

# Staff Report of the Executive Director, IHRC

## In Re: Eldorado’s Petition to Acquire the IHRC Permits and Licenses of Caesars Entertainment

### Introduction

This review of Eldorado Resorts Inc.’s (“ERI”) Petition for Transfer of Ownership (“ERI Petition”) has been guided by the provisions of the Indiana Pari-Mutuel Wagering on Horses Act (Ind. Code § 4-31-1-1 *et seq.*), The Gambling Games at the Race Tracks Act (Ind. Code § 4-35-1-1 *et seq.*), and Title 71 of the Indiana Administrative Code, containing all Indiana racing regulations.

A review of the current state of racing in the State of Indiana provides context for this report and support for the Indiana Horse Racing Commission Staff (“Commission Staff”) recommendations to the Indiana Horse Racing Commission (“IHRC”) contained herein. To assist in gathering the information that was used to prepare this report, the IHRC retained F. Douglas Reed (“Reed”), a principal in Racing, Gaming and Entertainment, LLC (“RG&E”). Reed is well known in international racing circles and perhaps best known for his 22-year association with the University of Arizona Race Track Industry Program (“RTIP”) where he served in virtually every capacity – including a stint as the program’s director. In addition, Reed also served for many years as the director of the RTIP’s highly respected annual Global Symposium on Racing & Gaming, North America’s largest pari-mutuel racing conference.

Given the time period between the permit transfer approval of Caesars Entertainment (“Caesars”) by the IHRC in 2018, and the acquisition/merger of Caesars with ERI, Reed has prepared two reports in a relatively short period of time. On May 29, 2018, Reed provided the IHRC with a report titled “A Report for the Indiana Horse Racing Commission – Considerations and Recommendations for the Commission” (“Reed’s First Report”). Reed’s First Report is incorporated herein and attached and identified as Exhibit C.2. In Reed’s First Report, tasked with providing analysis and commentary on Caesars as a prospective permit holder, he performed interviews and on-site inspections to evaluate the then-current state of racing in Indiana under ownership of Centaur. In that report, he made the following observations:

Another thing to consider is the level of satisfaction of the stakeholders with the state of the industry. When evaluating Indiana by this measure, it is clear to me this is almost an anomaly in the fact that all stakeholders (while having different economic concerns and priorities) are unanimous in their opinion of the cooperative efforts that exists [sic].

...

It was clear that currently [under Centaur ownership] the racing side of the business is not looked at solely by ROI [Return on Investment].

...

As a closing comment on this situational analysis, one often hears that the grass is greener on the other side, but that was not the case in Indiana. (Reed's First Report, The Current Situational Analysis – Indiana Horse Racing Industry Today, pp. 4-6).

Less than two years later, the IHRC again sought Reed's assistance, this time to provide analysis and commentary on ERI's request for permit transfer upon its acquisition of Caesars. Reed again memorialized his findings in a report titled "A Report for the Indiana Horse Racing Commission – Considerations and Recommendations for the Commission" dated January 9, 2020 ("Reed's Second Report"). Reed's Second Report is incorporated herein and attached and identified as Exhibit C.3.

The second report offered additional complimentary statements on the state of racing in Indiana under Caesars ownership. Reed made the following observation:

Another thing to consider is the level of satisfaction of the stakeholders with the state of the industry. When evaluating Indiana by this measure, the situation has not changed too much since the May 2018 report. With only one year under the new operators, Caesars, overall the environment has been good from a racing perspective. There have been a few changes noticed, but it doesn't appear to have created any serious problems.

Commission Staff believes that Reed's complimentary observations are on-point. The current, enviable state of Indiana racing did not happen by accident. Commission Staff is of the opinion that the IHRC, the permit holders, and the horsemen have done a fantastic job of maintaining the high standards put in place over 25+ years of horse racing.

Commission Staff is cognizant of the fact that this is the second permit transfer request in a short period of time, and that these permit requests result in significant uncertainty. The investigation and due diligence undertaken by Commission Staff has been largely an effort to ensure that ERI, if granted the permits for both racetracks, will maintain the high standards set by previous operators. With that said, the Commission Staff's investigation has produced somewhat mixed results as discussed in further detail below.

### **State of the Industry Following Transition of Ownership**

While the IHRC understands that Centaur was perhaps a "gold standard" as far as horse racing operators go, it also recognizes that Caesars has generally done a good job of maintaining the horse racing industry and the high standards set by their predecessor. However, Caesars time as the sole permit holder has not been without some missteps. At the December 3, 2019, IHRC meeting, the Commissioners noted that the annual Operational Plans prepared by Caesars appeared to be inadequate and lacked the participation/support of the horsemen's associations.

