

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

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In the Matter of: )  
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Five Glovers, LLC )  
t/a Town Hall )  
Retailer CR )  
Application for Substantial Change ) Case No. 08/050P  
at ) License No. 72640  
2218 Wisconsin Avenue, N.W. ) Order No. 2009 -103  
Washington, D.C. )  
\_\_\_\_\_ )

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

ALSO PRESENT: Andrew J. Kline, Esquire, on behalf of the Applicant  
  
Jacqueline Blumenthal, on behalf of the Protestants  
  
Martha Jenkins, Acting General Counsel  
Alcoholic Beverage Regulation Administration

**ORDER GRANTING LICENSEE’S PETITION FOR RECONSIDERATION**

The Board hereby adopts and incorporates its Findings of Fact and Conclusions of Law in its Order in this matter dated March 11, 2009, as if fully restated herein. The entirety of that Order remains in effect, subject to the modification made by this Order granting the Petition for Reconsideration, as described below.

Five Glovers, LLC, t/a Town Hall (“Petitioner”), filed a request for a substantial change, requesting a rooftop summer garden, on January 22, 2008. Protests were timely filed and there has been ample testimony before the Board to explain the positions of all parties involved, which need not be further stated in this Order. The Board granted Petitioner’s request for a substantial change to add a rooftop garden, subject to the Voluntary Agreement entered into by ANC 3B and the Petitioner, as modified by the Board’s Order dated March 11, 2009. Petitioner moved for reconsideration only with

respect to the type of material that the wall should be made of.<sup>1</sup> Thus, the only matter the Board addresses by this Order is whether the wall that Petitioner needs to construct must be made of cinder block.

While it is the Board's opinion that ordering a specific type of construction material would have provided a safety net of sorts to Petitioner, in that the previous order essentially supported the use of cinder block as sufficient, Petitioner objects to the specification of material type. The Board strongly cautions Petitioner that its request to remove the type of material from the order puts the onus on Petitioner to strictly comply with the rest of the Order that the wall, of whatever material Petitioner ends up using, must sufficiently abate noise emanating from the establishment. Failure to ensure noise control that mitigates the noise "so that it cannot be heard above a conversational level within adjoining residential premises" will result in Petitioner potentially ending up back before the Board on a Voluntary Agreement and/or noise violation.

In granting Petitioner's request to remove the term "cinder block" from the Order, we find that the Protestants are in no way harmed because the remaining provision that the wall must mitigate noise remains wholly intact. Thus, the objective of the noise control provision in the parties' Voluntary Agreement is satisfied.

## ORDER

It is hereby **ORDERED** on this 13<sup>th</sup> day of May, 2009, that the Petition for Reconsideration filed by Five Glovers, t/a Town Hall (Petitioner) is **GRANTED**. The Board hereby amends Page 12, number 1, to read as follows:

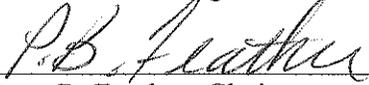
- 1. Section 11.3.2 shall be amended to provide that the construction of the wall will be built in such a manner as to mitigate the noise so that it cannot be heard above a conversational level within adjoining residential premises when windows and doors are closed.**

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<sup>1</sup> The Board notes that its previous Order was not a drafting error, as Petitioner suggests; however, in light of the Petition, Protestant's Opposition, and oral arguments before the Board on May 6, 2009, the Board amends its previous Order to remove the term "cinder block." The Board further notes that it is not in the business of sound engineering and relied on testimony from experts in that field in drafting its previous Order, having heard no substantive objection to the use of cinder block in any of the testimony.

The remainder of the Board's March 11, 2009 Order is unaffected by this Order.

District of Columbia  
Alcoholic Beverage Control Board

  
Peter B. Feather, Chairperson

  
Mital M. Gandhi, Member

  
Nick Alberti, Member

  
Donald Brooks, Member

  
Herman Jones, Member

  
Charles Brodsky, 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.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

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Five Glovers, LLC )	
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Retailer CR )	
Application for Substantial Change )	Case No. 08/050P
at )	License No. 72640
2218 Wisconsin Avenue, N.W. )	Order No. 2009-060
Washington, D.C. )	
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BEFORE: Peter B. Feather, Chairperson  
Mital M. Gandhi, Member  
Nicholas Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member

ALSO PRESENT: Andrew J. Kline, Esquire, on behalf of the Applicant  
  
Jacqueline Blumenthal, on behalf of the Protestants  
  
Martha Jenkins, Acting General Counsel  
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

The Board had before it a request for a substantial change filed by Five Glovers, t/a Town Hall, (Applicant) to expand its premises to include a roof-top summer garden with seating for thirty-two (32) patrons, located at premises 2218 Wisconsin Avenue, N.W., Washington, D.C. The request initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on April 23, 2008. Protests against the application were timely filed by a group of five or more individuals represented by Jacqueline Blumenthal (Group of 15); the Glover Park Citizens' Association (GPCA), and the Advisory Neighborhood Commission (ANC) 3B.

On May 30, 2008, ANC 3B entered into a Voluntary Agreement with the Applicant regarding the roof-top summer garden, and withdrew its protest. On August 4, 2008, the GPCA submitted a letter to the Board requesting that it be permitted to adopt the testimony of the Group of 15 residents in lieu of presenting its own testimony at the

protest hearing. The Board approved this request. Prior to the protest hearing, the Protestants and Applicant entered into a stipulation as to the following: (1) Applicant is a popular and successful restaurant; (2) Protestants do not question the quality of Applicant's menu; (3) Protestant accept that Applicant is an asset to nearby merchants; (4) and that by its presence, Applicant may increase the desirability of living in Glover Park.

The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the substantial change would adversely impact: (1) the peace, order, and quiet of the neighborhood and (2) residential vehicular parking.

