

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

<u>In the Matter of:</u>)	
)	
Peacock Café, Inc.)	
t/a Peacock Cafe)	
)	
Application for a Retailer's Class)	Application no. 35728-02/113P
CR License (substantial change))	2002-239
at premises)	
3251 Prospect Street, N.W.)	
Washington, D.C.)	
)	

Karen Tammany Cruse, on behalf of the Citizens Association of Georgetown, Protestant

Dimitri P. Mallios, Esquire, on behalf of the Applicant

BEFORE: Roderic L. Woodson, Esquire, Chair
Vera Abbott, Member
Charles Burger, Member
Laurie Collins, Member
Judy Moy, Member
Ellen Opper-Weiner, Esquire, Member
Audrey Thompson, Member

**ORDER ON WITHDRAWN PROTEST
AND A VOLUNTARY AGREEMENT**

The request to serve alcoholic beverages on a sidewalk café was protested and came before the Board on July 31, 2002 in accordance with D.C. Official Code Section 25-601 (2000 Edition). Karen Tammany Cruse, on behalf of the Georgetown Citizens Association, filed timely opposition.

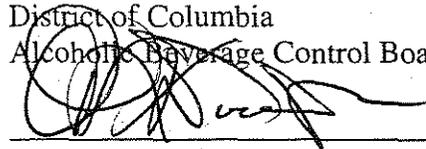
The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated August 26, 2002, the protestant has agreed to withdraw the opposition, provided, however, the 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 18th day of September 2002, **ORDERED** that:

Peacock Café, Inc.
t/a Peacock Café
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1. The opposition of Karen Tammany Cruse, on behalf of the Citizens Association of Georgetown is **WITHDRAWN**;
2. The request to serve alcoholic beverages on a sidewalk café for Peacock Café, Inc. t/a Peacock Café, 3251 Prospect Street, N.W., holder of a retailer's class CR license at 3251 Prospect Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement between the parties, is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Protestant and the Attorney for the Licensee.

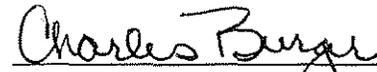
District of Columbia
Alcoholic Beverage Control Board



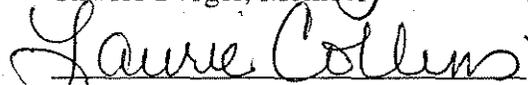
Roderic L. Woodson, Esquire, Chair



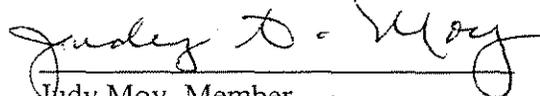
Vera Abbott, Member



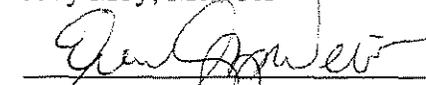
Charles Burger, Member



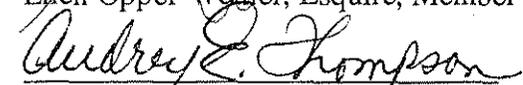
Laurie Collins, Member



Judy Moy, Member



Ellen Opper-Welger, Esquire, Member



Audrey E. Thompson, Member

AGREEMENT

This Agreement is entered into this 2nd day of June, 1998, by and among Peacock Cafe, Inc. ("Restaurant"), Mr. and Mrs. Edward L. Emes, Jr., Meda Mladek and Gail Percy:

WHEREAS:

1. The Restaurant is applying for a Retail Class "CR" License to be issued by the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for premises known as 3251 Prospect Street, N.W., Application # 35728.
2. Mr. and Mrs. Emes own and live in property located at 3226 N Street, N.W. and 3230 N Street, N.W. Mrs. Mladek owns a property at 3232 N Street, N.W., immediately adjacent to the properties of Mr. and Mrs. Emes. Ms. Percy owns a property at 3236 N Street, N.W., next to the Mladek property. The backyards of the Emes, Mladek and Percy properties immediately abut the courtyard behind 3251 Prospect Street, N.W.
3. The parties hereto wish to enter into a written agreement pursuant to the ABC Board's regulations, including 23 DCMR §1513, whereby the Restaurant agrees to comply with the terms and conditions set forth below and Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy (together, the "Neighbors") will refrain from lodging protests to the referenced application of the Restaurant conditioned upon the Restaurant's compliance with the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the following covenants, conditions and terms, the parties hereto agree as follows:

1. The Restaurant will not use the outdoor patio behind the premises known as 3251 Prospect Street, N.W., for any purpose, excepting only such necessary and incidental uses such as trash removal, deliveries and access for maintenance and repairs, to be done as quietly as practicable.
2. The Restaurant recognizes and agrees that the use of the said outdoor patio for any purpose, except the aforesaid necessary and incidental uses, would constitute "a substantial change in the nature of operation of the (Restaurant)" under the provisions of District of Columbia law and the ABC Board's regulations.
3. Notwithstanding the provisions of Paragraph 1 hereof, the Restaurant in any subsequent application may apply to the Board for permission to use the outdoor patio for any purpose specified in such subsequent application in accordance with District

of Columbia law and the ABC Board's regulations. Any such use shall be deemed to be "a substantial change in the nature of operation."

4. In any such application, the Restaurant (and any transferee) will have the burden of proving by clear and convincing evidence that such "substantial change" does not interfere with the Neighbors' peaceful enjoyment of their residential properties.

5. In addition to notices required by law or regulation, the Restaurant (and any transferee) shall give actual written notice to Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy on or before the day it files an application for permission to use the outdoor patio for any purpose.

6. The Restaurant agrees that nothing in its lease with Georgetown Prospect Place Associates Limited Partnership precludes the Restaurant from entering into and being bound by this Agreement.

7. So long as the Restaurant or any transferee of the Restaurant's license is operating a restaurant in the premises, the Restaurant and any such transferee agrees not to use any speakers or other devices to project or play music or any other noises in the courtyard behind 3251 Prospect Street, N.W., and to conduct its business in as quiet a manner as practicable taking into account the residential nature of the adjoining properties.

8. In consideration for and in reliance upon the commitments by the Restaurant herein, Mr. and Mrs. Emes, Mrs. Mladek and Ms. Percy hereby agree not to lodge protests to the Restaurant's pending application — conditioned, however, upon (a) the Restaurant's continuing compliance with the terms of this Agreement and (b) the incorporation of the terms of this Agreement in the ABC Board's order approving the Restaurant's application and license, as provided in 23 DCMR § 1513.

9. This Agreement shall bind and inure to the benefit of Mr. and Mrs. Emes, Mrs. Mladek, Ms. Percy and the Restaurant, and each of their respective heirs, successors and assigns and any transferees of the Restaurant's license. The parties intend that the restrictions and conditions of this agreement will become part of the liquor license itself and be binding on any subsequent transferee(s) and benefit any successors or assigns of the adjoining property owners in accordance with the ruling in *North Lincoln Park Neighborhood Ass'n v. ABC Board*, 666 A.2d 63 (D.C. 1995). The parties intend that this agreement shall continue in force notwithstanding any change in the law, by statute, court decision or otherwise, applicable to such agreements.

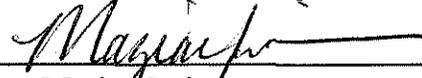
10. The Restaurant agrees that it will inform any transferee of its liquor license of the terms of this Agreement and condition any transfer of the license upon the transferee's agreement to be bound by this Agreement.

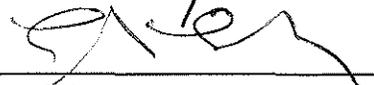
11. The parties hereto agree that any failure by the Restaurant (or any transferee) to comply with the foregoing commitments would constitute grounds for any other party to this Agreement to obtain appropriate legal or equitable relief, including without limitation an immediate court injunction, without the necessity of posting a bond, against use of the back courtyard area, and other relief as may be appropriate from the ABC Board or any other authority.

