

Made this 13th day of January, 2010
by and between
Liberty Tree
1016 H Street, NE
Washington DC 20002

and

Advisory Neighborhood Commission 6A

Preamble

Through this agreement, both parties aim to create an environment whereby the applicant may operate as a viable contributing business in the ANC 6A community, while concurrently curtailing any adverse effects a business such as the applicant's could have on abutting residential property owners, the Douglas Memorial United Methodist Church and the surrounding neighborhood.

The applicant agrees to work regularly with the ANC 6A, neighborhood associations, abutting residential property owners, the Douglas Memorial United Methodist Church and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this agreement are reasonable and must become wholly integrated into the day-to-day operation of the business establishment.

Further, ANC 6A acknowledges that this Cooperative Agreement shall be presented to all Class CR applicants within the boundaries of ANC 6A. The community and merchants have agreed that it is in all the parties best interests to standardize the requirements for the operations of restaurant, tavern, and nightclub establishments within the boundaries of ANC 6A. To the greatest extent possible, the ANC will not insist upon or allow any significant changes to this Cooperative Agreement that will unfairly benefit or, conversely, cause competitive disadvantage to, any individual applicant or establishment within the ANC, unless such change is required by the District of Columbia government, other authorized governmental bodies, or rule of law.

The community and merchants understand and agree that the changes imposed upon the operations of all licensees within the ANC as set forth herein are important measures to protect the safety, peace, order and quiet of the neighborhood, its residents, and businesses.

Witnesseth

Whereas, Applicant's premises is within the boundaries of ANC 6A; and,

Whereas, the parties desire to enter into an agreement governing certain requirements and understandings regarding the issuance of a Retailer's Class CR Liquor License at the subject premises; and,

The Parties Agree As Follows:

1. **Public & Private Space Cleanliness and Maintenance.** Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises) and outdoor private spaces (minimally the rear and side portions of the property) adjacent to the establishment in a clean and litter-free condition by:

- a. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily (once immediately before business hours and again between 5:00 P.M. and 8:00 P.M.).
- b. Maintaining regular trash garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean.
- c. Agreeing to obtain rodent-proof dumpsters to be placed only at the front (south side nearest H Street) of the property.
- d. Depositing trash and garbage only in rodent-proof dumpsters, and ensuring that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
- e. Ensuring timely disposal of trash and garbage that is least disruptive to the neighbors and that commercial trash pick-up will only take place between 7:00 A.M. and 7:00 P.M.
- f. Agreeing that no trash or debris will be placed or stored at the rear of the property.
- g. Agreeing that no glass recyclables material shall be dumped in outside containers after 9:00 P.M.
- h. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.
- i. Assisting in maintenance of the curb in front of the establishment to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulation in these respects.
- j. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
- k. Promptly removing or painting over any graffiti written on the exterior walls of the property.

Business Operations and Practices:

- a. Applicant agrees to the following indoor hours of operation:
 - i. Sunday through Thursday, 10:00 A.M. – 1:00 A.M.
 - ii. Friday through Saturday, 10:00 A.M. – 2:00 A.M.
- b. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated. A person of intemperate habits shall be defined as:
 - i. Any person convicted of alcohol offences or alcohol-related crimes three times or more in any one year; and
 - ii. Who has been so identified to the licensee by the Metropolitan Police Department by giving a photo and name to the licensee.
- c. Applicant agrees to take all necessary steps to prevent patron rowdiness, including refusing admission/service to rowdy and/or unruly persons.
- d. Applicant agrees to ensure that no patron bring alcohol into the establishment from outside sources, and at no time exits the establishment with alcoholic beverages.
- e. Applicant will not provide or sell alcoholic beverages “to go.”
- f. Applicant agrees not to promote or participate in bar or pub “crawls” or any other event of this nature.
- g. The licensed establishment will be managed by the applicant in person or a board licensed manager.
- h. Applicant, and all employees of the applicant, shall attend and complete an alcoholic beverage server training course/seminar.
- i. Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
 - i. Proper ID required (proof of age 21 minimum to be served and assurances that ID’s will be checked at all times prior to serving alcoholic beverages to patrons).
 - ii. Prohibition against selling alcohol to minors.

iii. Request to patrons to not litter, loiter, or make excessive noise in the neighborhood as they arrive or depart.

iv. Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.

v. Request that customers do not contribute to panhandlers.

j. Applicant will discourage patrons from congregating outside the establishment while waiting to be seated. To this end, applicant will institute a "pager" system or cell phone call-back system to notify patrons when their seating becomes available.

k. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:

i. Asking loiterers to move on whenever they are observed outside the establishment,

ii. Calling the Metropolitan Police Department (MPD) to remove loiterers if they refuse Applicant's request to move on,

iii. Calling the Metropolitan Police Department if illegal activity is observed,

iv. Keeping a written record of dates and times (i.e. log) when the MPD was called for assistance.

l. Applicant's log shall be provided to the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license.

m. Applicant shall not support of the installation of pay phones outside of the establishment on their property.

n. Applicant will utilize and maintain high-intensity flood-lights, outfitted with motion detectors, on the exterior of its premises so as to fully light the Summer Garden when not in use and the entire rear portion of the property from dusk until dawn.

o. Applicant shall provide valet parking services only with valet parking services as defined licensed and in compliance with Title 24 DCMR Chapter 16.

p. Applicant agrees not to operate a roof-top deck.

