

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

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In the Matter of:)	
)	
Garage Door, Inc.)	
t/a Five)	
)	
Application for a Retailer's Class CT)	License no.: 71638
License – Substantial Change)	Case no.: 60875-06/118P
at premises)	Order no.: 2006-237
1214B 18 th Street, N.W.)	
Washington, D.C.)	
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Garage Door, Inc., Applicant

Darren A. Bowie, Chairman, on behalf of Advisory Neighborhood Commission 2B,
Protestant

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The substantial change application for summer garden, having been protested, came before the Alcoholic Beverage Control Board ("Board") on September 20, 2006, in accordance with D.C. Official Code § 25-601 (2001). Darren A. Bowie, Chairman, on behalf of Advisory Neighborhood Commission ("ANC") 2B, filed timely opposition by letter on August 17, 2006.

The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated September 19, 2006, the Protestant has agreed to withdraw its protests, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

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Accordingly, it is this 20th day of September 2006, **ORDERED** that:

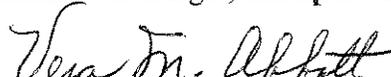
1. The protest of Mr. Bowie, Chairman, on behalf of ANC 2B, is **WITHDRAWN**;
2. The substantial change application of Garage Door, Inc. t/a 5, for a summer garden at 1214B 18th Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement is **INCORPORATED** as part of this Order;
and
4. Copies of this Order shall be sent to the Protestant and the Applicant.

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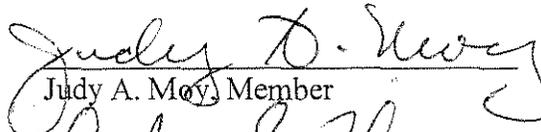
District of Columbia
Alcoholic Beverage Control Board



Charles A. Burger, Chairperson



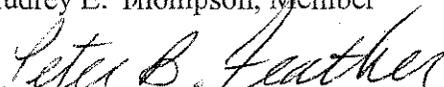
Vera M. Abbott, Member



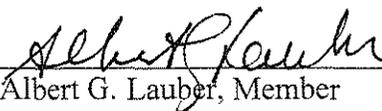
Judy A. Moy, Member



Audrey E. Thompson, Member



Peter B. Feather, Member



Albert G. Lauber, Member

Eartha Isaac, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

VOLUNTARY AGREEMENT

This Voluntary Agreement made this 19th day of September, 2006, by and among Garage Door, Inc., t/a Five (Applicant); and Advisory Neighborhood Commission 2B (ANC2B) (Protestant).

RECITALS

WHEREAS, Applicant is the holder of retailer's license 71638 Class CT for premises located at 1214B 18th Street NW; and

WHEREAS, Protestant has protested Applicant's request for a summer garden endorsement to its license for use of its rooftop deck; and

WHEREAS, the parties have agreed to enter into this voluntary agreement, pursuant to DC Code Section 25-446 (2001 ed.), to resolve the issues raised by Protestant's objection, and to request that the Alcoholic Beverage Control (ABC) Board approve Applicant's request for a summer garden endorsement conditioned on Applicant's compliance with the terms of this written agreement.

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. The hours of operation of the rooftop summer garden shall be:

Sunday through Thursday	5:00PM to 1:45AM
Friday and Saturday	5:00PM to 2:45AM
3. Applicant acknowledges familiarity with and will comply with the noise control provisions of District of Columbia laws and regulations, including but not limited to DC Code Section 25-725 (2001 ed.). Without limitation to the generality of the foregoing, small speakers (no more than four (4)) may be installed or placed on the rooftop for background recorded music, only. Such speakers shall be no larger than 14 inches in height. No live music or live performances shall be permitted on the rooftop.
4. Applicant shall maintain serviceable fire extinguishers on the rooftop at all times, and staff of the establishment stationed on the rooftop will be trained in the use and operation of said fire extinguishers.
5. Notices. In the event of a perceived violation of the provisions of this Agreement, Applicant shall be notified in writing of such violation. Notices shall be sent by first class mail postage prepaid, hand delivery or by recognized overnight delivery service as follows:

If to Applicant: Tim Sherman
Garage Door, Inc.
t/a Five
1214 B 18th Street, NW
Washington, DC 20036

With a copy to:
Michael D. Fonseca
Mallios & O'Brien
2600 Virginia Ave, NW
Suite 1112
Washington, DC 20037

If to protestant: Advisory Neighborhood Commission 2B
9 Dupont Circle, NW
Washington, DC 20036

Applicant shall address or rectify any perceived violation of this agreement, and provide a written response to any notification under this Agreement, within ten (10) calendar days. Failure to give notice shall not constitute waiver or acquiescence to the perceived violation; however, Protestant shall give notice of perceived violations of the terms of this Voluntary Agreement to Applicant, and permit Applicant to respond, prior to the filing of a complaint with the ABC Board.

6. Withdrawal of protest. Protestant hereby agrees to withdraw its protest and join with Applicant in requesting that the ABC Board accept this Agreement as a condition of approval of the summer garden endorsement. The withdrawal of Protestant's request is contingent upon the text of this Voluntary Agreement being incorporated in an Order of the Board granting Applicant's summer garden endorsement application.

7. Counterparts. This Agreement may be executed simultaneously in two counterparts, each of which shall be deemed an original and both, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature and may be appended to any other counterpart.

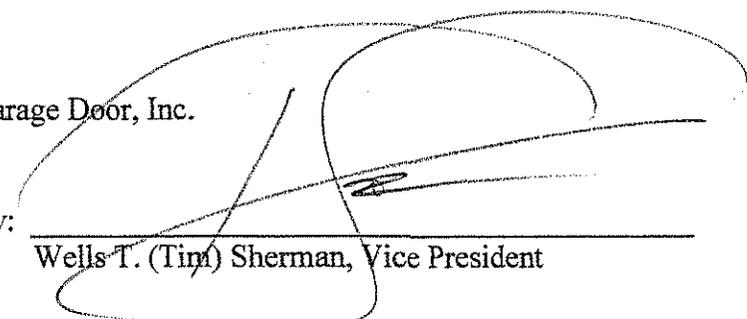
8. Authority. Representatives executing this Agreement on behalf of the respective parties do hereby affirm that they have the authority to do so.

In witness whereof, the parties have executed this Voluntary Agreement as of the day and date first above written.

Applicant:

Garage Door, Inc.

By:


Wells T. (Tim) Sherman, Vice President

Protestant:

Advisory Neighborhood Commission 2B

By: Darren A. Bowie 9/19/06
Darren Bowie, Chairman