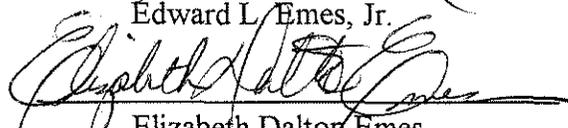
12. If it becomes necessary for any of the Neighbors to obtain relief from the courts or the ABC Board to enforce the terms of this agreement, the Restaurant (and any transferee) agrees to pay any legal fees incurred by the adjoining neighbor(s) in successfully enforcing this Agreement.

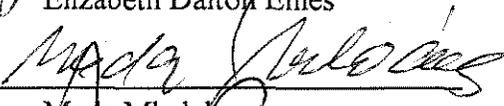
13. Nothing in this Agreement shall be used in any fashion to support any claim by any party not a signatory to this Agreement that it should be permitted to either obtain a liquor license or in any way use the back courtyard between the premises at 3251 Prospect Street, N.W., and the adjoining Neighbors' residences.

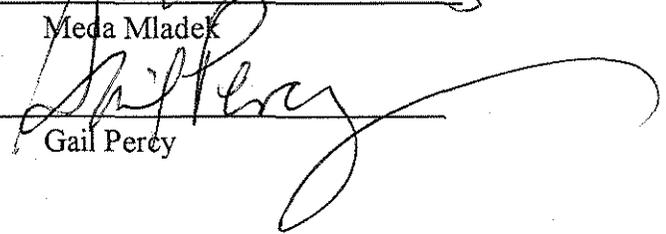
PEACOCK CAFE, INC.

BY 
Maziar Favian,
President


Edward L. Emes, Jr.


Elizabeth Dalton Emes


Meda Mladek


Gail Percy

AGREEMENT

Made the 26th day of August, 2002; by and between Peacock Café, Inc., t/a Peacock Café (hereinafter "Applicant"), and The Citizens Association of Georgetown (hereinafter "Protestant").

WHEREAS, Applicant is the holder of a Retailer's Class CR license (Application No. 35728); and,

WHEREAS, Applicant filed with the District of Columbia Alcoholic Beverage Control (ABC) Board (hereinafter "the Board") an application to serve alcoholic beverages on a sidewalk café which was deemed a substantial change in the nature of the operation of the establishment; and,

WHEREAS, Protestant lodged with the Board a protest of said application; and,

WHEREAS, the parties subsequently have negotiated in an effort to resolve the issues raised by Protestant's objections to sidewalk café service of alcoholic beverages; and,

WHEREAS, the parties desire to enter into a voluntary agreement, pursuant to 23 D.C.M.R. Section 1513, commemorating their several agreements;

NOW, THEREFORE, the parties agree as follows:

- I. Applicant shall adhere to the boundaries of the sidewalk café as indicated by the drawings approved by the Old Georgetown Board, Commission of Fine Arts and Public Space Committee. Seating capacity shall be for 24 persons, unless amended by the forgoing governmental agencies. The sidewalk cafe shall operate between the hours of 9:00 a.m. and midnight seven days. The applicant shall not provide any form of outdoor music or entertainment (whether on the sidewalk cafe or adjacent summer garden).

2. Demarcation of the outer boundaries of the approved sidewalk café shall be evidenced by metal spikes inserted flush to the sidewalk. Representatives of the parties will be in attendance when the boundary markers are inserted at the boundary points in the approved drawings. Pictures may be taken by the parties to memorialize the placement of the markers. Service on the sidewalk café will not occur prior to placement of the boundary markers, nor prior to issuance of a Public Space Permit.

3. Applicant agrees to maintain adequate supervision of the sidewalk café to ensure that tables, chairs and umbrellas remain inside the approved boundaries.

4. Applicant acknowledges that failure to adhere to the restrictions recited in paragraphs 1 through 3, inclusive, above, will constitute grounds for the Protestant to petition the Board for issuance of an Order to Show Cause, pursuant to 23 D.C.M.R. §1513.5, to gain Applicant's compliance with the terms of this Agreement.

