Per'd 6/20/01

THE DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:)		
Leeds the Way, LLC t/a Hank's Oyster Bar)))		
Application for a Retailer's Class DR License – Transfer/Substantial Change at premises 1624 Q Street, N.W. Washington, D.C.) Case no.:) Order no.:)	11003-05 2005-75	5/030P

Leeds the Way, LLC, Applicant

Bill Glew, President, on behalf of the Dupont Circle Citizens Association, and David Mallof and Alexis Rieffel, on behalf of a group of more than five (5) individuals, Protestants

BEFORE: Charles A. Burger, Chairperson Vera M. Abbott, Member Judy A. Moy, Member Audrey E. Thompson, Member Peter B. Feather, Member Albert G. Lauber, Member Eartha Isaac, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The transfer/substantial change application for a Retailer's Class "DR" License, having been protested, came before the Board on March 30, 2005, in accordance with D.C. Official Code § 25-601 (2001). Bill Glew, President, on behalf of the Dupont Circle Citizens Association, and David Mallof and Alexis Rieffel, on behalf of a group of more than five (5) individuals, filed timely opposition by letters on March 15, 2005.

The official records of the Board reflect that the Protestants and the Applicant have reached two (2) separate agreements that have been reduced to writing and have been properly executed and filed with the Board. Pursuant to the agreements, dated April 25, 2005 and May 4, 2005, the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the conditions listed below. The two (2) agreements are substantively similar in content except for the first and second paragraphs

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contained in provision 4.4. of the May 4, 2005 agreement, which the Board hereby incorporates as part of the final agreement. The following conditions, as agreed to by the Protestants and the Applicant, are approved by the Board to constitute the final agreement:

WHEREAS, the Applicant has filed an application for transfer of the license for premises located at 1624 Q Street, NW, Washington, DC (Application #11003) with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the purpose of an expansion to include a sidewalk cafe for the business known as Hank's Oyster Bar located at 1624 Q Street, NW, Washington, DC 20036;

WHEREAS, in connection with the transfer of the license, Applicant has requested an approval of a substantial change including an increase in occupancy and a sidewalk cafe;

WHEREAS, the Protestants have filed protests opposing the granting of Applicant's transfer and/or substantial change application;

WHEREAS, in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching agreements of resolution, the Parties hereto desire to enter into an agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestants' concerns and to include this agreement as a formal condition of its application, and (2) Protestants will agree to the issuance of the substantial change related to this license and withdrawal of their Protests provided that such agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such agreement.

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 above are incorporated herein by referenced.

2. Capacity.

- 2.1 Applicant's capacity for the interior of the establishment shall be no more than 65.
- 2.2 Applicant shall have seating for no more than 20 in its sidewalk cafe. Applicant shall request, in writing, that the Certificate of Use issued for its sidewalk cafe set forth the limitation on seats contained in this Agreement.
- 3. Interior Hours of Alcoholic Beverage Service. Applicant shall serve alcoholic beverages only between the following hours:

3.1 Sunday through Thursday: 11a.m. - midnight

3.2 Friday & Saturday: 11a.m. - 1a.m. (i.e., up until 1 a.m. Sat. or Sun. morning)

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Nothing in this Agreement shall require the Applicant to close or to stop serving food before 2:00 a.m. Monday through Friday mornings, or before 3:00 a.m. Saturday or Sunday mornings.

- 4. Outdoor Sidewalk Café. Applicant shall be permitted to serve food and alcoholic beverages during the following hours:
 - 4.1 Sunday through Thursday: 11a.m. 11p.m.
 - 4.2 Friday & Saturday: 11a.m. midnight
- 4.3 No food or beverage orders will be taken less than 30 minutes before the above sidewalk cafe closing times. Patrons will be given an oral notice, "last call", sometime prior to 30 minutes before the above-closing times. Patrons will be requested to depart the sidewalk cafe promptly at cafe closing time, or be requested to move inside the restaurant for further service. Applicant agrees to request that the above hours for the sidewalk cafe area be incorporated into any Certificate of Use issued by the Department of Consumer and Regulatory Affairs. In addition, Applicant agrees to support, in writing, any request for amendment to the public space permit governing its sidewalk cafe to limit the hours of operation of the cafe set forth above, to the extent that the public space permit governs Applicant's sidewalk cafe operations.
- 4. 4 Closing of Doors. Applicant and Protestants agree to a trial period concerning the closing of Applicant's doors to the sidewalk cafe. This trial period shall commence upon approval of this Agreement by the Board and terminate no later than May 15, 2006. During this trial period, Applicant shall close the doors to the cafe by 10 pm Sunday through Thursday and by midnight Friday and Saturday.

