



that because a violation of this condition will constitute a violation of a Board Order under D.C. Official Code § 25-823(6), this will resolve any delays in enforcement caused by the notice provision of the Settlement Agreement and result in greater penalties if a violation is found.

### ***Procedural Background***

The Notice of Public Hearing advertising Vita Lounge's Application was posted on October 10, 2013, which informed the public that objections to the Application could be filed on or before November 18, 2013. *ABRA Protest File No. 13-PRO-00154*, Notice of Public Hearing [Notice].

On November 18, 2013, the Alcoholic Beverage Control Administration ("ABRA") received a protest letter from Martin Smith, the designated representative of the Neighbors of Naylor Court, a Group of Five or More Residents and Property Owners ("Protestants"), pursuant to D.C. Official Code §25-602(a) (2001). Letter from Martin Smith, to ABRA Adjudication Division (November 1, 2013) [*Protest Letter*]. Additionally, ABRA received a protest letter from Chairman Matt Raymond on behalf of Advisory Neighborhood Commission 2F ("Protestants"). Letter from Chairman Matt Raymond to ABRA Adjudication Division (November 18, 2013) [*Protest Letter ANC 2F*]

The parties came before the Board for a Roll Call Hearing on December 2, 2013, where the group of 5 of more Protestants, the Smith Group, was granted conditional standing to protest the renewal Application. *ABRA Protest File No. 13-PRO-00154; Protest Letter. ANC 2F* was dismissed for failure to appear at the Roll Call Hearing. *Id; Protest Letter ANC 2F*. The Board held a Status Hearing with the parties on February 5, 2014.

The Protest Hearing occurred on June, 18 2014. The Board received Proposed Findings of Fact and Conclusions of Law from Vita Lounge on August 8, 2014. The Smith Group waived their right to file Proposed Findings of Fact and Conclusions of Law at the conclusion of the Protest Hearing. The Board considered the Applicant's Proposed Findings of Fact and Conclusions of Law in resolving this protest.

The issues in this matter are: (1) whether the renewal of the license will adversely impact the peace, order, and quiet of the neighborhood and, (2) whether the renewal of the license will adversely impact real property values. D.C. Official Code §§ 25-313, 25-725, and 25-726 and 23 DCMR § 400.1(a) (West Supp. 2014).

### **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:

## I. Background

1. The Applicant filed an Application to renew its Retailer's Class CT License. *See ABRA Licensing File No. 086037, ABRA Protest File No. 13-PRO-00154.* The Applicant's hours of operations and sales and services of alcoholic beverages are Sunday through Thursday, 5:00 p.m. until 2:00 a.m. *Protest Report (March 2014) [Protest Report].* The Applicant has an Entertainment Endorsement, which grants it the ability to provide entertainment between the hours of 5:00 p.m. to 2:00 a.m., Sunday through Thursday, and 5:00 p.m. to 3:00 a.m., Friday through Saturday. *See ABRA Licensing File No. 086037.* The Applicant has a Settlement Agreement with Advisory Neighborhood Commission 2F, which was approved by the Board on April 23, 2008. *See Board Order No. 2008-187.*

## II. ABRA Investigator Kofi Apraku

2. Investigator Kofi Apraku investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 13-PRO-00154, Protest Report.*

3. The establishment is located at 1318 9<sup>th</sup> Street, N.W. *Protest Report, 1.* It is located in a C-2-A zone. *Id.* There are twenty (20) ABC-licensed establishments located within twelve-hundred (1,200) feet of the establishment. *Id.* at 2. The Scripture Cathedral Child Care Center is located at 810 O Street, N.W., approximately ninety (90) feet away from the Applicant. *Id.* at 3; *Exhibit 4.*

4. The establishment is located in an attached building with a grey brick exterior and a large awning. *Protest Report, 3.* The establishment has two levels and two large second floor windows. *Id.* Vita Lounge and Restaurant operates on the first floor which has a bar, dance floor, and elevated seating area. *Id.* There is additional seating on the first floor towards the rear of the establishment. *Id.* at 4. Penthouse Nine operates on the second floor. *Id.* at 4. A private staircase leads to the second floor which also has a bar and several seating areas. *Id.* at 4. There is a second bar and additional seating at the rear of Penthouse Nine. *Id.* at 4. There is limited metered street parking lining the thirteen-hundred (1300) block of 9<sup>th</sup> Street, N.W. and directly in front of the establishment's exterior. *Transcript (Tr.), June 18, 2014 at 20 -21, Protest Report at 3.*

