THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Agua 301, Inc.	)	
t/a Agua 301	)	
	)	
Applicant for a New	)	Case No. 13-PRO-00091
Retailer's Class CR License	)	License No. ABRA-092094
	)	Order No. 2013-420
at premises	)	
301 Water Street, S.E.	)	
Washington, D.C. 20003	)	
	)	

Agua 301, Inc., t/a Agua 301 (Applicant)

Andy Litsky, Chairperson, Advisory Neighborhood Commission (ANC) 6D

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ORDER ON SETTLEMENT AGREEMENT AND WITHDRAWAL OF PROTEST OF ANC 6D

The Application filed by Agua 301, Inc., t/a Agua 301, for a new Retailer's Class CR License, was protested; however, a Roll Call Hearing scheduled for July 15, 2013, was not held, because the Parties submitted a Settlement Agreement before the hearing.

The official records of the Board reflect that the Applicant and ANC 6D have entered into a Settlement Agreement (Agreement), dated July 8, 2013, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Andy Litsky, on behalf of ANC 6D, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 6D.

Accordingly, it is this 2nd day of October, 2013, **ORDERED** that:

1. The Application filed by Agua 301, Inc., t/a Agua 301, for a new Retailer's Class CR License, located at 301 Water Street, S.E., Washington, D.C., is **GRANTED**;

2. The Protest of ANC 6D in this matter is hereby **WITHDRAWN**;

3. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

   Section 2 – The following sentence shall be modified to read as follows: "The live entertainment on the summer garden for this single yearly event consists of a band playing."

   Section 8 – The following sentence shall be modified to read as follows: "If the Licensee fails to respond adequately to any notice of perceived violation within ten (10) days of receipt, the ANC may file a complaint with the ABC Board pursuant to D.C. Code § 25-446(e)."

   The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and ANC 6D.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Nick Alberti, Member

Donald Brooks, Member

Herman Jones, Member

Mike Silverstein, Member

Pursuant to D.C. Official Code § 25-433, any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

SETTLEMENT AGREEMENT

This Settlement Agreement is made on this 8th day of JULY, 2013, by and between Agua 301, LLC ("the Licensee" or "Applicant"), and Advisory Neighborhood Commission 6D (the ANC").

WITNESSETH

WHEREAS, the Licensee's application for a Class CR Alcoholic Beverage Control (ABC) license for premises 301 Water Street, SE is pending before the District of Columbia ABC Board; and,

WHEREAS, said premises is within the jurisdictional boundaries of the ANC; and,

WHEREAS, the parties desire to enter into this Settlement Agreement in order to reflect their understandings regarding certain aspects of the Licensee's operations;

NOW, THEREFORE, in consideration of the recitals set forth above and the terms and conditions provided below, the parties agree as follows:

1. The Licensee shall operate a full service sit down restaurant with outdoor summer garden seating. The Licensee's interior seating shall not exceed 102. Summer garden seating (immediately adjacent to the dining room) shall not exceed 48. The exterior and interior occupancy shall not exceed 175. Interior hours of operation may commence as early as 8:00 am daily and shall terminate no later than 2:00 am Sundays – Thursdays and 3:00 am on Fridays and Saturdays. Summer garden hours of operation may commence as early as 8:00 am daily and shall terminate no later than 1:00 am Sundays – Thursdays and 2:00 am Fridays and Saturdays; Provided that : (a) on days designated by the DC ABC Board as "Holiday Extension of Hours" applicant may avail itself of the extended hours so provided; (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours (such as for Inauguration) applicant may avail itself of such extended hours; and (c) on January 1 of each year applicant may operate until 4:00 am. Consistent with Alcoholic Beverage Control Board interpretations, "closing hours" shall be construed as the hours at which no patrons shall remain on the premises.

2. The Licensee will offer predominately background music for dining, but may offer live entertainment no more than twelve (12) times per year. The Licensee shall not provide facilities for dancing and will not collect a cover charge. No live entertainment will be offered on the exterior summer garden with the exception of Cinco de Mayo (May 5) each year. The live entertainment on the summer garden for this single yearly event will consist of roaming mariachi band playing

acoustical instruments. The live roaming performance outside will terminate at 10:00 pm.

3. Commercially-reasonable sound attenuation methods will be utilized in the renovation of the premises so as to impede the projection of sound to the public streets or nearby residential premises. The Licensee's operations shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-725. Licensee will encourage employees and patrons to be considerate of residents in the neighborhood after departing the building by keeping conversations and other noises at a level that will not disturb the peace, order, quiet and tranquility of residents in the enjoyment of their homes and by departing the vicinity of the premises immediately upon exiting.

4. The Licensee will participate in the building's trash removal and storage program. Trash and dumpster areas maintained by the Licensee shall be kept clean. The Licensee shall enclose its dumpsters and keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control pest and rodent population. Licensee will provide for the proper (recyclable) removal of grease and oils and will not deposit these substances for removal in dumpsters or trash cans. Licensee will contract for regular rodent and pest (insect) abatement.

5. To maintain the peace, order and quiet of the surrounding neighborhood, Licensee shall receive all deliveries of food, beverages and supplies during hours between 7:00 am and 7:00 pm Mondays – Saturdays. No deliveries, excepting fresh bread products, shall be accepted on Sundays.

6. The Licensee shall undertake reasonable measures to ensure that alcoholic beverages are not served to minors. The Licensee's management and bartending staff shall be certified in recognized alcohol awareness programs (such as "TIPS" or "TAM").

7. The Licensee shall maintain video camera coverage of the exterior of its Premises. Surveillance footage shall be preserved for a minimum of thirty (30) days before erasure.

8. In the event of perceived violations of the foregoing provisions by Licensee, the ANC shall provide written notice of such to the Licensee. If the Licensee fails to respond adequately to any notice of perceived violation within (10) days of receipt, the ANC may petition the ABC Board, pursuant to DC Code 25-446(e) for issuance of a notice to show cause in order to enforce the provisions of this Agreement.

9. The Licensee acknowledges that the ANC is relying on the foregoing commitments in determining either to not protest the pending license application or to withdraw such protest may heretofore have been filed with the ABC Board.

The parties jointly request that this Agreement be incorporated into the ABC Board's order approving the pending license application.

IN WITNESS WHEROF, the parties have executed this Agreement on the day and year first above written.

ADVISORY NEIGHBORHOOD COMMISSION 6D

By:_____
Andrew Litsky, Chairman

AGUA 301, LLC

By:_____
Stephen Briggs, Managing Member

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ANC 6D

Near Southeast/Southwest

Advisory Neighborhood Commission 6D

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SMD 7 *David Garber*

July 10, 2013

Ruthanne Miller, Chair
Alcoholic Beverage Control Board
2000 14th Street NW, Suite 400S
Washington, DC 20009

VIA E-MAIL: tesha.anderson@dc.gov

RE: ABRA-092094, 13-PRO-00091, Agua 301, 301 Water Street SE, New License

Dear Ms. Miller:

At its regularly called, properly noticed meeting on July 8, 2013, with a quorum present, Advisory Neighborhood Commission (ANC) 6D voted 7-0 to withdraw its protest of the above-referenced request and support a Settlement Agreement.

For your review and approval, please find enclosed the Settlement Agreement, which was executed by the parties.

Should you have any questions, please feel free to contact me or Susan Eads Role, ANC 6D's Executive Director.

Sincerely,

Andy Litsky
Chairman, ANC 6D
Southwest & Near SE