Music / Dancing / Entertainment:

a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate sound proofing.

b. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment in accordance with DC Official Code Title 25-725.

c. Applicant agrees the rear portion of the property will be off-limits to patrons in order to protect the peace and quiet of adjacent residential property owners.

d. Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening and closing of all doors, including the entry door, Summer Garden door, rear kitchen door and exit doors.

e. Applicant agrees to keep all establishment doors and windows closed at all times.

f. Applicant shall obtain an entertainment endorsement to have a cover charge. For purposes of this clause, a cover charge is a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.

g. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement.

"Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

Outdoor Patio / Summer Garden Operations:

a. Applicant will provide Summer Garden seating for no more than 64 patrons.

- b. Applicant agrees that it shall not seek to expand the capacity of the Summer Garden without amendment of this agreement.
- c. Applicant agrees to the following Summer Garden outdoor hours of operation:
- Sunday through Thursday, 10:00 A.M. – 9:00 P.M. (last seating), with the Summer Garden shut down and completely vacated (tables bussed, floors swept and wet mopped) no later than 10:00 P.M.
 - Friday through Saturday, 10:00 A.M. – 10:00 P.M. (last seating), with the Summer Garden shut down and completely vacated (tables bussed, floors swept and wet mopped) no later than 11:00 P.M.
- d. Applicant agrees not to establish an outdoor bar area.
- e. Applicant agrees that all patrons consuming alcoholic beverages on the Summer Garden must be seated and ordering food.
- f. Applicant shall not offer any type of live or pre-recorded music on the Summer Garden.
- g. Applicant agrees to erect a concrete, brick or stone wall no less than 8 feet in height to enclose the entire perimeter of the Summer Garden. The rear perimeter wall will run in an East/West direction as an extension of the existing structure (Exhibit A) and will contain no doors, except for an “emergency only” exit door. This “emergency only” exit door shall be sound proof and only used in case of an emergency.
- h. Applicant agrees that no wall enclosing the Summer Garden will be located closer than 25 feet from the nearest residential property.
- i. In order to mitigate noise on the Summer Garden, applicant agrees that the wall enclosing the Summer Garden will include framing and a trellis designed such that its top and all sides can be covered with sound baffling awning or climbing vegetation.
- j. Applicant agrees the Summer Garden floor shall be made of stamped concrete or similar solid flooring material capable of being swept and wet-mopped to reduce rodents and insects. In no event shall the Summer Garden be built on a raised deck.
- k. Applicant agrees potted plants, trees or other types of noise mitigating techniques will be incorporated in the Summer Garden décor.
- l. No fewer than two signs will be clearly posted in the Summer Garden to remind patrons to keep their voices at normal speaking volume.
- m. Staff will monitor the Summer Garden area to make sure patrons do not raise their voices above normal speaking volume.
- n. Applicant agrees to keep any doors or windows leading to the Summer Garden closed at all times.
- o. Applicant will direct its employees to inspect the Summer Garden on a regular basis to ensure its cleanliness.
- p. Applicant shall have the Summer Garden area properly cleaned at the end of each night (tables bussed, floor swept and wet-mopped) to ensure that there is no garbage, food or odors present the following morning.

4. Cooperation with ANC 6A. Applicant agrees to work on resolving issues preventing the applicant from fulfilling its obligations under this cooperative agreement with all of the following: the Single-Member District (SMD) ANC Commissioner within whose boundaries the establishment is located, the Chair of the ABL Committee, and other Commissioners whose SMD's are adjacent to the location of the establishment.

5. Modifications. This agreement can be modified only by mutual agreement of all abutting residential property owners, the Douglas Memorial United Methodist Church, the 800 Street Block Association and ANC 6A along with the approval of the ABC Board. If applicant desires to modify the terms of this agreement, the applicant, prior to implementing the change(s), shall receive written agreement from all abutting residential property owners, the Douglas Memorial United Methodist Church and the 800 Street

Block Association, but only after a majority of the ANC 6A commissioners have voted in favor of the changes at a full public meeting.

6. Miscellaneous:

- a. Applicant certifies that it does not owe more than \$100 to the District of Columbia government as the result of any fine, fee or penalty interest or past due tax.
- b. Applicant will operate in compliance with all applicable laws and regulations.
- c. If any term, condition or provision of this agreement shall be held to be invalid, unenforceable or void, the remainder of this agreement shall remain in full force and effect.
- d. If applicant uses valet parking services, such services must comply with the District of Columbia valet parking regulations (DCMR Chapter 16 – Valet Parking).
- e. Applicant will provide abutting residential property owners, the Douglas Memorial United Methodist Church, 800 Block Neighborhood Association and ANC 6A with relevant and up-to-date contact information beyond the establishment phone number for dealing with incidences such as noise complaints, sounding of alarms and security breaches.
- f. All parties agree to review the terms and conditions of this agreement 9 months following ABRA acceptance of this agreement.

7. Enforcement:

- a. If either party hereto believes in good faith that the applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the applicant and the applicant shall have ten (10) days after receipt of such written notice to come into compliance with this agreement or respond to said alleged notice of default.
- b. Applicant and the ANC 6A Commission agree to enter into this agreement. If the applicant should breach the conditions of this agreement, it is understood by all parties that the ANC 6A, and/or its committees, or others shall immediately petition the ABC Board for a “show cause” hearing pursuant to 23 D.C.M.R. 1513.5.
- c. This cooperative agreement is binding on the applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

In Witness Whereof

The parties have affixed hereto their hands and seals.

Applicant:

By: Scott Hamilton Date: 1/13/10
Signature: [Signature]

Advisory Neighborhood Council 6A:

By: Kelvin J. Robinson Date: 1/15/10
Signature: [Signature], chair ANC 6A

ABC Board-Licensed Manager:

By: _____ Date: _____
Signature: _____

EXHIBIT

