THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
Da Luft DC, Inc.	)	
t/a Da Luft Restaurant & Lounge	)	
	)	
Applicant for a New	)	Case No. 11-PRO-00043
Retailer's Class CR License	)	License No. ABRA-087780
	)	Order No. 2012-145
at premises	)	
1242 H Street, N.E.	)	
Washington, D.C. 20002	)	
	)	

Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge (Licensee)

David Holmes, Chairperson, Advisory Neighborhood Commission (ANC) 6A

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member
Jeannette Mobley, Member

BOARD ORDER ON AMENDMENT TO BOARD ORDER NO. 2011-473

Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, filed an Application for a new Retailer's Class CR License (Application) at premises 1242 H Street, N.E., Washington, D.C. ANC 6A filed a protest; however, a Roll Call Hearing scheduled for October 24, 2011, was not held, because the Parties submitted a Voluntary Agreement before the hearing.

On November 16, 2011, the Board granted, through Order No. 2011-473, the Application filed by Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, for a new Retailer's Class CR License and approved the Voluntary Agreement (Agreement), dated October 10, 2011, submitted by the parties to govern the operations of the Licensee's establishment.

After the approval of the parties' Agreement, the Board approved similar Voluntary Agreements submitted by ANC 6A, which the Board approved with modifications to Sections 2 (i) and (j) (Business Operations and Practices), and 3 (d) (Music/Dancing/Entertainment). These modifications were not addressed in Order No. 2011-473.

Therefore, on this 18th day of April, 2012, the Board hereby **AMENDS**, Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, Order No. 2011-473, by incorporating into the Voluntary Agreement, dated October 10, 2011, the following modifications:

> Section 2 (i) (Business Operations and Practices)–The following sentence shall be modified to read as follows:"Applicant's call log and incident log shall be provided to the Board during meetings or hearings involving future renewals or contested proceedings involving the Applicant's license."
>
> Section 2 (j) shall be removed.
>
> Section 3 (d) (Music/Dancing/Entertainment) – This subsection shall be modified to read as follows:"The hours of operation for a patio or summer garden on private property (excluding rooftops) are limited until 11:00 pm Sunday through Thursday evenings and 12:00 am on Friday and Saturday evenings. The sale and consumption of alcoholic beverages must end at that time and the patio must be cleared of all patrons and staff. If the patio has been open for business for at least three months during the months of April through September and noise levels from the patio do not create a repeated disturbance to the neighborhood during this time period and the licensee has a record of good conduct during this time period, the licensee may submit a change of hours application to allow for expanded hours of operation on the patio."

The parties have agreed to these modifications.

All other terms and conditions of Board Order No. 2011-473 shall remain in full force and effect. Copies of this Order shall be sent to the Licensee and ANC 6A.

District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson

Donald Brooks, Member

Herman Jones, Member

Calvin Nophlin, Member

Mike Silverstein, Member

Jeannette Mobley, Member

I recuse myself from this matter.

Nick Alberti, 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

THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
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Da Luft DC, Inc.	)	
t/a Da Luft Restaurant & Lounge	)	
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Applicant for a New	)	Case No. 11-PRO-00043
Retailer's Class CR License	)	License No. ABRA-087780
	)	Order No. 2011-473
at premises	)	
1242 H Street, N.E.	)	
Washington, D.C. 20002	)	
	)	

Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge (Applicant)

David Holmes, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 6A

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The Application filed by Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge (Applicant), for a new Retailer's Class CR License, having been protested, and was scheduled for a Roll Call Hearing on November 7, 2011.

The Applicant and ANC 6A have entered into a Voluntary Agreement, dated October 10, 2011, setting forth the terms and conditions that govern the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson David Holmes, on behalf of ANC 6A, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 6A of this Application.

Accordingly, it is this 16th day of November 2011, **ORDERED** that:

1. The Application filed by Da Luft DC, Inc., t/a Da Luft Restaurant & Lounge, for a new Retailer's Class CR License, located at 1242 H Street, N.E., Washington, D.C., is **GRANTED**;

2. The Protest of ANC 6A in this matter is hereby **WITHDRAWN**;

3. The above-referenced Voluntary Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED**; and

4. Copies of this Order shall be sent to the Applicant and ANC 6A.

District of Columbia
Alcoholic Beverage Control Board

Nick Alberti, Interim Chairperson

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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013

October 17, 2011

Mr. Nick Alberti, Interim Chairman
Alcohol Beverage Control Board
2000 14th St NW, Suite 400S
Washington, DC 20009

RE: Da Luft DC, Inc (ABRA-08770)

Dear Chairman Alberti:

At a regularly scheduled and properly noticed meeting on October 13, 2011, Advisory Neighborhood Commission 6A voted 7-0-1 (with 5 commissioners present for a quorum) to approve the attached voluntary agreement with Da Luft DC, Inc. (ABRA-08770) to be located at 1242 H St NE and to withdraw our protest of such license if the ABC Board adopts the voluntary agreement. Please note that Commissioner Nick Alberti did not participate in the discussion of this matter nor did he vote.

