

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

_____)
In the Matter of:)
)
KHP IV DC TRS, LLC)
t/a The Darcy Hotel)
)
Application for Substantial Change)
(Increase Occupancy))
to Retailer's Class CH License)
)
at premises)
1515 Rhode Island Avenue, NW)
Washington, D.C. 20005)
_____)

Case No.: 18-PRO-00009
License No.: ABRA-102437
Order No.: 2018-344

KHP IV DC TRS, LLC, t/a The Darcy Hotel (Applicant)

Daniel Warwick, Chairperson, Advisory Neighborhood Commission (ANC) 2B

Steven Kameny, on behalf of A Group of Five or More Individuals

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

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF PROTESTS**

The Application filed by KHP IV DC TRS, LLC, t/a The Darcy Hotel, for a Substantial Change to increase its occupancy to its Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on February 20, 2018, and a Protest Status Hearing on April 4, 2018, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant, ANC 2B, and a Group of Five or More Individuals entered into a Settlement Agreement (Agreement), dated May 9, 2018, that governs the operation of the Applicant's establishment.

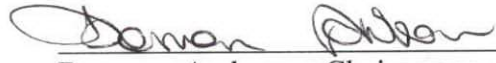
The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant; Chairperson Daniel Warwick, on behalf of ANC 2B; and Steven Kameny, on behalf of the Group of Five or More Individuals, are signatories to the Agreement.

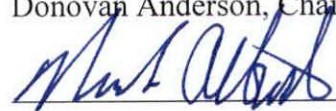
This Agreement constitutes a withdrawal of the Protests filed by ANC 2B and the Group of Five or More Individuals of this Application.


Accordingly, it is this 16th day of May, 2018, **ORDERED** that:

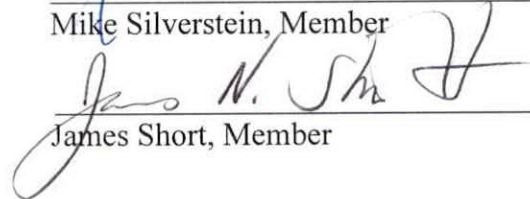
1. The Application filed by KHP IV DC TRS, LLC, t/a The Darcy Hotel, for a Substantial Change to increase its occupancy to its Retailer's Class CT License, located at 1515 Rhode Island Avenue, NW, Washington, D.C., is **GRANTED**;
2. The Protests of ANC 2B and the Group of Five or More Individuals in this matter are hereby **WITHDRAWN**;
3. 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
4. Copies of this Order shall be sent to the Applicant, ANC 2B, and Steven Kameny, on behalf of the Group of Five or More Individuals.

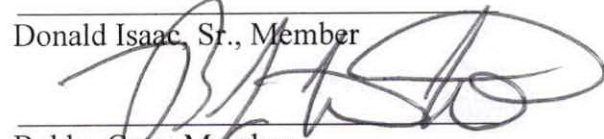
District of Columbia
Alcoholic Beverage Control Board

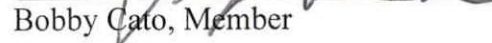

Donovan Anderson, Chairperson

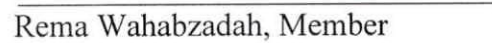

Nick Alberti, Member


Mike Silverstein, Member


James Short, Member


Donald Isaac, Sr., 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).

SETTLEMENT AGREEMENT

This Settlement Agreement is made on this 9th day of May, 2018, by and among KHP IV DC TRS, LLC/a The Darcy ("the Applicant") and Advisory Neighborhood Commission 2B ("the ANC"), and a group of 70 individuals¹ (the "Group of Individuals") (collectively "Protestants"). Steven Kameny is the designated representative of the Group of Individuals.

WITNESSETH

WHEREAS, Applicant is the holder of a Class CH (hotel) Alcoholic Beverage Control (ABC) license for premises located at 1515 Rhode Island Avenue, NW (the "Premises"); and

WHEREAS, the Applicant's substantial change application for an increase in the seating and occupant load of the existing summer garden is pending before the District of Columbia ABC Board; and

WHEREAS, said hotel Premises is within the jurisdictional boundaries of the ANC, and, the Group of Individuals reside or own property in immediate proximity of the Premises; and,

WHEREAS, the Protestants' objections to the substantial changes are limited to the summer garden capacity including noise and other concerns; and

WHEREAS, by Settlement Agreement between ANC 2B and a group of protestants dated October 3, 2016, with modification by Board Order dated October 19, 2016, the issues relating to the rear alleyways, parking and deliveries and music on the summer garden were addressed. This Settlement Agreement is not superseded; and

WHEREAS, Applicant acknowledges the July 6, 1999 Voluntary Agreement is not superseded by this Settlement Agreement; and,

WHEREAS, the parties desire to enter into this Settlement Agreement in order to reflect their understandings regarding certain limited aspects of the Applicant's operations of the summer garden at the rear of the Premises;

