

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

<hr/>	)	
<b>In the Matter of:</b>	)	
	)	
Linda & A, Inc.	)	
t/a Penthouse (The)	)	
	)	
Application for a Retailer Class CN	)	
License – renewal	)	Application no. 11371-03/015P
at premises	)	2004-53
3503 Georgia Avenue, N.W.	)	
Washington, D.C.	)	
<hr/>	)	

Councilmember Jim Graham, Phyllis Stewart-Thompson, President, on behalf of Luray-Warder Neighborhood Association, Brenda Williams, President, on behalf of Nile Valley Business Association, Janie Boyd, Commissioner Elect, SMD 1A07, on behalf of the Advisory Neighborhood Commission 1A, Charles E. Matiella, Commissioner Elect, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, Denise Wiktor, Vice Chair, 4<sup>th</sup> District CAC, Regina Upchurch, Commissioner, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, and Douglas Fierberg, Esquire, on behalf of Protestants

William J. Howard, Esquire, on behalf of Applicant

**BEFORE:** Charles A. Burger, Chairperson  
Vera M. Abbott, Member  
Peter B. Feather, Member  
Judy A. Moy, Member  
Audrey E. Thompson, Member

**ORDER ON WITHDRAWN PROTEST AND VOLUNTARY AGREEMENT**

The application, having been protested, came before the Board on February 5, 2003, in accordance with D.C. Official Code §25-601 (2001 Edition). Councilmember Jim Graham, Phyllis Stewart-Thompson, President, on behalf of Luray-Warder Neighborhood Association, Brenda Williams, President, on behalf of Nile Valley Business Association, Janie Boyd, Commissioner Elect, SMD 1A07, on behalf of the Advisory Neighborhood Commission 1A, Charles E. Matiella, Commissioner Elect, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, Denise Wiktor, Vice Chair, 4<sup>th</sup> District CAC, Regina Upchurch, Commissioner, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, and several individuals, represented by

Linda & A, Inc.  
t/a Penthouse (The)  
Application no. 11371-03/015P  
Page two

Douglas Fierberg, Esquire, filed timely protest letters.

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. However, the Board amended the agreement by striking the following phrase: "(or successor Councilmember.)" from Paragraph 5. Additionally, the Board amended the agreement by striking Paragraph 6 in its entirety. Pursuant to the amended agreement, dated March 12, 2004 the protestants have agreed to withdraw the opposition, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Accordingly, it is this 9<sup>th</sup> day of JUNE 2004, **ORDERED** that:

1. The opposition of Councilmember Jim Graham, Phyllis Stewart-Thompson, President, on behalf of Luray-Warder Neighborhood Association, Brenda Williams, President, on behalf of Nile Valley Business Association, Janie Boyd, Commissioner Elect, SMD 1A07, on behalf of the Advisory Neighborhood Commission 1A, Charles E. Matiella, Commissioner Elect, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, Denise Wiktor, Vice Chair, 4<sup>th</sup> District CAC, Regina Upchurch, Commissioner, SMD 1A08, on behalf of Advisory Neighborhood Commission 1A, and several individuals, represented by Douglas Fierberg, Esquire is **WITHDRAWN**;

2. The application of Linda & A, Inc. t/a Penthouse (The) for a retailer's class CN license (renewal) at 3530 Georgia Avenue, N.W., Washington, D.C. is **GRANTED**;

3. The above-referenced agreement between the parties is **INCORPORATED** as part of this Order; and

4. Copies of this Order shall be sent to the Protestants, the Attorney for the Protestants, the Attorney for the Applicant, and the Applicant.

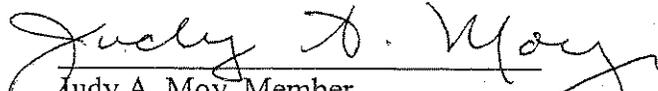
District of Columbia  
Alcoholic Beverage Control Board

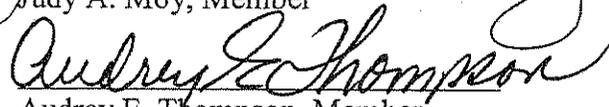
  
\_\_\_\_\_  
Charles A. Burger, Chairperson

  
\_\_\_\_\_  
Vera Abbott, Member

Linda & A, Inc.  
t/a Penthouse (The)  
Application no. 11371-03/015P  
Page three

  
Peter Feather, Member

  
Judy A. Moy, Member

  
Audrey E. Thompson, Member

HBKHA rec'd 4/7/04  
(LH)

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT (the "Agreement") is made this 12th day of March, 2004, by and between Linda & A, Inc. t/a The House ("Applicant") and United Neighborhood Coalition, Georgia Avenue Fightback Coalition, Luray Warder Neighborhood Association, North Columbia Heights Neighborhood Association, and Councilmember Jim Graham. (collectively referred to as "Protestants").

