

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

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In the Matter of:)
)
ARK Potomac Corp.)
t/a Sequoia Restaurant)
)
Application for a Retailer's Class CR)
License – Substantial Change)
at premises)
3000 K Street, N.W.)
Washington, D.C)
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Application no.: 28859
Order no.: 2005-70

ARK Potomac Corp., Applicant

Bill Starrels, on behalf of Advisory Neighborhood Commission 2E, Protestant

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ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST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 to permit the offering of live entertainment and to expand the offering of indoor live entertainment, having been protested, came before the Board on January 7, 2004, in accordance with D.C. Official Code § 25-601 (2001). Advisory Neighborhood Commission 2E and Noel Bohn filed timely oppositions. On January 7, 2004, the Board dismissed the protest of the Citizens Association of Georgetown because it failed to file a timely protest and the Board dismissed the protest of Noel Bohn because she did not have standing to file a protest pursuant to D.C. Official Code § 25-601(3) (2001).

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. The Board is approving the agreement with the following change. The Board is amending the last sentence of provision 4 to read as follows: "The Board will consider the parties' proposals and render an order approving of a replacement Outside Dining, Entertainment and Noise control provision." This technical change was proposed to the parties who subsequently informed the Board that they had no objection to the change.

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Pursuant to the agreement, dated March, 24, 2005, the Protestant has agreed to withdraw its protest, 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 27th day of April 2005, **ORDERED** that:

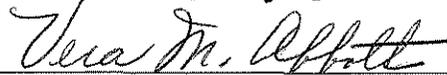
1. The protest of Bill Starrels, on behalf of Advisory Neighborhood Commission 2E, is **WITHDRAWN**;
2. The protests of the Citizens Association of Georgetown and Noel Bohn, are **DISMISSED**;
3. The substantial change application of ARK Potomac Corp., t/a Sequoia Restaurant to permit the offering of live entertainment and to expand the offering of indoor live entertainment at 2439 18th Street, N.W., Washington, D.C., is **GRANTED**;
4. The above-referenced final agreement, as amended, is **INCORPORATED** as part of this Order; and
5. Copies of this Order shall be sent to the Protestant and the Applicant.

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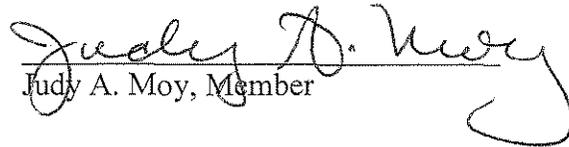
District of Columbia
Alcoholic Beverage Control Board



Charles A. Burger, Chairperson

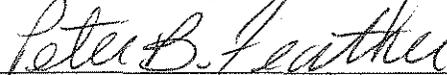


Vera M. Abbott, Member

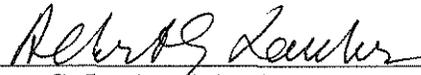


Judy A. Moy, Member

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.

AGREEMENT

This agreement ("agreement") is made this 24th day of ~~February~~ ^{MARCH}, 2005 by and between Ark Potomac Corp. t/a Sequoia Restaurant, 3000 K Street, NW (application No. 28859), (the "Applicant") and Advisory Neighborhood Commission 2E (the "ANC").

WHEREAS, Applicant filed with the District of Columbia Alcoholic Beverage Control Board (the "Board") an application for a substantial change to its license, Class CR (the "Application"), to offer live entertainment on its outside terrace and for expanded live entertainment inside the restaurant, and

WHEREAS, the ANC represents the residents and taxpayers within the boundaries of ANC 2E and wishes to ensure that no establishment that sells alcoholic beverages will adversely affect the health, safety, and quality of life in the surrounding community; and

WHEREAS, the Application for substantial change was subject to a protest by the ANC on the basis of the establishment's potential adverse affect on the peace, order and quiet of the surrounding neighborhood; and

WHEREAS, in order to secure the ANC's withdrawal of the protest pending before the ABC Board, Applicant has agreed to enter into this voluntary Agreement specifying the parties' agreement and understanding regarding the Applicant's operations, which such agreement shall supercede the agreement dated October 30, 1989, entered into between the parties;

NOW, THEREFORE, in consideration of the agreements set forth herein, the parties hereto mutually agree as follows:

1. Occupancy and Safety. The establishment shall have a maximum capacity of 750 persons indoors and 400 persons on the outdoor terrace. This limit shall be prominently posted and shall not be exceeded. The Applicant shall ensure that a clear passageway is maintained at all times for the safe egress of occupants in case of fire or other emergency.
2. Hours of Operation. The hours of operation shall be 11:00 a.m. to 2:00 a.m. Monday through Sunday. Applicant shall not admit patrons to its premises after 1:30 a.m. Monday through Sunday. The bar/lounge will have a maximum of 35 seats for the primary use of patrons waiting for dining service. Applicant shall offer a full service menu until two hours before closing, except when the premises are used for private functions.
3. Indoor Entertainment, Noise Control and Promotional Events. The Applicant may offer live entertainment or soft background recorded music conducive to a pleasant dining experience inside the Premises. The Applicant shall not offer, create facilities for, or otherwise encourage or permit dancing by patrons or employees, nor impose cover charges, when the establishment is open to the public. The Applicant will comply with the D.C. Noise Control Act and take necessary actions to ensure that music, noise and/or vibration from the establishment are not audible beyond the outdoor perimeter of the leased premises. On New Years Eve, and when private functions not open to the

public are held on the premises, there will be no restrictions on live entertainment or amplified music and patron dancing. However, the restriction on noise not being audible beyond the outdoor perimeter of the leased premises consistent with the D.C. Noise Control Act will remain in effect for private functions and on New Years Eve.

Applicant will not contract with outside promoters unless they represent third party bona fide organization sponsors. No cover charge or paid ticket admissions to private events will be permitted without sponsorship by a third party bona fide organization.

4. Outside Dining, Entertainment and Noise Control. Applicant and the ANC agree to a trial period for the offering of live entertainment on the Applicant's existing outdoor terrace. This trial period shall commence no earlier than March 15, 2005 and terminate no later than October 15, 2005. During this trial period, Applicant may offer live jazz performances to outdoor dining patrons one day per week, on weekdays only, from 6:00 p.m. to 9:00 p.m. Applicant may substitute a weekend evening for a weekday evening performance for private functions, only, said substitutions not to exceed four (4) weekend evenings during the trial period. The jazz offering will be tasteful and the amplification of instruments will not exceed reasonable volume as required by the D.C. Noise Control Act. The musicians shall perform adjacent to the terrace(s) on the easternmost portion of the outdoor dining space. Placement of the musicians will be at one of two sites on the B-Deck where tables 36-39 are located, or on the C-Deck where the C-Deck Bar is located. Final placement of the musicians will be based upon the location offering the least audible sound of the music from the outer perimeter at tables 0 and 16. (A diagram depicting the outdoor seating, musicians' placement and noise reading stations is attached.) Placement of the musicians shall be in excess of 500 feet, measured linearly, from the ground level property line of the nearest residential unit occupied at a Washington Harbor building as of the date of this agreement.

The parties agree to work together to resolve any complaints of noise disturbance attributed to outside entertainment. To this end, the parties agree to establish a phone tree between the licensee's managers, the ANC and residents of the Washington Harbor. Should complaints of noise disturbance not be resolved timely during the evening of the complaint, then the ANC may request a noise meter reading by qualified D.C. government inspectors or through an independent qualified acoustical engineer, holding a certificate of registration as a professional engineer issued by the District of Columbia. The noise reading shall be taken at the noise reading stations in the presence of the Applicant's senior manager on duty (see the noise reading stations on the attached diagram). A complaint will be deemed sustained upon issuance of a governmental citation of noise violation of the D.C. Noise Control Act, or a certified reading by an independent qualified acoustical engineer, holding a certificate of registration as a professional engineer issued by the District of Columbia, indicating a noise reading in excess of the D.C. Noise Control Act. The parties further agree that upon the third separate sustained complaint, as defined above, the trial period for the outside entertainment shall be terminated. Thereafter, the parties will continue to be bound by the negotiation terms of this Outside Dining, Entertainment and Noise Control provision.

In the event an independent qualified acoustical engineer's services are used to take noise meter readings, Applicant agrees to bear the cost of such services. The parties shall collaborate on the selection of the provider(s) of such services. The use of such services shall be initiated by the

Applicant, only, upon request of ANC 2E to Applicant, and after informal efforts to resolve any noise complaint are exhausted.