NOW, THEREFORE, in consideration of the recitals set forth above and the terms and conditions provided below, the parties agree as follows:

1. (a) At Applicant's election, the maximum seating capacity of the rear summer garden shall be increased to 100 seats and the maximum occupant load of the rear summer garden shall be increased to 120 persons. Such increases shall be conditioned upon Applicant's construction of a permanent enclosure of the existing outdoor space (lower portion of the rear summer garden), to provide sufficient sound attenuation from the increase in the

¹ There were seventy (70) individual petition signatures timely filed naming Steven Kameny as designated representative. At the initial hearing held on February 20, 2018, eight (8) individual petitioners appeared and standing was granted as to the group.

occupancy of the space, in an effort to be compliant with the noise provisions of DC Code 25-725. Applicant utilized a sound study prepared by Polysonics Acoustics & Technology Consulting which is attached as Exhibit A. The sound study proposed the use of a retractable enclosure to mitigate sound. Specifications for the permanent enclosure will meet or exceed the sound study's noise mitigation standard.

(b) Protestants agree to support (through their representative, Steven Kameny) an application for a zoning variance if such a variance is required in order to gain relief to construct the permanent enclosure referenced in Subsection 1(a), provided the variance applied for is limited to that purpose.

(c) There shall be no prominent flashing or moving lights visible to the exterior of the building or enclosed cover between the hours of 8pm and 10am daily.

2. (a) The hours of operation on the rear summer garden shall be 7:00 am to 11:00 pm Sunday through Thursday and 7:00 am to 12:00am Friday through Saturday. Sales and service of alcoholic beverages on the rear summer garden shall be Sunday through Thursday 8:00 am until 11:00 pm; and Friday and Saturday 8:00 am until 12:00 am. .
 - (b) The smaller upper portion of the rear summer garden area will remain unenclosed and may be used for operation, sale, service and consumption of alcohol during the following hours: Sunday through Thursday 8:00 am to 9:00 pm; and Friday and Saturday 8:00 am to 10:00 pm. Maximum capacity of the upper terrace portion of the rear summer garden area shall not exceed 40. There shall be no amplified or live music located on the upper terrace portion of the rear summer garden. The maximum occupant load of the combined upper and lower terraces (collectively the "summer garden") shall not exceed 120 persons
3. Paragraph numbered 4 of the October 3, 2016 Settlement Agreement as modified by the Board's order dated October 19, 2016 is restated below:
 - (a) Applicant agrees not to permit the use of amplified music (no amplified live music entertainment) or public address system on the rear patio/courtyard. It is understood by the parties that recorded background music may be permitted, but the background music will not be amplified with subwoofer speakers and must be kept at a reasonable volume.
 - (b) The parties have agreed to permit the following activities inside the permanent enclosure which shall not be considered in violation of subsection 3(a) above, and paragraph 4 of the October 3, 2016 agreement:

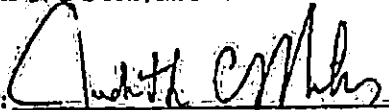
Live music performed with non-electric stringed instruments only which shall not be amplified

4. Applicant will include language in its contract for use of the outdoor summer garden providing that guests of the event host will not access the alley for any reason other than for egress in an emergency and will comply with restrictions on use of the summer garden set out in this Settlement Agreement. Applicant will have signage at the exit(s) from the summer garden to the alley that indicate for emergency use only.
5. Applicant will inform the event host contracting the summer garden space of the limitations on hours for deliveries to the hotel through the alley and shall use diligent commercially reasonable efforts to enforce them. These limitations are contained in the October 3, 2016 Settlement Agreement at sections 1 (b), (c) and (d). Applicant will advise the protest group on Applicant's efforts to post the hours of delivery, as required by the October 3, 2016 Settlement Agreement at section 1 (b). If Applicant is prohibited by any applicable laws or regulations from posting such signage, Applicant will promptly advise the Protestants of such prohibitions. Applicant will use diligent commercially reasonable efforts to overcome any barriers to posting the signage. If not prohibited by applicable law or regulations, the Applicant will post the signage before the increase in occupancy is effective. Applicant will notify ANC 2B, the Group of Individuals (through its representative, Steven Kameny) and the ABC Board of such posting through electronic mail to the parties and ABRA.legal@dc.gov.
6. The parties agree that upon ABC Board approval of this agreement, the increase in occupancy on the summer garden from 40 to 120 shall not be effective until construction of the permanent enclosure is complete. Applicant will notify ANC 2B, the Group of Individuals (through its representative, Steven Kameny) and the ABC Board of such completion through electronic mail to the parties and ABRA.legal@dc.gov. In the event that a zoning variance is required but not approved by the Board of Zoning Adjustment (BZA), the parties agree that this agreement is deemed null and void and the increase in occupancy for the summer garden from 40 to 120 shall not be effective. A copy of the BZA decision will be filed with the ABC Board with a request to enter an order terminating the agreement.
7. Subject to any restriction on signage imposed by applicable laws or regulations, Applicant will promptly post a sign at the rear of the Premises, indicating that there is "NO PARKING" in the alley adjacent to the Darcy Hotel. If not prohibited by applicable law or regulations, the Applicant will post the signage before the increase in occupancy is effective. Applicant will notify ANC 2B, the Group of Individuals (through its representative, Steven Kameny) and the ABC Board of such posting through electronic mail to the parties and ABRA.legal@dc.gov.

