

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

In the Matter of:)	
TBM Holdings, LLC)	
t/a TruOrleans)	
Application for Renewal of a)	Case No. 13-PRO-00051
Retailer's Class CR License)	License No. ABRA-086210
at premises)	Order No. 2014-056
400 H Street, N.E.)	
Washington, D.C. 20002)	
)	

TBM Holdings, LLC, t/a TruOrleans (Applicant)

Mark Kazmierczak, Commissioner, on behalf of Advisory Neighborhood Commission (ANC) 6C

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

**ORDER ON ADDENDUM TO SETTLEMENT AGREEMENT AND
WITHDRAWAL OF PROTEST OF ANC 6C**

The Application filed by TBM Holdings, LLC, t/a TruOrleans, for renewal of its Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 3, 2013, and a Protest Status Hearing on July 24, 2013, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 6C entered into a Settlement Agreement (Agreement), dated April 6, 2011, that governs the operation of the Applicant's establishment. This matter comes now before the Board to consider the Parties' Addendum to Settlement Agreement (Addendum), dated October 23, 2013, in accordance with D.C. Official Code § 25-446 (2001).

The Addendum has been reduced to writing and has been properly executed and

TBM Holdings, LLC
t/a TruOrleans
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filed with the Board. The Applicant and Commissioner Mark Kazmierczak, on behalf of ANC 6C, are signatories to the Addendum.

This Addendum constitutes a withdrawal of the Protest filed by ANC 6C.

Accordingly, it is this 5th day of February, 2014, **ORDERED** that:

1. The Application filed by TBM Holdings, LLC, t/a TruOrleans, for renewal of its Retailer's Class CR License, located at 400 H Street, N.E., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 6C in this matter is hereby **WITHDRAWN**;
3. The above-referenced Addendum to 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 modification:

Section 11 – The following language shall be removed: “Owner of license forfeits the application endorsement and/or will not seek renewal of an entertainment endorsement without prior approval from the ANC.”

The parties have agreed to this modification.

4. All terms and conditions of the original Agreement shall remain in full force and effect; and
5. Copies of this Order shall be sent to the Applicant and ANC 6C.

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t/a TruOrleans
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District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



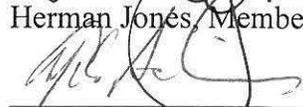
Nick Alberti, Member



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.

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 D.C. Official Code § 25-433, 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).

ADDENDUM TO VOLUNTARY AGREEMENT

THIS ADDENDUM to the Voluntary Agreement originally executed on April 6, 2011 is made and entered into as of 23 day of October, 2013 by and through TBM Holding, LLC (hereinafter the "Applicant") and Advisory Neighborhood Commission 6C. (hereinafter "ANC").

WHEREAS, Applicant having filed a renewal application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "Board") for reissuance of a Retailer's Class CR license for the premises of 400 H Street, N.W., Washington, D.C.

WHEREAS, in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into a settlement whereby, subject to approval of the Board, Applicant will agree to adopt additional measures to address the Protestants' concerns. Protestants' will agree to the issuance of the ABC License and withdraw their protest if the following conditions are met.

NOW THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties, agrees as follows:

1. The second floor must be completely and permanently enclosed. This means walls and/or windows. Plastic or other coverings are not sufficient.
2. The operating hours of a properly enclosed second floor can be the same as the first floor currently is approved for.
3. All doors and windows on the properly enclosed second floor must be closed by 10pm, 7 days a week on all floors.
4. The outdoor patio must close at 10pm, 7 days a week.
5. No congregating or smoking is allowed on the patio after it is closed, and the applicant will actively enforce this.
6. When the patio is closed it will be physically sealed off (e.g. with ropes or gates) to prevent people from accessing it.
7. No ashtrays or ash receptacles will be placed on or near the patio after it is closed.
8. Signage will be prominently placed that states patrons should be quiet and respectful of the surrounding neighborhood.
9. The sole patron entrance to the restaurant will be on H Street NE, not 4th Street NE.
10. No live music will be played, including DJs. Owner of license forfeits the application endorsement and/or will not seek renewal of an entertainment endorsement without prior approval from the ANC.
11. No music will be amplified outside of the restaurant.
12. Valet parking is not required (given that the only possible location would be on 4th Street NE, which could cause significant disruption to the neighborhood).
13. All other conditions in the current agreement not addressed here remain in effect.

IN WITNESS WHEREOF, the Parties place their signature to this agreement, on the 23rd day of October 2013.

