

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

_____ )	
<b>In the Matter of:</b> )	
)	
Among Doughboy Enterprises, LLC )	
t/a Mellow Mushroom )	
)	
Transfer of a )	License No. ABRA-086063
Retailer's Class CT License )	Order No. 2011-277
)	
at premises )	
2436 18 <sup>th</sup> Street, N.W. )	
Washington, D.C. 20009 )	
_____ )	

Among Doughboy Enterprises, LLC, t/a Mellow Mushroom (Applicant)

Olivier Kamanda, Commissioner, Advisory Neighborhood Commission (ANC) 1C

Denis James, President, Kalorama Citizens Association (KCA)

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

**ORDER ON SECOND AMENDMENT TO COOPERATIVE AGREEMENT**

Among Doughboy Enterprises, LLC's predecessor, Daki, LLC, ANC 1C, and KCA entered into a Cooperative Agreement, dated October 31, 2005, and an Amendment to Cooperative Agreement (Amendment), dated January 7, 2009, setting forth the terms and conditions by which the Applicant will operate its establishment. This matter comes now before the Alcoholic Beverage Control Board (Board) to consider the Parties' Second Amendment to Cooperative Agreement (Second Amendment), dated May 4, 2011, in accordance with D.C. Official Code § 25-446 (2001).

The official records of the Board reflect that the Parties have agreed to amend the Original Cooperative Agreement, dated October 31, 2005, and the Amendment to Cooperative Agreement, dated January 7, 2009; and the Applicant, ANC 1C, and KCA are signatories to the Second Amendment. The Second Amendment has been reduced to


writing and has been properly executed and filed with the Board. Pursuant to the Second Amendment, all terms and conditions of the Original Cooperative Agreement and Amendment to Cooperative Agreement not amended by the Second Amendment shall remain in full force and effect.

Accordingly, it is this 8<sup>th</sup> day of June 2011, **ORDERED** that:


1. The Second Amendment by and between Among Doughboy Enterprises, LLC, t/a Mellow Mushroom, located at 2436 18<sup>th</sup> Street, N.W., Washington, D.C., ANC 1C, and KCA to the Original Cooperative Agreement, dated October 31, 2005, and Amendment to Cooperative Agreement, dated January 7, 2009, is **APPROVED**;
2. The above-referenced Second Amendment is **INCORPORATED** as part of the existing Cooperative Agreement and Amendment to Cooperative Agreement, and this Order; and
3. Copies of this Order shall be sent to the Applicant, ANC 1C, and KCA.

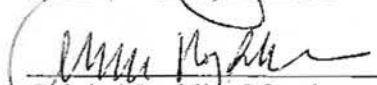
Among Doughboy Enterprises, LLC  
t/a Mellow Mushroom  
License No. ABRA-086063  
Page 3

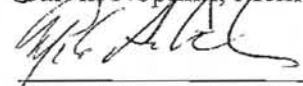
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
Nick Alberti, Interim Chairperson

  
\_\_\_\_\_  
Donald Brooks, Member

  
\_\_\_\_\_  
Herman Jones, Member

  
\_\_\_\_\_  
Calvin Nopplin, Member

  
\_\_\_\_\_  
Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days from the date of this Order with the Alcoholic Beverage Regulation Administration, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.



VERITAS

Veritas Licensing & Legislative Affairs

Andrew J. Kline\* Director

Terry Brennan License Administrator

Jes Julius Executive Assistant

May 19, 2011

**VIA E-MAIL AND HAND DELIVERY**

Thea D. Davis  
Assistant Attorney General  
Office of the General Counsel  
Alcoholic Beverage Regulation Administration  
1250 U Street, N.W., 3rd Floor  
Washington D.C. 20009

**RE: Second Amendment to Cooperative Agreement  
By and Among Doughboy Enterprises, LLC t/a Mellow Mushroom,  
ANC 1C and KCA;  
For License Class CT, License No. 76474;  
at Premises 2436 18<sup>th</sup> Street, NW**

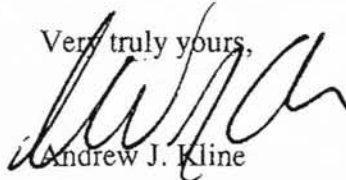
Dear Ms. Davis:

Doughboy Enterprises, LLC's predecessor, Kadi, LLC, entered into a Cooperative Agreement dated October 31, 2005 and an Amendment to Cooperative Agreement dated January 7, 2009 with Advisory Neighborhood Commission 1C ("ANC 1C") and the Kalorama Citizens Association ("KCA"). Enclosed is a Second Amendment to Cooperative Agreement dated May 4, 2011 ("Second Amendment") entered into by the parties which revises certain provisions concerning occupancy and hours of operation of the original Cooperative Agreement and First Amendment.

