

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

In the Matter of:)

Superclub Ibiza, LLC,)
t/a Ibiza)

Applicant for Renewal of)
Retailer's Class CN License)

at premises)
1222 1st Street, N.E.)
Washington, D.C. 20002)

Case No. 13-PRO-00150
License No. ABRA-074456
Order No. 2014-515

Superclub Ibiza, LLC t/a Ibiza (Applicant)

Tony Goodman, Commissioner, Advisory Neighborhood Commission (ANC) 6C

Douglass Firstenberg, on behalf of Protestant Group of 10

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Hector Rodriguez, Member
James Short, Member
Mike Silverstein, Member

**ORDER ON SETTLEMENT AGREEMENT AND WITHDRAWAL OF
PROTESTS OF ANC 6C AND THE PROTESTANT GROUP OF 10**

The Application filed by Superclub Ibiza, LLC t/a Ibiza, for the renewal of its Retailer's Class CN License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on December 9, 2013, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 6C, and the Protestant Group of 10 have entered into a Settlement Agreement (Agreement), dated August 5, 2014, that governs the operation of the Applicant's establishment. The Board also takes administrative notice that the Parties filed a Stipulation for Entry of Decision on October 16, 2014.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Commissioner Tony Goodman, on behalf of ANC 6C; and Douglas Firstenberg, on behalf of Protestant Group of 10; are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protests filed by ANC 6C and Protestant Group of 10.

Accordingly, it is this 10th day of December, 2014, **ORDERED** that:

1. The Application filed by Superclub Ibiza, LLC t/a Ibiza for the renewal of a Retailer's Class DN License, located at 1222 1st Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 6C and Protestant Group of 10 in this matter are hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Clause 3- Shall be amended to read as follows: "Seating: Seating and standing room capacity inside the building will be consistent with the Applicant's current Certificate of Occupancy; provided, that there shall be no than 100 persons maximum on the roof or patio. The parties consent that numbers for seating and standing inside the building shall also be consistent with any new Certificate of Occupancy issued by DCRA in the future."

Clause 4. – Shall be amended to read as follows: "Noise/Music/Dancing: Applicant acknowledges familiarity with and will comply with all applicable noise-control provisions of the District of Columbia law and regulations, including but not limited to:

(a) Preventing emissions of sound, capable of being heard outside the Premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with D.C. Official Code 25-725 (2001). Further the Applicant agrees to abide by all relevant provisions of the D.C. Noise Control Act of 1977 (D.C. Law 2-53, as amended) Title 20, DCMR Chapters 27 and 28, as amended) such that the noise level generated by patrons on the rooftop or elsewhere outside the establishment does not create a noise disturbance under the Noise Control Act.

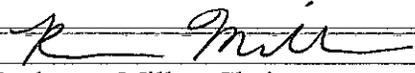
(c) The following language shall be removed: "if the sound level does not exceed 45 dB measured at the property line..."

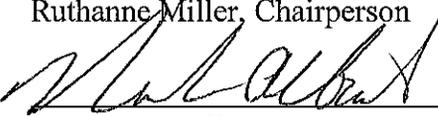
(d) Applicant agrees to use limiters (or other similar types of devices) on its sound system such that an employee, DJ or other person cannot turn up the sound level such that the sound level shall exceed the limits permitted under the D.C. Noise Control Act.

The parties have agreed to these modifications.

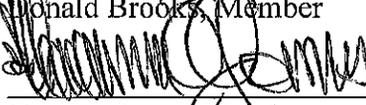
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4. Copies of this Order shall be sent to the Applicant, ANC 6C, and Douglass Firstenberg, on behalf of Protestant Group of 10.

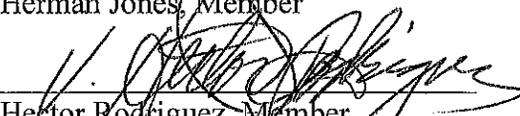
District of Columbia
Alcoholic Beverage Control Board

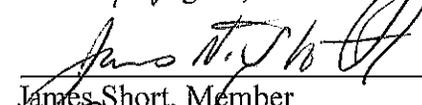

Ruthanne Miller, Chairperson

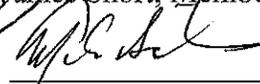

Nick Alberti, Member


Donald Brooks, Member


Herman Jones, Member


Hector Rodriguez, Member


James Short, Member


Mike Silverstein, 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 14th 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, 430 E Street, 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).