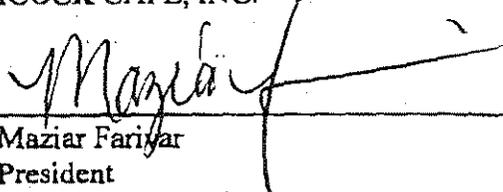
5. This Agreement shall be deemed independent of any other agreement(s) Applicant has entered into with any other parties, and such other agreement(s) shall not be deemed superceded or modified hereby.

6. The parties request that the text of the instant Agreement be incorporated in an order of the Board granting Applicant's application for sidewalk café service of alcoholic beverages conditioned upon Applicant's compliance with the terms hereof.

7. In consideration of, and reliance upon, the foregoing commitments by Applicant, Protestant requests hereby that its protest of Applicant's application for sidewalk café service be deemed withdrawn.

IN WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the
year and day first above written.

PEACOCK CAFE, INC.

By: 

Maziar Fariyar
President

THE CITIZENS ASSOCIATION OF
GEORGETOWN

By: 

Raymond J. Kukulski
President

2002-8-27-004

LAW OFFICES
O'BRIEN & LONG
Suite 208
2600 VIRGINIA AVENUE, N.W.
WASHINGTON, D.C. 20037

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STUART J. LONG
MICHAEL D. FONSECA

OF COUNSEL
BARBARA LEE SMITH

(202) 625-7700

FACSIMILE
(202) 625-7706

August 26, 2002

BY MESSENGER

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

Attention: Fred Moosally, Esquire

Re: Application No. 35728,
Peacock Cafe, Inc.
holder of a Retailer's Class CR
license at 3251 Prospect Street, N.W.

Dear Members of the Board:

Submitted herewith for filing is an Agreement between Peacock Cafe, Inc. and the Citizens Association of Georgetown settling the protest of the licensee's substantial change application to serve alcoholic beverages on a sidewalk cafe in public space.

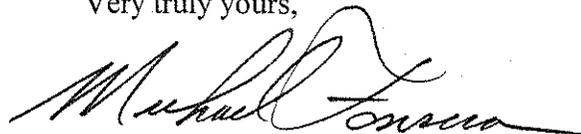
The Public Space Committee approved the licensee's application for a Public Space Permit at its meeting on August 22nd. We anticipate obtaining the Public Space Permit this week in time for Labor Day weekend. Accordingly, we request, hereby, early approval of the ABC sidewalk cafe permit and issuance of same upon delivery of the Public Space Permit to ABRA staff.

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Alcoholic Beverage Control Board
August 26, 2002
Page 2

The Board's cooperation in facilitating early issuance of the ABC Sidewalk Cafe Permit is appreciated sincerely.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael D. Fonseca". The signature is written in black ink and is positioned above the printed name.

Michael D. Fonseca

Enclosure

780605202

RL 6/24/98

LAW OFFICES
O'BRIEN & LONG
SUITE 305
3299 K STREET, N. W.
WASHINGTON, D. C. 20007

JUN 10 10 47 AM '98
ALCOHOLIC BEVERAGE
CONTROL DIVISION

STEPHEN J. O'BRIEN
STUART J. LONG
MICHAEL D. FONSECA

(202) 625-7700

FACSIMILE
(202) 625-7706

June 5, 1998

VIA MESSENGER

Alcoholic Beverage Control Board
Room 807
614 H Street, N.W.
Washington, D.C. 20001

Attn: Laura Byrd

Re: Application No. 35728
Peacock Cafe, Inc., Applicant for a
Retailer's License Class CR at
premises 3251 Prospect Street, N.W.

Dear Members of the Board:

Submitted herewith, pursuant to 23 DCMR, §1513, on behalf of the applicant and the signatories to the enclosure, is an Agreement negotiated in lieu of a protest of the above-referenced application.

The parties request, pursuant to 23 DCM §1513.3, that the Board incorporate the terms of the enclosure in its order approving this application.

Thank you for your attention to this filing .

Very truly yours,



Stephen J. O'Brien

copies: Loren Kieve, Esquire
Johnda McFarlane
Shahab Faviar