

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

In the Matter of:

Capitol City Brewing Company, LLC
t/a Penthouse Bar

Applicant for a New
Retailer's Class CT License

at premises
1612 U Street, N.W.
Washington, D.C. 20009

Case No. 11-PRO-00025
License No. ABRA-086789
Order No. 2011-422

Capitol City Brewing Company, LLC, t/a Penthouse Bar (Applicant)

Will Stephens, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 2B

Ronald Mueller, on behalf of A Group of Five or More Individuals (approximately 8
Individuals)

Ralph Allen Smith, on behalf of A Group of Five or More Individuals (approximately 16
Individuals)

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

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTESTS

The Application filed by Capitol City Brewing Company, LLC, t/a Penthouse Bar (Applicant), for a new Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 20, 2011 and a Protest Status Hearing on July 20, 2011, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2B, Ronald Mueller's Group of Five or More Individuals, and Ralph Allen Smith's Group of Five or More Individuals have entered into a Voluntary Agreement (Agreement), dated September 14, 2011, that governs the operation of the Applicant's establishment.

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The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Chairperson Will Stephens, on behalf of ANC 2B; Ronald Mueller, on behalf of A Group of Five or More Individuals; and Ralph Allen Smith, on behalf of A Group of Five or More Individuals, are signatories to the Agreement.

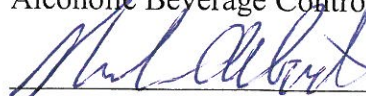
This Agreement constitutes a withdrawal of the Protests filed by ANC 2B, Ronald Mueller's Group of Five or More Individuals, and Ralph Allen Smith's Group of Five or More Individuals of this Application.

Accordingly, it is this 14th day of December 2011, **ORDERED** that:

1. The Application filed by Capitol City Brewing Company, LLC, t/a Penthouse Bar, for a new Retailer's Class CT License, located at 1612 U Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2B, Ronald Mueller's Group of Five or More Individuals, and Ralph Allen Smith's Group of Five or More Individuals in this matter are hereby **WITHDRAWN**;
3. The above-referenced Voluntary Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED**; and
4. Copies of this Order shall be sent to the Applicant; ANC 2B; Ronald Mueller, on behalf of A Group of Five or More Individuals; and Ralph Allen Smith, on behalf of A Group of Five or More Individuals.

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District of Columbia
Alcoholic Beverage Control Board



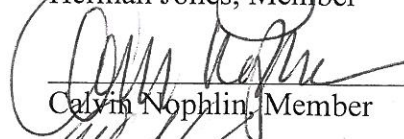
Nick Alberti, Interim Chairperson



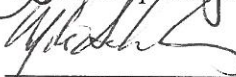
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, 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 of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

DEPARTMENT OF REVENUE
ALCOHOLIC BEVERAGE CONTROL BOARD
2011 SEP 14 10:20
ST. LOUIS, MO 63102

ABC SETTLEMENT AGREEMENT

THIS ABC SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 14 day of September 2011 by and among Capitol City Brewing Company, LLC, t/a Penthouse Bar ("Applicant"), Advisory Neighborhood Commission 2B ("ANC 2B"), Ralph Allen Smith on behalf of a Group of Seven individual protestants ("Smith Protestants") and Ronald Mueller on behalf of a Group of Eight individual protestants ("Mueller Protestants") (ANC 2B, the Smith Protestants and the Mueller Protestants are hereinafter referred to collectively as the "Protestants").

RECITALS

WHEREAS, Applicant operates the health club and fitness facility (the "Facility") known as Vida located at 1612 U Street, NW;

WHEREAS, the Facility includes a rooftop pool area with a bar, and a rooftop sundeck as an amenity to members of the Facility;

WHEREAS, Applicant has applied for a Retailer's Alcoholic Beverage License Class CT (the "License") for the sale of alcoholic beverages in the rooftop pool area;

WHEREAS, Protestants have filed a protest with the Alcoholic Beverage Control Board (the "Board") opposing the License;