The case came before the Board for a protest hearing on August 13, 2008. At the conclusion of the protest hearing, the Board took the matter under advisement. The parties subsequently submitted proposed findings of fact and conclusions of law. The Board, having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

### **FINDINGS OF FACT**

1. The Applicant's establishment is located at 2218 Wisconsin Avenue, N.W. Washington, D.C. (ABRA Licensing File No. 72640.) It is in the Glover Park neighborhood located in a C2A zone which allows for low-density mixed commercial and residential uses. (ABRA Protest Report No. 13084; TR 8/13/08, at 21, 40.) The establishment operates in a two-story brick building with a one-story extension that fronts on Wisconsin Avenue. (ABRA Protest Report No. 13084.)
2. The establishment shares a common wall with a two-story brick residence that faces the alley a half-block west of Wisconsin Avenue, and which has a one-story extension that faces Wisconsin Avenue. (ABRA Protest Report No. 13084; Tr. 8/13/08 at 34-35.) This adjacent property is also located in a C2A zone. (Tr. 8/13/08 at 41.) The two-story, three-bedroom residence is owned by Sharon Willick and William Strydesky and is rented as a single house to three tenants. (Tr. 8/13/08 at 18, 32, 34-35.) The one-story rear extension that sits on Wisconsin Avenue is leased by Ms. Willick and Mr. Strydesky to a Subway chain restaurant. (ABRA Protest Report No. 13084; TR 8/13/08, at 2134-36.)
3. Applicant's proposed roof-top summer garden would be built atop the one-story portion of the establishment that faces Wisconsin Avenue. (Tr. 8/13/08 at 35-36.) The proposed roof top is less than six feet away from the bedroom window of the abutting residence. (Tr. 8/13/08 at 29-30.) The establishment is located an alley's width away from the townhouses on the east side of Hall Place, N.W. and the north side of W Place, N.W. (ABRA Protest Report No. 13084)
4. There are approximately sixteen (16) Alcoholic Beverage Control (ABC) licensed establishments located within 1200 feet of the establishment. (ABRA Protest Report No.

13084; TR 8/13/08, 38.) The establishment is located in an area of businesses ranging from hotels, taverns, restaurants, beer, wine, and liquor stores. (ABRA Protest Report No. 13084; TR 8/13/08 at 22.)

5. The establishment's hours of operation are Sunday through Thursday, 10 a.m. to 1 a.m., and Friday and Saturday from 10 a.m. to 2:00 a.m. (ABRA Licensing File No. 72640; Tr. 8/13/08 at 17.) The establishment is applying for a roof-top summer garden with hours that are the same as the current hours of operation. (Tr. 8/13/08 at 17.) The establishment does not ordinarily open its doors for business until 5:00 p.m. on weekdays and 11:30 a.m. on weekends. (Tr. 8/13/08 at 17.)

6. Ileana Corrales has been an investigator with the Alcoholic Beverage Regulation Administration (ABRA) since February 4, 2008. (Tr. 8/13/08 at 16.) She and other ABRA investigators visited the establishment on 27 separate occasions between May 17, 2008 and July 25, 2008. (Tr. 8/13/08 at 24.) Investigator Corrales monitored the establishment 19 of those 27 times. (Tr. 8/13/08 at 24.) She stated that the Protestants are concerned about two protest issues; the adverse impact on peace, order and quiet and the second is the adverse impact on parking in the area. (Tr. 8/13/08 at 18-20.)

7. With regard to the issue of parking, Investigator Corrales observed that there are several two-hour metered parking spaces on Wisconsin Avenue, and there are three parking lots, two public and one private. (Tr. 8/13/08 at 22.) The two public lots are Atlantic Parking and USA Parking, both located across the street from Town Hall. (Tr. 8/13/08 at 22.) There is a sign inside the establishment that informs patrons that free parking is available at the USA Parking lot, which is across the street from the establishment. (Tr. 8/13/08 at 20-22.) Many of the establishment's patrons take taxis when leaving the establishment. (Tr. 8/13/08 at 25.)

8. Investigator Corrales testified that parking in front of the restaurant is not an issue, and that there was always parking available on Wisconsin Avenue and in the parking lots across the street during her visits. (Tr. 8/13/08 at 25-27.) During the monitoring period, many patrons parked their vehicles in the metered spaces on Wisconsin Avenue or across the street at the USA Parking lot. (Tr. 8/13/08 at 24-25.) In her estimation, there was sufficient parking available on Wisconsin during the evenings and at night. (Tr. 8/13/08 at 24-25.)

9. With regard to the issue of peace, order and quiet, Investigator Corrales observed during her visits to the establishment that it was clean and orderly. (Tr. 8/13/08 at 24.) On eight occasions, she noticed an employee sweeping the front area of the establishment several minutes before closing time. (Tr. 8/13/08 at 24.) At no time was it observed that any trash problem could be associated with the establishment, nor was trash left by patrons or employees of the establishment. (Tr. 8/13/08 at 24-25.) Investigator Corrales stated that of the 27 monitoring visits, noisy patrons were heard exiting the establishment on three occasions. (Tr. 8/13/08 at 24-25.) On all three occasions she was on Wisconsin Avenue N.W., and not on Hall Street N.W. (Tr. 8/13/08 at 36-37.) She also heard noisy patrons at neighboring establishments such as Bread Soda. (Tr. 8/13/08 at 37-38.)

10. Doris Yvonne Lacoste has lived near the establishment at 2326 37<sup>th</sup> Street N.W., Washington, D.C for over 11 years. (Tr. 8/13/08 at 46-47.) She lives near several restaurants that offer outside dining and has never had any problem with those establishments. (Tr. 8/13/08 at 49-51.) Ms. Lacoste has worked as a chef at several restaurants in the District of Columbia. (Tr. 8/13/08 at 47.) She is a regular customer of Town Hall and wants them to succeed as a restaurant. (Tr. 8/13/08 at 51.) She thinks the owners are very good operators and she likes the diverse client base of the establishment and the quality of its food. (Tr. 8/13/08 at 51-52.) She believes that Town Hall has done everything it can to mitigate the concerns of the neighborhood and that it is one of the best restaurants on Wisconsin Avenue. (Tr. 8/13/08 at 52, 61.)

11. Ms. Lacoste remarked that the establishment is often empty in the summer, while establishments such as Bourbon that have summer gardens are packed. (Tr. 8/13/08 at 53-54.) It is her opinion that the establishment needs the outdoor seating to be able to compete in the neighborhood. (Tr. 8/13/08 at 53-54.) Ms. Lacoste also testified that there are several restaurants in Glover Park that have remained successful without outdoor dining and that Town Hall has decent crowds in the fall and winter too. (Tr. 8/13/08 at 57-58.)

12. George Alan Blevins is an ANC Commissioner and resides about a one block and a half from the Wisconsin Avenue strip at 3516 W Place, No. 104. (Tr. 8/13/08 at 63-64.) Town Hall is located in his ANC Single Member District and he testified on behalf of the full ANC regarding their support for the substantial change. (Tr. 8/13/08 at 64, 67.) Commissioner Blevins stated that the establishment is very receptive to the community and works with the ANC to address any complaints they may have. (Tr. 8/13/08 at 70.) He also stated that there are five other outdoor summer gardens in Glover Park and that they have not caused any problems with the peace, order and quiet of the neighborhood. (Tr. 8/13/08 at 71-73.)

