

OHIO CASINO CONTROL COMMISSION

RESOLUTION 2020-25

**CONSIDERATION OF JACK CLEVELAND CASINO LLC'S APPLICATION
FOR A NEW CASINO-OPERATOR LICENSE**

WHEREAS, Article XV, Section 6(C)(4) of the Ohio Constitution created the Ohio Casino Control Commission ("Commission") to ensure the integrity of casino gaming by, among other things, licensing and regulating all gaming authorized by Article XV, Section 6(C) of the Ohio Constitution;

WHEREAS, Article XV, Section 6(C)(1) and (C)(6) of the Ohio Constitution and R.C. 3772.08(A) permit casino gaming to be conducted only by licensed casino operators of the 4 constitutionally defined casino facilities or by licensed management companies retained by licensed casino operators;

WHEREAS, R.C. 3772.09(A) prohibits any casino operator, management company, or holding company from conducting or participating in conducting casino gaming without first being licensed by the Commission;

WHEREAS, R.C. 3772.10(A) mandates that the Commission consider all of the following, as applicable, when determining whether to grant the privilege of a casino-operator license:

- (A) The reputation, experience, and financial integrity of the applicant, its holding company, and any other person that directly or indirectly controls the applicant;
- (B) The financial ability of the applicant to purchase and maintain adequate liability and casualty insurance and to provide an adequate surety bond;
- (C) The past and present compliance of the applicant and its affiliates or affiliated companies with casino-related licensing requirements in the state of Ohio or any other jurisdiction, including whether the applicant has a history of noncompliance with the casino-licensing requirements of any jurisdiction;
- (D) Whether the applicant has been indicted, convicted, pleaded guilty or no contest, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations;
- (E) Whether the applicant has filed, or had filed against it a proceeding for bankruptcy or has ever been involved in any formal process to adjust, defer, suspend, or otherwise work out the payment of any debt;
- (F) Whether the applicant has been served with a complaint or other

notice filed with any public body regarding payment of any tax required under federal, state, or local law that has been delinquent for 1 or more years;

- (G) Whether the applicant is or has been a defendant in litigation involving its business practices;
- (H) Whether awarding a license would undermine the public's confidence in the casino-gaming industry in the state of Ohio; and
- (I) Whether the applicant meets other standards for the issuance of a license that the Commission adopts by rule, which are not arbitrary, capricious, or contradictory to the expressed provisions of R.C. Chapter 3772;

WHEREAS, R.C. 3772.10(B) requires casino operators seeking licensure under R.C. Chapter 3772 to establish their suitability by clear and convincing evidence;

WHEREAS, R.C. 3772.11(A) requires any casino operator seeking licensure to submit, under oath, a Casino Operator and Management Company License Application and Holding Company Form ("Application");

WHEREAS, R.C. 3772.111 mandates that the Commission also consider the following when determining whether to grant a casino-operator license:

- (A) The facilities or proposed facilities for the conduct of casino gaming;
- (B) The prospective total revenue to be collected by the state of Ohio from the conduct of casino gaming; and
- (C) The extent to which the applicant exceeds or meets other standards adopted by the Commission;

WHEREAS, Article XV, Section 6(C)(4) of the Ohio Constitution, R.C. 3772.03, 3772.10, 3772.11, 3772.111, and 3772.17, and Ohio Adm.Code Chapter 3772-4 authorize the Commission to issue casino-operator licenses to applicants that the Commission determines are eligible for licensure and have paid all applicable fees;

WHEREAS, a new casino-operator license applicant is eligible for licensure upon meeting the following criteria:

- (A) Submission of a true and complete Application, as required by R.C. 3772.10(C) and 3772.11(A) and Ohio Adm.Code 3772-4-01 through 3772-4-05;
- (B) Payment of the nonrefundable application fee of \$1,500,000, as required by R.C. 3772.17(C) and Ohio Adm.Code 3772-4-06(A), and all fees necessary to cover the costs of the background investigation

in excess of the application fee set forth by Ohio Adm.Code 3772-4-06(A), if any, as permitted by R.C. 3772.17(C) and Ohio Adm.Code 3772-4-06(C);

- (C) Reimbursement of the costs for the criminal-records checks, as required by R.C. 3772.07;
- (D) Not having been convicted of or pled guilty or no contest to a disqualifying offense, as defined and required by R.C. 3772.07;
- (E) All holding companies and management companies, their directors, executive officers, members, managers, and any shareholder who holds more than 5% ownership of the holding companies and management companies, if any, submit the same information as the applicant, as required by R.C. 3772.11(B); and
- (F) Otherwise is suitable for licensure, as required by R.C. 3772.10(B) and (C);

