

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

| | | |
|-----------------------------------------------------|---|--------------------------|
| In the Matter of: |) | |
| DC Live, LLC |) | |
| t/a Elevate |) | |
| Applicant for Substantial Change (Sidewalk Cafe) |) | License No.: ABRA-100316 |
| to a Retailer’s Class CT License |) | Order No.: 2019-144 |
| at premises |) | |
| 15 K Street, NE |) | |
| Washington, D.C. 20002 |) | |

DC Live, LLC, t/a Elevate (Licensee)

Stephen O’Neal, Commissioner, Advisory Neighborhood Commission (ANC) 6C

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ORDER ON ADDENDUM TO SETTLEMENT AGREEMENT

The official records of the Alcoholic Beverage Control Board (Board) reflect that DC Live, LLC, t/a Elevate and ANC 6C entered into a Settlement Agreement (Agreement), dated February 17, 2016, and an Amendment to Settlement Agreement (Amendment), dated May 23, 2017. This matter comes now before the Board to consider the Parties’ Addendum to Settlement Agreement (Addendum), dated February 25, 2019, in accordance with D.C. Official Code § 25-446 (2001).

The Addendum has been reduced to writing and has been properly executed and filed with the Board. The Licensee and Commissioner Stephen O'Neal, on behalf of ANC 6C, are signatories to the Addendum.

Accordingly, it is this 20th day of March, 2019, **ORDERED** that:

1. The above-referenced Addendum to 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 modifications:

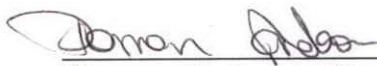
Section 2 (Summer Garden Hours) – This Section shall be modified to read as follows: “Elevate agrees that the hours of operation, sales, service, and consumption for the Summer Garden area shall not extend beyond 12:00 AM, Sunday – Thursday and 1:00 AM on Friday and Saturday.”

Section 3 (Sidewalk Café Hours) – This Section shall be modified to read as follows: “Elevate agrees that the hours of operation for the Sidewalk Café area shall not extend beyond 12:00 AM, Sunday-Thursday and 1:00 AM on Friday and Saturday. The Sidewalk Café hours of alcoholic beverage sales, service, and consumption shall be 10:00 AM – 12:00 AM Sunday through Thursday and 10:00 AM-1:00 AM Friday and Saturday. At the end of the sidewalk café hours of operation, no patrons shall remain in the sidewalk café area, and the Applicant shall secure the tables and chairs so as to make them unavailable for use by late-night passerby. After the sidewalk café closes, the Applicant shall promptly remove all litter and empty any outside waster receptacle(s) so that such materials do not remain in or near the sidewalk café overnight.”

The parties have agreed to these modifications.

2. All terms and conditions of the original Settlement Agreement and Amendment to Settlement Agreement not amended by the Addendum, shall remain in full force and effect; and
3. Copies of this Order shall be sent to the Licensee and ANC 6C.

District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



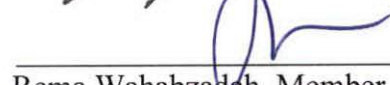
Mike Silverstein, Member



James Short, Member



Bobby Cato, Member



Rema Wahabzadah, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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; (202/879-1010). 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).

Addendum to Voluntary Agreement

This addendum to the Voluntary Agreement executed on January 17, 2016 is made and entered into as of February 25, 2019 by and through DC Live, LLC t/a Elevate (hereinafter "Elevate" or the "Applicant") and the Advisory Neighborhood Commission 6C (hereinafter "ANC") and shall supersede any terms in any other agreement.

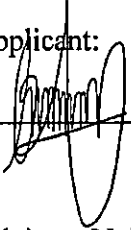
The Parties agree as follows:

- 1. Tavern Hours:** Elevate agrees that the hours of operation shall be from 10 AM until 2 AM Sunday – Thursday and 10 AM until 3 AM on Friday and Saturday. The ANC agrees that Elevate may apply for extended holiday hours for indoor operation of the establishment on holidays recognized by the Alcoholic Beverage Regulation Administration ("ABRA") Extended Holiday Hours program, provided, however, that Elevate may sell and serve alcoholic beverages until 4 AM on such extended holiday evenings but shall not operate for 24 hours on these holidays. Patrons shall be encouraged leave the premises peacefully and quietly without disturbing the residents in the surrounding neighborhood.
- 2. Summer Garden Hours:** Elevate agrees that the hours of operation for the Summer Garden area shall not extend beyond 12:00 AM, Monday – Thursday and 1:00 AM on Friday, Saturday and Sunday.
- 3. Sidewalk Café Hours:** Elevate agrees that the hours of operation for the Sidewalk Cafe area shall not extend beyond 12:00 AM, Monday – Thursday and 1:00 AM on Friday, Saturday and Sunday. The Sidewalk Café hours of alcoholic beverage sales, service, and consumption shall be 8:00 AM-1:00 AM Monday through Thursday and 8:00 AM-1:00 AM Friday and Saturday. At the end of the sidewalk café hours of operation, no patrons shall remain in the sidewalk café area, and the Applicant shall secure the tables and chairs so as to make them unavailable for use by late-night passersby. After the sidewalk café closes, the Applicant shall promptly remove all litter and empty any outside waste receptacle(s) so that such materials do not remain in or near the sidewalk café overnight.
- 4. Noise Suppression:** The Applicant's operation shall at all times comply with the D.C. Noise Control Act and D.C. Official Code § 25-725. Applicant acknowledges that noise is a critical issue for the neighborhood.
 - a. Applicant shall encourage employees and patrons to be considerate of residents in the neighborhood by keeping voices and other noises at a level that will not disturb the peace, order, quiet, and tranquility of residents in the enjoyment of their homes.

- b. Applicant shall keep the exterior door(s) closed at all times after the end of the sidewalk café's operating hours, except when patrons and staff are entering or exiting the interior premises.
5. **Termination:** Applicant agrees that in the event three residents from separate addresses deem noise after 10:00 PM (including, but not limited to, noise from speakers or other amplification devices) unduly disruptive and file a written complaint or complaints to either ABRA or the ANC to that effect, the parties shall amend the agreement to remove the terms of this addendum as relevant to the complaints.
6. **Renewal:** Applicant agrees that terms of this this addendum will terminate at the end of each calendar year, and be automatically renewed in the absence of action by the ANC to express the intent to refuse renewal.

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 26th day of February, 2019.

Applicant:



Advisory Neighborhood Commission 6C:

Stephen O'Neal

Stephen O'Neal
ANC 6C ABL Committee Chair

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

In the Matter of:)

DC Live, LLC)
t/a Elevate)

Holder of a)
Retailer's Class CT License)

at premises)
15 K Street, NE)
Washington, D.C. 20002)

License No.: ABRA-100316
Order No.: 2018-075

DC Live, LLC, t/a Elevate (Licensee)

Karen Wirt, Chairperson, Advisory Neighborhood Commission (ANC) 6C

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
James Short, Member
Donald Isaac, Sr., Member
Bobby Cato, Member
Rema Wahabzadah, Member

ORDER ON AMENDMENT TO SETTLEMENT AGREEMENT

The official records of the Alcoholic Beverage Control Board (Board) reflect that Partners at DC Live, LLC, t/a Elevate (Licensee), and ANC 6C have entered into a Settlement Agreement (Agreement), dated February 17, 2016, that governs the operation of the Licensee's establishment.

This matter comes now before the Board to consider the Parties' Amendment to Settlement Agreement (Amendment), dated May 23, 2017, in accordance with D.C. Official Code § 25-446 (2001).

The Amendment has been reduced to writing and has been properly executed and filed with the Board. The Licensee and Commissioner Stephen O’Neal, on behalf of ANC 6C, are signatories to the Amendment.

Accordingly, it is this 22nd day of February, 2018, **ORDERED** that:

1. The above-referenced Amendment to 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 modifications:


Section 2 (Summer Garden Hours) – “12 p.m.” shall be replaced with “12 a.m.”

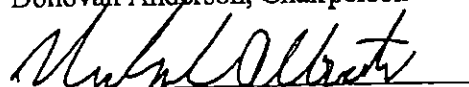
Section 3 (Termination) – This Section shall be modified to read as follows: “Applicant agrees that in the event three residents from separate addresses deem noise after 10:00 PM (including, but not limited to, noise from speakers or other amplification devises) unduly disruptive and file a written complaint or complaints to either ABRA of the ANC to that effect, the parties shall amend the agreement to remove the provision authorizing the extension of hours.