13. Commissioner Blevins is only aware of one establishment that has had any problems with its outside deck and that establishment was operated completely differently from Town Hall. (Tr. 8/13/08 at 73.) The other establishment did not emphasize food service and it had speakers on the back deck. (Tr. 8/13/08 at 73.) Town Hall informed ANC 3B that its operation would be food oriented and that they were willing to make significant concessions to provide financial stability and longevity to its employee base. (Tr. 8/13/08 at 74.)

14. Commissioner Blevins stated that ANC 3B worked very hard to execute a voluntary agreement to address the concerns of the neighborhood. (Tr. 8/13/08 at 77.) The Voluntary Agreement contains restrictions that are important to the ANC members and to their constituents to include; no live music or other entertainment, no dance floor or other facilities for dancing. (Tr. 8/13/08 at 77.) Additionally, the doors and premises would be kept closed at all times and parking would be provided. (Tr. 8/13/08 at 78.) Town Hall has agreed to limit its occupancy on the roof top dining area to thirty-two (32) seats. (Tr. 8/13/08 at 78.) Signage will be placed notifying patrons regarding free parking and the

establishment will ensure that the alleyway and the public easement are kept clean on a daily basis. (Tr. 8/13/08 at 78.) The hours of operation are to be limited from Sunday through Wednesday, 11:30 a.m. to 10:30 p.m. and on Thursday through Saturday, 10:30 a.m. to 11:30 p.m. (Tr. 8/13/08 at 778-79.) All patrons will be cleared off the deck by 11:30 p.m. (Tr. 8/13/08 at 79.) There will be no music, television or other sound emitting noise and there will be no alcoholic beverage service on the roof top deck. (Tr. 8/13/08 at 79.) The establishment has agreed to install a wall to block noise to neighboring properties, and will construct a green environmental area with shrubs and trees to help serve as a sound barrier and to beautify the area. (Tr. 8/13/08 at 79-80, 101, 104.)

15. Commissioner Blevins expressed his concern regarding the vacant properties and the need to shore up viable businesses because of the effect they have on the sustainability of other businesses in the neighborhood (Tr. 8/13/08 at 75, 81.) He testified that there were three vacant properties in the area but that reinvestment was underway and Glover Park is becoming a very popular spot. (Tr. 8/13/08 at 81-83.)

16. Commissioner Blevins conducted personal research and contacted an architect who stated that if an acoustical wall with foam was constructed, the neighbors would not hear much of anything. (Tr. 8/13/08 at 90.) The architect also said that with soundproofing, residual noise bouncing off of a wall would not be an issue either. (Tr. 8/13/08 at 90.) Commissioner Blevins personally tested the noise on three to five separate occasions at different times of the night, and found no serious noise issues. (Tr. 8/13/08 at 90.) He stood directly behind the establishment in the alley during these tests. (Tr. 8/13/08 at 105.) There was no roof-top summer garden at Town Hall during this time and thus, it was difficult to conduct sound tests. (Tr. 8/13/08 at 110.) Commissioner Blevins did not have an engineering study from a civil engineer, or an architect or a sound engineer, about the effectiveness of the sound abatement provisions included in the Voluntary Agreement. (Tr. 8/13/08 at 107.)

16. Commissioner Blevins is aware that the residents who live closest to Town Hall are not happy with the Voluntary Agreement that ANC 3B negotiated with the establishment. (Tr. 8/13/08 at 91.) He also indicated that ANC 3B insisted on more restrictions with the establishment than for Bread Soda, and that there were no negative consequences from the outdoor dining at Bread Soda. (Tr. 8/13/08 at 108-109.) Commissioner Blevins voted present rather than affirmative on the Voluntary Agreement because he represents the Single Member District that includes both the establishment and the Protestants, so he decided to remain neutral and vote "present". (Tr. 8/13/08 at 97.) The full ANC was highly supportive of the roof-top summer garden conditioned with the provisions listed in the Voluntary Agreement. (Tr. 8/13/08 at 97, 99-100.)

17. Paul Holder, resides at 1724 Hobart Street, N.W., Washington, D.C. and he is the managing partner for the establishment. (Tr. 8/13/08 at 122-123.) He purchased the establishment in March 2005 and reopened the business in August 2005. (Tr. 8/13/08 at 123.) He has received limited complaints about the operations of Town Hall and when he does receive them, he takes every step he can to address the concerns. (Tr. 8/13/08 at

126.) He described his relationship with the neighbors as good. (Tr. 8/13/08 at 126.) Town Hall caters to varying needs and demographics and is held in high regard by the Washington Post and the Glover Park Gazette. (Tr. 8/13/08 at 128.) Town Hall is a relaxed neighborhood bar and a superb restaurant that uses the services of an executive chef. (Tr. 8/13/08 at 128.)

18. Mr. Holder testified that the establishment has suffered tremendously due to the ease in moratorium restrictions that allowed three new, competing establishments to locate in the neighborhood, two of which have outdoor patios. (Tr. 8/13/08 at 129-130.) Mr. Holder indicated that the establishment has trouble competing in the summer months and that there is a dramatic downturn in business. (Tr. 8/13/08 at 133-134.) Business falls off in summer months and the establishment cannot compete without a roof deck. (Applicant Exhibit No. 5; Tr. 8/13/08 at 130-134.) When the moratorium zone was in place, the establishment enjoyed a certain amount of protectionism and it could manage without the outdoor dining because the business during the winter months carried them through the low months of the summer. (Tr. 8/13/08 at 129-130.)

19. Mr. Holder met with members of the community, attended and presented at ANC meetings and held an open house, in order to address the roof issues. (Tr. 8/13/08 at 135.) He received feedback from those meetings and used the information to ameliorate the concerns raised by the community. (Tr. 8/13/08 at 136.) Mr. Holder indicated that he was agreeable to building the kind of wall the protestants wanted to diminish the impact on Hall Place, N.W. and on other neighbors. (Tr. 8/13/08 at 136, 189.) He had plans drafted by an architect for the construction of a cinder block wall. (Tr. 8/13/08 at 136-137.) He also reduced the original number of dining seats from 40 to 32. (Tr. 8/13/08 at 141.)

20. Mr. Holder testified that the building material would contain sound-absorbing material and that he would place umbrellas over the tables to create a canopy effect to keep the sound down. (Tr. 8/13/08 at 141-143.) Sound absorption treatment will be applied to the undersides of all of the furniture. (Tr. 8/13/08 at 142.) The structure would have an overall U-shape design that would funnel the noise out towards Wisconsin Avenue. (Tr. 8/13/08 at 141-142.) Mr. Holder stated that they would not permit music or other amplification on the roof top deck and that any noise would just be ambient dinner conversation. (Tr. 8/13/08 at 142.) There will not be a bar in the outdoor area, access to the deck will be controlled, and there will only be seated dining on the roof top. (Tr. 8/13/08 at 145.) The outdoor portion of the establishment will close earlier than do other restaurants that have outdoor seating. (Tr. 8/13/08 at 145-146.)