Exhibit A

SETTLEMENT AGREEMENT CONCERNING ISSUANCE AND RENEWAL OF ALCOHOLIC BEVERAGE LICENSE

THIS AGREEMENT, made and entered into this 5th day of August, 2014 (the "Effective Date"), by and between Superclub Ibiza, LLC, trading as Ibiza (the "Applicant"), and Advisory Neighborhood Commission 6C (the "ANC 6C"), and the owners of ten properties, 2 M Street Redevelopment LLC, Palmetto Hospitality of Washington DC, LLC, VEF-VN Capital Plaza I, LLC, SCD Capitol Plaza, LLC, Archstone North Capitol Hill LP, DC CY Owner, LLC, CS Office One, LLC, CS Office Three, LLC, CS Residential One, LLC CS Residential Two, LLC and CS Grocery, LLC (the "Group of 10") (collectively, referred to as the "Protestants"), (collectively, the "Parties"), witnesses:

WHEREAS, a Voluntary Agreement dated September 12, 2007 was reached between the Applicant and ANC 6C for the Alcoholic Beverage Regulation Administration ("ABRA") license number 74456, a retailer class "CN" nightclub license for the premise located at 1222 - 1st Street, N.E., Washington, D.C. (the "Establishment") and was incorporated by the District of Columbia Alcoholic Beverage Control Board (the "Board") in Board Order No. 2007-084.

WHEREAS, the premises of Applicant's nightclub Establishment is located within the boundaries of ANC 6C.

WHEREAS, Protestants, ANC 6C and Group of 10, filed before the Board timely protests in November 2013 opposing the granting of Applicant's renewal of license number 74456, pursuant to D.C. Official Code §§ 25-601(4) and 25-601(2), respectively.

WHEREAS, the Group of 10 has authorized Douglass Firstenberg to execute this Agreement on behalf of the ten property owners.

WHEREAS, in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching settlement agreements, the Parties hereto desire to enter into a settlement agreement whereby (1) Applicant will agree to adopt certain measures governing the operation of its Establishment to address the Protestants' concerns and to include this Agreement as a formal condition of its application, and (2) Protestants will agree to the issuance of the renewal of the license and withdrawal of their Protests, *provided* that such Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Agreement. The Parties acknowledge that part of this Agreement should be incorporated by the Board and part of it will remain as a separate Agreement among the Parties.

WHEREAS, Applicant has recently taken or intends to take within the next 30 days certain measures designed to ameliorate Protestants' concerns,

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and undertakings memorialized herein, the Parties hereby agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

2. Hours: The opening hours of the Establishment are currently 12:00 p.m. on Sunday, 11:30 a.m. Monday through Friday and 5:00 p.m. on Saturdays. The Protestants would support a change in the Establishment's opening hours to 11:00 a.m. on all days consistent with other ABRA licensed businesses in the area. The closing hours of operation for the Establishment shall be: Sunday through Thursday, 2:00 a.m.; Friday and Saturday, 3:00 a.m. ("Closing Time"). The Applicant may request extended hours for ABRA-recognized holidays; however, such extended hours shall not be allowed for any summer garden areas. The summer garden (exterior) areas of the Establishment shall have the same opening hours and may allow the sale of service of alcoholic beverages by wait staff but not operate a bar area and in order to address concerns about noise the operating hours and any occupancy of these areas by patrons shall end as follows:

Roof: 12:00 a.m. on Sunday through Thursday and 1:00 a.m. on Friday and Saturday.

Patio: 12:00 a.m. on Sunday through Thursday and 1:00 a.m. on Friday and Saturday.

3. Seating: Seating and standing room capacity will be as provided by its new Certificate of Occupancy; ___ seating and ___ - standing inside the building and 100 persons maximum on the roof or patio. *[Please note that the seating and standing capacity inside the building shall be consistent with the new C of O issued by DCRA.]*

4. Noise/Music/Dancing. Applicant acknowledges familiarity with and will comply with all applicable noise-control provisions of the District of Columbia law and regulations, including but not limited to:

(a). Preventing emissions of sound, capable of being heard outside the Premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with D.C. Official Code § 25-725 (2001). Further, the Applicant agrees to abide by all relevant provisions of the D.C. Noise Control Act of 1977 (D.C. Law 2-53, as amended) Title 20, DCMR Chapters 27 and 28, as amended such that the maximum noise level shall not exceed 55dB during the daytime (7:00 a.m. to 7:00 p.m.) and 60 dB during the nighttime (7:00 p.m. to 7:00 a.m.) measured at the property line for both noise within the building and any noise on the rooftop and so the noise generated by patrons on the rooftop or elsewhere outside the establishment does not create a noise disturbance under the Noise Control Act.

