

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

In the Matter of:

Whole Foods Market Group, Inc.
t/a Whole Foods Market Group

Applicant for a New
Retailer's Class B License and
Retailer's Class DR License

at premises
101 H Street, SE
Washington, D.C. 20003

License Nos.: ABRA-109870
ABRA-110432
Order No.: 2018-706

Whole Foods Market Group, Inc., t/a Whole Foods Market Group (Applicant)

Sidon Yohannes, Counsel, on behalf of the Applicant

Meredith Fascett and Dr. Coralie Farlee, on behalf of Advisory Neighborhood Commission (ANC) 6D

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

ORDER ON SETTLEMENT AGREEMENT

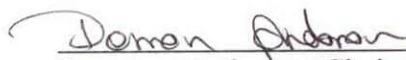
The official records of the Alcoholic Beverage Control Board (Board) reflect that Whole Foods Market Group, Inc., t/a Whole Foods Market Group, Applicant for new Retailers' Class B and DR License, located at 101 H Street, SE, Washington, D.C., and ANC 6D have entered into a Settlement Agreement (Agreement), dated September 10, 2018, that governs the operation of the Applicant's establishment.

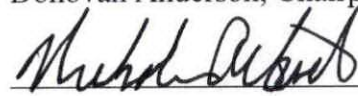
The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Meredith Fascett and Dr. Coralie Farlee, on behalf of ANC 6D, are signatories to the Agreement.


Accordingly, it is this 28th day of November, 2018, **ORDERED** that:

1. 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
2. Copies of this Order shall be sent to the Applicant and ANC 6D.

District of Columbia
Alcoholic Beverage Control Board

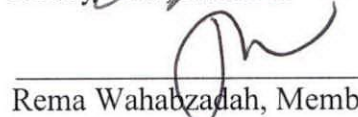

Donovan Anderson, Chairperson


Nick Alberti, Member


Mike Silverstein, Member


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).

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

1101 4th Street SW, Suite W130, Washington, DC 20024
ANC Office: 202 554-1795 office@anc6d.org

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is made on this 10th day of September 2018 by and between Whole Foods Market Group Inc t/a Whole Foods Market ("Applicant"), at 101 H Street, SE, Washington, DC 20003 ABRA Class B License #109870 and DR License #110432 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) a Class B License for a full service grocery store with a tasting endorsement and (b) a DR License for a restaurant with sidewalk cafe ("Establishment") located at 101 H Street, SE ("Premises").

The Class B grocery store may sell wine and beer for off-premises consumption. There may be a tasting endorsement, but no other endorsements unless approved by the Board with notice to the community as required by D.C. Code § 25-421 and § 25-422.

Under the DR license, the Applicant may sell and serve wine, and beer and have a sidewalk café, but will have no entertainment, dancing or cover charge endorsement unless approved by the Board with notice to the community as required by D.C. Code § 25-421 and § 25-422.

WHEREAS, the Applicant is encouraged 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, 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 (a) a Class B grocery store selling wine and beer for off-premises consumption, with a tastings endorsement and (b) a Class D restaurant serving food wine, and beer with a sidewalk cafe. There shall be no entertainment, dancing, or cover charge

endorsement unless approved by the Board with notice to the community as required by D.C. Code § 25-421 and § 25-422.

Establishment shall not participate in pub crawls. No signage shall have flashing lights.

3. a. Hours of Operation and Sales: Class B Grocery Store

The hours of operation of the grocery store shall not exceed:

Sunday through Saturday: 7:00 a.m. to 12:00 a.m.

The hours of sales of beer and wine and tastings in the grocery store area shall not exceed:

Sunday through Saturday: 7:00 a.m. to 12:00 a.m.

b. Hours of Operation and Sales: DR Restaurant

The hours of operation of the restaurant area shall not exceed:

Sunday through Saturday: 7:00 a.m. – 12:00 a.m.

The hours of sales, service, and consumption of alcohol in the restaurant area shall not exceed:

Sunday through Saturday: 8:00 a.m. – 12:00 a.m.

The hours of operation of the sidewalk café shall not exceed:

Sunday through Saturday: 7:00 a.m. – 12:00 a.m.

The hours of sales, service, and consumption of alcohol in the sidewalk café shall not exceed: Sunday through Saturday 8:00 a.m. – 12:00 a.m.

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 licenses 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 Class B grocery store and a DR restaurant on part of the first floor of the building with a sidewalk café. The Certificate of Occupancy will state the seating and occupant load; however, the total occupancy inside the restaurant shall not exceed 80 seats. The total number of seats in the sidewalk café shall not exceed 30 seats.
- 5. Sidewalk Café.** The sidewalk café, located on New Jersey Avenue and H Street, will be immediately adjacent to the building and be clearly delineated from the pedestrian walkway. No recorded music shall originate in or be piped to the sidewalk café. The Applicant shall take reasonable steps to ensure that none of its property or that belonging to patrons shall extend into the pedestrian walkway from the sidewalk cafe. There shall not be an outdoor bar in the sidewalk café, unless approved by the ABC Board with notice to the community as required by D. C. Code 25-421 and 25-422.

