A-829JB

ACCESS and INDEMNIFICATION AGREEMENT

This ACCESS and INDEMNIFICATION AGREEMENT (hereinafter referred to as the "**Agreement**"), is made as of April 28, 2023 **Effective Date**"), by and between the City of Atlantic City, a Municipal Corporation of the State of New Jersey ("**City**"), and **AC Ocean Walk LLC d/b/a Ocean Casino Resort** ("**Licensee**").

WITNESSETH:

WHEREAS, the City is the fee owner of those certain tracts or parcels of land known as the Public Beach and designated as Block 1, Lots 162-180 on the Tax Map of the City of Atlantic City, New Jersey (the "**Property**"); and

WHEREAS, Licensee operates the Ocean Casino Resort at 500 Boardwalk directly adjacent to the Property. The Property has suffered severe beach erosion rendering the area unsafe and unusable as a recreational beach. The Licensee has proposed a Beach Fill Project at the Property, at no cost to the City, which will renourish the beach making it safe and accessible for recreational use; and

WHEREAS, the City hereto intends to provide the Licensee the right to enter upon the Property to renourish a beach berm area at the Atlantic Ocean beachfront of Ocean Resort Casino. The Beach Fill Project will provide for shore protection and a recreational beach at an eroded beach berm area between Garden Pier and the Massachusetts Avenue groin as more particularly shown on Exhibit A attached hereto pursuant to the terms and conditions of this Agreement and including access across Boardwalk to allow for access to the beach.

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Licensee hereby agree as follows:

1. **Grant of Access**. The City hereby grants to Licensee, and to Licensee's employees, agents, consultants, representatives and contractors (collectively, the "**Licensee's Agents**") a non-exclusive, revocable license to enter upon the Property at reasonable times during normal business hours, to perform a beach renourish project on the Property (the "**Project**"), at Licensee's sole risk, cost and expense, as provided herein (the "**Right of Access**"). Such access granted hereunder is intended to convey and grant to Licensee and Licensee's Agents a temporary right to enter upon the Property and to conduct the activities stated herein.

2. **Notification**. Licensee shall, prior to accessing the Property, give the City notice of its schedule of work (to include commencement date, estimated time of work, completion date) so that the City shall have an opportunity to have a representative present during any Right of Access.

3. **Responsibility for Damages**. Licensee agrees that, in exercising its Right of Access, Licensee and Licensee's Agents will not materially interrupt or interfere with the activities of the City Boardwalk, City employees, or other persons occupying or working at the Property, including, without limitation, any construction, renovation, maintenance or other work. Except with respect to the City's or its employees or agents' actions or the discovery of pre-existing conditions affecting the Property, or the City's material interference with Licensee's Right of Access, Licensee agrees to be responsible for all loss or damage resulting from any entry, inspection or activity performed by Licensee and Licensee's Agents in furtherance of Licensee's Project.

4. **Insurance**. Licensee agrees that, in conducting its Project at the Property, Licensee and/or Licensee's Agents entering onto the Property shall carry commercial general liability insurance with limits of no less than $2,000,000.00 in the aggregate and $1,000,000.00 per occurrence, insuring all activity and conduct of Licensee and Licensee's Agents while exercising the Right of Access provided for in this Agreement. Before commencing work, and as a condition precedent for licensing, the Licensee shall purchase and maintain insurance, in conformance with the provisions contained in this Agreement. This insurance will provide a defense and indemnify the City of Atlantic City (City) against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Licensee's operations under this agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Licensee, any of its Licensees, officers, agents, subcontractors, employees, anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law and the City, unless, caused by the sole negligence of the City.

Proof of this insurance shall be provided to the City before the work commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of work, be deemed a waiver by the City of the Licensee's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this section deny coverage to the City, the Licensee will defend and indemnify the City at the Licensee's expense.

Minimum of Liability:

The Licensee must obtain the required insurance with the carrier rated A-VII or better by A. M. Best. The Licensee and all subcontractor and vendors retained by the Licensee shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance
$ 1,000,000.00 Each Occurrence (Bodily Injury and Property Damage)
$ 2,000,000.00 General Aggregate
$ 2,000,000.00 Products/Completed Operations Aggregate
$ 1,000,000.00 Personal and Advertising Injury

Contractual liability that will respond to Indemnification section shall be included in the policy. The General Aggregate Limit shall apply separately to the work as defined in the License Agreement. As an alternative, the Licensee may provide Commercial general Liability Insurance with no aggregate.

Umbrella Liability Insurance
$ 4,000,000 per Occurrence
$ 4,000,000 Aggregate.

Policy to apply excess of General Liability, Automobile Liability and Coverage B.

Contractor's Pollution Liability
The Licensee and/or Contractor shall provide such coverage as to protect the City from potential contamination on the nourishment site or any other beach affected by the natural relocation of the fill.

Insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability insurance shall be written in an amount of at least $2,000,000 per loss, with an annual aggregate of at least $2,000,000. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs, restoration costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If the Contractors Pollution Liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained, or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the Contract is completed. The City shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy

Comprehensive Automobile Liability Insurance
$ 1,000,000.00 Combined Single Limit Bodily Injury and Property Damage. Coverage must include all owned, non-owned and hired vehicles used by the Licensee.

Workers' Compensation and Employers' Liability Insurance
$ 500,000.00 Each Accident
$ 500,000.00 Each Employee for Injury by Disease
$ 500,000.00 Aggregate for Injury by Disease

If the Licensee is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included". This requirement does not apply if inclusion is not allowed by law.

Additional Insured Status and Certificate of Insurance

The City, along with their respective elected or appointed officials, officers, agents and employees, shall be named as Additional Insureds for Operations and Products/Completed Operations on the Licensee's Commercial general Liability Policy which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Agreement that it is the intent of the parties that any insurance obtained by the City is deemed excess, noncontributory and not co-primary in relation to the coverage (s) procured by the Licensee, any of its Licensee's, officers, agents, subcontractors. employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operations of statute, government regulation or applicable case law.

A Waiver of Subrogation clause shall be added to all policies required under this agreement in favor of the City, and this clause shall apply to the City's elected or appointed officials, officers, agents and employees. It should also apply to the Licensee's Worker's Compensation policy if allowed by state law. If the Licensee's policy or any subcontractor policy limits are greater than

the minimum limits noted above, the minimum limits required are automatically adjusted to those greater limits.

Prior to commencement of work, Licensee shall submit a Certificate of Insurance in favor of the City and as an Additional Insured Endorsement (in a form acceptable to the City) as required hereunder.

No Limitation on Liability

In any and all claims against the Additional Insureds by any employee of the Licensee, anyone directly or indirectly employed by the Licensee or anyone for whose acts the Licensee may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Licensee under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

Failure to Obtain/Maintain, Cancellation and Renewal

The Licensee shall maintain in effect all insurance coverages required under this Agreement at the Licensee's sole expense and with insurance companies acceptable to the City. In the event the Licensee fails to obtain or maintain any insurance coverage required under this Agreement, the City may, at its sole discretion, purchase such coverage as desired for the City's benefit and charge the expense to the Licensee, or, in the alternative, terminate this Agreement. In the event the coverage is cancelled or non-renewed, the Licensee will provide 21 days advance notice of the cancellation or non-renewal.

5. Indemnity. Licensee agrees to indemnify, defend and hold the City and its employees, officers, agents, and contractors, and the Property free and harmless from any actual loss, injury, damage, claim, lien, liability, cost or expense (including attorneys' fees and costs) arising out of or in connection with the Project and Licensee's Right of Access. Notwithstanding the foregoing, Licensee shall not be responsible (a) for the mere discovery, without exacerbation, of pre-existing conditions at the Property, (b) to the extent resulting from the negligence or willful misconduct of the City or its agents, employees and/or contractors. The provisions of this Section 5 shall survive any termination of this Agreement.

6. Restoration of Property. Licensee shall, at its sole cost and expense and in accordance with all requirements of applicable law, repair any damage or alteration of the physical condition of the Property, including the Boardwalk access, which results from any work or activity conducted by Licensee and/or Licensee's Agent. In addition, any beach fill work performed by Licensee will be undertaken in accordance with NJDEP Regulations. The provisions of this Section 6 shall survive any termination of this Agreement for a period of one (1) year.

7. Notices. Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other shall be in writing and sent by: (i) e-mail to the addresses set out below; or (ii) overnight delivery via a nationally recognized overnight courier, to the addresses set out below, or at such other addresses as specified by written notice delivered in accordance herewith. Notice shall be deemed given on the date such notice was sent by way of e-mail or on the date delivered in person by such nationally recognized overnight courier.

If to the City:

City of Atlantic City
City Clerk – Room 704
1301 Bacharach Blvd
Atlantic City, NJ 08401

With a copy to:

City of Atlantic City
Solicitor's Office – Room 707
1301 Bacharach Blvd
Atlantic City, NJ 08401
Att: Jack A. Berenato, Esq.
Email: JBerenato@acnj.gov

If to Licensee:

AC Ocean Walk LLC d/b/a Ocean Casino Resort
500 Boardwalk
Atlantic City, NJ 08401
Att: Joseph Muskett, Esq.
Email: joseph.muskett@theoceanac.com

With a copy to:

Cooper Levenson - Attorneys at Law
1125 Atlantic Avenue
Atlantic City, NJ 08401
Att: Nicholas F. Talvacchia, Esq.
Email: ntalvacchia@cooperlevenson.com

8. **Liens**. Licensee shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Licensee and Licensee's Agents with respect to any inspection or testing of the Property in furtherance of the Project. The provisions of this Section 8 shall survive any termination of this Agreement.

9. **Entire Agreement**. This Agreement is the final expression of, and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements with respect thereto. This Agreement may only be modified or amended by an agreement in writing duly executed and delivered by each of the parties hereto. Nothing herein shall obligate Licensee to enter into a purchase agreement for the Property.

10. **Assignment**. This Agreement shall not be assigned by Licensee without the City's prior written consent, which shall not be unreasonably withheld.

11. **Termination; Exclusivity**. Unless terminated either by agreement of the parties, or otherwise, this Agreement shall terminate thirty (30) days from the Effective Date, unless mutually agreed to between the City and Licensee. Immediately upon any such termination, the Rights of

Access granted hereunder shall cease. If the parties determine to execute a Lease or other agreement for a portion of the Property, this Agreement shall merge into and be governed by the terms of said Lease or other agreement covering the subject matter of this Agreement.

12. **Miscellaneous**. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstances shall to any extent be deemed invalid or unenforceable under applicable law, then the remainder hereof and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and the application of such a term, covenant, or condition to the person, entity or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby. The rights and privileges granted herein shall accrue to the benefit of each of the parties hereto. It is understood and agreed that this Agreement shall not in any way constitute a purchase and sale agreement or a partnership agreement, nor shall either party be required to enter into a purchase and sale agreement or partnership agreement, or negotiate, in good faith or otherwise, a purchase and sale agreement or partnership agreement.

13. **Governing Law**. This Agreement shall be governed by the laws of the State of New Jersey. In the event of any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party.

14. **Counterparts**. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same agreement. Handwritten signatures to this Agreement transmitted digitally (for example, through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver to the other party an executed original of this Agreement with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party to this Agreement shall be bound by its own digitally transmitted handwritten signature and shall accept the digitally transmitted handwritten signature of the other party to this Agreement.

IN WITNESS WHEREOF, said parties have set their hands and seals on this day and year first below written.

ATTEST:

By: Paula Geletei
Paula Geletei
City Clerk

Dated: 4/28/2023

CITY OF ATLANTIC CITY

By: _____
Marty Small, Sr.
Mayor

Dated: 4/28/2023

LICENSEE:
AC OCEAN WALK LLC d/b/a
OCEAN CASINO RESORT

By: Joseph Muskett
Joseph Muskett, Esq.
SVP & General Counsel

Dated: April 28, 2023

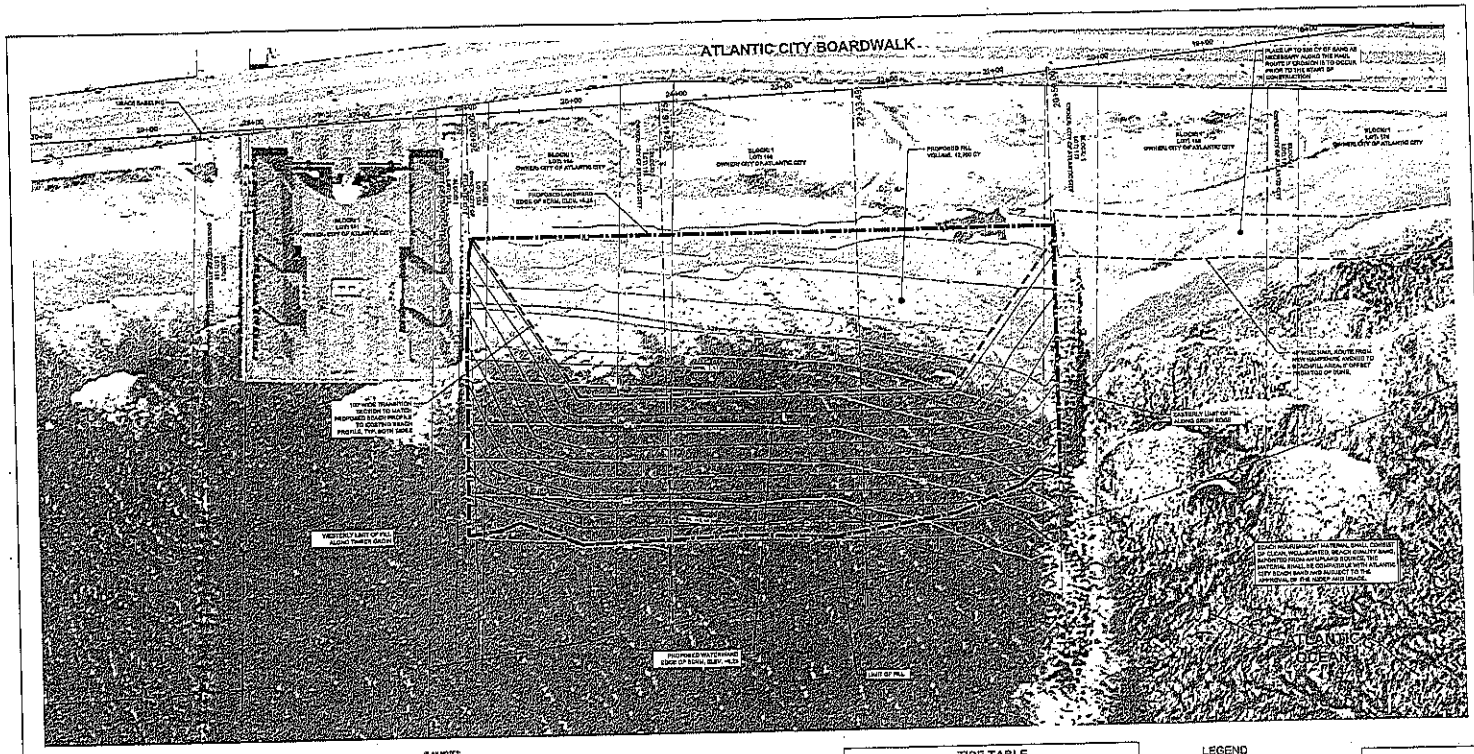
The within Agreement is approved as to form and execution.

Date: 4/28/2023

By: _____
Jack Berenato, Esq.
Assistant City Solicitor

Exhibit A

Project Area



PLAN NOTICE:

1. TOPOGRAPHIC INFORMATION SHOWN HEREON WAS OBTAINED BY THE FIELD SURVEY BY SCOTT MACDONALD ON JANUARY 12, 2023.
2. THE HORIZONTAL COORDINATE SYSTEM IS THE NEW JERSEY STATE PLANE COORDINATE SYSTEM (NAD83) AND VERTICAL DATUM IS THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
3. 2020 SHOREBOUND AERIAL IMAGERY IS TAKEN FROM THE NEW JERSEY GEOGRAPHIC INFORMATION NETWORK.
4. THE BASELINE WAS PROVIDED BY THE US ARMY CORPS OF ENGINEERS.
5. PROPERTY LINES HAVE BEEN EXTRACTED FROM THE NJ STATEWIDE PARCELS COMPOSITE BY THE NJ OFFICE OF INFORMATION TECHNOLOGY, OFFICE OF GIS (NJOGIS).
6. BLOCK AND LOT INFORMATION TAKEN FROM CITY OF ATLANTIC CITY TAX MAP SHEET 10.

PLAN

SCALE: 1" = 40'

TIDE TABLE	
DESCRIPTION	N.A.V.D. 1988 DATUM
HIGH TIDE LINE	3.20
MEAN HIGH HIGH WATER	1.99
MEAN HIGH WATER	1.57
N.A.V.D. 1988 DATUM	0.00
MEAN LOW WATER	-2.44
MEAN LOW LOW WATER	-2.61

TIDAL DATUMS BASED OFF NOAA STATION 8534720, ATLANTIC CITY, NJ

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- EXISTING HIGH TIDE LINE
- EXISTING MEAN HIGH WATER LINE
- EXISTING MEAN LOW WATER LINE
- PROPERTY LINE

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United States of America
Certificate No. 24GA28018400
T +1 (848) 413 3373
F +1 (973) 219 1073
www.mottmacdonald.com

Client:
OCEAN CASINO RESORT
500 BOARDWALK, ATLANTIC CITY
NEW JERSEY 08401

Rev	Date	Check	Description	Ch'kd	Appv'd

THOMAS R. THORNTON
NJ PROFESSIONAL LAND SURVEYOR LIC. No. 24GS04177600
Date: 10/2023

Designed	RML		Eng check	TWT	
Drawn	RML		Coordination		
Eng check	RML		Approved	TWT	
Date (ARCH D)	Scale	Rev	Discipline		
As Shown	BID	Rev0	STD		

Project Number: 507107898
BID: 3
Sheet: 4
Drawing Number: C-101

Title:
OCEAN CASINO RESORT
2023 BEACH NOURISHMENT
BLOCK 1, LOTS 163-181
BEACH NOURISHMENT PLAN

Resolution of the City of Atlantic City

No. 302

Approved as to Form and Legality on Basis of Facts Set Forth

Assistant City Solicitor /s/ Karl Timbers

Factual contents certified to by

Director of Planning & Development/s/ Jacques Howard

Prepared by City Solicitor's Office

Council Members SHABAZZ, MARSHALL, WEEKES & DUNSTON present the following Resolution:

RESOLUTION OF CONSENT TO ALLOW ACCESS TO THE BEACH FOR OCEAN BEACH REPLENISH AND DEPOSIT SAND

WHEREAS, the north-end beaches of Atlantic City are an "erosion hot spot" despite the US Army Corps of Engineers program to provide beach and dune nourishment approximately every 3 years; and

WHEREAS, AC Ocean Walk, LLC d/b/a Ocean Casino Resort ("Ocean"), in an effort to provide additional sand to the beach for this summer, in advance of the next nourishment project, intends to truck in sand to the beach between Garden Pier and the Massachusetts Avenue groin; and

WHEREAS, a contractor has been selected and federal and state permits are pending; and

WHEREAS, the project is scheduled to begin prior to the end of this month (April) and be completed before Memorial Day; and

WHEREAS, this matter was considered by the City Council's Planning and Development Subcommittee on February 1, 2023; and

WHEREAS, Ocean requested that the City of Atlantic City ("City") sign the NJDEP permit application as the property owner and the City signed the application on February 6, 2023; and

WHEREAS, Ocean requests that the City consent to allow its contractor's trucks access to the beach to replenish and deposit sand at no cost to the City on Beach Lots 39 and 40; and

WHEREAS, the purpose of this Resolution is for the City to consent to the request as herein proposed and to authorize the execution of any agreements, if required, including a license agreement, that may be required for the beach project; and

WHEREAS, City Council seeks to protect the beaches from erosion and has determined that this privately funded project will restore a significant portion of the federal beach design in this area and add much needed shore protection and public recreational beach area for this summer; and

WHEREAS, City Council finds and declares that the public interest of the City will not be harmed but rather enhanced by granting the consent as herein proposed; and

WHEREAS, WHEREAS, this matter was considered by City Council's Planning and Development Committee on February 1, 2023.

NOW, THEREFORE, BE IT RESOLVED, the Council of the City of Atlantic City hereby agrees and consents to allow Ocean's contractor's trucks to access the beach to replenish and deposit sand at no cost to the City on the beach between Garden Pier and the Massachusetts Avenue groin, consistent with this Resolution; and

BE IT FURTHER RESOLVED, by the Council of the City of Atlantic City, the Mayor is hereby authorized to execute and the City Clerk to attest to any required agreements to allow for the project; and

BE IT FURTHER RESOLVED, that the form of any required agreements shall be approved by the City Solicitor prior to its execution.

April 28, 2023 3:14 PM

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DUNSTON	X						SHABAZZ	X				X	
KURTZ	X						TIBBITT				X		
MARSHALL	X						WEEKES				X		
MORSHED	X					X	ZIA	X					
							RANDOLPH, PRESIDENT	X					

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: APRIL 19, 2023

Paula Geletei

/s/ Paula Geletei, City Clerk