

**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

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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:

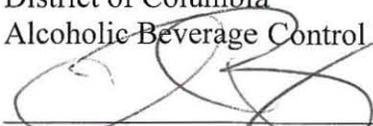
Section 8 (Communication with Protestant) – This section shall be removed.

The parties have agreed to this modification.

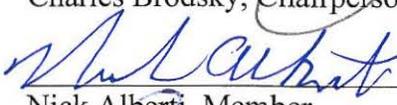
3. Copies of this Order shall be sent to the Applicant and ANC 6C.

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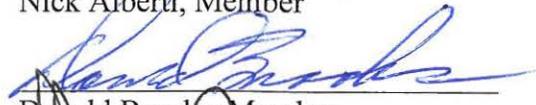
District of Columbia
Alcoholic Beverage Control Board



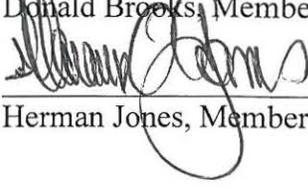
Charles Brodsky, Chairperson



Nick Alberti, Member

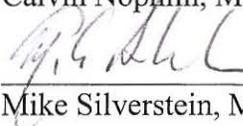


Donald Brooks, Member



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.

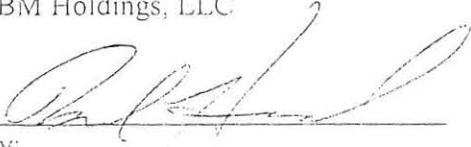
The applicant will encourage employees to take public transportation and not to park on surrounding residential streets.

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.

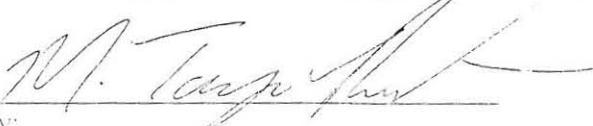
April

APPLICANT:
TBM Holdings, LLC


By: _____

Brad Howard

ADVISORY NEIGHBORHOOD COMMISSION 6C


By: _____

M. Tony Richardson
Commissioner ANC 6C05