(b). Applicant will close the windows of the Premises when amplified sound is being emitted. Street level doors will be closed at any time that amplified sound is being emitted, except when persons are in the act of using the door for ingress or egress from the Premises. The Applicant shall also best efforts to encourage patrons to keep noise to

a minimum when queuing in line on the sidewalks to enter the Establishment. The Applicant shall not block the sidewalk or public space with ropes and stanchions.

(c). Applicant agrees not to place outside any loudspeaker, tape player, CD player, television or other mechanical source of sound or noise, or to place any inside speaker in such a way that it projects sound into the public space sidewalk; provided, that background music may be played on the rooftop garden during the operating hours specified for roof garden in Section 2 if the sound level does not exceed 45 dB measured at the property line.

(d). Applicant agrees to use limiters (or other similar types of devices) on its sound system such that an employee, DJ or other person cannot turn up the sound level such that the sound level shall not exceed the decibel levels set forth in subsections 4(a) and 4(c) of this Section.

(e). The Applicant agrees to turn up the house lights at least 15 minutes prior to Closing Time and to turn all music completely off at Closing Time.

5. Trash/garbage/rodents.

(a). Applicant shall contract with a licensed commercial trash hauler and maintain regular trash/garbage removal service with frequency to ensure that trash containers do not overflow, regularly remove trash from the ground around the outside trash container area, and undertake all reasonable efforts to ensure that the outside trash container area remains clean by regular sweeping and hosing down the area as weather permits. Applicant shall deposit trash and garbage only in rodent-proof containers, and shall ensure container covers fit properly and remain fully closed except when trash or garbage is being added or removed consistent with the requirements of DCMR, Title 21, Chapter 7. Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population. The Applicant will also clean up the sidewalk areas along First Street surrounding the Establishment and along each side street for the length of the building plus 200 feet after closing every evening as provided in Section 6.

(b). Applicant agrees to segregate bottles (and recycle bottles, cans, and cardboard in accordance with D.C. Law 7-226) from trash and agrees there will be no loud dumping of bottles, or pickup of the recycling and trash from the dumpsters/cans in the alley behind the restaurant between the hours of 10:00 p.m. and 6:30 a.m. seven days a week. While Applicant must be permitted, consistent with standards of public health, to dispose of trash each night upon closing or before, Applicant agrees to take all reasonable steps to minimize the noise of such disposal and furthermore agrees to hold all recyclable bottles and cans inside overnight, starting at 10:00 p.m. to reduce the potential for noise disturbance in the alley. Applicant will undertake all reasonable efforts to ensure that no trash, waste or recycling will be ever left on the ground.

(c). Applicant will provide for proper removal and recycling of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the trash dumpsters.

6. Exterior including public space.

(a). Applicant shall assist in the maintenance of the public space in front of the Establishment to at least 18 inches outward from the curb as needed to keep them reasonably free of trash (including along 1st Street and on Patterson Street and N Street along each side of the Establishment's building plus 200 feet), to remove snow and ice from the sidewalks adjacent to the Establishment and comply with all applicable D.C. laws and regulations in these respects. Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the Premises during business hours and at closing, and to cause patrons to leave those areas at closing. Applicant agrees that any temporary fencing or other crowd control devices shall not block the public sidewalk or the adjacent landscaped public space.

(b). Applicant agrees not to place or cause to be placed any fliers, handbills or other similar advertisement in the public space, specifically on lampposts, street signs or any vehicle parked in the public space in the NOMA area pursuant to Section 1008 of DCMR, Title 24. To prevent littering, the Applicant shall undertake all reasonable efforts to prevent anyone from using the Establishment to distribute flyers and other advertisements or promotional materials and shall maintain responsibility to clean up any such flyers or promotional materials pursuant to Sections 5 and 6(a) of this Agreement.

7. Bar/Pub Crawls. Applicant agrees that entertainment provided at the establishment not to promote or participate in bar or pub "crawl" events.

8. After-Hours Party. Applicant agrees not to allow any after-hours party to take place on the premises.

9. Special Functions. Applicant agrees that any promoter or other individual or entity that intends to use the exterior of the building or rooftop garden for an event, including but not limited to a wedding, wedding reception, birthday party, corporate or organization function or other similar event shall first obtain the applicable one-day temporary license from ABRA. Further, any such event or function shall comply with the noise control provisions in Section 4 and all other requirements of this Agreement. Should any promoter or other individual violate the terms of this Agreement, the Applicant shall be jointly and severally liable for such violations.