21. Mr. Holder testified that he spoke to over a couple of hundred residents of the neighborhood, and he introduced numerous letters supporting his substantial change application. (Applicant Exhibit 6; Tr. 8/13/08 at 162-163.) He was aware that he when he first opened his business, the residents on Hall Place, N.W. weren't supportive of a roof-top summer garden. (Tr. 8/13/08 at 166-167.) He told the community when he bought the business that he had no plans for a roof-top summer garden, but now that three years has passed, business necessitated the construction. (Tr. 8/13/08 at 168.)

22. Mr. Holder testified that there is free parking for all patrons across the street at the USA Parking lot, which is across Wisconsin Avenue and away from Hall Place. (Tr. 8/13/08 at 176-177.) USA Parking has over one hundred spaces available at night and about 70 spaces available during the day. (Tr. 8/13/08 at 177.) Mr. Holder does not believe that the abutting property owners will have difficulty leasing their property to residential tenants when the roof-top summer garden is in place. (Tr. 8/13/08 at 161.) Mr. Holder told the abutting property owners that he would be willing to rent their residence if the roof-top summer garden affected their ability to rent the property. (Tr. 8/13/08 at 183, 188.)

23. Sharon Willick, is a member of the Protestant Group made up of 15 area residents. (Tr. 8/13/08 at 194.) She and her husband own the residence abutting Town Hall at 2216 Wisconsin Avenue. (Tr. 8/13/08 at 195.) The structure is made up of two houses that share a common wall with storefronts built on to both of them at the basement level. (Tr. 8/13/08 at 195.) Her half of the structure is one house that is rented out to three young women. (Tr. 8/13/08 at 195.) One of the bedroom windows of the rental property is six feet from the proposed roof-top summer garden. (ABRA Ex. No. 1; Tr. 8/13/09 at 29-30.) The abutting property is the same floor design except that it houses the Town Hall restaurant. (Tr. 8/13/08 at 195-196.) Ms. Willick resides in South Carolina but derives rental income from her former residence. (Tr. 8/13/08 at 196.) She was informed by her tenants that if the roof-top summer garden is approved, they will move out. (Tr. 8/13/08 at 197, 199, 233.) If she is not able to rent the property, then she will lose her livelihood as her husband and she depend on that rental income. (Tr. 8/13/08 at 197, 199.) Ms. Willick acknowledged that she is not aware of the value of her property and that because her tenants have a month to month tenancy contract, they may leave at any time, regardless of the presence of the roof-top summer garden. (Tr. 8/13/08 at 183.)

24. Ms. Willick's property has been located next to a restaurant for over 40 years. (Tr. 8/13/08 at 202.) She acknowledged that the property could be used for purposes other than residential tenancies, but that it might take some work to get it to the point where it can be used in a commercial situation. (Tr. 8/13/08 at 224.) She testified that she is opposed to the roof-top summer garden because she wants to maintain her rental income. (Tr. 8/13/08 at 226.) She has not consulted with a real estate agent regarding commercial rents or other value with regard to the abutting property. (Tr. 8/13/08 at 240.)

25. Ms. Willick testified that when the Applicant leased the property at 2218 Wisconsin Avenue in 2005, the owners were told by Melissa Lane, Chair of ANC 3B, that there was no support for a roof-top summer garden at the establishment. (Protestants Exhibit 2, Tr. 8/13/08 at 205.) She understood that the Applicant indicated at an ANC meeting in November of 2005 that there were no plans for a roof-top summer garden. (Tr. 8/13/08 at 206.) Ms. Willick was under the impression that the establishment would not apply for a roof-top summer garden, but she agrees that Mr. Holder never stated that he would never apply for a roof-top summer garden. (Tr. 8/13/08 at 230-231.) The roof-top summer garden had no support originally because of the establishment's location next to a residence and the fact that it was surrounded by a densely populated neighborhood of

townhouses and apartments. (Tr. 8/13/08 at 230.) The circumstances that made a roof-top summer garden untenable in 2005 have not changed. (Tr. 8/13/08 at 230.) She has participated in previous protests and was part of a group that entered into a Voluntary Agreement with Town Hall allowing them to extend their hours. (Tr. 8/13/08 at 231.)

26. Martin Beam, a principal in the acoustical consulting firm of Miller, Beam, and Paganelli, is an acoustical engineer with 20 years of experience. (Tr. 8/13/08 at 244.) Mr. Beam personally visited the site of the roof deck. (Tr. 8/13/08 at 244.) He estimated the noise potential from 32 people having separate conversations outside in a dining area would be roughly 77 to 80 decibels. (Tr. 8/13/08 at 245-246.) The estimate of 77 to 80 decibels is a conservative one because it does not include any other noise, such as from plates being cleared or glasses clinking together, or louder noises such as people laughing. (Tr. 8/13/08 at 246.) Among acoustical engineers, the numbers and process used to estimate noise potential are standardized and widely accepted. (Tr. 8/13/08 at 268, 280-281.) Mr. Beam is familiar with the D.C. noise code and testified that under Section 2700 of the D.C. Municipal Regulations, there is no restriction on unamplified voices. (Tr. 8/13/08 at 247.) He also stated that under Section 2800, businesses can not create sound levels above 60 decibels more than three feet from their property line. (Tr. 8/13/08 at 247.)

28. Mr. Beam testified that umbrellas would have no effect on abating the noise because they have no mask. (Tr. 8/13/08 at 248.) Likewise, soundproof foam on the underside of the patio furniture would have no effect on noise produced by conversations. (Tr. 8/13/08 at 248.) A row of shrubbery would have no effect on the noise level. (Tr. 8/13/08 at 261.) One would have to have about a hundred feet of dense foliage in order to get sound attenuation out of plants and shrubs. (Tr. 8/13/08 at 249.)

29. With regard to the proposed wall, Mr. Beam noted that the theoretical limit of what one would get out of a barrier is ten decibels. (Tr. 8/13/08 at 249.) The noise abatement depends on the height of the source, the height of the receiver, and the height of the barrier, and the distance between each. (Tr. 8/13/08 at 249-250, 272.) When one stands next to a wall, the sound will go over the top and any barrier that doesn't break the line of sight is completely ineffective. (Tr. 8/13/08 at 249-250.) The barrier wall described by Mr. Holder would be six feet high, made of composite board faced with latticework. (Applicant Exhibit No. 1.) Mr. Beam testified that if the wall doesn't block the line of sight from the abutting residence or other nearby residences, it will not reduce the noise to legal levels. (Tr. 8/13/08 at 250.) The bedroom window is not high enough above the summer garden area to block the line of sight from the six foot wall dividing the roof-top, (Protestant Exhibits No. 4, 5.) A higher wall would be more effective, but sound would still travel over it. (Tr. 8/13/08 at 250.)

30. Mr. Beam stated that the U shape design proposed by Mr. Holder to funnel the noise toward Wisconsin Avenue would not be effective. (Tr. 8/13/08 at 251.) Sound is omnidirectional and will continue to reflect and refract around the wall. (Tr. 8/13/08 at 251.) Despite the efforts of the establishment to abate the noise, Mr. Beam doesn't believe there is any way for them to not violate the 60 decibel at three feet in an open air

requirement. (Tr. 8/13/08 at 253-254, 257.) In open air, the sound is going to pass over any barrier that's built and it will reflect off of other walls and return to its source. (Tr. 8/13/08 at 257.)

31. Mr. Beam stated that metal umbrellas with sound absorbent material would absorb the noise and reduce the decibel level. (Tr. 8/13/08 at 260, 270, 278-279.) Sound absorbent material would mitigate the sound bouncing off walls. (Tr. 8/13/08 at 260.) A ten foot wall would reduce the sound by about five decibels. (Tr. 8/13/08 at 271-272.) Hall Place, unlike the bedroom in the abutting property, is well blocked from the sound by the presence of the building itself. (Tr. 8/13/08 at 275.) Mr. Beam testified that short of enclosing the entire roof deck area, there is nothing the Applicant can do that will reduce the level of noise emanating from the proposed roof-top summer garden to a legal level with regard to the abutting residence. (Tr. 8/13/08 at 253, 259, 279.)

32. Martin Dickinson resides at 2209 Hall Place, N.W., Washington, D.C and has lived there since 1983. (Tr. 8/13/08 at 283-284.) He thinks Hall Place, N.W. is the perfect urban residential place to live because it is peaceful, pleasant and close to everything. (Tr. 8/13/08 at 284.) He stated that when he looks out his back window, he can see directly to the area where the roof-top summer garden will be. (Tr. 8/13/08 at 287) He said the alley between his home and W Place serves as an echo chamber when neighbors throw their own private parties. (Tr. 8/13/08 at 288.) The conversation up and down the alley is fairly unbearable. (Tr. 8/13/08 at 288.) His concern is that if Town Hall is granted a roof-top summer garden, it will be the equivalent of loud parties every night of the week. (Tr. 8/13/08 at 288-289.) He testified that there are residents who live in close proximity to the establishment who fear the potential for noise disturbances from the roof-top summer garden because they have experienced how the sound in the alley is magnified and ricochets around in that environment. (Tr. 8/13/08 at 288, 307.)

33. With regard to parking, Mr. Dickinson stated that the traffic in the neighborhood has grown dramatically. (Tr. 8/13/08 at 290.) At night he can hardly ever find a place to park on Hall Place, N.W. or W Place, N.W. (Tr. 8/13/08 at 290.) He stated that there is a lot more foot traffic too. (Tr. 8/13/08 at 290.) Over the last three years the noise has definitely increased as there are more people who are loud while walking to their cars and they make noise when they slam their car doors. (Tr. 8/13/08 at 291.)

34. Mr. Dickinson testified that the neighborhood responded in opposition to the proposed roof-top summer garden by filing a protest. (Tr. 8/13/08 at 291-292.) The group is made up of 15 members, who represent anywhere from 36 to 38 households. (Tr. 8/13/08 at 292.) The members are owners of the abutting property and homeowners of properties located closest to the establishment. (Tr. 8/13/08 at 292.) They are all located on Hall Place, N.W. or W Place, N.W. (Tr. 8/13/08 at 292.) Mr. Dickinson believes that there is much broader support for the protest due to the speeches given by members of the GPCA. (Tr. 8/13/08 at 292.)

35. Mr. Dickinson stated that he is familiar with the Voluntary Agreement that ANC 3B entered into with Town Hall. (Tr. 8/13/08 at 292.) He and other residents asked ANC 3B

not to sign the Voluntary Agreement before consulting a sound expert to ensure that whatever sound abatement measures the voluntary agreement required would be effective in reducing the noise. (Tr. 8/13/08 at 293-294.) Mr. Dickinson does not agree with the Voluntary Agreement and he is angry that the ANC disregarded the residents' request and signed it anyway. (Tr. 8/13/08 at 294.)

### CONCLUSIONS OF LAW

36. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the Board's satisfaction that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence and testimony upon which this determination must be made, the Board concludes that the Applicant has demonstrated that the granting of Substantial Change application for a roof-top summer garden for 32 patrons with the conditions imposed by the Voluntary Agreement, would be appropriate for the area in which the establishment is located.

37. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) and D.C. Official Code § 25-609, an ANC's properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass'n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982). In this case, ANC 3B Commissioner Alan Blevins testified on behalf of the full ANC, indicating its support of Town Hall's application for a summer garden. He stated that ANC 3B worked very hard to address the concerns of the neighboring residents before entering into a Voluntary Agreement with Town Hall. The roof-top summer garden will be limited to 32 seats and there will be no alcoholic beverage service on the roof-top summer garden. The position of ANC 3B is entitled to great weight in this case. The Board took into account the position of ANC 3B and the execution of the Voluntary Agreement in granting the Applicant's request to have a roof-top summer garden.

38. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and 23 DCMR § 400.1(a) (2004), the Board must determine under the appropriateness standard whether permitting the Applicant to substantially change its license to permit the operation of a roof-top summer garden for 32 patrons will have an adverse effect on the peace, order, and quiet of the neighborhood. The Board did not find based upon the testimony of Investigator Corrales, ANC 3B Commissioner Blevins and Ms. Lacoste that the granting of a roof-top summer garden would adversely affect the peace, order, and quiet of the neighborhood.

39. For example, Investigator Corrales' visits to the establishment did not reveal any significant problems with peace, order, and quiet that were attributable to the establishment. Specifically, she indicated that during her investigative visits, the establishment was clean and orderly. At no time did she observe any trash problems associated with the establishment. Investigator Corrales also indicated that of her 27 monitoring visits, noisy patrons were heard exiting the establishment on only three occasions. The testimony of Ms. Lacoste also indicated that the owners were very good operators and that the establishment does everything it can to mitigate the concerns of the neighboring community.

40. The Board found credible the testimony of Commissioner Blevins that there are five other establishments in the neighborhood with a summer garden and that they have not caused any problems regarding the peace, order and quiet of the neighborhood. Additionally, Commissioner Blevins indicated that the terms in the Voluntary Agreement with Town Hall are much more restrictive than the terms in the other establishments' Voluntary Agreements such as Bread Soda. He added that there have been no significant problems with Bread Soda's operation of its summer garden.