6. **Signage.** Applicant agrees to take reasonable measures to maintain signage designating areas where alcoholic beverages cannot be consumed by patrons.
7. **Employee training.** Applicant agrees to take reasonable steps to ensure that all employees are provided training on the sale/service of alcoholic beverages, including training on the rules and regulations for the sale/service of alcoholic beverages for on-premises versus off-premises consumption.
8. **Parking.** Because there is limited parking in the vicinity, 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. Applicant shall make reasonable efforts to promote transportation options other than automobiles and, if it is within the Applicant's control, provide adequate bike parking.
9. **Noise and Privacy.** Applicant shall strictly comply with D.C. Official Code § 25-725. and to that end shall use various means to mitigate noise. Options for noise mitigation can include: awning(s), shrubbery, cinderblock or wooden walls (perhaps with vines), trees in planters, fountains with running water, awnings, or other muting or muffling objects.

If the restaurant operates between the hours of 10 pm and 7 am, Applicant shall inform its patrons by signage or other means that upon exiting the Establishment, that residences are in proximity to the Establishment and urge quiet and decorum by patrons on exiting the Establishment.

Applicant shall receive all deliveries of food, beverages, and supplies during hours between 7:00 a.m. and 10:00 p.m.

10. **Public Space and Trash.** The Applicant shall participate in the building's trash removal and storage program. Applicant shall take commercially reasonable measures to keep the Premises, trash collection area, loading dock, hallways, passageways, tree boxes, sidewalks and common areas providing access to and adjoining the Premises free of insects, rodents, vermin, other pests, trash and dirt accumulations generated by the operations in the Premises. Applicant shall take reasonable steps to prevent trash or refuse in, or permit trash, rubbish, cartons, merchandise or other goods intended for use in the Premises to accumulate in areas outside of the Premises other than in the landlord designated areas. All recycling shall be placed in the designated areas.

Applicant shall take commercially reasonable measures to maintain the Premises, including sidewalks, free of litter, refuse and debris.

Applicant shall not knowingly permit patrons to leave the premises with open containers, cups, bottles/cans, etc. excepting food and beverages packaged "to go."

Extermination. Applicant shall cause extermination services, including treatment for insects, spiders, rats, mice, moles and other rodents, to be provided to the Premises by a reputable exterminator on at least a monthly basis.

11. **Security.** Applicant shall have recording cameras which cover the inside area where alcoholic beverages are sold as well as the immediate outside areas of the Premises. In accordance with D.C. Official Code § 25-402(d)(3)(G), the establishment shall:
(a) Ensure the cameras are operational; (b) Maintain footage for a minimum of 30 days; and (c) Make the security footage available within 48 hours upon the request of ABRA or the MPD.
12. **Participation in the Community.** Applicant is encouraged to maintain open communication with the ANC and the community for which the ANC acts.
13. **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 § 25-447.

If to Applicant: Whole Foods Market Group Inc. t/a Whole Foods Market
101 H Street, SE
Washington, DC 20003
Attn: Albert Percival, President, Vice President Treasurer, Co-Director

and/or Nick DiMarco, General Manager
Whole Foods Market
101 H Street, SE
Washington, DC 20003
Phone: 720-253-4737
e-mail: Nick.DiMarco@wholefoods.com

If to Protestant: Advisory Neighborhood Commission 6D
1101 4th Street, SW, Suite W130
Washington, DC 20024
Attn: Chair, ANC
Phone: (202) 554-1795
e-mail: 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.

14. **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:

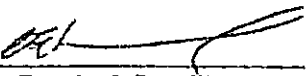
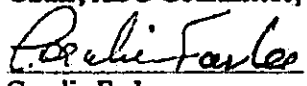
APPLICANT:

Chair, ANC6D <i>Meredith Fascett</i> _____ 9/23/2018 Meredith Fascett, SMD07 _____ Date Chair, ABC Committee, ANC6D Coralie Farlee _____ Date	Whole FoodMarket Group Inc. t/a Whole Foods Market By: _____ Albert Percival, President, Vice President Treasurer, Co-Director _____ Date
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Whole Foods Market Group Inc., t/a Whole Foods Market, ABRA Class
B# 109870 and DR # 110432, 101 H Street, SE, Washington, DC 20003
and ANC6D, September, 2018

The ANC:

APPLICANT:

Chair, ANC6D		Whole FoodMarket Group Inc. t/a Whole Foods Market
	9/23/2018	
Meredith Fascett, SMD07	Date	By: 
Chair, ABC Committee, ANC6D		Albert Percival, President, Vice President Treasurer, Co-Director
	9/25/18	9/23/18
Coralie Farlee	Date	Date