THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Spork, LLC	)	
t/a A n D	)	
	)	
Applicant for a New	)	Case No. 12-PRO-00074
Retailer's Class CT License	)	License No. ABRA-089950
	)	Order No. 2012-512
at premises	)	
1314 9th Street, N.W.	)	
Washington, D.C. 20001	)	
	)	

Spork, LLC, t/a A n D (Applicant)

Michael Benardo, Chairperson, Advisory Neighborhood Commission (ANC) 2F

Martin Smith, on behalf of A Group of Five or More Individuals

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

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTESTS

The Application filed by Spork, LLC, t/a A n D, for a new Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on September 10, 2012, and a Protest Status Hearing on October 10, 2012, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2F, and A Group of Five or More Individuals have entered into a Voluntary Agreement (Agreement), dated November 7, 2012, 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; Chairperson Michael Benardo, on behalf of ANC 2F; Martin Smith, on behalf of the Group of Five or More Individuals, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 2F and the Group of Five or More Individuals.

Accordingly, it is this 30th day of November, 2012, **ORDERED** that:

1. The Application filed by Spork, LLC, t/a A n D, for a new Retailer's Class CT License, located at 1314 9th Street, N.W., Washington, D.C., is **GRANTED**;

2. The Protests of ANC 2F and the Group of Five or More Individuals in this matter are hereby **WITHDRAWN**;

3. The above-referenced Voluntary 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 14 (Notice and Opportunity to Cure) – The following language shall be removed: "If the breach is not cured within the notice period – or, with respect to a breach which reasonably requires more than fourteen (14) days to cure, efforts to cure the breach have not been commenced - failure to cure shall constitute a cause of seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447."

   The parties have agreed to this modification.

4. Copies of this Order shall be sent to the Applicant, ANC 2F, and Martin Smith, on behalf of the Group of Five or More Individuals.

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 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

VERITAS

Veritas Licensing & Legislative Affairs

Andrew J. Kline* Director

November 15, 2012

VIA EMAIL AND HAND DELIVERY

Sarah Fashbaugh
Adjudication Assistant
Alcoholic Beverage Regulation Administration
2000 14th Street, NW, Suite 400 South
Washington, D.C. 20009

RE: Case #12-PRO-00074
Spork, LLC t/a A n D
1314 9th Street NW
License #ABRA-089950

Dear Sarah:

The Applicant, ANC 2F and the Group of Five or More have reached an agreement in the above-captioned matter. Enclosed is a fully-executed Voluntary Agreement for the Board's consideration signed by Mike Benardo, Chair, on behalf of ANC 2F, Martin Smith, Representative, on behalf of the Group of Five or More, and Dan O'Brien, on behalf of Spork, LLC. Given that a Voluntary Agreement has been reached, we respectfully request that the protests of the ANC and Group of Five be withdrawn, all further protest calendaring matters be cancelled, and a Board Order approving the Voluntary Agreement be issued.

Please do not hesitate to contact me should you require additional information or have any questions regarding this matter. As always, your facilitation in the protest process is greatly appreciated.

Very truly yours,

Andrew J. Kline

AJK/jrj
Encl. Voluntary Agreement
cc: Martha Jenkins, General Counsel, ABC Board
Investigator Ileana Corrales, ABRA
Tiwana Hicks and Diane Jackson, ABRA
Mike Benardo and Matt Raymond, ANC 2F
Martin Smith, Group of Five
Dan O'Brien
(All via email w/encl.)

*A non-lawyer representative providing representation before DC departments and agencies as permitted by statute or agency rule.

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") is made on this 7 day of November, 2012, by and among Spork, LLC t/a A n D ("Applicant"), Advisory Neighborhood Commission 2F ("ANC 2F") and a Group of Five or More represented by Martin Smith ("Smith Group"). (ANC 2F and Smith Group are sometimes jointly referred to as "Protestants.")

RECITALS

(a) Applicant has applied for a Retailer Class CT License (the "License") for a restaurant/bar establishment ("Establishment") located at 1314 9th Street, N.W., Washington, D.C. (the "Premises"); and,

(b) Protestants have protested the application;

(c) Applicant desires to cooperate with the ANC and the Smith Group in order to mitigate concerns related to the potential impact of operation of the Establishment on the surrounding community; and,

(d) In lieu of contested protest proceedings regarding the application for the License, the Parties wish to enter into a Voluntary Agreement pursuant to D.C. Official Code § 25-446 to address such concerns;

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.
2. Hours of Operation. Applicant's hours of operation shall not exceed the following:

Sunday – Thursday	11 a.m. – 1 a.m.
Friday – Saturday	11 a.m. – 2 a.m.

It is understood that upon expiration of the above hours of operation, no patron may remain on the Premises.

Provided, however, that (a) on days designated by the ABC Board as "Extended Hours for ABC Establishments" or "Daylight Saving Time Extension of Hours," Applicant may operate for one additional hour (that is, one hour later); (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general extended operating hours for specific occasions, such as Inauguration or World Cup, Applicant may avail itself of such extended hours.

