

A9492
(SH)

REVOCABLE LICENSE AGREEMENT EXTENSION

WHEREAS, A CERTAIN REVOCABLE LICENSE AGREEMENT was made and entered into on or about July 19, 2016, which expired on November 1st of the same year (“Expiration Date”) by and between the City of Atlantic City (the “City”), having an address at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401 and - **Dune Sea, LLC, d/b/a Polish Water Ice** (the “Licensee”), having a business address at **2613 Boardwalk**, Atlantic City, NJ 08401.

WHEREAS, City Code Sections 222-26 (D) and (G) require that such License Agreements be reviewed for renewal annually by the Planning Director; and

WHEREAS, the Licensee has requested that the License be renewed and the Planning Director having no objection to said renewal;

NOW, THEREFORE in consideration of the annual License fee of **\$1,425.00**, paid to the City of Atlantic City, the City hereby consents to the renewal of the referenced Revocable License Agreement for an additional season to the Expiration Date of November 1, 2017. The Licensee acknowledges and agrees that the terms of the original License Agreement, as amended in writing by the City heretofore, and in this instrument, and the provisions of the City Code, as may be amended from time to time, shall be binding upon the Licensee during this and any subsequent renewal periods.

NOTICE OF INSURANCE REQUIREMENTS

TO THE BOARDWALK LICENSEE:

The original License Agreement is specifically amended as follows:

Your firm's License Agreement for the use of a portion of the City Boardwalk mandates that you furnish a Certificate of Liability Insurance. The City requires that the Certificate you provide meet the following requirements:

- 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 503, Atlantic City, NJ 08401.

The City assumes that any Insurance Certificate presented by you will comply with all of the above requirements. We suggest you provide this notice to your insurance broker when requesting issuance of your Certificate. Any questions or concerns may be directed to Nancy Egrie, Risk Manager at 609-347-5531.

CONDITIONS

2. This License extension is contingent on adherence to the following conditions:
 - a. Umbrellas with product advertisements are not permitted. Umbrellas with the name and/or logo of the establishment, or no lettering at all shall be acceptable.
 - b. Temporary (un-mounted) signage is not permitted, please consider wall-mounted signage.
 - c. Free-standing menu boards are not permitted.
 - d. This document shall be posted in a conspicuous place on the premises and shall be available for inspection.
 - e. An updated in force copy of the Licensees Certificate of Insurance shall be provided to the Division of Planning upon expiration of the current insurance policy.
 - f. The Licensee assumes full responsibility for the cleanliness of the Licensed Area, and the 50 foot perimeter around the Licensed Area.

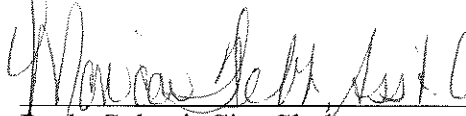
INDEMNIFICATION

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.

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

ATTEST:

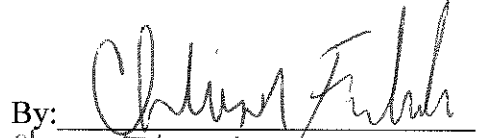
CITY OF ATLANTIC CITY


Paula Geletei, City Clerk

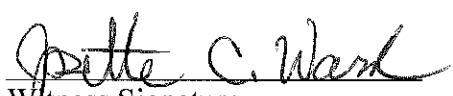

Hon. Don Guardian, Mayor

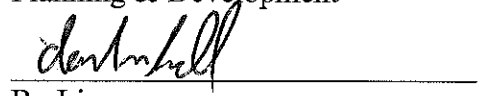
Date: 6/28/17

Planning Approval

By: 
Elizabeth A. Terenik, Director
Planning & Development

Date: _____


Witness Signature


By Licensee:

Date: 6-26-17

DAVID M HALL
Print Name:

VICE PRESIDENT
Title:

Date: JUNE 26, 2017

The within Agreement is approved as to form and execution.

By: 
City Solicitor

Date: 6-29-17

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.

Ordinance

Ordinance No. 23

OF THE
CITY OF ATLANTIC CITY, N.J.

Date 4-5-06...
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

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

Business Administrator /s/ Domenic F. Cappella

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 1st through November 1st.*

(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.

June 29, 2017 2:13 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.....

Reconsidered Over

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