

New Jersey Casino Control Commission
Resolution
No.18-06-21-00



RESOLUTION OF THE NEW JERSEY CASINO CONTROL
COMMISSION CONCERNING THE AMENDED PETITION OF AC
OCEAN WALK LLC D/B/A OCEAN RESORT CASINO FOR THE
ISSUANCE OF A CASINO LICENSE AND FOR VARIOUS RULINGS
IN CONNECTION THEREWITH
(PRN 1621801)(PRN 1661805)(PRN 1661806)(PRN 1661807)

WHEREAS, AC Ocean Walk LLC (“AC Ocean”), the casino license applicant, is a New Jersey limited liability company which is owned 99.5% by AC Beachfront LLC (“AC Beachfront”), a Delaware limited liability company and 0.5% by ACOWMGR, LLC (“ACOWMGR”), a Delaware limited liability company; and

WHEREAS, AC Beachfront wholly owns ACOWRE LLC (“ACOWRE”), a Delaware limited liability company which is the owner and lessor of the Ocean Resort Casino (“Ocean Resort”); and

WHEREAS, AC Beachfront is wholly owned by TEN RE ACNJ, LLC (“TEN RE”), a New Jersey limited liability company, which in turn is owned 88.5646% by Mile High Dice, LLC (“Mile High”), a Colorado limited liability company, and 3.1707% by Winding Trail, LLC (“Winding Trail”), a Connecticut limited liability company with the other remaining ownership interests each representing less than 5%; and



Resolution No. 18-06-21-00

Page 2

WHEREAS, on April 5, 2018, AC Ocean filed a Petition (PRN 1951801) requesting a declaratory ruling from the New Jersey Casino Control Commission (“Commission”) that ACOWRE, as the owner and lessor of Ocean Resort is required to hold a casino service industry enterprise (“csie”) license pursuant to *N.J.S.A. 5:12-82c(2)* and for approval of the Amended and Restated Operating Lease between ACOWRE and AC Ocean; and

WHEREAS, on June 6, 2018, the Commission granted the petition of AC Ocean and approved the Amended and Restated Operating Lease and determined, with the concurrence of the Division of Gaming Enforcement (“Division”), that ACOWRE is required to hold a csie license, not a casino license (Resolution No. 18-06-06-14); and

WHEREAS, on June 11, 2018, AC Ocean filed a Petition (PRN 1621801) requesting that the Commission issue a casino license pursuant to *N.J.S.A. 5:12-82b* to AC Ocean, and seeking other related rulings which Petition was amended by Letter Amendment dated June 15, 2018 and filed with the Division on June 18, 2018 correcting paragraphs 23 and 27 and the first *Whereas* clause; and

WHEREAS, on June 15, 2018, AC Ocean filed a Petition (PRN 1661805) requesting permission for Cory H. Morowitz to assume the duties and exercise powers as a member of the Audit Committee without having been qualified pursuant to *N.J.S.A. 5:12-85.1c* and *N.J.A.C. 13:69C-2.7(a)* and (c); and



Resolution No. 18-06-21-00

Page 3

WHEREAS, on June 14, 2018, AC Ocean filed a Petition (PRN 1661806) requesting permission for certain employees of AC Ocean to assume the duties and exercise their respective powers without having been qualified pursuant to *N.J.A.C. 13:69C-2.6* and for the issuance of temporary casino key employee licenses pursuant to *N.J.S.A. 5:12-89e*; and

WHEREAS, on June 15, 2018, AC Ocean filed a Petition (PRN 1661807) requesting permission for Stephen W. Morro to assume the duties and exercise powers as a member of the Compliance Committee and Audit Committee without having been qualified pursuant to *N.J.S.A. 5:12-85.1c* and *N.J.A.C. 13:69C-2.7(a)* and (c); and

WHEREAS, on June 7, 2018, the Division filed a *Report to the Casino Control Commission on the Application of AC Ocean Walk LLC for a Casino License* ("Division Report") reflecting its investigation into the background and qualification of the applicant and its qualifiers (D-1, in evidence) and a Supplemental Report dated June 18, 2018 (D-2, in evidence), and interposing no objection to the issuance of a casino license to AC Ocean; and

WHEREAS, the Director of the Division by Order 1746 dated June 6, 2018 (D-1, in evidence at Exhibit B) determined that the following business entities are required to be qualified pursuant to *N.J.S.A. 5:12-85.1b(5)* as holding companies in connection with the casino license application of AC



Resolution No. 18-06-21-00

Page 4

Ocean: (a) AC Beachfront, (b) ACOWMGR, (c) TEN RE, (d) Mile High, and (e) the Nancy and Bruce Deifik Family Partnership LLLP ("Family Partnership"); and

WHEREAS, the Director of the Division by Order 1746 (D-1, in evidence at Exhibit B) further required Mile High Dice MGR, LLC ("Mile High MGR"), the sole manager of TEN RE, to qualify as an entity qualifier of AC Ocean; and

WHEREAS, the Director of the Division by Order 1746 (D-1, in evidence at Exhibit B) exercised his discretion to require the qualification of Winding Trail pursuant to *N.J.S.A. 5:12-85.1c(5)*; and

WHEREAS, the Director of the Division by Order 1746 (D-1, in evidence at Exhibit B) determined that Luxor Capital Group, LP ("Luxor"), the Family Partnership and JPMorgan Chase Bank, N.A. ("JPMorgan") are required to establish and maintain their qualifications as financial sources of AC Ocean pursuant to Section 85.1e of the Casino Control Act ("the Act") in connection with the casino license application of AC Ocean; and

WHEREAS, the Director of the Division by Order 1746 (D-1, in evidence at Exhibit B) designated the following individuals as natural person qualifiers pursuant to *N.J.S.A. 5:12-85.1* for purposes of the casino license application of AC Ocean: (1) Amanda Deifik Witheiler in the following capacity – Family Partnership: Limited Partner; (2) Bruce Douglas Wayne Deifik in the following capacities – Family Partnership: General and Limited Partner; Mile High MGR: Manager/Member; Mile High Dice: Manager; (3) Jordan Douglas Deifik in the



Resolution No. 18-06-21-00

Page 5

following capacities – Family Partnership: Limited Partner; Mile High MGR: Member; (3) Nancy Lou Deifik in the following capacities – Family Partnership: General and Limited Partner; Mile High MGR: Member; (4) Frederick DeVesa in the following capacity – AC Beachfront: Audit and Compliance Committee Member; (5) Cory Morowitz in the following capacity – AC Beachfront: Audit Committee Member; (6) Stephen Morro – AC Beachfront: Audit and Compliance Committee Member; and (7) Walter Simon – AC Beachfront: Compliance Officer; and

WHEREAS, the Director of the Division by Order 1746 (D-1, in evidence at Exhibit B) further designated the following individuals as natural person qualifiers and casino key employees of AC Ocean pursuant to N.J.S.A. 5:12-85.1b and -89: Edward Carlson, in his capacity as Vice President Casino Marketing; Peter Ciccone, in his capacity as Senior Vice President Hotel Sales; Stephen Conigliaro, in his capacity as Vice President Player Development; Anthony Mason, in his capacity as Senior Vice President Marketing and Chief Marketing Officer; Loretta Pickus, in her capacity as Senior Vice President Legal and General Counsel; Ashley Polo, in her capacity as Vice President Brand Marketing and Communication; Vincent Turrano, in his capacity as Vice President Food and Beverage; Michael Baldino, in his capacity as Vice President Player Development; Frank Bonini, in his capacity as Senior Vice President Information Technology and Chief Information Officer; Alan



Resolution No. 18-06-21-00

Page 6

Greenstein, in his capacity as Senior Vice President, Chief Financial Officer, AC Ocean and Compliance Committee Member, AC Beachfront; Michael Kerley, in his capacity as Vice President Security; Frank Leone, in his capacity as Chief Executive Officer; Cindy LePine, in her capacity as Vice President Hotel Operations and Lori Yeager, in her capacity as Senior Vice President Human Resources and EEO Officer; and

WHEREAS, as set forth in the Division Report, (D-1, in evidence) the following individuals are in mandatory positions requiring casino key licensure pursuant to *N.J.A.C. 13:69D-1.11* and *N.J.A.C. 13:69K-1.4*: Frank Bonini, Senior Vice President Information Technology, Chief Information Officer; Adrianna Cuccinello, Executive Director Internet Gaming; Nicholas Ferraro, Casino Manager; Joyce Griffeth, Information Security Officer; Michael Kerley, Vice President Security; Peter Masarone, Director of Slot Operations; Ronald Royce, Director of Surveillance; Robert Smith, Casino Controller; Paul Stowell, Director of Internal Audit and Lori Yeager, Senior Vice President Human Resources and EEO Officer; and

WHEREAS, on June 7, 2018 the Division filed natural person qualifier reports regarding Jordan Douglas Deifik, Nancy Lou Deifik and Amanda Deifik Witheiler; and on June 14, 2018 filed a natural person qualifier report regarding Bruce Douglas Wayne Deifik; and on June 15, 2018, filed a natural person qualifier report regarding Frederick Phillip DeVesa; and



Resolution No. 18-06-21-00

Page 7

WHEREAS, on June 7, 2018 the Division filed a report on Peter Nicholas Ciccone, casino key employee and qualifier of AC Ocean; and

WHEREAS, Edward Carlson, Stephen Conigliaro, Anthony Mason, Loretta Pickus, Ashley Polo, and Vincent Turrano, identified as “Ocean Resort Casino Key Qualifier Applicants” in Exhibit A of AC Ocean’s PRN 1661806, have each filed the requisite disclosure forms and AC Ocean requests that each be temporarily qualified pending plenary qualification by the Commission pursuant to *N.J.S.A. 5:12-85.1b*; and

WHEREAS, Joyce Griffeth, Ronald Royce and Robert Smith, identified as “Mandatory Key Position Applicant[s]” in Exhibit B of AC Ocean’s PRN 1661806, have each filed the requisite disclosure forms and AC Ocean requests that each be granted a temporary key license pending investigation by the Division and plenary licensure by the Commission; and

WHEREAS, thirty (30) individuals listed as “Ocean Resort Casino Key Applicants” in Exhibit B of AC Ocean’s PRN 1661806, have each filed the requisite disclosure forms and AC Ocean requests that each be granted a temporary key license pending investigation by the Division and plenary licensure by the Commission; and

WHEREAS, Michael Baldino, Adrianna Cuccinello, Nicholas Ferraro, Alan Greenstein, Michael Kerley, Frank Leone, Cindy LePine, Peter Masarone,



Resolution No. 18-06-21-00

Page 8

Walter Simon, Paul Stowell and Lori Yeager each hold a valid casino key employee license; and

WHEREAS, by Order PRN 1501803 dated June 6, 2018, (D-1, in evidence, at Exhibit D), the Director approved the AC Ocean and AC Beachfront Compliance Plan as compliant with *N.J.A.C. 13:69C-8.8*; and

WHEREAS, by Order PRN 1501802 dated June 6, 2018 (D-1, in evidence, at Exhibit E), the Director approved the AC Beachfront and AC Ocean Audit Committee Charter; and

WHEREAS, by Order PRN 1501801 dated June 6, 2018 (D-1, in evidence at Exhibit F), the Director approved the AC Ocean Equal Employment and Business Opportunity Plan, and Certification of its Chief Executive Officer as consistent with the requirements of *N.J.S.A. 5:12-134* and *N.J.A.C. 13:69K-1.1*, et.seq.; and

WHEREAS, on June 19, 2018, the Division filed a Letter Report of that date (D-3, in evidence) in response to PRN 1661806 wherein it consents to the relief requested therein and corrects three typographical errors in Exhibit B to the Petition; and

WHEREAS, the Commission received all information, conducted a hearing, heard the arguments of counsel, considered the evidence and took final action on the application at its June 20 - June 21, 2018 special public meeting; and



Resolution No. 18-06-21-00

Page 9

WHEREAS, the Commission found by three (3) affirmative votes that AC Ocean has complied with all requirements of the Act for the issuance of casino license.

NOW, THEREFORE, BE IT RESOLVED, by the Commission that the application of AC Ocean for the issuance of a casino license and the plenary qualification of the holding companies, entity qualifier and financial sources and plenary or temporary qualification of natural person qualifiers of the casino licensee is hereby GRANTED based upon the findings and rulings and subject to the conditions contained herein as recommended by the Division;

FINDINGS AND RULINGS

Based upon consideration of the entire record of these proceedings, including the reports of the Division (D-1, in evidence, D-2, in evidence and D-3, in evidence) the Commission issues the following rulings and makes the following findings:

1. Pursuant to *N.J.S.A. 5:12-82b, c and d(1)-(10)*, AC Ocean is eligible for and required to hold a casino license as lessee and operator of Ocean Resort and no other person is presently eligible for or required to hold a casino license with respect to the approved casino hotel for purposes of *N.J.S.A. 5:12-82b and c*;

2. AC Ocean and their qualifying entities and individuals, delineated



Resolution No. 18-06-21-00

Page 10

herein, have established the requisite good character, honesty and integrity for purposes of *N.J.S.A.* 5:12-84, 85.1 and 89, as applicable;

3. AC Ocean and its holding companies have demonstrated their financial stability, integrity and responsibility;

4. AC Ocean has established that it has sufficient business ability and casino experience as to establish the likelihood of creation and maintenance of a successful, efficient casino operation;

5. AC Beachfront, ACOWMGR, TEN RE, Mile High, the Family Partnership and Mile High MGR are each qualified pursuant to *N.J.S.A.* 5:12-85.1;

6. Luxor, the Family Partnership and JPMorgan are each qualified as financial sources pursuant to *N.J.S.A.* 5:12-85.1e and *N.J.A.C.* 13:69C-5B.1(a);

7. Each of the other individuals identified by Director Order 1746 (D-1, in evidence at Exhibit B), and as indicated herein, as the natural persons required to qualify and/or to obtain licensure as a casino key employee for purposes of the AC Ocean casino license application is qualified or temporarily qualified pursuant to *N.J.S.A.* 5:12-85.1 and *N.J.A.C.* 13:69C-2.7, or, where required, is also licensed as a casino key employee pursuant to *N.J.S.A.* 5:12-89 or is an applicant for a casino key employee license and has been issued a temporary casino key employee license pursuant to *N.J.S.A.* 5:12-89e;



Resolution No. 18-06-21-00

Page 11

8. AC Ocean has satisfied the requirements of *N.J.S.A. 5:12-82d* to the extent applicable;

9. AC Ocean has established, in accordance with *N.J.S.A. 5:12-83a* and *84e*, the suitability of the casino and its related facilities, and that the location thereof will not adversely affect casino operations;

10. AC Ocean has established that the issuance to it of a casino license will not create undue economic concentration in casino operations for purposes of *N.J.S.A. 5:12-82e*;

11. Based on the findings contained in this Resolution, and subject to issuance of an operation certificate therefore, AC Ocean's facility is a "casino hotel" containing an "approved hotel" and a "casino" as defined by sections 6, 19, 27 and 83 of the Act.

CONDITIONS

1. AC Ocean shall maintain a Daily Operating Cash Balance of not less than \$10 million, which shall be available exclusively to AC Ocean and not restricted by JPMorgan or any other party.

2. AC Ocean shall maintain a Casino Bankroll of not less than \$11 million, which shall be maintained in cash at Ocean Resort or in a bank account that is available exclusively to AC Ocean and not subject to restriction by JPMorgan or any other party.

3. Upon opening, AC Ocean shall have direct access to a combined



Working Capital Reserve and Debt Service Reserve of at least \$20 million. These funds shall be available exclusively to AC Ocean for any operational purpose and not subject to approval or consent by JPMorgan or any other party. If at any point after opening the combined Working Capital Reserve and Debt Service Reserve balance falls below \$15 million, those reserves shall be replenished to a minimum \$15 million combined threshold within three business days.

4. AC Ocean shall immediately notify the Division if it does not have a combined Daily Operating Cash Balance, Casino Bankroll, Working Capital Reserve, and Debt Service Reserve that collectively total at least \$36 million. Any notification pursuant to this condition shall be accompanied by a plan submitted by AC Ocean and agreed to by JPMorgan to address the shortfall.

5. By no later than Wednesday of each week, AC Ocean shall provide the Division with its weekly cash activity forecast. This report shall detail actual deposits, disbursements, and cash balances for the preceding week, as well as projected deposits, disbursements, and cash balances on a daily basis for at least the next four weeks.

6. Within five calendar days of the end of each month, a financial representative shall provide the Division with a certification that AC Ocean maintained a combined Daily Operating Cash Balance, Casino Bankroll,



Resolution No. 18-06-21-00

Page 13

Working Capital Reserve, and Debt Service Reserve that collectively total at least \$36 million at all times during the month.

7. Within five calendar days of the end of each month, AC Ocean shall provide the month-end: (1) Daily Operating Cash Balance, (2) Casino Bankroll balance, (3) Working Capital Reserve balance and (4) Debt Service Reserve balance. In addition, AC Ocean shall provide a detailed analysis of all Reserves and any cash accounts under the control of JPMorgan, which shall include the opening balance, any sources and uses of funds during the month and the balance at the end of the month.

8. Within 20 calendar days of the end of each month, AC Ocean shall provide the Division with a comparison of the actual income statement to the forecasted income statement submitted to the Division in support of the casino license application. Any variance in excess of 10% shall contain an explanation for the variance.

9. Within 20 calendar days of the end of each month, AC Ocean shall provide the Division with a Statement of Cash Flows for the prior month.

10. AC Ocean shall simultaneously provide the Division with a copy of any document or report that is sent to JPMorgan pursuant to the New Term Loan.

11. AC Ocean shall immediately advise the Division if it projects that



its available funds will not be sufficient to address its projected cash needs for at least the next 90 days, along with a detailed plan to address the potential shortfall.

12. AC Ocean, as casino licensee, and JPMorgan, as lender, shall not cease providing the financial support necessary for Ocean Resort to maintain its qualifications, including financial stability, and to meet its ongoing operational obligations which shall include, but not be limited to, obligations to the Casino Revenue Fund, the Casino Control Fund, the Casino Reinvestment Development Authority, state, county, city and federal taxing authorities, other state, local and federal authorities, patrons, vendors of goods and services and employees without 45 days prior written notice of such action to the Division. Notwithstanding the foregoing, in no event shall JPMorgan be required to advance funds in excess of the \$175 million New Term Loan.

13. AC Ocean shall immediately notify the Division if JPMorgan denies approval of any request for a disbursement to AC Ocean from any of the Reserve Funds specified in the New Term Loan agreement.

14. AC Ocean shall immediately notify the Division if JPMorgan directs the execution, termination, or amendment of any agreement executed between AC Ocean and any third party or between ACOWRE and any third party.

15. AC Ocean shall immediately notify the Division if JPMorgan



Resolution No. 18-06-21-00

Page 15

withholds its consent for AC Ocean or ACOWRE to execute, terminate, or amend any agreement.

16. AC Ocean shall immediately notify the Division if JPMorgan withholds its consent for any requested improvement or alteration of the casino hotel property.

17. AC Ocean shall immediately notify the Division if JPMorgan requires AC Ocean to provide additional security as a condition for approval of a requested improvement or alteration of the casino hotel property.

18. No officer, director, or principal of JPMorgan shall serve as an officer, director, employee, or agent of AC Ocean.

19. On a monthly basis, AC Ocean shall submit a report to the Division detailing the nature and extent of communications between AC Ocean and JPMorgan, including with regard to property management, cash management, budget, and capital expenditure matters.

20. AC Ocean shall immediately notify the Division of any effort by JPMorgan or any of its representatives or affiliates to exercise any undue influence or control over any action or decision of AC Ocean, its officers, directors, and employees relating to the operation of the casino hotel facility.

21. With regard to the Division's effort to monitor compliance with the above-stated Conditions, JPMorgan shall cooperate fully at all times with those efforts.



Resolution No. 18-06-21-00

Page 16

22. The Director of the Division reserves the right to require qualification under the Act of JPMorgan as well as of any officer, director or other individual employed by JPMorgan if the facts and circumstances change or the Director decides that qualification under the Act is warranted.

23. In the event the Division determines that JPMorgan has exercised authority contrary to the provisions set forth either in the above Conditions or the New Term Loan Agreement, JPMorgan's status as a financial source under the Act will be reassessed and the determination of the Director set forth in Order 1746 as to that status will be void and of no effect.

24. AC Ocean and its Vice President Hotel Operations shall notify the Division in writing of any instance in which Hyatt affects in any substantial way hotel operations within five calendar days and AC Ocean shall provide immediate notification if Hyatt objects to the hiring, directs the termination, or otherwise impacts the employment status of a Vice President Hotel Operations.

25. Winding Trail and Frank M. Ruocco, Jr. shall not: (1) receive any dividends or interest based upon the security interest in TEN RE; (2) exercise, directly or through any trustee or nominee, any rights conferred by the security interest; or (3) receive any remuneration in any form from AC Ocean or any of its holding or intermediary companies or any affiliated entities, unless and until Frank M. Ruocco, Jr. is licensed as a casino key employee or qualified



Resolution No. 18-06-21-00

Page 17

and Winding Trail is qualified, except for payments under the Amended and Restated Consulting Agreement effective as of June 28, 2018.

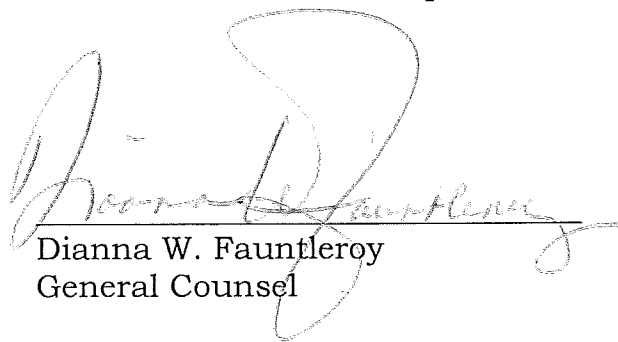
26. The requirements set forth in the above Conditions shall not be modified or eliminated except with the approval of the Division Director or his designee, with notice of such approval provided to the Chairman of the Commission.

BE IT FURTHER RESOLVED, that Applicant's request, as set forth on the record, to seal certain portions of D-1, in evidence, is hereby GRANTED.

EFFECTIVE DATE

The casino license issued June 21, 2018, shall become effective upon the issuance by the Division of an operation certificate for AC Ocean pursuant to N.J.S.A. 5:12-96.

Submitted by:


Dianna W. Fauntleroy
General Counsel



Resolution No. 18-06-21-00
Page 18

CERTIFICATION

I HEREBY CERTIFY that this Resolution correctly reflects the decision of the New Jersey Casino Control Commission.

A handwritten signature in cursive script, reading "Teresa Pimpinelli", written over a horizontal line.

Teresa Pimpinelli, Esq.
for the Executive Secretary

Meeting of June 20 through 21, 2018
Vote taken on pages 78-81 of June 21, 2018 Transcript