

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

In the Matter of:)
)
Independence 4 U, LLC)
t/a Declaration)
)
Applicant for a New)
Retailer's Class CR License)
)
at premises)
804 V Street, N.W.)
Washington, D.C. 20001)
_____)

Case No. 15-PRO-00097
License No. ABRA-099556
Order No. 2015-578

Independence 4 U, LLC, t/a Declaration (Licensee)

Ellen Sullivan, Commissioner, Advisory Neighborhood Commission (ANC) 1B

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 1B'S PROTEST**

The Application filed by Independence 4 U, LLC, t/a Declaration, for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on October 8, 2015, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 1B have entered into a Settlement Agreement (Agreement), dated November 5, 2015, 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 Commissioner Ellen Sullivan, on behalf of ANC 1B, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 1B.

Accordingly, it is this 2nd day of December, 2015, **ORDERED** that:

1. The Application filed by Independence 4 U, LLC, t/a Declaration, for a new Retailer's Class CR License, located at 804 V Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 1B in this matter is hereby **WITHDRAWN**;
1. 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 J (Modification of Settlement Agreement) – This Section shall be modified to read as follows: “This agreement can only be modified by 1) the Board, 2) mutual agreement of the parties, or 3) as otherwise permitted by law.”

Section K (Binding Effect) – This Section shall be modified to read as follows: “This Voluntary Agreement shall be binding upon and enforceable during the term of the license to which this Voluntary Agreement applies.”

The parties have agreed to these modifications.

3. Copies of this Order shall be sent to the Applicant and ANC 1B.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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.

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) 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) (2004).

AM

Voluntary Agreement Concerning Issuance of License 099556 to Independence 4 U LLC, for Declaration at 804 V St. NW Washington, DC 20001

THIS AGREEMENT made and entered into Nov. 5, 2015 by and between Independence 4 U, LLC (Applicant) and ANC1B (Protestant) witnesses.

Whereas, Applicant has filed application 099556 with the District of Columbia Alcoholic Beverage Control Board (ABC Board) for a new class CR license for premises to be known as Declaration, and to be located at 804 V St. NW Washington, DC 20001 (premises);

Whereas, Protestant has concerns opposing the granting of this application;

Whereas, in recognition of the ABC Board's policy of encouraging parties to a potentially contested proceeding to settle their differences by reaching voluntary agreements, by their signatures below, the parties hereto desire to enter into a voluntary agreement whereby (1) Applicant will agree to adopt certain measures to address Protestant's concerns and to include this agreement as a formal condition of its application, and (2) Protestant will agree to the issuance of the new license provided that such an agreement is incorporated into the ABC Board's order issuing the license, which license is conditioned upon compliance with this agreement;

Whereas, Applicant has recently taken or intends to take certain measures designed to ameliorate Protestant's concerns;

In consideration of the mutual covenants and undertakings memorialized herein, the Applicant and Protestants hereby agree as follows:

A. NOISE

Applicant acknowledges familiarity with and will comply with noise-control provisions of the District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with DCMR 905. Applicant will regularly monitor to assure no impact on nearby residents. The front and rear door will remain closed except to allow entrance to and exit from the establishment.

Sidewalk Cafe Area: Applicant will ensure that no temporary or permanent speakers will be present on or in the sidewalk cafe to include electronic devices used by patrons as speakers to play music during their entire visit in the sidewalk café. Once Applicant realizes that patrons are using their phone to play such amplified music, the Applicant shall notify patron that they must turn off the cell phone for such use or exit the Sidewalk Café. Applicant agrees not to have any live or recorded music or entertainment on or in the sidewalk cafe. Applicant agrees to post signage notifying patrons that the business is located in a mixed use building and request patrons to be respectful.

The Applicant agrees to restrict all events to those run by the restaurant and will not contract the

restaurant for any special events to be operated by an outside contractor.

B. FOOD AND ALCOHOL SERVICE

The establishment's hours of operation and alcoholic beverage service shall be as follows:

Day	Hours of Sidewalk Cafe**	Hours of Operation and Alcoholic Beverage Service Inside
Monday	11:00AM to 11:30PM	11:00AM to 12:00AM
Tuesday	11:00AM to 11:30PM	11:00AM to 12:00AM
Wednesday	11:00AM to 11:30PM	11:00AM to 12:00AM
Thursday	11:00AM to 11:30PM	11:00AM to 12:00AM
Friday	11:00AM to 12:30AM	11:00AM to 3:00AM
Saturday*	10:00AM to 12:30AM	10:00AM to 3:00AM
Sunday	10:00AM to 11:00PM	10:00AM to 11:00PM

*Holidays will have the same hours as Saturdays.

**Last call for the sidewalk cafe will be 30 minutes before the above listed closing times for the sidewalk cafe and patrons may not be seated after closing time regardless of alcoholic consumption.

C. ENTERTAINMENT HOURS

The establishment's hours of entertainment shall be as follows:

Day	Entertainment Hours for Inside Only
Monday	11:00AM to 12:00AM
Tuesday	11:00AM to 12:00AM
Wednesday	11:00AM to 12:00AM
Thursday	11:00AM to 12:00AM
Friday	11:00AM to 1:00AM
Saturday*	10:00AM to 1:00AM
Sunday	10:00AM to 11:00PM

*Holidays will have the same hours as Saturdays.

D. TRASH/GARBAGE/RODENTS

Applicant shall work with building management to:

- Maintain trash/garbage removal service at least three times weekly and see that the trash and dumpster area remains clean.
- To properly maintain trash dumpster(s) so that they close properly and do not leak.
- To only use rodent-proof dumpsters and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
- To request that its trash and recycling contractors pick up trash and materials no earlier than 9:00 AM and no later than 5:00 PM or as per agreements with JBG (the Landlord).

Applicant will make every reasonable effort to eliminate accessible food sources for rodents and eliminate the rat population. Applicant will have professional extermination services or provide them as needed. Applicant will provide for the proper removal of grease and fatty oils from the establishment. No recyclables will be dumped outside of the building between 10:00 PM and 9:00 AM.

Sidewalk Cafe Bussing: Applicant agrees that removal of trash, recycling, glassware, and dishware from the sidewalk cafe area shall be done in a manner that mitigates ambient noise; to include, but not limited to, no trash and recycling receptacles in the sidewalk cafe.

E. CAPACITY & SIDEWALK CAFE SEATING

Applicant shall at all times adhere to its occupancy limit as specified in its Certificate of Occupancy Permit, which shall remain posted in public view at all times. Applicant shall post a conspicuous sign at each exit advising patrons of the residential neighborhood and the necessity of quiet departure. Applicant agrees to restrict the total sidewalk cafe capacity to 12 people. Tables and chairs shall be located within the sidewalk café area during all hours of operation. The sidewalk café area shall, at all times, be operated for the service of seated patrons. At no time shall tables and chairs be cleared so as to use the sidewalk café area as a standing cocktail area. Only seated patrons shall be served in the sidewalk café area.

F. SMOKING

Applicant agrees to maintain the sidewalk cafe as a non-smoking outdoor space.

G. PARKING

Applicant will encourage transit use, and will encourage patrons to use nearby public parking facilities rather than parking on residential streets via signage and the website.

H. SIGNAGE/PUBLICITY

In all signs and advertisements, Applicant shall emphasize food over alcoholic beverages.

I. NOTICE AND OPPORTUNITY TO CURE

In the event that any of the parties are in breach of this Agreement, each such party shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within thirty (30) days of the date of such notice. If Applicant or the licensee fails to cure within the thirty day period (or, with respect to a breach which reasonably requires more than thirty days to cure, fails to commence cure of such breach and diligently pursues such cure) such failure shall constitute for filing a complaint with ABRA. Unless otherwise noted above, any notice required to be made under this Agreement shall be in writing postage prepaid, or hand delivered, to the other parties

to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt.

J. MODIFICATION OF SETTLEMENT AGREEMENT

This agreement can be modified only by mutual agreement of the parties with the approval of the ABC Board for acceptance and enforcement or by the ABC Board.

K. BINDING EFFECT

This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant during the term of the license to which this Voluntary Agreement applies.

If to Applicant:
Independence 4 U, LLC
804 V St., NW
Washington, DC 20001

With a copy to:
Camelia Mazard cmazard@dbmlawgroup.com

If to Protestants:
ANC1B, Attn: Ellen Sullivan, ANC 1B02, Frank D. Reeves Municipal Center, 2000 14th St., NW, Suite 100B, Washington, DC 20009, 1b02@anc.dc.gov

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Wherefore, by the signing of the representatives of Applicant and Protestant, Applicant hereby agrees to aforementioned covenants and Protestants agrees to the issuance of the Class CR license to Applicant, and withdraws its protest, provided that this agreement is incorporated into the ABC Board's order issuing a Class CR license, the issuance of which is conditioned upon compliance with the Voluntary Agreement.

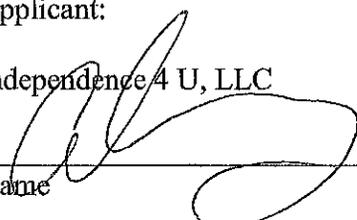
SIGNATURE BLOCKS

Accordingly, on this 5 day of Nov 2015 it is ordered that the Voluntary Agreement between Applicant and Protestant is incorporated into the ABC Board's order issuing Applicant an amended Class CR license.

Applicant:

Independence 4 U, LLC

Name

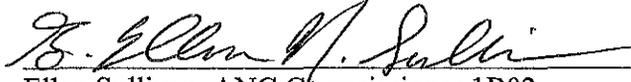


Date

11/5/2015

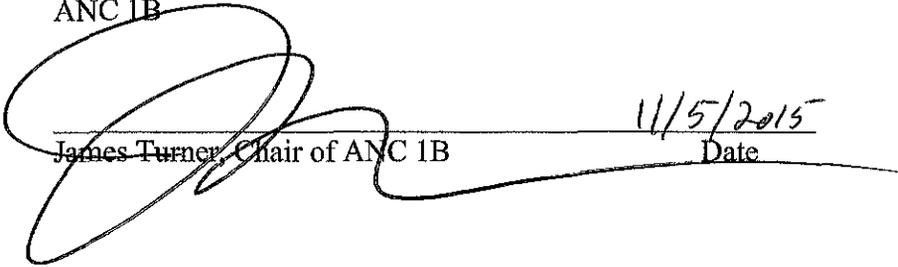
Protestants:

ANC 1B02


Ellen Sullivan, ANC Commissioner 1B02

11/5/2015
Date

ANC 1B


James Turner, Chair of ANC 1B

11/5/2015
Date