We respectfully request that the Board issue an Order approving the enclosed Second Amendment, and instruct ABRA staff to issue and update the Applicant's License in accordance with the Second Amendment.

Do not hesitate to contact me if you, the Board, or ABRA staff have questions in connection with this matter.

Very truly yours,



Andrew J. Kline

AJK/jrj

cc: Martha Jenkins, General Counsel, ABC Board  
Diane Jackson, Licensing Specialist, ABRA  
Olivier Kamanda, ANC 1C  
Denis James, KCA

**SECOND AMENDMENT TO COOPERATIVE AGREEMENT**

**THIS SECOND AMENDMENT TO COOPERATIVE AGREEMENT** ("Second Amendment") is made and entered into this 4TH day of MAY, 2011, by and between Doughboy Enterprises, LLC t/a Mellow Mushroom ("MM"), Advisory Neighborhood Commission 1C ("ANC 1C") and Kalorama Citizens Association ("KCA")

**WITNESETH**

WHEREAS, MM is Applicant for transfer of the Retailer's License Class CT, License No. 76474 (the "License") issued by the District of Columbia Alcoholic Beverage Control Board (the "Board") used in connection with the business operation at the premises located at 2436 18<sup>th</sup> Street, NW, Washington DC

WHEREAS, there exists a Cooperative Agreement (the "Original Cooperative Agreement") with ANC 1C and KCA dated October 31, 2005, and an Amendment to Cooperative Agreement ("First Amendment") dated January 7, 2009;

WHEREAS, there also exists a Board Order, No 2009-113, dated May 20, 2009, which places certain limitations on the operation of the rooftop deck and enclosure;

WHEREAS, the parties desire to further amend the Original Cooperative Agreement on the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

1. **Hours.** The permissible hours of operation shall be:

**Inside:**

Sunday through Thursday: 9:00 a.m. to 2:00 a.m.

Friday and Saturday: 9:00 a.m. to 3:00 a.m.

**On the outdoor deck:**

Sunday through Thursday: 9:00 a.m. to 11:00 pm

Friday and Saturday: 9:00 a.m. to 1:00 am

2. **Seating.** Seating capacity shall not exceed:

First Floor: 86

Second Floor: 72

Rooftop enclosure: 29

3. **Operation.** For Section 1 A.) (4) (a) of the Original Cooperative Agreement, the following language shall be added:

REC'D  
MAY 19 2011  
CM

The Applicant has gross annual food sales of at least \$1,500.00 per occupant. For calculating the minimum food requirement under this subsection of this Cooperative Agreement, the seating on the first and second floor shall be deemed to be 152 seats, plus the newly constructed [29] seats in the enclosure on the rooftop, for a total of 181 seats, on which the \$1,500.00 per seat food minimum shall be calculated.

5. **Cooperative Agreement Still in Effect.** Except as provided in this Second Amendment and in the First Amendment, and as limited by Board Order number 2009-113, the Cooperative Agreement shall remain in full force and effect and sets forth conditions to the License to be incorporated into a Board Order approving issuance of the License of MM.

**Applicant:**

**Doughboy Enterprises, LLC**

By: Pooja Mehta  
Print Name: POOJA MEHTA  
Date: 5/17/2011

**Advisory Neighborhood Commission 1C**

By: Olivier Kamran  
Print Name: Olivier Kamran  
Date: May 4, 2011

**Kalorama Citizens Association**

By: Denis I.E. James  
Print Name: DENIS I.E. JAMES  
Date: 5-4-2011

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

In the Matter of:	)	
	)	
Kadi, LLC,	)	Roll Call and Status Hearing on Protest
t/a 18 <sup>th</sup> & Red	)	License Number: 76474
	)	Case Number: 08-056P
Application for a Substantial Change	)	
To a Retailer's Class CT License	)	ORDER NUMBER: <u>2009-113</u>
at premises	)	
2436 18 <sup>th</sup> Street, N.W.	)	
Washington, D.C.	)	

BEFORE:            Peter B. Feather, Chairperson  
                      Mital M Gandhi, member  
                      Nick Alberti, member  
                      Charles Brodsky, member  
                      Donald Brooks, member  
                      Herman Jones, member

ALSO PRESENT:   Andrew Kline, Esquire, on behalf of the Licensee  
  
                          Nicholas Karambelas, Esquire, on behalf of Protestants  
                          1840 Columbia Road  
  
                          Denis James, on behalf of 12 Protestants

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

The Application, filed by Kadi, LLC, t/a 18<sup>th</sup> & Red ("Applicant") for a Substantial Change to its Retailer's Class CT License to operate a rooftop deck and dining area at premises 2436 18<sup>th</sup> Street, N.W., came before the Alcoholic Beverage Control Board (the "Board") for a Roll Call Hearing on July 28, 2008, and continued to September 17, 2008, at which time the matter was set for mediation. An agreement was not reached by the Applicant and the Protestants, and the matter was set for a Status Hearing on October 1, 2008, and again on November 12, 2008. The matter was scheduled for a Protest Hearing on January 28, 2009, the substance of which this Order is based upon.