WHEREAS, the parties desire to enter into this Agreement to resolve the protest of the license application.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.
2. Hours of Rooftop. Applicant shall commence operations no earlier than 8:00 a.m. on any day and shall cease operations no later than 12:00 midnight, Sunday through Thursday, and 1:00 a.m. Friday and Saturday nights (being actually Saturday and Sunday mornings).
3. Occupancy Levels.
 - 3.1 No more than 200 people shall occupy the rooftop pool area, as such area is identified in the drawing attached hereto as Exhibit A, after 9:00 p.m.
 - 3.2 No more than 100 people shall occupy the sundeck area, as designated on Exhibit A attached hereto, after 9:00 p.m.
 - 3.3 Combined occupancy of the rooftop pool area and the sundeck area shall not exceed 299 people at any time.
4. Use of Pool Club Facility Limited to Members. The rooftop pool area, including the sundeck, shall be limited to members of Vida and their guests, which may include renting or furnishing all or any portion of the rooftop pool area or the sundeck for a private party or event. Applicant shall not market or advertise the rooftop pool, the sundeck, or the bar to the public, except in connection with the marketing of memberships to the Facility. All terms of this Agreement including without limitation those in paragraphs 2 and 3 above and paragraph 6 below shall apply to any such private party or event.

5. Sound Insulation. Before beginning operations, Applicant shall construct a parapet wall extension on the southern wall of the building, extending on the western wall of the building to a distance that aligns with the northern edge of the pool, and extending on the eastern wall of the building to the top of the stairwell, as shown on Exhibit A. The wall shall be at least seven feet (7 ft.) in height from the floor or deck of the rooftop adjacent to the area to be used and shall prevent sound levels at or above 55 decibels from crossing any residential property line. Applicant shall consult with a sound engineer of its choice in selecting the materials to be used in constructing any parapet wall extension and following construction of such wall shall present a written report from the sound engineer confirming that the parapet wall as actually constructed satisfies the foregoing condition.
6. Music. No music shall be played in or on the rooftop pool area or the sundeck area other than through Applicant's sound system, other than devices attached to earphones. Applicant's sound system shall play only ambient, background music. The location, orientation, and volume level of speakers shall be maintained to comply with D.C. Code Section 25-725 and to prohibit music from being heard at any now existing residential property that is on the same or an adjacent city block as Applicant's premises. The speaker level will be limited via hardware and/or software in order to ensure compliance with the foregoing code provision and requirement and to prevent any person (whether authorized or not) from increasing the volume above the level described in this paragraph. Applicant shall not provide facilities for dancing.
7. No Promoters / No Lines. Applicant and its affiliates, partners, marketers, and promoters shall not promote or market its business as a nightclub. Applicant shall not allow its affiliates, partners, marketers or promoters to lease space, take a cover charge at the door, receive or share in the cover charge collected on a given night, or receive or share in the sales collected on a

given night. Applicant and its affiliates, partners, marketers, and promoters shall not sell tickets for admission to the premises. Applicant and its affiliates, partners, marketers, and promoters shall not advertise events at Applicant's premises as hosted by anyone, presented by anyone, or otherwise advertise events of promoters, and they shall receive no incentive-based compensation. Applicant shall not allow lines to form on the street in front of the Facility after 8:00 p.m. Nothing herein shall restrict or prohibit the marketing of health club memberships to prospective members, or prevent any member from the collecting of donations, admission fees or other remuneration in connection with a charitable event, provided that all of such monies collected are paid over to a tax-exempt charity.

8. Signage. Applicant shall display prominently in the rooftop pool area a sign advising patrons that the premises are adjacent to residences and requesting that patrons be considerate of neighbors. Applicant shall install signage in the alley stating that the alley is to be used as a walk through or drive through only and that parking is prohibited.

9. Trash Removal. Applicant shall not dump recycling materials into the dumpster, recycling bins or other containers on the exterior of the Facility after 11:00 p.m. on weekdays and after midnight on weekends.

10. Withdrawal of Protest. Protestants agree to the withdrawal of their protest provided that this Agreement is incorporated into the Board's order approving issuance of the License and compliance with this Agreement by Applicant is required by such Order.

11. Compliance and Notices.

11.1 Applicant shall provide a direct line to the manager on duty to report any violations of this Agreement and to request an immediate correction of the situation.

11.2 The parties to this Agreement shall meet on the first anniversary of the date hereof to discuss compliance with the Agreement. In the absence of recurring allegations of violations by Applicant, the parties will discuss amendments to this Agreement to increase the hours of operation or the occupancy levels.