The December 3, 2019, Meeting Minutes are incorporated herein and attached and identified as Exhibit C.4. While Caesars has since greatly improved upon the original versions of the Operational Plans submitted for Commission consideration, it is important to note that these inadequacies did occur, and the IHRC was compelled to step in and address them.

During the December 3, 2019, IHRC meeting, Jeff Hendricks of ERI stood before the Commission and stated that ERI is committed to upholding any commitments made by Caesars with regard to the Operational Plans. He also indicated that ERI is aware of the history and proud tradition of horse racing in Indiana, and plans to continue to maintain and grow the industry if granted the opportunity to take over the permits.

Because IHRC had the good fortune of regulating racing while working in conjunction with a motivated and interested permit holder in Centaur, any other prospective permit holder must be judged against the experience provided by Centaur. In light of that fact, the IHRC believes that Caesars, despite some missteps, has largely been a worthy successor to Centaur.

### **Relevant Legislative History**

The legislature, being extremely mindful of the storied history of horse racing in Indiana, enacted the Pari-Mutuel Wagering Act in 1989. This cleared the way for legalized pari-mutuel wagering in Indiana. Initially, a percentage of the admission fees paid to board riverboats was directed to the Commission and included monies to be distributed for purses, to horsemen's associations and for administrative expenses of the Commission. In 2007, the General Assembly enacted legislation that allowed racetrack permit holders to seek gambling games (slots) at the tracks as long as a certain percentage (15%) of the adjusted gross receipts of the slot machine wagering each month was paid to support the horse racing industry.

The legislature made clear that gaming at the tracks was permitted if, and only if, a race track permit holder was in good standing with the IHRC:

#### **IC 4-35-5-4.5**

##### **Horse racing required of licensee**

Sec. 4.5. A license issued under this article is null and void if the licensee fails to:

- (1) obtain or maintain a permit issued under [IC 4-31-5](#) to conduct a pari-mutuel wagering horse racing meeting in Indiana; or
- (2) satisfy the requirements of [IC 4-31](#) concerning the amount of live horse racing that the licensee must conduct at the licensee's racetrack.

*As added by P.L.233-2007, SEC.21.*

(Emphasis added.)

In other words, the “price of admission” to operate gambling games at the two centrally located Indiana racetracks mandated a recognition by track ownership that slots, and more recently table games, were only possible because of the existence of and as a means of supporting the Indiana horse racing industry. At the same time, the legislature limited the number of permits for pari-mutuel racing to two (2). That number mirrored the number of tracks in operation at that time. These are the same two tracks (Harrah's Hoosier Park Racing & Casino and Indiana Grand Racing & Casino) that continue to operate today and are the subject of the ERI Petition.

In addition, pursuant to the initial legislation enabling pari-mutuel wagering, joint ownership of Indiana racetracks was prohibited. This changed in 2011 when the General Assembly determined that joint ownership of the two Indiana racetracks would be allowed (effectively creating a monopoly) if, and only if, the proposed joint ownership was determined to be: “In the best interests of the: (A) Indiana horse racing industry; and (B) state”. Ind. Code § 4-31-5-8(c)(3). Centaur met this burden in late 2012 when it petitioned the Commission to approve its purchase of Indiana Grand and move to “one breed/one track” racing in Indiana. There is little dispute within the industry that Centaur’s ownership and the advent of “one breed/one track” racing in Indiana has been a resounding success. However, the Commission has long been of the opinion that the monopoly ownership of both racetracks is only feasible under **outstanding ownership** and close cooperation between the permit holder, the IHRC, and the horsemen.

In 2013, the legislature established an intricate process of negotiation between the tracks and the representatives of the horsemen’s associations (subject to final approval by the Commission) which allowed the track payments of adjusted gross receipts to horsemen to fall between 10% and 12% (inclusive).

### **Transfer Criteria**

The criteria for transferring ownership of the tracks mirrors the original permit criteria which are found at 71 IAC 11-1-6. [For the benefit of the Commission, a complete copy of this regulation is attached to this report and identified as Exhibit C.1.] Many of the referenced criteria (scheduled completion of the facility, types and variety of racing offered, status of governmental actions needed to develop the facility, extent of public support or opposition to horse racing, effects of location, etc.) have already been established and/or are not much in dispute with respect to the ERI Petition filed. There are, however, a number of critical issues which the Commission must weigh and determine with respect to the ERI Petition.