The parties agree to negotiate in good faith for a long term or permanent replacement of this Closing of Doors subsection to adjust the closing time earlier or later. In the event the parties are unable to reach an agreement regarding same on or before May 15, 2006, then either party may petition the Board for a Fact Finding Hearing for Resolution of an Impasse in Negotiations. Upon petition to the Board, the parties shall submit in writing their last best written offers for replacement language for this subsection. The Board will consider the parties' proposals and render an order approving of a replacement subsection.

In addition, Applicant will close all windows to the establishment promptly at 9 p.m., or at any time earlier when the noise from Applicant's sidewalk cafe exceeds the District's allowed decibel limits.

5. **Nightly Outside Chair Storage**. All chairs used in connection with the sidewalk cafe will be neatly stacked and locked outside the restaurant nightly. Tables will be moved neatly against the wall of the restaurant.

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6. Loitering, Trash Removal, and Outside Maintenance.

6.1 Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash, to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects.

6.2 Applicant shall make reasonable and lawful efforts to prevent or disperse loitering or any other source of noise or disturbance in the areas in front of the premises during business hours

and at closing, and to cause patrons to leave those areas at closing.

6.3 Applicant shall maintain regular trash garbage removal service, regularly remove trash

from the trash area, and see that the trash area remains clean.

- 6.4 Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. All garbage from the sidewalk cafe will be stored inside the restaurant, or in appropriate containers in the rear of the building. No trash will be stored in the area of the sidewalk cafe.
- 6.5 Applicant will install and in a neighborly manner maintain a neat, black wrought iron tree guard in the front public space tree box, consistent with others of those in the neighborhood.
- 7. Consideration of the Neighborhood. Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage those using and/or leaving the establishment to keep conversations/noise down at all times, especially after 9 p.m.
- 8. **Noise/Music/Dancing**. In addition to Sections 4.3 and 4.4, Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises by any musical instrument or amplification device or other device or source of sound or noise, in accordance with DCMR 905. No outdoor music, live or taped, shall be heard or played in the outdoor cafe.

9. Exterior and Public Space and Sidewalk Cafe Usage Provisions.

9.1 Applicant will comply with all applicable signage regulations, including those for historic districts and will remove those that are in violation.

9.2 Applicant will hose down areas in front of and in the rear of the establishment as necessary to remove food debris, except in below freezing weather.

9.3 The sidewalk cafe shall be operated from April I to November 30 inclusive. All tables and chairs shall be removed from the front of the premises from December I through March 31.

9.4 Up to six (6) umbrellas (no logos or brands allowed; Hank's name only is o.k.) shall be allowed in the sidewalk cafe, or a retractable awning is also acceptable, so long as it is retracted nightly at closing time. A station may be used for water service, silverware, and napkins.

9.5 All food and drinks shall be purchased from a server by patrons sitting down; no one standing will be served food or drinks. The consumption of food by each sidewalk cafe patron shall be encouraged.

