

STATE OF INDIANA
BEFORE THE INDIANA HORSE RACING COMMISSION
2020 JUL 16 A 10:23

IN RE:
THE PETITION OF ELDORADO RESORTS, INC. FOR)
(1) ALL NECESSARY APPROVALS INCLUDING APPROVAL)
TO ACQUIRE ALL OF THE OWNERSHIP OF CAESARS)
ENTERTAINMENT CORPORATION AND ITS DIRECT)
AND INDIRECT SUBSIDIARIES INCLUDING HOOSIER)
PARK, LLC AND CENTAUR ACQUISITION, LLC AS SET)
FORTH IN THE MATERIAL DEFINITIVE AGREEMENT)
AND PLAN OF MERGER; (2) TO FIND THE CHANGE IN)
OWNERSHIP IS IN THE BEST INTERESTS OF THE STATE)
OF INDIANA AND HORSE RACING; (3) APPROVAL OF)
THE ACQUISITION FINANCING; (4) APPROVAL OF)
PRESERVATION OR TRANSFER OF RECOGNIZED)
MEETING PERMITS AND SATELLITE FACILITY LICENSES)
RELATED TO THE OPERATIONS OF INDIANA GRAND)
AND HOOSIER PARK; AND (5) SUCH OTHER APPROVALS)
AS MAY BE NECESSARY TO IMPLEMENT THE)
CONTEMPLATED TRANSACTION)

FINAL ORDER

This matter came before the Indiana Horse Racing Commission (the “Commission”) on July 13, 2020 (the “Hearing”) pursuant to the Petition (“Transfer Petition”) filed by Eldorado Resorts, Inc. (hereinafter the “Petitioner”, “Applicant”, or “ERI”¹) on or about July 30, 2019 along with the Transfer Application filed by ERI with the Commission on or about July 16, 2019 (the “Transfer Application”), seeking an Order that: (1) Grants All Necessary Approvals Including Approval to Acquire All of The Ownership of Caesars Entertainment Corporation, and Its Direct and Indirect Subsidiaries Including Centaur Acquisition, LLC and Hoosier Park, LLC as

¹ Upon completion of the merger, ERI will undergo a corporate name change to become Caesars Entertainment, Inc. As appropriate, references to and requirements of “Eldorado” or “ERI” in this Order include and extend to the post-merger and closure entity Caesars Entertainment, Inc.

Set Forth in the Material Definitive Agreement and Plan of Merger; (2) Finds that the Change In Ownership is in the Best Interests of The State of Indiana and Horse Racing; (3) Approves the Acquisition Financing; (4) Approves the Preservation or Transfer of Recognized Meeting Permits and Satellite Facility Licenses Related to The Operations of Indiana Grand and Hoosier Park; and (5) Such Other Approvals as May Be Necessary to Implement the Contemplated Transaction. The undersigned members of the Commission having considered the Transfer Petition, the presentation of the Petitioners, the Indiana Horse Racing Commission Staff (“Commission Staff”) and the public, as well as the other materials admitted into evidence at the public hearing on July 13, 2020 (the “Hearing”) which are referenced and/or have been considered by the Commission with respect to the Transfer Petition and being in all respects duly advised now render the following Final Order:

The Record Before the Commission

1. ERI announced the merger with Caesars Entertainment Corporation (“Caesars” or “CEC”) on June 24, 2019. If approved, ERI will acquire all of Caesars’ outstanding shares. The total cost of the merger is nearly \$17 billion dollars. Upon completion of the merger, ERI will undergo a corporate name change to become Caesars Entertainment, Inc. If the merger is approved, the new company would own and operate in excess of fifty (50) domestic gaming and seven (7) horse racing facilities across sixteen (16) states including : Hoosier Park, LLC, operating as Harrah’s Hoosier Park Racing & Casino located in Anderson, Indiana (“Hoosier Park”); and Centaur Acquisition, LLC, operating as Indiana Grand Racing & Casino (“Indiana Grand”) located in Shelbyville, Indiana (collectively referred to as the “Indiana racetracks”). After the merger, the ownership of the Indiana racetracks will essentially remain unchanged. ERI, as Caesars

Entertainment, Inc., would become the parent company of these Indiana racetracks and related licenses through the purchase of Caesars and its subsidiaries.

2. ERI filed its Transfer Application and Transfer Petition with the Commission in July of 2019. The Transfer Application included a significant number of exhibits with detailed information regarding ERI's proposed merger with and acquisition of Caesars (and its direct and indirect subsidiaries). Shortly thereafter, ERI's counsel caused to be submitted completed personal disclosure forms of Board Members, as deemed necessary by the Commission Staff. Since then, and over the course of the past several months, the Commission Staff has conducted its own detailed investigation into ERI, which includes but is not limited to ERI's past ownership and operation of various horse racing facilities located within the United States. The Transfer Petition and Transfer Application were identified as "Commission Exhibits A. & B." and were made a part of the made a part of the record of proceedings ("Record") during the Commission hearing.

3. Concurrently, in response to a related transfer of ownership application prepared by ERI and submitted to the Indiana Gaming Commission (the "IGC"), the IGC's Background and Financial Investigations Divisions completed a confidential investigative report relating to this transaction and the IGC commissioned a confidential analysis of the proposed transaction from its outside financial analyst, Dan Roberts, of DR Financial Consulting, LLC. The IGC provided confidential copies of these materials for the review of this Commission as a part of its deliberative process. Copies of these materials were attached to the (unredacted) Staff Report of the Commission's Executive Director, were identified as "Commission Exhibits C.5 & C.6" and were made a part of the made a part of the Record during the Commission hearing.

4. The Commission received and reviewed a detailed analysis of the current status of racing operations in Indiana and at past and present ERI horse racing facilities which contained proposed recommendations from the Commission's outside racing expert/analyst/consultant, F. Douglas Reed ("Reed"), Racing Gaming and Entertainment LLC ("RG & E"). Reed is well known in international racing circles and perhaps best known from 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.

5. 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"). In Reed's First Report, tasked with providing analysis and commentary on Caesars as a prospective permit holder, Reed performed interviews and on-site inspections to evaluate the then-current state of racing in Indiana under the ownership of Centaur. Reed's First Report was attached to the (redacted and unredacted) Staff Report of the Commission's Executive Director, was identified as "Commission Exhibit C.2" and was made a part of the made a part of the Record during the Commission hearing.

6. Less than two years later, the IHRC once again sought Reed's assistance, this time to provide analysis and commentary on ERI's request for the transfer of horse racing permits (with related licenses) as part of its proposed 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 was also attached to the (redacted and unredacted) Staff Report of the Commission’s Executive Director, was identified as “Commission Exhibit C.3 and was also made a part of the Record during the Commission hearing.

7. On October 22, 2019, multiple representatives of ERI met with representatives of the IGC staff, the Commission Staff and with counsel for the Commission. At that meeting ERI circulated a confidential document/presentation it had prepared containing what ERI believed to be the benefits of the proposed “transformational strategic combination”. The Commission received and reviewed this confidential document which was identified as “Commission Exhibit Q” and made a part of the Record during the Commission hearing.

8. On December 19, 2019, multiple representatives of ERI (with some new faces) met again with representatives of the IGC staff, the Commission Staff and with counsel for the Commission. At that meeting ERI circulated two confidential documents it had prepared relating to the matters discussed at that meeting. The Commission received and reviewed these confidential documents which was identified as “Commission Exhibit R” and made a part of the Record during the Commission hearing.

9. In between the filing of the Transfer Petition and the issuance of the Executive Director’s (redacted and unredacted) Staff Report on July 6, 2020, the Commission Staff performed and completed an extensive investigation relating to the Petition and Application. This resulted in the exchange of several confidential and non-confidential communications between representatives of the Commission Staff and ERI. The written communications deemed

most relevant to the Transfer Petition are included and designated as exhibits in the Exhibit List of the Commission (both redacted and unredacted) timely filed on July 8, 2020.

10. The Commission issued a Notice of Hearing and Pre-Hearing Order on ERI's Transfer Petition on or about June 25, 2020 which set a public hearing date, time and place for this matter and established a number of related deadlines leading up to the Hearing. (referred to as the "Commission's Pre-Hearing Order").

11. The Federal Trade Commission concluded its review of the merger on June 26, 2020 and issued conditional approval for the transaction.

12. The IGC's Background and Financial Investigations Divisions investigation of key persons from ERI and Caesars was summarized in a **confidential** letter dated July 6, 2020 from Sara Tait, the Executive Director of the IGC, to Deena Pitman, the Commission's Executive Director (which was not provided to the public). This letter was identified as "Commission Exhibit T" and made a part of the Record during the Commission hearing.

13. Pursuant to the Commission's Prehearing Order, the Commission's Executive Director timely submitted and filed her Staff Report (with attached Exhibits) on or about July 6, 2020 (the "Staff Report"). An unredacted copy of the Staff Report and Unredacted Exhibits (containing confidential financial information, investigative materials and/or trade secrets) was identified as "Commission Exhibit C with attached/referenced Exhibits 1-16" was made available to the Commission. A redacted copy of the Staff Report with Redacted Exhibits (containing confidential financial information, investigative materials and/or trade secrets) was identified as "Commission Exhibit C with attached/referenced Exhibits 1-16" was and was made a part of the Record during the Commission hearing. The redacted version of the Staff Report

and exhibits was provided to ERI on or about July 6, 2020 and made publicly available shortly thereafter.

