

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3F

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SETTLEMENT AGREEMENT

Made this 23rd day of July, 2019, by and between Upmarket VanNess LLC (the “Applicant”) and Advisory Neighborhood Commission 3F (the “ANC or “ANC 3F”),

WITNESSETH

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control (“ABC”) Board are Applicant’s applications for a new Retailer’s Class B liquor license (License Number ABRA-XXXXXXX) and a new Retailer’s Class ‘C’ liquor license (License Number ABRA-YYYYYYY) for the premises known as Uptown Market, 4465 Connecticut Avenue, NW (the “Establishment”), and

WHEREAS, both Applicant and ANC (the “parties”) desire to enter into a Settlement Agreement commemorating certain understandings regarding Applicant’s operating plans; and

WHEREAS, in consideration of the premises recited, and the mutual covenants and promises set forth below;

General

1. Applicant shall manage and operate a bona fide ‘Full-Service Grocery Store’ and ‘Restaurant with Sidewalk Café’ at the Establishment with an emphasis on food. The nature of operation of the ‘Full-Service Grocery Store’ will be a grocery store with prepared food and deli also containing an eat-in café. Beer and wine will be available for OFF premises consumption with a Tasting Endorsement ON premises. The nature of operation of the ‘Restaurant with Sidewalk Café’ will be restaurant-style food such as sandwiches, salads, and entrees made-to-order in a counter-service grab-n-go style within a full-service grocery store. Beer, wine, and spirits will be available for ON

premises consumption inside the premises and outside at the Sidewalk Cafe.

2. According to the Certificate of Occupancy, the restaurant shall have a maximum of 100 seats for the exclusive use of dining patrons. The restaurant shall have a maximum of 60 seats indoor and a sidewalk café with a maximum of 40 seats.
3. The Applicant agrees that the hours of operation at the Establishment will begin no earlier and end no later than the following hours and as applicable, be based on the tenant's lease agreement with the building's landlord:

Inside

Sunday – Thursday 7:00 a.m. – 12:00 a.m.

Friday – Saturday 7:00 a.m. – 12:00 a.m.

Sidewalk Café

Sunday – Thursday 7:00 a.m. – 12:00 a.m.

Friday – Saturday 7:00 a.m. – 12:00 a.m.

4. The Applicant will hold periodic beer and wine tastings.
5. Sales of refillable beer, wine or cider containers shall be in compliance with all ABRA regulations.
6. An ABC-licensed manager, conversant with all aspects of this agreement, shall be on site at the Establishment during all posted hours of operation.

Hours and Conditions of Alcohol Sales

7. Applicant's hours of sale, service, or consumption of alcoholic beverages will be entirely within the Establishment's posted hours of operation. However, the Establishment will serve alcoholic beverages between 11am – 11pm Monday – Friday, and 10am – 11pm Saturday and Sunday.

8. Alcoholic beverages will be served primarily in conjunction with full meal service. Patrons shall be able to purchase full meal service from the Applicant until posted closing times inside and outside the restaurant premises.
9. Applicant will only provide take-out alcoholic beverages within the Retailer's Class 'B' Full- Service Grocery Store' liquor license purview.

Take-Out / Delivery Service

10. Applicant may provide take-out and delivery food service to patrons within a reasonable driving radius. Applicant's delivery vehicles will not impede travel lanes and public parking on the public streets and alleys around the Establishment.

Music / Entertainment

11. Applicant shall not install or utilize any video games in the Establishment.
12. Applicant may present live or recorded music inside the Establishment until 11 pm daily to accompany dining, provided that no doors to the exterior of the restaurant shall be propped open at any time when music is being played in the restaurant.
13. Applicant may also present music outside the Establishment until 11 pm daily for the sidewalk café and to accompany dining, provided that the noise level shall conform at all times to the District's Noise Ordinance regulations of D.C Code § 25- 275 and 20 DCMR 2700, *et. seq.*
14. In all cases, Applicant will extend best efforts to prevent music from the restaurant's premises, inside and outside, from becoming an unreasonable disturbance to occupants in adjacent buildings and surrounding premises.

Advertising

15. Applicant shall be prohibited from displaying any advertising banners, neon signs, or other outside signage other than the sign permitted by zoning above the Establishment. Applicant shall post no signs in public space or outside the restaurant advertising liquor sales or happy hours.

Public Spaces

16. Applicant shall care for the areas of public space that border the Establishment on all sides, including collection of loose trash and garbage and prompt removal of snow and ice.
17. Applicant shall comply with all aspects of the Civil Infractions Act and the litter Control Administration Act. Any alleged violations left uncorrected may be referred by ANC 3F to the appropriate agency.
18. Applicant shall have the restaurant and surrounding area properly cleaned at the end of each night to ensure there is no garbage or odor. Applicant shall respect the surrounding residential buildings and limit noise after closing hours when disposing of trash and bottles in receptacles and ensure that trash receptacles remain closed and free of vermin at all times.
19. Applicant shall schedule garbage collection, hood cleaning, and any other activity that causes a noise disturbance at the frontage and/or in the alley behind the Establishment only between 9:00 a.m. and 9:00 p.m., or in accordance with the relevant building lease agreement for any form of garbage collection and noise disturbance activity.
20. Applicant agrees to maintain the sidewalk café as a non-smoking outdoor space and will conform at all times to the District's Smoking Ordinance Regulations of D.C. Code § 7-1701.

Breach of Agreement / Notifications

21. Applicant shall comply with District of Columbia Official Code Title 25 and District of Columbia Municipal Regulations Title 23 as they apply to the establishment and the laws and regulations of the District of Columbia in the operation of the Establishment.

22. The Parties agree that any failure of the Applicant to adhere to the foregoing commitments will constitute grounds for ANC 3F to file complaint with the ABC Board in accordance with DC Official Code 25-447.

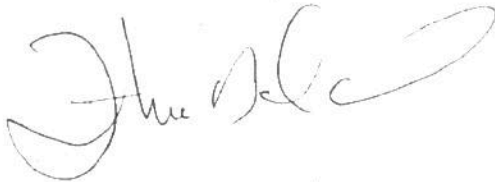
In consideration of and in reliance upon the commitments reflected in items 1 through 22 above, ANC 3F will advise the ABC Board that it does not oppose Applicant's pending application for the Retailer's Class 'B' and 'C' licenses.

IN WITNESS WHEREOF, the parties have affixed hereunto their hands and seals on the year and day first written above.

APPLICANT: UpMarket Van Ness, LLC

Signature:

Name:
Francis J.
McDonald




Title: Vice
President

ANC3F

Signature:

Name:

Title:



ANC3F Chair