41. The testimony of the Protestants' witnesses did reveal a concern regarding the noise levels emitting from the roof-top deck out to the abutting property and to the neighborhood at large. In particular, Sharon Willick owns the abutting property which shares the same roof as Town Hall. She testified that the proximity of the proposed roof-top summer garden would interfere with the peace, order and quiet of her tenants and that she risked the ability to rent the property once the roof-top summer garden is in operation. Additionally, the Board took into consideration the testimony of protest witness, Mike Beam, the acoustical engineer who had concerns about the decibel level of 32 patrons have dinner conversations in an open air atmosphere. He did state that metal umbrellas and sound absorbent material would help to mitigate the sound bouncing off of walls and that residents on Hall Place, N.W. and W Street, N.W. would be blocked from sound by the presence of the building itself.

42. The Board also took into account the testimony of Town Hall owner, Paul Holder, who stated that he was agreeable to meeting the demands of the protestants to construct the type of wall they wanted to separate the two properties on the roof-top. He also indicated that all building materials would be sound-proof, that umbrellas would be employed to create a canopy effect and that sound-proofing material would be applied to the underside of the summer garden furniture. Additionally, the summer garden would be landscaped with shrubs and plants to aid in the suppression of noise and to beautify the roof.

43. The Board recognizes that not all sound will be abated but it believes that the steps Mr. Holder outlined in his construction plans coupled with the conditions in the Voluntary Agreement regarding the prohibition of music, entertainment and amplified voices as well as the prohibition of alcoholic beverage service on the roof-top will help to significantly reduce the noise levels. The efforts offered by the Applicant to accommodate the area residents clearly demonstrate to the Board that Town Hall is willing to make concessions to address the residents' concerns. As Commissioner Blevins testified, Town Hall is very receptive to the community and it works with area residents to address their complaints.

44. Pursuant to D.C. Official Code § 25-313(b) (3) (2001) and 23 DCMR § 400.1(b) (2004), the Board must determine whether the granting of the Substantial Change Application will have an adverse effect on residential parking needs and vehicular and pedestrian safety. The Board found credible the testimony of the ABRA Investigator Ileana Corrales who indicated that public parking is not an issue on Wisconsin Avenue,

N.W. Moreover, the Board also finds that the availability of two parking garages in the area and the offer of the establishment to validate the parking, helped address the concerns of the residents that parking was very limited during evening and night time hours. Lastly, Investigator Corrales stated that she observed patrons walk or take public transportation to the Applicant's establishment. As such, the Board finds that the Applicant's operation of a roof-top summer garden will not have an adverse impact on parking.

45. The Board finds no evidence based upon the record as a whole, that the Applicant's Substantial Change Application will have an adverse impact on real property values. This was not a protest issue raised by the Protestants.

### **ORDER**

Therefore, it is hereby **ORDERED** on this 11th day of March 2009 that the Application filed by Five Glovers, t/a Town Hall, (Applicant) to expand its premises to include a roof top summer garden with seating for thirty-two (32) patrons, located at premises 2218 Wisconsin Avenue, N.W., Washington, D.C., be and the same is hereby **GRANTED**.

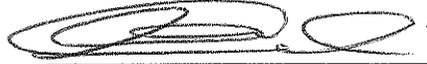
It is **FURTHER ORDERED** that the Voluntary Agreement entered into by ANC 3B and Five Glovers, t/a Town Hall on May 30, 2008, be and the same is hereby **APPROVED** with the following modifications:

1. Section 11.3.2 shall be amended to provide that the construction of the cinder block wall will be built in such a manner as to mitigate the noise so that it cannot be heard above a conversational level within adjoining residential premises when windows and doors are closed; and
2. The wall shall be constructed to a height sufficient to block the line of sight from the bedroom window of 2216 Wisconsin Avenue N.W. that overlooks the shared roof-top.

District of Columbia  
Alcoholic Beverage Control Board

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Peter B. Feather, Chairperson



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Mital M. Gandhi, Member



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Nick Alberti, Member



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Donald Brooks, Member



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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.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

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

In the Matter of:	)	
	)	
Five Glovers, LLC	)	
t/a Town Hall	)	
Application for a Retailer's Class CR	)	
License – Substantial Change	)	
at premises	)	Case no.: 60987-06/013P
2218 Wisconsin Avenue, N.W.	)	License no.: 72640
Washington, D.C.	)	Order no.: 2006-018
	)	

Five Glovers, LLC, Applicant

Jarrett Ferrier, on behalf of the Glover Park Citizens Association, The DeVol Funeral Home, Inc., Sharon Willick, William Strydesky, Joseph Alfenito, Pamela Gatz, Jacqueline Blumental, Marcia A. Johnston, Herbert Menegus, Catherine Batza, J. Terry Wingfield, Jr., Raymond and Sherry Kaskey, Louis and Ruth Kahn, Joan Sapienza, Thomas Shea, Dana and Milton Grossman, Gay Truscott, and William L. Miller, Protestants

**BEFORE:** Charles A. Burger, Chairperson  
Vera M. Abbott, Member  
Judy A. Moy, Member  
Audrey E. Thompson, Member  
Peter B. Feather, Member  
Albert G. Lauber, Member  
Eartha Isaac, Member

**ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST**

The substantial change application for a Retailer's Class "CR" License to change its hours of operation *from* Sunday through Saturday, 11:00 a.m. to 11:30 p.m., *to* Sunday through Thursday, 11:00 a.m. to 2:00 a.m., and Friday and Saturday, 11:00 a.m. to 3:00 a.m., and to change its hours of alcoholic beverage service *from* Sunday through Saturday, 11:00 a.m. to 11:30 p.m., *to* Sunday through Thursday, 11:00 a.m. to 2:00 a.m., and Friday and Saturday, 11:00 a.m. to 3:00 a.m., having been protested, came before the Board on November 30, 2005, in accordance with D.C. Official Code § 25-601 (2001). Jarrett Ferrier, on behalf of the Glover Park Citizens Association, The DeVol Funeral Home, Inc., Sharon Willick, William Strydesky, Joseph Alfenito, Pamela Gatz, Jacqueline Blumental, Marcia A. Johnston, Herbert Menegus, Catherine Batza, J. Terry Wingfield, Jr., Raymond and Sherry Kaskey, Louis and Ruth Kahn, Joan Sapienza,

**Five Glovers, LLC**  
**t/a Town Hall**  
**Case no. 60987-06/013P**  
**License no. 72640**  
**Page two**

Thomas Shea, Dana and Milton Grossman, Gay Truscott, and William L. Miller, filed timely oppositions by letter.