Commissioner Adam Healy, chair of the ANC's Alcohol Beverage Licensing Committee, is authorized to represent the ANC in this matter. He can be reached at healy-anc6a01@gmail.com or 202.556.0215.

On behalf of the Commission,

David Holmes, Chair

Made this 10 day of OCT, 2011

by and between

Da Luft DC, Inc.
1242 H Street, NE
Washington DC 20002
and
Advisory Neighborhood Commission 6A

Preamble

Through this agreement, both parties aim to create an environment whereby the applicant may operate as a viable contributing business in the ANC 6A community, while concurrently curtailing any adverse effects a business such as the applicant's could have on the surrounding neighborhood.

The applicant agrees to work regularly with the ANC 6A, neighborhood associations, and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this agreement are reasonable and must become wholly integrated into the day-to-day operation of the business establishment.

Further, ANC 6A acknowledges that this Voluntary Agreement shall be presented to all Class CR applicants within the boundaries of ANC 6A. The community and merchants have agreed that it is in all the parties best interests to standardize the requirements for the operations of restaurant, tavern, and nightclub establishments within the boundaries of ANC 6A. To the greatest extent possible, the ANC will not insist upon or allow any significant changes to this Voluntary Agreement that will unfairly benefit or, conversely, cause competitive disadvantage to, any individual applicant or establishment within the ANC, unless such change is required by the District of Columbia government, other authorized governmental bodies, or rule of law.

The community and merchants understand and agree that the changes imposed upon the operations of all licensees within the ANC as set forth herein are important measures to protect the safety, peace, order and quiet of the neighborhood, its residents, and businesses.

Witnesseth

Whereas, Applicant's premises is within the boundaries of ANC 6A; and,

Whereas, the parties desire to enter into an agreement governing certain requirements and understandings regarding the issuance of a Retailer's Class CR Liquor License at the subject premises; and,

The Parties Agree As Follows:

1. Public Space Cleanliness and Maintenance. Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises, and the alleyway behind the subject premises) adjacent to the establishment in a clean and litter-free condition by:
   a. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily (once immediately before business hours and again between 5:00 p.m. and 8:00 p.m.).
   b. Maintaining regular trash garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean.
   c. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
   d. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.

e. Assisting in maintenance of the curb in front of the establishment to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulation in these respects.
f. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
g. Promptly removing or painting over any graffiti written on the exterior walls of the property.
h. Requiring the owner and employees not to park on public space between the building and the curb.
i. Not locating trash bins, chairs, tables, or other equipment on public space without a valid space permit.

2. Business Operations and Practices:

a. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person or to any person who appears to be intoxicated.
b. Applicant agrees to take all necessary steps to prevent patron rowdiness, including refusing admission/service to rowdy and/or unruly persons.
c. Applicant agrees to ensure that no patron bring an open container of an alcoholic beverage into the establishment from outside sources, and at no time exits the establishment with an open container of an alcoholic beverage. Wine shall be corked in accordance with Title 25-113(b)(5)(A)(B)(C) of the DC Municipal Code.
d. Applicant will not provide or sell alcoholic beverages "to go." Applicant agrees not to promote or participate in bar or pub "crawls" or any other event of this nature.
e. The licensed establishment will be managed by the applicant in person or a board licensed manager.
f. Applicant, and all employees of the applicant, shall attend and complete an alcoholic beverage server training course/seminar.
g. Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
i. Proper ID required (proof of age 21 minimum to be served and assurances that ID's will be checked at all times prior to serving alcoholic beverages to patrons).
ii. Prohibition against selling alcohol to minors.
iii. Request to patrons to not litter, loiter, or make excessive noise in the neighborhood as they arrive or depart.
iv. Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.
v. Request that customers do not contribute to panhandlers.
h. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:
i. Asking loiterers to move on whenever they are observed outside the establishment,
ii. Calling the Metropolitan Police Department (MPD) to remove loiterers if they refuse Applicant's request to move on,
iii. Calling the Metropolitan Police Department if illegal activity is observed,
iv. Keeping a written record of dates and times (a call log) when the MPD is called for assistance.
v. Applicant will maintain a detailed incident log. An incident is defined as any activity by patrons of the establishment inside or immediately outside the establishment which could lead to an ABRA investigation. Each incident will contain date, time and location of each incident with a concise summary. Guests and staff involved or witnesses of the incident will be identified and listed. If there is a medical or police response, that information will also be noted.

i. Applicant's call log and incident log shall be provided to the ANC or Board during meetings or hearings involving future renewals or contested proceedings involving the Applicant's license.
j. After receiving complaints and/or observing problems with this establishment, ANC Commissioners and/or the ABL Committee chair may ask the D.C. Metropolitan Police Department (MPD) for records and data regarding calls for service or other necessary police presence around this establishment.
i. If data from MPD indicates that this establishment has caused or is significantly contributing to additional crime or criminal activities in the neighborhood, including disorderly conduct and/or reoccurring public disturbance, the ANC 6A ABL Committee will hold a public meeting to discuss the problems and ways in which to mitigate them. The Applicant, MPD, and an ABRA representative will be invited and encouraged to participate, as well as concerned residents. MPD will be asked to recommend to the Committee the days of the week and hours when the reimbursable MPD detail should be necessary to

maintain peace, order, and quiet at and around this establishment and the costs that would be associated with such reimbursable detail. If the Committee recommends the use of a reimbursable MPD detail at this establishment to mitigate these problems, the recommendation will then be considered by ANC 6A at their next scheduled meeting.

