

- (2) The remaining portions of the 2008 settlement agreement, entered between Penn Quarter, Advisory Neighborhood Commission 6C (“ANC 6C”) and Dominick Cardella on October 1, 2008, remain in effect.
- (3) The settlement agreement, entered between Penn Quarter and Advisory Neighborhood Commission 2C (“ANC 2C”) on May 21, 2014, remains in effect.

The Board finds that this minor amendment to the agreement will not have a negative impact on the surrounding neighborhood.

Procedural Background

On January 10, 2014, Penn Quarter filed a timely Petition to Terminate a Settlement Agreement (“Petition”) requesting that the Board terminate its 2008 settlement agreement. Top Shelf, LLC t/a Penn Quarter Sports Tavern, Case No. 10766-08/024P, Board Order No. 2008-264 (D.C.A.B.C.B. Oct. 1, 2008) [*2008 Settlement Agreement*]. The settlement agreement was entered into by Penn Quarter, ANC 6C¹ and Dominick Cardella and was approved by the Board on October 1, 2008. *Id.*

The Board found that the Petition satisfied D.C. Official Code § 25-446(d)(2) because it was filed during the Petitioner’s renewal period and after four years from the date the Board originally approved the settlement agreement at issue in this matter. The Petition also contained the affidavit required by § 25-446(d)(5). The Alcoholic Beverage Regulation Administration (ABRA) then provided notice to the parties to the settlement agreement and the public in accordance with District of Columbia (D.C.) Official Code § 25-446(d)(3).

Subsequently, protests against the Petition were filed by ANC 2C and Dominick Cardella in accordance with District of Columbia (D.C.) Official Code §§ 25-601(1) and 25-602. *ABRA Protest File No. 14-PRO-00011*.

The parties came before the Board’s Agent for a Roll Call Hearing on March 10, 2014 and the Protestants were granted standing to protest the Petition. The parties then came before the Board for a Protest Status Hearing on April 23, 2014. At the Protest Status Hearing, the ANC and Petitioner presented the Board with a settlement agreement, which the Board approved. Top Shelf, LLC t/a Penn Quarter Sports Tavern, Case No. 14-PRO-00011, Board Order No. 2014-225 (D.C.A.B.C.B. May 21, 2014) [*2014 Settlement Agreement*]. The Petitioner and remaining Protestant, Dominick Cardella (hereinafter “Protestant”), proceeded to a Protest Hearing on June 4, 2014.

Based on the Protestant’s initial protest letter, the Board may only grant the Petition if the Board finds that the request will not have a negative impact on peace, order, and quiet in the area

¹ Although ANC 6C is a signatory of the original Settlement Agreement between the parties, the ANC’s boundaries have since realigned and the establishment is no longer within the jurisdiction of ANC 6C. Therefore, this matter was brought to the attention of ANC 2C, the ANC in which the establishment is located.

located within 1,200 feet of the establishment and otherwise satisfies § 25-446. D.C. Official Code §§ 25-446(d)(4), 25-602; Letter from Dominick Cardella, Abutting Property Owner, to Tesha Anderson, Adjudication Assistant, Alcoholic Beverage Control (ABC) Board (February 11 2014) [Cardella Protest Letter]².

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

1. Penn Quarter's hours of operation are as follows: Monday through Sunday, 6:30 a.m. – 2:00 a.m. See *ABRA Licensing File No. ABRA-076039*. Penn Quarter's hours of sales, service and consumption are as follows: Sunday through Thursday, 11:00 a.m. to 1:30 a.m., Friday and Saturday, 11:00 a.m. to 2:30 a.m. Id. Finally, the establishment's hours of entertainment are as follows: Sunday through Thursday, 6:00 p.m. to 1:30 a.m., Friday and Saturday 6:00 p.m. to 2:00 a.m. Id.

2. Petitioner holds a Retailer's Class CT License and has two settlement agreements attached to its license. *ABRA Protest File No. 14-PRO-00011*, Notice of Public Hearing. The Board approved the original settlement agreement on October 1, 2008. *2008 Settlement Agreement*, 2. The Board approved the second settlement agreement, entered into by ANC 2C and Penn Quarter on May 21, 2014. *2014 Settlement Agreement*, 2.

I. 2008 Settlement Agreement

3. Petitioner entered into a settlement agreement with ANC 6C and Protestant on September 10, 2008. *2008 Settlement Agreement*, 1. In the agreement, the parties agreed to take reasonable measures, including the possibility of additional sound proofing, to minimize the level of sound emanating from the premises. Id. at 4. In addition, the establishment promised to control amplified volume levels and maintain an environment quiet enough, as provided by DC law, to allow residents enjoyment of the neighborhood. Id.

4. The agreement includes a provision by which the establishment agreed to have all exterior amplified sound equipment and speakers turned off prior to 11:00 p.m. daily, and exterior televisions turned off prior to 10 p.m. Id. at 5.

II. 2014 Settlement Agreement

5. Penn Quarter entered into a settlement agreement with ANC 2C on May 21, 2014. *2014 Settlement Agreement*, 2. The agreement provides that the establishment's "hours of operation"

² The Board notes that at the conclusion of the Protest proceedings, the Protestant requested the opportunity to submit Proposed Fact Findings of Fact and Conclusions of Law, but none was received by the Board. Instead, the Protestant submitted correspondence dated June 23, 2014 which reiterated its position. The Board did not consider the post-hearing submission for purposes of deliberating this matter.

shall be consistent with the hours of operation as permitted by the establishment's ABRA license and Sidewalk Café license. Id.

6. As a condition of the settlement agreement between the parties, ANC 2C withdrew its protest. Id.

III. Testimony of ABRA Investigator Abiye Ghenene

7. ABRA Investigator Abiye Ghenene investigated the Petition and wrote the Protest Report submitted into the record. *Transcript (Tr.)*, June 4, 2014 at 21. The establishment is located at 639 Indiana Avenue NW in a Downtown Development zone in which the general purpose is to create a balance mix of [building] uses, including both residential and commercial. Id. at 23; *ABRA Protest File No. 14-PRO-00011*, Protest Report, 2-3 [*Protest Report*]. The zone in which the establishment is located is also a commercial ("C4") zone, whereby office, retail, house and other mixed uses are permissible. *Protest Report*, 3.