8. The Protestants acknowledge and agree that, in reliance on the foregoing commitments, they will withdraw the protests that heretofore have been filed with the ABC Board. The parties jointly request that this Agreement be incorporated into the ABC Board's order approving the pending summer garden substantial change of the Class CH License.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

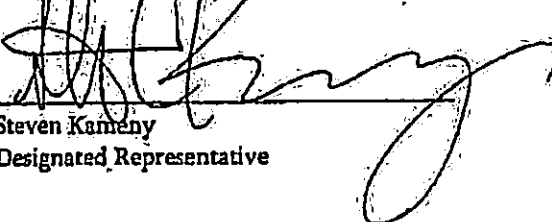
KHP IV DC TRS, LLC

By: 
Judith C. Miles
Vice President and Secretary

ADVISORY NEIGHBORHOOD COMMISSION 2B

By: 
Daniel Warwick, Chairman

GROUP OF INDIVIDUALS

By: 
Steven Kamény
Designated Representative



POLYSONICS
Acoustics & Technology Consulting

March 13, 2018

Mr. Mike Soliman
KHP IV TRS LLC
1515 Rhode Island Avenue, NW
Washington, DC 20005

Project: Darcy Hotel Terrace Noise Analysis
Report #5757

Dear Mr. Soliman,

Polysonics completed a noise analysis for the Darcy Hotel Terrace project in Washington, DC.

The purpose of the project is to determine the noise impact of the proposed outdoor terrace occupancy expansion to the adjacent residences.

The DCMR requires musical instruments or unamplified voices not to generate a noise disturbance or to disturb the "peace and quiet."

Polysonics performed a 24-hour test at the property to determine the existing noise levels at the site and performed calculations determining how loud the terrace will be at the nearest residences.

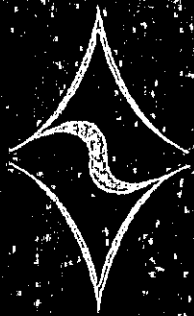
The results from our analysis show that the increased occupation from 40 to 120 is expected to increase the noise levels by approximately 20 dBA.

In order to mitigate the noise, Polysonics recommends a glass or plexiglass enclosure to the terrace. The enclosure will sufficiently reduce noise levels to the current "peace and quiet."

Please let me know if you would like any further information.