The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated February 20, 2006, the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Accordingly, it is this 8<sup>th</sup> day of March 2006, **ORDERED** that:

1. The protests of Jarrett Ferrier, on behalf of the Glover Park Citizens Association, The DeVol Funeral Home, Inc., Sharon Willick, William Strydesky, Joseph Alfenito, Pamela Gatz, Jacqueline Blumental, Marcia A. Johnston, Herbert Menegus, Catherine Batza, J. Terry Wingfield, Jr., Raymond and Sherry Kaskey, Louis and Ruth Kahn, Joan Sapienza, Thomas Shea, Dana and Milton Grossman, Gay Truscott, and William L. Miller, are **WITHDRAWN**;

2. The substantial change application of Five Glovers, LLC, t/a Town Hall, for an extension of the hours of operation and the hours of alcoholic beverage service of the Retailer's Class "CR" License at 2218 Wisconsin Avenue, N.W., Washington, D.C., is **GRANTED**;

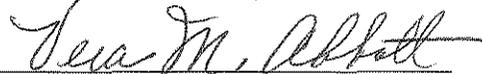
3. The above-referenced agreement is **INCORPORATED** as part of this Order;  
and

4. Copies of this Order shall be sent to the Protestants and the Applicant.

Five Glovers, LLC  
t/a Town Hall  
Case no. 60987-06/013P  
License no. 72640  
Page three

District of Columbia  
Alcoholic Beverage Control Board

Charles A. Burger, Chairperson



Vera M. Abbott, Member



Judy A. Moy, Member



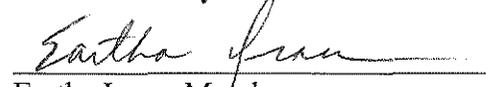
Audrey E. Thompson, Member



Peter B. Feather, Member



Albert G. Lauber, Member



Eartha Isaac, 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.

LAW OFFICES

ANDREW J. KLINE

1225 NINETEENTH STREET, N.W.  
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bshort@klineawdc.com

LaQuan S. Partee, Legal Assistant  
Lpartee@klineawdc.com

February 28, 2006

**VIA HAND DELIVERY**

Alcoholic Beverage Control Board  
c/o Tiwana Clarke, Esq.  
941 North Capitol Street, NE  
7th Floor  
Washington, DC 20002

**RE: Five Clovers, LLC t/a Town Hall  
2218 Wisconsin Avenue, NW  
License No. 722640  
Substantial Change  
Voluntary Agreement**

Dear Members of the Board:

Please be advised that the parties have reached a resolution in the above-captioned matter. A fully executed Voluntary Agreement is enclosed. Please dismiss the protests and direct the staff to process the substantial change on the liquor license.

If you have any questions regarding the foregoing or the enclosed, please do not hesitate to contact me.

Very truly yours,



Andrew J. Kline

AJK/jrj

Enclosure

cc: Fred Moosally, General Counsel, ABRA  
Douglas Fierberg, Esq.  
Milton Grossman, Esq.  
Paul C. Holder  
(all via e-mail)

OFFICE OF THE ATTORNEY GENERAL  
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## VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT (the "Agreement") made this 20<sup>th</sup> day of February, 2006, by and between Five Glovers, LLC t/a Town Hall ("Applicant") and Glover Park Citizens Association, Milton Grossman, Dana Grossman, The DeVol Funeral Home, Inc., Joseph Alfenito, Pamela Gatz, Joan Sapienza, Thomas Shea, Jacqueline Blumenthal, Gay Truscott, William L. Miller, Sharon Willick, William Strydesky, Marcia Johnston, Herbert Menegus, Catherine Batza, J. Terry Wingfield, Jr., Ramond Kaskey, Sherry Kaskey, Louis Kahn, Ruth Kahn (hereinafter collectively referred to as "Protestants")

### RECITALS

WHEREAS, Town Hall has applied for a substantial change to its alcoholic beverage Retailer's License Class CR (the "License") for premises located at 2218 Wisconsin Avenue, NW, Washington, DC (the "Premises") for the extension of its hours of operation;

WHEREAS, Protestants have filed a protest against approval of the substantial change;

WHEREAS, the parties have discussed the concerns of the Protestants, and have reached an understanding related to the operation of the establishment; and

WHEREAS, the parties have agreed to enter into this Agreement and request the Board to approve of the issuance of the License, conditioned upon Applicant's compliance with the terms and conditions of this written agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration,

the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

2. Entertainment. Applicant shall not have a disc jockey, but may offer music in the form of recorded music through the upload of MP3's during all hours of operation. Applicant shall not offer live music or other live entertainment in its Premises. Applicant shall not provide a dance floor for dancing by its patrons nor other facilities for dancing.

3. Noise. Applicant acknowledges familiarity with and will comply with the noise-control provisions of District of Columbia law and regulations, including The DC Noise Control Act of 1977 (Public Law 2-53), as amended. The Applicant agrees to abide by all Alcoholic Beverage Control regulations, as amended. The doors and windows of the premises will be kept closed at all times during business hours when music is being played, or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises. Music and vibration from the establishment shall not be audible or felt in any neighboring residential premises or in the DeVol Funeral Home during its hours of operation.

4. Parking. Applicant shall provide complimentary or discounted parking for its patrons at a lot or lots within reasonable proximity of the Premises. Applicant shall publicize the availability of complimentary or discounted parking in all advertising.

5. Occupancy. Applicant shall not exceed the occupancy provided for in its certificate of occupancy.

6. Signage. Applicant shall post signage near its front main entrance in the interior of the Premises reminding its patrons to be considerate of its residential neighbors when exiting the Premises and returning to their vehicles.

7. “Cover Charges”/Entrance Fees. Applicant shall not charge for entrance to its establishment unless such fee is associated with a special event or fundraising event.

8. Deliveries. Applicant shall have beer deliveries only once per week per distributor. Applicant shall have keg and liquor deliveries no more than two (2) days per week. Food deliveries may occur on a daily basis.

9. Loitering, Trash Removal, and Outside Maintenance.

9.1 Applicant shall on a daily basis clean its abutting alleyway and the public sidewalk in front of its establishment and the immediate neighboring properties to its north and south to at least 18 inches outward from the curb so that these areas are reasonably free of trash, snow, and ice.

9.2 Applicant shall make reasonable and lawful efforts to prevent or disperse loitering or any other source of noise or disturbance in the areas in front of the premises during business hours and at closing, and to cause patrons to leave those areas at closing.

9.3 Applicant shall not serve alcoholic beverages in paper or plastic cups. Applicant shall prohibit patrons from leaving the Premises with alcoholic beverages. Applicant shall maintain regular trash garbage removal service, regularly

remove trash from trash area, and see that the trash area remains clean. Applicant shall maintain its contact with Ecolab Pest Control (or similar provider) and regularly treat the Premises, abutting alley, and trash facilities for rodent and pest infestation.

