

RESOLUTION 18 - 2021

**A RESOLUTION TO APPROVE AN AGREEMENT WITH UPSTATE ENTERTAINMENT, LLC d/b/a THE DYNASTY LOUNGE AT CLUB EPIC AND TO AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Mauldin (hereinafter "City") has commenced an action to revoke the business license of Upstate Entertainment d/b/a Dynasty Lounge at Club Epic ("hereinafter "Epic"); and,

WHEREAS, the parties have engaged in extensive negotiations to resolve their differences; and,

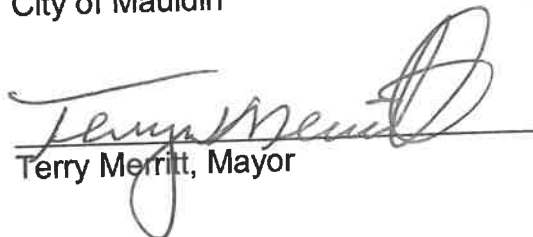
WHEREAS, the parties have reached a comprehensive agreement resolving all issues and providing for measures to be taken by both parties as a part of this agreement.

NOW, THEREFORE, be it resolved that:

1. The Mayor and Council approve the Agreement attached hereto and authorizes the Mayor to execute the Agreement approved this 27 day of July, 2021.

Dated: July 27, 2021

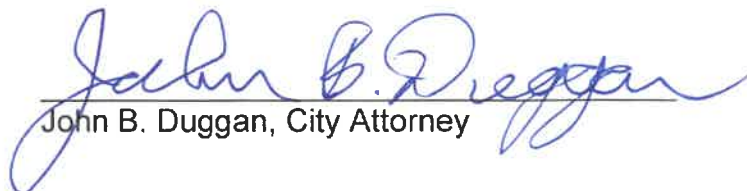
City of Mauldin

  
Terry Merritt, Mayor

**ATTEST:**

  
Cindy Miller, Municipal Clerk

Approved as to Form:

  
John B. Duggan, City Attorney

## **AGREEMENT**

The City of Mauldin, a South Carolina municipal corporation (“City”), enters this Settlement and Release Agreement (“the Agreement”) with Upstate Entertainment, LLC d/b/a the Dynasty Lounge at Club Epic (“Upstate”) as of this 27<sup>th</sup> day of July, 2021 (the “Effective Date”).

### **Background**

WHEREAS, by letter dated June 25, 2021, David Dyrhaug, the City’s License Official, suspended Dynasty Lounge at Club Epic’s (“Upstate”) Business License.

WHEREAS, Upstate disputes that its business constitutes a public nuisance and has raised several defenses to the suspension and revocation of its Business License (the “Dispute”); and,

WHEREAS, a public hearing was scheduled before the Mayor and City Council on July 22, 2021 at 2:00 p.m. to determine if Upstate’s Business License should be revoked; and,

WHEREAS, prior to the hearing, the City and Upstate negotiated a resolution of the Dispute subject to the final approval by both parties. This Agreement memorializes the terms of the parties’ final Agreement and inures to and is for the benefit of all parties named in the above-referenced lawsuit and their employees, agents, representatives, members, successors and assigns.

### **Terms of the Agreement**

For and in consideration of the mutual promises and covenants outlined in this Agreement, including the recitals in the Background section of this Agreement, the City and Upstate, intending to be legally bound, agree as follows:

1. Upstate agrees that it shall cease doing business in the City of Mauldin on or before 11:30 pm on November 30, 2021. In the event of a COVID-19 shutdown during this time, this deadline may be extended for a term equal to the shutdown period.
2. Beginning July 27, 2021 and ending at 11:30 pm on November 30, 2021 (hereinafter the “Probationary Period”), Upstate shall be allowed to continue operating its business pursuant to a Conditional Business License issued by the City, which shall be subject to the terms and conditions set forth herein.
3. During the Probationary Period, the following mandatory terms and conditions shall apply to the Conditional Business License:
  - a. Upstate shall abide by all rules, regulations, ordinances, and laws applicable to its business. Should the City believe that Upstate is violating any provision of the City of Mauldin Noise Ordinance the City shall first request that the noise level to be reduced. Should the noise level not be reduced within ten (10) minutes of the

request, Upstate may be cited for a violation of the noise ordinance which, if Upstate is guilty thereof, can form the basis of a violation of probationary basis.

- b. Upstate shall enter into contracts with additional lot(s) in the area to provide a sufficient number of parking spaces, and it shall provide the City a copy of those contracts within five (5) days of the Effective Date of this Agreement.
  - c. Upstate shall provide a minimum of four (4) exterior SLED certified security officers from thirty (30) minutes before opening until thirty (30) minutes after closing. To the fullest extent possible, but which may be restricted by their SLED certification, Upstate will have two (2) of these officers or two (2) other employees, if prohibited by SLED certification, who shall routinely patrol both sides of Main Street from the area of Enterprise Rental to Knollwood Drive. Upstate's security team shall be responsible to provide general security for Upstate and the surrounding area and shall prevent Upstate's customers from parking on any private property that has objected to the parking of Upstate customers. Furthermore, Upstate shall deny entry to any person who disregards its instructions not to park on private property that has objected to the parking of Upstate customers. On nights which customer counts are below one hundred (100) people the City and Upstate may agree to less security personnel.
  - d. Upstate shall publish on the internet including but not limited to, its website and any social media presence controlled by Upstate and/or its authorized representatives the following: Customers shall park at 516 (C) N. Main St. or at the following locations which Upstate has a written agreement with for parking.
  - e. Upstate and its security officers shall be responsible to report to the City any criminal activity or violations of this Agreement.
  - f. Upstate shall close at 1:30 a.m. each day of operation.
  - g. Upstate shall pay to the City \$100.00 per day for officers assigned by the City to provide extra patrol and security for the area of Upstate on days which Upstate is open. On days which customer counts are less than one hundred (100) people the City and Upstate may agree to less patrols and pro-rated payments based on lesser amount of patrolling.
  - h. Incidents caused by customers of other clubs in the area or unknown persons not associated with Upstate shall not form the basis of any alleged probationary violations.
4. The finding of a violation of one or more of the terms and conditions of the Conditional License shall result in the immediate suspension or revocation of Upstate's Business License subject to the following procedure:
- a. If the City believes Upstate has violated the terms of the Conditional Business License set forth herein, the City shall provide a list of all violations to the City

Attorney and Upstate's Attorney who shall immediately consult as to the nature of the alleged violations and attempt to resolve the dispute.

- b. Should the attorneys be unable to resolve the alleged violations, the parties shall mediate the dispute within five (5) days of dissemination of the violations to the attorneys.
  - c. Should mediation be unsuccessful, the parties shall conduct a binding arbitration of the dispute within five (5) days and the decision of the Arbitrator will be final with no appeal.
  - d. The parties shall equally share the costs of the mediation and arbitration.
5. In the event there is an incident occurring at Upstate which the City believes constitutes an imminent threat to the life, safety, or welfare of any person, the City shall be entitled to immediately suspend the Conditional License of Upstate by providing Upstate with a detailed and specific notification of the allegations, a copy of all data or information supporting such notification, the City's basis in believing the conduct is an imminent threat to the life, safety or welfare of any person and that the suspension is pending a mediation and arbitration. Such incidents that constitute a threat to life or safety shall include any incidents involving violent crimes as defined by S.C. Code §16-1-60 (1976) and the discharge of a firearm occurring at Upstate or by a customer of Upstate that occurs in close proximity to Upstate. Incidents caused by customers of other clubs in the area or unknown persons not associated with Upstate shall not form the basis of this alleged conduct.
6. In consideration of the terms and conditions set forth above, Upstate, and its successors and assigns, as well as its agents, employees, and members, will release and forever discharge the City of Mauldin, and the City's employees, agents, administrators, and elected officials of and from any and all manner of actions, causes of action, suits, debts, accounts, judgments, claims and demands whatsoever, in law or equity, as a result of, or growing out of, or in any way connected with any and all injuries, losses, and damages, to person and to property, both known and unknown, of any nature or kind sustained by Upstate, resulting or to result, or which might result, from the suspension of Upstate's Business License on June 25, 2021 up to the date of execution of this Agreement, provided however, the City fully complies with the terms and conditions of this Agreement.
7. Upstate understands, stipulates, and agrees that this Agreement extends to any claims that it could potentially make or cause of action it could potentially assert as part of any lawsuit or other proceeding involving the City of Mauldin and the City's employees, agents, administrators, and representatives related in any way to the suspension of its Business License on June 25, 2021 up to the date of execution of this Agreement, provided however, the City fully complies with the terms and conditions of this Agreement.



#### **Additional Provisions**

1. This Agreement will be governed by the laws of the State of South Carolina.

2. The parties hereto are responsible for their own attorney's fees and costs incurred in this matter, up to and including the consummation of this Agreement.
3. Upstate and the City of Mauldin acknowledge that they have entered into this Agreement after having had an opportunity to read the Agreement and consult with counsel prior to signing.
4. It is further understood and agreed that this settlement is a compromise of doubtful and disputed claims, and that the promises made herein are not to be construed as any admission of liability on the part of the persons, firms, or corporations hereby released by whom liability is expressly denied.
5. Upstate and the City intend for the terms contained in this Agreement to be the final expression of their Agreement. No other agreements of any kind exist between Upstate and the City.
6. Upstate and the City acknowledge and agree that the person executing this Agreement has the corporate authority to enter into this Agreement and bind the respective parties hereto.
7. If any term or provision of this Agreement or the application of any term or provision of this Agreement to any person, entity, or circumstance is deemed, to any extent, to be invalid or unenforceable, the remainder of this Agreement will not be affected by that determination of invalidity or unenforceability.
8. This Agreement may not be altered, amended, or modified except in a suitable writing signed by the parties and their respective counsel, with the formality hereof.
9. This Agreement is effective upon approval by City Council and Upstate may resume operation immediately upon their agreement.

WITNESSES:


Upstate Entertainment, LLC d/b/a Dynasty Lounge  
at Club Epic

  
\_\_\_\_\_  
  
\_\_\_\_\_

BY:  7-27-21

Kendrick Foster

ITS: Member

  
\_\_\_\_\_  
Robert C. Childs, Attorney for Upstate  
Entertainment, LLC d/b/a Dynasty Lounge at Club  
Epic

WITNESSES:

[Signature]  
[Signature]

CITY OF MAULDIN

BY: [Signature]  
Terry Merritt

ITS: Mayor

[Signature]  
John B. Duggan, City Attorney