Pursuant to D.C. Official Code § 25-313(b), the filed protest issue is whether the substantial change request for an outdoor rooftop deck would adversely affect the peace,

order, and quiet of the neighborhood. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant's establishment is located at 2436 18<sup>th</sup> Street, N.W. The Applicant has filed for a substantial change to its Class CT Retailer's license to add a rooftop deck and dining area. (Alcoholic Beverage Regulation Administration ("ABRA") Protest File for License No. 76474). The remaining Protestants<sup>1</sup> of this Application at the time of the Protest Hearing on January 28, 2009, were the 1840 Columbia Road Residents, represented by Nicholas Karambelas, and other Columbia Road residents, represented by Denis James. *See collectively Transcripts of Roll Call Hearing*, September 17, 2008, *Status Hearing*, October 1, 2008, *Status Hearing* November 12, 2008, and *Protest Hearing*, January 28, 2009.
2. The Protestants, collectively, lodge this protest based on the effect this substantial change in the Applicant's establishment will have on the general peace, order, and quiet of the area. *See generally* ABRA Protest File, protest letters included therein, License No.: 76474; *see also Transcript, Protest Hearing* January 28, 2009 (hereinafter referred to as "Tr.") at 33.
3. ABRA Investigator Erin Mathieson was assigned to investigate the protest of 18<sup>th</sup> & Red's application. *Tr.* at 32. She spoke with Denis James and Gretchen Ellsworth concerning the impact this Application for a rooftop summer garden would have on the general peace, order, and quiet of the area. *Tr.* at 33. Ms. Ellsworth told Investigator Mathieson that she was concerned about loud music on the rooftop. *Tr.* at 33. Investigator Mathieson observed that the Applicant's establishment is separated by a service alley from one of the groups of protestant residents. *Tr.* at 34. There are 63 other ABC-licensed establishments in a 1,200-foot radius, some parking available on a limited basis, valet parking on the weekends, four bus stops, and the Woodley Park Metro nearby. *Tr.* at 34-35. Pursuant to the Applicant's existing Voluntary Agreement, there are restrictions on the hours of operation for the second floor – it is closed on Sundays and Mondays, opens at 5:00 p.m. during the rest of the week, and closes at 2:00 a.m. on weekdays and 3:00 a.m. on weekends. *Tr.* at 36. The first floor opens at 11:00 a.m., with the same closing times as the second floor. *Tr.* at 36-37. During this protest investigation, ABRA investigators visited the Applicant's establishment 28 times and observed no ABRA violations, nor were there any observations of excessive noise. *Tr.* at 37.
4. Investigator Mathieson spoke with the owner, Mr. Kadi, who provided drawings and details about the proposed summer garden rooftop. *Tr.* at 38-39. He provided information regarding the proposed soundproofing for the rooftop area to diminish the

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<sup>1</sup> The Advisory Neighborhood Commission, ("ANC") and the Applicant reached a Voluntary Agreement prior to the Protest Hearing and, therefore, was no longer protesting the application at the time of the Protest Hearing.



noise levels of the rooftop area. *Tr.* at 40-41. Mr. Kadi explained to Investigator Mathieson that the establishment was going to build two walls and a partial ceiling on the rooftop such that the residents in the building across from the service alley would not be able to see patrons. *Tr.* at 43-44. There are several other establishments with outside seating in the area. *Tr.* at 50. Investigator Mathieson did not conduct any independent sound testing from what Mr. Kadi provided to her about his proposed soundproofing. *Tr.* at 53-54. Investigator Mathieson's report was moved and admitted into evidence as ABRA Exhibit 6. *Tr.* at 59. The Board takes notice of its contents.

5. The Applicant presented Mr. Kadi, the owner, as its witness. *Tr.* at 61. He has been the owner of the establishment for approximately two years. *Tr.* at 61. Mr. Kadi and the other managing partner are responsible for the supervision of the establishment. *Tr.* at 63. He believes that the rooftop area is necessary for his business to be competitive with other establishments in the area and the understanding from customers that it is a draw. *Tr.* at 64. He lives near the establishment and his building does not have a rooftop area and the homeowners there are always looking for an outdoor gathering place in the warmer months. *Tr.* at 65. Photographic exhibits depicting the area were admitted into evidence. *Applicant's Exhibits 1-3; Tr.* at 70-82. Mr. Kadi described floor plans that the establishment has worked on for the proposed 46-seat outdoor dining area which evolved from a completely unenclosed area to one that is enclosed by three walls as well as a roof. *Applicant's Exhibit 4; Tr.* at 82-90. Mr. Kadi has been in the architectural and construction industry for eight years and his wife, who assisted with the plans, is also an architect. *Tr.* at 85. The plans for the rooftop continued to evolve to include an outdoor deck area, in addition to the enclosed structure, which would have a flexible or closeable wall. *Applicant's Exhibits 5-7; Tr.* at 90-100.