### **Financial Ability of the Applicant**

71 IAC 11-1-6(b)(5) essentially provides that the applicant (ERI) must have the financial ability to “successfully” own and operate a pari-mutuel facility. In this particular case, the applicant must have the financial ability to “successfully” own and operate two pari-mutuel facilities. ERI have submitted numerous financial documents to the Indiana Gaming Commission (“IGC”) and IHRC that relate to its ability to operate the racinos and “successfully” conduct pari-mutuel wagering operations at Indiana Grand and Hoosier Park.<sup>1</sup>

The IHRC has asked ERI to provide information and answer some inquiries regarding the put/call provision of ERI’s agreement with the real estate investment trust (“REIT”), VICI.<sup>2</sup> ERI has taken the position that approval or denial of the put/call provision is not appropriately

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<sup>1</sup> The IGC Staff has been extremely helpful and generous in sharing both confidential information and resources with the IHRC under the “intra-agency deliberative materials” exception to the PRA. These materials have either been designated as “Confidential” when submitted to the IGC/IHRC by the applicant and/or by the IGC.

<sup>2</sup> A REIT is a popular tool in the gaming industry whereby a casino operator transfers its real property to VICI and leases it back from them through a leaseback agreement.

considered as part of ERI's permit application, because it cannot be exercised until 2022. The IHRC has previously acknowledged some reservation about allowing Indiana racetracks to operate under a contractual agreement with a REIT. Final Order Approving Caesars Permit Application, dated July 10, 2018, Condition 10, p. 26 ("Final Order"). Therefore, IHRC retains any and all rights to examine a proposed transfer by ERI and VICI, at the appropriate time and exercise its right of approval or denial of the transaction.

**Redacted – Confidential Information** provided to Commissioners for consideration.

Commission Staff believes there are significant financial considerations that may impact ERI's ability to successfully operate two racetracks if approved. The transaction is incredibly complex and involves many moving pieces. Commission Staff is concerned that external factors (some of which may be outside ERI's control) may have negative impacts on racing in Indiana if suddenly ERI is not so well-capitalized.<sup>3</sup> Additionally, because of the complexity of the transaction, there are numerous financial institutions that ERI is depending upon for financing. If factors like the corona virus or some other unforeseen circumstance continue to drag on the economy, Commission Staff is concerned that the ripple effect of such issues may be felt far and wide and felt most acutely in sectors of the business which are generally not as profitable on a balance sheet like horse racing.<sup>4</sup>

#### Integrity

71 IAC 11-1-6(b)(1) authorizes the IHRC to consider the integrity of the prospective operator. ERI already holds a license to operate the Tropicana Evansville facility in Evansville, Indiana. Though this report does not identify any specific, outstanding issues, given the IHRC's broad authority to consider "any other indices" related to the integrity of the applicant that the Commission considers relevant, Commission Staff believes that it is important to consider some of the events that occurred during the IHRC's investigation process.

**Redacted – Confidential Information** provided to Commissioners for consideration.

A permit holder's candidness and openness with regulators is of the utmost importance in the successful operation of racing in Indiana. The ability of the Commission Staff to request and receive candid and accurate information from a permit holder is absolutely vital. Though one incident may not disqualify a permit applicant, Commission Staff believes that it is worth pointing out that incidents like this might bring ERI's suitability as a permit holder into question.

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<sup>3</sup> At the time of this writing ERI's stock shares were trading at \$41.70/share, while the 52-week high is \$70.74. While fluctuations and variations in the stock market are common and not necessarily cause for alarm, it is difficult for Commission Staff to accept that ERI will remain committed to dedicating money to horse racing if EBITDA and other important financial measurement metrics begin to decrease.

<sup>4</sup> That being said, in the current economic environment, there is financial risk both in approving and allowing the Merger (where ERI becomes the controlling party of "New Caesars") OR in denying the Petition and forcing the "Old Caesars" to move forward with their current Gaming and Racing responsibilities. If the Commission were to approve the Merger with stringent conditions relating to horse racing, the Indiana horse racing industry would arguably be in a better position with increased "leverage" moving forward than if there was a denial of the Merger Petition and racing was to continue under the existing (7/10/2018) Final IHRC Order.

