

A-904
KC

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of the date set forth below by and between the City of Atlantic City (the "City"), having an address at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401 and **Dectrinity LLC** (the "Licensee"), having an address at 2637-2641 Boardwalk and 2701 Boardwalk, Atlantic City, NJ 08401.

WHEREAS, the City is a municipal corporation of the State of New Jersey, owning and controlling certain real property within its territorial limits, including that certain real property known as the Boardwalk and in particular that portion of the Boardwalk located between Avenue and adjacent to Lot 3 in Block 35 and Lot 8 in Block 32 (the "City Property"); and

WHEREAS, the Licensee owns or leases certain real property (the "Licensee Property") directly adjacent to the City Property and operates a business which sells food and beverage to the public at that location; and

WHEREAS, as permitted by Section 222-26 et seq of the Atlantic City Code, the Licensee wishes to maintain tables and chairs for its patrons in certain portions of the City Property adjacent to the Licensee Property (the "Licensed Area"); and

WHEREAS, the City desires to grant a License to the Licensee to use the Licensed Area to serve food and beverages to its patrons as permitted by the City Code.

NOW, THEREFORE, in order to carry out the intent as expressed above, and in consideration of the payment of Fifty Two Thousand, Three Hundred Seventy Six Dollars (\$52,376) and the mutual covenants herein contained, the City and the Licensee hereby agree and covenant as follows:

PURPOSE

1. The City hereby grants a Revocable License to the Licensee to use the Licensed Area to maintain a seating area and serve food and beverage from Licensee's adjacent establishment to its patrons.

LICENSED AREA

2. For purposes of this Agreement, the Licensed Area is defined as [circle one]:

- a. ~~That 12 foot portion of the Boardwalk, measured North to South, (also referred to as the First Ribbon of Boardwalk) immediately adjacent to Licensee's Property (shown on the tax maps of the City of Atlantic City as Lot in Block, also known as Boardwalk) and extending across the full Southern boundary of the Licensee's property (see attached legal description prepared by N/A on N/A, 201__);~~
or

- b. That 10 foot portion of the Boardwalk, measured North to South, (also referred to as the First Ribbon of Boardwalk) immediately adjacent to Licensee's Property and extending across the full Southern boundary of the Licensee's property, as shown on plan and legal descriptions prepared by Arthur Ponzio Co. on March 23, 2023, as follows:

(License Area 1) Lot 8 in Block 32, also known as 2701 Boardwalk and the location of the Biergarten; and

(License Area 2) Part of Lot 3 in Block 35, also known as 2637-2641 Boardwalk, including the deck located at the northwest corner of California Avenue and the Boardwalk, and the location of the Bungalow Restaurant.

e. The applicant shall be responsible to insure that no alcoholic beverages served in the Licensed Area pass beyond the boundary of that area.

f. Any seating and/or tables in the Licensed Area shall not impair the free and uninterrupted passage of persons, rolling chairs and/or trams along said Boardwalk.

g. The privileges afforded herein may be suspended by the Mayor of the City of Atlantic City, the Chief of Police, the Chief Engineer of the Fire Department, the Director of Emergency Management or the Director of Health and Human Services in the event of a parade or a weather or other emergency with or without notice in the interests of public health and safety.

h. In addition to the foregoing and the representations included in the Licensee's request, the requirements of this License shall include by reference all of the provisions of City Code Section 222-26, the provisions of any Resolution or Order of the Casino Control Commission or Permit from the New Jersey Division of Alcoholic Beverage Control.

i. This Revocable License shall terminate and be of no effect and the Licensed Area shall revert back to the City if the Licensee or its successors fails to properly maintain the Licensed Area or the Permitted Structures in the reasonable judgment of the City. Said maintenance shall include a responsibility on the part of the licensee to keep both the Licensed Area and the fifty foot perimeter around the Licensed Area clean and free from debris. In the event of failure of these responsibilities, within forty eight (48) hours of written notice from the City to the Licensee, the Permitted Structure shall be removed by the Licensee or its successors, at its own expense, or thereafter the City, at the City's discretion, may remove the Permitted Structure and the

City, its agents, servants, and employees shall bear no responsibility or liability for damage caused to the Permitted Structures or adjoining structures by such removal, and the City shall receive the reasonable cost for such removal from the Licensee or its successors.

j. No signs, banners, logos, emblems, advertisements or the like, not specifically approved by the Atlantic City Division of Planning or the appropriate City land use board, shall be placed in the Licensed Area or upon the Permitted Structures.

k. Under no circumstances shall the Permitted Structures exceed the perimeter of the Licensed Area allowed under the code nor shall the Permitted Structures be expanded or embellished without the express permission of the City Division of Planning. The Licensee may, with the approval of the City Division of Planning, reduce the size of the Permitted Structures from that which is described in plans and specifications referred to in paragraph 2 herein, so long as the design of the reduced structure is consistent with such plans and specifications. Such reduction in size shall not affect any other terms, conditions or requirements of this Agreement. In no event shall anything be placed within the Licensed Area which is different in design from that which is described in plans and specifications referred to in Paragraph 2 herein, without the approval of the Division of Planning.

l. The Permitted Structures shall at all times be maintained by the Licensee or Licensee's designee at the Licensee's (or designee's) sole cost and expense in accordance with Section 222-26 of the Atlantic City Code. All of those Permitted Structures shall be removed from the licensed area when the establishment is not open for business except that the Licensee shall be permitted a grace period of one hour after the close of the business for removal and one hour before opening of the business for set-up.

No Permitted Structures are permitted within the Licensed Area or otherwise during the period from November 2nd and February 28th.

m. The Licensee shall provide, for its patrons, restroom facilities, accessible to persons with disabilities and compliant with the requirements of the Americans with Disabilities Act (ADA), upon or accessible from the premises to which the license is issued.

GOVERNMENTAL APPROVALS

5. All appropriate local, state and federal approvals or permits shall be obtained by Licensee or its agents, prior to erecting the Permitted Structures.

REVOCAION

6. The City retains the right, at any time, upon forty-eight (48) hours notice from the City to the Licensee, to revoke this License, in part or in its entirety, and to require that the Permitted Structures or any structure existing at the time of such notice, be removed from the City's right of way described hereinabove. If, at the expiration of the said forty-eight (48) hours notice period, the Licensee fails to remove such structure, the City may remove such structure and receive reimbursement from the Licensee or its successor, for the reasonable costs of such removal. Should the City remove the Permitted Structures pursuant to the terms of this paragraph, the City and its agents, servants, and employees shall bear no responsibility or liability for damage caused to the Permitted Structure or adjoining structures, during such removal process.

INSURANCE

7.

a. Licensee shall obtain, at its own cost and expense, Commercial General Liability insurance in the name of the Licensee, which insures all operations of the Licensee contemplated by this Agreement, the contractual assumption of liability reflected by

this Agreement and names the City, its elected or appointed officials, officers, employees and agents as an Additional Insureds for General Liability including Products/Completed Operations and Contractual Liability. Such General Liability insurance shall be written with minimum limits of liability of \$1,000,000 per Occurrence Combined Single Limit for Bodily Injury, Property Damage, including Products/Completed Operations Liability and \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations aggregate. If the General Liability coverage for this license location is included in a policy that covers other operations or locations, the General Aggregate shall apply separately to this licensed location.

If the Licensee is the seller of alcohol at the license location, Licensee shall provide Liquor Liability coverage of not less than \$1,000,000 per occurrence and aggregate either as an endorsement to the General Liability or a separate policy. If the Liquor Liability coverage for this license location is included in a policy that covers other operations or locations, the limits shall apply separately to this licensed location. If a separate policy, the City, its elected or appointed officials, officers, employees and agents shall be named as Additional Insureds.

All policies required under this agreement shall be issued by a carrier authorized to provide this insurance in New Jersey and have a minimum AM Best Rating of A-VIII.

- b. LICENSEE shall also obtain, at its own cost and expense, Workers Compensation insurance for any obligations that LICENSEE may have with respect to the statutory obligations of the New Jersey Workers Compensation and Occupational Disease Laws.

The Coverage A limit is Statutory and the Coverage B limit shall be no less than \$500,000.

This insurance shall apply to all Sole Proprietor, Partner or LLC Member and the certificate of insurance must state they are not excluded.

c. The LICENSEE shall include a waiver of subrogation in favor of the City for all policies listed in Section 7a. This does apply to Workers' Compensation if allowed by State law.

d. Certificates of all such insurance shall be provided to the LICENSOR at least 14 days prior to the commencement of this license agreement and shall be subject to approval by the City's Risk Manager, such approval not to be unreasonably conditioned, withheld or delayed. The policies shall also provide, and the certificate shall so note, that the coverage may not be canceled or any major change in coverage be implemented without at least 30 days prior written notice given to the CITY. Should the said policy be renewable on an annual, semiannual or other basis, the Licensee shall have a continuing obligation to provide proof to the City of such insurance coverage. Certificate holder address to the City of Atlantic City, Office of Risk Management, 1301 Bacharach Blvd., Suite 707, Atlantic City, NJ 08401.

SUBJECT TO LAW

8. The Licensee and this License Agreement are subject to all Federal and State laws and the Ordinances of the City of Atlantic City as they now exist or may be hereafter adopted or amended and the Resolutions of the City now in effect or which may be hereafter passed and adopted.

INDEMNIFICATION

9. As a condition hereof, the Licensee and its successors and assigns agree and are bound to hold the City harmless and to defend the City against any and all claims for damages, costs and expenses to persons or property that may arise out of or be occasioned by use, occupancy, and/or maintenance of the aforementioned Permitted Structure, any loss within the Licensed Area, or from any act or occasion by any representative, agent, customer or employee of the Licensee. It is the intention of this paragraph on the part of the Licensee and a condition of this License that this paragraph shall serve as a full and total indemnification against any kind or character of claim whatsoever that may be asserted against the City by reasons of, or as a consequence of having granted this License.

BINDING EFFECT

10. This License Agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to this Agreement.

RECORDATION

11. This License Agreement may not be recorded by the Licensee.

EFFECTIVE DATE AND TERM

12. This License Agreement is effective as of the date of the signature below. Unless revoked in accordance with the terms herein, this License shall be valid until November 1st of the year in which it is executed.

13. This license is contingent on the submission to the Division of Planning of a Legal Description of the Licensed Area.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals
the day and year first below written.

ATTEST:

CITY OF ATLANTIC CITY

Paula Geletei
Paula Geletei, City Clerk

Marty Small Sr.
Hon. Marty Small Sr., Mayor

Date: 6/14/2023

Planning Approval

Date: _____

By: Jacques A. Howard
Planning Director

Kevin Z. [Signature]
Witness Signature

Nicholas Dounalis
By Licensee:

Date: 6/2/23

Nicholas Dounalis
Print Name:

Manger
Title:

Date: 6/2/23

The within Agreement is approved as to form and execution.

By: Jack Berenato
Asst. City Solicitor, Jack Berenato

Date: 6/9/2023

Resolution of the City of Atlantic City

No. 349

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

Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers

Director of Planning & Development /s/ Jacques Howard

Prepared by City Solicitor's Office

Council Member RANDOLPH, SHABAZZ, MARSHALL & DUNSTON present the following Resolution:

RESOLUTION GRANTING REVOCABLE LICENSE AGREEMENT TO DECTRINITY, LLC D/B/A BUNGALOW RESTAURANT FOR ENCROACHMENT OVER THE BOARDWALK FOR RENOVATION OF DECORATIVE FEATURE AND SIGN

WHEREAS, Dectrinity, LLC, d/b/a Bungalow Restaurant, hereafter referred to as “Applicant” has proposed improvements to the façade of its Boardwalk frontage located at 2701 Boardwalk (“Bungalow Property”) to renovate and expand a decorative feature and sign above the entrance to the Bungalow (the “Project”). The Project is being undertaken in conjunction with the renovation and expansion of the Bungalow for the summer of 2024. An Architectural Rendering, by SOSH Architects, of the area to be licensed, is attached as Exhibit A; and

WHEREAS, About six (6’) feet of the proposed decorative feature and sign involved in the Project would encroach into and over the public right-of-way, including certain projections along the frontage of the Bungalow Property and, consequently, to permit its development, the Applicant has requested approval by City Council of a license from the City to permit said encroachment; and

WHEREAS, the City is a municipal corporation of the State of New Jersey, owning and controlling certain rights of way within its territorial limits, including a certain portion of the Boardwalk located at 2701 Boardwalk, as shown on the tax map of the City of Atlantic City, which Boardwalk abuts the Bungalow Property; and

WHEREAS, the Applicant is specifically requesting permission from the City to maintain certain encroachments, not to exceed six (6’) feet, upon City-owned real property and within the City’s right-of-way for the decorative feature and sign Project to help activate and enliven the adjoining Boardwalk area; and

WHEREAS, the Project would be installed and maintained solely at the Applicant’s expense and without cost to the City; and

WHEREAS, this matter was considered and approved by City Council’s Planning and Development committee on May 10, 2023; and

WHEREAS, the City seeks to promote the growth of tourism in the City and finds that the grant of a license supports tourism and promotes public safety and cleanliness; and

WHEREAS, City Council finds and declares that the public interest of the City will not be harmed by granting a license as herein proposes.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Atlantic City, that the Mayor is hereby authorized to execute and the City Clerk to attest to a revocable License Agreement to authorize Dectrinity, LLC and its affiliates and tenants to encroach upon the City's rights-of-way consistent with this Resolution.

BE IT FURTHER RESOLVED, that Dectrinity, LLC shall enter into the License Agreement subject to the following terms and conditions:

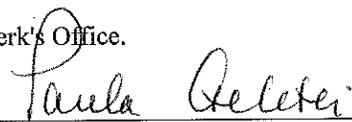
1. The proposed License Agreement will be subject to review and approval by the City Solicitor.
2. The proposed License Agreement will be subject to review and approval by the City Department of Planning & Development.
3. The proposed License Agreements shall contain a provision by which the proposed licensee and its successors shall hold harmless and indemnify the City for all costs, liabilities and claims arising out of or related to the existence, maintenance, or use of the said encroachments upon the City's right-of-way.
4. The License Agreements shall be binding upon the heirs, assigns and/or successors in right, title or interest of the parties to the said agreement.

June 8, 2023 9:32 AM

| 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 | | | | X | | SHABAZZ | X | | | | | |
| KURTZ | X | | | | | | TIBBITT | X | | | | | |
| MARSHALL | X | | | | | | WEEKES | X | | | | | |
| MORSHEDE | 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: MAY 24, 2023


 /s/ Paula Geletei, City Clerk