APPLICANT:
COMMISSION 6C

TBM Holdings, LLC

By: James T. Redding

ADVISORY NEIGHBORHOOD

By: Mark Kazmierczak, Commissioner 6C

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

_____)	
In the Matter of:)	
)	
TBM Holdings, LLC)	
t/a TruOrleans)	
)	
Applicant for a New)	Case No. 11-PRO-00010
Retailer's Class CR License)	License No. ABRA-086210
)	Order No. 2011-194
at premises)	
400 H Street, N.E.)	
Washington, D.C. 20002)	
_____)	

TBM Holdings, LLC, t/a TruOrleans ("Applicant")

M. Tony Richardson, Commissioner, on behalf of Advisory Neighborhood Commission

BEFORE: Charles Brodsky, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

**ORDER ON VOLUNTARY AGREEMENT AND
WITHDRAWAL OF PROTEST**

The official records of the Alcoholic Beverage Control Board (Board) reflect that TBM Holdings, LLC, t/a TruOrleans ("Applicant"), filed an Application for a new Retailer's Class CR License located at 400 H Street, N.E., Washington, D.C., having been protested, came before the Board for a Roll Call Hearing on February 28, 2011 and a Protest Status Hearing on April 6, 2011, in accordance with D.C. Official Code § 25-601 (2001). The Protest Hearing was scheduled for May 11, 2011.

The Applicant and Commissioner M. Tony Richardson, on behalf of ANC 6C, have entered into a Voluntary Agreement, dated April 6, 2011, setting forth the terms and conditions that govern the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and

TBM Holdings, LLC
t/a TruOrleans
Case No. 11-PRO-00010
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filed with the Board. The Applicant and Commissioner M. Tony Richardson, on behalf of ANC 6C, are signatories to the Agreement. This Agreement constitutes a withdrawal of the Protest filed by ANC 6C of this Application.

David Prestwood, on behalf of A Group of Five or More Individuals, and Genevieve D. Sapir, on behalf of another Group of Five or More Individuals, submitted a letter, dated April 5, 2011, withdrawing their Protests. On April 6, 2011, the Board dismissed the Protest of Genevieve Sapir and Gregory Stackel, on behalf of A Group of Five or More Individuals, for failure to appear at the Protest Status Hearing.

Accordingly, it is this 4th day of May 2011, **ORDERED** that:

1. TBM Holdings, LLC, t/a TruOrleans, Applicant for a new Retailer's Class CR License located at 400 H Street, N.E., Washington, D.C., is **GRANTED**;
2. The above-referenced Voluntary Agreement submitted by the Applicant and ANC 6C to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

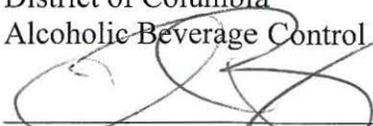
Section 8 (Communication with Protestant) – This section shall be removed.

The parties have agreed to this modification.

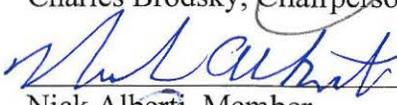
3. Copies of this Order shall be sent to the Applicant and ANC 6C.

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t/a TruOrleans
Case No. 11-PRO-00010
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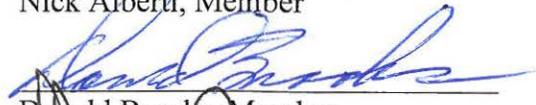
District of Columbia
Alcoholic Beverage Control Board



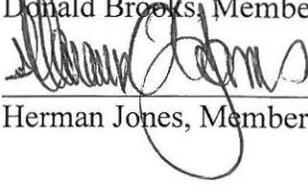
Charles Brodsky, Chairperson



Nick Alberti, Member

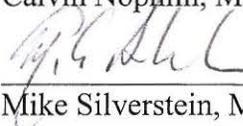


Donald Brooks, Member



Herman Jones, Member

Calvin Nophlin, Member



Mike Silverstein, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

VOLUNTARY AGREEMENT

THIS AGREEMENT is made and entered into as of this 6th day of April, 2011 by and between TBM Holding, LLC (hereinafter the "Applicant"), Advisory Neighborhood Commission 6C, (hereinafter the "ANC").

WHEREAS, Applicant having filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "ABC Board") for issuance of a Retailer's Class CR license for premises of 400 H Street, N.E., Washington, D.C.

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestants' concerns and Protestants' will agree to the issuance of the ABC License and withdraws their Protests.

