

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**  
941 N. Capitol Street, NE, Suite 7200  
Washington, D.C. 20002

IN RE GLAD, LLC t/a Jack's	)	
1527 17 <sup>th</sup> Street, N.W.	)	
Retailer Class CR	)	
	)	License No.: ABRA-74020
Applicant.	)	
	)	

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**MOTION FOR CONTINUANCE**

Protestants Madison Jones and a certain group of negatively affected individual residents (the Protestants), through counsel, hereby move for an Order continuing the November 18, 2009 Protest Hearing in this matter.

Applicant does not consent to the relief requested.

In support hereof, the Protestants state:

1. This matter arises from Applicant's application for approval of a rooftop summer garden seating 42 persons and expansion of the licensed premises to include the second floor with seating for 40 persons.
2. The Protestants did not retain undersigned counsel until this afternoon, November 9, 2009.
3. Good cause exists to continue the scheduled protest hearing because:
  - The Protestants believe this matter can be resolved short of a Protest Hearing through settlement and entry into a Voluntary Agreement. The Protestants and Applicant have discussed a Voluntary Agreement, and have exchanged terms of a Voluntary Agreement. The Protestants believe an agreement is still possible, if given time to negotiate. A

Voluntary Agreement, rather than a Protest Hearing, would conserve the Board's resources and promote economy and efficiency.

- Without a continuance, the Protestants will be required to prepare for a Protest Hearing, rather than devote the necessary time and energy to finalizing a Voluntary Agreement to settle this matter.

- The Protestants filed a lengthy Protest Information Form prior to retaining counsel. With a continuance, undersigned counsel will be able to file a simplified Protest Information Form, indicating the evidence and witnesses that the Protestants will present at the Protest Hearing. A clear and concise Protest Information Form will assist the Board in preparing for and deciding the Protest Hearing, and again would conserve the Board's resources and promote economy and efficiency.

- Applicant's application seeks to double the size of an existing establishment, a drastic and substantial change, particularly in this area of Washington, D.C. The Protestants believe additional time to negotiate a settlement is in the interests of justice and will prevent undue hardship.

- This is the Protestants' first request for a continuance. Further, the Protestants request only a brief 30 day continuance.

4. For good cause shown, and in the interests of justice and to prevent hardship, the Protestants request the November 18, 2009 Protest Hearing be continued and rescheduled to a mutually agreeable date and time.

WHEREFORE, the Protestants respectfully move for an Order continuing the November 18, 2009 hearing in this matter to any date available to the Alcoholic Beverage Control Board at least 30 days after November 18, 2009.

Respectfully submitted,

By: Michael K. Hibey  
Michael K. Hibey (D.C. Bar 502890)  
Mitchell & Hibey, LLP  
1146 19th Street, N.W.  
Seventh Floor  
Washington D.C. 20036  
*Attorney for the Protestants*

Dated: November 9, 2009

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of November 2009, a copy of the foregoing document was served by first class mail and email upon:

Michael Fonseca, Esq.  
Mallios & O'Brien  
2600 Virginia Avenue, N.W.  
Suite 1112  
Washington, D.C. 20037  
*Attorney for Applicant*

Michael K. Hibey  
Michael K. Hibey

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :  
 :  
GLAD, LLC :  
t/a Jack's : Case No. 09/063P  
1527 17<sup>th</sup> Street, N.W. : License No.: ABRA-74020  
Retailer's Class CR :  
 :  
 :  
Licensee/Applicant. :  
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OPPOSITION TO MOTION FOR CONTINUANCE

Glad, LLC, through undersigned counsel, opposes Protestant Madison Jones and whatever number of certain other individual Protestants' Motion for Continuance of the November 18, 2009 protest hearing.

Protestants' motion and statements in support do not satisfy the Board's requirement for good cause shown.