6. Mr. Kadi is familiar with the buildings where the Protestants reside. *Tr.* at 104-105. They are about 70-115 feet angles from where the proposed outside seating area would be. *Tr.* at 105. Mr. Kadi has explored sound reduction options in materials for the structures to be built. *Tr.* at 106. Mr. Kadi does not plan to have loudspeakers outside of the rooftop enclosure, but would have them inside of the enclosure. *Tr.* at 126. He plans to have seating in the enclosed area of the rooftop for about 75 seats and achieve food sales consistent with his license. *Tr.* at 128. The structure that is to be soundproofed and enclosed is the back part of the rooftop, which is closest to the apartments across the service alley. *Tr.* at 130. The front area, where the outside area would be, is proposed to seat 46 people. *Tr.* at 132. Mr. Kadi also believes that the mechanicals in the rear of the building will buffer the noise. *Tr.* at 142. The outdoor deck would only be open until 1:00 a.m. and there would be no DJ or noise except for conversation from patrons on the outdoor deck. *Tr.* at 143-144. Mr. Kadi has spoke with the Historic Preservation Review Board, but has not yet had any plans approved. *Tr.* at 154.

7. The Protestants represented by Mr. James called Ms. Jennifer Dooley as a witness. *Tr.* at 173. Ms. Dooley lives at 1844 Columbia Road, N.W. *Tr.* at 174. She lives on the second floor and her apartment faces 18<sup>th</sup> & Red. *Tr.* at 175. Ms. Dooley took a photograph on her digital camera, a hard copy was not presented, of her view of 18<sup>th</sup> & Red from her back porch. *Tr.* at 181. The Reef is another establishment in the

vicinity of Ms. Dooley's residence which is further away from her residence than the Applicant's establishment. *Tr.* at 182-183. She has heard noise from The Reef during her time at this residence. *Tr.* at 183. She is concerned about noise emanating from the Applicant's establishment from what the proposed third floor would be. *Tr.* at 186. She stated that operation of this rooftop deck until 1:00 a.m. would negatively affect her lifestyle. *Tr.* at 187. She thinks that 10:30 p.m. or 11:00 p.m. would be a reasonable closing time for the proposed deck, as opposed to 1:00 a.m. *Tr.* at 187-188. Ms. Dooley clarified earlier statements about The Reef to mean that she is not sure that noises coming from that area are from The Reef itself or from the street, but she guessed it was probably from The Reef. *Tr.* at 196. She also stated that her work schedule is 5:00 p.m. to 5:00 a.m. *Tr.* at 196-197. She said that the noise level, when she does hear it, is not so much that she can't sleep. *Tr.* at 197. Ms. Dooley did not know whether the proposed sound-proofing would alleviate her concerns about noise. *Tr.* at 202-203. Ms. Dooley also clarified that her work schedule varies. *Tr.* at 206.

### CONCLUSIONS OF LAW

8. Pursuant to D.C. Official Code § 25-313(a), an Applicant must demonstrate to the Board's satisfaction that the substantial change sought to be made is appropriate for the neighborhood in which it is located. Pursuant to D.C. Official Code § 25-313(b), the Board shall consider all relevant evidence of the record, including: (1) the effect of the establishment on real property values; (2) the effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726; and (3) the effect of the establishment upon residential parking needs and vehicular and pedestrian safety. Based on the testimony and evidence presented at this Protest Hearing, the Board concludes that the Applicant has demonstrated that granting its request for use of an outdoor rooftop deck with the conditions imposed by the Board as listed below, would be appropriate for the area in which the establishment is located.

9. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d), the ANC's recommendations are to be given great weight during deliberations by the government entity, in this case the Board. The fact that the ANC has entered into a Voluntary Agreement with the Applicant to support this substantial change is important in the Board's determination. The Board finds that the only objection to this Application presented at this Protest Hearing pertains to the potential effect on "peace, order, and quiet," through the testimony of one neighborhood resident, Ms. Dooley. While the Board credits Ms. Dooley's testimony as honest and candid, Ms. Dooley did not know whether the sound-proofing plans that the Applicant has would alleviate her concerns about the noise.