8. There are approximately twenty-eight ABC-licensed establishments within 1,200 feet of the establishment. *Tr.*, 6/4/14 at 23. There is one daycare approximately 149 feet away from the establishment. Id. The surrounding area of Indiana Avenue has high pedestrian and vehicular traffic throughout the day and minimal traffic during the evening hours. *Protest Report*, 4.

9. The establishment has two outdoor seating areas. *Tr.*, 6/4/14 at 24. These areas can seat about forty patrons. Id.

10. As part of the investigation, ABRA investigators monitored the establishment on five separate occasions. *Tr.*, 6/4/14 at 24; *Protest Report*, 6. The investigators monitored the establishment and immediate surrounding areas during operational hours and nonoperational hours. *Protest Report*, 6. ABRA investigators observed light to heavy levels of vehicular/pedestrian traffic and minimal available parking. *Protest Report*, 6. During this monitoring period, investigators heard minimal specific noise emanating from the establishment while patrons were sitting in the Sidewalk Café. Id.

11. During Investigator Ghenene's visits, the establishment televisions were playing, but the noise emanating from them did not appear to be excessive. *Tr.*, 6/4/14 at 28. This type of noise is appropriate for a C4 zone. Id.

12. The establishment's investigative history shows that it received a warning letter and committed two violations of its settlement agreement within six days of one another in the same month of 2010. *Tr.*, 6/4/14 at 36. There have been no violations since 2010. Id.

IV. Testimony of Michael Brand

13. Michael Brand is the owner of Penn Quarter. Id. at 3, 43. The establishment has been in business for ten years. Id. at 43.

14. At the hearing Mr. Brand clarified that he was not seeking termination of the settlement agreement, but only amendment to the provision of its settlement agreement with the Protestant that states “The establishment will have all exterior amplified sound equipment and speakers turned off prior to 11:00 p.m. daily and exterior televisions turned off prior to 10:00 p.m.” Id. at 9. Mr. Brand complains that when there are large crowds seated in the outdoor area, he has to turn the television off in order to comply with the establishment’s 2008 settlement agreement. Id. at 10. With the current hour restriction, patrons are asked to go inside if games are broadcast beyond 10:00 p.m. Id. As a result, Mr. Brand is asking to keep the establishment televisions on until the outdoor seating areas close. Id. at 46.

a. Good Faith Negotiations

15. Mr. Brand made several efforts to negotiate amendments to the settlement agreement with the Protestant. Id. at 48. Mr. Brand contacted the Protestant about a year prior to the Protest Hearing. Id. He contacted the Protestant verbally and by email, asking to discuss a change in the hours the televisions would be on at the establishment. Id. at 50.

b. Change in Circumstances

16. Mr. Brand finds there to be several key changes in the neighborhood since he first opened the establishment. Id. at 71. About five years ago, the city installed lighting down Indiana Avenue, N.W. Id. at 72. When that area of the city was developed, many more residents moved into the neighborhood. Id. at 73. Additionally, the storefronts that were once boarded up are now restaurants that patrons enjoy visiting. Id.

17. Since 2008, there are a few establishments that have opened for business that are similar to Penn Quarter. Id. at 85. For example, Redline, located near the Verizon Center, is a sports bar that also has televisions located in an outdoor seating area. Id.

18. In addition, Penn Social, another sports bar, roughly three blocks away, is a key competitor for the establishment. Id. at 87. It seats a large number of patrons, is constantly busy and enjoys late service. Id. at 86.

19. Mr. Brand is concerned about increasing competition from the various bars and restaurants that are opening up in the neighborhood due to their size and resources. Id. at 89. Because Penn Quarter is a smaller establishment, he is finding it difficult to compete. Id.

V. Testimony of David Quinlan

20. Mr. Quinlan testified on behalf of the Protestant. Id. at 95. Mr. Quinlan resides at 601 Pennsylvania Avenue in an apartment building that has bedroom and living room windows that face Indiana Avenue. Id. at 95-96. He has lived at this residence for twenty years. Id. at 98.

21. Mr. Quinlan expressed his concerns about the noise emanating from the establishment. He testified that he did not know about the televisions, but at least three times a week he hears

noise from the establishment that sounds like a wave. He did not know where the sound was coming from until recently. Id. at 96 -97.

VI. Testimony of Dominick Cardella

22. Dominick Cardella is the abutting property owner next to Penn Quarter. Id. at 5. The establishment and his residence share a common wall. Id. at 125. He has lived in this building for forty-two years. Id. at 108.

23. Mr. Cardella testified that based upon his research of the District of Columbia Noise Control Act, the maximum noise levels in commercial areas during the hours of 9:00 p.m. to 7:00 a.m. is 65 decibels. Id. at 109. On May 15, 2014, he purchased a digital sound level meter and took a sound reading of the establishment at approximately 10:20 p.m. Id. at 110. The meter recorded a reading of 89.6 decibels. Id.³

24. Mr. Cardella admits that in spite of his belief that the establishment has violated its settlement agreement on numerous occasions, he has not filed any complaints because he tried to settle his differences directly with Mr. Brand. Id. at 127.

CONCLUSIONS OF LAW

25. Under D.C. Official Code § 25-446(d)(1), “Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board. D.C. Official Code § 25-446(d)(1). Accordingly,

The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

- (A) (i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or

³ The Board notes that Section 2700.7 of Chapter 27 of Title 20 of the D.C. Municipal Regulations requires sound levels to be tested in accordance with the “test procedures to be used for measuring sound levels to determine compliance with Chapters 27 and 28...” 20 DCMR §§ 2700.7. Noise levels under the Act may be measured by any official designated by the Mayor or by any person who is a qualified acoustical engineer who holds a certificate of registration as a professional engineer issued by the District.

In the present case, there is no evidence on the record to support that this testing of sound comports with the testing procedures created in accordance with Chapter 27 in order to find a violation of Chapter 27. The Board interprets §2700.20 as only allowing the Board to deem measurements taken by a government official or “qualified acoustical engineer” sufficient to determine whether a licensee is in violation of Chapter 27. The testing procedures are discussed in Chapter 29 of title 20 of the DCMR. 20 DCMR § 2900 *et. seq.* (West Supp. 2014); See also 19th and K, Inc. t/a Ozio Martini & Cigar Lounge, Case No. 13-PRO-00151, Board Order No. 2014-315 (D.C.A.B.C.B. August 15, 2014). Mr. Brand has not established that he is a “qualified acoustical engineer that holds a certificate of registration as a professional engineer issued by the District.” 20 DCMR § 2700.7. As a result, the Board cannot accept these measurements as proof that Penn Quarter is in violation of Chapter 27.

