

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

**In the Matter of:** )

Dancing Crab, LLC )  
t/a Dancing Crab )

Holder of a )  
Retailer's Class CR License )

License No. ABRA-090297  
Order No. 2014-394

at premises )  
4615 41<sup>st</sup> Street, N.W. )  
Washington, D.C. 20016 )

Dancing Crab, LLC, t/a Dancing Crab (Licensee)

Matthew Frumin, Chairperson, Advisory Neighborhood Commission (ANC) 3E

**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**

The official records of the Alcoholic Beverage Control Board (Board) reflect that Dancing Crab, LLC, t/a Dancing Crab (Licensee), and ANC 3E have entered into a Settlement Agreement (Agreement), dated September 11, 2014, that governs the operation of the Licensee's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Licensee and Chairperson Matthew Frumin, on behalf of ANC 3E, are signatories to the Agreement.

Accordingly, it is this 22<sup>nd</sup> day of October, 2014, **ORDERED** that:

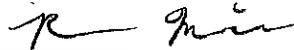
1. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Licensee's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

Section 3 (Exterior Maintenance and Neighborhood Peace) – The following language shall be modified to read as follows: “Applicant shall provide a copy of such engineer’s report to the ABC Board who will in turn provide it to the ANC.”

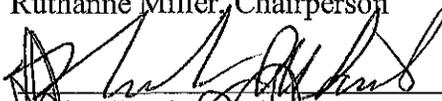
The parties have agreed to this modification.

2. Copies of this Order shall be sent to the Licensee and ANC 3E.

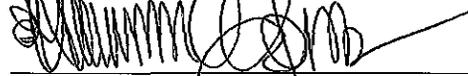
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



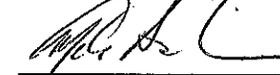
Nick Alberti, Member



Herman Jones, Member



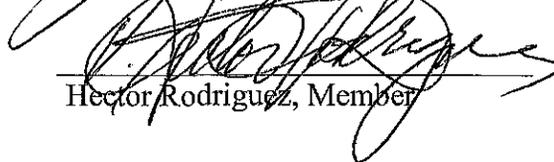
Donald Brooks, Member



Mike Silverstein, Member



James Short, Member



Hector Rodriguez, Member

Pursuant to D.C. Official Code § 25-433, 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 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 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

THIS SETTLEMENT AGREEMENT (The "Agreement") made this 11<sup>th</sup> day of September 2014, by and between Dancing Crab LLC doing business as Dancing Crab at 4615 41<sup>st</sup> Street, NW and Advisory Neighborhood Commission 3E ("ANC 3E")

### RECITALS

WHEREAS, Applicant holds a Retailer Class C Restaurant license for premises located at 4615 41st Street, NW, Washington, D.C. (the "Premises") for the operation of a restaurant;

WHEREAS, the Applicant seeks a substantial change to that license to allow for increased capacity and a rooftop service area;

WHEREAS, the parties have discussed the concerns of ANC 3E and have reached an understanding related to the operation of the establishment;

WHEREAS, the parties have agreed to enter into this Settlement Agreement and request that the District of Columbia Alcoholic Beverage Control Board (the "Board") approve the requested substantial change, conditioned upon Applicant's compliance with the terms and conditions of this written agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual covenants and conditions herein after set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.
2. Advertising. Applicant agrees that it will not advertise the restaurant as a nightclub.
3. Exterior Maintenance and Neighborhood Peace.

Applicant will make sure that the area surrounding the exterior of the restaurant is clean, that the trash is properly disposed of and that the general appearance is in good order.

Applicant will make reasonable efforts to maintain the peace and quiet of the nearby residential neighborhood.

If patrons loiter in nearby parks, open areas or the nearby residential neighborhood, then Applicant will take reasonable steps to discourage such activity.

When music is being played at the establishment, it shall not be audible from the opposite side of Wisconsin Avenue, NW. No music from the establishment, whatsoever, shall be audible in the Tenley Hill condominium located at 4650 41<sup>st</sup> Street, NW. Whenever Applicant features live entertainment after 10:00 p.m., Applicant shall employ sufficient personnel to provide for the safety of its patrons and the peace and order of the nearby residential neighborhood. Applicant will consult with a sound engineer to design and maintain a sound

system to ensure that sound projects as little as possible. Applicant shall provide a copy of such engineer's report to the ANC for review and comment prior to reopening of the business

. On Applicant's second floor and rooftop summer gardens, applicant may operate until 1:00 am Sunday through Thursday and 2:00 am Fridays and Saturdays; provided, however, that music on said summer gardens shall cease not later than 11 pm Sundays through Wednesday, midnight Thursdays and 1:00 am Fridays and Saturdays. Hours for the enclosed sidewalk café located in the immediate front of the premises shall be the same as for the summer gardens; provided, that the windows to the enclosed sidewalk café are closed by 11:00 p.m. If such windows are not closed by 11:00 p.m., Applicant shall cease operation of its sidewalk café at that latter hour – 11:00 pm (at which time all patrons shall have vacated the sidewalk café).

4. Kitchen Hours. The kitchen will remain open up until one hour prior to closing of the premises.

5. Notices. In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing of such violation. Any notices required to be given under this Agreement shall be in writing and mailed by certified mail or hand delivered to the other parties to this Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

If to Applicant:

Dancing Crab LLC  
c/o Carlos Horcasitas  
4615 41 Street, NW  
Washington, DC 20016

With a copy to:

Stephen J. O'Brien  
Mallios & O'Brien  
2600 Virginia Avenue, NW  
Suite 406  
Washington, DC 20037

If to Protestant:

ANC 3E  
c/o Lisner Home  
Suite #219  
Washington, DC 20016

Either party may change the notice addresses listed above by written notice to the other party at the addresses listed above. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

6. ANC Will Not Protest. In consideration of Applicant's agreement to the provisions of this Voluntary Agreement, ANC 3E agrees not to protest the substantial change to the License.

7. Acceptance of Agreement by Board. If the Board shall not accept this Agreement in its entirety, ANC 3E's consent to the requested substantial change shall be deemed withdrawn.

8. Entire Agreement. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Agreement. This Agreement shall be construed in accordance with the laws of the District of Columbia

9. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. Successors and Partial Invalidity. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event any part of this Agreement should be determined by a court of competent jurisdiction or the Alcoholic Beverage Control Board to be invalid or unenforceable, the validity of the rest of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part held to be invalid or unenforceable.

11. Authority. Each party who signs the Agreement warrants that he or she is authorized to do so.

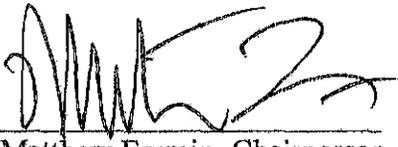
[SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year stated below:

Applicant:  
Dancing Crab LLC doing business as Dancing Crab

By:   
\_\_\_\_\_  
Carlos Horcasitas, Manager  
Date Signed: September 16, 2014

ANC 3E

By:   
\_\_\_\_\_  
Matthew Frumin, Chairperson  
Date Signed: September 16, 2014