantic City market will be further expanded if the Harrah's AC acquisition proceeds. If the Commission ultimately determines that the Harrah's AC sale is appropriate, the matter of the licensure status of Harrah's Landlord would then be ripe for increased regulatory requirements in accordance with the public policies of the Act, including concentration concerns,[36] and under an assessment of the parties' rights and obligations, including the ability to control, pursuant to the Master Lease terms, as well as in view of current financial and economic factors.

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[36] As discussed in Section IV., E., 1., of this Report, MGC regulatory market concentration concerns arose as to the St. Louis area in 2018 pursuant to a proposed property transfer from ERI to GLPI in connection with the TEI acquisition. GLPI owned other casino hotel facilities in that vicinity. As a result, the parties entered the ART to provide a financing loan for the relevant Lumière Place property, rather than a sale of that property to the REIT. That loan arrangement remains in effect.

Recently, as also noted in this Report, VICI REIT is providing mortgage loan funds as to the new CEC Las Vegas convention center, a property in which it has a call right.

With regard to the financial analysis provided in this Report, it will be essential to monitor the financial stability of the VICI REIT structure which will have an integral role in the viability and continuity of at least two and maybe three casino hotels in Atlantic City. In that respect and from a concentration standpoint, every other REIT in Atlantic City owns only one casino hotel, and one of those REITs is controlled by the parent holding company of the operating entity. Pursuant to *N.J.S.A.* 5:12-92b, csie licensees and their qualifying individuals must establish their qualification according to standards applicable to casino key employees, which include establishing their financial stability, integrity and responsibility and their good character, honesty and integrity. The full financial stability provisions of the Act, however, are not specifically applicable to csie licensees, and the particular criteria by which an entity may evidence its financial stability to the Division or Commission would not otherwise pertain, most prominently by showing the ability to meet its ongoing expenses, pay governmental obligations and pay its debts. Under the proposed Merger, the need for the Division's close and ongoing monitoring of VICI REIT's financial stability is clear, as well as requirements for it to provide additional assurances concerning financial stability.

Accordingly, testimony must be presented during the proceeding in this matter regarding the impact that REIT ownership of Caesars AC, Harrah's AC if that sale is authorized, and Trop AC will have on capital expenditure decisions going forward. Since the approval of a sale of Harrah's AC to VICI REIT could result in further negative effects on operations and investment levels in the Atlantic City casino properties and adversely affect the Atlantic City gaming market, that sale must be carefully considered along with ERI's commitment to dedicate funds of $400 million over three years and the

parameters of that commitment in order to properly protect Caesars AC, Harrah's AC and Trop AC and ensure the necessary improvements are made and continue at those properties.[37] In seeking approval for the sale of Harrah's AC to VICI REIT, ERI and CEC must clearly and convincingly demonstrate that such sale to fund the Merger would benefit the Atlantic City gaming market and serve the public policy interests of the State of New Jersey. In the event that the sale is to be approved, the licensure status of VICI REIT and its related entities would need to be subject to enhanced requirements pursuant to the provisions of the Act, including Sections 1b and 82b, c and e.

[37] In the event that the sale of Bally's AC is not consummated, that facility needs to be considered as well.

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VIII. CONCLUSION

As set forth in this Report, the Division has thoroughly reviewed and analyzed the proposed Merger transactions. Based on its overall investigation, and particularly the financial analysis detailed in this Report, the Division has significant concerns regarding the Merger and whether it should be approved to proceed. The Division will provide its position upon the conclusion of the hearing in this matter based on the testimony to be produced. The evidence provided at the hearing will be critically important to the specific major areas in issue as outlined in this Report, primarily related to capital expenditure commitments, the impact of potential synergy Measures, staffing levels for the Atlantic City properties going forward, restrictive covenants, undue economic concentration and the operating and ownership structures of the AC Licensees.

Respectfully submitted,

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