Commission Staff will recommend strict and candid/increased accountability from the permit holder should the Commission elect to approve ERI's permit application.

### Efforts to Promote and Improve the Horse Racing Industry in Indiana

71 IAC 11-1-6(b)(9) provides that the Commission may consider an applicant's: "[E]fforts to **promote**, develop and **improve** the horse racing industry in Indiana." (Emphasis added.) This criterion does not allow an applicant to simply make efforts to *maintain* the current state of the industry. Because of the high standards of operation currently in place, the required commitment to improve the industry must be substantial. It will require meaningful accountability.

Given that ERI has no past racing history in Indiana, Commission Staff must rely on commitments and statements made by ERI regarding its future plans for racing. To that end, Commission Staff applauds ERI's efforts to reach out to the horsemen's associations and compile a list of commitments that Commission Staff believes are a good starting point to ensure that racing in Indiana continues to grow and flourish.

Initially, on February 5, 2020, Commission Staff received a letter from Eldorado that included a number of commitments in response to Reed's Second Report (the "February Letter"). The February Letter is attached herein and incorporated as Exhibit C.11. The February Letter contained a few important commitments, namely ERI's commitment to adopt the recommendations set forth in Reed's Second Report and to retain knowledgeable racing managers and hire other qualified managers. As a result of this commitment, ERI hired Mr. Joe Morris and created the SVP Racing role. A number of these commitments are included in the Commission Staff's recommendations below.

Following the receipt of the February Letter, evidently, ERI continued to come to terms with the gravity and importance of the horse racing industry in Indiana. Commission Staff is aware that ERI undertook concentrated efforts to meet with the horsemen directly and discuss a list of commitments that the horsemen believe are necessary to ensure that Indiana horse racing continues on its current path of success and innovation.

On March 4, 2020, Commission Staff received a letter from ERI restating its commitment to grow and improve Indiana racing in partnership with the IHRC and the horsemen's associations (the "March Letter"). The letter, dated March 3, 2020, is attached herein and incorporated as Exhibit C.12. The March Letter includes a number of commitments, indicating that, perhaps for the first time during this application process, that ERI was devoting serious thought and consideration to the improvement and growth of Indiana racing.

ERI guaranteed the horsemen's distribution of twelve percent (12%) through the 2033 racing season, with the promise to undertake a legislative effort directed to permanently set the distribution at twelve percent. In the event that a legislative effort would be unsuccessful, ERI has committed to an automatic ten-year renewal of the twelve percent commitment following the 2033 racing season. Commission Staff is pleased with ERI's commitment to the horsemen and the apparent understanding that the horsemen's distribution is foundational to maintaining and improving the horse racing industry in Indiana.

ERI has also agreed to fund an initial “Racing Capital Escrow Fund” of \$20-25 million to be spent over a ten-year period beginning in 2020. The funds are intended to be used to “fund major projects and enhancements to the race track facilities. . .” To administer the fund, ERI proposes the creation of the Racing Capital Fund Advisory Committee which would consist of three ERI members and a representative of the three horsemen’s associations that currently hold contracts with the racetracks. Again, Commission Staff is of the opinion that this is a positive step by ERI to addressing concerns about its leadership and interest in holding horse racing permits.

The commitments described above, along with the others listed in the March Letter give the Commission Staff some hope that, were ERI to become the sole racing permit holder, that the Indiana racing industry would be in the hands of an entity that has at least begun to think about the monumental importance that the racing permits hold, and the long-term, unwavering commitment necessary to ensure that horse racing continues to flourish and grow in Indiana.

While the horsemen’s associations have remained neutral, Commission Staff did receive a letter from Standardbred horsemen Ernie Gaskin, Nat Hill, and Henry Blackwell, voicing strong opposition to the approval of ERI as the IHRC permit holder. The letter is attached herein and incorporated as Exhibit C.13. Additionally, Commission Staff received a letter from Dwayne Rhule, a long-time horseman and participant in Indiana horse racing, which is attached and identified as Exhibit C.14. Commission Staff recognizes and appreciates the contributions that these four gentlemen have made to Standardbred racing in Indiana and recommends that the Commission take notice of their concerns.<sup>5</sup>

#### Management Ability of the Applicant

71 IAC 11-1-6(b)(7) provides that the IHRC may consider the management ability of the applicant. Because ERI has not managed a track in Indiana, the Commission Staff relies heavily on Reed’s Second Report detailing, among other things, the current status of ERI racetrack properties: Pompano Park, Scioto Downs, and Mountaineer<sup>6</sup>. While Commission Staff commends ERI’s efforts to make commitments to growing the racing industry in Indiana, its management of racetrack properties that it either has owned or currently owns, is cause for significant concern of the Commission Staff.