10. Consideration. Applicant will encourage employees and patrons to be considerate of neighboring residents, including those of the Hotel, business owners, operators and their employees at all times. Applicant will encourage its employees leaving the establishment to keep conversations and noise down from 11:00 p.m. to 7:00 a.m.

11. Cooperation with Interested Parties. The Applicant agrees to cooperate with ANC 6C, ABC Board, MPD, DCFEMS, the Commissioner for the Single Member District within whose boundaries the Establishment is located, the Group of 10 and the NOMA BID to resolve issues that prevent the Establishment from fulfilling its obligations under this Agreement.

12. Security. The Applicant agrees to (i) engage and maintain adequate security personnel at all times when the Establishment is operating and until at least one hour past closing time to ensure that the Establishment's patrons have dispersed from the area peacefully and (ii) ensure that all of its video cameras are maintained and fully functioning on a weekly basis every Friday night and (iii) maintain a log book of such maintenance checks. The Applicant agrees to hire reimbursable details from MPD. The Applicant agrees to share (i) a copy of its current security plan with the Protestants as such security plan has been approved by the Board and any subsequent amendments in the future. The Applicant's current Security Plan indicates that it has one security guard per 50 patron capacity per its current Certificate of Occupancy. Whenever the Applicant has live entertainment, including a guest disk jockey, the Applicant shall employ five additional security guards to address the anticipated crowd of patrons that typically attend such entertainment events.

13. Parking. The Applicant agrees to enter into and maintain a contract with parking lot owner or company to provide parking for patrons in the nearby area consistent with its Certificate of Occupancy.

14. Modification. This agreement can be modified by mutual agreement of all the parties with the approval of the ABC Board. The parties shall use all reasonable effort to come to a mutual agreement. In the case of ANC 6C, if Applicant desires to modify the terms of this agreement prior to implementing the changes, Applicant shall receive written agreement from ANC 6C after approval by the commissions at a regularly scheduled public meeting. In the event the parties cannot voluntarily agree, the Licensee shall have the right to request approval of the ABC Board to its proposed change.

16. Regulations. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.

17. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable by the ABC Board with respect to its order on the license renewal, those terms or provisions of the Agreement not incorporated by reference in the Board's order shall provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement.

18. Withdrawal of Protests. Protestants agree to the issuance of the renewal of the license and withdrawal of their Protest, *provided* that this Settlement Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Settlement Agreement.

19. Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself

20. 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.

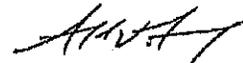
21. Binding Effect. This Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant, any entity of the Group of 10 Protestants and such entity's successors and assigns, ANC 6C and any transferees of the license.

22. Bankruptcy Court Approval. The enforceability of this Agreement, and all conditions therein, shall be contingent on its approval by the United States Bankruptcy Court for the District of Columbia in Case No. 1:13-bk-00418. The seeking of such approval shall be undertaken with all due speed and shall not be delayed, hindered, or opposed by any party to this Agreement. The Applicant shall file a motion for judicial approval of this Agreement with the Court in no more than 21 days from the Effective Date of this Agreement.

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

APPLICANT:

SUPERCLUB IBIZA, LLC

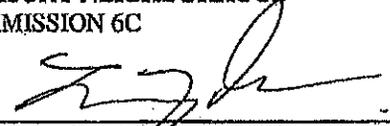
By: 

Name: Aldo Truong

Title: managing member

PROTESTANTS:

ADVISORY NEIGHBORHOOD
COMMISSION 6C

By: 

Tony Goodman on behalf of ANC 6C

GROUP OF 10

By: _____

Douglass M. Firstenberg, not
individually, but as Designated
Representative for the Group of 10

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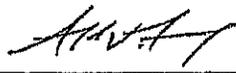
APPLICANT:

SUPERCLUB IBIZA, LLC

By:

Name:

Title:


Aldo Truong
managing member

PROTESTANTS:

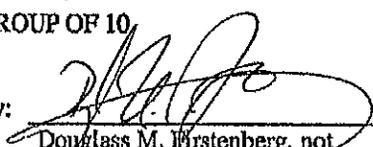
ADVISORY NEIGHBORHOOD
COMMISSION 6C

By:

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GROUP OF 10

By:


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