3. Last Call. Last call shall be announced one-half hour prior to closing, each night of operation.

4. Noise and Privacy. Applicant shall adhere to DC Code 25-725 with respect to emanation of noise from the Establishment. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any residential premises (whether on property zoned commercial or residential), other than the licensed establishment, by the use of any mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise, bell, horn, gong, whistle, drum, or other noise-making article, instrument, or device. Applicant will also take reasonable steps to ensure that the music, noise, and vibrations are not disruptive to the adjacent residential property occupants' reasonable use of outdoor areas of their property.

5. Public Space and Trash. Applicant shall maintain regular trash removal service; regularly remove trash from the trash area, and see that the trash area remains clean. Applicant shall deposit trash, grease and garbage only in proper containers, and shall see that container covers fit properly and remain fully closed and secured, except when trash, grease or garbage is being added or removed. Applicant shall keep the public space and street free of garbage/grease caused

by its operations and make reasonable efforts in the cleaning of the public space in front of the establishment (including when weather permits the use of a watering hose). Applicant shall not empty bottles or cans into any outside container after 12:00 midnight.

6. Rat and Vermin Control. Applicant shall provide monthly rat and vermin control for the Establishment.

7. Patrons. Applicant shall take reasonable steps to prevent its patrons from causing noise or disturbances in front of, or immediately adjacent to, the Establishment during the hours of operation and as they depart at closing.

8. Complaint Log. The Establishment's website, if any, will prominently feature the name and contact information for an individual to which any comments about the operation of Establishment may be addressed. The Applicant shall maintain a log for every complaint lodged with the Establishment for any issue relating to this Agreement, including, but not limited to, complaints of noise, parking congestion, traffic congestion, security, trash, rodents, and/or operating hours. The log shall include, for each separate complaint, to the extent provided by any such complainant, the name of the complainant, the date of the complaint, any contact information provided by the complainant, the nature of the complaint, and the response taken by the Applicant or the Establishment. Every complaint shall be kept on file in the complaint log for a minimum of three years from the date on which the complaint was made. Applicant shall make the complaint log available to the ABC Board for inspection and copying upon reasonable advance request.

9. Agreement Available Upon Demand. A copy of this Agreement shall be kept on the premises and made available to law enforcement officers and Alcoholic Beverage Regulatory Administration inspectors immediately upon request.

10. Compliance with ABRA Regulations. Applicant shall abide by applicable Alcoholic Beverage Administration (ABRA) regulations regarding ownership of the License.

11. Binding Effect. This Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant.

12. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Severability. In the event that any part of this Agreement is found to be invalid, unenforceable or not binding, the remaining portions shall remain in full force and effect and be fully binding on the Parties.

14. Notice and Opportunity to Cure. Protestants agree to provide Applicant with written notice of any perceived violation of this Agreement. In the event that either party believes that the other materially breached any obligations under this Agreement, such party shall give written notice to the other of the existence of the breach and the specific nature thereof. The party alleged to be in breach shall have fourteen (14) days from the receipt of notice to cure the alleged breach (or if the breach shall relate to excessive noise or disturbance, such shorter period as may be reasonable under the circumstances to immediately restore peace, order and quiet). If the breach is not cured within the notice period—or, with respect to a breach which reasonably requires more than fourteen (14) days to cure, efforts to cure the breach have not been commenced—failure to cure shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to D.C. Official Code § 25-447. In the case of a continuing violation, no notice or opportunity to cure need be provided for subsequent violations of this Agreement, following the initial provision of notice. Any notices required to be made under this Agreement

shall be in writing and sent either via e-mail or U.S. mail, postage prepaid, to the parties to this Agreement at the addresses below. Notice shall be deemed given as of the time of receipt or refusal of receipt.

If to Applicant:

Spork, LLC
ATTN: Dan O'Brien
1314 9th Street, NW
Washington, DC 20001
Sundevich@gmail.com

With a Copy To:

Andrew J. Kline
Veritas Licensing & Legislative Affairs
1225 19th Street, NW, Suite 320
Washington, DC 20036
akline@veritasdla.com

If to Smith Group:

Martin Smith
1326 Naylor Court, NW
Washington, DC 20001
msmith202@gmail.com

If to ANC 2F:

ANC 2F
5 Thomas Circle, NW
Washington, DC 20005
anc2f@starpower.net

Any party may change its notice address by written notice to the other. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated below.

PROTESTANTS:

ANC 2F

By: _____
Mike Benardo, Chairman

Date Signed: 11/7/12

GROUP OF FIVE OR MORE "SMITH GROUP"

By: _____
Martin Smith, Representative

Date Signed: 11/14/12

APPLICANT:

SPORK, LLC

By: _____
Dan O'Brien

Date Signed: 11/14/12