

5/4/05

AGREEMENT

THIS AGREEMENT (the "Agreement") is made this 4 day of May, 2005 between The Show Bar, LLC t/a The Show Bar (the "Applicant") and UOF-H Street, LLC (the "Protestant").

WHEREAS, Applicant applied for issuance of a Retailer's License Class CN;

WHEREAS, Applicant has agreed to modify that application so as to request a Retailer's License Class CT and otherwise ensure that it shall not be issued a Class CN license;

WHEREAS, Protestant owns the real property and improvements abutting and immediately adjacent to the premises for which Applicant's license is sought;

WHEREAS, Protestant has protested the Applicant's application; and

WHEREAS, the parties have agreed to enter into this Agreement and to request the Alcohol Beverage Control Board to approve the Applicant's application conditioned upon Applicant's full compliance with the terms of this written Agreement in the future.

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. Public Space Cleanliness and Maintenance. Applicant shall maintain its property and the public space in a clean and litter-free condition by:
 - a. Picking up all trash on and in the public space areas immediately adjacent to its premises, including , the front sidewalk up to and including the gutter in front of the premises, and the back alley bordering the rear of the property. Applicant shall clean these areas a minimum of three times daily (immediately before business hours and once between 5:00 p.m. and 8:00 p.m., and within an hour prior to or after closing).
 - b. Maintaining regular commercial trash and garbage removal service sufficient to keep its trash and any dumpster area reasonably clean and free from overflow. Applicant shall deposit trash and garbage only in 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.
 - c. 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.
 - d. Maintaining the public space in front of the establishment to keep it free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulation in these respects.
 - e. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.

- f. Promptly removing or painting over any graffiti written on the exterior walls of the property.

2. Business Improvement District:

- a. Applicant shall be an active participant in an effort to bring a Business Improvement District (BID) program to the H Street NE corridor.
- b. Applicant shall support and financially contribute to any BID implemented on the H Street NE corridor.

3. Business Operations and Practices:

- a. Applicant shall not, directly or indirectly, sell or deliver alcohol to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated. A person of intemperate habits shall be defined as:
 - 1) Any person arrested or cited for alcohol-related offences by the Metropolitan Police Department for any alcohol-related crime three times or more in any one year; and
 - 2) Who has been so identified to the licensee by the Metropolitan Police Department by giving a photo and name to the licensee.
- b. Applicant shall take all necessary steps to prevent patrons from becoming rowdy or disturbing the Protestant's tenants. Applicant shall refuse admission/service to loud, rowdy, and/or unruly persons.
- c. Applicant shall ensure that no patron brings alcohol into the establishment from outside sources, and at no time exits the establishment with alcoholic beverages.
- d. Applicant shall not provide or sell alcoholic beverages "to go."
- e. Applicant shall not promote or participate in bar or pub "crawls" or "tours", or any other event of similar nature.
- f. The establishment shall be managed by the applicant in person or a board-licensed manager.
- g. Applicant, and all bar managers of the applicant, shall attend and complete an alcoholic beverage server training course/seminar.
- h. Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
 - 1) *Proper ID required (proof of age 21 minimum to be served and assurances that ID's will be checked at all times prior to serving alcoholic beverages to patrons.
 - 2) The sale of alcohol to minors is prohibited.

- 3) Patrons are requested by management to not litter, loiter, or make excessive noise in the neighborhood as they arrive or depart.
 - 4) Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.
 - 5) Patrons are requested by management to not contribute to panhandlers.
- i. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:
- 1) Asking loiterers to move on whenever they are observed outside the establishment;
 - 2) Calling the Metropolitan Police Department (MPD) to remove loiterers if they refuse Applicant's request to move on;
 - 3) Calling the Metropolitan Police Department if illegal activity is observed;
 - 4) Keeping a written record of dates and times (i.e. log) when the MPD was called for assistance;
 - 5) Applicant's log shall be provided to the Board and, for good cause shown to the Board, to Protestant during hearings involving future renewals or contested proceedings involving the Applicant's license.
 - 6) If the establishment becomes a scene of violent crime or disturbances, Applicant shall, among other things, implement and file with the ABC Board a security plan specifically identifying the manner in which it will resolve such crime or disturbances including, if necessary, through the retention of a qualified third-party security company.
- j. Applicant shall not post any alcoholic beverage signage (promotions) in the windows (i.e. "Bud Light" signs, "Bacardi" signs, or other signs/posters that identify brand(s) of alcohol.).
- k. Applicant shall prohibit the installation of pay phones around the establishment (externally).
- l. Applicant shall install and maintain high-intensity flood-lights on the rear of its premises so as to fully light the abutting alleyway from dusk until dawn.
- m. Applicant shall not exceed its stated capacity.
- n. Applicant shall take all reasonable actions to ensure that fumes and odors emanating from the premises are not smelled within Protestant's property. Applicant shall ensure that its exhaust hoods and other ventilation equipment are vented away from Protestant's property and the roof-top HVAC systems located thereon.