- (ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;
- (B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and
- (C) The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

D.C. Official Code § 25-446(d)(4)(A)-(C).

26. The Board amends the settlement agreement as follows, based on the Board's determination that such amendments satisfy § 25-446.

I. PENN QUARTER SATISFIED § 25-446(D)(4)(A) BY ATTEMPTING TO NEGOTIATE AN AMENDED SETTLEMENT AGREEMENT IN GOOD FAITH WITH THE PROTESTANT.

27. The Board finds that Penn Quarter satisfied § 25-446(D)(4)(A) through its negotiations with the Protestant. Under § 25-446(d)(4)(A), in order to terminate or amend a settlement agreement when the other signatories have been located, it must be shown that "the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement." D.C. Official Code § 25-446(d)(4)(A)(i)-(ii).

28. The Board notes that the Petitioner negotiated in good faith when attempting to amend the settlement agreement with the ANC and the Protestant. Supra, at ¶¶ 6, 15. The Board also credits Mr. Brand's testimony that he contacted the Protestant on numerous occasions in which he inquired about the possibility of amending the hours of television usage. Supra, at ¶ 15. In addition, Mr. Brand was able to successfully negotiate a settlement agreement with ANC 2C. Supra, at ¶ 6.

29. Accordingly, the Board finds that Penn Quarter negotiated in good faith and therefore has satisfied § 25-446(D)(4)(A).

II. PENN QUARTER DEMONSTRATED THAT SOME OF THE PROVISIONS OF THE SETTLEMENT AGREEMENTS MERIT AMENDMENT UNDER § 25-446(D)(4)(B) BASED ON A CHANGE IN THE NEIGHBORHOOD AND CIRCUMSTANCES BEYOND THE CONTROL OF THE PETITIONER.

30. Petitioner clarified at the hearing that he is not interested in terminating the agreement in its entirety, but rather only in amending the provision that limits the hours of the outdoor television usage. Supra, at ¶ 14.

31. Petitioner has provided sufficient evidence to demonstrate that an amendment to the hours of outdoor television usage in its establishment is warranted.

32. Under § 25-446(d)(4)(B), in order to terminate or amend the settlement agreement, Penn Quarter must show that “[t]he need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located.” § 25-446(d)(4)(B).

33. Here, the Board notes several changes in the neighborhood that warrant amending the settlement agreement’s television operation hours. First, it is clear that the Petitioner has been granted an entertainment endorsement which allows for entertainment to be featured until 1:30 a.m. Sunday through Thursday and until 2:00 a.m. on Friday and Saturday. Supra, at ¶ 1. The Petitioner is not requesting for the use of the outdoor televisions to last that same duration, but rather until 11:00 p.m. Monday through Thursday and until 12:00 a.m. on Friday and Saturday. Supra, at ¶ 3. This request is one hour later than the outdoor televisions are currently running Sunday through Thursday and two hours later on Friday and Saturday.

34. The record also shows that the neighborhood in which the establishment is located has undergone many changes and has attracted many new businesses and patrons. Supra, at ¶ 8. More specifically, Penn Quarter is experiencing direct competition with nearby, similar establishments who are permitted to have unlimited television usage in their outdoor seating areas. Supra, at ¶ ¶ 16-19. As a result, the Petitioner is requesting the extra time allotment to utilize the outdoor televisions so that the establishment can accommodate the patrons who come to the establishment to enjoy sporting events.

35. Due to the change in circumstances as described above, the Board finds that an amendment to the hours that the outdoor televisions are used is justified.

III. PENN QUARTER DEMONSTRATED THAT AMENDING THE SETTLEMENT AGREEMENT WILL NOT RESULT IN AN ADVERSE IMPACT UNDER § 25-446(D)(4)(C).

36. The Board finds that amending the agreement to allow Penn Quarter the ability to utilize the outdoor televisions until 11:00 p.m. Monday through Thursday and until 12:00 a.m. on Friday and Saturday will not have a negative impact on the neighborhood’s peace, order, and quiet.

37. The burden is on the Petitioner to show that “[t]he amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.” § 25-446(d)(4)(C). The only appropriateness standard raised by the Protestant is § 25-313(b)(2), which states, “[i]n determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Official Code § 25-313(b)(2).

A. Amending the settlement agreement will not encourage crime.

38. The Board finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not subject the neighborhood to an increase in crime or other forms of disorder. Multiple investigations conducted by ABRA show that the establishment is not a source of crime and disorder in the community, and Penn Quarter's record shows that the establishment is not engaged in any major violations of the city's liquor laws. Supra, at ¶¶ 10-12.

B. Amending the settlement agreement will not encourage excessive noise.

39. The Board further finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not have a negative impact on noise in the neighborhood.

40. Section § 25-725 states, "The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any: . . . Mechanical device . . ." D.C. Official Code § 25-725(a)(1). Further, § 25-313(b)(2) permits the Board to consider noise beyond the scope of § 25-725. Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd., 2013 WL 5271321, *4 n. 12 (D.C. 2013) ("However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.")

41. The Board credits the testimony of Investigator Ghenene that after monitoring the establishment on five separate occasions, the noise emanating from the establishment was minimal. Supra, at ¶ 11. Further, the Board notes that the establishment has had no ABRA violations since 2010. Supra, at ¶ 12. The Board credits the ABRA investigator's testimony that the establishment's televisions emanate minimal noise in the neighborhood. Supra, at ¶¶ 10-11. The Board also credits the testimony of the Protestant, who admits that he has made no complaints of a violation of the settlement agreement to ABRA, an option available to him as an abutting property owner and signatory of the underlying settlement agreement. Supra, at ¶ 24.

42. In light of the above findings, the Board determines that an extension to the hours of the usage of outdoor televisions will have a de minimis impact on the surrounding neighborhood. Consequently, the Board will amend the agreement to allow Penn Quarter to extend the hours of usage of the outdoor televisions until 11:00 p.m. Monday through Thursday and until 12:00 midnight on Friday and Saturday.