The following excerpt from Reed’s Second Report represents Doug Reed’s findings after visiting ERI properties and conducting tours and interviews with staff:

- Eldorado has limited racing experience and lacks a deep bench of racing expertise to pull from when adding the existing properties in Indiana.<sup>7</sup>

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<sup>5</sup> This letter does not purport to speak for the Indiana Standardbred Association or any of the other horsemen.

<sup>6</sup> The Mountaineer (WV) was acquired by ERI in 2014 and subsequently sold in 2019 to Century Casinos. The transaction was expected to close in early 2020. Despite the fact that ERI may no longer own Mountaineer, Commission Staff believes that Doug Reed’s findings at Mountaineer are instructive and have thus elected to include them as part of this Report.

- [R]elationships with horsemen groups were far less supportive than average; keeping in mind there were unique circumstances at two facilities and stakeholders often felt racing manager’s “hands were tied[.]”
- [S]ecuring expenditures on the racing side sometimes took pressure to get results but most gaming operators value their gaming licenses therefore requests may get approved – especially if complaints are elevated to a regulatory body[.]
- [W]hile facilities visited are old, it appears the minimum is spent on the racing side and bottom line cuts seemed to be the norm. It should be noted that competitive environments in all three cases were challenging.

Below are additional excerpts from Reed’s visit to **Scioto Downs**:

Upon leaving the rear of the casino you discover one of two entrances to the simulcast area closed due to an escalator shutdown and to my left a fenced off closed grandstand that I was told was condemned due to an unsafe roof. The grandstand was closed prior to the 2017 racing season and remains fenced off. (Reed’s Second Report, p.8).

...

There were some horsemen that raced and have participated at both Scioto Downs and Hoosier Park and they felt there was no comparison and did not like how the property at Scioto had become more “run down” since Eldorado took over. The relationship with the horsemen association was challenging but perhaps not as adversarial as observed at the other two properties visited. (Reed’s Second Report, p.9).

...

For the most part (at this track and others visited) there were only a few [horsemen] that had problems with the racing management, but most [horsemen] said their “hands were tied” by upper management and therefore local racing management couldn’t do much. (Reed’s Second Report, p. 9).

...

There were a number of people interviewed that reported marketing as an area of deficiency. However, many did say the races attract good crowds on Friday and Saturday nights. Of course, the large grandstand has been closed so the crowds are now shifted to either the clubhouse or a small bleacher type grandstand. (Reed’s Second Report, p. 9).

Reed also noted a number of issues at **Pompano Park**:

Not having been to that property for decades, I did park on the wrong side and was greeted again by a closed grandstand and clubhouse (pictures of the facility Appendix B). Like Scioto, there was a much smaller bleacher type grandstand placed at the rear of the casino, with a much less desirable viewing area of the live races.

...

It was clear when I spoke to stakeholders the first issue on their mind was that lawsuits were in progress and Eldorado was aggressively seeking to “decouple” racing from the casino by replacing the pari-mutuel license with a Jai Alai license.



...

When Eldorado took over the management and ownership of Pompano the efforts to “decouple” escalated. There were a number of cuts made in personnel and hardly any capital was spent on racing.

...

A number of mid-level managers were eliminated and several stated that on many race nights top racing management are not present. There was deferred maintenance, a few dorms (rent is charged for dorm rooms – a policy in place before Eldorado owned the property) were closed rather than fixed, and a few barns had a transformer that needed repair, but those barns were closed instead. (Racing managers said the barn area will not be full this year and those barns would not be needed.)

...

Negotiations with horsemen went from bad to worse according to many when the property changed hands from Isle of Capri to Eldorado. (Reed’s Second Report, p.10).

...

Most horsemen felt there was little if any marketing on the racing side. Others interviewed that could make reasonable comparisons felt racing marketing was better elsewhere. (Reed’s Second Report, p.11).

Finally, Reed made the following observations during his time at **Mountaineer** racetrack which Eldorado owned beginning in 2014 and sold at the end of 2019:

It is a very large facility by today’s standards and with the exception of the lower level of the grandstand, the remaining grandstand and entire clubhouse are closed on regular days of racing. With the exception of the horsemen, there appeared to be very few racing customers.

...

It was very clear that any spending now that a sale was pending had been cut to bare bones. However, it’s a case of going from bad to worse. It seems evident that cuts were made pre-sale, perhaps to make the bottom line look better, but this is just speculation. In multiple interviews “bottom line” and “cuts” were often mentioned. (Reed’s Second Report, p.11).

...

Mountaineer does not offer wages similar to other tracks and has difficulty hiring qualified racing officials. Two examples are Mountaineer has been months without a track superintendent (and allegedly has a very short-handed track crew) and do not have enough assistant starters on the gate crew. Horsemen have had to pressure management to get more hands in the starting gate and management has even used temp help that are not familiar with horses. (Reed’s Second Report, p.12).

Despite not visiting **Presque Isle Downs** (“PID”), Reed conducted some due diligence and noted the following:

Unlike the other racing properties acquired by Eldorado, this property was very new, in fact newer than the Indiana properties.

...

In 2017, the director of racing retired and the position was filled by the director of finance as an additional title/duty. Also similar to some of the properties visited, I was left with the impression that Eldorado needed encouragement or requirements to get things done for racing at this property versus just asking or expecting it to be part of the expense of running a horse racing facility. (Reed's Second Report, p.13).

As discussed above, Eldorado has certainly made encouraging statements and taken important actions, such as the hiring of Joe Morris for the newly-created Senior Vice President of Racing position. However, all of Eldorado's commitments to Indiana horsemen and the IHRC must be evaluated against the backdrop presented in Reed's Second Report.

Unfortunately, it's very difficult for Commission Staff to read through Reed's Second Report and come away with any optimism about ERI's history of managing racing properties. ERI's management style to this point has been the antithesis of the management style that has been encouraged, expected, and largely received, from Centaur and Caesars. Rather, it raises significant concern about whether handing ERI the "keys to the kingdom" by granting them both racing permits in Indiana is truly in the best interest of Indiana racing.

#### Impact of Racing on Anderson, Shelbyville, and the State of Indiana

71 IAC 11-1-6(b)(10) and (13) allow the IHRC to examine the impact of the racing operations on the state and local communities where the tracks operate. If the Commission approves this transfer, ERI will become the sole operator of Indiana's two pari-mutuel racetracks. The importance of this position cannot be understated. The Commission should effectively consider ERI to occupy a position with the horsemen and local communities that is akin to a fiduciary relationship.

In the past, Centaur had been an excellent steward of these same relationships. Following the acquisition of Centaur by Caesars, the Commission imposed a condition upon Caesars as a permit holder that it commit to continue to support the State of Indiana, and the communities of Anderson and Shelbyville in a manner comparable to Centaur efforts. (Final Order, p. 26, Condition 12). Commission Staff recommends that the Commission impose the same condition on any new owner of the racing permits. There is no doubt that the communities of Shelbyville and Anderson are important and it's vital that the permit holders remain productive and active members of both of these communities.

As a final point, pari-mutuel racing has become an integral part of the Anderson and Shelbyville communities over the past several years. The state, local communities, and racing industry have all benefitted from the one breed/one track racing instituted in 2013. The Executive Director strongly emphasizes that she can foresee no circumstance where she would recommend returning to past practices and support a recommendation to consolidate racing operations at one of the two existing pari-mutuel tracks.

## **Executive Director Recommendations**

There is no doubt that this is a difficult, and monumental decision for the Commission. The horse racing industry as a whole is facing difficult obstacles, including the call for stricter safety and animal welfare regulation and increased scrutiny on the use of medication in horse racing. The Indiana racing industry has benefitted from the hard work and tireless dedication of the IHRC, the horsemen, and the permit holders, throughout its storied history. Now, in the opinion of Commission Staff, the permit holder must be an entity that is not only capable, but eager to lead the Indiana industry into the future.

Unfortunately, based on all of the information before the Commission Staff, it is not clear that ERI offers the capable leadership needed for the future of Indiana racing. This is not a conclusion that the Commission Staff reaches lightly. As stated above, the Commission Staff was impressed with the commitments that ERI offered in the March Letter. These commitments, for the first time, made Commission Staff believe that ERI was giving serious thought and consideration to its ownership of the two racing permits and its place as a steward of both racing and the Anderson and Shelbyville communities.

On the other hand, Commission Staff cannot ignore the information in Reed's Second Report. It is difficult to reconcile the "two sides" of ERI as an organization. One that is promising great things and making commitments to the Indiana horsemen and IHRC to be the permit holder that the Indiana industry needs. The other, an entity that is and has been clearly disinterested in horse racing since entering the industry in 2014 and seems strongly averse to spending any additional money to improve horse racing at its currently-owned properties.

Upon completion of its merger with MTR Gaming, Inc., ERI became the owner of Scioto Downs in 2014 and has been the owner since that time. Commission Staff understands that there are economic considerations that a company must make when determining what facilities should receive a limited amount of capital. But for an organization like ERI, claiming that they will operate first-class racing facilities in Indiana, Commission Staff is left to wonder why Doug Reed's impression of Scioto offered such stark contrast to the Indiana racetracks. It is unclear why ERI, having owned Scioto since 2014, and having claimed an interest in operating first-class racing facilities, has neglected to even complete a grandstand repair at Scioto in five-plus years of ownership, let alone handling the issues Reed described on the backside.

Additionally, it is unclear to Commission Staff that ERI would remain as committed to horse racing if Indiana Grand and/or Hoosier Park are affected by economic downturn or fall short of expected revenues following the table game build-out. Admittedly, this is unclear no matter the applicant, however, with ERI it is particularly concerning given Reed's assessment that bottom line cuts and sacrifices are commonplace at other ERI racing properties in difficult markets.

In short, it is impossible for Commission Staff to offer its enthusiastic or unqualified recommendation for the approval of ERI's permit application. Should the Commission determine that approval of ERI's application is in the best interest of racing, Commission Staff recommends the following conditions be placed on ERI licenses:

1. Eldorado should honor, perform and comply with the horsemen's association contracts in effect at the time a Final Order is issued on its application;
2. Eldorado should agree to comply with the Initial Distribution Agreement, including its commitment to the maximum statutory distribution amount of 12% of adjusted gross receipts to the horsemen through calendar year 2033;
3. Eldorado should agree to an automatic ten year renewal of the above, following calendar year 2033;
4. Eldorado should prepare in consultation with the horsemen's associations and present to the Commission for approval, on an annual basis, a racing operations plan for the upcoming calendar year before race dates are allocated. Eldorado must agree that any material changes to the operational plans are subject to Commission approval and material deviations from the plan without Commission approval will be tied to the license and (depending on the nature of the deviation) with the Commission's discretion as to whether penalties will be imposed or other administrative action might be taken;
5. Eldorado must continue to employ racing management that is knowledgeable, trusted and familiar and that is appropriately empowered/authorized to address any concerns raised by the Commission or its Executive Director, subject to appropriate corporate governance policies and procedures;
6. Eldorado will strive for the highest track safety for its participants and equine athletes. Eldorado agrees that in the event of track maintenance or safety concerns, and/or in the event that the Commission has determined that track maintenance or safety concerns exist, Eldorado will employ top-tiered industry expert consultants to help advise and formulate the best recommendations and methods to best remedy the subject matter, as needed. Eldorado agrees that it will accept the recommendations of the industry experts and begin the process of implementing the recommendations within sixty days of receipt of the recommendations;
7. Eldorado must maintain or increase the current number of stalls and maintain or improve the current condition of stalls. Eldorado must maintain or improve the current condition of the racetrack surfaces, maintain and improve the response to any backside maintenance issues that may arise and promptly address any safety or integrity concerns that may present in the future;
8. Eldorado will provide approved horsemen's associations an additional \$1 million for three years (2020-2022) to cover the timeframe of future expansion projects needed for full implementation of table games. This \$1 million distribution is set at the same percentages set forth in IC 4-35 for the horsemen's adjusted gross receipts distribution;
9. Eldorado should allow for an off season training period and provide stall and dormitory rooms free of charge during off season training. The intent of off season training is to allow for its use by horsemen actively participating in Indiana racing programs. Rules to determine eligibility for off season training should be agreed upon with each tracks respective management and the respective horsemen's associations racing at each track. Eldorado agrees to properly winterize any barn or facility that might be used during the off season training period;
10. Eldorado must materially comply with the schedule for equipment replacement through 2033 as set forth in the titled "Hoosier Park and Indiana Grand Equipment Summary, Revised May 18, 2018" and identified as Exhibit C.15., of the Staff Report. Eldorado