10. The Board believes that the Applicant has proffered extensive plans, in various drafts, to address the specific concerns of the neighborhood regarding the mitigation of sound emanating from the rooftop deck. Mr. Kadi, the owner of the establishment and a person with construction and architectural experience, testified extensively about his plans, which the Board takes note of through the documentary exhibits admitted through

his testimony. The Board believes that Mr. Kadi is aware of his obligations to comply with the statutes, regulations, and the Voluntary Agreement with the ANC to mitigate noise emanating from the establishment.

11. The Board also considers the testimony of Investigator Mathieson to be instructive of the establishment's conduct in that during some 28 visits by ABRA investigators to the establishment, there were no violations observed. Mr. Kadi also shared his plans and his research on sound-proofing with Investigator Mathieson. Moreover, her testimony that there are 63 other establishments in the area, several of which have outdoor seating, is indicative of the nature of this area and its character to be one that fits with the type of substantial change proposed by the Applicant. The Board believes it is fair to permit the Applicant to compete with the other establishments similarly situated. The Board heard no testimony about complaints regarding noise from other establishments with outdoor seating, in particular the establishment mentioned by name, The Reef, which has a rooftop deck similar to the one the Applicant proposes but with less noise-reduction than the Applicant proposes.

12. Although the construction plans are slightly difficult to discern from the transcript, the Board understands there to be a two-part rooftop area. The one area where there will be seating and food service, as well as music with amplification, will be substantially enclosed with sound-proofing efforts to be installed by the Applicant. Also, there will be an unenclosed outdoor deck seating approximately 46 people – this is the area which the Board finds draws protest because of its lack of enclosure. The Board believes this outdoor area can operate in conformity with the laws, regulations, and Voluntary Agreement through the measures proposed by the Applicant and through restricting the hours of operation of that area to 1:00 a.m. on Friday and Saturday and 11:00 p.m. on Sunday through Thursday.

13. The Board finds no evidence in the record that the Applicant's proposed substantial change would affect parking, vehicular or pedestrian safety, or real property values.

14. Based on the Applicant's representations of the number of people expected on the outdoor rooftop deck, and the Board's acknowledgement of the Protestants' concern about noise, the Board finds that no more than 46 people shall be permitted on the outdoor deck at any given time. The Board's authority to place conditions on the Applicant's license is found in D.C. Official Code § 25-104(e).

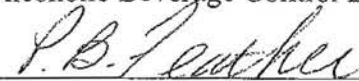
**ORDER**


Therefore, it is hereby **ORDERED** on this 20<sup>th</sup> day of May, 2009, that the Application for a Substantial Change to Retailer's Class CT License filed by Kadi, LLC, t/a 18<sup>th</sup> & Red, to include a partially enclosed rooftop deck for outdoor dining be and the same hereby is **GRANTED**.

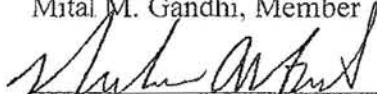
It is **FURTHER ORDERED** that the Applicant shall comply with all of the conditions contained in its Voluntary Agreement with the Advisory Neighborhood Commission in constructing and operating the rooftop deck. The Voluntary Agreement entered into between the Applicant and the ANC to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order. The Applicant shall comply with all noise restrictions in the applicable statutes, regulations, and the Voluntary Agreement. The Board imposes the following specific conditions:

1. There will be no music, live or transmitted, outside of the enclosed area.
2. The outdoor deck will close no later than 1:00 a.m. on Friday and Saturday and 11:00 p.m. on Sunday through Thursday.
3. No more than 46 people shall be on the outdoor deck at any given time and no more than 75 people shall be on the rooftop area in total at any given time.

District of Columbia  
Alcoholic Beverage Control Board


  
Peter B. Feather, Chairperson

  
Mital M. Gandhi, Member

  
Nick Alberti, Member

Charles Brodsky, Member

  
Donald Brooks, Member

  
Herman Jones, Member

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 the service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington D.C. 20001.

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 (April 2004) 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).

**AMENDMENT TO COOPERATIVE AGREEMENT CONCERNING  
ISSUANCE OF LICENSE FOR SALE OF ALCOHOLIC BEVERAGES**

THIS AMENDMENT TO COOPERATIVE AGREEMENT ("Amendment") made and entered into this 7 day of January, 2009, by and between Kadi, LLC t/a 18th & Red (hereinafter the "Applicant"), Advisory Neighborhood Commission 1C (hereinafter "ANC 1C") and the Kalorama Citizens Association (hereinafter "KCA").

