

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

<b>In the Matter of:</b>	)	
	)	
CW Yards, LLC	)	
t/a Whaley's	)	
	)	
Applicant for a New	)	License No. ABRA-102223
Retailer's Class CR License	)	Order No. 2016-452
	)	
at premises	)	
301 Water Street, S.E.	)	
Washington, D.C. 20003	)	
	)	

CW Yards, LLC, t/a Whaley's (Applicant)

Andy Litsky and Dr. Coralie Farlee, Advisory Neighborhood Commission (ANC) 6D

**BEFORE:** Donovan Anderson, Chairperson  
Nick Alberti, Member  
Mike Silverstein, Member  
Ruthanne Miller, Member  
James Short, Member

**ORDER ON COOPERTIVE AGREEMENT**

The official records of the Alcoholic Beverage Control Board (Board) reflect that CW Yards, LLC, t/a Whaley's, Applicant for a new Retailer's Class CR License, located at 301 Water Street, S.E., Washington, D.C., and ANC 6D have entered into a Cooperative Agreement (Agreement), dated April 11, 2016, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Andy Litsky and Dr. Coralie Farlee, on behalf of ANC 6D, are signatories to the Agreement.

Accordingly, it is this 20th day of July, 2016, **ORDERED** that:


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

Section 10 (License Ownership and Compliance with ABRA Regulations) – The following language shall be removed: “Applicant also specifically agrees to be the sole owner of the ABC license.”

The parties have agreed to this modification.

2. Copies of this Order shall be sent to the Applicant and ANC 6D.

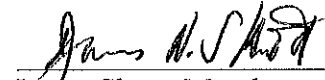
District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
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 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 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).

★ ★ ★  
██████████ **Advisory Neighborhood**  
██████████ **Commission 6D**

11014<sup>th</sup> Street SW, Suite W130, Washington, DC 20024  
ANC Office: 202 554-1795 ■ FAX: 202 554-1774  
[office@anc6d.org](mailto:office@anc6d.org)

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement") is made on this 11th day of April 2016 by and between CW Yards LLC t/a Whaley's ("Applicant"), at 301 Water Street, SE, License # 102223 and Advisory Neighborhood Commission 6D ("the ANC"), (collectively, the "Parties").

### PREAMBLE

Through this agreement both parties aim to create an environment in which the Applicant may operate as a viable contributing establishment in the ANC6D community.

#### WITNES ETH

WHEREAS, Applicant has applied for a License Class CR for a business establishment ("Establishment") serving spirits, wine, and beer, including indoor space, two summer garden areas, and entertainment endorsement located at 301 Water Street, SE, Suite 115, Washington, D.C. 20003 ("Premises"); and

WHEREAS, the Applicant agrees to work regularly with ANC6D and its representatives, other neighborhood organizations, and residents to ensure that the business operations facilitate the enjoyment of the surrounding neighborhood; and

WHEREAS, in lieu of a protest filing by the ANC, the Parties are desirous of entering into a Cooperative Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect, within the ANC, on (1) 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 (2) The effect of the establishment upon residential parking needs and vehicular and pedestrian safety, and to eliminate the need for a Protest Hearing regarding the license application; and

WHEREAS, all parties believe that the statements and provisions contained in this agreement are reasonable and shall become wholly integrated into the day-to-day operation of the Establishment. The Parties agree that any change in operations is considered of great concern which they may bring to the attention of the ABC Board. The Parties acknowledge that any change in operations requires prior approval by the ABC Board; and

WHEREAS, the Parties have agreed to enter into this Agreement and request that the Alcoholic Beverage Control Board ("ABC Board") approve the Applicant's license application conditioned upon the Applicant's compliance with the terms of this written Agreement and

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. **Recitals Incorporated.** The recitals set forth above are incorporated herein by reference.
2. **Nature of the Business.** The Applicant will manage and operate an Establishment serving spirits, wine, and beer, offering a seasonal seafood menu which may change based on business needs. The Establishment will have two summer garden areas. Entertainment will consist of occasional live music or DJ in the interior premises only. There will be limited Saturday and Sunday hours for entertainment in the summer garden areas as indicated in Section 3 below.
3. **Hours of Operation and Sales.**

The Applicant's hours of **operation** for inside premises and summer garden areas shall be as follows:

Sunday through Thursday: 10 am.-1 am,  
Friday and Saturday: 10 am – 2 am

The Applicant's hours for **selling, serving, and consuming alcohol** in the **indoor space** shall be as follows:

Sunday through Thursday: 10 am – 1 am,  
Friday and Saturday 10 am-2 am

The Applicant's hours for **operation of and selling, serving, and consuming alcohol** in the **two summer garden areas** shall be as follows:

Sunday through Saturday, 10 a.m. to 1 a.m.