14. The Indiana HBPA submitted a letter dated July 7, 2020 (Commission Exhibit V.) supporting the Transfer Petition as long as it was issued with specified (and otherwise appropriate conditions). The ISA, through their counsel, Roger Young, submitted a letter dated July 9, 2020 indicating that organization's concurrence with the findings, recommendations and proposed conditions in the Staff Report (Commission Exhibit W.) Indiana ITOBA submitted a letter in support of the Transfer Petition on July 10, 2020. (Commission Exhibit W.) The Commission did, however, receive letters in opposition to the Transfer Petition from Standardbred horsemen Ernie Gaskin, Nat Hill, and Henry Blackwell (Commission Exhibit C. 13), from Dwayne Rhule, the Chairman of the Standardbred Advisory Board (Commission Exhibit C.14), and a final submission in opposition from Nat Hill on July 7, 2020 (that is one of the letters made a part of Commission Exhibit W).

15. Pursuant to the Commission's Pre-Hearing Order and Indiana Code 4-21.5-3-26(f), the Commission's counsel timely submitted a request for official notice. The Commission granted that request and officially took administrative notice that ERI, Caesars, Hoosier Park and Indiana Downs were 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, and I.C. 4-35) and Titles 71 and 68 of the Indiana Administrative Code (Indiana Horse Racing Commission and Indiana Gaming Commission, respectively).

16. Pursuant to the Commission's Prehearing Order, the Commission's Counsel timely submitted and filed the Commission's Exhibit List on or about July 8, 2020. An unredacted copy of the Commission's Exhibit List identified Commission Exhibits A-W,

inclusive. Subject to declarations of confidentiality (where appropriate), these exhibits were made a part of the Record (without objection) during the Commission hearing. A redacted version of the Commission's Exhibit List was made publicly available.

17. The Commission held a (public) Hearing on July 13, 2020. Proper Notice of the Hearing, including the Commission's consideration of the Transfer Petition, was timely provided to the public on June 25, 2020.

18. All of the documents and information referenced above were offered and admitted into evidence (subject to appropriate designations of confidentiality) at the Hearing. All exhibits were admitted without objection.

19. ERI presented the testimony of three (3) individuals, all of whom were representatives of ERI. (Thomas Reeg, Chief Executive Officer, Anthony Carano, President and Chief Operating Officer and Joe Morris, Senior Vice President of Racing). These witnesses testified under oath, were available to and did answer questions posed to them at the Hearing by the Commission and its Standardbred counsel.

20. The Executive Director of the Commission, Ms. Deena Pitman, testified at the Hearing that she stood by the opinions and conclusions expressed in her Staff Report.

21. As reflected in the Commission's Pre-Hearing Order, the Commission further provided an opportunity for interested individuals or entities to speak on behalf of, or in opposition to, the Transfer Petition. Nine individuals testified under oath before the Commission. This included: Brian Elmore, Executive Director of the Indiana HBPA; Dwayne Rhule, the Chair of the Standardbred Advisory Committee; Nat Hill IV, Standardbred Horseman; Ernie Gaskin, Standardbred Horseman; Paul Martin, QHRAI; Joe Putnam, President of the ISA; the Honorable Bob Cherry, Indiana State Representative for District 53; Bruce Murphy, President of ITOBA;

and the Honorable Terri Austin, Indiana State Representative for District 36. For the most part, the testimony given was in support of the ERI Transfer Petition.

22. Subject to the conditions and/or covenants contained in this Final Order, the Commission reviewed financial information, reviewed exhibits containing reasonable recommendations and analysis and heard credible evidence enabling it to consider the Transfer Petition and render this decision.

The Governing Criteria

1. The Commission has specifically evaluated and considered this Transfer Application against the Indiana General Assembly's stated criteria, as set forth in Indiana Code 4-31-5-8. In particular, pursuant to Indiana Code 4-31-5-8(c)(3), the Commission considered witness testimony at the Hearing on July 13, 2020, the report of the Commission Staff and the attached reports of the Commission's consultant, the exhibits admitted into evidence, the matters officially noticed, the public comments, and the other information it deemed relevant, then deliberated in an open meeting and determined that granting the Transfer Petition/Transfer Application, subject to the conditions and/or covenants herein, would be in the best interests of the Indiana horse racing industry and the State of Indiana.

2. The Commission also has considered and determined that ERI's Transfer Petition, subject to the conditions and covenants contained herein, is consistent with the Commission's permit requirements and factors, as outlined in 71 IAC 11-1-6.

Findings of Fact

1. The State of Indiana has cultivated a horse racing and breeding industry over the last two and a half decades that have generated a significant state-wide economic impact.

According to the Indiana Racing and Breeding Industry Survey (which had been admitted into evidence during the Centaur/Indiana Grand public hearing in December of 2012 through the pre-filed testimony of Jim Brown), “the State of Indiana is generating extraordinary and economic activity from its far-sighted design of an on-going investment in the state horse racing and breeding industry.” That Survey specifically concluded that the industry generates a direct impact of \$733 million and a total impact of more than \$1 billion on the State’s economy. Also, according to that Survey, the industry is responsible for the direct and related employment of 9,865 jobs across Indiana and further responsible for approximately \$89 million in state and local tax revenue. (Commission Exhibit G.).

2. 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. (Staff Report, Commission Exhibit C.) Hoosier Park (in Anderson) opened in 1994 and was the State’s only racetrack until December 2002, when Indiana Downs (subsequently renamed Indiana Grand) was opened.

3. The Indiana General Assembly has passed several laws designed to support the racing and breeding industry. 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.

4. During the same session, 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.)*

As a former Commission appropriately recognized in 2013: “Indiana’s racino model (allowing electronic gaming at the State’s racetracks) was implemented by the General Assembly in 2007 based upon the apparent recognition that racing and gaming have grown inseparable, with the dependence of racing on gaming revenues.” (Commission Exhibit D, p.12).

5. 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 ultimately 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 (Hoosier Park and Indiana Grand) that continue to operate today and are the subject of ERI’s Transfer Petition.

6. 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.

7. 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).

8. Since this particular legislation was enacted, pursuant to the Initial Distribution Agreement (the “IDA) and this Commission’s Final Orders, Centaur and/or Caesars have agreed to pay the maximum statutory percentage to the horsemen **every single calendar year** - without exception. Centaur had done so while making numerous, substantial and important improvements to the racing side of its operations that have benefitted all breeds and horsemen who participate in Indiana racing. Hand-in-hand with the horsemen, Centaur created a model relationship between ownership and racing participants that was both admired and emulated. It also created the standard against which the ownership by Caesars was measured. Even today, it remains the standard against which the ERI Transfer Petition has been considered, evaluated and will be measured by this Commission moving forward.

9. 71 IAC 11-1-6(b) (5) provides that the Commission may evaluate the financial ability of an applicant (in this case ERI) to successfully own and operate the Indiana pari-mutuel racing facilities. During “normal times”, a proposed merger/acquisition that is as involved and complex as the one at issue here would be difficult to evaluate. In the midst of a pandemic, that evaluation has become exponentially more difficult.

10. The Commission agrees with the Commission Staff that there are significant

financial considerations present that may impact ERI's ability to successfully operate two racetracks if approved. The transaction is incredibly complex and involves many moving pieces. External factors (some of which may be outside ERI's control) may have negative impacts on racing in Indiana. Obviously, if the Covid-19 pandemic continues on without a treatment or vaccine identified, or even gives rise to another strong sustained wave, it could be a disaster for the casino industry as a whole. There is substantial debt involved in the proposed transaction, and cash flow may be tight- particularly in the short-term. Additionally, because of the complexity of the transaction, there are numerous financial institutions that ERI is depending upon for financing. If circumstances continue to create a drag on the economy, the Commission is concerned that the ripple effect of such issues may be felt far and wide. The unique timing of this deal has proven to be challenging (at best).

11. 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 its current Gaming and Racing responsibilities. On balance, the Commission believes that approving the Transfer Petition with stringent conditions relating to horse racing leaves the Indiana horse racing industry in a better position moving forward than if the Commission were to deny the Transfer Petition.

12. The General Assembly has specifically delegated to this Commission the responsibility and authority to determine whether ERI's proposed single-entity ownership is in the industry's and State's best interests. With overwhelming industry support, Centaur met its burden of establishing this in 2012 and continued to make good on its commitments, covenants and promises right up to the date that the Indiana race tracks were conveyed to Caesars. As

observed by the Commission's Executive Director in her Staff Report:

“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.”
(Staff Report, Commission Exhibit C, p.2)

While some missteps did occur, Caesars has proven over the past two years to be a good industry partner in maintaining the high standards and ideals that had been established for the Indiana horse racing industry prior to the issuance of the Commission's Final Order in 2018 (Commission Exhibit F).

13. The Commission is mindful of the very legitimate industry concerns that stem from change- and particularly in the present circumstances with **a second new** race track owner formerly unknown to most Indiana racing participants and this Commission in the course of the past two years. In Indiana, there is only one permitted pari-mutuel track where specific breed racing participants may race. “One-breed/one track racing” initiated under Centaur's single ownership has been a resounding success (See, Commission Exhibit D, pp.10-11). The fear that ERI may not appropriately value, recognize and protect Indiana racing operations to the same extent that Centaur, and now Caesars, have repeatedly demonstrated is a legitimate concern- until proven otherwise.

14. 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 and the Commission must rely heavily on Reed's Second Report detailing, among other things its management of racetrack properties that ERI has either previously owned or currently owns (including Pompano Park, Scioto Downs, and Mountaineer) which gives rise to significant concerns. Reed's Second Report (Commission Exhibit C.3) lays out some of this problematic

history that has also been referenced by the Executive Director in her Staff Report. (Redacted Staff Report, Commission Exhibit C. pp. 7-10)

15.. After the issuance of the Second Reed Report (and as will be discussed in more detail below), ERI has worked collaboratively with Indiana racing participants to arrive at proposed commitments to the Indiana racing industry that are thoughtful, forward looking and encouraging. Nonetheless, all of ERI's commitments to the industry must be evaluated against the backdrop presented in Reed's Second Report. To this point, ERI's horse racing management style has been the antithesis of the management style that the Commission has encouraged, expected, and largely received, from Centaur and Caesars. Sadly, it raises significant concerns about whether handing ERI the "keys to the kingdom" by granting them both Indiana racing permits is truly in the best interests of Indiana racing.²

16. In addition, 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. The Commission believes strongly that these commitments must be accompanied by meaningful accountability. Like the Commission Staff, the Commission applauds ERI's efforts to reach out to the horsemen's associations and to present a list of commitments (contained in Commission Exhibits C.11 & C.12) that the Commission views as a good starting point to ensure that racing in Indiana

² The Commission shares the Commission Staff's fear that ERI may not be truly interested in becoming a true horse racing partner going forward, as evidenced by its lackluster efforts at other racetracks it owns or has previously owned. While hoping that this will not be the case going forward, the Commission is prepared to take any and all available action(s) necessary to protect the future of the Indiana racing industry and the State of Indiana should this fear prove to become a reality.

continues to grow and flourish.

17. Initially, on February 5, 2020, the Commission Staff received a letter from ERI that included a number of commitments made in response to Reed's Second Report (the "February Letter"; Commission Exhibit C.11). The February Letter contained a few important promises, including ERI's commitment to adopt the recommendations set forth in Reed's Second Report and to hire and retain qualified and knowledgeable racing managers. As a result of this commitment, ERI retained Mr. Joe Morris to fill the newly created SVP of Racing position. As described in Commission Exhibit K, the SVP of Racing will directly report to the President and COO of the new entity.

18. Following the submission of the February Letter, ERI apparently continued to come to terms with the history, gravity and importance of the horse racing industry in Indiana. Laudably, ERI undertook concentrated efforts to meet with the horsemen directly and to discuss and formulate a list of potential commitments that the horsemen believe are necessary to ensure that Indiana horse racing continues on its current path of success and innovation. Following those outreach efforts in early March, the Commission Staff received a letter from ERI dated March 3, 2020 restating its commitment to grow and improve Indiana racing in partnership with the Commission and the horsemen's associations (the "March Letter"; Exhibit C.12). The March Letter included a number of "new" detailed commitments, which indicated that ERI was continuing to devote serious thought and consideration to the improvement and growth of Indiana racing.

19. By way of example only, 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 this legislative

effort was unsuccessful, ERI committed to an automatic ten-year renewal of the twelve percent commitment following the 2033 racing season.³

20. ERI also agreed to fund an initial “Racing Capital Escrow Fund” of \$25⁴ million to be spent over a ten-year period beginning in 2020. The funds would be used to “fund major projects and enhancements to the race track facilities. . .”⁵ These commitments, along with others listed in the ERI February and March Letters provide the Commission with hope and an expectation that the Indiana horse racing industry is in the hands of an entity that is serious about the long-term, unwavering commitment necessary to ensure that horse racing continues to flourish and grow in Indiana.

21. The Indiana HBPA submitted a letter dated July 7, 2020 (Commission Exhibit V.) supporting the Transfer Petition as long as it was issued with specified (and otherwise appropriate conditions). The ISA, through their counsel, Roger Young, submitted a letter dated July 9, 2020 indicating that organization’s concurrence of the findings, recommendations and proposed conditions in the Staff Report (Commission Exhibit W.) Indiana ITOBA submitted a letter in support of the Transfer Petition on July 10, 2020. (Commission Exhibit W.) The Commission did, however, receive letters in opposition to the Transfer Petition from

³ With respect to the continuation of the maximum statutory payment (12%) to Horsemen by ERI, the financial information considered by the Commission makes clear that this would not have a material effect on the balance sheet of ERI (or its affiliated entities) nor on ERI/Caesars ROI to shareholders. As the Commission knows well, however, any reduction of this percentage would have a substantial impact on racing participants as well as the related breeding and support operations/individuals that directly or indirectly participate in the Indiana racing industry. (Commission Exhibits C and G).

⁴ERI agreed to the \$25M initial escrow figure as well as a “replenishment” of \$25M into an escrow account every 10 years as set forth in the letter of Tom Reeg of ERI to Deena Pitman dated July 9, 2020 (Part of Commission Exhibit W).

⁵ The Initial Capital Fund Escrow Account would need to be fully funded/monetized at the outset and would be capital expenditures made **in addition to** any equipment purchases made pursuant to the obligation imposed by Condition 11. of this Final Order or any capital expenditures that might be made on the “gaming” side of each racino.

Standardbred horsemen Ernie Gaskin, Nat Hill, and Henry Blackwell (Commission Exhibit C.13), from Dwayne Rhule, the Chairman of the Standardbred Advisory Board (Commission Exhibit C.14), and a final submission in opposition from Nat Hill on July 7, 2020 (that is one of the letters made a part of Commission Exhibit W). The Commission takes note of the longstanding participation of these four individuals in Indiana horse racing, their significant contributions over time to the Indiana horse racing industry as well as notice of the concerns that they have expressed in these documents.

22. The Commission believes that adopting the recommendations contained in the Staff Report (Commission Exhibit C) and Reed's First and Second Report's (Commission Exhibits C.2 & C.3) should bring some level of comfort and confidence to racing industry participants while providing ERI with the opportunity to fully and fairly demonstrate its articulated commitment to Indiana racing.

23. The Commission also confirms its recognition that pari-mutuel racing has become an integral part of the Anderson and Shelbyville communities over the past several years. This is confirmed by the letters in support of the Transfer Petition submitted by Mayor Thomas Broderick, Jr. of Anderson dated July 9, 2020 and Mayor Thomas DeBaun of Shelbyville dated July 1, 2020 (two of the letters made a part of Commission Exhibit W). The state, local communities and racing industry have all benefitted from the one breed/one track racing instituted in 2013. The Commission continues to agree with the Executive Director that it cannot envision that it would be agreeable to return to past practice and support a proposal to consolidate racing operations at one of the two existing pari-mutuel racing facilities.

24. In addition, 71 IAC 11-1-6(b) (10) and (13) allow the Commission to examine the impact of the racing operations on the state and the local communities where the tracks operate.

Once approved, ERI will become the sole operator of Indiana's two pari-mutuel racetracks. The importance of this position cannot be understated. Following the transfer, the Commission will consider ERI to occupy a position with the horsemen and local communities that has many of the components of a fiduciary relationship.

25. Because of the central and critical roles that the Anderson and Shelbyville communities have played in the development of the Indiana horse racing industry, the Commission has determined that ERI must covenant and commit to continue to support those communities and the State of Indiana in a manner that exceeds the Centaur efforts summarized and reported in the 2017 State and Community Impact Report referenced in the Staff Report issued in the Centaur-Caesars transfer proceeding. In that regard, ERI must 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/marketing dollars to local sports teams or other entities. Post-merger but on-or before Dec. 31, 2020, ERI must increase its community spend in Anderson and Shelbyville in the aggregate amount of Two-Hundred and Fifty Thousand Dollars (\$250,000.00) through community donations and/or new local partnerships and continue that commitment in 2021 and thereafter. Moreover, ERI must commit to timely fulfill any remaining commitment to the Centaur Equine Specialty Hospital in Shelbyville (Letter from Willie M. Reed, DVM, Dean of the Purdue College of Veterinary Medicine, dated July 10, 2020; Commission Exhibit W) and agree that its suitability to hold the racing permits will be tied to its continuing financial support in the Anderson and Shelbyville communities.

26. The Indiana horse racing industry, itself, is critical to the State of Indiana. In

particular, it is critical to the State's broader agri-business initiatives. As previously stated, the Indiana Racing and Breeding Industry Survey concluded that the industry generated a direct impact of \$733 million and a total impact of more than \$1 billion on the State's economy. The Survey also recognized that the industry is responsible for the direct and related employment of 9,865 jobs across Indiana and further responsible for approximately \$69 million in state and local tax revenue.

27. The Industry Survey also recognized that "the State of Indiana is generating extraordinary economic activity from its far-sighted design of an on-going investment in the state horse racing and breeding industry, generating in-state revenues from out-of-state sources." The Survey further concluded: "this is an industry that is especially important to the two communities, Anderson and Shelbyville, and the surrounding areas, but the impact is statewide because of the broad statewide involvement of the breeding services, and likely other equine industry activity."

28. Hoosier Park and Indiana Downs also directly provide significant financial support to the State of Indiana. The state collects over \$100 million per year in wagering taxes from these facilities and both facilities collectively employ approximately 2,500 people. (Commission Exhibit D, p. 12).

29. Throughout this proceeding, ERI has repeatedly promised to maintain "first class"/ "gold standard"/ "best in class" racing facilities (both frontside and backside) at Hoosier Park and Indiana Grand as well as "first class" off-track betting facilities. ERI has expressed its understanding that, as the holder of one (much less both) Indiana racing permit(s) it is expected **not only to maintain, but to improve** the current Indiana horse racing status quo.

30. Centaur had set the "Indiana racing" bar very high, Caesars largely carried on that

tradition--and ERI has agreed to exceed the established standards. 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 Commission must require a substantial commitment by ERI to improve the industry which provides for meaningful accountability. The Commission agrees with its Executive Director that the adoption of the recommendations made in Reed's First and Second Reports will go a long way towards providing the accountability necessary for ERI to measure and effectively demonstrate its efforts to improve the horse racing industry in Indiana:

One requires the approval on an annual basis of an operations plan before race dates are allocated. This operational plan would be a commitment by the owner and any changes that need to be made during the year would be subject to commission approval. Violations of the operational plan without commission approval would be tied to the license and depending on the nature of the violation it would be up to the discretion of the commission as to the extent of any penalties that might be imposed. If the change/deviation would be deemed an emergency then the executive director of the commission should be empowered to approve any part that could not wait for full commission approval.

* * *

1. **An outline for a yearly operational plan needing approval before race date allocation** (*the commission may want to consider the following elements and add/delete as they see necessary given the Indiana statutes and regulatory scheme, with consideration of what is practical, fair and reasonable and being careful to guard against unintended consequences.*)
 - a. Contracts with the necessary horsemen groups should be approved beforehand and included as a part of the operational plan.
 - b. An overview of changes planned for the upcoming year. It could/should also include changes made to address opportunities to enhance or better racing for employees, customers, horsemen and/or other stakeholders. (See SWOT analysis for more detail.) Examples may be post time changes, new personnel, changes in strategy to attract more handle, any legislative agenda, surveillance or other technological improvements, training initiatives, Total Reward changes, ADW changes, any synergistic efforts with other Caesars properties, etc. It would be

helpful to include any data analytics to support any change that might be made.

c. Racing CAPEX expenditures should be identified with a timeline and cost estimates. The allocation should address what is necessary for safety, upkeep, frontside and backside racing related expenditures, new initiatives and/or what need is to be addressed with each outlay of capital (i.e., the expenditure enhances integrity or surveillance, or is enhancing racing customer or horsemen comfort, etc.)

d. The racing marketing plan. There should be a commitment to spend an agreed upon amount for the marketing of racing during the plan year. The plan should identify specific promotions, marketing advertising buys, CRM efforts, social media and any other appropriate marketing outlays. The plan should cover the marketing of live racing but should also include some key simulcast events. The racing marketing plan should include the amount of spending on racing specific events and initiatives. Of course, some marketing expenditures would be for the entire facility and may be more inclusive. This budget should fairly allocate expenditures based upon reasonable metrics.

e. Any of the usual, normal and necessary things needing approval for race dates would be included in the operational plan: the race dates, post times, staffing etc. The plan should be specific as to staffing of racing personnel at each track in that this was a critical component of the good relationships at the various jurisdictions reviewed. A process that increases the chance that quality hires are made should be considered.

f. The commission may want to consider, given the opportunities that the new ownership may bring to the table, that one item each year on the plan specifically address an issue of safety, integrity, promotion, industry growth, increase of an industry standard that is forward looking and may be an outcome of discussions during the previous year.

g. Prior to any consideration of the approval of the operational plan for an upcoming year, the commission must be presented year end projected results and validation to demonstrate to the satisfaction of the commission that the current year's plan was accomplished in good faith.

h. Other items as may be deemed necessary by the commission or its Executive Director. (See the other recommendations for additional suggestions.)

i. A force majeure type clause or similar provision that would apply to any elements of the operational plan that could not be completed due to issues beyond Caesars control.

While communications between other racing commissions and Caesars is already a "strength", this recommendation would provide transparency to all

racing constituents and would formalize a process that provides for an annual review of the racing side of the business and the discussion of forward-looking issues that would impact racing. It would help to insure accountability (which is a corporate strength of Caesars) on the racing side of the product. (Reed's First Report, Conclusions and Recommendations, pp.20-22; Commission Exhibit C.2).

31. ERI has agreed (and must covenant) to 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. The plan must include and/or address each of the elements referenced at pages 20-22 of the RG &E Report, dated May 29, 2018 (Reed's First Report; Commission Exhibit C.2.) submitted in conjunction with the Centaur-Caesars transfer proceeding. These elements are also set forth in Finding of Fact 18 (pp. 14-16) of the Centaur-Caesars Final Order (Commission Exhibit F) and are incorporated herein by reference. ERI understands and agrees that the obligation to submit each year a comprehensive operational plan will become a commitment of ERI and that any material change during each relevant year will be subject to Commission approval. Material deviations from the operational plan without Commission approval will be tied to the license. If a change/deviation is deemed an emergency by the Commission's Executive Director then she will be empowered to approve any change/deviation that cannot wait for Commission approval.

32. ERI has also committed to implement the recommended improvements to the operational plan proposed by the most recent Reed Report (Reed's Second Report; Commission Exhibit C.3)) that are designed to (1) ensure stakeholder transparency and input prior to the submission of the plan for approval and (2) to add measurable and quantifiable details that can be monitored, revised, discussed and enhanced going forward. Those include: Eldorado's commitment to communicate with key stakeholders in sufficient time to obtain and incorporate their feedback **prior to** ERI's submission of the operational plan to the Commission for

approval; to work with the Commission Staff to establish any necessary modification(s) of the timelines currently in place for the process; and to include (without limitation) the following in each operational plan:

- (a) Detailed, measurable goals and itemized budgets that will provide increased clarity to the Commission and other industry stakeholders and allow for easier benchmarking;
- (b) A proposed marketing plan that identifies specific promotions, marketing, advertising buys, Customer Relationship Management (“CRM”) efforts, social media initiatives and other appropriate marketing expenditures and outlays. The racing marketing plan will include the projected spending on racing specific events and initiatives planned for the following year;
- (c) A detailed breakdown of racing personnel to be employed at each track including a year-by-year comparison of horse racing staffing employment levels accompanied by an explanation of why specific positions are to be and/or were added or eliminated during a given year. ERI acknowledges and understands the complicated nature of running a “first class” horse racing operation and the significant human resources that race meets conducted with the highest of standards and the greatest level of integrity necessarily require. ERI commits to maintaining “pre-pandemic” employment levels and positions at both Indiana Grand and Hoosier Park racetracks on a going forward basis absent express approval from the Commission to deviate from such levels; provided, however, that in light of the disruption caused by the ongoing pandemic, this commitment will not be enforced until the one-year anniversary of this Order or the 2021 racing season;

(d) Year-end projected results (with validation) that will allow the Commission to measure/evaluate whether the previous year's operational plan was complied with in good faith.

(Commission Exhibits C.11, C.12 and W.; Reeg 7/9/2020 Letter)

33. Given ERI's history in horse racing (as referenced in this Final Order), the Commission has decided that an additional oversight mechanism is necessary. ERI must agree that upon a request by the Commission's Executive Director to ERI, an independent racing expert (such as Doug Reed of RG & E or some other individual selected by the Commission's Executive Director with comparable credentials) may be retained by the Commission Staff and paid for by ERI to perform a review and audit of any operational plan that has been adopted by the Commission at the request of ERI in order to ensure that "best racing practices" are being utilized at both Indiana tracks and that there has been substantial compliance with any specific operational plan approved by the Commission.

34. 71 IAC 11-1-6(b)(7) requires an applicant to retain qualified racing management among other things (i.e. plans for human health and safety, concession plans, personnel plans, etc.). The Reed First and Second Reports recognized Centaur and Caesar's strengths in running horse racing operations that had knowledgeable racing management and racing managers that were trusted and familiar. (Reed's First Report, SWOT Analysis, p.17; Reed's Second Report, pp.6-7)

35. The Commission supports the proposition that it is important that racing management be appropriately empowered and adopts the related recommendation in Reed's First Report as it will now apply to ERI:

The second recommendation is that Caesars continue its general practices regarding racing management but that it further empower its racing managers so as not to tie their hands any more than necessary.

* * *

The second recommendation is an attempt to create some assurance that the status quo (regarding Caesars having racing management with racing experience and knowledge in place) will be maintained in Indiana- and preferably improved. Commission approval is required of executive management and changes to those positions. The importance of the need for qualified racing management (whenever such approvals come about) cannot be overstated.

Often times the racing manager is the “face” of Caesars before the commission at most meetings. The person (or another authorized representative) attending the commission meetings should be empowered to make decisions up to a certain level. The person(s) designated to attend the meetings could be identified as part of the operational plan and the approximate dollar level of authority identified. This would allow certain commitments to be made that would minimize the need to unnecessarily involve corporate management. This might help alleviate the stakeholders feeling that racing managers’ hands are tied and the fear that things cannot get done or will be delayed unnecessarily because another layer of bureaucracy is in place. It is understood that Caesars is a large corporation and may legitimately feel that decisions at one facility may have an impact elsewhere. However, if an operational plan (as recommended) is in place for the year, that plan would cover most major decisions and the personnel attending the commission meetings throughout the year should be expected and able to handle any other type of decision. (Perhaps crisis/emergency and anomalies aside.) (Reed’s First Report, Conclusions and Recommendations, pp.20-22).

36. ERI has indicated that they will be retaining the racing manager at Anderson (Rick Moore at Hoosier Park) and Eric Halstrom, the recently appointed racing manager at Indiana Grand (to replace John Schuster) and will make the ongoing commitment to keep knowledgeable managers and hire other qualified managers as appropriate. These are valued, comforting and appropriate commitments. ERI has also committed to maintain current racing leadership positions and to retain and/or replace racing management on a going forward basis (including the SVPR) with individuals that are appropriately empowered/authorized to address any concerns or issues raised by the Commission or its Executive Director, subject to appropriate corporate governance policies and procedures.

37. That being said, it is also important to have knowledgeable racing people in the upper management of ERI so that ERI communicates in a meaningful way that racing has a “seat at the table” and is valued. Sometime after the Transfer Petition was filed, but after the issuance by the Commission of the Reed Report, ERI contacted and subsequently employed Joe Morris, an individual with a long and detailed history of involvement in the United States horse racing industry. The Commission has been informed that Mr. Morris will continue to serve the combined entity as the Senior Vice President of Racing (“SVPR”) with a direct report to the President and Chief Operating Officer, who has been designated to be Anthony Carano. (Commission Exhibit K). ERI had not previously employed an individual in this capacity and Mr. Morris’ appointment has been made as one way of demonstrating and strengthening ERI’s commitment to operate horse racing in Indiana in a manner that is recognized as the “industry leading, best-in-class and/or gold standard” of the United States horse racing industry. In this regard, ERI covenants (on a going forward basis) to employ Mr. Morris (or someone similarly experienced and credentialed in horse racing) as the SVPR with direct reporting capabilities to the President and/or Chief Operating Officer of the combined entity. It is understood and agreed that ERI’s SVPR will work closely with and communicate frequently with the Hoosier Park and Indiana Grand property management teams, Indiana horsemen and their representatives, Commission members and Commission Staff.

38. ERI has communicated its understanding that good, consistent lines of communication and transparency between ERI, the Commission and the registered horsemen’s associations are a key to ensuring that the best interests of Indiana racing and that the public interest are upheld and that the stewardship of the industry does not diminish. In fact, ERI has made representations to the Indiana Horsemen’s Associations that they intend to establish a

“model partnership” with the Commission and horsemen to collaboratively enhance and move forward the Indiana horse racing industry. To this end, ERI is being urged to agree that its SVPR and Chief Operating Officer, as well as the General Managers and Racing Managers of Hoosier Park and Indiana Grand will attend at least two (2) meetings each calendar year with select Members of the Commission, the Commission’s Executive Director, select members of the Commission’s Staff, select members of the leadership of the communities of Anderson, Shelbyville and/or their surrounding areas and representatives from Indiana’s recognized horsemen’s associations. These meetings will be held to ensure that there are consistent “top level” discussions relating to the performance, promotion and status of the Indiana horse racing industry, its facilities, its impact on and assistance to the communities in which the tracks are located, its impact on the Indiana horse racing industry, the need to address and/or revisit horse racing statutes and regulations (then in place) and efforts to maintain and improve the safety and integrity of racing. It is anticipated that one of these meetings would be conducted sometime within a month or two after racing in Indiana has commenced for a given calendar year and the second meeting would be conducted sometime after the conclusion of Indiana racing in that same year but before the presentation of the next year’s operational plans for the two race tracks.

39. In addition, ERI agrees that its General Managers and racing management personnel at each race track will hold regular monthly meetings with appropriate horsemen’s association representatives and (as appropriate) representatives of the Commission Staff. ERI’s SVPR will attend as many of these monthly meetings as reasonably possible, but no fewer than six (6) each calendar year.

40. Upon transfer, ERI will begin with racing properties (physical improvements) and equipment that are in “good” to “excellent” condition. Centaur and Caesars have done an

exemplary job of meeting the needs of the horsemen and investing in the facilities, equipment and property- even to this day. A document entitled Hoosier Park and Indiana Grand Equipment Summary, Revised May 18, 2018 was attached to the Staff Report and identified as Exhibit “C.15”. This schedule identifies equipment associated with a specific track (Hoosier Park or Indiana Grand) for track maintenance/racing operations, backside maintenance and operations, snow management, and frontside operations and includes a replacement schedule through and including 2033. The Commission believes that a covenant by ERI (as was made by Caesars before it) to comply with and not make materials deviations from this equipment replacement schedule is both necessary and appropriate.

41. While ERI is known to the IGC, this Commission has no past first-hand experience with ERI’s commitment to horse racing in Indiana. Instead, this Commission must rely on ERI’s representations, commitments and promises, in addition to the opinions and recommendations of industry participants, Commission consultants and the Commission’s Executive Director.⁶ The Commission is convinced that it must be deliberate, measured and careful moving forward given some of the materials it reviewed that were admitted into the record at the hearing. (See, Unredacted Staff Report and attached exhibits, Commission Exhibit C.) These materials support the necessary inclusion of conditions and/or covenants in this Final Order which will provide meaningful opportunities for this Commission to track and review ERI’s efforts and approve a detailed racing operation plan each year at the time that racing dates are submitted and awarded.

⁶ A permit holder’s candidness and openness with regulators is of the utmost importance to the successful operation of racing in Indiana. The ability of the Commission and 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, repeated incidents could bring ERI’s suitability as a permit holder into question. The Commission will require strict and candid accountability from the permit holder going forward.

42. The Commission appreciates ERI's commitment to maintain the strong relationships that had initially been forged between ownership and the Indiana horsemen's associations under Centaur's stewardship. The champions of the Indiana horse racing industry include too many horsemen to appropriately recognize in a single Order. While vigorously representing the interests of their constituents during this timeframe, the leadership of the Indiana horsemen's associations have been marked by thoughtful people who have respectfully listened to/considered other horse racing interests and have been prepared to make sacrifices in an effort to lead to the greater good. This is a significant factor in the Commission's ability to regulate a vibrant, growing racing industry that Reed recognized was (despite their small differences) uniformly "rowing the boat in the same direction."

43. ERI acknowledges and understands that the Commission takes no position in this proceeding as to whether a REIT operation would be appropriate and/or permitted at one of the Indiana racetracks or OTB facilities. To date, neither VICI or any other REIT has been licensed or permitted by this Commission and there is no expectation or guarantee that this would be done in the future if an appropriate request were to be made to the Commission. This Commission is not aware of any other domestic race track that has successfully operated for a significant period of time under a REIT structure and has serious concerns about whether such a structure would be in the best interests of Indiana horse racing or would promote Indiana's objective to operate with the highest of standards and greatest level of integrity and to continue to increase industry improvement and growth.

44. The Commission believes that most of the suggestions contained in the helpful submissions made by the leadership of the Indiana horsemen's associations (Commission Exhibits V and W) have either been picked up in the conditions and/or covenants contained in

this Order, or will be able to be addressed by ownership and the leadership of the Indiana horsemen's associations committed to continue to "row the boat in the same direction".

45. ERI has made additional promises and commitments to the Commission throughout the course of this proceeding that may be included in the conditions which are the subject of the Condition and Covenant Joinder attached hereto.

46. ERI's operation of both Hoosier Park and Indiana Downs will remain under the strict supervision of this Commission and the IGC. For example, the licenses and permits issued by this Commission and the IGC remain subject to annual applications, consideration and renewal. Both the Commission and the IGC share the overall regulation of their respective interests in the operations of the racinos.

47. Subject to ERI's acceptance of the conditions, understandings and covenants contained herein, the Commission finds that ERI has met its burden of establishing that its proposed single-entity ownership of the only two racetracks (and related satellite facilities) that will be operated in the State of Indiana is in the industry's and the State's best interests.

Conclusions of Law

A. ERI's Transfer Petition Satisfies the Factors Set Forth in Ind. Code § 4-31-5-8.

1. Pursuant to Ind. Code § 4-31-5-8(b)(1), the Commission may deny a permit to any applicant if denial is in the public interest. Moreover, pursuant to Ind. Code § 4-31-5-8(c)(3), the Commission shall deny a permit to any applicant that (either directly or through the applicant's owners) holds the State's other racing permit unless the Commission determines that the applicant's petition is in the best interests of the Indiana horse racing industry and the State

of Indiana.⁷

2. The Commission has fully considered the voluminous and detailed record before it and has determined that subject to the conditions and covenants contained herein, ERI's Transfer Petition is in the best interests of the Indiana horse racing industry and the State of Indiana pursuant to Ind. Code § 4-31-5-8(c)(3) and that it is also in the public interest pursuant to Ind. Code §4-31-5-8(b)(1).

3. ERI's Transfer Petition is in the best interests of the Indiana horse racing industry based upon all of the facts set forth above, including;

(a) Ownership of the Indiana race tracks will be transferred to a company with enhanced financial strength;

(b) The one-breed/one-track racing platform has been universally applauded by horsemen and the entire industry and ERI will be continuing this practice;

(c) ERI has proposed a racing management team that is committed to continuing to cultivate a successful, thriving racing industry in Indiana;

4. The Commission further finds that ERI's Transfer Petition is in the best interests of the State based upon all of the facts set forth above, including:

(a) the anticipated effect of continuing significant capital expenditures on racing and increased economic development in the local communities of Anderson and Shelbyville;

(b) continuing tax revenues and employment opportunities that Indiana derives from its racing and gaming industries; and

(c) positive impacts upon Indiana's agribusiness economy.

Maintaining the viability of the State's racetracks is critical to preserving the jobs and tax

⁷ The remaining elements of Ind. Code §§ 4-31-5-8(b) and (c) do not apply to ERI's Transfer Petition since ERI has not defaulted on any payments described therein.

revenues that the State General Assembly has consistently sought to generate and protect. The Indiana racing industry faces many challenges that will only be met if ERI fulfill's the many significant and material commitments and promises it has made during the pendency of the underlying proceeding. Without these substantial commitments, promises and undertakings, this Commission would not have issued its conditional approval of ERI's Transfer Petition. The Commission believes that approving ERI's Transfer Petition is the best way under difficult and challenging circumstances to continue to support and improve the racing and breeding industries in the State of Indiana.

B. ERI's Transfer Petition Also Satisfies the Factors Set Forth in 71 I.A.C. § 11-1-6

5. 71 I.A.C § 11-1-6 sets forth the regulatory factors this Commission shall apply when considering whether to grant an applicant's petition for a new permit. That same section also applies to transfer petitions such as ERI's, though certain factors set forth therein clearly apply only to new permits (and, thus, not to transfer petitions).

6. Also relevant here, the Commission concludes (among other things), pursuant to 71 I.A.C. § 11-1-6(b)(5), that ERI is qualified and financially able to operate a race track. Pursuant to 71 I.A.C. § 11-1-6(b), the Commission also has considered (among other things) ERI's integrity, ERI's commitment to maintain first class/gold standard racing facilities at Hoosier Park and Indiana Grand while investing in quality promotions and advertising for horse racing, ERI's management ability, ERI's commitment to maintaining strong partnerships with the horsemen's associations and local communities, and ERI's articulated commitment to expend significant efforts to promote, develop and improve the horse racing industry in Indiana.

7. The Commission, having considered all of the facts set forth above and the entire

record presented to the Commission, hereby concludes that ERI's Transfer Petition establishes by credible and substantial evidence that the applicable factors outlined in 71 I.A.C § 11-1-6 have been met subject to the conditions and covenants contained herein.

* * *

WHEREFORE, for the foregoing reasons, the Commission concludes that ERI's Petition meets all of the applicable statutory and regulatory standards and specifically finds that ERI's Petition is in the best interests of the Indiana Horse racing industry and the State of Indiana. The Commission, therefore, **ORDERS AND DECREES** that ERI's Petition is **GRANTED**, and specifically that the Permits to conduct horse racing at Indiana Grand and Hoosier Park, the Licenses to operate satellite wagering facilities in Indianapolis, New Haven and Clarksville, IN and the (currently inactive) Licenses to operate satellite wagering facilities in Evansville and Merrillville, IN shall be transferred to ERI subject to the following conditions and covenants:

1. ERI understands and agrees that the operation of the permits to conduct racing (and related licenses) are subject to the condition of receiving approval from the Indiana Gaming Commission to transfer the related gambling game licenses to ERI, any conditions in any final order of the Indiana Gaming Commission related thereto and other approvals and/or authorizations as may be required by law;

2. ERI understands that this conditional license is being awarded based upon ERI's repeated significant and material representations during the underlying permitting process that it will exercise and carry out, post-merger, its expressed commitment to grow and improve Indiana

horse racing in partnership with the Commission, the Commission Staff and the registered Indiana horsemen's associations. As such, the Commission takes seriously the importance of each and every one of the conditions contained herein. ERI understands and agrees that a material breach of any such condition could lead the Commission to take any and all actions available to it pursuant to Indiana law including (without limitation) those set forth in Condition 21., suspension, revocation and/or non-renewal of the permit(s) and related licenses;

3. ERI covenants to honor, perform and comply with the horsemen's association contracts in effect at the time of this Order, to honor, perform and comply with the Initial Distribution Agreement, and to operate the satellite facilities in Indianapolis, New Haven and Clarksville, IN. Further, ERI agrees that prior approval from the Commission is required in the event that ERI at some future date should seek to terminate or suspend operations at one (1) or more of the satellite facilities;

4. ERI covenants to pay the maximum statutory distribution amount to horsemen (as provided by IC 4-35-7-16(f)) of 12% through calendar year 2033, regardless of whether hotels are added at either facility in the interim. Thereafter, ERI's commitment to pay the maximum statutory distribution amount to horsemen (as provided by IC 4-35-7-16(f)) of 12% will automatically renew for an additional 10 years (or through and including calendar year 2044), subject to Commission approval. The payment percentage rate will change only if ERI complies with the appropriate statutory prerequisites/requirements and is able to establish to the satisfaction of the Commission by clear and convincing evidence that some other percentage allowed for by law is in the best interests of the state and the horse racing industry.

In this regard, ERI expresses its understanding and appreciation of the historical, existential, legislatively mandated support of Indiana Horse racing that has flowed from the

operation of legalized gaming in Indiana since its inception. ERI covenants and represents that as long as it holds any horse racing permit in the State of Indiana that is in good standing, it will not make, take and/or direct **any** efforts to “decouple”⁸ the relationship between legalized gaming under the jurisdiction of the Indiana Gaming Commission and pari-mutuel wagering under the jurisdiction of the Indiana Horse Racing Commission;

5. ERI 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 ERI may be authorized by the Indiana Gaming Commission to offer to the public at a racino or off-track betting facility. In the event that new revenue streams from additional forms of wagering authorized by the Indiana Gaming Commission and/or new forms of pari-mutuel racing may be offered to the public by 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;

6. ERI covenants to 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. The plan must include and/or address each of the elements referenced at pages 20-22 of the RG &E Report, dated May 29, 2018 (Reed’s First Report; Commission Exhibit C.2.) submitted in conjunction with the Centaur-Caesars transfer proceeding. These elements are also set forth in Finding of Fact 18 (pp. 14-16) of the Centaur-Caesars Final Order (Commission Exhibit F) and are incorporated herein by

⁸ See Findings of Fact #3-7 for a historical reference to the “coupling” of the Indiana Gaming and Horse Racing Industries.

reference. ERI understands and agrees that the obligation to submit each year a comprehensive operational plan will become a commitment of ERI and that any material change during each relevant year will be subject to Commission approval. Material deviations from the operational plan without Commission approval will be tied to the license and (depending on the nature of the deviation) within the Commission's discretion as to whether penalties will be imposed, the extent of any penalties that will be imposed or any other appropriate action provided by applicable law and regulations that might be taken. If a change/deviation is deemed an emergency by the Commission's Executive Director then she will be empowered to approve any change/deviation that cannot wait for Commission approval.

ERI acknowledges and agrees to implement the recommended improvements to the operational plan proposed by the most recent Reed Report (Reed's Second Report) that are designed to (1) ensure stakeholder transparency and input prior to the submission of the plan for approval and (2) to add measurable and quantifiable details that can be monitored, revised, discussed and enhanced going forward. Those include: Eldorado's commitment to communicate with key stakeholders in sufficient time to obtain and incorporate their feedback **prior to** ERI's submission of the operational plan to the Commission for approval; to work with the Commission Staff to establish any necessary modification(s) of the timelines currently in place for the process; and to include (without limitation) the following in each operational plan:

- (a) Detailed, measurable goals and itemized budgets that will provide increased clarity to the Commission and other industry stakeholders and allow for easier benchmarking;
- (b) A proposed marketing plan that identifies specific promotions, marketing, advertising buys, Customer Relationship Management ("CRM") efforts, social

media initiatives and other appropriate marketing expenditures and outlays. The racing marketing plan will include the projected spending on racing specific events and initiatives planned for the following year;

- (c) A detailed breakdown of racing personnel to be employed at each track including a year-by-year comparison of horse racing staffing employment levels accompanied by an explanation of why specific positions are to be and/or were added or eliminated during a given year. ERI acknowledges and understands the complicated nature of running a “first class” horse racing operation and the significant human resources that race meets conducted with the highest of standards and the greatest level of integrity necessarily require. ERI commits to maintaining “pre-pandemic” employment levels and positions at both Indiana Grand and Hoosier Park racetracks on a going forward basis absent express approval from the Commission to deviate from such levels; provided, however, that in light of the disruption caused by the ongoing pandemic, this commitment will not be enforced until the one-year anniversary of this Order or the 2021 racing season;
- (d) Year-end projected results (with validation) that will allow the Commission to measure/evaluate whether the previous year’s operational plan was complied with in good faith.

ERI agrees that upon a request by the Commission’s Executive Director to ERI, an independent racing expert (such as Doug Reed of RG & E or some other individual selected by the Commission’s Executive Director with comparable credentials) may be retained by the Commission Staff and paid by ERI to perform a review and audit of any operational plan that has been adopted by the Commission at the request of ERI in order to ensure that “best racing

practices” are being utilized at both Indiana tracks and that there has been substantial compliance with any specific operational plan approved by the Commission.

7. ERI covenants and commits that it will increase the 2021 Indiana advertising and promotional spend by a minimum of 10% above 2019 amounts with a focus on increasing visitation at the race track and OTB’s and an awareness of the importance and quality of Indiana racing;

8. ERI covenants and commits to continue to support the state of Indiana, and the communities of Anderson and Shelbyville in a manner that exceeds the Centaur efforts summarized and reported in the 2017 State and Community Impact Report referenced in the Staff Report issued in the Centaur-Caesars transfer proceeding (Commission Exhibit C.16). 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/marketing dollars to local sports teams or other entities. Post-merger but on-or before Dec. 31, 2020, ERI commits to increase its community spend in Anderson and Shelbyville in the aggregate amount of Two-Hundred and Fifty Thousand Dollars (\$250,000.00) through community donations and/or new local partnerships and represents that it will continue that commitment in 2021 and thereafter. Moreover, ERI commits to timely fulfill any remaining commitment to the Centaur Equine Specialty Hospital in Shelbyville. Eldorado further agrees that its racing permits are tied to its continued involvement in the Anderson and Shelbyville communities and a failure to maintain or improve appropriate community spend may result in a suitability issue moving forward.

9. Sometime after its Petition was filed, but after the issuance by the Commission of the Reed Report, ERI contacted and subsequently employed Joe Morris, an individual with a long and detailed history of involvement in the United States horse racing industry. The Commission has been informed that Mr. Morris will continue to serve the combined entity as the Senior Vice President of Racing (“SVPR”) with a direct report to the President and Chief Operating Officer, who has been designated to be Anthony Carano. ERI had not previously employed an individual in this capacity and Mr. Morris’ appointment has been made as one way of demonstrating and strengthening ERI’s commitment to operate horse racing in Indiana in a manner that is recognized as the “industry leading, best-in-class and/or gold standard” of the United States horse racing industry. In this regard, ERI covenants (on a going forward basis) to employ Mr. Morris (or someone similarly experienced and credentialed in horse racing) as the SVPR with direct reporting capabilities to the President and/or Chief Operating Officer of the combined entity. It is understood and agreed that ERI’s SVPR will work closely with and communicate frequently with the Hoosier Park and Indiana Grand property management teams, Indiana horsemen and their representatives, Commission members and Commission Staff. ERI also covenants to maintain current racing leadership positions and to retain and/or replace racing management on a going forward basis (including the SVPR) with individuals that are knowledgeable about the operation of horse racing, trusted and familiar and that are appropriately empowered/authorized to address any concerns or issues raised by the Commission or its Executive Director, subject to appropriate corporate governance policies and procedures.

10. ERI understands and acknowledges that good, consistent lines of communication and transparency between ERI, the Commission and the registered horsemen’s associations are a key to ensuring that the best interests of Indiana racing and that the public interest are upheld and

that the stewardship of the industry does not diminish. In fact, ERI has made representations to the registered Indiana Horsemen's Associations that they intend to establish a "model partnership" with the Commission and horsemen to collaboratively enhance and move forward the Indiana horse racing industry. To this end, ERI agrees that its SVPR and Chief Operating Officer, as well as the General Managers and Racing Managers of Hoosier Park and Indiana Grand will attend at least two (2) meetings each calendar year with select Members of the Commission, the Commission's Executive Director, select members of the Commission's Staff, select members of the leadership of the communities of Anderson, Shelbyville and/or their surrounding areas and representatives from Indiana's recognized horsemen's associations. These meetings will be held to ensure that there are consistent "top level" discussions relating to the performance, promotion and status of the Indiana horse racing industry, its facilities, its impact on and assistance to the communities in which the tracks are located, its impact on the Indiana horse racing industry, the need to address and/or revisit horse racing statutes and regulations (then in place) and efforts to maintain and improve the safety and integrity of racing. It is anticipated that one of these meetings would be conducted sometime within a month or two after racing in Indiana has commenced for a given calendar year and the second meeting would be conducted sometime after the conclusion of Indiana racing in that same year but before the presentation of the next year's operational plans for the two race tracks.

In addition, ERI agrees that its General Managers and racing management personnel at each race track will hold regular monthly meetings with appropriate horsemen's association representatives and (as appropriate) representatives of the Commission Staff. ERI's SVPR will attend as many of these monthly meetings as reasonably possible, but no fewer than six (6) each calendar year.

11. ERI covenants to 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” (identified as Commission Exhibit C. 15) and understands that any material deviation from this schedule is subject to approval by the Commission or its Executive Director, which approval shall not be unreasonably withheld;

12. In addition to the equipment replacement responsibilities of ERI set forth in the immediately preceding condition, ERI covenants and agrees to establish and fully fund/monetize a capital improvement escrow fund of twenty-five million dollars (\$25,000,000.00) with a third-party fiduciary (independent from ERI) on or before January 1, 2021 (the “Initial Capital Fund Escrow Account” or “ICFEA”)⁹. The ICFEA is to be fully spent over a ten-year period (or on or before December 31, 2030; the “Initial Capital Fund Escrow Period” or “ICFEP”) on major racing capital projects and/or racing capital enhancements at Hoosier Park and/or Indiana Grand in a manner that is designed to position each track as an “industry leading and/or gold standard” race track in the United States of each horse racing breed(s) that races there¹⁰. It is the intent of ERI and the Commission that the existence and expenditure of the ICFEA funds will help attract quality horsemen, equine athletes and related personnel to race in Indiana and to fuel the growth of the horse racing industry. While there is no minimum or maximum amount that must be spent in a given year, it is envisioned that approximately 10% of the total ICFEP funds will be spent during each calendar year. All expenditures in excess of fifty thousand dollars (\$50,000.00) must

⁹ This condition requires that ERI deposit the **entire** \$25 Million dollar amount into the ICFEA no later than Jan. 1, 2021. The failure to do so would give rise to any and all rights and remedies available to the Commission pursuant to the terms of this Final Order and/or as otherwise provided for by law.

¹⁰ The Initial Capital Fund Escrow Account will need to be fully funded/monetized at the outset and is to be used only for any racing capital expenditures made **in addition to** any equipment purchases made pursuant to the obligation imposed by Condition 11 of this Final Order, Moreover, those funds are not to be authorized for **any** capital expenditures that might be made by ERI on the “gaming” side of either racino.

be approved by the Commission or its designee. Moreover, it is anticipated that the total amount of the ICFEP funds will be equally divided and/or equally allocated between Hoosier Park and Indiana Grand. If funds remain in the ICFEA on Jan. 1, 2031, they will be deposited (in equal amounts) into the integrity funds of the Commission referenced in Condition 22., set forth below.

The ICFEA is to be spent on projects approved by a newly formed "Racing Capital Fund Advisory Committee" or "RCFAC". The RCFAC will consist of six members: (1) ERI's Senior Vice President of Racing; (2) the general manager of Hoosier Park; (3) the general manager of Indiana Grand; and a representative from each of the three horsemen's association who are approved by the Commission and who contract each year with the race tracks. The Committee shall assemble, meet and propose a set of standards, guidelines and procedures on or before November 1, 2020 that will be submitted for the Commission's review and approval prior to Jan. 1, 2021.

ERI understands, agrees and covenants that it will be obligated to deposit a second installment of twenty-five million dollars (\$25,000,000.00) on or before December 31, 2030 to fund the "Second Capital Fund Escrow Account" or "SCFEA") which will run from January 1, 2031 through and including December 31, 2040 (the "Second Capital Fund Escrow Period" or "SCFEP). The SCFEA will be administered in the same manner and for the same general purposes as the ICFEA.

13. ERI covenants to cause Indiana Grand to seek and maintain its accreditation with the NTRA Safety and Integrity Alliance;

14. ERI covenants to continue to conduct the "one-breed/one track racing" initially authorized by the Commission in 2013 and to offer the same number of days racing offered at

Hoosier Park and Indiana Grand in 2019 unless good cause is established to the satisfaction of the Commission and an alternate race day schedule is approved;

15. ERI covenants and commits that it will maintain and/or improve the current condition of the racetrack surfaces. In this regard, upon the recommendation of the Commission, the Commission Staff and/or the formal request of a registered horsemen's association operating at a specific track ERI covenants that it will employ and consult with top-tier industry experts in order to formulate the best and safest solution under the circumstances and appropriately communicate that to the Commission Staff and the appropriate registered horsemen's organization(s);

16. ERI covenants and commits to exercise its best efforts to continue the past and current focus of prior Indiana permit holders to highlight Indiana's racing industry and facilities. This was accomplished by many different means and methods but significantly included making Hoosier Park and Indiana Grand available to host major racing events including the Breeder's Crown, the AQHA Quarter Horse Challenge and the Indiana Derby. In addition, ERI agrees to fund an additional purse increase of one million dollars (\$1,000,000.00) for each of three consecutive years (2020-2022) to increase pursues in consultation with the registered horsemen's associations and subject to the approval of the Commission or its designee;

17. ERI covenants and commits to increase the number of stalls at Indiana Grand to 1100 on or before Dec. 31, 2021, to maintain the current number of stalls at Hoosier Park, to maintain the condition of all new stalls and to maintain and improve the current condition of existing stalls. In addition, ERI commits that it will not alter the current policy of making stables and dormitories available to horsemen and track personnel without charge unless it has obtained the advance permission of the Commission or its designee.

Moreover, ERI recognizes the potential benefit of making Hoosier Park and/or Indiana Grand available to horsemen for “off season training” purposes. The intent of such a program would be to make the tracks available for off-season training for use by horsemen who actively participate in the Indiana racing programs. This should encourage and foster growth in Indiana’s racing and breeding programs- and help increase the numbers of Indiana bred and sired horses.

ERI covenants and commits to work collaboratively with the registered horsemen’s associations that operate at each track in order to arrive at mutually agreeable terms and conditions which would put in place programs (subject to Commission approval) for off-season training. ERI understands that capital improvements would be necessary at each track (it is anticipated that these funds would be issued through the ICFEA) to enable off-season training and that those specifics would be addressed by the RCFAC as generally provided for in Condition 12;

18. ERI covenants and commits to maintain “first class”/ “gold standard” racing facilities (both frontside and backside) at Hoosier Park and Indiana Grand as well as “first class” off-track betting facilities. ERI understands and appreciates that, as the holder of one (much less both) Indiana racing permit it is expected **not only to maintain, but to improve** the current Indiana horse racing status quo. In this regard, ERI covenants and commits to maintain and/or improve the response to any backside maintenance issues that may arise and promptly address any safety and or integrity concerns that may be presented;

19. ERI acknowledges and understands that the Commission takes no position in this proceeding as to whether a REIT operation would be appropriate and/or permitted at one of the Indiana racetracks or OTB facilities. To date, neither VICI or any other REIT has been licensed or permitted by this Commission and there is no expectation or guarantee that this would be done

in the future if an appropriate request were to be made to the Commission. This Commission is not aware of any other domestic race track that has successfully operated for a significant period of time under a REIT structure and has serious concerns about whether such a structure would be in the best interests of Indiana horse racing or would promote Indiana's objective to operate with the highest of standards and greatest level of integrity and to continue to increase industry improvement and growth.

Initially, ERI made the following representation to the IHRC in paragraph 4 of its Petition to Acquire CEC and the Horse Racing Permits filed and served on July 31st, 2019 ("Eldorado Petition"):

Eldorado has reached an agreement with VICI Properties ("VICI"), whereby VICI has a call right to acquire, and Eldorado has a put right to require that VICI acquire, the land and real estate associated with Hoosier Park and Indiana Grand between January 1, 2022 and December 31, 2024. Eldorado, through its direct and indirect subsidiaries, will continue to hold the Recognized Meeting Permits and would have a lease agreement to continue to operate on the real estate should the put-call option be exercised. In response to follow-up questions from Commission Staff (post-pandemic on 4/28/2020),

ERI represented that the exercise of the Put-Call Agreement was not an essential part of the financing for the proposed transaction (the Merger Agreement) and that the financial forecasting models presented to (or contemplated to be presented to) Gaming Regulators in Nevada, New Jersey and/or Indiana after March 1, 2020 did not include any proceeds from the Put-Call Agreement.

In the same communication, ERI also made the following representation to this Commission which it reaffirms by its conditional acceptance of this Final Order:

"ERI acknowledges and understands that, as in the Centaur transaction, by approving the ERI/Caesars merger and the transactions contemplated thereby, the IHRC is not taking a position as to whether a REIT operation would be appropriate and/or permitted at one of the Indiana racetracks or OTB facilities. ERI acknowledges that any exercise under the Put-Call Agreement would be subject to IHRC approval and it is anticipated that New Caesars will have other options available to maintain liquidity and first-class operations throughout the portfolio."

20. ERI covenants (both preclosing and post-closing) that it will continue to do all things necessary to assist the 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 race track or licensed satellite facility). To the extent that the Commission would exercise its discretion **not** to license a particular individual, ERI covenants to work with the Commission to rectify any issues that may arise.

21. ERI hereby acknowledges that the Indiana Gaming Commission issued IGC Order # 2020-87 dated July 10, 2020 which provides in pertinent part the following:

3. ERI shall obtain from the Indiana Horse racing Commission (“IHRC”) a transfer of the permits for Hoosier Park and Indiana Grand to conduct horse racing operations under Ind. Code § 4-31;

4. Further, ERI shall meet any and all conditions contained in a Final Order issued by the IHRC relating to conditional approval permitting ERI to conduct horse racing operations under Ind. Code § 4-31. Failure by ERI to meet any such condition may be the basis for action taken by the Commission pursuant to its powers and authority under Ind. Code § 4-33 or § 4-35;

ERI understands and agrees that in the event that the Indiana Horse Racing Commission were to determine that there had been a material breach by ERI of any of the conditions contained herein, that the Indiana Horse Racing Commission would then have the right (among other potential remedies provided to it by law) to seek a resolution from the Indiana Gaming Commission (pursuant to Ind. Code § 4-35-12-1 et seq.) requesting the appointment of a temporary Trustee(s) who would exercise all duties provided for by Ind. Code § 4-35-12-1 et seq. including the operation of the related horse race track and any related pari-mutuel wagering operations.

22. ERI acknowledges and understands that the execution of this Final Order will result in the issuance of two separate racing permits and gambling game licenses and will obligate ERI to make the integrity fund payments for each permit and license required by Ind. Code § 4-35-7-12.5, Ind. Code § 4-35-7-15, Ind. Code § 4-35-8.7-2 and Ind. Code § 4-35-8.7-3;

23. ERI's understands and agrees that its operations shall be subject to the continued review and regulation by the Commission and the IGC in that ERI, Caesars, Hoosier Park and Indiana Grand 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, and I.C. 4-35) and Titles 71 and 68 of the Indiana Administrative Code (Indiana Horse Racing Commission and Indiana Gaming Commission, respectively).

24. ERI agrees that any Final Order issued on its permit application cannot feasibly incorporate and/or address all issues and challenges that may arise while it is operating the two Indiana racetracks. Eldorado covenants and agrees to work collaboratively with the horsemen and the Commission in order to appropriately evaluate and resolve any such matter not addressed directly in this Final Order.

25. ERI understands and agrees that a divestiture of either of the Indiana horse racing permits (and related licenses) that are the subject of this Final Order is subject to the approval of the Commission. In such event, ERI understands and agrees that it will be obligated to comply with and fully perform any and all of the conditions contained herein absent prior approval from the Commission releasing it from any specific obligation(s).

26. ERI acknowledges and covenants that any definitive divestiture agreement(s) that ERI enters into pursuant to the provisions of Indiana Gaming Commission Order 2020-87 §

II.D.3., will not divest any assets other than those owned by Aztar Indiana Gaming Company, LLC, Horseshoe Hammond LLC and Caesars Riverboat Casino LLC.

27. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, ERI covenants that it will not discriminate against any employee or applicant for employment relating to its operation of the permits and/or licenses awarded as part of this Final Order with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). ERI certifies that it will comply with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in its operation of the permits and/or licenses awarded as part of this Final Order its operation of the permits and/or licenses awarded as part of this Final Order.

28. ERI understands and agrees that its election to exercise the option to join in this Order by accepting and agreeing to the conditions and covenants contained herein will also act as a **waiver** of any appeal rights related to this Order as set forth in Ind. Code § 4-21.5-3-5.

WHEREFORE, this Final Order of the Commission conditionally approving the transaction will be effective on July 15, 2020 after being signed by a majority of the Commission **and** after the signature of the ERI representative(s) authorized to consent to any covenants and/or conditions contained in this Final Order. In the event that a Final Order of the IGC has issued which authorizes closing to proceed and with the understanding that all other conditions precedent to closing have been met by the parties, closing may be conducted as soon thereafter

as could be arranged by the parties to the transaction. In so doing, ERI waives any appeal rights related to this Order as set forth in Ind. Code § 4-21.5-3-5;

IN THE ALTERNATIVE, this Order shall be effective once it becomes a Final Order upon the occurrence of the passage of fifteen (15) days following the receipt of the signed Final Order from the Indiana Horse Racing Commission as set forth in Ind. Code § 4-21.5-3-5.

IT IS SO ORDERED this 15th day of July, 2020 by the Indiana Horse Racing Commission.



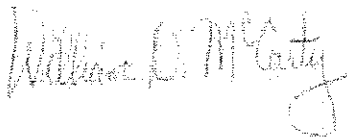
Philip C. Borst, Chair



Greg Schenkel, Vice-Chair



George Pillow, Member

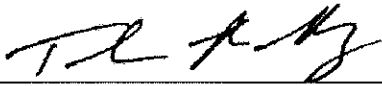


Bill McCarty, Member

CONDITION AND COVENANT JOINDER

Petitioner, Eldorado Resorts, Inc. joins in this Order to evidence their acceptance of said agreement to the conditions and covenants imposed upon the Petitioner by the foregoing Final Order.

Dated this 15 day of July, 2020.



Eldorado Resorts, Inc.

By: Thomas R. Reeg

Title: Chief Executive Officer