C. Amending the settlement agreement will not encourage trash and litter.

43. The Board finds that allowing Penn Quarter to expand its hours of use of the outdoor televisions will not encourage trash and litter around the surrounding neighborhood. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and ". . . take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter." D.C. Official Code § 25-726. The record does not show any evidence that the establishment has created a trash or litter problem in the neighborhood.

44. Therefore, the Board finds that amending the hours of usage of the outdoor televisions provision of the settlement agreement in accordance with this Order will not have an adverse impact on the neighborhood.

IV. THE PETITIONER SATISFIED ALL REMAINING REQUIREMENTS REQUIRED TO AMEND THE SETTLEMENT AGREEMENTS.

45. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestant in their initial protest. See Craig v. District of Columbia Alcoholic Beverage Control Bd., 721 A.2d 584, 590 (D.C. 1998) (“The Board's regulations require findings only on contested issues of fact.”); 23 DCMR § 1718.2. Accordingly, based on the Board’s review of the Petition and the record, Penn Quarter has satisfied all remaining requirements imposed by Title 25 and Title 23 to merit the amendment of its settlement agreement by the Board in accordance with this Order.

ORDER

Therefore, the Board, on this 10th day of September 2014, hereby **AMENDS** the settlement agreement entered into by the Petitioner, the ANC, and the Protestant as follows:

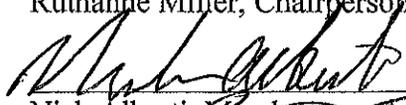
- (1) Penn Quarter is permitted to utilize its televisions until 11:00 p.m. Monday through Thursday and until 12:00 midnight on Friday and Saturday on the outdoor patio.
- (2) The settlement agreement, entered between Penn Quarter and ANC 2C on May 21, 2014, remains in effect.
- (3) The remaining portions of the settlement agreement, entered between Penn Quarter, ANC 6C and Dominick Cardella on October 1, 2008, remain in effect.

IT IS FURTHER ORDERED that all other provisions of the settlement agreement shall remain in full force and effect.

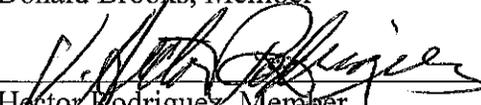
ABRA shall provide copies of this Order to the Petitioner, ANC 2C, ANC 6C and the Protestant.

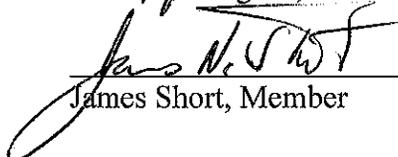
District of Columbia
Alcoholic Beverage Control Board


Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Hector Rodriguez, Member


James Short, Member

Under 23 DCMR § 1719.1 (2008), 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, under 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 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).

Settlement Agreement

**Top Shelf LLC TA Penn Quarter Sports Tavern
ABRA License Number 76039
("Establishment")**

**639 Indiana Avenue
Washington, DC 20004
("Premises")**

AND

**Advisory Neighborhood Commission 2C
("ANC 2C")**

PREAMBLE

This Settlement Agreement, having been adopted by vote of a majority of Commissioners of ANC 2C, at a regularly scheduled and duly noticed meeting, and executed by the Establishment and ANC 2C, and dated as indicated above replaces the current Voluntary Agreement dated August of 2008 that is currently attached to the Establishment's License.

The Establishment agrees to work regularly with ANC 2C and the surrounding residents to ensure that its operations do not adversely affect the neighborhood. Both parties believe the statements and provisions contained in the Settlement Agreement are reasonable and will become wholly integrated into the day-to-day operations of the Establishment.

The ANC, the community and the Establishment understand and agree that the requirements imposed upon the Establishment, as set forth herein, are important measures to enhance the relationship with the community and the ANC, protect the safety, peace, order and quiet of the neighborhood for all.

Witnessed

Whereas, the Establishment's premises are within the boundaries of ANC 2C03.

Whereas, the ANC and the Establishment desire to enter into an agreement governing certain requirements and understandings regarding the Establishment's Class C Tavern License.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Use and Purpose of Premises. The Establishment will operate as a “tavern.” It will not operate as a “nightclub.” According to ABRA regulations a “tavern” is a space in a building which is regularly used and kept open as a place where food and alcoholic beverages may be served. The Establishment acknowledges that it does not have an “entertainment endorsement” for dancing. The Establishment also acknowledges that with an entertainment endorsement” for dancing, a business may have recorded and live music, but may not provide facilities for dancing for its employees, patrons or entertainers.

2. Business Operations and Practices.

a). The Establishment shall take all necessary steps to prevent patron rowdiness including refusing admission and service to, or ejecting, rowdy unruly persons. Should any disturbance occur inside or outside the Premises where a patron or patrons are required to leave, the Establishment will take any measure deemed appropriate under the circumstances, including but not limited to, contacting the police, and ensuring the safety of any other patron that may have complained to management or was inadvertently affected by a disruptive patron to ensure that there is no additional disturbance outside the Premises after any such incident.

b). The Establishment’s “Hours of Operation” shall be consistent with the hours of operation as permitted by the Establishment’s ABRA license and Sidewalk Café license.

3. Noise, Complaints and Interested Parties.

a). The Establishment will post conspicuous signage to advise patrons of its Sidewalk café closing times. The Establishment shall also and at all times post a legible sign in the enclosed café stating, “Please be respectful of the Peace and Quiet that is required by our residential neighbors.”

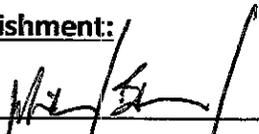
b). If noise from the establishment is a source of a reasonable complaint by neighbors living close by or near the Premises or any other issues that the ANC or neighbors find objectionable the Establishment shall meet with the neighbors and the ANC. All parties shall act in good faith and use reasonable judgment to attempt to find an acceptable solution to resolve any of these concerns within (15) business days from receipt of written notice of the complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing by all parties will be implemented within (10) ten business days following the meeting or as agreed by the parties. Should said steps not be adhered to by PQST the ANC may request a show cause hearing pursuant to 23DCMR 1513.5.

4. Miscellaneous. The Establishment shall keep on premises, a copy of this Settlement Agreement in the Premises in conjunction with the posting of its alcoholic beverage license.