The Applicant's hours of **Entertainment for the indoor space** shall be as follows:

Sunday through Thursday: 10 am - 1 am,  
Friday and Saturday: 10 am – 2 am

The Applicant's hours of **Entertainment in the summer garden areas** shall be as follows:

Saturday and Sunday 10 am-8pm

Provided that: (a) on days designated by the DC ABC Board as "Holiday Extension of Hours" applicant may avail itself of the extended hours so provided; (b) in the event the Council of the District of Columbia or the ABC Board grants licensees in general

extended operating hours (such as for Inauguration) applicant may avail itself of such extended hours; and (c) on January 1 of each year applicant may operate until 4:00a.m. Consistent with Alcoholic Beverage Control Board interpretations, "closing hours" shall be construed as the hours at which no patrons shall remain on the premises.

4. **Floors Utilized and Occupancy.** The Applicant will operate its establishment on the first floor of the building. The Certificate of Occupancy will state the seating and occupant load; however, the Establishment will not exceed a total occupancy of 121, which includes indoor capacity of a maximum of 71 plus two summer garden areas with seating of a maximum of 32 and 18 patrons, respectively. There shall be no standing patrons in the summer garden areas.
5. **Summer Gardens.** Applicant plans to provide seating for 50 patrons in two areas consisting of 32 and 18 seats, respectively. There shall be no standing patrons in the summer garden areas. There shall be only live acoustic music in the summer garden areas and only during the hours as indicated in #3, above. No containers, cups, bottles/cans, etc. shall be permitted outside of or to leave the area regardless of content, excepting food and beverages packaged "to go."
6. **Parking Arrangements.** It is a concern of the ANC that the Applicant's operation of the Establishment does not create or exacerbate parking problems within the ANC. The Applicant shall notify patrons (through a website or other means) that there is limited parking in the vicinity and shall provide information about public transportation.
7. **Noise and Privacy.** Applicant shall strictly comply with D.C. Official Code § 25-725 and to that end shall use various means including making architectural improvements to the property and take all necessary actions and mitigation efforts to ensure that music, noise and vibration from the Establishment are not audible in any residential premises.

Applicant shall inform its patrons by signage or other means that upon exiting the Establishment and walking through the neighborhood the provisions of the "Noise at Night" law prohibit persons from making "unreasonably loud noise between the hours of 10 pm and 7 am that are likely to annoy or disturb one or more persons in their residences."

Applicant shall receive all deliveries of food, beverages, and supplies during hours between 7:00 a.m. and 7:00 p.m. Mondays to Saturdays. No deliveries excepting fresh bread products and seafood shall be accepted on Sundays.

8. **Public Space and Trash.** The Applicant shall participate in the building's trash removal and storage program. Trash and dumpster areas maintained by the Applicant shall be kept clean. The Applicant shall enclose its dumpsters and keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control pest and rodent population. Applicant shall ensure that the area around the dumpster is

kept clean at all times and the dumpster is placed such that it does not encroach on the abutting property owners and so that no garbage is placed on the abutting property. Applicant will provide for the proper (recyclable) removal of grease and oils and will not deposit these substances for removal in dumpsters or trash cans. Applicant will contract for regular rodent and pest (insect) abatement. Applicant shall have the Establishment and the area around the Premises properly cleaned at the end of each night to ensure that there are not garbage and odors present the following morning.

9. ***Security Cooperation in Stemming Illegal Drugs and Public Drinking.*** Applicant shall take all necessary steps to minimize problems of illegal drugs and public drinking, including, at all times a trained employee on site, without limitation, designating a sufficient number of employees to assure adequate security and to control unruly patrons, whether inside or in the immediate outside area; monitoring for and prohibiting sales or use of illegal drugs within or about the Premises, maintaining contact and cooperating with MPD and other enforcement officials when known or suspected drug activities occur. Applicant shall to the full extent permissible by law discourage loitering in the vicinity of the Premises.

Applicant shall have sufficient number of recording cameras of good photographic quality which maintain information for at least 30 days. These recording cameras shall cover exterior of the premises and summer garden areas, including all entrances and exits. This information shall be made available to representatives of ABRA and/or MPD as requested.

10. ***License Ownership and Compliance with ABRA Regulations.*** Applicant promises to the ANC that it shall abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license and all other provisions applicable to liquor licensees, and agrees that the ANC shall have standing to ask the ABC Board to enforce any violations of the agreement. Applicant also specifically agrees to be the sole owner of the ABC license.
11. ***Participation in the Community.*** Applicant agrees to seek to maintain open communication with the ANC and the community for which the ANC acts.
12. ***Notice and Opportunity to Cure.*** In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within 30 days of the date of such notice. If Applicant or the licensee fails to cure within the 30-day period (or, with respect to a breach which reasonably requires more than 30-days to cure, fails to commence cure of such breach and diligently pursues such cure) failure shall constitute a cause for filing a complaint with the ABC Board pursuant to D.C. Official Code § 25-446(e).

If to Applicant: CW Yards LLC t/a Whaley's  
301 Water Street, SE, Suite 115  
Washington, DC 20003  
Attn: David B Wiseman, Managing Member  
Phone: 404-759-3631  
e-mail: [davidbwiseman@gmail.com](mailto:davidbwiseman@gmail.com)


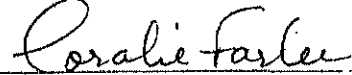
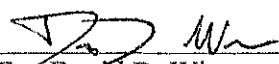
If to the ANC: Advisory Neighborhood Commission 6D  
1101 4<sup>th</sup> Street, SW, Suite W130  
Washington, DC 20024  
Attn: Chair, ANC  
Phone: (202) 202 554-1795  
Fax (202) 202 554-1774  
e-mail: [office@ANC6D.org](mailto:office@ANC6D.org)

Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

- 13. **No Protest.** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, and in reliance thereupon, the ANC shall refrain from filing a protest of the Applicant's pending license application.

**The ANC:**

**APPLICANT:**

<p><b>Chair, ANC6D</b>            Andy Litsky, SMD04          Date 4/11/16</p> <p><b>Chair, ABC Committee, ANC6D</b>            Coralie Farlee          cfarlee@mindspring.com          Date 4/11/16</p>	<p>CW Yards, LLC t/a Whaley's</p> <p>          By: David B. Wiseman          Managing Member          Date 04/11/16</p>
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★ ★ ★  
ANC 6D

*Near Southeast/Southwest*  
Advisory Neighborhood Commission 6D

APR 13 2016  
10:31 AM

1101 Fourth Street, SW  
Suite W 130  
Washington, DC 20024  
202.554.1795  
Email: office@anc6d.org  
Website: www.anc6d.org

April 11, 2016

Donovan Anderson, Chair  
Alcohol Beverage Control Board  
2000 14<sup>th</sup> Street, NW, Suite 400S  
Washington, DC 20009

**OFFICERS**

Chairperson  
*Andy Litsky*  
Vice Chairperson  
*Rachel Reilly Carroll*  
Secretary  
*Stacy Cloyd*  
Treasurer  
*Meredith Fascett*

Re: ANC6D recommendation for new license, Cooperative Agreement, and stipulated license for CWYards LLC t/a Whaley's, 301 Water Street, SE, License Class CR ABRA-102223

Dear Mr. Anderson:

At its regularly scheduled, properly noticed meeting on April 11, 2016, with a quorum present, the Advisory Neighborhood Commission 6D voted 5 to 0 to 0 to support the Cooperative Agreement. At that same meeting, the ANC6D also voted 5 to 0 to 0 to support the licensee's application for a new license; and voted 5 to 0 to 0 to recommend a Stipulated License.

**COMMISSIONERS**

SMD 1 *Marjorie Lightman*  
SMD 2 *Stacy Cloyd*  
SMD 3 *Rachel Reilly Carroll*  
SMD 4 *Andy Litsky*  
SMD 5 *Roger Moffatt*  
SMD 6 *Rhonda Hamilton*  
SMD 7 *Meredith Fascett*

This applicant plans to take over space that was initially proposed for 301 Water Street LLC, t/a The Navy Yard Oyster, ABRA # 096888 and Board Order 2015-109. The application for The Navy Yard Oyster was withdrawn (ABRA supplemental Licensing agenda 3/23/16), the license was not issued, and the establishment never opened. This applicant, t/a Whaley's, has been offered the space, with the stipulation that it occupy the space "no later than May 1, 2016." The ANC6D submits the CA and supports the request for new license as well as the stipulated license to enable the applicant to occupy the space by May 1. The Cooperative Agreement is attached.

Please contact Commissioner Litsky (at the number above) or Coralie Farlee, Chair, ABC Committee, ANC6D at 202-554-4407, [cfarlee@numospring.com](mailto:cfarlee@numospring.com) if you have any questions or concerns.

Sincerely,

*Andy Litsky by RHC*

Andy Litsky, Chair  
ANC6D

*Coralie Farlee*

Coralie Farlee, Chair  
ABC Committee, ANC6D

Cc: Martha Jenkins

Attachment: CA