

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

In the Matter of:)	
)	
Shabby, LLC)	
t/a Due South)	
)	
Applicant for a New)	License No. ABRA-097053
Retailer's Class CT License)	Order No. 2015-079
)	
at premises)	
301 Water Street, S.E.)	
Washington, D.C. 20003)	
)	

Shabby, LLC, t/a Due South (Applicant)

Roger Moffatt, Chairperson, Advisory Neighborhood Commission (ANC) 6D

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

ORDER ON SETTLEMENT AGREEMENT

The official records of the Alcoholic Beverage Control Board (Board) reflect that Shabby, LLC, t/a Due South, Applicant for a new Retailer's Class CT License, located at 301 Water Street, S.E., Washington, D.C. and ANC 6D have entered into a Settlement Agreement (Agreement), dated December 8, 2014, 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 Roger Moffatt and Commissioner Coralie Farlee, on behalf of ANC 6D, are signatories to the Agreement.

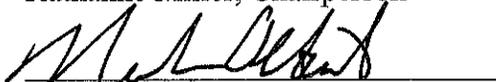
Accordingly, it is this 4th day of March, 2015, **ORDERED** that:

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; and
2. Copies of this Order shall be sent to the Applicant and ANC 6D.

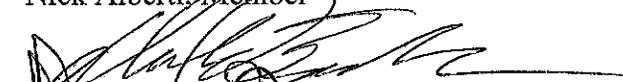
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



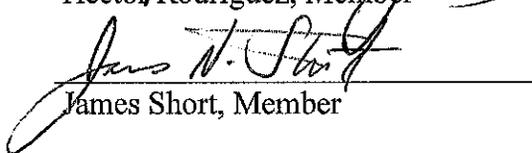
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, 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.

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).



1101 4th Street SW, Suite W130, Washington, DC 20024-
 ANC Office: 202 554-1795 ■ FAX: 202 554-1774
office@anc6d.org

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“Agreement”) is made on this 8th day of December 2014 by and between Shabby, LLC, t/a Due South (“Applicant”), at 301 Water Street, SE, License # 097053 and Advisory Neighborhood Commission 6D (“Protestant”), (collectively, the “Parties”).

PREAMBLE

Through this agreement both parties aim to create an environment in which the Applicant may operate as a viable contributing establishment in the ANC6D community.

WITNESETH

WHEREAS, Applicant has applied for a License Class CT and has agreed to amend his application and seek a retailer’s class CR license for a business establishment (“Establishment”) serving spirits, wine, and beer, with indoor space, summer garden and entertainment endorsement located at 301 Water Street, SE, Washington, D.C. 20003 (“Premises”); and

WHEREAS, Protestant is Advisory Neighborhood Commission ANC6D, which filed a timely protest (the “Protest”) against the issuance of the Applicant’s license application pursuant to D.C. Official Code § 25-601(1) and 601(4), respectively; and

WHEREAS, the Applicant agrees to work regularly with ANC6D and its representatives, other neighborhood organizations, and residents to ensure that the business operations facilitate the enjoyment of the surrounding neighborhood; and

WHEREAS, the Parties are desirous of entering into a Cooperative Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect, within the ANC, on (1) the effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726; and (2) The effect of the establishment upon residential parking needs and vehicular and pedestrian safety, and to eliminate the need for a Protest Hearing regarding the license application; and

WHEREAS, all parties believe that the statements and provisions contained in this agreement are reasonable and shall become wholly integrated into the day-to-day operation of

the Establishment. The Parties agree that any change in operations is considered to be of great concern which they may bring to the ABC Board's attention. The Parties acknowledge that any change in operations requires prior approval by the ABC Board; and

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board ("ABC Board") approve the Applicant's license application conditioned upon the Applicant's compliance with the terms of this written Agreement; and

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. **Nature of the Business.** The Applicant will manage and operate a Tavern Establishment serving spirits, wine, and beer, and southern food. The Establishment will have a summer garden.
3. **Hours of Operation and Sales.** The Applicant's hours of **operation** of the indoor space shall be as follows:
Sunday through Saturday 10 a.m. – 2:30 a.m.

The Applicant's hours for selling, serving, and consuming alcohol **in the indoor space** shall be as follows:

Sunday through Saturday 10 a.m. – 2 a.m.