5. Enforcement. The Establishment and ANC 2C agree to enter into this Settlement Agreement and recognize that upon their joint filing of this Settlement agreement with the Alcoholic Beverage Regulatory Administration this Settlement Agreement, shall be incorporated into the Establishment's License and constitute a part thereof. If the Establishment should breach the conditions of the Settlement agreement or any other ABRA statute it is understood by all parties that ANC 2C and or others shall seek self-mediation within (15) business days of said notice and attempt civil resolution before petitioning the ABC Board for a "show cause" hearing pursuant to 23 DCMR 1513.5.

In witness whereof, the parties acting through their authorized representatives have signed and sealed this Settlement Agreement.

Establishment:

Signature: 

Printed Name: MICHAEL BRAND

Title: OWNER

Date: 4/2/14

Advisory Neighborhood Commission 2C

Signature: 

Printed Name: Kevin Wilsey

Title: Chairman ANC 2C

Date: 4-21-14

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

In the Matter of:)	
)	
Top Shelf, LLC)	
t/a Penn Quarter Sports Tavern)	
)	
Petition to)	Case No. 14-PRO-00011
Terminate Voluntary Agreement)	License No. ABRA-076039
for a Retailer's Class CT License)	Order No. 2014-225
)	
at premises)	
639 Indiana Avenue, N.W.)	
Washington, D.C. 20004)	

Top Shelf, LLC, t/a Penn Quarter Sports Tavern (Petitioner)

Kevin Wilsey, Chairperson, Advisory Neighborhood Commission (ANC) 2C

Dominic Cardella, Abutting Property Owner (Protestant)

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 AND
WITHDRAWAL OF PROTEST OF ANC 2C**

The official records of the Alcoholic Beverage Control Board (Board) reflect that Top Shelf, LLC, t/a Penn Quarter Sports Tavern, (Petitioner), entered into a Voluntary Agreement with ANC 2C and Dominic Cardella on September 10, 2008 and it was approved by the Board on October 1, 2008. The Petitioner sought to terminate its Voluntary Agreement, under D.C. Official Code § 25-446(d). The Petition to Terminate was protested by ANC 2C and Dominic Cardella.

The official records of the Board reflect that the Petitioner and ANC 2C have entered into a Settlement Agreement (Agreement), dated April 21, 2014, that governs the operation of the Petitioner's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Petitioner and Chairperson Kevin Wilsey, on behalf of ANC 2C, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 2C of this Petition.

Accordingly, it is this 21st day of May, 2014, **ORDERED** that:

1. The Protest of the ANC 2C in this matter is hereby **WITHDRAWN**;
2. The above-referenced Settlement Agreement submitted by the Petitioner and ANC 2C to govern the operations of the Petitioner's establishment is **APPROVED** and **INCORPORATED** as part of this Order; except for the following modifications:

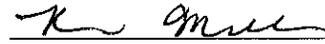
Section 3 (Notice, Complaints, and Interested Parties) – The last sentence shall be modified to read as follows: “Should steps not be adhered to by PQST, the ANC may file a complaint with the ABC Board pursuant to D.C. Official Code § 25-446(3).”

Section 5 (Enforcement) – The last sentence shall be modified to read as follows: “If the Establishment should breach the conditions of the Settlement Agreement, it is understood by all parties that ANC 2C or others shall seek self-mediation within fifteen (15) business days of said notice and attempt civil resolution before filing a complaint and request for investigation with the ABC Board pursuant to D.C. Official Code § 25-446(3).”

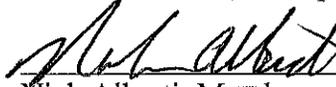
The Petitioner and ANC 2C have agreed to these modifications.

3. The protest filed by Dominic Cardella is unaffected by the settlement reached between ANC 2C and the Petitioner.
4. Copies of this Order shall be sent to the Petitioner, ANC 2C, and Dominic Cardella.

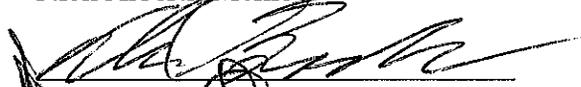
District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



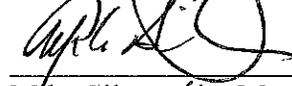
Nick Alberti, Member



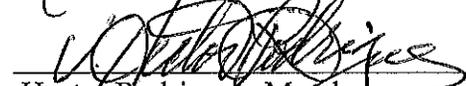
Donald Brooks, Member



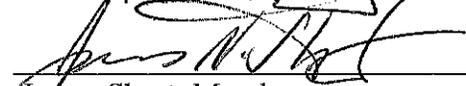
Herman Jones, Member



Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, 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).

Settlement Agreement

**Top Shelf LLC TA Penn Quarter Sports Tavern
ABRA License Number 76039
("Establishment")**

**639 Indiana Avenue
Washington, DC 20004
("Premises")**

AND

**Advisory Neighborhood Commission 2C
("ANC 2C")**

PREAMBLE

This Settlement Agreement, having been adopted by vote of a majority of Commissioners of ANC 2C, at a regularly scheduled and duly noticed meeting, and executed by the Establishment and ANC 2C, and dated as indicated above replaces the current Voluntary Agreement dated August of 2008 that is currently attached to the Establishment's License.

The Establishment agrees to work regularly with ANC 2C and the surrounding residents to ensure that its operations do not adversely affect the neighborhood. Both parties believe the statements and provisions contained in the Settlement Agreement are reasonable and will become wholly integrated into the day-to-day operations of the Establishment.

The ANC, the community and the Establishment understand and agree that the requirements imposed upon the Establishment, as set forth herein, are important measures to enhance the relationship with the community and the ANC, protect the safety, peace, order and quiet of the neighborhood for all.

Witnessed

Whereas, the Establishment's premises are within the boundaries of ANC 2C03.

Whereas, the ANC and the Establishment desire to enter into an agreement governing certain requirements and understandings regarding the Establishment's Class C Tavern License.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Use and Purpose of Premises. The Establishment will operate as a "tavern." It will not operate as a "nightclub." According to ABRA regulations a "tavern" is a space in a building which is regularly used and kept open as a place where food and alcoholic beverages may be served. The Establishment acknowledges that it does not have an "entertainment endorsement" for dancing. The Establishment also acknowledges that with an entertainment endorsement" for dancing, a business may have recorded and live music, but may not provide facilities for dancing for its employees, patrons or entertainers.

2. Business Operations and Practices.

a). The Establishment shall take all necessary steps to prevent patron rowdiness including refusing admission and service to, or ejecting, rowdy unruly persons. Should any disturbance occur inside or outside the Premises where a patron or patrons are required to leave, the Establishment will take any measure deemed appropriate under the circumstances, including but not limited to, contacting the police, and ensuring the safety of any other patron that may have complained to management or was inadvertently affected by a disruptive patron to ensure that there is no additional disturbance outside the Premises after any such incident.

b). The Establishment's "Hours of Operation" shall be consistent with the hours of operation as permitted by the Establishment's ABRA license and Sidewalk Café license.

3. Noise, Complaints and Interested Parties.

a). The Establishment will post conspicuous signage to advise patrons of its Sidewalk café closing times. The Establishment shall also and at all times post a legible sign in the enclosed café stating, "Please be respectful of the Peace and Quiet that is required by our residential neighbors."

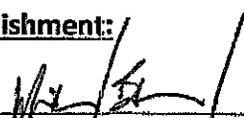
b). If noise from the establishment is a source of a reasonable complaint by neighbors living close by or near the Premises or any other issues that the ANC or neighbors find objectionable the Establishment shall meet with the neighbors and the ANC. All parties shall act in good faith and use reasonable judgment to attempt to find an acceptable solution to resolve any of these concerns within (15) business days from receipt of written notice of the complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing by all parties will be implemented within (10) ten business days following the meeting or as agreed by the parties. Should said steps not be adhered to by PQST the ANC may request a show cause hearing pursuant to 23DCMR 1513.5.

4. Miscellaneous. The Establishment shall keep on premises, a copy of this Settlement Agreement in the Premises in conjunction with the posting of its alcoholic beverage license.

5. Enforcement. The Establishment and ANC 2C agree to enter into this Settlement Agreement and recognize that upon their joint filing of this Settlement agreement with the Alcoholic Beverage Regulatory Administration this Settlement Agreement, shall be incorporated into the Establishment's License and constitute a part thereof. If the Establishment should breach the conditions of the Settlement agreement or any other ABRA statute it is understood by all parties that ANC 2C and or others shall seek self-mediation within (15) business days of said notice and attempt civil resolution before petitioning the ABC Board for a "show cause" hearing pursuant to 23 DCMR 1513.5.

In witness whereof, the parties acting through their authorized representatives have signed and sealed this Settlement Agreement.

Establishment:

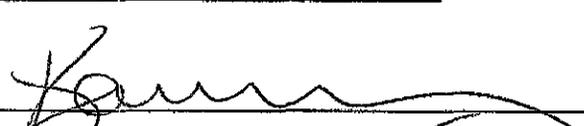
Signature: 

Printed Name: MICHAEL BRAND

Title: OWNER

Date: 4/2/14

Advisory Neighborhood Commission 2C

Signature: 

Printed Name: Kevin Wilsey

Title: Chairman ANC 2C

Date: 4-21-14

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

<hr/>)	
In the Matter of:)	
)	
Top Shelf LLC)	
t/a Penn Quarter Sports Tavern)	
)	
Application for a Substantial Change)	Case No. 10766-08/024P
To a Retailer's Class "CR" License)	License No. 76039
at premises)	Order No. 2008-264
)	
639 Indiana Ave., N.W.)	
Washington, D.C. 20004)	
<hr/>)	

Top Shelf LLC t/a Penn Quarter Sports Tavern, Applicant

Karen Wirt, Chairperson, and Charley Docter, Commissioner, on behalf of Advisory Neighborhood Commission 6C, and Dominick Cardella, Abutting Property Owner, Protestants

BEFORE: Peter B. Feather, Chairperson
Judy A. Moy, Member
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The Substantial Change Application (Application) was filed by Top Shelf LLC t/a Penn Quarter Sports Tavern to its Retailer's Class CR license for an Entertainment Endorsement, a Class Change from a Retailer's Class CR license to a Retailer's Class CT license and a change in the hours of operation and sale of alcoholic beverages. The Application, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on January 2, 2008 in accordance with D.C. Official Code § 25-601 (2001). Karen Wirt, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 6C, filed a timely protest letter dated December 17, 2007, and Dominick Cardella, Abutting Property Owner filed a timely protest letter dated December 3, 2007.

Top Shelf LLC
t/a Penn Quarter Sports Tavern
License No. 76039
Case No. 10766-08/024P
Page Two

The official records of the Board reflect that the Applicant and the Protestants have reached a Voluntary Agreement which has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the Voluntary Agreement, dated September 10, 2008 the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending Application is conditioned upon the Applicant's continuing compliance with the terms of the Voluntary Agreement.

Accordingly, it is this 1st day of October 2008, **ORDERED** that:

1. The protests of ANC 6C and Dominick Cardella are **WITHDRAWN**;
2. The Substantial Change Application filed by Top Shelf LLC t/a Penn Quarter Sports Tavern to its Retailer's Class CR license for an Entertainment Endorsement, a Class Change from Class CR to a Class CT and a change in the hours of operation and sale of alcoholic beverages at 639 Indiana Ave., N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced Voluntary Agreement is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Applicant and to the Protestants.

Top Shelf LLC
t/a Penn Quarter Sports Tavern
License No. 76039
Case No. 10766-08/024P
Page Three

District of Columbia
Alcoholic Beverage Control Board

Peter B. Feather, Chairperson



Judy A. Moy, Member

Mital M. Gandhi, Member



Nick Alberti, Member

Charles Brodsky, Member



Donald Brooks, Member



Herman Jones, 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

Dated as of September 10, 2008 by and between

**Top Shelf LLC/Penn Quarter Sports Tavern
ABRA License Number 76039
("Establishment")**

**639 Indiana Avenue
Washington, DC 20004
("Premises")**

And

**Protestors including Advisory Neighborhood Commission 6C
("ANC 6C") and Dominick Cardella, (adjacent neighbor)**

PREAMBLE

This Voluntary Agreement, having been adopted by a vote of a majority of the Commissioners of ANC 6C at a full public meeting, and executed by the Establishment and ANC 6C ("the Parties"), and dated as indicated above, pertains to the applications filed with the Alcohol Beverage Regulation Administration in October, 2007 and in June, 2008. Through this Voluntary Agreement, the Parties aim to create an environment whereby the Establishment may operate as a viable contributing business at its premises in the ANC 6C community, while concurrently curtailing any adverse effects its operations could have on the surrounding neighborhood and residents.