WITNESSETH

WHEREAS, Applicant has applied for renewal of its retailer's license Class CN;

WHEREAS, Protestants have protested the application on the grounds that the Applicant's establishment has previously been the scene of violence and other disturbances to the neighborhood; 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 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. Permanent Adoption of a Security Plan and Summary Suspension Conditions.

From this date forward, the Applicant shall continue to comply with the conditions placed upon its license by the ABC Board as a result of Summary Suspension Hearing on March 5, 2003, including, without limitation:

A. The Applicant shall maintain a security plan which identifies retention of a qualified third-party security company to provide security services at the establishment. Under that plan, the Applicant or its security company shall provide two (2) security staff on the interior of the establishment on Friday and Saturday from 10:00 p.m. to 3:30 a.m. and during peak hours on other days including, by way of example, at special promotions and like events. The Applicant shall also provide two (2) security staff at the exterior of the establishment from 10:00 p.m. to 3:30 a.m. on Friday and Saturday;

B. The Applicant shall maintain an incident log in which the Applicant records all incidents involving fights, acts of violence, or other disturbances of the police which occur on or immediately in front of the premises. The log shall be available for review by the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license;

C. The Applicant shall maintain a log identifying all calls made by the establishment to the Metropolitan Police or Fire Department or other emergency personnel. The log shall be available for review by the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license;

D. Absent approval from the ABC Board following lawful notice to all parties hereto, the Applicant shall not exceed its stated capacity of 150 persons, whether seated or standing. The Applicant shall ensure such capacity through use of a counting mechanism stationed at the front door to the premises;

E. All new employees of the Applicant involved in the service of alcoholic beverages shall attend alcoholic beverage server training, and certifications of such training shall be provided to the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license;

F. The Applicant shall conspicuously post signs stating the following: "You must be 21 years of age to enter. No touching the Dancers. All patrons are required to adhere to these policies."

G. The Applicant is prohibited from using outside promoters. The Protestant will not oppose a subsequent lawful request by the Applicant to modify this Agreement so as to use outside promoters to the extent such promoters are used to convert the establishment from an adult entertainment venue into one offering mainstream entertainment that does not involve nudity, hip-hop, or performances resulting in disruptions to the neighborhood.

2. Noise and Privacy. Applicant will comply with the D.C. Noise Control Act, and take all necessary actions to ensure that music, vibration from music, general restaurant noise, and noise from patrons are not audible from or within adjacent residential properties. If necessary, the Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening of entrance and exit doors.

3. Trash; Patrons; Loitering; Prostitution; and Drug Dealing.

A. Trash: Within one hour prior to or after the opening or closing of the establishment, the Applicant will pick-up and clean all refuse in the following areas:

1. In the alley bordering its facility, running from its entrance on Georgia Avenue to five feet past the South-West corner of the Applicant's building;
2. The sidewalk and curb areas in front of its premises and bordering Georgia Avenue, running from the North-East corner of its building to twenty feet past the South side of the alley bordering its building.

In the interim periods, the Applicant will make reasonable efforts to regularly police and clean these areas to ensure a clean presence in and around the establishment.

B. Patrons. Applicant shall take reasonable steps, such as notification of the Metropolitan Police, to prevent its patrons or other persons from causing violence, noise, or other disturbances inside and at the entrance of the establishment. "Lap dancing" or actual or simulated sex acts between the dancers or employees of the establishment and patrons are prohibited.

C. Lighting. The Applicant will install and maintain flood-lights on the exterior of its premises so as to fully light the alley abutting the premises from dusk until dawn.

D. Loitering. The Applicant will take all reasonable steps necessary within the law of the District of Columbia, such as notification of the Metropolitan Police, to prevent loitering by any persons at or in the immediate area of the entrance to the establishment, including, without limitation, instructing its security personnel to intervene or to seek assistance from the police.

E. Prostitution. The Applicant shall not knowingly permit any of its employees or persons patronizing the Establishment from soliciting or engaging in acts of prostitution within, or in the immediate areas around, the establishment.

F. Drug Dealing. The Applicant shall not knowingly permit any of its employees or persons patronizing the Establishment from soliciting or dealing in controlled substances within, or in the immediate areas around, the establishment.

4. Security. To the extent any of the security provisions set forth in Paragraph 1 above fail to reasonably control violence and other disturbances at the Applicant's establishment, the Applicant agrees to undertake additional, reasonable security measures so as to reasonably control unruly behavior that is made known to it by its patrons, whether such misconduct is caused by patrons or activities associated with the establishment on or immediately adjacent to its premises. Notwithstanding the foregoing, the Applicant shall immediately call the Metropolitan Police Department in the event of any breach of the peace at or immediately adjacent of its establishment. Details of the Applicant's security plans, or any changes thereto, shall be provided to the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license.

