

A-5248/CR

**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 **Atlantic City SF LLC d/b/a Sugar Factory** (the "Licensee"), having an address at **1000 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 1 in Block, (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 Thirty-Seven Thousand One Hundred and Twenty Dollars (\$37,120.00)** 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 (shown on the tax maps of the City of Atlantic City as Lot 7 in Block 61, also known as 1000 Boardwalk) and extending across the full Southern boundary of the Licensee's property (see attached legal description prepared by Author Ponzio on June 25, 2018);

## **PERMITTED STRUCTURES**

3. All tables, chairs, umbrellas, landscaping, fencing, partitions or any other hardware to be placed, erected and/or maintained within the Licensed Area of the First Ribbon, (hereinafter the "Permitted Structures") shall strictly conform to the plans, description and/or design submitted to and approved by the Division of Planning, or any

amendments or supplements thereto as required and approved by the Director of Planning. Said attachments and any required or approved amendment(s) are hereby made a part of this agreement as if fully set forth herein. No structure, equipment or improvements shall be erected upon the licensed area unless approval therefore has been received by the Licensee in writing by the Planning Division.

**SPECIFIC CONDITIONS OF USE**

4. The within License is expressly subject to the following conditions:

a. The Licensee's use of the above described Licensed Area is limited to those uses permitted in the Licensed Area by City Code and/or Ordinance.

b. Licensee's use shall be in accordance with the application submitted to the City of Atlantic City by Licensee's letter dated June 22, 2018 and in accordance with Petition No. N/A submitted to the Casino Control Commission or application to the New Jersey Division of Alcoholic Beverage Control (as applicable).

c. For the purposes of this License, Licensee is granted from the City possession of the Licensed Area to the extent necessary to satisfy the provisions of N.J.S.A. 33:1-1 et seq and N.J.S.A. 5:12-103 (as applicable) requiring control of a licensed premises.

d. Any alcoholic beverages provided in or on the Licensed Area shall be served in plastic cups or glassware bearing the name and/or logo of the Applicant's establishment.

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.

### **REVOCACTION**

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, it's 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 406, 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: 3/30/2022

Planning Approval

By: Barbara A. Woolley-Dillion

Date: 3/10/2022

Barbara A. Woolley-Dillion PP, AICP  
Director  
Planning & Development

Claire Bendine  
Witness Signature

[Signature]  
By Licensee:

Date: 1/25/2022

David B. Superman  
Print Name:  
Atlantic City SF, LLC  
Title: MANAGING MEMBER  
Date: 2/25/2022

The within Agreement is approved as to form and execution.

By: Matthew Sykes  
Asst. City Solicitor

Date: 3/30/22

Note: Please submit the following items with your License Extension

1. The signature page signed, printed name below with title and date.
2. Your fee in full made payable to the City of Atlantic City.
3. A copy of your Certificate of Insurance if it has expired



AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_



### ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Executive Insurance Agency		NAMED INSURED Atlantic City Sf LLC	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: 25 FORM TITLE: Certificate Of Liability Insurance**

Atlantic City, it's elected or appointed officials, officers, employees and agents are listed as Additional Insureds for General Liability including Products/Completed Operations and Contractual Liability.  
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 of Atlantic City.  
Those usual to the Insured's Operations. Notice to City.



# Ordinance

Ordinance No. 23                      OF THE                      Date.4-5-06...  
CITY OF ATLANTIC CITY, N.J.    Date to Mayor.4-20-06

Approved as to Form and Legality on Basis of Facts Set Forth    Factual contents certified to by

City Solicitor /s/ Kimberly A. Baldwin

Business Administrator /s/ Domenic F. Cappella

REVISED 4/5/06 & REVISED 4/5/06

Prepared by the City Solicitor's Office

Council Members JONES, SCHULTZ, SMALL & CALLAWAY Present the following Ordinance:

## **AN ORDINANCE TO AMEND THE ATLANTIC CITY CODE SECTION 222-26(G), REGULATING BOARDWALK PLACEMENT OF TABLES AND CHAIRS**

**WHEREAS**, in order to augment the amenities available to both residents and tourists in the Resort, the City of Atlantic City provided a mechanism under Chapter 222-26 of the City Code for retail food establishments on the Boardwalk to allow seating and service to tables on the Boardwalk; and

**WHEREAS**, while the new service has been popular with the public and some merchants, it has, in some cases, disrupted orderly Boardwalk activity because of the location and number of tables; and

**WHEREAS**, in particular, the seating in the second ribbon of the Boardwalk has encroached significantly on the space available for pedestrian traffic; and

**WHEREAS**, by adjusting the permitted locations of the tables and chairs, the impact on pedestrian traffic and non-food establishments can be minimized and the food service amenity can remain available to the public; and

**WHEREAS**, the additional seating expands the area of public accommodation of adjacent food establishments and therefore, as a license condition, those establishments should assure that they have adequate restroom facilities to accommodate all patrons;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Atlantic City that:

### SECTION 1:

Section 222-26(C) of the Atlantic City Code is amended as follows [New language is shown in *italics*, deleted language is struck through]:

However, the foregoing subsection shall not prohibit a duly licensed retail food establishment with frontage on the north side of the Boardwalk from providing seating and/or tables located entirely within the 12 feet of the Boardwalk directly in front of the premises and provided that the Boardwalk is at least 60 feet in width (from the northerly edge to its southerly edge) for the full width of said retail food establishments frontage and where the Boardwalk is less than 60 feet in width but at least 40 feet in width, the seating and/or tables shall be restricted entirely within the eight feet of the Boardwalk in front of said premises. *The seating shall be permitted under the conditions outlined below from March 1<sup>st</sup> through November 1<sup>st</sup>.*

(1) Any seating and/or tables shall not impair the free and uninterrupted passage of persons, rolling chairs and/or trams along said Boardwalk

(2) Tables and chairs are permitted on the Boardwalk under the conditions expressed herein and only while the adjacent retail establishment is open for business and for one hour after the close of that business and one hour before opening of that business.

(3) The owner of any retail food establishment providing seating and/or tables on the Boardwalk pursuant to this section must maintain the first ribbon of the Boardwalk free and clear of all rubbish and litter. This duty is in addition to any and all other duties imposed on all retail food establishments by the Department of Health and/or any code enforcement agency having jurisdiction over such premises

*(4) A sample of all proposed tables and chairs shall be submitted to the City Division of Planning prior to their placement on the Boardwalk. No table or chair set will be permitted without prior approval. In no event shall picnic style tables (rectangular table with bench seating) be permitted in the Boardwalk seating area.*

(5) *Privileges permitted under this section are specifically limited and may be suspended by the Mayor, the Chief of Police, the Chief Engineer of the Fire Department or the Director of Emergency Management in the event of a parade or a weather or other emergency with or without notice in the interests of public health and safety*

(6) In addition of the penalty set forth at § 222-31 of the Code of the City of Atlantic City, upon a charge and finding of any violation of this section, the mercantile license of said retail food establishment and/or the privileges provided by this section may be *suspended or* revoked. The administrative hearing officer having jurisdiction over the suspension or revocation of a mercantile license for violations of this section shall be the Director of Neighborhood Services and/or his designee.

(7) The privileges provided under this section are not intended to provide any easement or other property interests but may be supplemented by separate license agreement approved by City Council

(8) Alcoholic beverages may be served and/or consumed at any seating and/or tables permitted under this section *in accordance with the further licensing provisions of § 222-26G below*

(9) Where the Boardwalk is less than 40 feet in width, the seating and/or tables contemplated under this article shall be prohibited

*(10) All Boardwalk eateries that exercise the option provided by this section shall be required to hold harmless and indemnify the City of Atlantic City from and against any and all claims arising out of or in connection with such undertaking. Prior to the issuance of a license (or license renewal) permitting the table and chair placement, such eatery shall annually submit to the Atlantic City Director of Planning and Development proof of an insurance policy issued by an insurance company licensed to do business in the State of New Jersey insuring the Boardwalk eatery and the City of Atlantic City against all claims for damage to property or bodily injury, including death, which may rise from or in connection with Boardwalk seating and service. Such insurance shall name the City of Atlantic City as an additionally insured and shall provide that the policy shall not terminate or be cancelled prior to its normal expiration date without 30 days' advance written notice to the City. The minimum amounts of insurance to be maintained under such policy are a combined single limit policy of \$1,000,000*

Section 222-26(D), including all subsections, of the Atlantic City Code is deleted (removing all provisions permitting tables in the second ribbon):

Section 222-26(F), including all subsections, of the Atlantic City Code is deleted (removing all provisions specific to Indiana Avenue to Martin Luther King Blvd)

Section 222-26(G) of the Atlantic City Code is amended as follows:

G. Prior to the *placement of any tables and chairs* on the Boardwalk by an establishment under any of the subparagraphs above, the owner or operator of the establishment shall enter into a license agreement with the City of Atlantic City defining the conditions for the use of the area *in which said tables and chairs shall be placed*. The license agreement shall:

1. reference the requirements in the applicable section of this § 222-26 and include a description of the types of tables, chairs and other fixtures to be permitted in the licensed area and, notwithstanding the provisions of this section, the time period in which those times may be present and the manner in which they may be fixed on and to the Boardwalk;
2. include insurance and indemnification requirements at least as protective to the City as those enumerated in § 222-26C(13);
3. require that all alcoholic beverages be served in plastic cups or glassware bearing the name and logo of the licensee's establishment.
4. require annual review by the Director of Planning, or other Mayor designee, and the Mayor shall be authorized to execute any renewal on behalf of the City;
5. be revocable by the Mayor or Council upon 30 days' notice to the licensee or immediately upon the breach of the agreement by the licensee
6. require an annual fee to be paid to the City in an amount equal to \$50 per linear foot of Boardwalk frontage of the property licensed if the licensee holds an alcoholic beverage license or \$25 per linear foot of Boardwalk frontage of the property licensed if the licensee does not hold an alcoholic beverage license.
7. *require, as a condition of said license, that the Licensee 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.*

Section 222-26(H), of the Atlantic City Code is deleted

## SECTION 2:

All Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to remedy the inconsistency.

SECTION 3:

This Ordinance shall become effective upon final passage and publication as provided by law.

March 22, 2022 2:49 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.		
JONES	X						ROBINSON	X							
MANCUSO	X						ROSARIO	X							
MARSH	X						SCHULTZ	X							
MASON	X					X	SMALL				X				
CALLAWAY, PRESIDENT								X				X			
X-Indicates Vote								NV-Not Voting		AB-Absent		MOT-Motion		SEC-Second	

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on ...APRIL 5, 2006.....  
 Adopted on second and final reading after hearing on.....APRIL 19, 2006.....

Approved By.../s/ Robert W. Levy, Sr.....Date...APRIL 20, 2006....By Council.....Ride \_\_\_\_\_  
 Mayor \_\_\_\_\_ Aye \_\_\_\_\_ Nay \_\_\_\_\_

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

...../s/ Rosemary Adams.....City Clerk

JD/dle March 22, 2022 2:49 PM

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FIRST PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	S
JONES	X						ROBINSON	X					
MANCUSO	X						ROSARIO	X					
MARSH				X			SCHULTZ	X					
MASON	X					X	SMALL	X					
							CALLAWAY, PRESIDENT	X				X	

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

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on ...APRIL 5, 2006.....