The Establishment agrees to work regularly with ANC 6C, neighborhood associations, and residents to ensure that its operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this Voluntary Agreement are reasonable and must become wholly integrated into the day-to-day operations of the Establishment.

The community and the Establishment understand and agree that the requirements imposed upon the Establishment, as set forth herein, are important measures to protect the safety, peace, order and quiet of the neighborhood, residents, and businesses.

WITNESSED

Whereas, the Establishment's Premises are within the boundaries of ANC 6C09;

Whereas, the Parties desire to enter into an agreement governing certain requirements and understandings regarding the Retailer's Class CN Liquor License change applications, filed by the Establishment, in October, 2007 and in June, 2008;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Use and Purpose of Premises.** The Establishment will operate as a "tavern." It will not operate as a "nightclub." According to ABRA regulations, a "tavern" is a space in a building which is regularly used and kept open as a place where food and alcoholic beverages may be served. The Establishment is not requesting an "entertainment endorsement" for dancing. The Establishment acknowledges that with an "entertainment endorsement," a business may offer entertainment, except nude performances, and offer facilities for dancing by patrons. And, without an "entertainment endorsement," for dancing, a business may have recorded and live music, but may not provide facilities for dancing for its employees, patrons, or entertainers.

2. **Public Space Cleanliness and Maintenance.** The Establishment shall maintain the public space adjacent to the Premises in a clean and litter-free condition. The area maintained shall include, but will not be limited to, the entirety of the adjacent sidewalk(s) up to and including the curb/gutter and 18" into the street(s) adjacent the Establishment (the "Maintenance Area"). Cleanliness and maintenance of the Maintenance Area and Premises shall include, but not be limited to, the following:

- (a) Picking up and properly disposing of all trash and litter, regardless of source, a minimum of twice daily. Removing trash from the Premises or Maintenance Area and placing it on the curb between the hours of 10 p.m. and 7 a.m. with reasonable measures being taken to prevent disturbing residential neighbors during the course of such trash pick-up, collection, and removal.
- (b) Ensuring that all trash and garbage is placed only in rodent-proof trash containers, that trash covers fit properly, and that trash containers remain fully closed except when trash or garbage is being added or removed.
- (c) Maintaining a contract with a service for regular trash, garbage, and recycling removal.
- (d) Exercising due diligence to prevent and/or have eliminated vermin infestation in and around the Establishment, including following, at a minimum, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.

3. **Business Operations and Practices – General.**

- (a) The Establishment's "Hours of Operation," Sunday thru Thursday, will be 6:30 a.m. to 2 a.m. "Hours of Sale of Alcoholic Beverages," Sunday thru Thursday, will be 11 am to 1:30 am. "Hours of Operation," Friday and Saturday, will be 6:30 a.m. to 3 a.m., with the provision that the Establishment will end operations on one of its two floors at 2 a.m. "Hours of Sale of Alcoholic Beverages," Friday and Saturday, will be 11 a.m. to 2:30 a.m., with the provision that the Establishment will end the sale of alcoholic beverages on one of its two floors at 1:30 a.m. Last Call will occur 30 minutes before closing on each floor.

- (b) The Establishment will not, directly or indirectly, sell or deliver alcohol to any intoxicated person.
- (c) The Establishment agrees to ensure that no patron shall:
 - (i) bring alcohol into the Premises from outside sources, except as provided by law;
 - or
 - (ii) Exit the Establishment with alcoholic beverages.
- (d) All the Establishment's employees shall attend alcoholic beverage server training as required by DC law.
- (e) The Establishment shall post a notice kept in good repair and visible from point of entry stating that proper identification is required for the service of alcohol.
- (f) The Establishment agrees to reasonably check identification to ensure that only patrons of legal age are served alcoholic beverages.
- (g) As long as the Establishment provides food service, the Establishment shall at all times provide metal utensils and reusable, sturdy plates or bowls in connection with all food served and consumed on the Premises. Take-away purchases are exempt from this requirement.

4. Business Operations and Practices – Security and Parking.

- (a) The Establishment shall have on the Premises a minimum of one security host for every 60 patrons, whose sole responsibility is the monitoring of the peace, order and quiet of the establishment and its immediate environs. An Establishment manager may be used to satisfy the requirement for one security host.
- (b) The Establishment shall take all necessary steps to prevent patron rowdiness, including refusing admission and service to, or ejecting, rowdy or unruly persons ("Disruptive Patrons"). Should any disturbance occur inside or outside the Premises where a patron is, or patrons are, required to leave, the Establishment's personnel/staff shall escort any and all other patrons ("Concerned Patrons") who request assistance as a result of their fear that they could be harmed by the Disruptive Patrons, while enroute to their vehicle, the nearest Metro, or a taxi, as may be appropriate and/or shall take such other measures as deemed appropriate under the circumstances, including, but not limited to, contacting the police, to see that the Concerned Patrons exit the Building and the environs safely without being harmed and to ensure that there is no additional disturbance outside the Premises when the Concerned Patrons exit.
- (c) The Establishment shall not allow or encourage staff or patrons to remove any of their clothing as part of any "strip tease" type dance or in any other type of circumstance. Nudity and/or partial nudity shall not be utilized in any advertisement or display inside or outside the Building.

(d) The Establishment shall make every effort (within the law) to prohibit criminal activity inside or adjacent to the Building. The Establishment shall attempt to achieve this by:

(i) Calling the Metropolitan Police Department if illegal activity is observed;

(ii) Working with the D.C. Metropolitan Police Department (MPD) if, in the opinion of the MPD, the operation of this Establishment has caused, or is contributing to, criminal activities in the neighborhood. In the event of such a circumstance, the Establishment shall make the changes to its operations that the MPD believes are necessary to ameliorate the situation. If the MPD determines that a police presence is necessary to maintain peace, order, and quiet, the Establishment shall provide to MPD funds sufficient to cover the police presence.

5. Business Operations and Practices – Exterior.

(a) The Establishment shall not permit the installation of pay phones inside or on the Premises and shall actively oppose the installation of pay phones outside the Premises on public space.

(b) The Establishment will install and maintain on the exterior of its Premises lighting which shall be in use from dusk until dawn every day of the year

(c) The Establishment agrees to fully encourage its patrons, with noticeable signage, to enter and leave the Premises in a peaceful, quiet, and orderly manner that is respectful of the neighborhood.

(d) If neighbors, acting as “Protestors,” as provided by law, file a complaint about the Establishment’s operations, and in the reasonable judgment of the Protestors, an aspect of the operation is causing a detrimental effect on the neighbors or the neighborhood, even if the action or inaction complained about is not a breach of this Agreement, the Establishment shall meet with the Protestors, and while acting in good faith and using reasonable judgment under the circumstances, shall attempt to find an acceptable solution to resolve the concerns of the neighbors.

6. Sound, Music, Dancing, and Entertainment.

(a) The Establishment agrees to take reasonable measures, including the possibility of additional sound proofing, to minimize the level of sound emanating from the Premises. The establishment will control amplified volume levels and maintain an environment quiet enough, as provided by DC law, to allow residents enjoyment of the neighborhood.

(b) The Protestors understand that the Establishment has a public space permit and that there may be amplified sound from music or television audible beyond the public

space. The Establishment will have all exterior, amplified sound equipment and speakers turned off prior to 11 p.m. daily, and exterior televisions turned off prior to 10 p.m.

(c) The closing hours of operation for the Unenclosed Sidewalk Café shall be 10 pm on Sunday - Thursday and 11pm on Friday - Saturday. The closing hours of operation for the Enclosed Sidewalk Café shall be 11 pm on Sunday - Thursday and 12 midnight on Friday - Saturday. This provision will not restrict smokers who are prohibited by DC law from smoking inside any establishment.

(d) At all times the walkway between the Enclosed and Unenclosed Sidewalk Café will remain open with an unencumbered 7 foot wide pedestrian lane.

(e) The Establishment will post conspicuous signage to advise patrons of its Sidewalk Café's closing times. The establishment shall also and at all times post a legible sign in the Enclosed Café stating, "Please be respectful of the Peace and Quiet that is required by our residential neighbors."

(f) The Establishment shall not produce any sound, noise, or music of such intensity that it may be heard in any premises outside the Premises in accordance with DC Official Code Title 25-725 and or 20 DCMR §§ 2700 et seq and 2800 et seq., as amended

(g) Notwithstanding the previous paragraph, if noise from the Establishment is a source of complaint by neighbors living and working near the Premises, the Establishment shall meet with the Protestors, and all parties shall act in good faith and use reasonable judgment, to attempt to find an acceptable solution to resolve the concerns of the parties within fifteen (15) business days from written notice of the noise complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing will be implemented within ten (10) business days following the meeting or as agreed to by the parties.

(h) The Establishment will not extend its hours of operation, its hours of alcoholic beverage sales, or operate conversely to this Agreement without the support of the adjacent neighbor.

(i) The Establishment will implement measures to ensure that during hours of operations its sidewalk café is used only by patrons.

(j) When the unenclosed outside café is closed, the Establishment will move and stack the tables and chairs into the enclosed portion of its sidewalk café in order to restore the promenade.

7. Cooperation with Interested Parties.

The Establishment agrees to work with the Protestors, ANC 6C, the ABC Board, MPD, the Commissioner for the Single Member District within whose boundaries the Premises is located, the Downtown Neighborhood Association, the Pennsylvania Condominium Association to resolve issues arising from the Establishment's failure to fulfill its obligations

under this Voluntary Agreement. If there are legitimate and reasonable issues raised by the community, the Establishment shall meet with the Protestors, and all parties shall act in good faith and use reasonable judgment, to attempt to find an acceptable solution to resolve the concerns of the parties within fifteen (15) business days from written notice of the noise complaint to discuss possible steps to ameliorate the problem. Steps agreed to in writing will be implemented within ten (10) business days following the meeting or as agreed to by the parties.

8. Modifications. The Establishment will notify ANC 6C of any application to the ABC Board for any substantial change in operations or for a change in ownership 30 days prior to the application.

9. Miscellaneous.

(a) The Establishment shall keep on premises, a copy of this Voluntary Agreement in the Premises in conjunction with the posting of its alcoholic beverage license. The Establishment shall include an appropriately sized sign indicating that a copy of this Voluntary Agreement is kept on the Premises.

(b) The Establishment shall file a written report with the Protestors by January 15th and July 15th of each year which summarizes its operations and the procedures to be followed to continue compliance with the terms and conditions of this Agreement. If the report includes information which, in the reasonable judgment of the Protestors, causes them to believe that the Establishment is in violation or will violate the terms and conditions of this Agreement, then the Establishment shall meet with the Protestors to discuss the questions or concerns. Participation by the Protestors in such a meeting will in no way limit any of their rights and remedies under this Agreement.

(c) The Establishment will operate in compliance with all applicable laws and regulations.

10. Enforcement.

The Establishment and ANC 6C agree to enter into this Voluntary Agreement and recognize that upon their joint filing of this Voluntary Agreement with the Alcoholic Beverage Regulatory Administration this Voluntary Agreement shall be incorporated into the Establishment's License and constitute a part thereof. If the Establishment should breach the conditions of this Voluntary Agreement, it is understood by all parties that the ANC6C, and/or its committees, or others shall seek self mediation within fifteen (15) business days of said notice and attempt civil resolution before petitioning the ABC Board for a "show cause" hearing pursuant to 23 DCMR 1513.5.

This Voluntary Agreement is binding on the Establishment, but not on any unrelated successors, transferees, or assigns of the Establishment. Any subsequent successors, transferees, or assigns will be required to negotiate with the Protestors if they desire a change to any of the terms of this Voluntary Agreement.

In witness whereof, the parties, acting through their authorized representatives have signed and sealed this Voluntary Agreement.

Establishment:

Signature: 
Printed Name: MICHAEL BRUNI Date: 8/8/08
Title: owner

Advisory Neighborhood Commission 6C Representative:

Signature: 
Printed Name: KAREN WIRT Date: 9.10.08
Title: Chair, ANC 6C

Dominick Cardella, adjacent neighbor

Signature: 
Printed Name: DOMINICK CARDELLA Date: 8/11/08
Title: ADJACENT NEIGHBOR

ABC Board-Licensed Manager:

Signature: _____
Printed Name: _____ Date: _____