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- 10. **Modification**. This Agreement can be modified only by the ABC Board, or by mutual agreement of all the parties with the approval of the ABC Board.
- 11. **Regulations**. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.
- 12. Withdrawal of Protest. Protestants agree to the issuance of the substantial change to the license and the withdrawal of their protests provided that the present Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Agreement.
- 13a. Support of Relaxation of Moratorium from the Group of five (5) or more individuals. The individual Protestants hereby will support relaxation of the existing Dupont Circle East Moratorium such to allow DR licensees, such as the Applicant, to convert license class from a DR license to a CR license, so long as the inside and outside hours of operation for the CR establishment are consistent with the hours stated here in Sections 3 and 4 in their entirety.
- 13b. Support of Relaxation of Moratorium from DCCA. The Protestant hereby will support relaxation of the existing Dupont Circle East Moratorium such to allow DR licensees, such as the Applicant, to convert license class from a DR license to a CR license, upon the written agreement of each DR license in the Dupont Circle East Moratorium zone that it will ask the Board to reasonably conform its licensed closing hours to its actual closing hours. This Agreement satisfies that condition with respect to Applicant.
- 14a. Support of License Class Conversion from the Group of five (5) or more individuals. In the event the Dupont Circle East Moratorium is relaxed to allow DR licensees to apply to convert their licensees to class CR licensees, Protestants hereby agree to support Applicant's application for such change, so long as Applicant complies with the provisions of this Agreement, including those provisions related to the hours of operation in the interior of its premises and on its sidewalk cafe.
- 14b. **Support of License Class Conversion from DCCA**. In the event the Dupont Circle East Moratorium is relaxed to allow DR licensees to apply to convert their licenses to class CR licenses, Protestant hereby agrees to support Applicant's application for such change, so long as Applicant complies with the provisions of this Agreement.
- 15. **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which when taken together, constitute one and the same document. That signature to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

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16. **Severability**. In the event that any part of this Agreement is found to be invalid, unenforceable or not binding, the remaining portions shall remain in full force and effect and be fully binding on the Parties.

Accordingly, it is this 11th day of May 2005, **ORDERED** that:

- 1. The protests of Bill Glew, President, on behalf of the Dupont Circle Citizens Association, and David Mallof and Alexis Rieffel, on behalf of a group of more than five (5) individuals, are WITHDRAWN;
- 2. The transfer/substantial change application of Leeds the Way, LLC, t/a Hank's Oyster Bar, for a Retailer's Class "DR" License at 1624 Q Street, N.W., Washington, D.C., is **GRANTED**;
- 3. The above-referenced agreement, is **INCORPORATED** as part of this Order; and
- 4. Copies of this Order shall be sent to Bill Glew, President, on behalf of the Dupont Circle Citizens Association, David Mallof and Alexis Rieffel, on behalf of a group of more than five (5) individuals, and the Applicant.

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District of Columbia
Alcoholic Beverage Control Board

Charles A. Burger, Charperson

Not voting

Vera M. Abbott, Member

Judy A. Moy, Member

Not voting

Audrey E. Thompson, Member

Peter B. Feather, Member

Albert G. Lauber, Member

Eartha Isaac, 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, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

AGREEMENT

THIS AGREEMENT, made and entered into this 25 day of 4005, (the "Agreement") by and between Leeds the Way, LLC., trading as Hank's Oyster Bar (hereinafter the "Applicant") and the Dupont Circle Citizens Association (hereinafter the "Protestant").

WITNESSETH

WHEREAS, the Applicant has filed an application for transfer of the license for premises located at 1624 Q Street, NW, Washington, DC (Application #11003) with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the purpose of an expansion to include a sidewalk café for the business known as Hank's Oyster Bar located at 1624 Q Street, NW, Washington, DC 20036;

WHEREAS, in connection with the transfer of the license, Applicant has requested an approval of a substantial change including an increase in occupancy and a sidewalk café;

WHEREAS, the Protestant has filed a protest opposing the granting of Applicant's substantial change application;

WHEREAS, in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching agreements of resolution, the Parties hereto desire to enter into an agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestant's concerns and to include this agreement as a formal condition of its application, and (2) Protestant will agree to the issuance of the substantial change related to this license and withdrawal of its Protest provided that such agreement is incorporated in its entirety into the Board's order renewing the license, which order is thereby conditioned upon compliance with such agreement.

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 above are incorporated herein by referenced.
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- 2.2 Applicant shall have seating for no more than 20 in its sidewalk café. Applicant shall request, in writing, that the Certificate of Use issued for its sidewalk cafe set forth the limitation on seats contained in this Agreement.
 - 3. Interior Hours of Alcoholic Beverage Service.

Applicant shall serve alcoholic beverages only between the following hours:

Sunday through Thursday: 11am - midnight

Nothing in this Agreement shall require Applicant to close or to stop serving food before 2:00 a.m. Monday through Friday mornings, or before 3:00 a.m. Saturday or Sunday mornings.