5. Additional Restrictions on Operations. Excluding advertisements for its charitable parties for children as identified herein, the Applicant shall not, directly or indirectly, distribute or allow for the distribution of flyers advertising any of the Applicant's business or events. The Applicant will not employ any person at the establishment who is not at least eighteen (18) years old. With respect to the Applicant's special Christmas, Easter or like holiday charitable programs involving children under the age of 18, the parties to this agreement agree that such events will be hosted in the community, and not within the establishment, provided, however, that Councilmember Jim Graham's office (~~or successor Councilmember~~) shall, after being given notice under Paragraph 12, timely arrange for suitable space in the neighborhood to be made available to the Applicant for such events at local churches, public halls, or like facilities at no cost to the Applicant. Such alternative space must be arranged within thirty (30) days after notice is given and a request is made by the Applicant and be available for no less than thirty (30) days in advance of the Applicant's scheduled event so that the Applicant can plan and prepare for the event. The alternative space must be within walking distance to the Establishment (6 or so blocks), seat at least 150 people, and have food preparation facilities so that food may be served by the Applicant to children. Subject to the foregoing, the Applicant shall not permit children or any person under the age of eighteen (18) from entering the establishment.

~~6. Inspection of the Establishment. Upon reasonable notice, the Applicant shall permit a representative or designee of Councilmember Graham's office (~~or successor Councilmember~~) to visit the establishment to review compliance with this Agreement, provided, however, such visit shall be conducted in a manner which does not disturb the operations of the establishment. The Applicant shall make either the owner or his son available to meet with the representative at this time. No photographs of the interior of the establishment are permitted during such inspection.~~

7. Parking. The Applicant shall continue using its best efforts to secure a contract for private parking for its patrons.

8. Participation in Community Meetings. In order to maintain an open dialogue with the community and cooperatively address and control any problems associated with its operations, the Applicant, upon reasonable notice, shall send a representative of the establishment to requested meeting(s) by Councilmember Graham's office (or its designee), the Metropolitan Police Department, or the local Advisory

Neighborhood Commission to discuss and find ways to reasonably resolve any problems or concerns related to the Applicant's establishment.

9. ABC Regulations. Applicant reaffirms its commitment to abide by all ABC regulations.

10. Withdrawal of Protest. The Protestants hereby withdraw their protests to the Application for renewal. It is expressly understood and agreed by the parties hereto that this withdrawal shall not be deemed a waiver or forfeiture of the rights of the Protestants, or any other person, to seek, through the institution of a show cause proceeding or other applicable procedure, the revocation of the Applicant's license or other legal or equitable relief based on a breach of this Agreement or the terms or conditions of the Applicant's license.

11. Binding Effect. This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of Applicant. A material violation of this Agreement or its ABC license by the Applicant shall constitute cause for seeking a Show Cause Order from the ABC Board.

12. Notice. Any notices required to be made under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

1. APPLICANT:

The House  
3530 Georgia Avenue, N.W.  
Washington, D.C. 20010  
With a copy to:  
William J. Howard, Esquire  
4316 Hamilton Street  
Hyattsville, Maryland 20781

2. PROTESTANTS:

Dr. Adrian Wilson, President  
United Neighborhood Coalition  
c/o Councilmember Jim Graham's Office  
1350 Pennsylvania Ave., NW  
Suite 406  
Washington, DC 20004  
and  
Ms. Janie Boyd, ANC 1B Commissioner, President  
Georgia Avenue Fightback Coalition  
c/o Councilmember Jim Graham's Office  
1350 Pennsylvania Ave., NW  
Suite 406  
Washington, DC 20004  
and  
Councilmember Jim Graham, Ward One  
The Wilson Building  
1350 Pennsylvania Ave., NW  
Suite 406  
Washington, DC 20004  
and

Alicia Rucker, President  
Luray Warder Neighborhood Association  
c/o Councilmember Jim Graham's Office  
1350 Pennsylvania Ave., NW  
Suite 406  
Washington, DC 20004  
and

Garrett Preesick, President  
North Columbia Heights Neighborhood Association.  
3612 New Hampshire Ave., NW  
Washington, DC 20010

With a copy to:

The Honorable Jim Graham  
1350 Pennsylvania Avenue, N.W.  
Suite 406  
Washington, D.C. 20004  
and

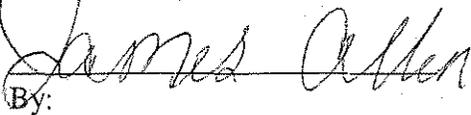
Douglas E. Fierberg, Esquire  
1150 Connecticut Avenue, N.W.  
Ninth Floor  
Washington, DC 20036

13. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

APPLICANT:

**LINDA & A, INC. T/A THE HOUSE**

  
By:

PROTESTANTS:

**UNITED NEIGHBORHOOD COALITION**

\_\_\_\_\_  
By: Dr. Adrian Wilson, President

**GEORGIA AVENUE FIGHTBACK COALITION**

\_\_\_\_\_  
By: Ms. Janie Boyd, ANC 1B Commissioner, President

[executions continued on following page]