4. Music / Dancing / Entertainment:

- a. Applicant shall take all reasonable actions, including performing a sound check with Protestant, to ensure that sound and vibration originating from within the establishment are not disruptive to or heard or felt within Protestant's property. Applicant shall install adequate sound proofing in the establishment, particularly between party-walls, and shall not affix speakers to the party-wall between the establishment and Protestant's property. Applicant shall keep the sound system at reasonable levels of volume and bass, and reduce even further these levels when necessary to ensure that its operations do not interfere with Protestant's tenants or property.
- b. Applicant shall close all windows at all times when live music is being played within the subject premises, unless the volume of said music is so low, with the windows open, as to not be heard by anyone standing on the sidewalk in front of the premises on H Street NE.
- c. Applicant agrees to end playing of live music at 11PM on weekdays and 1AM on weekends.
- d. Applicant may provide live music or live entertainment to be performed by employees or hired entertainers, but not by patrons. All persons performing live music or entertainment shall be "fully clothed." There shall be no nude performance – topless or bottomless, and no "sexually-oriented" entertainment shall be offered at the establishment. Fully clothed is defined as wearing clothing that covers the buttocks, pubic region, genitals and female breast. Applicant shall not, under any circumstances, offer "sexually oriented" entertainment (as defined below) or entertainment by performers who are less than "fully clothed:" (as defined above). The foregoing restrictions shall apply to all forms of recorded or electronically transmitted entertainment, as well as live entertainment.
- e. Nude performance is defined as dancing or other entertainment by a person (or audience participant) whose genitals, pubic region, or buttocks are less than completely and opaquely covered and, in the case of a female, whose breasts are less than completely and opaquely covered below a point immediately above the top of the areola.
- f. Sexually oriented performance or entertainment (whether by performers or members of the audience), as defined by 11 DCMR 744 and constituting actual or simulated acts of human masturbation, sexual intercourse, sexual stimulation or arousal, sodomy, or bestiality; and fondling or other erotic touching of human genitals, pubic region, buttock, or breast. "Lap dancing" or actual or simulated sex acts between the dancers, performers, or employees of the establishment and patrons are prohibited.

5. Continued Operation as a "CT". Applicant agrees that it will not file any request in the future seeking a "substantial change" in its operations that would change its operations or class of license from a "CT" to a "CN" or nightclub, although Applicant shall be permitted to request a "substantial change" to operate as a "CR" or restaurant. In all circumstances during the existence of the license obtained by Applicant hereunder, the Applicant and holder of this license in this location will not seek to operate as a "CN" or nightclub.

6. Cooperation with ANC 6A. Applicant shall work with the Single-Member District ANC Commissioner whose boundaries the establishment is located, on resolving issues preventing the applicant from fulfilling its obligations under this cooperative agreement.

7. Cooperation with Protestant. Upon reasonable request, Applicant shall promptly meet and confer with Protestant to resolve any problems at or caused by the establishment or between the parties.

8. Modifications. This agreement can be modified only by mutual agreement of all the parties with the approval of the ABC Board. In the case of ANC6A, if applicant desires to modify the terms of this agreement, the applicant, prior to implementing the change(s), shall receive written agreement from ANC6A after a majority of the commissioners shall have voted in favor of the changes at a full public meeting.

9. Miscellaneous.

- a. Applicant certifies that it does not owe more than \$100 to the District of Columbia government as the result of any fine, fee or penalty interest or past due tax.
- b. Applicant shall prominently post a copy of this Agreement in its establishment.
- c. Applicant shall operate in compliance with all applicable laws and regulations.

10. Enforcement.

- a. If either party hereto believes in good faith that the applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the Applicant and the 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. In the event of an uncured material breach of the conditions of the Agreement, Protestant shall have the right to petition the ABC Board for a "show cause" hearing. The parties further agree that this agreement may be enforced by or against any party in the Superior Court for the District of Columbia, and, in the event a party has proved that the other failed to reasonably cure a material breach(s) of this agreement, that prevailing party is entitled to its reasonable attorneys' fees and costs.
- c. This Agreement is binding on the Applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

[EXECUTION SET FORTH ON FOLLOWING PAGE]

Executed this 4th day of May, 2005.

APPLICANT: THE SHOW BAR, LLC

By: Ju Engat

PROTESTANT: UOF - H STREET, LLC
BY: SQUARE MARK, INC. MANAGER

By: Robert Appleby
Robert Appleby, Pres.