**WITNESSETH**

WHEREAS, Applicant is the holder of a Retailers License Class CT, License No 76474, (hereinafter the "License") issued by the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the premises known as 18th & Red located at 2436 18th Street, NW, Washington, DC;

WHEREAS, the establishment falls within the boundaries of ANC 1C;

WHEREAS, in connection with the previous conversion of the License from a Class CR to a Class CT, the parties entered into a Cooperative Agreement Concerning Issuance of License for Sale of Alcoholic Beverages dated October 31, 2005;

WHEREAS, Applicant has applied for permission to expand its premises to include a rooftop dining area which expansion constitutes a "substantial change" as that term is used in the relevant alcoholic beverage licensing statute and regulations;

WHEREAS, ANC 1C and the KCA agree to the requested substantial change, provided Applicant adopts certain measures to address concerns raised by ANC 1C, KCA and other protestants and that such conditions be incorporated into the Board's Order approving the substantial change.

NOW, THEREFORE, in consideration of the mutual covenants and undertaking memorialized herein, the parties agree as follows:

1. **Amendment of Cooperative Agreement.** The provision of this Amendment shall amend the Cooperative Agreement. In the event of a conflict between the provisions of this Amendment and the Cooperative Agreement, the provisions of this Amendment shall prevail.
2. **Rooftop Operation.** Applicant may expand its premises to include a rooftop dining area upon the terms and conditions set forth herein.
3. **Seating Capacity.** Seating capacity for the rooftop dining area shall not exceed 100.
4. **Noise and Music on Rooftop.** Notwithstanding the provisions of paragraph 4 of the Cooperative Agreement, Applicant may provide music in the rooftop dining area provided, the speakers shall be limited to midrange only, no subwoofers shall be used and no speakers larger

than 3 inch by 3 inch Bose cube type speakers with maximum output of 30 watts shall be used. Applicant shall, at all times, strictly comply with the provisions of paragraphs 4 c) and d) of the Cooperative Agreement.

**4. Limitations of Outdoor Seating in the Rooftop Area.** Applicant may make use of an open deck area on the Roof which shall be located towards the front of the building (18<sup>th</sup> Street) and shall extend no more than sixty (60) feet from the front face of the building. Behind the open deck area, Applicant may make use of a covered rooftop area. The two side walls as well as the roof structure and rear wall of the covered rooftop area must be permanent and rigid construction without air gaps, louvers, windows doors or open penetrations of any type. The roof shall be rigid and fixed. If any part of the rooftop enclosure is made of glass, the glass shall be double pane.

**5. Hours of Operation on Rooftop.** Licensee agrees to clear the outdoor deck area by 1 a.m. seven nights per week; hours of operation in the 3-sided rooftop structure remain the same as those on the lower floors.

**6. Cooperative Agreement Still in Effect.** Except as provided herein, the Cooperative Agreement shall remain in full force and effect and align with this Amendment and shall set forth conditions to the License to be incorporated in a Board Order.

APPLICANT:

Kadi, LLC t/a 18th & Red

By: \_\_\_\_\_  
Jonathan Kadi

Protestants: --

Advisory Neighborhood Commission

By: \_\_\_\_\_  
M. Mindy Moretti, ANCIC Vice Chair

Kalorama Citizens Association

By: \_\_\_\_\_  
Denis James, president

ENFORCEMENT

THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of: )  
 )  
Anzu, LLC )  
t/a Anzu )  
Application for a Retailer's Class CR )  
License – substantial change )  
at premises )  
2436 18<sup>th</sup> Street, N.W. )  
Washington, D.C. )

Case no.: 28075-05/029P  
Order no.: 2005-286

Anzu, LLC, Applicant

Alan J. Roth, Chairperson, on behalf of Advisory Neighborhood Commission 1C, and  
Denis James, President, on behalf of the Kalorama Citizens Association, Protestants

**BEFORE:** Charles A. Burger, Chairperson  
Vera M. Abbott, Member  
Judy A. Moy, Member  
Audrey E. Thompson, Member  
Peter B. Feather, Member  
Albert G. Lauber, Member  
Eartha Isaac, Member

**ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST**

The substantial change application for a change in license class from a Retailer's Class "CR" License to a Retailer's Class "CT" License, having been protested, came before the Board on April 20, 2005, in accordance with D.C. Official Code § 25-601 (2001). Alan J. Roth, Chairperson, on behalf of Advisory Neighborhood Commission ("ANC") 1C, and Denis James, President, on behalf of the Kalorama Citizens Association ("KCA"), filed timely opposition by letters on March 7, 2005 and April 4, 2005, respectively.

The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated October 31, 2005, the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.



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t/a Anzu  
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Accordingly, it is this 7<sup>th</sup> day of December 2005, **ORDERED** that:

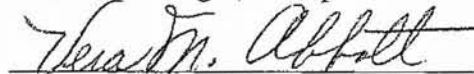
1. The protests of Alan J. Roth, Chairperson, on behalf of ANC IC, and Denis James, President, on behalf of KCA, are **WITHDRAWN**;
2. The substantial change application of Anzu, LLC, t/a Anzu, for a change in license class from a Retailer's Class "CR" License to a Retailer's Class "CT" License at 2436 18<sup>th</sup> Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement is **INCORPORATED** as part of this Order;  
and
4. Copies of this Order shall be sent to the Protestants and the Applicant.