11.3 Notices under this Agreement shall be in writing and mailed by certified mail (or similar service including FedEx or UPS), return receipt requested, postage prepaid, hand delivery, or emailed to the other parties. Notice is to be given as follows:

If to Applicant:

Capitol City Brewing Company, LLC t/a Penthouse Bar
ATTN: David Von Storch
c/o Vida Fitness
1612 U Street, NW
Washington, DC 20009
david@uacompanies.com

With a Copy to:

Andrew J. Kline
Veritas Licensing and Legislative Affairs
1225 19th Street, NW, Suite 320
Washington, DC 20036
akline@veritaslla.com

If to ANC 2B:

ANC 2B
ATTN: Will Stephens
9 Dupont Circle, NW
Washington, DC 20036
willstephensanc2b08@gmail.com

If to Smith Protestants:

Ralph Allen Smith
2000 16th Street, NW, #006
Washington, DC 20009
allensmithdc@gmail.com

If to Mueller Protestants:

Ronald Mueller
1916 16th Street, NW
Washington, DC 20009
rlantler@earthlink.net

12. 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.

13. 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.

14. Construction. In the event any conduct by Applicant in 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 liable for one violation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated above.

APPLICANT:

Capitol City Brewing Company, LLC

By: 

David von Storch

Date Signed: 9/14/11

PROTESTANTS:

ANC 2B:

By: _____

Will Stephens, Chair

Date Signed: _____

Smith Protestants

Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: _____

Mueller Protestants

Ronald Mueller, on behalf of himself and seven other individuals

Date Signed: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated above.

APPLICANT:

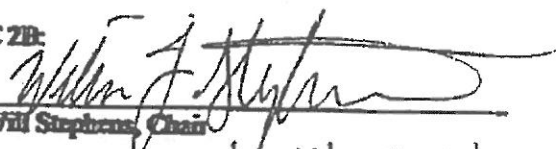
Capital City Brewing Company, LLC

By: _____
David von Storch

Date Signed: _____

PROTESTANTS:

ANC 2B:

By:  _____
Will Stephens, Chair

Date Signed: Sept. 14, 2011

Smith Protestants

Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: _____

Mueller Protestants

Ronald Mueller, on behalf of himself and seven other individuals

Date Signed: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated above.

APPLICANT:

Capitol City Brewing Company, LLC

By: _____
David von Storch

Date Signed: _____

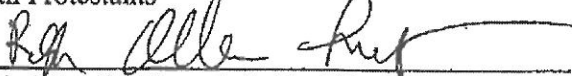
PROTESTANTS:

ANC 2B:

By: _____
Will Stephens, Chair

Date Signed: _____

Smith Protestants



Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: Sept 14, 2011

Mueller Protestants

Ronald Mueller, on behalf of himself and seven other individuals

Date Signed: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date stated above.

APPLICANT:

Capitol City Brewing Company, LLC

By: _____
David von Storch

Date Signed: _____

PROTESTANTS:

ANC 2B:

By: _____
Will Stephens, Chair

Date Signed: _____

Smith Protestants

Ralph Allen Smith, on behalf of himself and six other individuals

Date Signed: _____

Mueller Protestants

Ronald O. Mueller

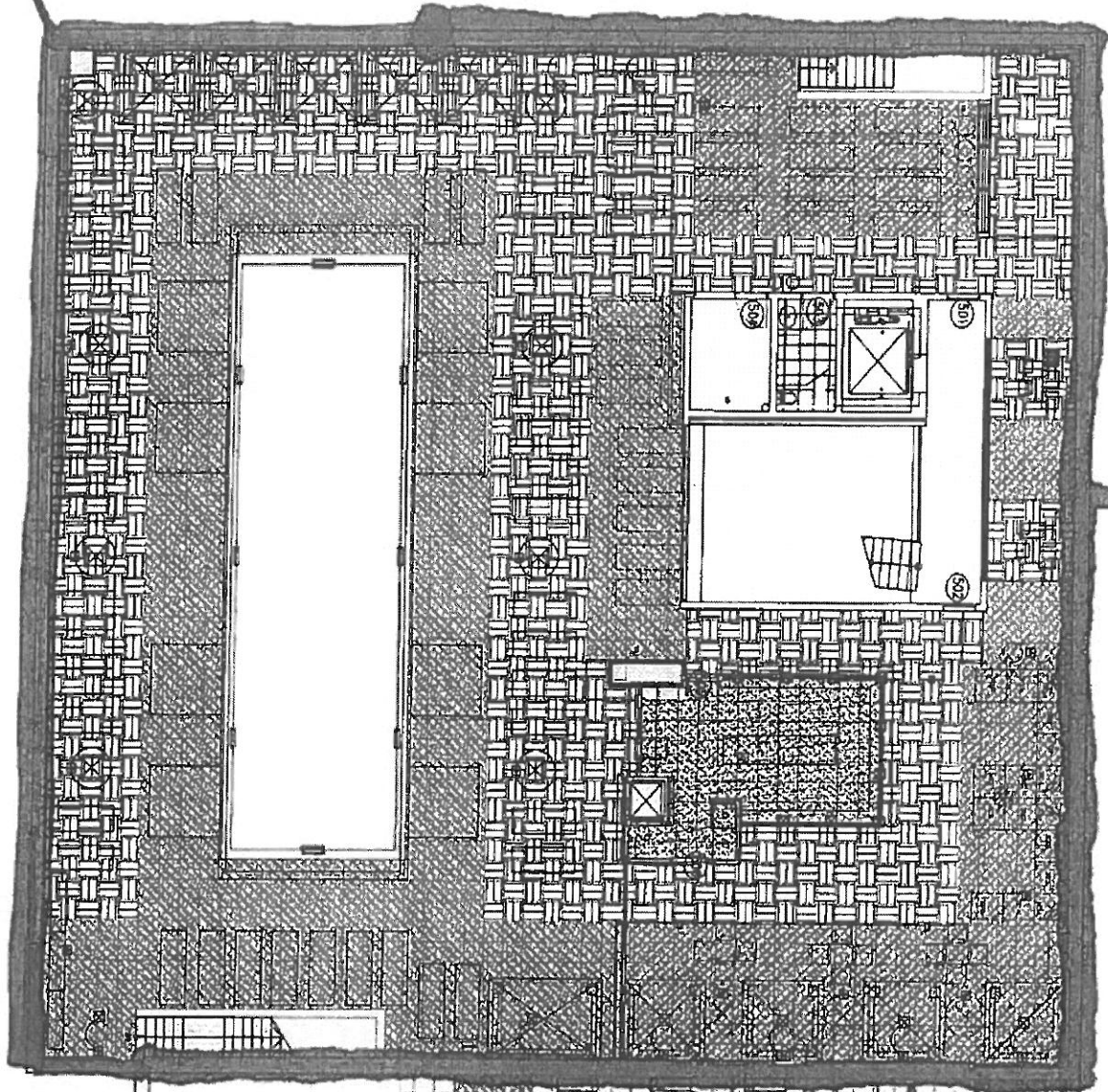
Ronald Mueller, on behalf of himself and seven other individuals

Date Signed: 14 Sept 2011

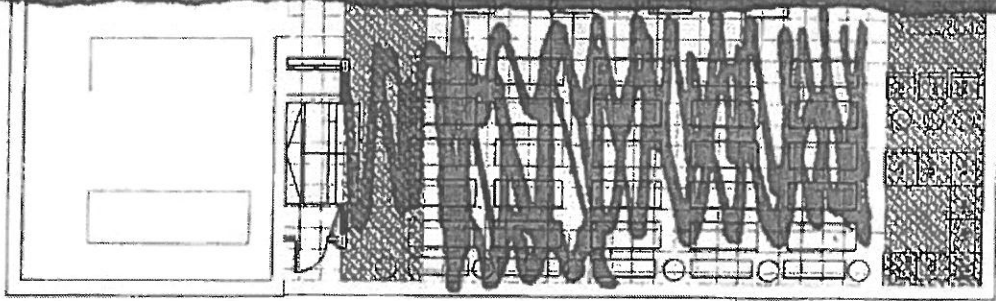
EXHIBIT A

DRAWING

PARAPET WALL EXTENSION



ROOFTOP DECK



SUNDECK AREA