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

| | | |
|---|---|---|
| **In the Matter of:** | | |
| Chupacabra, LLC<br>t/a Chupacabra | | |
| Applicant for a New<br>Retailer's Class CT | Case No.<br>License No.<br>Order No. | 13-PRO-00123<br>ABRA-092662<br>2013-414 |
| at premises<br>822 H Street, N.E.<br>Washington, D.C. 20002 | | |

Chupacabra, LLC, t/a Chupacabra (Applicant)

David Holmes, Chairperson, Advisory Neighborhood Commission (ANC) 6A

**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 6A**

The Application filed by Chupacabra, LLC, t/a Chupacabra, for a new Retailer's Class CT License, was protested; however, a Roll Call Hearing scheduled for September 23, 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 6A, have entered into a Settlement Agreement (Agreement), dated September 12, 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 David Holmes, on behalf of ANC 6A, are signatories to the Agreement.

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

Accordingly, it is this 19th day of September, 2013, **ORDERED** that:

1. The Application filed by Chupacabra, LLC, t/a Chupacabra, for a new Retailer's Class CT License, located at 822 H Street, N.E., Washington, D.C., is **GRANTED**;

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 The Protest of ANC 6A in this matter is hereby **WITHDRAWN**;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

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

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 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.

Made this 12th day of Sept, 2013

by and between

**Chupacabra (ABRA #092662)**
822 H Street, NE
Washington DC 20002

and

**Advisory Neighborhood Commission 6A**

**Preamble**

Through this Agreement, both parties aim to create an environment whereby Applicant may operate as a viable contributing business in the ANC 6A community, while concurrently curtailing any adverse effects a business such as Applicant's could have on the surrounding neighborhood.

Applicant agrees to work regularly with ANC 6A, neighborhood associations, and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this Agreement are reasonable and must become wholly integrated into the day-to-day operation of the business establishment.

Further, ANC 6A acknowledges that this Settlement Agreement shall be presented to all Class CR applicants within the boundaries of ANC 6A. The community and merchants have agreed that it is in all the parties' best interests to standardize the requirements for the operations of restaurant, tavern, and nightclub establishments within the boundaries of ANC 6A. To the greatest extent possible, the ANC will not insist upon or allow any significant changes to this Settlement Agreement that will unfairly benefit or, conversely, cause competitive disadvantage to, any individual applicant or establishment within the ANC, unless such change is required by the District of Columbia government, other authorized governmental bodies, or rule of law.

The community and merchants understand and agree that the changes imposed upon the operations of all licensees within the ANC as set forth herein are important measures to protect the safety, peace, order, and quiet of the neighborhood, its residents, and businesses.

**Witnesseth**

Whereas, Applicant's premises is within the boundaries of ANC 6A; and,

Whereas, the parties desire to enter into an agreement governing certain requirements and understandings regarding the issuance of a Retailer's Class CR Liquor License at the subject premises; and,

**The Parties Agree As Follows:**

1. **Public Space Cleanliness and Maintenance.** Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises, and the alleyway behind the subject premises) adjacent to the establishment in a clean and litter-free condition by:
    a. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily (once immediately before business hours and again between 5:00 p.m. and 8:00 p.m.).
    b. Maintaining regular trash and garbage removal service, regularly removing trash from the trash and dumpster area, and seeing that the trash and dumpster area remain clean.
    c. Depositing trash and garbage only in rodent-proof dumpsters, and seeing that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
    d. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.
    e. Assisting in maintenance of the curbs in front of the establishment to keep them free of trash, removing snow and ice from the sidewalk, and complying with all applicable D.C. laws and regulation in these respects.
    f. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
    g. Promptly removing or painting over any graffiti written on the exterior walls of the property.
    h. Requiring the owner and employees not to park on public space between the building and the curb.
    i. Not locating trash bins, chairs, tables, or other equipment on public space without a valid space permit.

2. **Business Operations and Practices.**
    a. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person or to any person who appears to be intoxicated.
    b. Applicant agrees to take all necessary steps to prevent patron rowdiness, including refusing admission/service to rowdy and/or unruly persons.
    c. Applicant agrees to ensure that no patron brings an open container of an alcoholic beverage into the establishment from outside sources, and at no time exits the establishment with an open container of an alcoholic beverage. Wine shall be corked in accordance with DC Code § 25-113(b)(5).
    d. Applicant will not provide or sell alcoholic beverages "to go." Applicant agrees not to promote or participate in bar or pub "crawls" or any other event of this nature.
    e. The licensed establishment will be managed in person by Applicant or a board-licensed manager.
    f. Applicant, and all employees that are designated to serve alcoholic beverages, shall attend and complete an alcoholic beverage server training course/seminar.
    g. Applicant shall post a notice kept in good repair and visible from point of entry a sign that states:
        i. Proper ID is required to be served and that the establishment will check IDs at all times prior to serving alcoholic beverages to patrons;
        ii. It is illegal to sell alcohol to anyone under age 21;
        iii. Patrons are requested not to litter, loiter, or make excessive noise in the neighborhood as they arrive or depart;
        iv. Warning: Drinking alcoholic beverages during pregnancy can cause birth defects; and
        v. The establishment requests that customers do not contribute to panhandlers.
    h. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:
        i. Asking loiterers to move on whenever they are observed outside the establishment;
        ii. Calling the Metropolitan Police Department if illegal activity is observed;
        iii. Keeping a written record of dates and times (a "call log") when the MPD is called for assistance; and