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District of Columbia  
Alcoholic Beverage Control Board

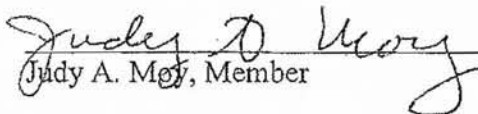
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Charles A. Burger, Chairperson



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Vera M. Abbott, Member

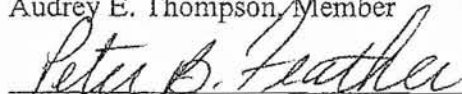


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Judy A. Moy, Member

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Audrey E. Thompson, Member

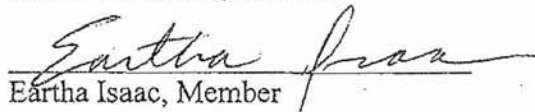


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Peter B. Feather, Member

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Albert G. Lauber, Member



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Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

2005 NOV -9 P 5:18

COOPERATIVE AGREEMENT CONCERNING ISSUANCE  
OF LICENSE FOR SALE OF ALCOHOLIC BEVERAGES

REC'D BY \_\_\_\_\_

THIS AGREEMENT, made and entered into this 31st day of October, 2005, by and between Anzu, L.L.C., trading as Anzu (hereinafter the "Applicant") Advisory Neighborhood Commission 1C (hereinafter "ANC 1C") and the Kalorama Citizens Association (hereinafter "KCA") witnesses:

Whereas Applicant has filed an application (No. 50076) with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for change in license Class from CR-02 (Restaurant) to CT-02 (Tavern) of license No. 60612, for the premises known as Anzu, located at 2436 18th Street, N.W., Washington, DC,

Whereas, the establishment falls within the boundaries of ANC 1C, and

Whereas, the KCA's membership boundaries, include the establishment and much of the affected area, and the KCA has many members within the affected area, and

Whereas, this is a matter of concern to ANC 1C and the KCA due to the absence of a clear or statutory requirement for a "Tavern" to serve any measurable amount of food,

Whereas in recognition of the Board's policy of encouraging parties to settle their differences by reaching voluntary agreements, the Parties hereto desire to enter into a Cooperative Agreement whereby (1) Applicant will agree to adopt certain measures to address ANC 1C's and KCA's concerns and to include this agreement as a formal condition of its application, and (2) ANC 1C and KCA will agree to the change in class of the license, *provided* that such agreement is incorporated into the Board's order issuing the license, which order is thereby conditioned upon compliance with such agreement.

Whereas Applicant has recently taken or intends to take certain measures designed to ameliorate ANC-1C's and KCA's concerns.

Now therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties agree as follows:

1. Operation.

- A.) The Protestant-parties agree to the change of license class from CR to CT. The Applicant agrees to be in compliance with the conditions listed below.

The Applicant shall make a good faith effort to sell and serve food. For

purposes of this agreement, a "good faith effort" to sell or serve food shall be met if the Applicant:

- (1) Maintains a kitchen, kitchen staff, and the supplies and equipment necessary for the daily preparation and service of prepared food menu items other than snack food, (for example, appetizers, soups, salads, sandwiches, entrees, desserts, etc.). For purposes of this section, "snack food" is defined as items such as: peanuts, popcorn, potato chips, pretzels, etc.;
- (2) Is open from at least 5 p.m. to 11 p.m. for the service of dinner to the public either: (a) a minimum of six (6) days per week or (b) a minimum of five (5) days per week with the service of brunch for a minimum of four (4) hours on a Saturday or a Sunday;
- (3) Continues to keep and maintain, the books and records required to be kept by D.C. Official Code § 25-113(j)(3)(A) (2004); and
- (4) Is in compliance with at least three (3) of the following four (4) criteria:
  - (a) The Applicant has gross annual food sales of at least \$1,500.00 per occupant (as determined by the establishment's Board-approved certificate of occupancy);
  - (b) The Applicant offers food service until at least two (2) hours prior to closing;
  - (c) The Applicant promotes food sales inside of the establishment by offering menus to seated patrons, and through the use of a sandwich board or menu displays at tables featuring food items with no drink specials; and
  - (d) The Applicant's exterior advertising to the public emphasizes food and does not primarily advertise drink specials.

If the Protestants are not satisfied that the Applicant is in compliance with paragraphs A.)(1), A.)(2), or A.)(3) of this section, the Protestants may petition the Board, after six (6) months from the date of the Board's order approving the agreement, for a show cause hearing.

If the Protestants are not satisfied that the Applicant is in compliance with paragraph A.)(4) of this section, the Protestants may petition the Board, after one year from the date of the Board's order approving the agreement, for a show cause hearing.

- B.)
- (1) From 2 hours before closing until closing, Applicant may feature a "late-night" food menu, with a reduced number of food items from the regular menu.
  - (2) Applicant agrees to maintain the interior seating, in tables, chairs, and bar-stools, in or about the same proportion as exists as of the date of this agreement.
  - (3) Applicant agrees to seek no change in license class to CN or DN.

- (4) Applicant shall provide and encourage food service from either the regular menu or the "late night menu", depending on the time of the order, to patrons on the second floor of the establishment in the following ways:
- a) By table tent food menus on display at the bar.
  - b) By supplying food menus to patrons upon request.

2. Hours.

The hours of operation shall be:

First Floor: Sunday through Thursday: 11:00 am until 2:00 am  
SUNDAY, Friday and Saturday: 11:00 am until 3:00 am  
Second Floor: Closed ~~Monday~~ Monday *OK 1/12/2005 AA 112-05*  
Tuesday through Thursday: 5:00 pm until 2:00 am  
Friday and Saturday: 5:00 pm until 3:00 am

3. Seating. Seating capacity will not exceed: Interior tables and bar

First floor: 80 Second floor: 72 Total: 152  
Seating in bar-stools and couches, with tables, for 40 will be maintained on the second floor.

4. Noise and Music

Applicant acknowledges familiarity with and will comply with all applicable noise-control provisions of 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), including 20DCMR, Chapters 27 and 28, as amended.
- b) The doors and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises. There shall be no music played on the roof.
- c) Music from inside will not be audible at surrounding residential housing areas.
- d) Applicant agrees not to place outside in the public space any loudspeaker, tape player, CD player or other similar device, or to place any inside speaker in such a way that it projects sound into the public space.
- e) Applicant agrees to apply to the Board and receive Board approval before incorporating additional aspects of the Entertainment Endorsement (23DCMR 1001.1-1002.4) into the operations of the establishment.

5. Trash/Garbage/Rodents.

a) Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant will make every reasonable effort to eliminate food sources for rodents to help eliminate the rat population. Applicant will recycle the following items as per DC Law 7-226: cardboard, glass and cans.

b) Applicant agrees to segregate and recycle bottles and cans apart from trash and agrees not to dispose of bottles and cans in the outside trash dumpsters or recycling containers between the hours of 11:00 pm and 8:00 am.

c) Applicant shall provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster. Applicant agrees to provide ANC 1C with a copy of the contract to remove grease/fatty oils from the establishment.

6. Exterior, including Public Space.

a) Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable DC laws and regulations in these respects.

b) 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 encourage patrons to leave those areas at closing.

c.) Applicant agrees that due to lack of space, there will be no sidewalk cafe or summer garden on the sidewalk in front of the establishment where a clear path to the ground level restaurant shall be maintained at all times.

7. Bar/Pub Crawls.

Applicant agrees not to promote or participate in bar or pub "crawls" or "tours", or any other similar event.

8. Consideration.

Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage employees leaving the establishment to keep conversations and noise to a minimum from 11:00 PM to 7:00 AM.

9. Modification.


This agreement can be modified only by the ABC Board, or by the mutual agreement of all the parties with the approval of the ABC Board. In the case of ANC-1C, if Applicant desires to modify the terms of this agreement, prior to implementing the changes, Applicant shall receive written agreement from ANC-1C after a majority of the

commissioners present, constituting a quorum shall have voted in favour of the changes at a full public meeting.

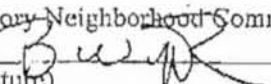
10. Regulations.  
In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.
11. Availability of Voluntary Agreement.  
Applicant agrees to keep available at all times a copy of this agreement at his establishment and to familiarize all his employees with its conditions.
12. Withdrawal of Protest.  
The Protestants agree to the substantial change of the license and the withdrawal of their protests, *provided that this* Cooperative Agreement is incorporated into the Board's Order granting the aforesaid Application, which order is thereby conditioned upon compliance with this Cooperative Agreement.
13. Replacement.  
This agreement replaces any interest that the protestants may have had in any previous voluntary agreement associated with this license.

APPLICANT:

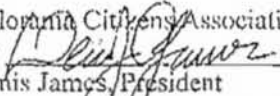
OTHER PARTIES

Anzu, L.L.C.  
By:   
(signature)  
ARIBITO PERAZA (PRESIDENT)  
(please print name and title)

Date: 11-2-05

Advisory Neighborhood Commission IC  
By:   
(signature)  
BRYAN WEAVER  
(please print name and title)

Date: 11-7-05

Kalamita Citizens Association  
By:   
Denis James, President

Date: 11-2-2005