

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)
)
KH & C, Inc.,)
t/a S & W Liquors)
)
Renewal Application for Retailer's)
Class A License) License No. 10963
) Order No. 2009-179
at premises)
1428 9th Street, N.W.)
Washington, D.C.)
)

KH & C, Inc., t/a S & W Liquors

Charles Reed, Chair, Advisory Neighborhood Commission (ANC) 2F, Protestant

BEFORE: Peter B. Feather, Chairperson
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (Board) reflect that KH & C, Inc., t/a S & W Liquors, Applicant for Renewal of a Retailer's Class A license located at 1428 9th Street, N.W., Washington D.C., and ANC 2F, (the Parties) have entered into a Voluntary Agreement (Agreement) dated April 1, 2009, setting forth the terms and conditions that govern the operation of the Applicant's establishment. This Agreement constitutes a withdrawal of the Protest of this Application.

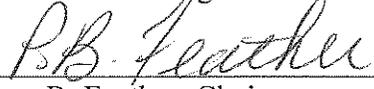
The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Reed are signatories to the Agreement.

KH & C, Inc.
t/a S & W Liquors
License No. 10963
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Accordingly, it is this 15th day of July 2009, **ORDERED** that:

1. The Application filed by KH & C, Inc., t/a S & W Liquors for a Retailer's Class A license located at 1428 9th Street, N.W., Washington, D.C., is **GRANTED**,
2. The Protest in this matter is hereby **WITHDRAWN**,
3. This above-referenced Voluntary Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and ANC 2F.

District of Columbia
Alcoholic Beverage Control Board


Peter B. Feather, Chairperson

Mital M. Gandhi, Member


Nick Alberti, Member

Charles Brodsky, Member


Donald Brooks, Member

Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

AMENDED AND RESTATED VOLUNTARY AGREEMENT

This AMENDED AND RESTATED VOLUNTARY AGREEMENT, dated as of the 1st day of April, 2009, between ADVISORY NEIGHBORHOOD COMMISSION 2F (“ANC 2F” or “Commission”) and KH&C, Inc., dba S & W Liquors, 1428 9th Street, NW, 14th Street, NW, Washington, DC (“Licensee”) holding License number 10963, Class A Retailer.

WITNESSETH

WHEREAS, ANC 2F and Licensee have previously entered into a Voluntary Agreement, which was approved by the Alcoholic Beverage Control Board of the District of Columbia (the “ABC Board”); and

WHEREAS, Licensee has pending an application for exception to recently enacted the Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008, (the “Act”) which, among other things, provides under D.C. Code §25-345(b) for certain restrictions on the sale of beers, malt liquors and ales and spirits in single containers; and

WHEREAS, Licensee and ANC 2F, in resolving other issues related to the ANC 2F protest on Licensee’s pending license renewal have agreed that Licensee will withdraw its application for exception; and

WHEREAS, the parties also wish to amend the Voluntary Agreement to make mutually agreeable changes in light of changed circumstances;

NOW THEREFORE, premises considered and for good and valuable consideration, the receipt and sufficiency of which the parties mutually acknowledge, the parties agree as follows:

1. **Recitals Incorporated.** The recitals to this Agreement are hereby incorporated herein by reference.
2. **Hours of Operation.** The Licensee holds a Class A Retail off-premises license and, therefore, is not likely to contribute to noise problems that would disturb nearby residential tenancies. Accordingly, Licensee's hours of operation, at Licensee's discretion, may be those set up to the maximum permitted by the liquor laws of the District of Columbia.
3. **No Change in Class of License.** Licensee expressly agrees that it shall not apply for or change the class of license from a Retail Class A license.
4. **Public Space and Trash and Deliveries.** The Licensee shall monitor on a daily basis the sidewalk (up to and including the curb and gutter area), alley (if any), the store entry way and other immediately adjacent areas, cleaning them and keeping them free of all litter, bottles, trash and other debris. Licensee agrees to maintain a dumpster in the rear of the building in the public alley and to contract with a commercial trash hauler for pickup frequencies necessary to assure there is no overflow from the dumpster between pickups. Licensee shall take whatever actions necessary to ensure that its dumpster does not overflow. Material shall not be deposited into the dumpster after 11:00 p.m. or before 8:30 a.m. Licensee shall require its trash and recycling contractors to pick up trash and materials, and schedule its deliveries, after 9:00 a.m. on weekdays and after 10:00 a.m. on weekends and holidays.
5. **Loitering and Public Drinking.** Licensee shall make reasonable efforts to discourage loitering and public drinking in the vicinity of its premises, and shall notify

ANC 2F as well as the Metropolitan Police Department where problems of this nature persist.

6. **License Ownership.** Licensee agrees to abide by all Alcoholic Beverage Regulations Administration (“ABRA”) regulations regarding the ownership of the license. Licensee further agrees that no sale or transfer of its license shall become effective (a) without first giving ANC 2F 30 days notice in advance of such sale and disclosing in such notice the identity of the transferee and any person directly or indirectly having a 5% or more interest in such transferee, and (b) requiring that as a condition of such transfer, the transferee agree to execute this Agreement and to be bound by its terms.

7. **Community Affairs.** Licensee shall make reasonable efforts to liaise with the community served by the ANC, by receiving notices of the meetings of the ANC and of the Logan Circle Community Association, (“LCCA”), joining from time to time in community affairs, and attending meetings of the ANC when specifically requested to do so, in addition to engaging in other activities Licensee may deem appropriate.

8. **Single Sales of Alcoholic Beverages.** Licensee agrees that it shall withdraw its pending request for an exception to the Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008, D.C. Code §25-345(b) (the “Act”). Any provision in the Act notwithstanding, Licensee agrees that it will not offer or sell single containers of beer, malt or ales in single containers of less than 72 ounces.

9. **Violations.** In the event of a violation of this Agreement, Licensee shall be notified in writing and given an opportunity to cure such violation within thirty (30) days thereafter before action against Licensee on the basis of such violation may be

undertaken (unless it is a third violation or a violation which by nature goes to the health or safety of the public and is a matter of urgency, in which case a lesser cure period may at the election of ANC 2F may be specified). A material violation of this Agreement or the liquor laws of the District of Columbia by Licensee, which has not been corrected within the period for cure, shall constitute cause for seeking a Show Cause Order from the ABC Board.

10. **Notices.** Any notice required to be made under this Agreement shall be in writing and mailed by certified mail, sent by facsimile using a device which indicates receipt on sender's copy, or hand-delivered, to the other party to this Agreement. Mailed notice shall be deemed effective when mailed.

Notice is to be given as follows:

If to Licensee, to:

S & W Liquors
1428 9th Street, NW, 14th Street, NW,
Washington, DC

If to ANC 2F, to:

Advisory Neighborhood Commission 2F
P.O. Box 9348 – Mid-City Station
Washington, D.C. 20005

With email copy to Chairperson, ANC 2F
(currently, Charles D. Reed creed@kgrmlaw.com)

The parties shall provide each other with the fax and email information. The parties may change the notice address listed above by written notice to the other party. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

11. **Billboard and Telephone.** Licensee shall remove the billboard and arrange for the removal of the outdoor telephone as soon as possible

(a) With respect to the bill board, Licensee shall present a valid DC sign permit within 90 days. If such permit is timely presented, Licensee shall cause the billboard to be removed upon cancellation by Contest Promotions, LLC of its contract with Licensee or September 30, 2012, whichever is sooner. If no such permit is timely presented, Licensee shall remove as soon as possible, but not later than December 31, 2009.

(b) With respect to the telephone, Licensee represents and warrants that it receives no income with respect to the telephone; and it promises to diligently pursue the removal of the telephone through the DC Public Service Commission proceedings now pending; and it will join with ANC 2F in its effort to cause the telephone to be removed.

12. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same instrument.

13. **Binding Effect.** This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Licensee.

14. **Effective Date.** This Amended and Restated Voluntary Agreement shall become effective upon its acceptance by the ABC Board.

[Signature Page Follows]

ADVISORY NEIGHBORHOOD
COMMISSION 2F

By: Charles D. Reed
Charles D. Reed, Chairman

S & W LIQUORS

By: Harold W. Fink
Harold W. Fink