9.4 Applicant shall deposit trash and garbage only in rodent-proof dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.

9.5 Applicant shall not dispose of glass bottles or other glass refuse outside the premises after midnight or before 8:00 a.m.

10. Hours of Operation.

The hours of operation shall be:

Sunday - Thursday, 10 am to 1:00 a.m.

Friday and Saturday, 10 am to 2 a.m.

Last call for alcohol will be 15 minutes before closing.

11. Notices. In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing of such violation. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand delivered, to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

If to Applicant:

Five Glovers, LLC t/a Town Hall  
2218 Wisconsin Avenue, NW  
Washington, DC 20007

With a copy to:

Andrew J. Kline, Esquire  
1225 Nineteenth Street, NW  
Suite 320  
Washington, DC 20036

If to Protestants:

Glover Park Citizens Association  
P.O. Box 32268  
Washington, DC 20007

With a Copy to:

Douglas Fierberg, Esq.  
Bode & Grenier LLP  
1150 Connecticut Avenue, NW  
9th Floor  
Washington, DC 20036

Applicant may change the notice addresses listed above by written notice to the signatories hereto at the addresses listed below their signatures. 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.

12. Withdrawal of Protest. In consideration of the Applicant's agreement to the provisions of the Voluntary Agreement, the Protestants support the approval of Applicant's amendment to License as sought by the request for approval of substantial change as amended herein, and hereby withdraw their protests to

the substantial change, and join with the Applicant in requesting that the amended License be issued forthwith in accordance with the Board's normal procedures.

13. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and they shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Agreement. This Agreement shall be construed in accordance with the laws of the District of Columbia

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

15. Successors and Partial Invalidity. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event any part of this Agreement should be determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the rest of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part held to be invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated below:

APPLICANT:

Five Clovers, LLC t/a Town Hall

By:   
Paul Holder, Managing Member

Date Signed: 2/16/06

PROTESTANTS:

Glover Park Citizens Association

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Milton Grossman  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Dana Grossman  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Jim Devol  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Joseph Alfenito  
Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Pamela Gatz  
Date Signed: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated below:

APPLICANT:

Five Glovers, LLC t/a Town Hall

By: \_\_\_\_\_  
Paul Holder, Managing Member

Date Signed: \_\_\_\_\_

PROTESTANTS:

Glover Park Citizens Association

By: J. K. Ferrier

Print Name: JARRETT K. FERRIER

Date Signed: 2/19/06

Milton Grossman

Milton Grossman  
Date Signed: 2/22/06

Dana Grossman

Dana Grossman  
Date Signed: 2/22/06

The DeVol Funeral Home, Inc.

By: John F. DeVol

Print Name: JOHN F. DEVOL

Date Signed: 2/21/06

Joseph Alfenito

Joseph Alfenito  
Date Signed: 2/25/2006

Pamela Gatz  
Pamela Gatz  
Date Signed: 2/25/06

Joan Sapienza  
Joan Sapienza  
Date Signed: 2-26-06

Thomas Shea  
Date Signed: 2-26-06

Jacqueline Blumenthal  
Jacqueline Blumenthal  
Date Signed: 2/18/06

Gay Truscott  
Gay Truscott  
Date Signed: 2/22/06

William L. Miller  
Date Signed: 2/22/06

Sharon Willick  
Sharon Willick  
Date Signed: 2/22/06

William Strydesky  
William Strydesky  
Date Signed: \_\_\_\_\_

Marcia Johnston  
Marcia Johnston  
Date Signed: 2/20/06

Herbert Menegus  
Herbert Menegus  
Date Signed: 2/18/06

Catherine Batza  
Catherine Batza  
Date Signed: 2/18/06

*J. Terry Wingfield, Jr.*

J. Terry Wingfield, Jr.

Date Signed: 2/19/06

*Ramond Kaskey*

Ramond Kaskey

Date Signed: 2/19/06

*Sherry Kaskey*

Sherry Kaskey

Date Signed: 2/19/06

*Louis Kahn*

Louis Kahn

Date Signed: 2-18-06

*Ruth Kahn*

Ruth Kahn

Date Signed: 2/18/06

RECEIVED DEC 5 1995

## VOLUNTARY AGREEMENT

This is an agreement between 1) Dee Chai Development Corporation, holder of a Class CR alcoholic beverage license for Xing Kuba Restaurant, 2218 Wisconsin Avenue, N.W. ("the Restaurant") and 2) Sharon Willick and William Strydesky, 2216 Wisconsin Avenue, N.W. ("Neighbors").

The Restaurant and Neighbors wish amicably to resolve the issues which are presently before the Alcoholic Beverage Control Board ("the Board") upon the Restaurant's application for an amendment of its Class CR License. It is therefore agreed between the Restaurant and Neighbors that:

1. Upon the Board's acceptance of this Agreement, Neighbors will withdraw their pending protest and not oppose the Board's granting of the pending application for license amendment.

2. The Restaurant will promptly engage a competent licensed building contractor and arrange for the installation of a sound-absorbing wall on the second floor of the Restaurant along the entire length of the common wall between the Restaurant and Neighbor's residence. This sound-absorbing wall will be constructed in substantial conformity with the design drawing included in the July 1, 1995, Report of Acoustical Design Collaborative, Ltd. ("ADC") Construction of the sound-absorbing wall will be completed on or before December 31, 1995.

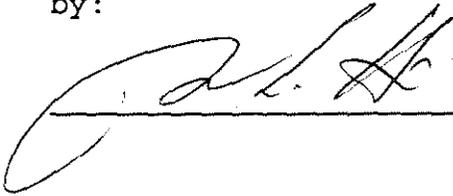
3. The Restaurant will not place any speaker or any other sound-emitting device on or immediately adjacent to the sound-absorbing wall. The Restaurant will not operate any speaker or

sound-emitting device at a sound level higher than that utilized by ADS in its testing pursuant to Paragraph 4 infra.

4. Upon completion of the sound-absorbing wall, the Restaurant will arrange for ADC to conduct such tests as it determines to be needed to ascertain whether the design objectives indicated in the July 1, 1995, Report have been met. Neighbors will grant ADC reasonable access to their residence to facilitate ADC's sound measurements. If ADC determines that the design objectives have not been met, the Restaurant will arrange for appropriate modifications promptly to be made.

Hereby agreed to by:

Dee Chai Development Company  
T/A Xing Kuba Restaurant  
by:



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12/4/95  
Date

Sharon Willick  
William Strydesky,  
Protestants  
by:

Milton J. Grossman  
Milton J. Grossman  
Their Attorney

11/27/95  
Date