WHEREAS, R.C. 3772.112 requires a casino operator, before being licensed by the Commission, to post, and thereafter maintain, a surety bond in the amount of \$1,000,000 payable to the state of Ohio, conditioned on the operator complying with Article XV, Section 6(C) of the Ohio Constitution and R.C. Chapter 3772 and the rules adopted thereunder;

WHEREAS, R.C. 3772.112 further provides that:

- (A) The surety bond be issued by a surety that is licensed to do business in this state;
- (B) The surety bond be approved by the Commission;
- (C) The total aggregate liability of the surety is limited to the amount specified in the surety bond;
- (D) The surety not cancel the surety bond unless the surety has given the Commission, in the event of nonpayment of premium, 10 days' notice of the intention to cancel, and in the event of any other cause, 30 days' notice of the intention to cancel; and
- (E) If the surety bond is to be canceled, and if the casino operator fails to post and maintain a new surety bond in the specified amount on or before the day of cancellation, the operator's license is void;

WHEREAS, R.C. 3772.03(D)(5) mandates that the Commission adopt rules prescribing the minimum amount of insurance that must be maintained by casino operators;

WHEREAS, Ohio Adm.Code 3772-7-01(A) requires, among others, casino-operator licensees to obtain and maintain the following types of insurance in

minimum amounts determined by the Commission:

- (A) Liability;
- (B) Casualty;
- (C) Property;
- (D) Crime;
- (E) Worker's compensation; and
- (F) Any other type of insurance the Commission deems necessary to ensure the licensee is adequately insured;

WHEREAS, JACK Cleveland Casino LLC ("JACK Cleveland") submitted an Application in accordance with R.C. 3772.11(A) and Ohio Adm.Code 3772-4-01 through 3772-4-05;

WHEREAS, JACK Cleveland paid the nonrefundable application fee, as required by R.C. 3772.17(C) and Ohio Adm.Code 3772-4-06(A);

WHEREAS, JACK Cleveland submitted information and materials necessary to demonstrate that the operator has posted, and thereafter will maintain, a surety bond in the amount of \$1,000,000, in accordance with and as required by R.C. 3772.112, and as further evidenced by the Commission's adoption of Resolution 2016-21;

WHEREAS, JACK Cleveland submitted information and materials (summaries of which are attached as Exhibit A) necessary to demonstrate that the operator has obtained and maintains all of the requisite types of insurance and the amounts of each type, required by R.C. 3772.03(D)(5) and Ohio Adm.Code 3772-7-01(A);

WHEREAS, the entities that appear on the attached Exhibit B will be holding companies (collectively, "Holding Companies"), and as such they submitted information and documentation required of holding companies under R.C. 3772.11(B);

WHEREAS, the Commission's Division of Licensing and Investigations ("Division") reviewed the Application and other materials and information and conducted a thorough suitability investigation of JACK Cleveland and the Holding Companies;

WHEREAS, the Division prepared a comprehensive report to the members of the Commission, dated July 8, 2020, captioned *Investigative Report on the Application of JACK Cleveland Casino LLC for a New Casino-Operator License* ("Report");

WHEREAS, the Report concludes that based upon the investigation, no material derogatory or other negative information that adversely impacts the suitability of

JACK Cleveland or the Holding Companies was uncovered and that JACK Cleveland is eligible to be approved for licensure;

WHEREAS, the Division recommends that the Commission grant JACK Cleveland's new casino-operator license, subject to the conditions specified herein;

WHEREAS, the Commission has reviewed the Report and considered the matter at its public meeting held on July 15, 2020.

NOW, THEREFORE, BE IT RESOLVED that JACK Cleveland is **SUITABLE** and **ELIGIBLE** for licensure.

BE IT FURTHER RESOLVED that the new Application is **APPROVED** and JACK Cleveland is **LICENSED** as a casino operator for a period not to exceed 3 years, subject to continued compliance with R.C. Chapter 3772 and the rules adopted thereunder and the following conditions:

- (A) As a condition precedent to licensure, JACK Cleveland and the Holding Companies must close the proposed sale-purchase transaction, including the subsequent transfer of control, in a substantially similar form and without any material or substantial changes to the terms or documentation provided in support thereof, as determined by the Commission, no later than September 17, 2020, and provide executed copies of all related documents within 10 days of their execution; if the transaction closes in a substantially different form or with one or more material or substantial changes, as determined by the Commission, or does not close by September 17, 2020, approval thereof is null and void, unless further approved by the Commission;
- (B) JACK Cleveland and the Holding Companies shall notify the Commission, in accordance with Ohio Adm.Code 3772-4-09, regarding:
 - (1) The status of all pending litigation and any litigation commenced subsequent to the issuance of JACK Cleveland's new casino-operator license;
 - (2) Any changes to the owners, officers, directors, and key employees; any new owners, officers, directors, and key employees are required to submit key-employee license applications, as required under R.C. 3772.13 and Ohio Adm.Code Chapter 3772-5; and any new owners, officers, directors, and key employees must establish their suitability for licensure by clear and convincing evidence and be found eligible and otherwise suitable by the Commission, as required under R.C. 3772.10 and 3772.13;
 - (3) Any loans or additional debt incurred by them; and

- (4) Any event of default or any failure to meet any payment of interest or principal when due under any of their existing or future debt obligations;
- (C) JACK Cleveland and the Holding Companies shall submit, as applicable, all information required to be provided to the Commission under R.C. 3772.18;
- (D) JACK Cleveland and the Holding Companies shall comply with all applicable and effective internal controls, standard operating procedures, governance documents, and agreements, whether or not approved by the Commission;
- (E) JACK's Board of Managers, Compliance Committee, and Audit Committee shall keep and retain complete and accurate minutes of all their formal and informal meetings (including any discussion, issues, or reports of fraud, noncompliance, or concerns raised internally, externally, or otherwise), whether the meetings take place in person, telephonically, or by some other means of communication, in accordance with Ohio Adm.Code 3772-1-07 and any applicable internal controls, standard operating procedures, governance documents, and agreements, whether or not approved by the Commission;
- (F) JACK's Compliance Committee and Audit Committee shall notify the Commission's Executive Director no later than 30 days from when either conducts any due diligence efforts, takes any action, or makes any recommendations concerning current or future business; and
- (G) JACK Cleveland shall pay all fees required by the Commission, including a nonrefundable new license fee of \$1,500,000, as required by R.C. 3772.17(B) and Ohio Adm.Code 3772-4-07(B).

BE IT FURTHER RESOLVED that Resolution 2020-25 does not in any way affect, negate, or otherwise absolve JACK Cleveland or the Holding Companies from their duties to update information in accordance with Ohio Adm.Code 3772-4-09 and 3772-5-04, as applicable, or from their obligations to comply with R.C. Chapter 3772 and the rules adopted thereunder and all other conditions imposed by the Commission through resolution or otherwise.

BE IT FURTHER RESOLVED that Resolution 2020-25 does not restrict or limit the Commission's future exercise of authority and discretion with respect to requesting additional information from or imposing additional conditions or taking further action upon JACK Cleveland, the Holding Companies, or other affiliated persons under R.C. Chapter 3772 and the rules adopted thereunder.

Adopted: July 15, 2020

Exhibit A
Resolution 2020-25

JACK Cleveland Casino LLC

Types of Insurance Policies

Commercial General Liability	\$2,000,000
Automobile Liability	\$1,000,000
Umbrella Liability	\$275,000,0000
Workers' Compensation – Participates in the Ohio State Insurance Fund as required by law	
Commercial Crime	\$10,000,000
Property- Business Real Property, Business Personal Property	\$393,143,073
Property- Business Income, Extra Expense	\$227,286,332
Property- Extra Expense	\$30,000,000

Exhibit B
Resolution 2020-25

Holding Companies

1. Cullen Enterprises LLC
2. Cullen Family Trust f/b/o John Cullen u/a/d October 29, 2009
3. Cullen Family Trust f/b/o Matthew Cullen u/a/d October 29, 2009
4. Cullen Family Trust f/b/o Ryan Cullen u/a/d October 29, 2009
5. Daniel B. Gilbert Property Trust u/a/d October 31, 2011
6. DG Ohio Ventures LLC
7. JACK Investment Co., LLC
8. JACK Ohio Finance LLC
9. JACK Ohio LLC
10. JACK Parent LLC
11. Matthew P. Cullen Property Trust u/a/d October 31, 2011
12. Nathan M. Forbes Property Trust u/a/d October 31, 2011
13. NF Ohio Ventures LLC
14. Pennant Ventures II LLC
15. Rock Ohio Ventures LLC