- must agree that any material deviations from the schedule are subject to approval by the Commission or the Executive Director;
11. Eldorado must fund a Racing Capital Escrow Fund with \$25M to be spent over a 10-year period beginning in 2020. The funds must be held in a third party escrow account and will fund major projects and enhancements to the racetrack facilities to ensure that both tracks will be industry leading. There will be no maximum or minimum spent per year and the fund will be replenished with \$25M every ten years;
  12. Eldorado must create a Racing Capital Fund Advisory Committee to consist of: a representative from Eldorado's corporate executive management, a representative from Hoosier Park racing management, and a representative from Indiana Grand racing management. Additionally, the Committee must include a representative of each of the flat racing associations that have a contract with the track, as well as two representatives from the Standardbred racing association that has a contract with the track;
  13. Eldorado must seek and maintain accreditation for Indiana Grand with the NTRA Safety and Integrity Alliance;
  14. Eldorado acknowledges and understands that it has applied for two separate racing permits and gambling games licenses and it will be obligated to make the integrity fund payments for each permit and license required under Ind. Code 4-35-7-12.5, 4-35-7-15, 4-35-8.7-2, and 4-35-8.7-3;
  15. Eldorado acknowledges the importance of the Indiana Horse Racing Commission and the regulatory role it plays in racing. Eldorado agrees that it will make no effort to diminish the amounts allotted to the IHRC in Ind. Code 4-35-7-12.5(2)(b) and (c);
  16. Eldorado acknowledges and understands that the Commission takes no position as to whether a REIT operation would be appropriate and/or permitted at one of the Indiana racetracks or OTB facilities. Eldorado understands there is no guarantee that VICI or any other REIT would be approved/licensed in the future if the appropriate request was made to the Commission;
  17. Eldorado will continue to do all things necessary to assist Commission Staff in processing and completing the licensing of Board members, racing participants at the tracks and licensed satellite facilities and any other designated representatives who "participate in racing" (regardless of whether they do so at a permitted racetrack or licensed satellite facility). To the extent that the Commission would exercise its discretion not to license a particular individual, Eldorado agrees to work with the Commission to rectify any issues that may arise;
  18. Eldorado commits to continue to support the State of Indiana, and the communities of Anderson and Shelbyville in a manner comparable to Centaur and Caesars efforts. Eldorado agrees to provide the Commission with a quarterly breakdown, including specific dollar amounts, spent on community investment in both Anderson and Shelbyville. These breakdowns should include direct community spend in Shelbyville and Anderson and should not be propped up by sponsorship dollars to local sports teams or other entities. Eldorado further agrees that its racing permits are tied to its continued involvement in the Anderson and Shelbyville communities and failure to maintain or improve current community spend may result in a suitability issue going forward;
  19. Eldorado, if given both permits, will covenant to conduct the "one-breed/one track racing" initially authorized by the Commission in 2013 unless and until otherwise approved by the Commission;

20. Eldorado shall be subject to the continued review and regulation by the Commission and the Indiana Gaming Commission in that Eldorado, Harrah's Hoosier Park Racing & Casino and Indiana Grand Racing & Casino are subject to, among other things, laws and regulations contained in Title 4, Articles 31, 33 and 35 of the Indiana Code (I.C. 4-31, I.C. 4-33, I.C. 4-35) and Titles 71 and 68 of the Indiana Administrative Code (Indiana Horse Racing Commission and Indiana Gaming Commission, respectively);
21. Eldorado agrees that any Final Order issued on its permit application cannot feasibly incorporate/cover all issues or challenges that may arise while operating the two racetracks. Eldorado agrees to work collaboratively with the horsemen and the Commission to resolve any such issues not addressed directly in a Final Order; and
22. Eldorado acknowledges and commits that legally recognized constituents of the Indiana Horse Racing Industry will participate and receive revenues at the maximum statutory distribution amount of 12% from any new forms of wagering that may be authorized at any racino under the regulation of the Commission and/or off track betting facility operated by ERI. In the event that new revenue streams from additional forms of pari-mutuel racing become available to ERI, ERI covenants and commits that any such revenues will be distributed in the same manner and according to the same relative percentages that pari-mutuel revenues are currently calculated and distributed to racing industry constituents.

Commission Staff remains deeply concerned that ERI is not truly interested in becoming a true horse racing partner, as evidenced by its lackluster efforts at other racetracks that it owns or has previously owned. Any conditions imposed by the Commission must allow for meaningful accountability to ensure that the commitments that ERI has made are not eroded due to outside challenges or circumstances, or general reluctance to spend additional money on racing.



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Deena Pitman, Executive Director  
Indiana Horse Racing Commission