We submit, respectfully, the following points in opposition:

1. The Licensee's application for expansion to the second floor and for a rooftop summer garden was filed by letter dated April 22, 2009. A Roll Call hearing on the protested application was held on July 13, 2009. The Board scheduled the protest hearing for November 18, 2009 at the Roll Call Hearing.
2. At the status hearing held on October 7, 2009, the Board again ordered the protest hearing be held on November 18, 2009. A mediation, continued at the request of the Protestants of this motion, was held on October 16, 2009.
3. On October 23, 2009, Protestants rejected a final settlement offer that included withdrawal of the application for the rooftop seating. Protestants' counsel concedes that Protestants filed their Protest Information Form with ABRA (but did not serve a copy on the

Licensee's counsel). Thus, Protestants thereby acknowledged their obligation to follow procedures in advance of the November 18, 2009 protest hearing.

4. The Protestants waited until November 9, 2009, nine (9) days before the protest hearing, to ascertain counsel. There is no good cause shown for such delay, and rewarding such an 11<sup>th</sup> hour continuance sends a message to all protestants that dilatory tactics are acceptable.

5. The issues for protest have been narrowed to expansion to the second floor with seating not to exceed 48 persons. A Voluntary Agreement has been entered between the Licensee and Advisory Neighborhood Commission 2B and another group of seven (7) individual protestants recognized by the Board and represented by Catherine R. Chen. A copy of the executed agreement is attached hereto.

6. The protest of the Metropolitan Police Department has been withdrawn based on the Voluntary Agreement's recognition that the rooftop summer garden application will be withdrawn. A copy of Sergeant John McDonald's email confirming withdrawal by MPD is attached hereto.

7. The Licensee is not prepared to concede further restrictions to its business operations for the expansion to the second floor when the rooftop seating is now off the table. Protestants seek through a hearing continuance greater leveraging of bargaining based on delay in Board approval of an expansion. A continuance will delay a process begun by the original filing on April 22, 2009. Protestants' assertion that an agreement is still possible belies the fact that only the Licensee is being asked for more. There is no negotiation. There are protestant demands greater than gained thus far only.

8. Granting of a continuance will bring hardship only to the Licensee by further delaying a decision on the application for expansion to the second floor. The Licensee cannot commence any final build out to connect the first and second floor until all protests are adjudicated and the Board approves the application. The Protestants, only, gain favor by

further delay in the adjudication of this matter. Indeed, Protestants' request for a hearing date at least thirty days after November 18, 2009, is disingenuous as it effectively results in a hearing in February 2010. The Board does not sit the last two weeks of December and the calendar for January 2010 is likely overscheduled already.

WHEREFORE, the Licensee/Applicant opposes, respectfully, an Order continuing the November 18, 2009 hearing.

Respectfully submitted,



Michael D. Fonseca (#363768)

Mallios & O'Brien

2600 Virginia Avenue NW

Suite 1112

Washington, DC 20037

(202) 625-7700

*Attorney for the Licensee/Applicant*

#### CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of November 2009, a copy of the foregoing document was served by first class mail and email upon:

Michael K. Hibey (#502890)

Mitchell & Hibey, LLP

1146 19<sup>th</sup> Street, N.W.

Seventh Floor

Washington, DC. 20036



Michael D. Fonseca

## VOLUNTARY AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 12<sup>th</sup> day of November, 2009 by and between Glad, LLC (hereinafter the "Applicant"), Advisory Neighborhood Commission 2B (hereinafter "ANC 2B"), Metropolitan Police Department ("MPD"), and a recognized group of seven (7) individuals owning or residing at 1520 16<sup>th</sup> Street, NW, protesting the application (hereinafter inclusively "Protestants").

**WHEREAS**, Applicant having filed a substantial change application with the District of Columbia Alcoholic Beverage Control Board (hereinafter "ABC Board") for expansion of its premises to include the second floor and a rooftop summer garden for the licensed premises at 1527 17<sup>th</sup> Street, N.W., Washington, D.C.