Definitions:

- a. "Licensee" or "Applicant" means applicant(s) for ABRA license AND any future operators of this facility.
- b. "Agreement" means this Voluntary Agreement.
- c. "Premises" means 400 H Street NE and all operations therein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

1. **Nature of Business:** Applicant will operate at all times as a bona-fide Class CR Restaurant (as such term is defined in ABC statutes and regulations). Food service will be available until one (1) hour before closing. Applicant will not make its premises available to non-employee promoters for presentation of advertised "parties" or "events" intended to generate profit for such promoters. However, such latter restriction shall not preclude Applicant from closing its premises to the general public from time to time in order to accommodate invitation only private functions.
2. **Hours of Operation:** Applicant's operating hours for the interior and partially-enclosed second floor shall be 7:00am to 2:00am daily. Applicant's operating hours for the sidewalk café shall be 7:00am to 10:00pm Sundays – Thursdays, and 7:00am to 12:00am Fridays and Saturdays.

It is understood that after cessation of said "operating hours," no patrons shall remain on the premises or the sidewalk café, respectively.

- 3. Noise Suppression:** The Restaurant's operation shall at all times be in compliance with the D.C. Noise Control Act and DC Code 25-725. Applicant acknowledges that Protestants are particularly concerned regarding the potential for noise emanating from its partially-enclosed second floor seating area. Applicant recognizes the sensitive nature of this property with the majority of the frontage on a residential street and residential properties in close proximity to the building.

Accordingly, Applicant agrees that in the event three residents from separate addresses in the 700 or 800 block of 4th Street NE deem noise (including, but not limited to, noise from speakers or other device from amplification) from said second floor area unduly disruptive and file a written complaint or complaints to ABRA to that effect, the operating hours for said second floor will immediately be altered to conclude at 10:00pm Sundays - Thursdays, and 12:00am Fridays and Saturdays. Said operating hours will remain in effect until such time as the second floor area is further enclosed in such manner as to preclude emanation of any disruptive noise.

If applicant voluntarily encloses second floor, and three residents from separate addresses in the 700 or 800 block of 4th Street NE deem noise from said area unduly disruptive and file a written complaint or complaints to ABRA to that effect, all windows on the premises (including the second floor), must be closed after 10:00pm Sunday through Thursday, and 12:00am Friday and Saturday.

Applicant 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.

Applicant shall not install, use or permit to be used any speakers or other device for amplification on the sidewalk café. Applicant will actively discourage patrons, clients, guests, staff or anyone with business at the premises to congregate on the 4th Street side of the premises for any purposes, including, but not limited to, smoking. Licensee will instruct all persons with business at the premises not to use the sidewalk along 4th Street as a smoking area and will direct staff to actively encourage smokers to move to the H Street side of the premises.

- 4. Parking:** The applicant shall contract with a valet service. All valet parking drop off and pick up will occur on H Street. The applicant is responsible for ensuring that the valet service does not park vehicles in the surrounding neighborhood streets. The valet service or the applicant will secure spaces for the valet service.

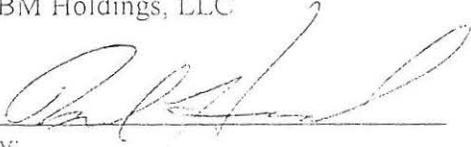
The applicant will encourage employees to take public transportation and not to park on surrounding residential streets.

5. **Deliveries:** To maintain the peace, order and quiet of the surrounding neighborhood, Applicant shall receive all deliveries of food, beverages and supplies during hours between 9:00 am and 5:00 pm Mondays – Fridays. No deliveries shall be accepted on weekends.
6. **Trash Pick-Up and Removal:** Applicant will maintain regular trash/garbage removal service only during the hours from 9:00 am to 5:00 pm. All trash and garbage shall be stored in the interior of the premises until it is to be picked up by Applicant's hauler. The Applicant shall keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control pest and rodent population. Applicant will contract for regular rodent and pest (insect) abatement. There shall be no outdoor disposal of glass bottles after 9:00pm.
7. **Removal of Grease and Oils:** Applicant will provide for the proper (recyclable) removal of grease and oils and will not deposit these substances for removal in dumpsters or trash cans.
8. **Communication with Protestant.** Applicant agrees to meet, as reasonably requested (but not less than every 3 months if so requested), with the Protestants (or any of them) to address any perceived problems arising from the operation of the business. The Applicant agrees to work in good faith with the Protestants to resolve any such problems.
9. **Withdrawal of Protest.** Protestants agree to the issuance of the license and the withdrawal of their protests upon execution of this Agreement, provided that this Voluntary Agreement is incorporated into the Board's order issuing, amending or renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.
10. **Right to Seek Redress:** The parties agree that Applicant will be given written notice of any alleged violation of this Agreement and will be afforded ten (10) days in which to investigate and respond to any complaint. The parties agree that if any complaint of violation of this Agreement is not so resolved, then any failure of the Applicant to adhere to the foregoing commitments will constitute a breach of this agreement and grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by D.C. Code 25-446(e).

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 6th day of March, 2011.

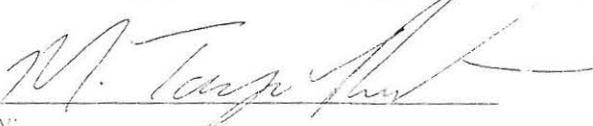
April

APPLICANT:
TBM Holdings, LLC


By: _____

Brad Howard

ADVISORY NEIGHBORHOOD COMMISSION 6C


By: _____

M. Tony Richardson
Commissioner ANC 6C05

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

In the Matter of:)	
)	
TBM Holdings, LLC)	License No.: 86210
t/a TruOrleans)	Case No.: 11-CMP-00372
)	Order No.: 2013-071
)	
)	
Holder of a Retailer's Class CR License)	
at premises)	
400 H Street, N.E.)	
Washington, D.C. 20002)	
)	

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

ALSO PRESENT: TBM Holdings, LLC, t/a TruOrleans, Respondent

Martha Jenkins, Esq., General Counsel
Alcoholic Beverage Regulation Administration

ORDER ENFORCING SETTLEMENT AGREEMENT

This matter arises from the Fact Finding Hearing held by the Alcoholic Beverage Control Board (Board) on November 9, 2011. Brad Howard and Hans Chistenson appeared at the hearing on behalf of TBM Holdings, LLC, t/a TruOrleans (Licensee). *Transcript (Tr.)*, November 9, 2011 at 2. In addition, Alcoholic Beverage Regulation Administration (ABRA) Investigator Jabriel Shakoor appeared at the hearing to testify regarding Case Report Number 11-CMP-00372. *Id.* at 5.

According to Investigator Shakoor's testimony, he received three written complaints from nearby residents regarding patron noise at the establishment. *Id.* at 6. The complaints were written by David Prestwood, Greg Stackel, and Hayley Gerkin and submitted to ABRA on August 21 and August 29, 2011. *Id.* Mr. Prestwood and Ms. Gerkin live on the 800 block of 4th Street, N.E., while Mr. Stackel lives on the 700 block of 4th Street, N.E. *Id.* at 6-7.

According to the establishment's Settlement Agreement, the

Applicant agrees that in the event three residents from separate addresses in the 700 or 800 block of 4th Street NE deem noise (including, but not limited to, noise from speakers or other device from amplification) from said second floor area unduly disruptive and file a written complaint or complaints to ABRA to that effect, the operating hours for said second floor will immediately be altered to conclude at 10:00pm Sundays – Thursdays, and 12:00am Fridays and Saturdays. Said operating hours will remain in effect until such time as the second floor area is further enclosed in such manner as to preclude emanation of any disruptive noise.

In re TBM Holdings, LLC, t/a TruOrleans, Case No. 11-PRO000010, Board Order No. 2011-194, Settlement Agreement, § 3 (D.C.A.B.C.B. May 4, 2011).

Consequently, the complaints submitted by Mr. Prestwood, Mr. Stackel, and Ms. Gerkin trigger the reduced hours on the establishment's second floor described by the Licensee's Settlement Agreement.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 20th day of March 2013, **ORDERS** TBM Holdings, LLC, t/a TruOrleans, to cease operating its second floor at 10:00 p.m., Sunday through Thursday, and at 12:00 a.m. on Friday and Saturday.

IT IS FURTHER ORDERED that approval of the Licensee's upcoming application for renewal shall only be approved if the Licensee's hours of operation for the second floor are amended to reflect that operations on the second floor must cease at 10:00 p.m., Sunday through Thursday, and 12:00 a.m. on Friday and Saturday.

IT IS FURTHER ORDERED that this order shall be rescinded if the Licensee further encloses the second floor in accordance with § 3 of its Settlement Agreement, and the Board approves an Application for Substantial Change for extended hours on the Licensee's second floor that describes the changes made to the second floor.

IT IS FURTHER ORDERED that the Licensee may request a contested Fact Finding Hearing within the next ten days if it wishes to dispute this Order.

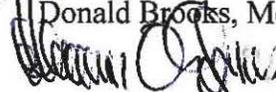
The ABRA shall deliver copies of this Order to the Licensee.

District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Mike Silverstein, 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, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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).