5. The establishment is located next to Thally, a Retailer's Class CR licensed establishment. *Protest Report, 2.* There are five (5) ABC licensed establishments within twelve-hundred (1,200) feet of Vita Lounge that have entertainment endorsements. *Protest Report, 3.*

6. ABRA Investigators monitored the Applicant on ten (10) separate occasions between Saturday, February 15, 2014, and Saturday, March 10, 2014. *Tr., 6/18/14 at 20.* ABRA investigators did not observe any loitering, criminal activity or excessive noise or trash around the establishment. *Tr., 06/16/14 at 20.*

7. Investigator Apraku testified that in the past, ABRA Investigators would investigate noise complaints against the Applicant on a regular basis. *Tr., 06/18/14 at 22-23, 30.*

8. Investigator Apraku has been a part of the Noise Task Force since 2013. *Tr.*, 6/18/14 at 23. The Noise Task Force has investigated Vita Lounge for noise complaints. *Tr.*, 6/18/14 at 23-24. According to Investigator Apraku, the Applicant did not receive a warning or citation for any noise violations. *Tr.*, 6/18/14 at 23, 30.

### **III. Abeba Beyene**

9. Abeba Beyene is the owner of Vita. *Tr.*, 6/18/14 at 35. Ms. Beyene has owned the establishment for approximately three years. *Tr.*, 6/18/14 at 36, 92.

10. Ms. Beyene has lived in the U.S. for fifteen (15) years, and has worked as a bar manager and bartender at several lounges throughout the D.C. area. *Tr.*, 6/18/14. Vita is the first establishment that she has owned. *Tr.*, 6/18/14 at 36.

11. Ms. Beyene testified that when she began operating Vita she used the existing sound system installed by the previous owner. *Tr.*, 6/18/14 at 37. The establishment has thirty-four (34) speakers; seventeen (17) of which are on the first and second floors. *Tr.*, 6/18/14 at 39, 61.

12. She asserted that she was not aware that The Nine Condominium, located at 1316 Naylor Court, N.W., was located next to Vita Lounge. *Tr.*, 6/18/14 at 37, 248. She also claimed that she did not know that the establishment shares a second floor interior wall with the condominium. *Tr.*, 6/18/14 at 38.

13. Ms. Beyene testified that once she opened for business that the residents of The Nine immediately began complaining to her about excessive noise emanating from her establishment. *Tr.*, 6/18/14 at 38. Ms. Beyene and her neighbors have met on multiple occasions to try to mitigate the excessive noise transmitted from the establishment. *Tr.*, 6/18/14 at 77. Ms. Beyene has disconnected eleven speakers on the first and second floors. *Tr.*, 6/18/14 at 39, 50, 54. The establishment now uses twelve of the thirty-four speakers installed in the establishment. *Tr.*, 6/18/14 at 39, 61.

14. On April 20, 2014, Mr. Martin Smith contacted Ms. Beyene and requested that she lower the volume level of noise transmitted out of the back of the establishment. *Tr.*, 06/18/14 at 128, 132, 158, 174-175, 282. Ms. Beyene informed Mr. Smith that she, along with ABRA, Metropolitan Police Department and the D.C. Department of Consumer and Regulatory Affairs investigated the sound level and that it was not excessively loud. *Tr.*, 06/18/14 at 282.

15. Ms. Beyene installed a limiter on the sound system for the first and second floors. *Tr.*, 6/18/14 at 39-40, 79, 88. The limiter automatically shuts off the sound system when the volume is increased beyond a pre-set limit. *Tr.*, 6/18/14 at 40, 80. Ms. Beyene, her neighbors, and the Protestants agreed on the sound level for the limiter. *Tr.*, 6/18/14 at 40-41. According to Ms. Beyene, the volume on the sound system is set to the lowest level. *Tr.*, 6/18/14 at 88.

16. Ms. Beyene agreed that excessive noise has emitted through the rear emergency door of the establishment. *Tr.*, 6/18/14 at 42. To help decrease the amount of sound transmitted through

the backdoor, she hired a sound engineer to apply a sound-proof seal to the door. *Tr.*, 6/18/14 at 42.

