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

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|---|---|---|
| **In the Matter of:** | ) | |
| 3050 K, LLC<br>t/a Cabana's | ) | |
| Petition to Terminate Voluntary Agreement<br>at premises<br>3050 K Street, N.W., B<br>Washington, D.C. 20007 | ) | License No. 71826<br>Order No. 2010-479<br>Case No. 10-PRO-00083 |

3050 K, LLC, t/a Cabana's, Petitioner

Bill Starrels, Vice Chairperson, Advisory Neighborhood Commission (ANC) 2E

Jennifer Altemus, President, on behalf of Citizens Association of Georgetown (CAG

J. William Little, on behalf of Washington Harbor Condominium Unit Owners' Association, Inc. (WHA)

BEFORE: Nick Alberti, Acting Chairperson
Mital M. Gandhi, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

## ORDER ON AMENDED AND RESTATED VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The official records of the Alcoholic Control Board (Board) reflect that 3050 K, LLC, t/a Cabana's (Petitioner), located at 3050 K Street, N.W., Washington, D.C., filed a Petition to Terminate its Voluntary Agreement. The Petitioner; Vice Chairperson Bill Starrels, on behalf of ANC 2E; Jennifer Altemus, on behalf of CAG; and J. William Litlle, on behalf of WHA, have entered into an Amended and Restated Voluntary Agreement (Agreement) dated September 7, 2010, setting forth the terms and conditions that govern 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; Vice Chairperson Bill Starrels, on behalf of ANC 2E; Jennifer Altemus, on behalf of CAG; and J. William Litlle, on behalf of WHA, are signatories to the Agreement. This Agreement constitutes a withdrawal of the Protest filed by ANC 2E, CAG, and WHA.

Accordingly, it is this 22nd day of September 2010, **ORDERED** that:

1. The Protest in this matter is hereby **WITHDRAWN**;

2. The above-referenced Amended and Restated Voluntary Agreement submitted by the Parties to govern the operations of the Petitioner's establishment is **APPROVED** and **INCORPORATED** as part of this Order; and

3. Copies of this Order shall be sent to the Petitioner, ANC 2E, CAG, and WHA.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Acting Chairperson

Mital M. Gandhi, Member

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 1250 U Street, N.W., Third Floor, Washington, DC 20009.

# AMENDED AND RESTATED VOLUNTARY AGREEMENT

DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION
2010 SEP 10 P 2:17

**THIS AMENDED AND RESTATED VOLUNTARY AGREEMENT** ("Agreement") is made by 3050 K, LLC, t/a Cabana's (the "Applicant"), Advisory Neighborhood Commission 2E (the "ANC"), the Citizens Association of Georgetown (the "CAG") and the Washington Harbor Condominium Unit Owners' Association, Inc. ("WHA").

## RECITALS

WHEREAS, the Applicant is the holder of a Class "CR" restaurant alcoholic beverage license as defined in D.C. Code § 25-101(43) for the property located at 3000 K Street, N.W. in the Georgetown Historic District (the "Establishment"), ABC Application No. 26398, issued by the District of Columbia Alcoholic Beverage Control Board ("ABC Board");

WHEREAS, the Applicant is not licensed to operate the Establishment as a nightclub, and it is subject to the restrictions on nightclubs and taverns established in D.C. Code § 25-339 for the Georgetown Historic District.

WHEREAS, the ANC represents the residents and taxpayers within its boundaries and wishes to insure that no establishment that sells alcoholic beverages will adversely affect the health, safety and quality of life in the surrounding community;

WHEREAS, the CAG represents residents within Georgetown and wishes to insure that no establishment that sells alcoholic beverages will adversely affect the health, safety and quality of life in the surrounding community;

WHEREAS, WHA is the governing body of the Washington Harbour Condominium located at 3030 K Street, N.W. and represents residents within the neighborhood and boundaries affected by the Establishment;

WHEREAS, the parties entered into a Voluntary Agreement in 2004 commemorating certain understandings regarding the Applicant's operational plans (the "2004 Agreement"), and

WHEREAS, the parties desire to enter into this Agreement to amend and replace the 2004 Agreement.

NOW, THEREFORE, in consideration of the premises above recited, and

the covenants and promises set forth below, the parties agree as follows:

1. **Incorporation of Recitals**. The Recitals set forth above are incorporated herein by this reference as substantive provisions of this Agreement.

2. **Operation as a Restaurant**. The Applicant will not seek a substantial change in its "CR" restaurant alcoholic beverage license without providing written notice to the ANC, the CAG, and WHA of the proposed change prior to or at the time the request for approval is submitted to ABRA.

3. **Interior Occupancy.** The Establishment has an occupancy, as established in its Certificate of Occupancy, of 209 persons.

4. **Exterior Service and Occupancy**. The Applicant has provided the ABC Board and the ANC with a diagram of the outdoor serving area, and agrees to send a revised diagram to WHA and the ANC prior to making any substantial change in the boundaries or layout. The Applicant shall limit occupancy in the outdoor service area to 90 seats, and the seating will remain in substantially the same manner as the seating plan attached hereto. Except for periodic private events and a limited number of non-private events, not to exceed six per calendar year, the Applicant expressly agrees that there shall be no permanent, temporary, stationary or other bar service set-up on the exterior seating area of the Establishment.

The borders of the outdoor serving area shall be indicated by clearly visible markers. During the hours of service, pole and rope or similar barriers will be placed along the lines indicated by the markers to define the serving area and to restrict passage except at the designated entrance and exit. Reasonable measures will be taken to ensure that the barriers remain in their proper place during times of operation. Such measures shall include the placement of table seating where possible, along the barriers at ground level near the fountain.

5. **Entertainment, Music, and Related Issues**. No music will be played outdoors or otherwise be audible from beyond the barriers of the Establishment's outdoor seating area after 8:00 p.m. Exterior windows and doors in front of the establishment shall be closed after 12:00 a.m. (midnight), when amplified music is being played, except as necessary for persons to enter and exit the Establishment. Applicant shall not cede control of access to the premises to any promoter or other third party, and there shall be no cover charges imposed to enter the establishment except for periodic private events.

Except for private events and periodic dance lessons, the Establishment

will not advertise or promote dancing in the Establishment.

In the event of a conflict between the terms of this Agreement and the Establishment's Entertainment Endorsement, the terms of this Agreement shall control.

6. **Closing.** The Applicant shall close the Establishment in accordance with the hours of operation set forth in its CR license or one hour before the legal closing hour on any given day, whichever shall be later. (Copy attached hereto as **Exhibit A**).

7. **Community Cooperation**. The parties to this Agreement agree to work together to resolve matters of community concern relating to the Establishment. To this end, the parties agree that each will notify the other as soon as reasonably possible of any complaint about the Establishment and attempt a cooperative resolution of such complaint as the first recourse. The ANC, the CAG, and/or WHA shall notify the Applicant of any perceived violation(s) of this Agreement as soon as reasonably possible so that the Applicant may be given reasonable opportunity (7 days) to cure such violations prior to the ANC, the CAG and/or WHA filing a petition with the ABC Board to enforce the terms of this Agreement. Notwithstanding the foregoing, nothing herein shall preclude the ANC, the CAG or WHA (or any of its unit owners or agents) from contacting an ABRA enforcement official or the District of Columbia police to promptly report a complaint concerning the Establishment.

8. **Final Agreement**. This Agreement amends and supersedes the 2004 Agreement and any other prior agreement between the parties, and shall constitute the only agreement between the parties, except to the extent it might be modified, in writing, in the future.

Executed this 7th day of September, 2010

**APPLICANT**
**3050 K LLC**

**By:** Gregory Caten
**Greg Casten**

**ADVISORY NEIGHBORHOOD COMMISSION 2E**

**BY:** _____
**Bill Starrels, Vice-Chairman, ANC 2E**

CITIZENS ASSOCIATION OF GEORGETOWN

BY: _____
Jennifer Altemus, President

WASHINGTON HARBOR CONDOMINIUM
UNIT OWNERS ASSOCIATION, INC.

By: _____
J. William Little, President

# EXHIBIT A

Cabana's
3050 K, LLC
3050 K ST NW B
*License Number* : ABRA-071826
*License Class: Restaurant C Capacity: 197*

COPY

Voluntary Agreement
Entertainment: Cover Charge Entertainment Summer Garden

Hours of Operation

| | Operation | Sales | Entertainment |
|---|---|---|---|
| Sunday: | 10 am - 2 am | 10 am -2 am | 11 am - 12 am |
| Monday: | 10 am - 2 am | 10 am - 2 am | 11 am - 12 am |
| Tuesday: | 10 am - 2 am | 10 am - 2 am | 11 am - 12 am |
| Wednesday: | 10 am - 2 am | 10 am - 2 am | 11 am - 12 am |
| Thursday: | 10 am - 2 am | 10 am - 2 am | 11 am - 12 am |
| Friday: | 10 am - 3 am | 10 am - 3 am | 11 am - 12 am |
| Saturday: | 10 am - 3 am | 10 am - 3 am | 11 am - 12 am |

Sidewalk Cafe Hours of Operation

| | Operation | Sales |
|---|---|---|
| Sunday: | - | - |
| Monday: | - | - |
| Tuesday: | - | - |
| Wednesday: | - | - |
| Thursday: | - | - |
| Friday: | - | - |
| Saturday: | - | - |

Summer Garden Hours of Operation

| | Operation | Sales |
|---|---|---|
| Sunday: | 10 am - 2 am | 10 am - 2 am |
| Monday: | 10 am - 2 am | 10 am - 2 am |
| Tuesday: | 10 am - 2 am | 10 am - 2 am |
| Wednesday: | 10 am - 2 am | 10 am - 2 am |
| Thursday: | 10 am - 2 am | 10 am - 2 am |
| Friday: | 10 am - 3 am | 10 am - 3 am |
| Saturday: | 10 am - 3 am | 10 am - 3 am |

**Expiration Date: 03/31/2013**

**You will be billed annually for any balance due.**