The parties have agreed to these modifications.

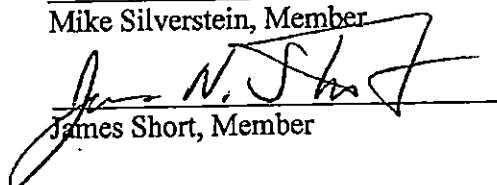
2. All terms and conditions of the original Settlement Agreement not amended by the Amendment, shall remain in full force and effect; and
3. Copies of this Order shall be sent to the Licensee and ANC 6C.

District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Nick Alberti, Member

Mike Silverstein, Member


James Short, Member

Donald Isaac, Sr., Member

Bobby Cato, Member

Rema Wahabzadah, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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; (202/879-1010). 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).

Addendum to Voluntary Agreement

This addendum to the Voluntary Agreement executed on January 17, 2016 is made and entered into as of May 23, 2017 by and through DC Live, LLC t/a XO (hereinafter "XO" or the "Applicant") and the Advisory Neighborhood Commission 6C (hereinafter "ANC") and shall supersede any terms in any other agreement.

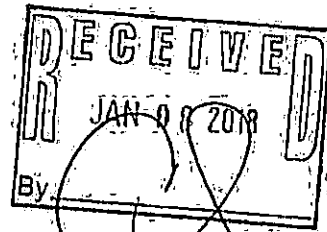
The Parties agree as follows:

- 1. Tavern Hours:** XO agrees that the hours of operation shall be from 10 AM until 2 AM Sunday – Thursday and 10 AM until 3 AM on Friday and Saturday. The ANC agrees that XO may apply for extended holiday hours for indoor operation of the establishment on holidays recognized by the Alcoholic Beverage Regulation Administration ("ABRA") Extended Holiday Hours program, provided, however, that XO may sell and serve alcoholic beverages until 4 AM on such extended holiday evenings but shall not operate for 24 hours on these holidays. Patrons shall be encouraged leave the premises peacefully and quietly without disturbing the residents in the surrounding neighborhood.
- 2. Summer Garden Hours:** XO agrees that the hours of operation for the Summer Garden area shall not extend beyond 12:00 PM, Monday – Thursday and 1:00 AM on Friday, Saturday and Sunday.
- 3. Termination:** Applicant agrees that in the event three residents from separate addresses deem noise after 10:00 PM (including, but not limited to, noise from speakers or other amplification devices) unduly disruptive and file a written complaint or complaints to either ABRA or to the ANC to that effect, the extension of hours detailed in this addendum will terminate immediately.
- 4. Renewal:** Applicant agrees that the extension of hours detailed in this addendum will terminate at the end of each calendar year, and be automatically renewed in the absence of action by the ANC to express the intent to refuse renewal.

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 23rd day of May, 2017

Applicant:

Advisory Neighborhood Commission 6C:

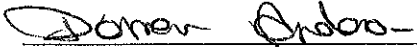


This Agreement constitutes a withdrawal of the Protest filed by ANC 6C.

Accordingly, it is this 17th day of February, 2016, **ORDERED** that:

1. The Application filed by DC Live, LLC, t/a XO, for a new Retailer's Class CT License, located at 15 K Street, N.E., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 6C in this matter is 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; and
4. Copies of this Order shall be sent to the Applicant and ANC 6C.


District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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; (202/879-1010). 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).

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 17 th day of February, 2016 by and between DC Live, LLC t/a XO (hereinafter “XO” or the “Applicant”) and Advisory Neighborhood Commission 6C (hereinafter “ANC 6C” or the “Protestant”).

WHEREAS, XO has filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter “ABC Board”) for issuance of a Retailer’s Class CT license (100316) for premises at 15 K Street NE, Washington, D.C., including requests for Entertainment and Summer Garden Endorsements;

WHEREAS, ANC 6C has protested the approval of the application and the granting of the license;

WHEREAS, the parties desire to enter into this Settlement Agreement whereby XO will adopt certain measures to address ANC 6C’s concerns, such measures to be formal conditions to the approval of the license, in exchange for the withdrawal of the protest filed by ANC 6C.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein after set forth, and other good and viable consideration, XO and ANC 6C agree as follows:

- 1. Recitals Incorporated:** The recitals set forth above are incorporated herein by reference.
- 2. Tavern Hours:** XO agrees that the hours of operation shall be from 10 AM until 2 AM Sunday – Thursday and 10 AM until 3 AM on Friday and Saturday. The ANC agrees that XO may apply for extended holiday hours for indoor operation of the establishment on the following eight (8) evenings per year: New Year’s Eve, Saturday and Sunday of Memorial Day weekend, the eve of Independence Day, Saturday and Sunday of Labor Day weekend, Christmas Eve and Christmas Day; provided, however, that XO may sell and serve alcoholic beverages until 4 AM on such 8 extended holiday evenings but shall not operate for 24 hours on these holidays. Patrons shall be encouraged leave the premises peacefully and quietly without disturbing the residents in the surrounding neighborhood.
- 3. Summer Garden Hours:** XO agrees that the hours of operation for the Summer Garden area shall not extend beyond 10:00 PM, Monday – Thursday and midnight on Friday, Saturday and Sunday.
- 4. Outdoor Entertainment:** XO agrees that no live music will be presented in the summer garden; provided, however, that XO may make use of a DJ the Summer Garden area until 10 pm. The playing of recorded music shall cease at least ½ hour prior to the designated closing time for the summer garden.

5. **Capacity:** The capacity of the tavern is limited to 320 persons seated and 400 standing. The capacity of the summer garden is limited to 60 persons seated or standing, excluding employees. Standing persons shall not be served in the summer garden area.
6. **Noise:** XO agrees to employ sufficient noise abatement and mechanical controls (e.g., governors) on audio devices to ensure that the level of any form of amplified sound, noise, and/or vibration emanating from the establishment complies with applicable law and this Agreement. Without limiting the generality of the foregoing, and consistent with the provisions of Section 7 of this Agreement, XO agrees to review and, as required to ensure ongoing compliance with this Agreement, take such additional actions (including, without limitation, the installation of additional sound abatement materials and the development of policies) to prevent the emanation of any form of amplified sound, noise, and/or vibration from the establishment or the summer garden which may be heard in any residence. XO may request reasonable access to neighboring properties, including those at 60 L Street, NE and 1005 North Capitol Street, NE, prior to opening the summer garden to conduct tests to confirm that any form of amplified sound, noise, and/or vibration from the establishment or the summer garden is not audible in such dwellings.
7. **Continuing Cooperation:**
 - (a) XO will provide the ANC with the name, direct phone number, cellphone number and email address of the manager on duty. If ANC contacts the manager on duty, who is responsible for compliance with this Agreement, the manager on duty will promptly determine whether the sound levels exceed the requirements of this Agreement, and if so, will promptly lower the sound levels or undertake such measures as may be needed to comply with this Agreement and applicable law.
 - (b) Without limiting the generality of the foregoing, XO agrees to review and take any action reasonably required to ensure ongoing compliance with this Agreement, including without limitation, developing policies to avoid complaints. If there are noise complaints from the ANC or local residents, XO shall take all steps reasonably required to address such complaints, including the installation of additional noise controls to ensure XO's compliance with applicable law and this Agreement.
 - (c) XO shall maintain readily visible signage at the entry and exit points of the establishment, the summer garden and the parking lot which signage shall contain language reminding patrons that they are in a mixed use neighborhood and requesting that their enjoyment of the establishment and summer garden be in a respectful and orderly manner. XO's staff or security personnel shall remove from the summer garden and the premises any patron who fails to adhere to this admonition.
 - (d) XO agrees that its manager with understanding of the terms of this agreement and applicable law will monitor levels to ensure compliance.

- 8. Security:** XO 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 and any complaints from patrons, the ANC and local residents. XO agrees to hire reimbursable details from MPD on Friday and Saturday nights when there is an "advertised event". An advertised event shall be an event featuring live entertainment that is advertised via radio advertising and distributed flyers. The Applicant agrees to share (i) a copy of its security plan that complies D.C. Official Code § 25-402(d)(3) with the ANC and the Board when such security plan has been approved by the Board and any subsequent amendments in the future. Whenever the Applicant has live entertainment, including a guest disk jockey, the Applicant shall employ additional security guards to address the anticipated crowd of patrons that typically attend such entertainment events.
- 9. Parking:** XO agrees to provide barricades to separate vehicle and pedestrian traffic in the driveway and parking areas. Further, XO agrees have a security person stationed on Friday and Saturday nights at the exit of the on-site parking lot from one hour prior to closing until one hour after closing each night to ensure that patrons leave the parking lot in an orderly manner and to minimize noise from patrons (e.g., honking of car horns). XO also agrees to (i) provide additional lighting in the parking lot to make it safer at nighttime and (ii) not play amplified music outside in the late night and early morning hours (e.g., after 9:30 PM or before 10 AM Sunday – Thursday or after 11:30 PM or before 10 AM on Friday and Saturday).
- 10. Promoters:** XO shall not cede control of the premises to any promoter or third party, nor shall XO allow any promoter or third party to control access to the establishment.
- 11. After Parties:** Except as otherwise provided herein, XO shall not operate beyond the hours stated in Section 2 of this Agreement. With respect to the eight evenings of extended holiday hours discussed in Section 2, every year XO shall each year (a) provide the ANC with a copy of its Extended Holiday Hours Program Registration Form and Public Safety Plan Information Form when XO files these forms with ABRA and (b) be invited to brief the ANC at a public meeting at least 30 days prior to each holiday requested about its safety plan.
- 12. Public Space and Trash:** XO shall keep the area adjacent to the premises clean and free of litter, bottles and other debris in compliance with DC Code and municipal regulations. Applicant shall police these areas sufficiently to ensure that refuse, flyers and other materials are promptly removed after each closing.

13. Trash Pick-Up and Removal: XO will maintain regular trash/garbage removal service by a licensed trash hauler only during the hours from 9:00 AM to 5:00 PM. XO shall keep dumpster lids tightly closed to inhibit entry by rodents, to limit odors and help control the pest (insect) and rodent population. XO will also remove snow from the sidewalk adjacent to the premises within 8 daylight hours after the snow stops as consistent current DC law.

14. Notice and Opportunity to Cure: The Parties to this Agreement agree to work together to resolve matters of community concern related 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 complaints as the first recourse. Unless a breach of this Agreement is of an emergency nature, the Party in breach shall provide for a cure within 15 days of the notice of such breach. If Applicant fails to cure within the 15-day period (or, with respect to a breach which reasonably requires more than 15 days to cure, fails to commence a cure of such breach and diligently pursue such cure), such failure shall constitute cause for filing a complaint with the Board.

15. Notices: Notices required to be made under this Agreement shall be in writing and mailed to the addressee identified in this Agreement via certified mail, return receipt requested, postage prepaid, or hand-delivered. Notice shall be deemed given as of the time of receipt or refusal of receipt. If to Protestant:

ANC 6C:
Chairperson, ANC 6C
P.O. Box 77876
Washington, DC 20013

With a copy to:

Lyle M. Blanchard, Esq.
1620 L Street NW, Suite 900
Washington, D.C. 20036

If to Applicant:

DC Live, LLC
15 K Street NE
Washington, DC 2002

With a copy to:

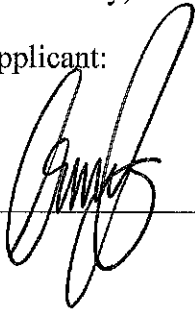
Andrew J. Kline, Esq.
1225 19th Street NW, Suite 320

Washington, D.C. 20036


- 16. Entire Agreement:** This Agreement sets forth the entire understanding of the parties with respect to Applicant's alcoholic beverage application and issuance of the License. There are no other warranties or representations which have been made or shall be relied upon by any of the Parties to this Agreement other than those expressly set forth herein.
- 17. 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.
- 18. Construction:** In the event any violation of this Agreement shall be deemed a violation of District of Columbia law, the violation of this Agreement shall be merged into the law violation, such that the Applicant shall only be found liable for one violation by the Board.
- 19. Withdrawal of Protest:** Protestants agree to the issuance of the license and the withdrawal of their protests upon execution of this Agreement, if the Board's order issuing the license is conditioned upon compliance with this Agreement.

IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 7th day of February, 2016.

Applicant:



Advisory Neighborhood Commission 6C:



TONY GOODMAN
ANC 6C