17. Ms. Beyene asserted that she is willing to do anything to eliminate any excessive noise from being emitted from her establishment in order to accommodate her neighbors. *Tr.*, 6/18/14 at 67. According to Ms. Beyene, she has solicited two estimates from construction companies that could soundproof her establishment; one for \$17,000 and another for \$14,500. *Tr.*, 06/18/14 67, 68, 69, 81. She promised to hire one of the companies to soundproof Vita Lounge immediately. *Tr.*, 6/18/14 at 67.

18. According to Ms. Beyene, the Protestants want her to enter into a new Settlement Agreement that requires her to close her establishment one hour earlier. *Tr.*, 6/18/14 at 68. The proposed Settlement Agreement would require Vita Lounge to close at 1:00 a.m., Sunday through Thursday and 2:00 a.m., Friday and Saturday. *Tr.*, 6/18/14 at 68. The earlier closing time is expected to reduce the noise level and the amount of patrons leaving Vita Lounge when it closes for the night. *Tr.*, 06/18/14 at 68. Ms. Beyene stops serving alcoholic beverages one half hour before closing. *Tr.*, 6/18/14 at 75, 85, 96.

19. Ms. Beyene did not enter into the Settlement Agreement. *Tr.*, 6/18/14 at 68. She believes the restricted hours of operation would have a detrimental impact on her business. *Tr.*, 6/18/14 at 68, 84, 97-98, 217, 235.

20. Ms. Beyene provided the names of several ABC licensed establishments in the community that she views as competitors. *Tr.*, 6/18/14 at 74, 84. The establishments have the same hours of operation as Vita Lounge. *Tr.*, 06/18/14 at 74, 84. She alleges that closing her establishment one hour earlier would give these establishments a competitive advantage. *Tr.*, 6/18/14 at 99.

21. MPD and Treasury Police provide security for the establishment until 4:00 a.m. on Friday and Saturday. *Tr.*, 6/18/14 at 85, 93, 97, 104, 219. Ms. Beyene has also posted several signs inside the establishment that remind patrons to exit quietly because they are in a residential neighborhood. *Tr.*, 6/18/14 at 85. Additionally, Ms. Beyene instructs the D.J. to remind patrons to exit quietly. *Tr.*, 6/18/14 at 85.

22. According to Ms. Beyene, there is sufficient street parking. *Tr.*, 6/18/14 at 105. She also employs U Street Parking which provides valet parking services. *Tr.*, 6/18/14 at 105, 147.

#### **IV. Martin Smith**

23. Martin Smith testified on behalf of the Protestants. *Tr.*, 06/18/14 at 108. Mr. Smith resides at 1326 Naylor Court, N.W., two houses and a vacant lot away from Vita. *Tr.*, 6/18/14 at 110. Mr. Smith has lived near Vita since 2010. *Tr.*, 6/18/14 at 110.

24. Mr. Smith serves on the Alcohol Policy Committee for ANC 2F. *Tr.*, 6/18/14 at 115. The Committee created a template for Settlement Agreements between ABC Licensees and the ANC that restricts the hours of operation. *Tr.*, 6/18/14 at 116, 134, 238-239. Some ABC licensed

establishments have agreed to and used the template as a basis for their Settlement Agreements with ANC 2F. *Tr.*, 6/18/14 at 117, 142, 240-241.

25. Mr. Smith asserted that restricting the hours of operation for the ABC Licensees helps the community to avoid the “worst of the drunks” that exit the establishments at late hours. *Tr.*, 6/18/14 at 119.

26. Mr. Smith testified that the Applicant fails to meet the appropriateness standard for the residential community. *Tr.*, 6/18/14 at 123. He asserted that the Applicant has a Retailer’s Class CT License with an entertainment endorsement, but operates as a nightclub. *Tr.*, 6/18/14 at 123, 124-125.

27. According to Mr. Smith, the community has had consistent problems with excessive noise emanating from the establishment. *Tr.*, 6/18/14 at 125, 147, 219. Loud fighting and screaming from patrons exiting the establishment have also been problematic. *Tr.*, 6/18/14 at 125, 147, 219. Residents frequently call MPD to address the disturbances. *Tr.*, 6/18/14 at 125, 148, 238.

28. Mr. Smith has contacted the Applicant on several occasions in attempts to mitigate the level of sound emitted from the establishment. *Tr.*, 6/18/14 at 128, 153.

29. Specifically, he claimed that the Applicant was uncooperative and unresponsive to his request on April 20, 2014 to lower the volume of the noise emanating from the establishment. *Tr.*, 6/18/14 at 128, 132, 158, 174-175. He testified that she lowered the volume after he informed her that he was contacting ABRA to file a noise complaint. *Tr.*, 6/18/14 at 169, 170, 174, 175.

30. Mr. Smith argued that Vita Lounge should have “last call” for serving alcohol before the closing hour, close at least one hour earlier, and end its valet service. *Tr.*, 6/18/14 at 124, 134, 185, 186, 190, 193, 215, 218, 221. According to Mr. Smith, the patrons of Vita Lounge disrupt the peace, order and quiet of the neighborhood when leaving the establishment between the hours of 2:30 a.m. and 4:00 a.m. *Tr.*, 6/18/14 at 125, 190. Mr. Smith knows that the disorderly people are patrons of Vita, because it is the only establishment in the neighborhood that closes at those hours. *Tr.*, 6/18/14 at 125.

31. Mr. Smith has filed noise complaints against the Applicant since 2011. *Tr.*, 6/18/14 at 136, 238. He filed noise complaints in November 2013, April 2014, and February 2014. *Tr.*, 6/18/14 at 135. He testified that he is frustrated with ABRA’s inadequate response to his noise complaints. *Tr.*, 6/18/14 at 126, 134, 135, 183. According to Mr. Smith, he has had to wait more than one year for ABRA to adjudicate a noise complaint. *Tr.*, 6/18/14 at 126, 127, 128, 129, 183.

32. Mr. Smith claimed that the number of noise complaints against the Applicant have decreased because the residents of the community are frustrated with ABRA’s inadequate enforcement and adjudication process. *Tr.*, 6/18/14 at 127, 129. After a noise complaint is filed, the establishment has thirty (30) days to correct the problem before a subsequent complaint can be filed. *Tr.*, 6/18/14 at 126, 127, 139. Mr. Smith testified that it is easier for him to leave his

home and wait until the Applicant closes for the night before returning home than it is to file a noise complaint with ABRA. *Tr.*, 6/18/14 at 129, 181, 183,184.

33. Mr. Smith admitted that the level of noise emitted from the establishment has changed and is more “manageable”. *Tr.*, 6/18/14 at 130, 132, 133. Typically, he cannot hear any noise emitted from the establishment with his windows and doors closed. *Tr.*, 6/18/14 at 146. However, the noise level of the patrons exiting the establishment has not improved but has worsened. *Tr.*, 6/18/14 at 130.

34. Mr. Smith asserted that residents have moved out of the neighborhood and suffered financial losses in the form of reduced property values because of the noise problem with Vita Lounge. *Tr.*, 6/18/14 at 150.

35. The template Settlement Agreement proposed by the Smith Group does not alter the existing Settlement Agreement provision regarding excessive noise. *Tr.*, 6/18/14 at 139, 216. The proposal reduces the thirty (30) day notice to cure to fourteen (14) days and requires that noise issues be resolved immediately. *Tr.*, 6/18/14 at 140, 215-216.

#### **V. George Danilovics**

36. Mr. George Danilovics is a member of the “Smith Group” and testified on behalf of the Protestants. *Tr.*, 06/18/14 at 247. Mr. Danilovics has resided in the Nine Condominium located at 1316 Naylor Court, N.W., since January 2010. *Tr.*, 06/18/14 at 248, 250. He serves as the Nine’s treasurer and oversees all the financial matters associated with the building. *Tr.*, 06/18/14 at 254. The building has four residential units and commercial spaces. *Tr.*, 06/18/14 at 249-250. Thally, a Retailer’s Class CR licensed establishment, occupies the first floor of the commercial space. *Tr.*, 06/18/14 at 249.

37. Mr. Danilovics’ condominium unit is located on the third and fourth floors, at the rear of the building. *Tr.*, 06/18/14 at 249.

38. When Mr. Danilovics purchased the unit, Vita was not in operation. *Tr.*, 06/18/14 at 251. Be Bar, a former Retailer’s Class CT licensed establishment, operated at the premises 1318 9<sup>th</sup> Street, N.W. *Tr.*, 06/18/14 at 251.

39. Mr. Danilovics testified that he never filed a noise complaint against Be Bar. *Tr.*, 06/18/14 at 252. He began to file noise complaints against Vita in 2011, after Be Bar transferred its ABC license to the Applicant. *Tr.*, 06/18/14 at 252. According to Mr. Danilovics, excessive noise became a problem once Vita, formerly Mood Lounge, began operations. *Tr.*, 06/18/14 at 252.

40. Mr. Danilovics asserted that since the Applicant has changed its trade name from Mood Lounge to Vita Lounge the problem of excessive noise has improved. *Tr.*, 06/18/14 at 253, 277. Based on Mr. Danilovics’ testimony, there were several noise complaints filed against the Applicant when it operated under the trade name Mood Lounge. *Tr.*, 06/18/14 at 253. The ABC

Board deemed Mood Lounge in violation of several ABRA regulations and imposed fines. *Tr.*, 06/18/14 at 253.

41. Mr. Danilovics filed a noise complaint against the Applicant in December 2013. *Tr.*, 06/18/14 at 253. Mr. Danilovics is rarely in his unit during the weekends. *Tr.*, 06/18/14 at 254. However, he testified that he has heard excessive noise emanating from the establishment into his residence. *Tr.*, 06/18/14 at 254. Mr. Danilovics also asserted that excessive noise is a re-occurring problem with the Applicant. *Tr.*, 06/18/14 at 277.

42. According to Mr. Danilovics, both renters and owners of second floor units have moved out of the building. *Tr.*, 06/18/14 at 256, 266, 267, 268, 271, 279. The Applicant and the condominium share a second floor wall. *Tr.*, 06/18/14 at 256, 271, 272.

43. Mr. Danilovics testified that A&D and Thally, two ABA licensed establishments in the neighborhood, have the same closing hours as proposed in the template Settlement Agreement. *Tr.*, 06/18/14 at 259. He claimed that both establishments have been successful and do not disrupt the peace, order and quiet of the neighborhood. *Tr.*, 06/18/14 at 259.

44. Mr. Danilovics also testified that Lost and Found, a Retailer's Class CT Licensee, has adopted the Smith Group's template Settlement Agreement. *Tr.*, 06/18/14 at 261. Mr. Danilovics stated that Lost and Found has extended hours of operation which is acceptable to the community, because the Licensee agreed to a strict sound provision. *Tr.*, 06/18/14 at 262. Specifically, as part of the agreement, no noise can be audible outside of the establishment. *Tr.*, 06/18/14 at 262.

## **VI. Settlement Agreement**

45. Section 6 of Vita's Settlement Agreement states,

Applicant will . . . take all necessary actions to ensure that music, noise and vibrations from the establishment are not audible within any adjacent residential properties . . . Should any sound, noise or music be heard in any residential premises, Applicant will take immediate remedial action.

*In re WAMI, LLC, t/a Be Bar*, Case No. 61087-08/039P, *Settlement Agreement*, § 6 (D.C.A.B.C.B. Apr. 23, 2008).

## **CONCLUSIONS OF LAW**

46. The Board may approve an Application to Renew a Retailer's Class CN License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and real property values of the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

47. Furthermore, “. . . the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Official Code § 25-314(c).

**I. THE BOARD FINDS THE APPLICATION FILED BY VITA IS INAPPROPRIATE UNDER § 25-315 DUE TO THE ESTABLISHMENT’S CONTINUOUS VIOLATION OF THE SETTLEMENT AGREEMENT.**

48. The Board finds the Application inappropriate based on Vita’s continuous violations of § 6 of its Settlement Agreement.

49. As a matter of law, “. . . any breach of the voluntary agreement constitutes a breach of the license itself and must be taken into account by the Board in considering an application for renewal of the license.” *N. Lincoln Park Neighborhood Ass’n v. Alcoholic Beverage Control Bd.*, 666 A.2d 63, 67 (D.C. 1995); D.C. Official Code § 25-315(b)(1). A licensee’s settlement agreement must be interpreted according to the principles of contract law. *North Lincoln Park Neighborhood Ass’n v. District of Columbia Alcoholic Beverage Control Bd.*, 727 A.2d 872, 875 (D.C. 1999). The Board generally construes a settlement agreement “within its four corners and generally . . . enforce[s] it as written.” *Prince Const. Co., Inc. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 385 (D.C. 2006).

50. In this case, Vita has agreed to refrain from emitting noise in a manner that may be heard in an adjacent residence. *Supra*, at ¶ 45. Nevertheless, the Board credits Mr. Danilovics testimony that he hears the establishment’s music inside his residence on a regular basis. *Supra*, at ¶ 41. Based on the terms of the Settlement Agreement, this action on the part of Vita constitutes a material breach of the agreement on a regular basis.

51. Therefore, the Board concludes that the establishment is inappropriate based on its continuous violation of the settlement agreement.

**II. THE BOARD IMPOSES CONDITIONS ON THE LICENSE TO RESOLVE THE NOISE ISSUES RAISED BY THE PROTESTANTS.**

52. Under § 25-104(e), “[t]he Board, in issuing licenses, may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the [neighborhood] . . . where the licensed establishment is to be located. D.C. Official Code § 25-104(e). Among other purposes, the Board uses conditions to address “. . . valid concerns regarding appropriateness that may be fixed through the imposition of specific operation[al] limits or requirements on the license.” *In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) .

53. The Board finds it necessary to condition continued licensure on the establishment refraining from producing amplified music and sound that may be heard in a residence. The

Board notes that this requirement permits an ABRA Investigator to immediately issue a citation or file a report alleging violations without waiting for the cure period to expire. *Supra*, at ¶¶ 31, 32. The Board further notes that a violation of this condition will be considered a primary tier violation, which will subject Vita to greater penalties if it fails to comply. 23 DCMR § 800 (West Supp. 2014) (See §25-823(6)). The Board also notes that this condition gives Vita the flexibility to determine the best manner in which to soundproof the establishment—so long as it achieves the required result. *Supra*, at ¶ 17.

### **III. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 2F'S ISSUES AND CONCERNS.**

54. ANC 2F's written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding Vita's impact on peace, order, and quiet, public safety, and real property values. Letter from Matthew Raymond, Chair, ANC 2F, to Ruthanne Miller, Chair, Alcoholic Beverage Control Board, 1-2 (Nov. 18, 2013). The Board finds that the condition imposed by the Board in this Order resolves the noise issues raised by the parties. Furthermore, Vita has demonstrated that it has taken steps to ensure the safety of the establishment and the public. *Supra*, at ¶ 21. The Protestants have not rebutted this showing or demonstrated that the safety concerns they raise have not been satisfied by these efforts on the part of Vita. Finally, the Board finds that Vita's security arrangements are sufficient evidence to demonstrate that the establishment has taken measures to prevent negative externalities that may have an adverse impact on property values. *Id.* The Board notes that the Protestants have not presented sufficient evidence to rebut this showing or provided enough evidence for the Board to make a finding in its favor on this issue as well.

### **IV. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.**

55. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants 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 (West Supp. 2014). Accordingly, based on the Board's review of the Application and the record, the Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

## **ORDER**

Therefore, the Board, this 3rd day of December 2014, hereby **ORDERS** that the Renewal Application of the Retailer's Class CT License filed by Mimi & D, Inc., t/a Vita Restaurant and Lounge/Penthouse Nine, at premises 1318 9th Street, N.W., Washington, D.C., is **GRANTED**, subject to the following condition:

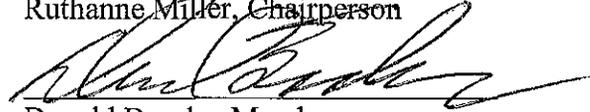
1. The license holder shall refrain from generating amplified music or other amplified sounds that may be heard in any residence—regardless of the zoning designation of the residence or residential unit.

Copies of this Order shall be sent to the Applicant and the Protestant.

District of Columbia  
Alcoholic Beverage Control Board

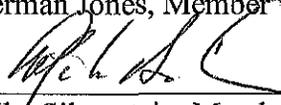


Ruthanne Miller, Chairperson

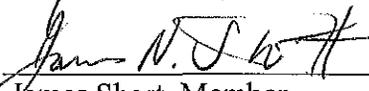


Donald Brooks, Member

Herman Jones, Member



Mike Silverstein, Member



James Short, Member

Pursuant to 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, 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 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).