**WHEREAS**, Applicant hereby withdraws its application for a rooftop summer garden.

**WHEREAS**, in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by negotiating agreements, the parties hereto being desirous of entering into an agreement whereby, subject to approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestants' concerns and Protestants will agree to the expansion of the ABC licensed premises and withdraw the Protests.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings memorialized herein, the parties agree as follows:

- 1. Use of Second Floor:** Applicant is permitted to use the second floor space to include seating at tables and a bar not to exceed 48. The hours of operation and alcoholic beverage service will be those approved for the licensed premises heretofore.
- 2. Ingress/Egress to Second Floor:** Applicant shall construct an interior access from the first floor to the existing stairway entrance from the front of the establishment on 17<sup>th</sup> Street. Thus, ingress and egress to the second floor shall be either directly from the 17<sup>th</sup> Street entrance to the second floor, or through the first floor access to the existing stairway. However, no patron of the second floor shall be allowed to ingress or egress from the rear stairway leading to the alley abutting Stead Park. Such rear stairway is to be used in case of an emergency only.
- 3. Noise Suppression:** Sound attenuation methods will be utilized in the construction of the 2<sup>nd</sup> floor. Construction of a vestibule for an existing 1<sup>st</sup> floor entrance creating a second interior door will be completed before use of the second floor commences. Applicant will encourage employees and patrons, by posted signs or other printed notation, to be considerate of residents in the neighborhood after departing the building, by keeping conversations and other noises at a level that will not disturb the peace, order, quiet and tranquility of residents in the enjoyment of their homes or generate a noise complaint.
- 4. Cooperation with Residents:** Applicant agrees to meet, as needed, with the Protestants to discuss any problems arising from the operation of the Establishment. The Applicant agrees to work in good faith with the Protestants to resolve these problems.
- 5. Withdrawal of Protest:** Protestants agree to the expansion of the licensed premises to include second floor use and the withdrawal of their protests upon execution of this Agreement and provided that this Voluntary Agreement is incorporated into the Board's

order issuing, amending or renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.

**6. Right to Protest:** The parties agree that Applicant will be given notice of any alleged violation of this Agreement, and will be afforded reasonable time to investigate and respond to any such complaint (not greater than ten (10) days). The parties agree that if reasonable discussion of violations is not resolved then any failure of the Applicant to adhere to the foregoing commitments would constitute a breach of this agreement and grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by the D.C. Regulations.

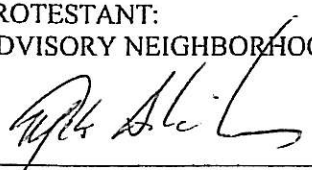
IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 12<sup>th</sup> day of ~~October~~, 2009.

*November*

APPLICANT:  
GLAD, LLC

PROTESTANT:  
ADVISORY NEIGHBORHOOD COMMISSION 2B

\_\_\_\_\_  
By: Latif Guler  
Managing Member

  
\_\_\_\_\_  
By: Mike Silverstein  
Chairman

GROUP OF 7 INDIVIDUAL PROTESTANTS

\_\_\_\_\_  
By: Catherine R. Chen, Designated Representative

METROPOLITAN POLICE DEPARTMENT

MPD withdrew Protest  
By: *see attached email  
confirmation*



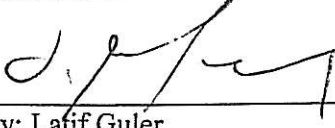
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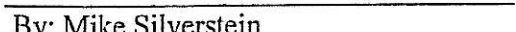
IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 10<sup>th</sup> day of ~~October~~ 2009.

*November* *CRC*

APPLICANT:  
GLAD, LLC

  
By: Latif Guler  
Managing Member

PROTESTANT:  
ADVISORY NEIGHBORHOOD COMMISSION 2B

  
By: Mike Silverstein  
Chairman

GROUP OF 7 INDIVIDUAL PROTESTANTS

  
By: Catherine R. Chen, Designated Representative

METROPOLITAN POLICE DEPARTMENT

  
By: