

ORDER 2021-228
AN ORDER OF THE INDIANA GAMING COMMISSION APPROVING
SETTLEMENT AGREEMENT AND RELEASE

The Commission has considered the following factors:

1. Pursuant to 68 IAC 13-1-18, settlement agreements entered into by and between the Indiana Gaming Commission (“Commission”) and its licensees must be approved by the Commission as the ultimate authority for the agency and entered pursuant to Commission Order.
2. On May 15, 2020, the Commission granted Lucy Luck Gaming, LLC (“LLG”) a license to operate a casino in Vigo County, Indiana.
3. On June 24, 2021, the Commission issued Order No. 2021-114, which concluded that LLG was ineligible for renewal of its casino owner’s license and denied LLG’s request for annual renewal of the Vigo County casino owner’s license.
4. On July 12, 2021, LLG filed its Petition for Review of Order No. 2021-114, with said petition currently pending before the Office of Administrative Law Proceedings, Administrative Cause No. IGC-0721-001440 (the “Petition”)
5. Thereafter, the Commission and LLG agreed to resolve all issues raised in the Petition by entering into a Settlement Agreement and Release (the “Settlement,” attached hereto), where LLG, among other things, agreed to dismiss its Petition, with prejudice.
6. Approval of the Settlement allows a very important economic development project to move forward for the benefit of the State of Indiana, specifically the County of Vigo, and is in the best interest of the public and the gaming industry.

COMMISSION ACTION

The Commission hereby **APPROVES** the Settlement entered into by and between the Commission and LLG, as attached hereto.

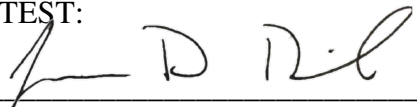
IT IS SO ORDERED THIS 21st DAY OF DECEMBER, 2021.

THE INDIANA GAMING COMMISSION



Michael McMains, Chair

ATTEST:



Jason Dudich, Secretary

AGREEMENT

This agreement is made and entered into by and between the Indiana Gaming Commission (the "Commission"), by and through its Executive Director, on one hand and Lucy Luck Gaming, LLC ("LLG"), on the other. The Commission and LLG are each, individually, a "Party" and, collectively, the "Parties."

RECITALS

WHEREAS, on May 15, 2020, LLG obtained a license to operate a casino in Vigo County, Indiana;

WHEREAS, on June 24, 2021, the Commission issued Order No. 2021-114, which concluded that LLG was "ineligible for renewal of its casino owner's license" and denied LLG's request for annual renewal of the Vigo County casino owner's license;

WHEREAS, on July 12, 2021, LLG filed its Petition for Review of Order No. 2021-114, with said petition currently pending before the Office of Administrative Law Proceedings, Administrative Law Judge Gamboa, Administrative Cause No. IGC-0721-001440 ("Review Proceeding");

WHEREAS, Order No. 2021-114 has been stayed pending resolution of the Review Proceeding;

WHEREAS, on November 17, 2021, the Commission conditionally approved the issuance of a casino owner's license for Vigo County to an entity affiliated with Churchill Downs Incorporated and, as a result, anticipates receiving a new licensure fee equal to the amount of this settlement;

WHEREAS, the Parties make this agreement to avoid future litigation and future costs, and to compromise and fully settle the issues pending before the Office of Administrative Law Proceedings such that construction of a casino may move forward in Vigo County, Indiana;

WHEREAS, enabling the timely construction of a casino in Vigo County, Indiana, is consistent with the economic development goals as set forth in the Riverboat Gambling Act;

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. **Effective Date.** This agreement shall be effective when both Parties have, by their duly authorized representatives, signed this agreement (the "Effective Date").

2. **Surrender of Casino Owner's License.** Within 3 days of the Effective Date, LLG shall submit written notification to the Commission requesting, without leave of the Commission, a permanent surrender of its casino owner's license for the Vigo County casino. The Executive Director of the Commission shall approve and accept the surrender.

3. **Joint Motion to Dismiss.** Within 3 days of the Effective Date, the Parties shall submit a joint motion to ALJ Gamboa with a proposed order dismissing the Review Proceeding with prejudice for the reason that the matter has been resolved. For the avoidance of doubt, in the event LLG or any of its members or agents are subject to jurisdiction of the Commission for other reasons, now or in the future, the Commission hereby reserves all rights to assert any and all claims, as warranted, in relation to such other matters.

4. **Refund of LLG license fee.** The Commission will consider the approval of this Settlement Agreement at a meeting scheduled to occur on December 21, 2021. Within 30 days after the Commission's approval of this settlement agreement, the Commission will cause LLG to be returned the \$5 million fee it paid in relation to its former casino owner's license. In no event shall the return of the \$5 million fee be paid later than January 20, 2022.

5. **Termination of revocation investigation.** As of the Effective Date, the Commission will cease its investigation into whether LLG's casino owner's license for Vigo County should be revoked.

6. **Commission rights.** Notwithstanding anything to the contrary herein, nothing in this agreement in any way restricts, diminishes, waives, or surrenders the Commission's rights to regulate gaming in Indiana consistent with its authority to do so, against any individual(s) or entities in any way whatsoever, including but not limited to LLG or its members. Furthermore, nothing in this agreement prevents or restricts the Commission from cooperating with any other federal, state, or local official(s) if requested regarding

any facts giving rise to, or described in, or the matters arising from, any Commission investigation.

7. **Entire agreement.** This agreement constitutes the entire agreement between the Parties. Each of the Parties represents that—outside of the terms set forth in this agreement—neither has made any representations to or agreements with the other concerning the subject matter addressed by this agreement and that neither has been induced to enter into this agreement on the basis of any statement that is not set forth in this agreement.

8. **Governing law and jurisdiction.** This agreement shall be governed by and construed in accordance with its express terms and otherwise in accordance with the law of the State of Indiana. Each Party agrees that any claim or action arising out of this agreement or any breach thereof shall be brought exclusively in the state commercial court in Marion County, Indiana. Each Party irrevocably submits to the jurisdiction of the state commercial court in Marion County, Indiana, and further waives any objection to venue in that court and any right to change venue from that court.

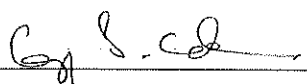
9. **Severability.** If any provision of this agreement is determined to be invalid or otherwise unenforceable by a court of competent jurisdiction, then such provision shall be deemed amended to the extent necessary to render it both consistent with the parties' intentions and enforceable. The determination that any provision is invalid or otherwise unenforceable shall in no way affect the validity or enforceability of any other provision herein. The lone exception to this Section 11 is Section 4. If that provision is determined to be invalid, the Parties agree that this agreement shall be void in its entirety and that the Parties shall be returned to their respective positions and rights as they existed prior to the Effective Date.

10. **Construction.** The Parties participated jointly in the negotiation and preparation of this agreement, and each Party has had an opportunity to obtain the advice of an attorney and to review, comment upon, and redraft this agreement. Therefore, the Parties agree that this agreement shall be construed as if the Parties jointly prepared it. Any uncertainty or ambiguity shall not be construed against any Party, regardless of who may have been responsible for drafting the provision(s) at issue.

11. **Authority.** Each of the Parties represents and warrants that (a) it has the authority to enter into this agreement and (b) that the person signing below is authorized by that Party to sign on its behalf and to bind that Party to the terms of this agreement.

12. **Counterparts.** This agreement may be executed in counterparts, each of which is deemed to be an executed original even if all signatures do not appear on the same counterpart. PDF copies of this agreement shall have the same force and effect as originals.

LUCY LUCK GAMING, LLC



By: Greg Gibson

12 / 20 / 2021

Date

THE INDIANA GAMING COMMISSION



By: Greg Small

12/21/2021

Date