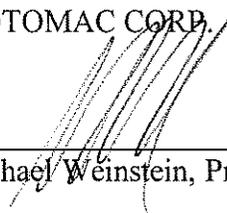
The parties agree to negotiate in good faith for a long term or permanent replacement of this Outside Dining, Entertainment and Noise Control provision of the agreement. In the event the parties are unable to reach an agreement regarding same on or before December 31, 2005, then either party may petition the Board for a Fact Finding hearing for Resolution of An Impasse in Negotiations. Upon petition to the Board, the parties shall submit in writing their last best written offers for replacement language for this provision. The Board shall consider the parties proposals and render an order approving of a replacement Outside Dining, Entertainment and Noise Control provision.

5. Underage Service of Alcohol. The Applicant shall strictly enforce the underage drinking laws of the District of Columbia by requiring valid official identification showing age and cooperating with ABC inspectors and the Metropolitan Police Department in enforcing the law. During private functions on the premises, Applicant shall retain responsibility for ascertaining valid official identification of guests of the private function.
6. Signage. The Applicant shall erect no exterior signs or awnings without application to the D.C. Department of Consumer and Regulatory Affairs for approval.
7. Trash. The Applicant shall comply with all aspects of the Civil Infractions Act and the Litter Control Administration Act. Within one hour prior to or after the opening and closing of the establishment, the Applicant will pick-up and clean all refuse in front of its establishment, running from the length of its premises. In the interim periods, the Applicant will make reasonable efforts to regularly police and clean these areas to ensure a clean presence in and around the establishment.
8. Compliance with ABC Regulations and the Law. The Applicant agrees to abide by all ABC regulations and other laws regarding the ownership of the license. A fully licensed manager who is conversant with this agreement shall be on duty at all times that the establishment is open.
9. Community Cooperation. The parties to this Agreement agree to work together to resolve matters of community concern relating to the establishment. To this end, the parties agree that each will notify the other as soon as reasonably possible of any complaint about the establishment and attempt a cooperative resolution of such complaint as the first recourse. The ANC shall notify the Applicant of any perceived violations of this Agreement as soon as reasonably possible so that the Applicant may be given a reasonable opportunity (7 days) to cure such violations prior to the ANC filing a petition with the ABC Board to enforce the terms of this Agreement.
10. Binding Agreement. This Agreement is binding upon the Applicant and all parties hereto, including their successors, assignees, or transferees. The Applicant agrees to specifically notify any prospective successor, assignee or transferee of the existence of this Agreement and to provide them with a copy. The parties agree that the provisions of this Agreement are conditions of the license and any uncured failure of Applicant to adhere to the foregoing commitments may be grounds for the ANC to petition the ABC Board for issuance of an order to show cause. This Agreement constitutes the entire agreement between the parties. This agreement may be

modified only by the written agreement of both parties or by order of the Board. This agreement supercedes the agreement between the parties dated October 30, 1989.

Executed this 24th day of March, 2005.

ARK POTOMAC CORP.



By: Michael Weinstein, President

ADVISORY NEIGHBORHOOD COMMISSION 2E

By:

modified only by the written agreement of both parties or by order of the Board. This agreement supercedes the agreement between the parties dated October 30, 1989.

Executed this ____ day of _____, 2005.

ARK POTOMAC CORP.

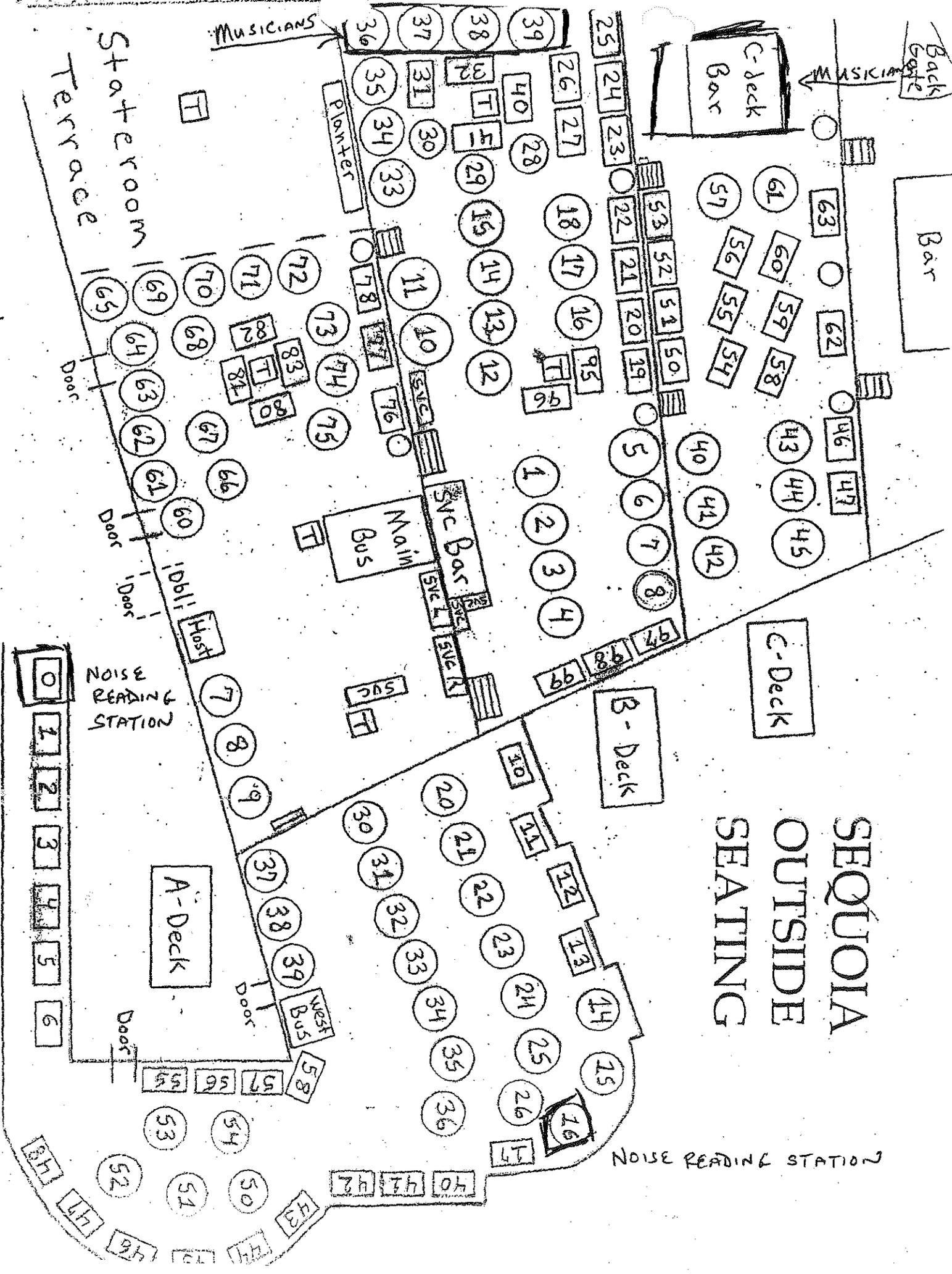
By: Michael Weinstein, President

ADVISORY NEIGHBORHOOD COMMISSION 2E



By:

SEQUOIA OUTSIDE SEATING



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March 24, 2005

Alcoholic Beverage Control Board
941 North Capitol Street, N.E.
7th Floor
Washington, D.C. 20002

Attention: Laura Byrd

Re: Application No. 28859,
ARK POTOMAC CORP.
t/a Sequoia Restaurant
holder of a Retailer's Class CR license
3000 K Street, N.W.

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
LICENSING & REGISTRATION
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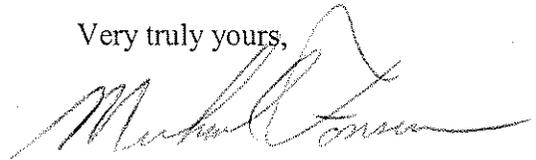
Dear Members of the Board:

Submitted herewith for filing is an Agreement between the referenced licensee and Advisory Neighborhood Commission 2E resolving the protest of the application for substantial changes to permit the offering of live entertainment outdoors and to expand the offering of indoor live entertainment.

This agreement supercedes the existing October 30, 1989 agreement between parties.

The Board's earliest issuance of an order approving the requested changes, and incorporating the terms of this agreement into the license, is appreciated sincerely.

Very truly yours,



Michael D. Fonseca

Enclosures