Sincerely,
Polysonics

Christopher Karner
Senior Consultant
Direct line: 540-341-4988 x-2102



POLYSONICS

Acoustics & Technology Consulting

NOISE ANALYSIS:
DARCY HOTEL TERRACE
WASHINGTON, DC
REPORT #5757

PREPARED FOR: KHP IV TRC LLC

PREPARED BY: CHRISTOPHER KARNER

MARCH 13, 2018

the sound of experience

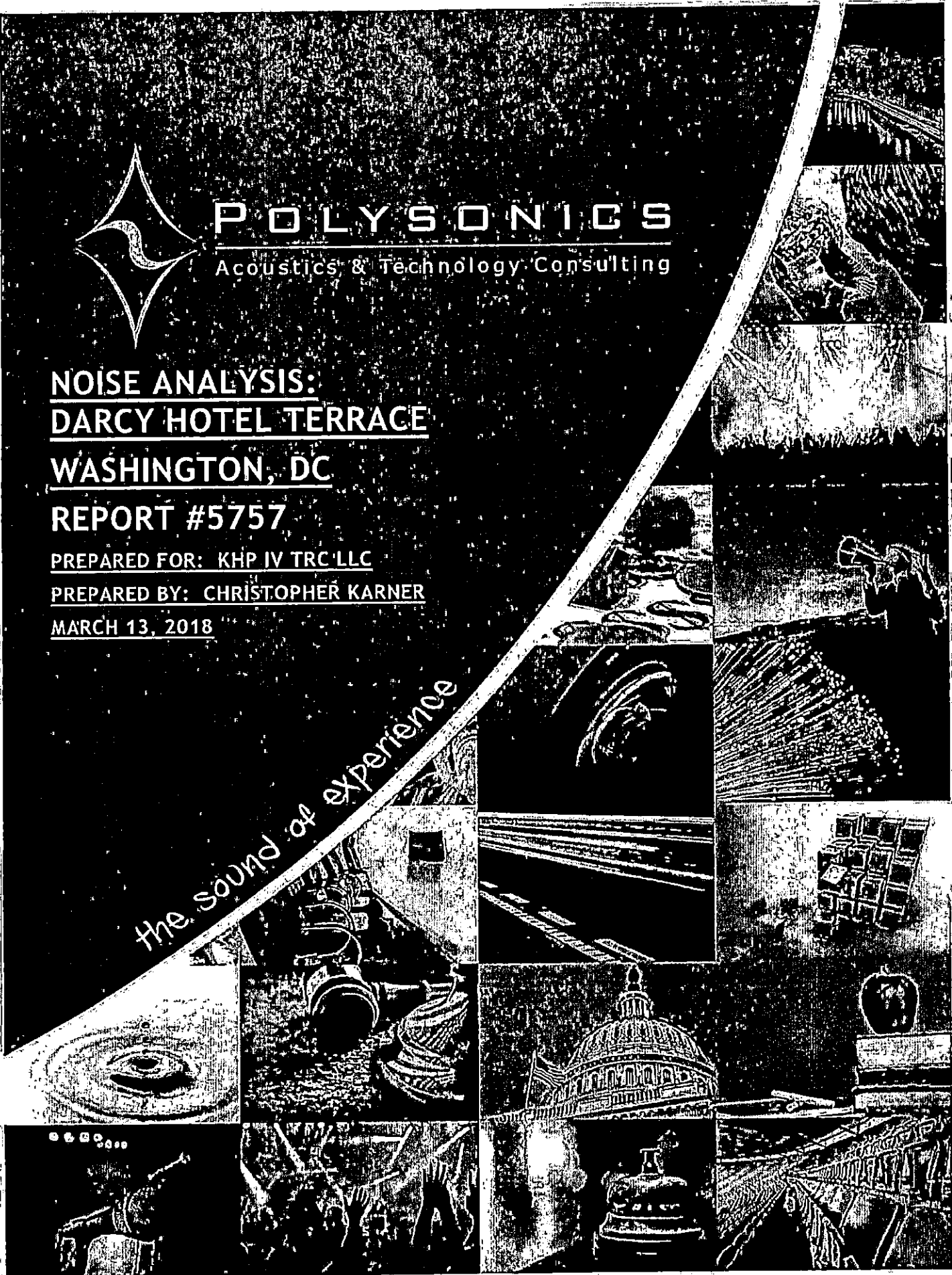


TABLE OF CONTENTS

EXECUTIVE SUMMARY3

PROJECT INFORMATION3

DCMR NOISE LEVEL LIMITS3

MEASURED NOISE CONDITIONS.....4

MEASUREMENT RESULTS.....4

DATA ANALYSIS.....5

NOISE MITIGATION6

CONCLUSIONS.....7

APPENDIX8

LIST OF TABLES

TABLE 1: MEASURED NOISE LEVELS5

LIST OF FIGURES

FIGURE 1: COMMON SOUND LEVELS3

FIGURE 2: SOUND LEVEL METER LOCATION.....10

FIGURE 3: 24-HOUR MEASUREMENT – M111

EXECUTIVE SUMMARY

Polysonics completed a noise analysis for the Darcy Hotel Terrace project in Washington, DC.

The purpose of the project is to determine the noise impact of the proposed outdoor terrace occupancy expansion to the adjacent residences.

The DCMR requires musical instruments or unamplified voices not to generate a noise disturbance or to disturb the "peace and quiet."

Polysonics performed a 24-hour test at the property to determine the existing noise levels at the site and performed calculations determining how loud the terrace will be at the nearest residences.

The results from our analysis show that the increased occupation from 40 to 120 is expected to increase the noise levels by approximately 20 dBA.

In order to mitigate the noise, Polysonics recommends a glass or plexiglass enclosure to the terrace. The enclosure will sufficiently reduce noise levels to the current "peace and quiet."

Details of the analysis including discussion of applicable standards, analysis methodologies, and resultant noise impact are provided herein.

PROJECT INFORMATION

The project has a ground level terrace at the Darcy Hotel. The current terrace is allowed to have 40 people, and the hotel desires to increase the number to 120 people. Polysonics understands the use to be events such as banquets, wedding ceremonies, or meetings.

The current terrace is located behind the building in alleyway. There are residential buildings directly west of the building, and across the alley to the north. Background music is played quietly over loudspeakers.

The concern with increasing the number of people is causing a noise disturbance or exceeding the noise code.

Polysonics performed measurements at the site to determine the existing noise levels and used these noise levels to perform calculations predicting the future noise levels from the terrace.

DCMR NOISE LEVEL LIMITS

The District of Columbia regulates noise levels by providing noise level limits in the D.C. Municipal Regulations and D.C. Register (DCMR).

DCMR Section 2800 "Musical Instruments, Loudspeakers, Amplifiers, and Unamplified Voices" states that "noise resulting from musical instruments, loud speakers...and unamplified voices shall not...make, continue, or cause...any noise disturbance." A noise disturbance is defined in DCMR Section 2799 as "any sound which is loud and raucous or loud and unseemly and

unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof.”

In Section 2800, a specific decibel level associated with a noise disturbance or peace and quiet is not provided. The term “peace and quiet” is difficult to define in an urban environment. However, Polysonics can define the current typical, average, and maximum noise levels occurring at the site, which presumably are not generating noise complaints. Noise levels above these existing levels would represent a noise disturbance, exceeding the existing “peace and quiet.”

An excerpt from the U.S. Department of Housing and Urban Development (HUD) Noise Guidebook can be seen in Figure 1 in the Appendix. Various noise levels will be discussed in this report, and Figure 1 can be used as a general guide to how loud the levels will sound, and what the perception of the level will be.

MEASURED NOISE CONDITIONS

From Wednesday January 24 to Thursday January 25, 2018, Polysonics performed a 24-hour noise measurement at the project site.

Measurements were performed at one location. The measurement location can be seen in Figure 2.

Traffic and mechanical equipment were the primary noise sources at the site.

The instrumentation used for the measurement included one Bruel and Kjaer 2238 sound level meter. This instrument is capable of measuring noise levels and calculating statistical results over the measured time period. The unit meets ANSI S1.4 standards for Type I Sound Level Meters and was calibrated prior to the measurement survey, traceable to the National Institute of Standards and Technology (NIST). All measurements were made in the standard dBA metric, which best simulates human hearing and is in accordance with DCMR standards.

Weather data from the weather station located at Ronald Reagan National Airport shows no periods of rain during the measurement. Wind gusts exceeding 10 mph were reported sporadically between 1:40 p.m. and 5:00 p.m. and 8:00 p.m. to 9:00 p.m. on January 24th and 7:00 a.m. to the end of the measurement on January 25th. Although these wind gusts likely elevated the ambient noise levels at the outdoor measurement locations, the effect is not apparent on the measurement data. The meters were likely shielded within the walled terrace within the building courtyard.

MEASUREMENT RESULTS

The “peace and quiet” of the existing noise levels is not represented by a single number. The noise level present most of the time represents the site at its quietest, but there are also peaks in the noise data. These peak noise levels exceed the typical noise levels, but are still within the existing noise levels of the site.

Based on the measured data, Polysonics can determine the “peace and quiet” of the site.

We measured sound levels using two different metrics: L_{eq} and L_{90} . L_{eq} is a metric describing the average noise level measured over a given time period. L_{90} is the noise level present for 90 percent of the entire measurement period. The L_{90} noise level will exclude all one-time noise events that were included in the L_{eq} (such as sirens, horns, or passing vehicles) and represents the typical noise level at the site. The L_{eq} is useful in understanding the overall noise level of a site, the L_{90} is useful in determining what the typical “quiet” (no loud noise events) noise level of a site is.

The one-minute L_{eq} results from the noise measurement can be seen in Figure 3.

As seen in Figure 3, the noise level is generally around 56 dBA throughout the day and 55 dBA during the nighttime. There are peaks throughout the day, reaching as high as 75 dBA, but generally the peaks are between 60 to 70 dBA.

A summary of these different perspectives of the “peace and quiet” at the site can be seen in Table 1.

TABLE 1: MEASURED NOISE LEVELS

Typical Noise Level, L_{90} dBA	Average Noise Level, L_{eq} dBA	Max. Noise Level, L_{eq} dBA	Min. Noise Levels, L_{eq} dBA
55	58	75	52

As seen when comparing Table 1 and Figure 3 to Figure 1, it can be determined that the “peace and quiet” at is between moderate and loud.

DATA ANALYSIS

The areas of concern are people speaking loudly, unamplified music, or any other array of typical dining noises.

A person typically speaks 60 dBA at a low voice and 85 dB in a loud voice, when measured at 3 feet. Polysonics understands that the events will not be raucous, so only typical speaking voices are expected.

The speech from people is a point source, which decrease 6 dB per doubling of distance. The center of terrace is approximately 58 feet from the closest façade of the buildings to the west and 166 feet from the closest façade to the north. Therefore, the speaking noise is reduced 13 dB (56') to the west and 17 dB (122') to the north.

For example, a person speaking at 60 dBA within the terrace would be 47 dBA at the façade of the western building and 42 dBA at the northern building.

Existing Conditions

A 40 person event did not occur during the measurement, but if 40 people were speaking normally simultaneously, the expected noise levels would be 63 dBA to the western building and 59 dBA to the northern building.

When comparing these noise levels to the results shown in Table 1, it can be seen exceeding the measured typical noise level and average noise level, but not the maximum noise level.

When compared to Figure 1, the results of 40 people speaking normally at the same time, the results would be considered loud. As previously mentioned, a noise level event of 63 dBA would be typical for the peaks occurring at the site, as shown in Figure 3.

Therefore, a 40 person event would be within the measured "peace and quiet" of the site.

Future Conditions

If the number of people is increased to 120, the noise levels of everyone speaking simultaneously would increase by around 20 dBA. For example, 120 people speaking at 60 dBA within the terrace would be 83 dBA at the façade of the western building and 79 dBA at the northern building.

When compared to the data in Table 1, the measurement in Figure 3, or the projected noise levels with 40 people speaking, it can be seen the noise levels would be increased over the existing "peace and quiet."

Polysonics understands that the 120 people at an event would not be speaking loudly or simultaneously throughout the day constantly. However, at some events everyone may be clapping or cheering simultaneously, which would result in noise levels as described above.

NOISE MITIGATION

The terrace currently has a 6' barrier along the northern and western sides which would mitigate noise at a ground level, but most of the adjacent locations are elevated above the wall.

An enclosure above the terrace and barrier could be used to provide sufficient mitigation to accommodate the additional 80 guests into the existing "peace and quiet."

The enclosure could be made of glass or plexiglass. The proposed enclosure (Roll-A-Cover, Int'l) lists their 1/4" clear tempered single pane of glass reducing noise 26 dBA and their 10mm polycarbonate panel reducing noise 19 dBA.

As previously stated, an increase from 40 to 120 people is inherently a 20 dB increase, so the use of either of these materials would effectively reduce the noise back to the current "peace and quiet".

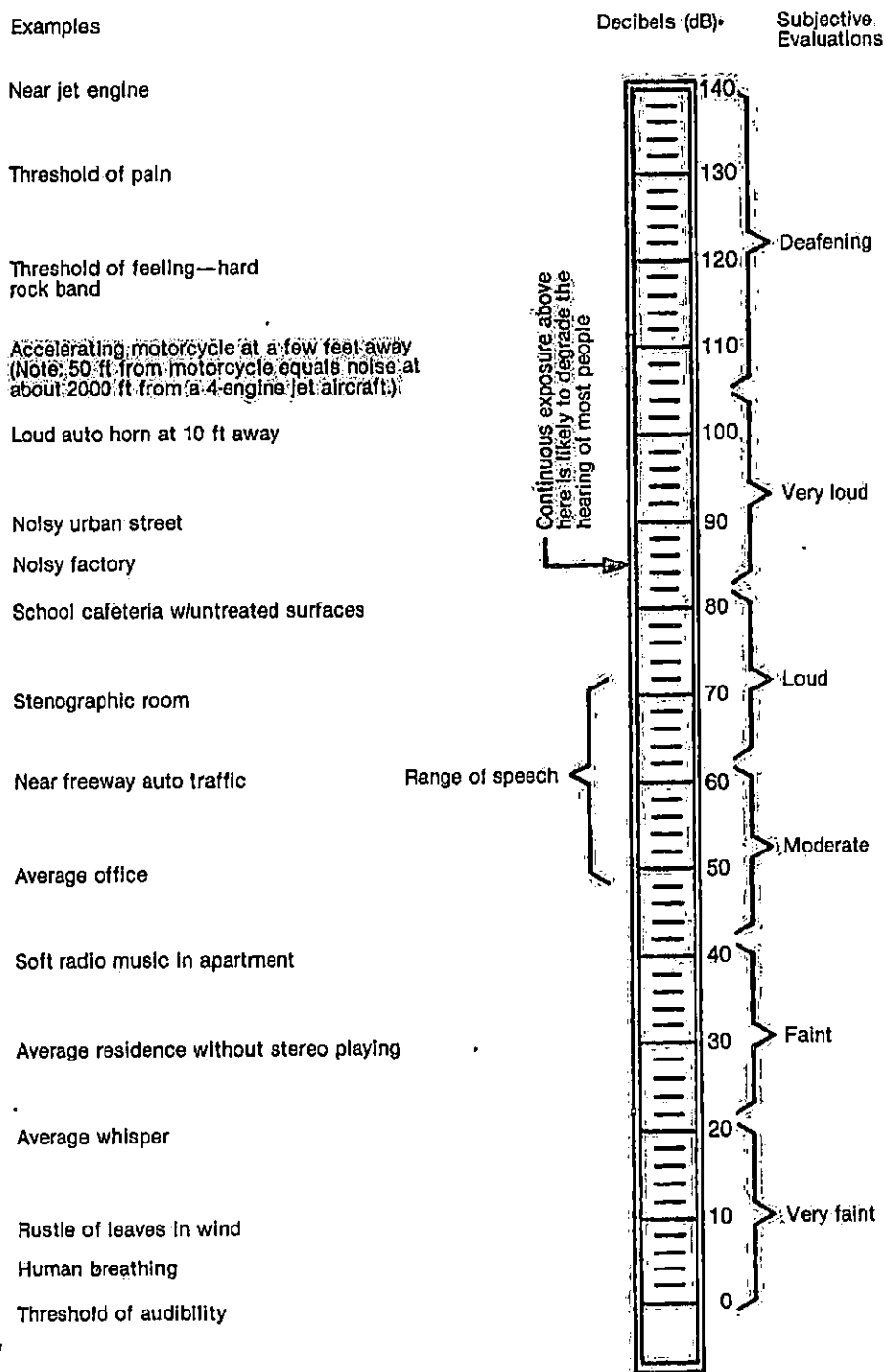
CONCLUSIONS

As shown in this report, the noise levels at the site consist of constant noise sources (traffic and HVAC) and intermittent noise levels (single event cars, garbage trucks, exterior hotel events) which, when combined, constitute the existing "peace and quiet" of the site. The "peace and quiet" of an urban environment is not expected to be silent, but to represent the typical noise levels present at the site.

Increasing the number of allowed people at the terrace for events is expected to exceed the existing "peace and quiet" of the site. In order to mitigate the noise, Polysonics recommends a glass or plexiglass enclosure to the terrace, as detailed earlier in the report. The enclosure will sufficiently reduce noise levels to the current "peace and quiet."

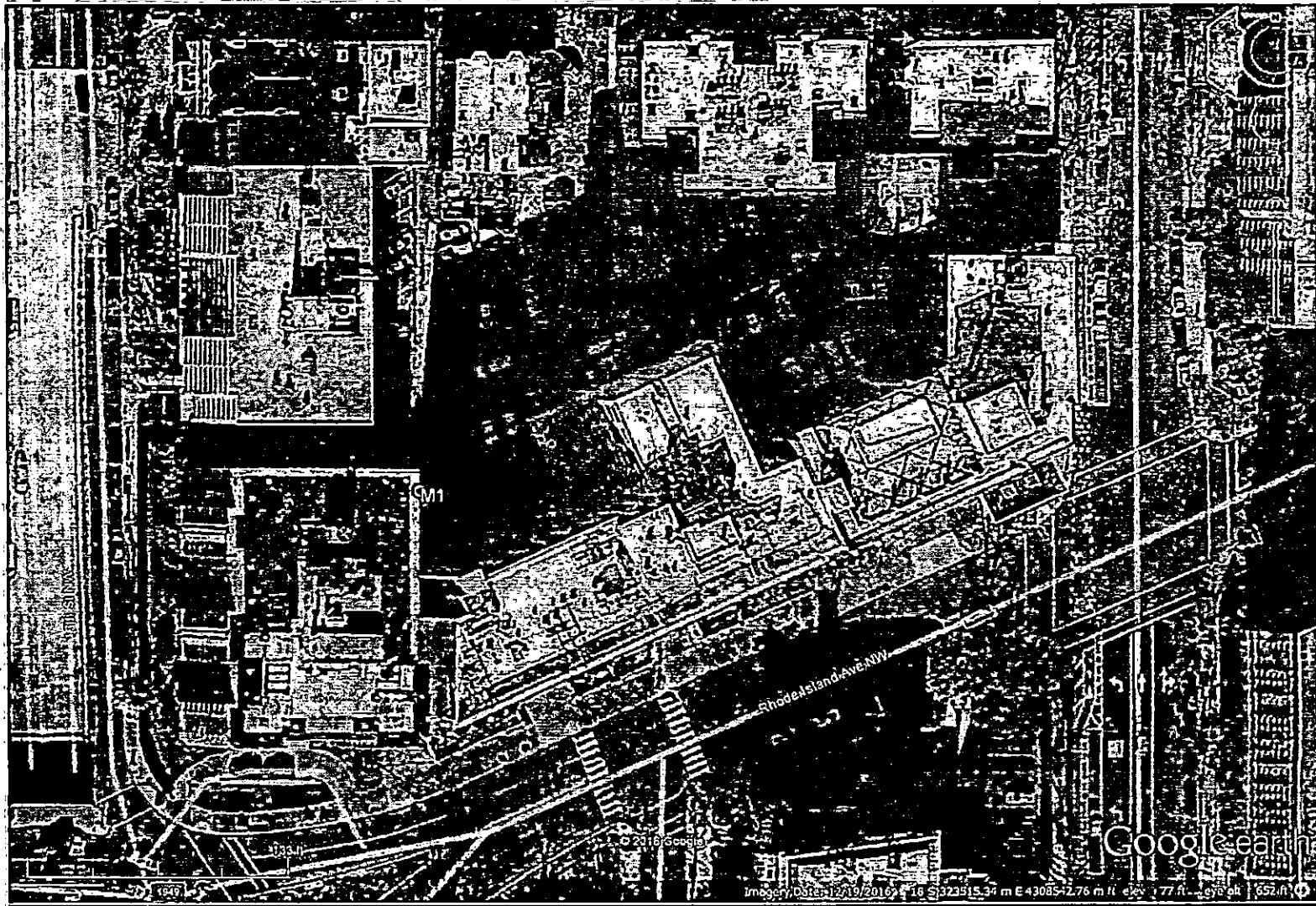
APPENDIX

FIGURE 1: COMMON SOUND LEVELS



•dB are "average" values as measured on the A-scale of a sound-level meter
(From *Concepts in Architectural Acoustics*: M. David Egan, McGraw Hill, 1972.)

FIGURE 2: SOUND LEVEL METER LOCATION



POLYSONICS

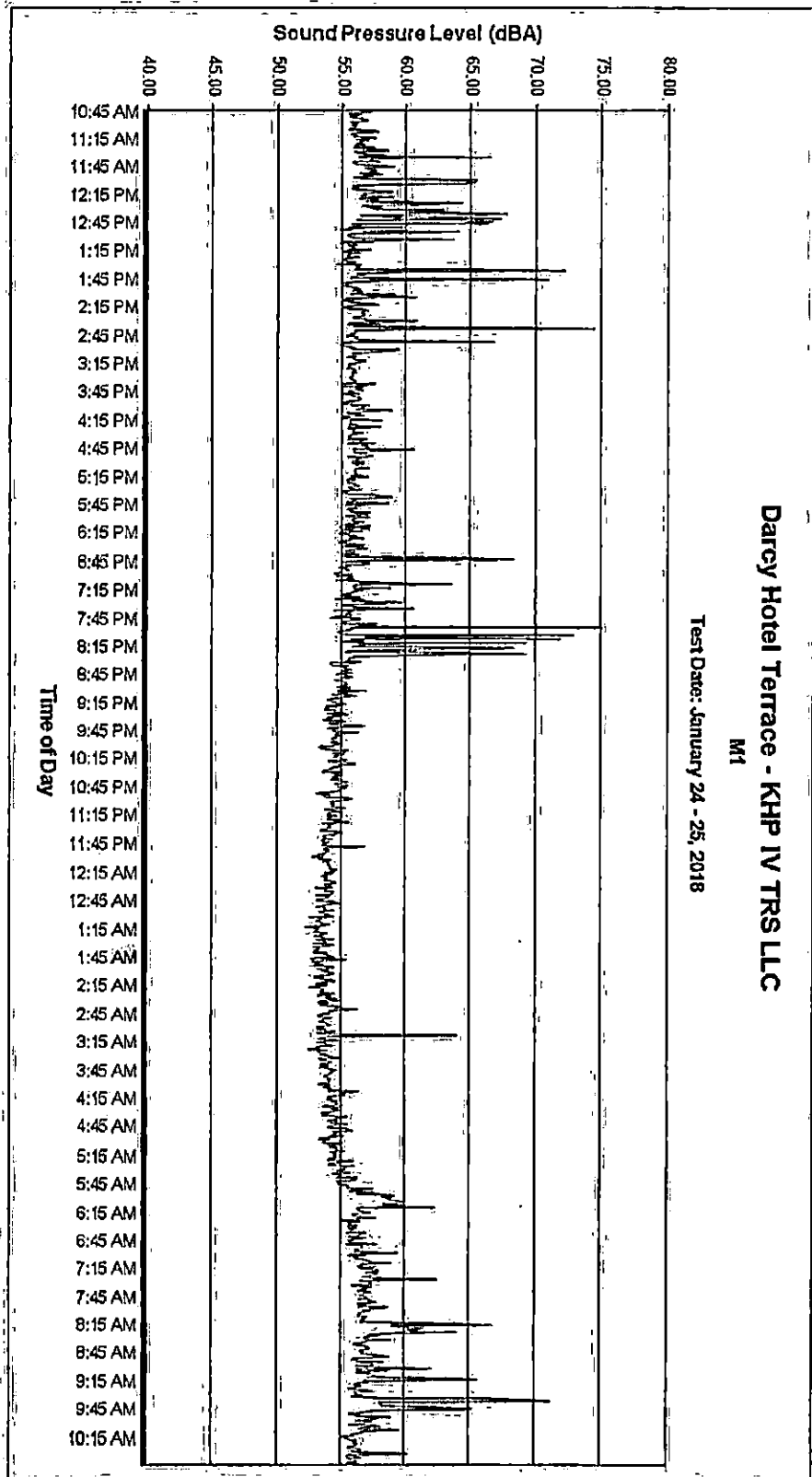
NOISE ANALYSIS—DARCY HOTEL TERRACE

MARCH 13, 2018

REPORT # 5757

PAGE 10 OF 12

FIGURE 3: 24-HOUR MEASUREMENT - M1



Darcy Hotel Terrace - KHP IV TRS LLC
M1

Test Date: January 24 - 25, 2018



POLYSONICS
Acoustics & Technology Consulting

405 Belle Air Lane
Warrenton, VA 20186
800.388.7172
www.polysonics.com