iv. Applicant will maintain a detailed incident log. An incident is defined as any activity by patrons of the establishment inside or immediately outside the establishment that could lead to an ABRA investigation. Each incident will contain the date, time, and location of each incident with a concise summary. Guests and staff involved or witnesses of the incident will be identified and listed. If there is a medical or police response, that information will also be noted.

i. Upon request of the Board, Applicant's call log and incident log shall be provided to the Board during meetings or hearings involving future renewals or contested proceedings involving Applicant's license.

j. Applicant shall not support the installation of pay phones outside of the establishment on its property.

k. Applicant will utilize and maintain high-intensity floodlights on the exterior of its premises so as to fully light any abutting alleyway from dusk until dawn.

l. Applicant shall provide valet parking services only with valet parking companies as defined, licensed, and in compliance with D.C. Municipal Regulations Title 24 Chapter 16. Applicant will not engage in valet parking that results in vehicles parked in residential parking spaces.

3. **Music / Dancing / Entertainment.**

a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate soundproofing.

b. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment in accordance with DC Code § 25-725.

c. In order to mitigate noise on an outdoor patio or summer garden the following steps will be taken:

i. Applicant shall not offer any type of live or pre-recorded music on the patio;

ii. A fence or other barrier will enclose the entire perimeter;

iii. No fewer than two signs will be clearly posted to remind guests to keep their voices at normal speaking volume;

iv. Staff will monitor the outdoor area to make sure guests do not raise their voices above normal speaking tones; and

v. Potted plants, trees, fountains, or other types of noise mitigation techniques will be incorporated into the decor.

d. The hours of operation for a patio or summer garden on private property (excluding rooftops) are limited until 11:00 pm Sunday through Thursday evenings and 12:00 am on Friday and Saturday evenings. The sale and consumption of alcoholic beverages must end at that time and the patio must be cleared of all patrons and staff. If the patio or summer garden has been open for business for at least three months during the months of April through September and noise levels from the patio or summer garden have not violated this Section and the licensee otherwise has a record of good conduct, the ANC may support a change of hours application submitted to ABRA to allow for expanded hours of operation on the patio or summer garden.

e. If the outdoor patio is located on public space, the hours of operation of that patio will be limited until 11:00 p.m. Sunday through Thursday evenings and 12:00 a.m. on Friday and Saturday evenings. The sale and consumption of alcoholic beverages must end at that time and the patio must be cleared of all patrons.

f. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement. "Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

g. All CT license holders with an entertainment endorsement must have an ABRA-accepted security plan in place.

h. The kitchens for all CR license holders shall remain open and operational up until at least one hour prior to closing.

4. **Cooperation with ANC 6A.** Applicant agrees to work on resolving issues preventing Applicant from fulfilling its obligations under this Agreement with all of the following: the Single Member District (SMD) ANC Commissioner within whose boundaries the establishment is located, the Chair of the ABL Committee, and other Commissioners whose SMDs are adjacent to the location of the establishment.

5. **Modifications.** This Agreement may be modified and such modification implemented by Applicant only by mutual agreement of the parties and the subsequent approval of the modification by the ABC Board pursuant to DC Official Code Code § 25-446.

6. **Miscellaneous.**
   a. Applicant shall post a copy of this Settlement Agreement in the establishment in conjunction with the posting of its alcoholic beverage license.
   b. Applicant will operate in compliance with all applicable DC laws and regulations.

7. **Enforcement.**
   a. If either party hereto believes in good faith that Applicant is in violation of this Agreement, written notice specifying the alleged violation shall be delivered to Applicant and Applicant shall have ten (10) days after receipt of such written notice to come into compliance with this Agreement or respond to said alleged notice of default.
   b. Applicant and ANC 6A agree to enter into this Agreement. If Applicant should breach the conditions of this Agreement, it is understood by all parties that ANC 6A and/or its committees shall immediately file a complaint with the ABC Board, which will be investigated by ABRA's Enforcement Division, and may subject Applicant to a Show Cause proceeding or any other penalty available to the Board under the law.
   c. This Settlement Agreement is binding on Applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

**In Witness Whereof**

The parties have affixed hereto their hands and seals.

**Applicant:**

By: Kevin C Bombardier Date: 9/12/13

Signature: Kevin C. Bombardier

**Advisory Neighborhood Commission 6A Representative:**

By: David Holmes Date: 9/13/2013

Signature: David Holmes