Notwithstanding the foregoing, on the date of any postseason game played by the Washington Nationals or DC United, Applicant may operate and sell, serve, and permit consumption of alcohol in the **indoor** space during all legal hours, subject to approval by the ABC Board as may be required by law.

The Applicant's hours for operation of and selling, serving, and consumption of alcohol in the **summer garden** shall be as follows:

Sunday through Saturday, 10 a.m. – 2 a.m.

The Applicant's hours of Entertainment in the **indoor space** shall be as follows:

Monday through Friday, 6 p.m. to 2 a.m.

Saturday and Sunday, 10 a.m. to 2 a.m.

4. **Floors Utilized and Occupancy.** The Applicant will operate its establishment on the first floor of the building and in a summer garden area. The Establishment's occupancy will be governed by its certificate of occupancy, but in no case shall the occupancy of the Summer Garden exceed 92 patrons.

5. **Summer Garden.** Applicant plans to provide a Summer Garden with seating for 92 patrons. There shall be no live music or entertainment in the Summer Garden. There may be recorded music in the Summer Garden provided it is not audible in any residence. No containers, cups, bottles/cans, etc. shall be permitted outside of or to leave the area regardless of content.
6. **Parking Arrangements.** It is a concern of the Protestants that the Applicant's operation of the Establishment does not create or exacerbate parking problems within the ANC. The Applicant shall notify patrons (through a website or other means) that there is limited parking in the vicinity and shall provide information about public transportation.
7. **Noise and Privacy.** Applicant shall strictly comply with D.C. Official Code § 25-725 and to that end shall use various means including making architectural improvements to the property and take all necessary actions and mitigation efforts to ensure that music, noise and vibration from the Establishment are not audible in any residential premises.

Applicant shall inform its patrons by the posting of a sign near the exit that upon exiting the Establishment and walking through the neighborhood the provisions of the "Noise at Night" law prohibit persons from making "unreasonably loud noise between the hours of 10 p.m. and 7 a.m. that are likely to annoy or disturb one or more persons in their residences."

Licensee shall receive all deliveries of food, beverages, and supplies during hours between 7:00 a.m. and 7:00 p.m. Mondays to Saturdays. No deliveries excepting fresh bread products shall be accepted on Sundays.

8. **Public Space and Trash.** The Applicant shall participate in the building's trash removal and storage program. Trash and dumpster areas maintained by the Applicant shall be kept clean. The Applicant shall enclose its dumpsters and 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 shall ensure that the area around the dumpster is kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property owners and so that no garbage is placed on the abutting property. 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. Applicant will contract for regular rodent and pest (insect) abatement. Applicant shall have the Establishment and the area around the Premises properly cleaned at the end of each night to ensure that there are not garbage and odors present the following morning.
9. **Security Cooperation in Stemming Illegal Drugs and Public Drinking.** Applicant shall take all necessary steps to minimize problems of illegal drugs and public drinking, including, at all times a trained employee on site, without limitation, designating a sufficient number of employees to assure adequate security and to control unruly patrons, whether inside or in the immediate outside area; monitoring for and prohibiting sales or use of illegal drugs within or about the Premises, maintaining contact and cooperating

with MPD and other enforcement officials when known or suspected drug activities occur. Applicant shall to the full extent permissible by law discourage loitering in the vicinity of the Premises. Applicant shall cooperate with MPD in the investigation of criminal offenses within and immediately around the business. The applicant shall secure all crime scenes to the best of its ability and shall not contaminate, destroy, alter or clean any area known to be a crime scene until authorized to do so by the lead MPD official on the scene of the offense.

Applicant shall have sufficient number of recording cameras of good photographic quality which maintain information for at least 30 days. These recording cameras shall cover indoor, and summer garden areas, including all entrance, exits, and other crowded spaces. This information shall be made available to representatives of ABRA and/or the MPD as requested.

The Protestant (ANC6D) requests that the ABC Board require the Applicant to develop a written Security Plan to be filed with the ABC Board and a copy provided to the ANC/ABC Committee. This plan shall include the elements required in DC Law Title 25-211(d)(2) .

10. ***Participation in the Community.*** Applicant agrees to seek to maintain open communication with the Protestants, and the community for which the ANC acts.
11. ***Notice and Opportunity to Cure.*** In the event that any of the parties is in breach of this Agreement, it 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 30 days of the date of such notice. If Applicant or the licensee fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30-days to cure, fails to commence cure of such breach and diligently pursues such cure) failure shall constitute a cause for filing a complaint with the ABC Board pursuant to D.C. Official Code § 25-446 (e).

If to Applicant: Shabby, I.J.C t/a Due South
3227 35th Street, NW
Washington, DC 20016
Attn: Robert Blair, Managing Member
Phone: (202) 255-5855 (cell)
Fax (202) 333-8368
e-mail: boblairdc@gmail.com

If to Protestants: Advisory Neighborhood Commission 6D
1101 4th Street, SW, Suite W130
Washington, DC 20024
Attn: Chair, ANC
(202) 202 554-1795
Fax (202) 202 554-1774

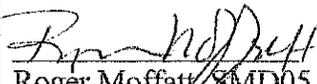
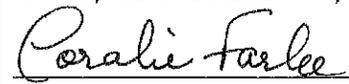
e-mail: office@ANC6D.org

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.

- 13. **Withdrawal of Protest.** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestants shall withdraw the Protest.

PROTESTANT:

APPLICANT:

<p>Chair, ANC6D</p> <p> <u>12/08/2014</u> Roger Moffatt, SMD05 Date</p> <p>Chair, ABC Committee, ANC6D</p> <p> <u>8 Dec 14</u> Coralie Farlee Date cfarlee@mindspring.com</p>	<p>Shabby, LLC t/a Due South</p> <p> <u>12/10/14</u> By: Robert Blair, Managing Member Date</p>
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Near Southeast/Southwest
Advisory Neighborhood Commission 6D

December 8, 2014

1101 Fourth Street, SW
Suite W130
Washington, DC 20024
202.554.1795
Email: office@anc6d.org
Website: www.anc6d.org

Ruthanne Miller, Chair
Alcohol Beverage Control Board
2000 14th Street, NW, Suite 400S
Washington, DC 20009

OFFICERS

Chairman
Roger Moffatt

Vice Chairman
Andy Litisky

Secretary
Stacy Cloyd

Treasurer
Rachel Reilly Carroll

COMMISSIONERS

SMD 1 - *Sara Marrero*
SMD 2 - *Stacy Cloyd*
SMD 3 - *Rachel Reilly Carroll*
SMD 4 - *Andy Litisky*
SMD 5 - *Roger Moffatt*
SMD 6 - *Rhonda Hamilton*
SMD 7 - *Vacant*

RE: ANC6D Cooperative Agreement for new application/license: Due South, 301 Water Street, SE, CR License #096888.

Dear Ms. Miller:

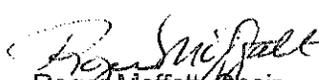
At its regularly scheduled, properly noticed meeting on December 8, 2014, with a quorum present, the Advisory Commission 6D voted 3 to 0 to 1 to recommend approval of a Cooperative Agreement for applicant, Due South, new License # 097053.

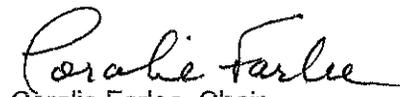
Please note that the applicant applied for a license Class CT and has agreed to amend his application and seek a retailer's Class CR license. This is consistent with other establishments at that address; in addition, the establishment is being discussed and advertised as a "restaurant."

This is a new application. ANC6D has previous experience with this applicant at the Bullpen I and Bullpen II establishments. We have, therefore, tightened some of the hours and request some additional requirements, notably that we request the ABC Board require the applicant to develop a security plan to include the elements required in DC Law Title 25-211(d)(2). Also, specific occupancy numbers are included only for the Summer Garden; we are concerned that some patrons of nearby establishments have become accustomed to "standing around" in the outdoor space; this new establishment is just across the street from a large residential apartment building. A signed Cooperative Agreement is attached.

Please contact Commissioner Moffatt or Dr. Coralie Farlee, Chair, ABC Committee, ANC6D at 202-554-4407, cfarlee@mindspring.com if you have any questions or concerns.

Sincerely,


Roger Moffatt, Chair
ANC6D


Coralie Farlee, Chair
ABC Committee, ANC6D

Cc: Martha Jenkins
✓ Sarah Fashbaugh
Attachment: CA