ii. If the ANC, by a majority vote, supports requiring a reimbursable MPD detail, the ANC Chair will notify in writing the First District MPD Commander or his/her designee and the Applicant that this establishment will be required to have a reimbursable MPD detail assigned to their location.

iii. The Applicant shall transmit to MPD funds sufficient to provide the next month's reimbursable MPD detail by the 1st day of each month that the reimbursable detail is required.

iv. The reimbursable detail shall be maintained by the Applicant for up to six months. Within six months, the ABL Committee will conduct another review to hear input on whether or not the reimbursable MPD detail should be continued. The ABL Committee will make a recommendation that will then be considered by the ANC at their next scheduled meeting.

k. Applicant shall not support of the installation of pay phones outside of the establishment on their property.

l. Applicant will utilize and maintain high-intensity flood-lights on the exterior of its premises so as to fully light any abutting alleyway from dusk until dawn.

m. Applicant shall provide valet parking services only with valet parking companies as defined licensed and in compliance with Title 24 DCMR Chapter 16. Applicant will not engage in valet parking that results in vehicles parked in residential parking spaces.

3. Music / Dancing / Entertainment:

a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate sound proofing.

b. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment in accordance with DC Official Code Title 25-725.

c. In order to mitigate noise on an outdoor patio or summer garden the following steps will be taken:

1) Applicant shall not offer any type of live or pre-recorded music on the patio.
2) A fence or other barrier will enclose the entire perimeter.
3) No fewer than two signs will be clearly posted to remind guests to keep their voices at normal speaking volume.
4) Staff will monitor the outdoor area to make sure guests do not raise their voices above normal speaking tones.
5) Potted plants, trees, fountains or other types of noise mitigation techniques will be incorporated into the decor.
6) No more than 30 patrons may be on the patio at one time and all patrons and staff shall be cleared from the patio when alcohol sales cease for the day.
7) The hours of operation for the patio or summer garden shall be limited to 10:00 p.m. Sundays through Thursdays and to midnight Fridays and Saturdays.

d. If the outdoor patio is located on public space, the hours of operation of that patio will be limited until 11:00 p.m. Sunday through Thursday evenings and 12:00 a.m. on Friday and Saturday evenings. The sale and consumption of alcoholic beverages must end at that time and the patio must be cleared of all patrons.

e. Applicant may not use the rooftop nor the third floor for storage, food preparation, patron seating, or service of alcohol.

f. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement. "Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

g. All CT license holders with an entertainment endorsement must have an ABRA accepted security plan in place.

h. All CR license holders shall comply with ABRA regulations that require their kitchen to remain open and

operational up until at least 2 hours prior to closing.

4. Cooperation with ANC 6A. Applicant agrees to work on resolving issues preventing the applicant from fulfilling its obligations under this cooperative agreement with all of the following: the Single Member District (SMD) ANC Commissioner within whose boundaries the establishment is located, the Chair of the ABL Committee, and other Commissioners whose SMD's are adjacent to the location of the establishment.

5. Modifications. This agreement can be modified only by mutual agreement of all the parties with the approval of the ABC Board or by the ABC Board consistent with DC Code § 25-446. In the case of ANC6A, if applicant desires to modify the terms of this agreement, the applicant, prior to implementing the change(s), shall receive written agreement from ANC6A after a majority of the commissioners shall have voted in favor of the changes at a full public meeting.

6. Miscellaneous:
   a. Applicant shall post a copy of this voluntary agreement in the establishment in conjunction with the posting of its alcoholic beverage license.
   b. Applicant will operate in compliance with all applicable DC laws and regulations.

7. Enforcement:
   a. If either party hereto believes in good faith that the applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the applicant and the applicant shall have ten (10) days after receipt of such written notice to come into compliance with this agreement or respond to said alleged notice of default.
   b. Applicant and the ANC 6A Commission agree to enter into this agreement. If the applicant should breach the conditions of this agreement, it is understood by all parties that the ANC 6A, and/or its committees, or others shall immediately petition the ABC Board for a "show cause" hearing pursuant to 23 D.C.M.R. 1513.5.
   c. This cooperative agreement is binding on the applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

In Witness Whereof

The parties have affixed hereto their hands and seals.

Applicant:

By: JOSEPHINE LUTI (PRESIDENT) Date: 10-10-11

Signature: JOSEPHINE

Advisory Neighborhood Commission 6A Representative:

By: DAVID HOLMES, CHAIR Date: 10-13-11

Signature: