

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

**In the Matter of:** )

Tryst, Inc. )  
t/a Tryst )

Application for a Retailer's Class )  
CR (substantial change) )  
at premises )  
2459 18<sup>th</sup> Street, N.W. )  
Washington, D.C. )

Case no. 35644-02/111P  
2002-269

Denis I.E. James, Chairperson for the ABC Licensing Committee, on behalf of the Kalorama Citizens Association, Protestant

Constantine Stavropoulos, President, on behalf of the Applicant

**BEFORE:** Roderic L. Woodson, Esquire, Chair  
Vera Abbott, Member  
Charles Burger, Member  
Laurie Collins, Member  
Judy Moy, Member  
Ellen Opper-Weiner, Esquire, Member  
Audrey Thompson, Member

**ORDER ON WITHDRAWN OPPOSITION  
AND VOLUNTARY AGREEMENT**

The request for a substantial change to include a live jazz trio, Monday through Friday, 6:00 p.m. – 11:00 p.m. was protested and came before the Board on July 24, 2002 in accordance with the D.C. Official Code Section 601 (2000 Edition). Denis I.E. James, on behalf of the Kalorama Citizens Association, filed a timely protest letter dated July 7, 2002.

The official records of the Board reflect that the parties have reached an agreement that has been reduced to writing and has been properly executed and filed with the Board. Pursuant to the agreement, dated October 19, 2002, the protestant has agreed to withdraw the opposition, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the agreement.

Tryst, Inc.  
t/a Tryst  
Page two

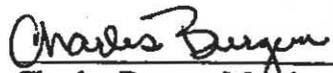
Accordingly, it is this 4<sup>th</sup> day of December ~~November~~ 2002, **ORDERED** that:

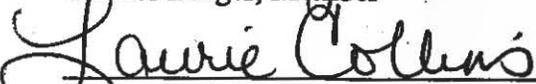
1. The opposition of Denis I.E. James, Chairperson of the ABC Licensing Committee, on behalf of the Kalorama Citizens Association, is **WITHDRAWN**;
2. The request for a substantial change to include a live jazz trio, Monday through Friday, 6:00 p.m. – 11:00 p.m. for Tryst, Inc. t/a Tryst, holder of a retailer's class CR license, at premises 2459 18<sup>th</sup> Street, N.W., Washington, D.C., is **GRANTED**;
3. The above-referenced agreement between the parties is **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Protestant and the Attorney for the Applicant.

District of Columbia  
Alcoholic Beverage Control Board

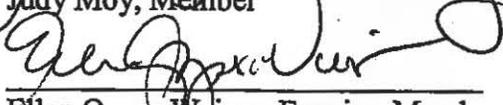
  
Roderic L. Woodson, Esquire, Chair

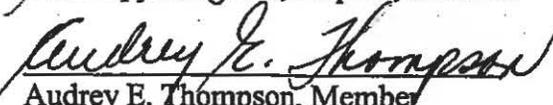
  
Vera Abbott, Member

  
Charles Burger, Member

  
Laurie Collins, Member

  
Judy Moy, Member

  
Ellen Opper-Weiner, Esquire, Member

  
Audrey E. Thompson, Member

35644

AMENDMENT TO AGREEMENT OF MAY 5, 1998

THIS AGREEMENT, made and entered into this <sup>4th</sup> day of <sup>Dec</sup> October, 2002, by and between Tryst, Inc., trading as Tryst (hereinafter the "Applicant") and the Kalorama Citizens Association (hereinafter the "Protestants") witnesses:

Whereas Applicant has filed an application (#35644) with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the substantial change of a class "CR" License for the premises known as Tryst, located at 2459 18th Street, NW, Washington, DC.

Whereas Protestants have filed before the Board a protest opposing the granting of this substantial change request.

Whereas in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching cooperative agreements, the Parties hereto desire to enter into a cooperative 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 of the license and withdrawal of the Protest, *provided* that such agreement is incorporated into the Board's order of the license, which order is thereby conditioned upon compliance with such agreement.

Whereas Applicant has recently taken or intends to take certain measures designed to ameliorate Protestants' concerns.

Now therefore, in consideration of the mutual covenants and undertakings memorialized herein, the Parties agree as follows:

Paragraph #1 of May 5, 1998 Agreement is deleted and new Paragraph #1 below takes its place.

The parties wish the word "feet" in Paragraph #5 of the May 5, 1998 Agreement to be replaced by the word "inches".

1. Noise/Music/Dancing. Applicant acknowledges familiarity with and will comply with all applicable 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, as set forth in Title 23 DCMR 905 and the D.C. Noise Control Act and its amendments (D.C. Law 2-53, D.C. Act 11-297 and D.C. Act 14-88 and its future successor amendments. Sound emanating from any part of the establishment shall not be audible in residential structures in the vicinity.

Applicant agrees to carefully manage the level of the sound and to close the doors and windows of his establishment when live music is being performed if he expects the performance will exceed volume levels allowed by law, or if complaints are received by the Metropolitan Police Department or the ABC Board.

Applicant further agrees to close the doors and windows of the establishment when live music is being presented by 10:30 pm every such night.

Applicant request is for a 'jazz trio' and he hereby promises to limit performances to three musicians in that format.

Live music performances may take place Monday through Thursday from 6:00 PM until 11:00 PM.

Applicant agrees that should his live music presentations result in a formal (written) violation of the D.C. Noise Control Act or Title 23 DCMR 905, that would constitute grounds for the KCA to petition the ABC Board for issuance of an order to show cause pursuant to 23 DCMR 1513.5.

2. Regulations. In addition to the foregoing, Applicant will operate in compliance with all applicable laws and regulations.

3. Withdrawal of Protests. Protestants agree to the issuance of the renewal of the license and withdrawal of their Protest, *provided* that this Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Agreement.

APPLICANT:

PROTESTANTS

  
\_\_\_\_\_

By: Constantine Stavropoulos

*Protestant*

Date: Oct. 28, 02

  
\_\_\_\_\_

Kalorama Citizens Association

By: Denis I.E. James, ABC Licensing Chair  
(for Kalorama Citizens Association)

Date: OCTOBER 19, 2002

# 35044



P.O. Box 21311  Kalorama Station  Washington DC 20009  
202.483.6492

AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of May, 1998 by and between "Tryst" (hereinafter the "Applicant"), and PETER SCHOTT, on behalf of Kalorama Citizens Association (hereinafter the "Protestant").

WHEREAS, Applicant having filed an application with the District of Columbia Alcohol Beverage Control Board (hereafter "ABC Board") for issuance of a class CR License for the premises at 2459 18th St., N.W., Washington, DC 20009, which application is pending before the ABC Board in case No. 35644.

WHEREAS, Protestant having timely filed before the ABC Board a protest opposing the granting of the referenced application; and

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 the approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestant's concerns and Protestant ~~will agree~~ to the issuance of the ABC License, and withdrawal of the Protest. *(Signature)*

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

1. Noise suppression: There shall be no loud music performed in the establishment. Sound emanating from any part of the establishment shall not be audible in residential structures in the vicinity or on the sidewalks across the street from the Restaurant on 18th Street. The Restaurant's operations shall at all times be in compliance with the D.C. Noise Control Act. Applicant will encourage employees and patrons, by posted sign 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 disturb the peace and tranquility of residents in the enjoyment of their homes or generate a noise complaint.

Founded 1919

- Peter Schott  President
- Mike Gould  Executive Vice President
- Jim Nash  Vice President
- Larry Karr  Treasurer
- Ken Knott  Secretary



2. Hours of Operation: Applicant shall open its doors to receive patrons from no earlier than 7 am Monday through Saturday, and 8 am Sunday until no later than 2 am, Monday through Thursday, 3 am Friday and Saturday, and midnight on Sunday. Alcoholic beverages may not be carried out of the establishment and shall only be available during hours expressed by law. Food service will be available at all times that alcoholic beverages are served. Alcohol shall be served between Monday through Friday, noon to closing, Saturday and Sunday with onset of brunch until closing.

3. Trash removal: Applicant will maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area and see that those areas remain clean, and keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control the pest and rodent population.

4. Removal of grease and oils: Applicant will provide for the proper removal of grease and oils and will not deposit these substances for removal in dumpster.

5. Removal of trash: Applicant will maintain free of trash and litter the adjacent rear alley area, and public space and street to a minimum distance of 18 feet from the curb, adjacent to the front of the building, in compliance with all applicable D.C. regulations in this respect, as often as needed (minimum of twice daily).

6. Food service to liquor ratio: Applicant will comply in all respects with the requirements of its license or other requirements of law, including maintaining the appropriate ratio between food service and liquor sales, refusing sales of alcohol or cigarettes to legally underage persons, and refusing to sell alcohol to inebriated patrons.

7. Ingress and Egress: No patron or ingress or egress at rear of building shall be permitted

8. Public Space Usage: No tables nor structures shall be placed outside the building without proper licensing and notification process.

9. Employment practices: Applicant will make its best efforts to recruit employees from Adams Morgan and adjacent areas.

10. Right to protest: The parties agree that if reason discussions of violations are resolved then any failure of the Applicant to adhere to the foregoing commitments would constitute grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by in the D.C. Regulations.

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*NOT*  
*to*

IN WITNESS WHEREOF, the Parties place their hands, on the date written above.

APPLICANT

  
\_\_\_\_\_  
Tryst, by  
Constantine Stavropoulos

  
\_\_\_\_\_  
Peter Schott, President  
Kalorama Citizens Association

980505007

App No 35644



P.O. Box 21311  Kalorama Station  Washington DC 20009  
202.483.6492

5 1 1998  
RECEIVED  
ALCOHOL BEVERAGE  
CONTROL DIVISION

May 5, 1998

Alcohol Beverage Control Division  
Department of Consumer and Regulatory Affairs  
614 H St., N.W., 8th Floor  
Washington, DC 20001  
Attn: Laura Byrd  
Application # 35644

Dear Ms. Byrd:

In a letter dated April 27, the Kalorama Citizens Association filed a protest on the granting of a liquor license for Tryst Inc., located at 2459 18th St., NW which has applied for a CR license.

We are pleased to announce that we have reached a voluntary agreement with that establishment (attached) and want this voluntary agreement a part of their permanent file. Having reached an agreement we therefore drop our protest.

Thank you very much,

Sincerely,  
*Peter Schott*  
Peter Schott, President  
Kalorama Citizens Association

**Founded 1919**

- Peter Schott  President
- Mike Gould  Executive Vice President
- Jim Nash  Vice President
- Larry Karr  Treasurer
- Ken Knott  Secretary



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

**In the Matter of:**

Tryst, Inc.

t/a Tryst

Holder of a Retailer's License

Class CR at premises

2459 18<sup>th</sup> Street, N.W.

Washington, D.C.

) License no.: 25781

) Application no.: 35644

) Order no.: 2005-291

Denis James, President, on behalf of the Kalorama Citizens Association, and Constantine Stavropoulos, on behalf of Tryst, Inc., Signatories

**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 AMENDMENT TO VOLUNTARY AGREEMENT**

On December 12, 2005, Denis James, President, on behalf of the Kalorama Citizens Association, and Constantine Stavropoulos, on behalf of Tryst, Inc., Signatories, filed an amendment, dated December 1, 2005, to the Licensee's existing voluntary agreement, dated May 5, 1998, for approval by the Board, in accordance with Title 23 of the District of Columbia Municipal Regulations ("23 DCMR") § 1609.4 (2004).

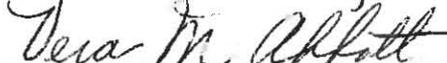
The official records of the Board reflect that the Signatories have reached an amendment to the existing voluntary agreement, dated May 5, 1998, which has been reduced to writing and has been properly executed and filed with the Board. The amendment clarifies that the establishment's hours of operation listed in provision 2 of the May 5, 1998 agreement are Sunday through Thursday, from 6:30 a.m. to 2:00 a.m., and Friday and Saturday, from 6:30 a.m. to 3:00 a.m., and that the establishment's hours of sale and service of alcoholic beverages are Sunday through Thursday, from 10:00 a.m. to 1:40 a.m., and Friday and Saturday, from 10:00 a.m. to 2:40 a.m. Having determined that the December 12, 2005 amendment to the existing voluntary agreement complies

**Tryst, Inc.**  
**t/a Tryst**  
**License no. 25781**  
**Application no. 35644**  
**Page two**

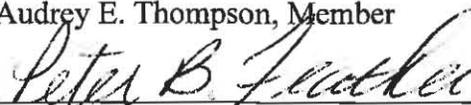
with all applicable laws and regulations, the Board does hereby, this 16<sup>th</sup> day of December 2005, **APPROVE** the amendment and **INCORPORATE** the text of the same into this Order. Copies of this Order shall be sent to the Signatories.

District of Columbia  
Alcoholic Beverage Control Board

  
\_\_\_\_\_  
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

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.



December 12, 2005

Mr. Charles Burger, Chairman  
Alcoholic Beverage Control Board  
941 North Capitol Street, NE  
Suite 7200  
Washington, DC 20002

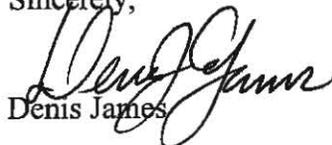
With regard to Tryst, Inc., License Number 25781

Dear Chairman Burger,

At Licensee Tryst Inc.'s request, the Kalorama Citizens Association has agreed to amend its voluntary agreement with the establishment. Tryst Inc. sought the ability to open ½ hour earlier each day of operation, to clarify the hour when service of alcoholic beverages could begin, and to extend its Sunday operations from a closing hour of 12:00 midnight to a new closing hour of 2:00 am. While the KCA does not consider these changes to be substantial, as the establishment may currently be open until the legal limit every other night of operation, we recognize that the Board is the final authority in this matter.

I am faxing this letter and amendment today in care of Mr. Fred Moosally, so that the Board may consider it this coming Wednesday. I will turn over the original to Mr. Moosally on Wednesday, when I have other cases before the Board.

Sincerely,

  
Denis James

enc.

**Amendment To Voluntary Agreement Between Parties Tryst, Inc., 2459 18<sup>th</sup> Street, NW, ABC Application Number 35644, License Number 25781, and the Kalorama Citizens Association, November 29, 2005**

Whereas, the parties wish to amend provision Number 2 of the agreement dated May 5, 1998 to read as follows:

The Hours of Operation for the establishment shall be:  
**Sunday through Thursday: 6:30 am until 2:00 am.**  
**Friday and Saturday: 6:30 am until 3:00 am.**

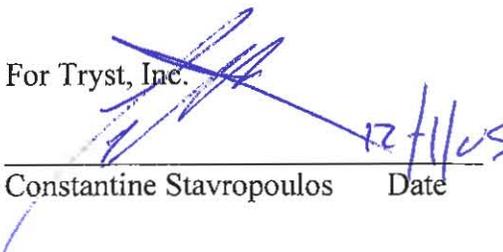
The Hours of Sale and Service of Alcoholic Beverages shall be:  
**Sunday through Thursday: 10:00 am until 1:40 am.** Last Call shall be announced by 1:30 am. License-holder shall have until 1:40 am to take and fill "Last Call" orders. All drinks must be consumed and off all tables by 2:00am.

**Friday and Saturday: 10:00 am until 2:40 am.** Last Call shall be announced by 2:30 am. License-holder shall have until 2:40 am to take and fill "Last Call" orders. All drinks must be consumed and off all tables by 3:00am.

License-holder shall announce last call no later than ½ hour before closing each night of operation.

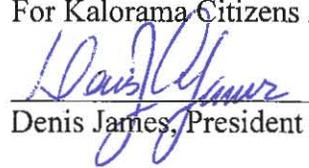
Food service will be available at all times that alcoholic beverages are served.

For Tryst, Inc.

  
Constantine Stavropoulos

Date

For Kalorama Citizens Association

  
Denis James, President

Date

# 35044



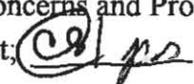
P.O. Box 21311  Kalorama Station  Washington DC 20009  
202.483.6492

AGREEMENT

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WHEREAS, Applicant having filed an application with the District of Columbia Alcohol Beverage Control Board (hereafter "ABC Board") for issuance of a class CR License for the premises at 2459 18th St., N.W., Washington, DC 20009, which application is pending before the ABC Board in case No. 35644.

WHEREAS, Protestant having timely filed before the ABC Board a protest opposing the granting of the referenced application; and

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 the approval of the ABC Board, Applicant will agree to adopt certain measures to address the Protestant's concerns and Protestant ~~will agree~~ to the issuance of the ABC License, and with<sup>S</sup>~~drawal~~ of the Protest; 

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

1. Noise suppression: There shall be no loud music performed in the establishment. Sound emanating from any part of the establishment shall not be audible in residential structures in the vicinity or on the sidewalks across the street from the Restaurant on 18th Street. The Restaurant's operations shall at all times be in compliance with the D.C. Noise Control Act. Applicant will encourage employees and patrons, by posted sign 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 disturb the peace and tranquility of residents in the enjoyment of their homes or generate a noise complaint.

Founded 1919

- Peter Schott  President
- Mike Gould  Executive Vice President
- Jim Nash  Vice President
- Larry Karr  Treasurer
- Ken Knott  Secretary

2. Hours of Operation: Applicant shall open its doors to receive patrons from no earlier than 7 am Monday through Saturday, and 8 am Sunday until no later than 2 am, Monday through Thursday, 3 am Friday and Saturday, and midnight on Sunday. Alcoholic beverages may not be carried out of the establishment and shall only be available during hours expressed by law. Food service will be available at all times that alcoholic beverages are served. Alcohol shall be served between Monday through Friday, noon to closing, Saturday and Sunday with onset of brunch until closing.

3. Trash removal: Applicant will maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area and see that those areas remain clean, and keep dumpster lids tightly closed and incapable of being entered by rodents, in order to limit odors and help control the pest and rodent population.

4. Removal of grease and oils: Applicant will provide for the proper removal of grease and oils and will not deposit these substances for removal in dumpster.

5. Removal of trash: Applicant will maintain free of trash and litter the adjacent rear alley area, and public space and street to a minimum distance of 18 feet from the curb, adjacent to the front of the building, in compliance with all applicable D.C. regulations in this respect, as often as needed (minimum of twice daily).

6. Food service to liquor ratio: Applicant will comply in all respects with the requirements of its license or other requirements of law, including maintaining the appropriate ratio between food service and liquor sales, refusing sales of alcohol or cigarettes to legally underage persons, and refusing to sell alcohol to inebriated patrons.

7. Ingress and Egress: No patron or ingress or egress at rear of building shall be permitted

8. Public Space Usage: No tables nor structures shall be placed outside the building without proper licensing and notification process.

9. Employment practices: Applicant will make its best efforts to recruit employees from Adams Morgan and adjacent areas.

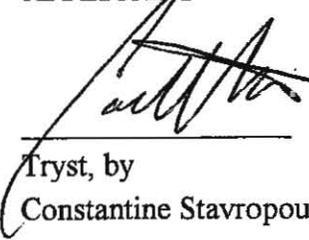
10. Right to protest: The parties agree that if reason discussions of violations are resolved then any failure of the Applicant to adhere to the foregoing commitments would constitute grounds for the Protestant to petition the Board for issuance of an order to Show Cause, as provided by in the D.C. Regulations.

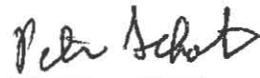
*able to*

*NET*

IN WITNESS WHEREOF, the Parties place their hands, on the date written above.

APPLICANT

  
\_\_\_\_\_  
Tryst, by  
Constantine Stavropoulos

  
\_\_\_\_\_  
Peter Schott, President  
Kalorama Citizens Association

980505007

App No 35644



P.O. Box 21311  Kalorama Station  Washington DC 20009  
202.483.6492

RECEIVED  
MAY 5 10 27 AM '98  
ALCOHOLIC BEVERAGE  
CONTROL DIVISION

May 5, 1998

Alcohol Beverage Control Division  
Department of Consumer and Regulatory Affairs  
614 H. St., N.W., 8th Floor  
Washington, DC 20001  
Attn: Laura Byrd

Application # 35644

Dear Ms. Byrd:

In a letter dated April 27, the Kalorama Citizens Association filed a protest on the granting of a liquor license for Tryst Inc., located at 2459 18th St., NW which has applied for a CR license.

We are pleased to announce that we have reached a voluntary agreement with that establishment (attached) and want this voluntary agreement a part of their permanent file. Having reached an agreement we therefore drop our protest.

Thank you very much,

Sincerely,

Peter Schott, President

Kalorama Citizens Association

Founded 1919

- Peter Schott  President
- Mike Gould  Executive Vice President
- Jim Nash  Vice President
- Larry Karr  Treasurer
- Ken Knott  Secretary

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

_____ )	
In the Matter of: )	
)	
Tryst, Inc. )	
t/a Tryst )	
Renewal Application for a Retailer's )	Case No.: 35644-04/098P
License Class "CR" at premises )	Order No.: 2006-010
2459 18 <sup>th</sup> Street, N.W. )	License No.: 25781
Washington, D.C. )	
)	
Applicant )	
_____ )	

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

ALSO PRESENT: Fred P. Moosally, III, Esquire, General Counsel  
Alcoholic Beverage Regulation Administration

Tiwana Z. Clarke, Esquire, Assistant Attorney General  
Alcoholic Beverage Regulation Administration

Dimitri Mallios, Esquire, on behalf of the Applicant

David L. Good, Esquire, on behalf of Carlos Lumpuy, Chris Reynolds,  
Wilson Reynolds, Robert Keenan, Pierro Pozzodi Borgo, and Donna J.  
Groves, Protestants

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

The application, filed by Tryst, Inc., ("Applicant"), t/a Tryst, for a renewal of its Retailer's Class "CR" License at premises 2459 18<sup>th</sup> Street, N.W., Washington, D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on September 8, 2004. It was determined that timely protests were filed pursuant to D.C. Official Code § 25-601 (2001) by various District of Columbia residents including Carlos Lumpuy, Chris Reynolds, Wilson

Reynolds, Robert Keenan, Pierro Pozzodi Borgo, and Donna J. Groves (“Protestants”). On September 8, 2004, Mr. Lumpuy was dismissed as a protestant in this matter because he failed to appear at the roll call hearing. On October 8, 2004, a timely request for reinstatement was filed by David L. Good, Esq., on behalf of Mr. Lumpuy.<sup>1</sup> The Board subsequently reinstated the protest of Mr. Lumpuy on January 19, 2005. The filed protest issues, pursuant to D.C. Official Code § 25-602(a) (2001), are whether the establishment adversely affects the peace, order, and quiet of the neighborhood and whether the establishment adversely affects residential parking needs and vehicular and pedestrian safety.

The case came before the Board for public protest hearings on August 3, 2005 and August 10, 2005. At the August 3, 2005 hearing, the Board approved a written motion made by the Protestants, dated July 29, 2005, to consolidate the protest hearings for both this matter and the application of Romain’s Table, Inc., t/a Romain’s Table/The Diner, for a renewal of its Retailer’s Class “CR” License at premises 2453 18<sup>th</sup> Street, N.W., Washington, D.C., because the parties and the protest issues in each matter were the same. The Board noted that a separate written decision would be rendered in each matter. During the August 3, 2005 hearing, an oral motion was also made by the Applicant to dismiss the case because only three (3) out of the six (6) Protestants were present for the protest hearing. The Board denied the Applicant’s motion because the Protestants provided written letters of authorization designating Mr. Good as their representative in this matter in accordance with section 1701.2 of Title 23 of the District of Columbia Municipal Regulations (“23 DCMR”) (2004). At the conclusion of the August 10, 2005 protest hearing, the Board took its decision in this matter under advisement. The Board having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board’s official file, makes the following:

### FINDINGS OF FACT

1. The Applicant’s establishment is located at 2459 18<sup>th</sup> Street, N.W. (ABRA Application File No. 25781.) The Applicant’s establishment opened in 1998 and holds a Retailer’s Class “CR01” License. (ABRA Application File No. 25781; Tr. 8/3/05 at 62.) The establishment’s approved hours of operation are Monday through Thursday, 6:30 a.m. to 2:00 a.m., and Friday and Saturday, 6:30 a.m. to 3:00 a.m. (ABRA Application File No. 25781; Tr. 8/3/05 at 62.) The Applicant has a voluntary agreement with the Kalorama Citizens Association, dated May 5, 1998, as amended, which places a number of conditions on the Applicant’s license. (ABRA Application File No. 25781.)
2. Constantine Stavropoulos is president of both Tryst, Inc., t/a Tryst, and Romain’s Table, Inc., t/a Romain’s Table/The Diner, which holds a Retailer’s Class “CR” License at 2453 18<sup>th</sup> Street, N.W. (ABRA Application File Nos. 25781 and 60149.) Mr. Stavropoulos is also the chair of the interim board of directors of the Adams Morgan Business Improvement District

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<sup>1</sup> The October 8, 2004 request for reinstatement filed by Mr. Good on behalf of Mr. Lumpuy also contained a request to include the Reed Cooke Neighborhood Association (“RCNA”) as a protestant in this matter. On January 19, 2005, the Board denied this request because: 1) the Board did not have on file a timely protest from RCNA, as required by D.C. Official Code § 25-602(a) (2001); and, 2) RCNA was not a corporation in good standing under the laws of the District of Columbia during the protest period, which is required for RCNA to have standing under D.C. Official Code § 25-601(3) (2001).

("AMBID"). (Tr. 8/3/05 at 168.) The establishment employs approximately sixty-five (65) employees, most of whom live in the surrounding area. (Tr. 8/3/05 at 62.) Food sales make up approximately sixty (60) percent of the establishment's total sales. (Tr. 8/3/05 at 62.) Mr. Stavropoulos indicated that there are approximately forty-two (42) businesses located in the same block as the licensed establishment, including seventeen (17) establishments that sell alcohol. (Applicant's Exhibit No. 11; Tr. 8/3/05 at 194-195.) There is a throughway on 18<sup>th</sup> Street, N.W., midway between Columbia Road, N.W., and Kalorama Street, N.W., that allows individuals to access the alley behind the establishment and there is a loading zone on 18<sup>th</sup> Street, N.W., in front of The Diner. (Tr. 8/3/05 at 66-67.) Mr. Stavropoulos' managers collected two-thousand and sixty-four (2,064) signatures in support of renewing the establishment's Retailer's Class "CR" License and the liquor license of Romain's Table, Inc., with about three-hundred and fifty-nine (359) individual signatures obtained from Adams Morgan residents. (Applicant's Exhibit No. 1; Tr. 8/3/05 at 196-198.)

3. The establishment has two (2) sealed dumpsters and uses a company called Rick's Refuse for trash pick-up service seven (7) days a week, between the hours of 10:00 a.m. and 1:00 p.m., to prevent trash from overflowing. (Tr. 8/3/05 at 68-70.) There are approximately eight (8) to ten (10) different trash companies that service the entire block upon which the establishment is located. (Tr. 8/3/05 at 70.)
4. With regard to the issue of peace, order, and quiet, Mr. Stavropoulos stated that between 1998 and 2000, he never received any complaints regarding the operation of the Applicant's establishment. (Tr. 8/3/05 at 71.) In 2002, he began meeting with Wilson Reynolds regarding the congestion problems of the alley behind the establishment and subsequently, Mr. Reynolds formed a group called the Alley Cats, which Mr. Stavropoulos participated in as a business owner, to come up with solutions to these problems. (Tr. 8/3/05 at 72-73.) Mr. Stavropoulos suggested the idea of having a single-source trash pick-up to cut down on the congestion of using multiple trash companies in the alley. (Tr. 8/3/05 at 73.)
5. In February of 2002, Mr. Stavropoulos implemented an idea posed by Mr. Reynolds to schedule long lead delivery times for the establishment before 7:00 a.m., when there is less activity in the alley and before people go to work. (Tr. 8/3/05 at 74-76, 171-172.) Tryst and The Diner continue to receive the majority of their deliveries early in the morning. (Tr. 8/3/05 at 176.) Mr. Stavropoulos also began syncing the deliveries of both establishments, as best he could, to try to get one delivery coming for both establishments, instead of several deliveries. (Tr. 8/3/05 at 75-76.) He recalled that within a week of beginning this process, Mr. Reynolds informed him that there was a noise issue because the delivery trucks were parking directly behind the back doors of both establishments, resulting in an echo effect throughout the alley. (Tr. 8/3/05 at 76-77, 80.)
6. Mr. Stavropoulos stated that as a result of the echo effect, he instructed all delivery drivers to park approximately one hundred and fifty (150) feet south of the licensed establishment, causing the drivers to walk the deliveries up to the establishment using hand carts. (Applicant's Exhibit No. 4f; Tr. 8/3/05 at 77, 80-82, 184.) Mr. Stavropoulos stated that he took additional precautions by: 1) posting laminated signs on the back door of the establishment instructing the drivers where to park; 2) inserting the parking instructions on

the invoices; 3) requiring each delivery driver to sign a log indicating the date of delivery, time of delivery, and the location where they parked; and 4) instructing all delivery drivers to turn off their engines, radios, and compressor – weather permitting. (Applicant's Exhibit Nos. 2a-2b, 4d-4e, 9; Tr. 8/3/05 at 78-81, 95, 180-181, 192.) He indicated that the establishment's employees who receive deliveries immediately instruct the drivers, if they are not parked in the proper place, to park in the designated parking area. (Tr. 8/3/05 at 79.) The log kept by the establishment notes whether the delivery drivers park in the designated area and if an employee tells the driver to park in the designated area in the alley. (Tr. 8/3/05 at 79, 92.) If a driver refuses to park in the designated area, the vendor is contacted immediately and the driver is either removed from that route or reprimanded by the vendor. (Tr. 8/3/05 at 79.) Mr. Stavropoulos stated that between March of 2002 and July 2002, Mr. Reynolds never contacted him about the situation or expressed any complaints. (Tr. 8/3/05 at 82-83.)

7. In July 2004, Mr. Stavropoulos moved the designated delivery truck parking area further north, to a section of the alley where the City Paper is located and where there are no residential homes, in an effort to reduce the amount of noise that would disturb residents. (Applicant's Exhibit No. 4b; Tr. 8/3/05 at 87-88, 173, 183.) This new delivery area was approximately one hundred (100) feet away from the establishment. (Tr. 8/3/05 at 88-89.) Mr. Stavropoulos also changed the back door signs to reflect the new delivery area and gave the vendors new instructions regarding the delivery area. (Applicant's Exhibit 2a-2b, 4d-4e; Tr. 8/3/05 at 89, 95, 180-181.) Baked goods are occasionally delivered to Tryst through the front door before the establishment opens at 6:30 a.m. (Tr. 8/3/05 at 169.)
8. With regard to residential parking needs, Mr. Stavropoulos stated that moving the delivery location also allows the majority of people leaving the alley to exit out of the throughway near Caribou Coffee. (Tr. 8/3/05 at 92.) Mr. Stavropoulos noted that despite moving the designated parking area, there is no guarantee that the alley won't still be blocked because the surrounding establishments begin getting their deliveries around 9:00 a.m. or 10:00 a.m., causing the alley to be congested while people are leaving for work. (Tr. 8/3/05 at 92-93.)
9. Tryst and The Diner receive their alcoholic beverage deliveries daily between the hours of noon and 2:00 p.m. (Tr. 8/3/05 at 95-96.) The eighteen-wheeler beer trucks are too large to enter the alley, so they park on 18<sup>th</sup> Street, N.W., and the truck drivers wheel the kegs around into each establishment. (Tr. 8/3/05 at 95-96, 169.) He stated that the delivery trucks park in front of the establishment, blocking in parked cars, because the trucks are too long to park in the designated loading zone on 18<sup>th</sup> Street, N.W., which requires vehicles to back in. (Applicant's Exhibit Nos. 7a-7c; Tr. 8/3/05 at 96-97, 169, 190-191.)
10. With regard to the issue of noise, Mr. Stavropoulos implemented a policy whereby all recycled bottles are kept inside of the establishment until the morning when they are put into the recycling dumpsters. (Tr. 8/3/05 at 90-91.) Mr. Stavropoulos believes that noise will always be an issue because the neighborhood is a mixed-use community with businesses on one side and residents on the other; but he believes that his establishments have tried their best to lessen the severity of the noise problems. (Tr. 8/3/05 at 90, 173.)

11. The Board received a letter, dated July 21, 2005, from Ward One Councilmember Jim Graham in support of the renewal of the Applicant's license. (Tr. 8/3/05 at 186-187.)
12. Josh Gibson is a member of Advisory Neighborhood Commission ("ANC") 1C07 and he is the executive director of AMBID. (Tr. 8/3/05 at 100-103, 107, 121.) Mr. Gibson supports the renewal of the Applicant's license. (Tr. 8/3/05 at 101, 123.) Mr. Gibson believes that Tryst and The Diner are central to the identity of the Adams Morgan neighborhood and that they are two (2) of the best performing and most responsible members of the business community. (Tr. 8/3/05 at 101.) He stated that ANC 1C did not take a position on the renewal of the Applicant's license. (Tr. 8/3/05 at 101.) Mr. Gibson stated that ANC 1C only takes action on licensees that are problematic and that the absence of action from the ANC is a form of tacit approval. (Tr. 8/3/05 at 101.) Mr. Gibson noted a page from the minutes of a January 7, 2004 ANC 1C meeting that contained a resolution in which ANC 1C commended Mr. Stavropoulos for running quality businesses in the Adams Morgan community. (Applicant's Exhibit No. 6; Tr. 8/3/05 at 105-106.)<sup>2</sup> He indicated that a quorum was present when ANC 1C voted on this resolution. (Tr. 8/3/05 at 126.)
13. Mr. Gibson indicated that in a Business Improvement District ("BID") the property owners within the boundaries of the commercial district agree to tax themselves an additional supplement on their property value and that the money raised by the BID is then spent to address cleanliness and safety issues. (Tr. 8/3/05 at 102.) He believes that the primary benefits of a BID are sustainable funding and a permanent staff. (Tr. 8/3/05 at 109.) Mr. Gibson indicated that AMBID is attempting to: 1) widen the Z curve at the northern end of the alley so that trucks can enter the alley from the north; and, 2) find a single source trash solution to save the businesses money and also reduce the number of trucks in the alley. (Applicant's Exhibit No. 4a; Tr. 8/3/05 at 104.) Mr. Gibson believes that the more serviceable you can make both ends of the alley, the more alternatives you give to someone who is trying to get out of the alley and that by widening one entrance to the alley you encourage trucks to drive into the alley rather than forcing them to back into the alley, causing the "beep, beep" sound. (Tr. 8/3/05 at 113, 116.) Mr. Gibson indicated that most of the trucks in the alley are for food deliveries and that alcoholic beverage deliveries are done from the street, due primarily to the size of the trucks. (Tr. 8/3/05 at 130, 134.)
14. Dr. Charles L. Brazie resides at 2006 Columbia Road, N.W., and owns a consulting company headquartered in Adams Morgan. (Tr. 8/3/05 at 135-136, 143.) Dr. Brazie is an officer and a director in the Adams Morgan Business and Professional Association and he is also a director on AMBID. (Tr. 8/3/05 at 136.) Dr. Brazie also serves on a committee for the Adams Morgan Mainstreet Organization ("Mainstreet"), where he is the designated liaison officer for ABRA matters, and on the Steering Committee of the 18<sup>th</sup> Street Traffic and Transportation Study, which has been ongoing for six (6) months. (Tr. 8/3/05 at 136, 156.) Dr. Brazie indicated that the District Department of Transportation ("DDOT") has hired a well-known consulting firm to conduct this comprehensive study to analyze the 18<sup>th</sup> Street, N.W., corridor, including Woodley Park, and the alleys that are associated with 18<sup>th</sup> Street,

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<sup>2</sup> The Board notes that ABRA's current Chief of Operations Jeff Coudriet was a Commissioner in ANC 1C at the time that the January 7, 2004 resolution was passed but that Mr. Coudriet no longer serves as a Commissioner in ANC 1C.

N.W. (Tr. 8/3/05 at 136-137, 140-142.) He stated that the study will analyze pedestrian and vehicular interface problems, alley congestion problems, and general congestion problems at the intersections of 18<sup>th</sup> Street, N.W., and Columbia Road, N.W., and at the intersection of 18<sup>th</sup> Street, N.W., and Florida Avenue, N.W. (Tr. 8/3/05 at 137.)

15. The two (2) subcommittees of Mainstreet, one for the east side alley of 18<sup>th</sup> Street, N.W., and one for the west side alley of 18<sup>th</sup> Street, N.W., are working in anticipation of the BID and have signed-up the majority of the businesses on 18<sup>th</sup> Street, N.W., to use a single source trash pick-up service and standardized receptacles in the alleys. (Tr. 8/3/05 at 141-142.) Dr. Brazie stated that there are currently sixteen (16) trash companies that make pick-ups within Adams Morgan's commercial district. (Tr. 8/3/05 at 142.) He believes that a sole or dual source trash pick-up service will allow for more efficient trash collection and that standardizing the trash receptacles in the alleys will prevent leakage and access by rats. (Tr. 8/3/05 at 146.) He also stated that vehicles parked illegally in the alleys will begin getting ticketed and towed by the Department of Public Works. (Tr. 8/3/05 at 147-150.)
16. Katie Davis resides at 1751 Lanier Place, N.W., and has lived in Adams Morgan since she was 10 years old. (Tr. 8/3/05 at 159.) Ms. Davis runs a youth group called the Urban Rangers and she has participated in beautification projects on Columbia Road, N.W., and 18<sup>th</sup> Street, N.W. (Tr. 8/3/05 at 161.) Ms. Davis supports the renewal of the Applicant's license. (Tr. 8/3/05 at 160.) She believes that Mr. Stavropoulos and his two (2) businesses, Tryst and The Diner, were catalysts for bringing life to a commercial strip that was otherwise desolate. (Tr. 8/3/05 at 160-161.) She considers Mr. Stavropoulos a valuable community member and believes he has made a concerted effort by attending meetings discussing problems with trash, rodents, and alley improvement. (Applicant's Exhibit No. 10; Tr. 8/3/05 at 164.)
17. Carlos Lumpuy has resided at 2366 Champlain Street, N.W., since the 1970s. (Tr. 8/3/05 at 242-243, 258.) Mr. Lumpuy also owns three (3) other residences on Champlain Street, N.W., and an apartment building at 2351 Champlain Street, N.W. (Tr. 8/3/05 at 243.) His residence is a little more than forty (40) feet south of the Applicant's establishment. (Tr. 8/3/05 at 258.)
18. With regard to residential parking needs, Mr. Lumpuy stated that he and his tenants have difficulty getting in and out of their parking spaces on Champlain Street, N.W. (Tr. 8/3/05 at 245, 252.) Mr. Lumpuy testified that the delivery trucks for both Tryst and The Diner park at the northern end of the alley, preventing him from exiting in that direction. (Tr. 8/3/05 at 250-251, 259.) He noted that he can only exit via the south end of the alley, by Caribou Coffee, if the alley is not blocked by other trucks. (Tr. 8/3/05 at 259.) He has had to call a cab a number of times because his car has been blocked in by delivery trucks. (Tr. 8/3/05 at 256.) Mr. Lumpuy indicated that the average wait time for a delivery truck to move ranges from ten (10) minutes to two (2) hours. (Tr. 8/3/05 at 257.)
19. Mr. Lumpuy testified that the alley is sixteen (16) feet wide and that the dumpsters take up between four (4) and five (5) feet of the alley space. (Tr. 8/3/05 at 246, 254.) He indicated that when a delivery truck pulls into the alley, coupled with the dumpsters, it is impossible for a car to pass. (Tr. 8/3/05 at 254.) Mr. Lumpuy stated that the delivery truck drivers have

informed him that both Tryst and The Diner will not accept deliveries from the front of the establishment. (Tr. 8/3/05 at 255.) He believes that the Applicant's establishments should use one of the six (6) loading zones on 18<sup>th</sup> Street, N.W., including the one that is directly in front of the licensed premises. (Tr. 8/3/05 at 265.)

20. Erik Huey has resided at 2380 Champlain Street, N.W., Unit 303, since November 2001. (Tr. 8/3/05 at 27-28, 47.) Mr. Huey is the secretary of the Grammercy Loft Condominium Association. (Tr. 8/3/05 at 32-33.) He parks his car in the garage of his building, which contains a total of eight (8) parking spaces. (Tr. 8/3/05 at 28-29.) Mr. Huey leaves for work by car between 8:30 a.m. and 9:30 a.m. (Tr. 8/3/05 at 29.)
21. With regard to residential parking needs, Mr. Huey indicated that there is usually a delivery truck parked directly in front of his garage that prevents him from exiting his garage or there are delivery trucks parked on either side of the alley that prevent him from exiting the alley. (Tr. 8/3/05 at 29.) He estimated that the delivery trucks range in size from twenty (20) to thirty (30) feet. (Tr. 8/3/05 at 53-54.) Mr. Huey stated that getting his car blocked in is a serious problem that has caused him to be late to meetings and work. (Tr. 8/3/05 at 31.)
22. Mr. Huey stated that at the Board meetings of the Grammercy Loft Condominium Association he and his neighbors have discussed this parking problem along with the trash in the alleys and the dumpsters which take up one third of the alleyway space. (Tr. 8/3/05 at 32, 46.) The Condominium Board has received complaints from all eight (8) parking space owners. (Tr. 8/3/05 at 32-33.) He stated that the alley behind his building is between fifteen (15) and twenty (20) feet wide and he estimated that the dumpsters take up to five (5) feet of the alley and that the rest of the alley is consumed by the delivery trucks, leaving less than one foot on either side of a parked delivery truck. (Tr. 8/3/05 at 34, 56.)
23. With regard to peace, order, and quiet, Mr. Huey testified that the delivery trucks begin making noises in the alley at 5:30 a.m. and that the noises continue until after 9 a.m. (Tr. 8/3/05 at 34-35.) He described the noises as loud idling sounds, coupled with vibrations that can be felt in the alley and inside of his building. (Tr. 8/3/05 at 34.) Mr. Huey testified that he is forced to close his windows because of these loud noises, which include the conversations of the workers, the honking of horns, and the sounds of radios playing. (Tr. 8/3/05 at 35.) He believed that the delivery trucks he has observed in the alley include beer trucks, but more often than not the delivery trucks are not beer trucks. (Tr. 8/3/05 at 55-56.) He testified that on Friday and Saturday nights at midnight and then again between 2 a.m. and 3 a.m., he can hear bags full of beer bottles being dumped into the alley dumpsters. (Tr. 8/3/05 at 36, 44-45.)
24. Mr. Huey wants the deliveries to be done on the street, rather than in the alley, and he also wants the trash receptacles and dumpsters to be removed from the alley or for the trash removal to be coordinated so that all of the establishments can use one company that would come on a specific day and not during peak driving hours. (Tr. 8/3/05 at 47-48.)
25. Donna Groves has resided at 2356 Champlain Street, N.W., since 1997, and she owns a business on 18<sup>th</sup> Street, N.W. (Tr. 8/10/05 at 14, 18, 51-52.) Although she can walk to work,

she often uses her car to meet clients. (Tr. 8/10/05 at 18.) Tryst and The Diner are approximately two hundred (200) feet away from her residence. (Tr. 8/10/05 at 17-18.) Ms. Groves has two (2) parking spaces that are located to the rear of her townhouse, which can only be accessed through the alley between 18<sup>th</sup> Street, N.W., and Champlain Street, N.W. (Tr. 8/10/05 at 18.) Her parking spaces are approximately one hundred (100) feet away from the alley exit that is near Caribou Coffee. (Tr. 8/10/05 at 34.)

26. With regard to residential parking needs, she stated that between 6:00 a.m. and 8:30 a.m., as well as in the afternoon, her car is blocked in by delivery and trash trucks waiting to make their way up the alley once the congestion clears up from behind Tryst and The Diner. (Tr. 8/10/05 at 19, 36-39.) Ms. Groves has been late to appointments and forced to take cabs because her car has been blocked in. (Tr. 8/10/05 at 23.) She usually gives herself an extra fifteen (15) to thirty (30) minutes in the morning in case her car is blocked. (Tr. 8/10/05 at 24, 48.) Ms. Groves testified that all of her neighbors experience the same problem. (Tr. 8/10/05 at 25.) She indicated that between 6 a.m. and 9 a.m., most of the delivery trucks belong to either Tryst or The Diner. (Tr. 8/10/05 at 19-20, 51.) Ms. Groves stated that when her car is blocked in, she has had to knock on the back doors of each restaurant along the alley to find the drivers and ask them to move their trucks. (Tr. 8/10/05 at 20.) She determined that on more than one occasion delivery trucks have been parked directly behind both of Mr. Stavropoulos' establishments. (Tr. 8/10/05 at 31, 38.)
27. Ms. Groves indicated that it is impossible for a vehicle to get around the trucks when they are parked in the alley. (Tr. 8/10/05 at 25.) She stated that the width of the alley is sixteen (16) feet and that the dumpsters in the alley range in size between fifty-four (54) inches deep and six and a half (6 ½) feet wide. (Tr. 8/10/05 at 25, 55-56.) Ms. Groves indicated that regardless of where in the alley the delivery trucks are parked, the blockage problem still exists because it has a chain effect that causes other trucks, not necessarily trucks associated with the Applicant's establishment or The Diner, to form a line down the alley. (Tr. 8/10/05 at 32, 46-47.)
28. With regard to peace, order, and quiet, Ms. Groves stated that the delivery trucks also generate noises, including a "beep, beep, beep" noise when the trucks reverse, the slamming of doors, and a loud grumbling when the trucks sit idle. (Tr. 8/10/05 at 32-34.)
29. Ms. Groves believes that this problem can be solved if both Tryst and The Diner accepted their deliveries from the loading zones located on 18<sup>th</sup> Street, N.W. (Tr. 8/10/05 at 45.) She also believes that another solution would involve limiting all deliveries to a specific time of day, so residents could work their schedules around those delivery times. (Tr. 8/10/05 at 49-50, 59-60.)
30. Peter Lyden resides at 1726 Euclid Street, N.W., and is the president of the Reed-Cooke Neighborhood Association ("RCNA"). (Tr. 8/10/05 at 61.) Mr. Lyden stated that RCNA has used its voluntary agreements with neighboring ABC establishments to address the issue of truck deliveries by drafting language that ensures that the establishments will move their deliveries out of the alley and onto 18<sup>th</sup> Street, N.W., thereby reducing the conflict that exists

when you have residents abutting a commercial area. (Protestant's Exhibits Nos. 2-3; Tr. 8/10/05 at 62-70, 81.)

31. Wilson Reynolds has resided at 2370 Champlain Street, N.W., Unit 23, since 1984. (Tr. 8/10/05 at 83-84.) Since December 2003, Mr. Reynolds has compiled a collection of photographs and written logs documenting congestion and noise in the alley between Champlain Street, N.W., and 18<sup>th</sup> Street, N.W. (Protestant's Exhibit No. 4; Tr. 8/10/05 at 84-85.) Mr. Reynolds' daily observation of both the delivery truck services and trash activities in the alley occurred between 5 a.m. and 9 a.m. (Tr. 8/10/05 at 84-88.) Mr. Reynolds would record his observations whenever he was awoken and would note: 1) what kind of truck it was; 2) the time the truck arrived; 3) the time the truck departed; 4) any noises that were made by the truck; and, 5) if the truck blocked another vehicle that was trying to enter or exit the alley. (Tr. 8/10/05 at 88-89, 96-97, 158.) Mr. Reynolds testified that since he began recording his observations, there has been only one delivery truck that did not deliver to either the Applicant's establishment or The Diner. (Tr. 8/10/05 at 96-98, 148.) He observed many trash trucks going through the alley, but he has never seen alcoholic beverage delivery trucks for either Tryst or The Diner congesting the alley. (Tr. 8/10/05 at 148, 159.) Mr. Reynolds confirmed that there are signs posted on the back of both of the establishments directing the delivery truck drivers to park in a certain portion of the alley before 9:00 a.m. (Tr. 8/10/05 at 155.)
32. Mr. Reynolds stated that the delivery times ranged from ten (10) minutes to over three (3) hours. (Tr. 8/10/05 at 100-101.) He noted that Mondays, Wednesdays, and Fridays had the heaviest amount of activity. (Tr. 8/10/05 at 89.) Mr. Reynolds described several log incidents in which SYSCO, Treehouse Produce, and Instant Whip trucks were parked in the alley making deliveries. (Applicant's Exhibit No. 9; Tr. 8/10/05 at 89-92.) He testified that the SYSCO trucks are the only delivery trucks that primarily park at the northern end of the alley behind the City Paper. (Tr. 8/10/05 at 153, 156.) Mr. Reynolds narrated a videotape recording he made in August 2004 of the delivery trucks blocking the alley between Champlain Street, N.W., and 18<sup>th</sup> Street, N.W., while making deliveries to both Tryst and The Diner. (Protestant's Exhibit No. 11; Tr. 8/10/05 at 130-139.)
33. With regard to residential parking needs, Mr. Reynolds indicated that it is difficult for him to park and exit his parking space because at least two (2) times per week there is either a delivery truck parked in front of his space or delivery trucks parked at each end of the alley. (Tr. 8/10/05 at 108-109.) He recalled having to wait as long as fifteen (15) minutes for trucks drivers to move their vehicles. (Tr. 8/10/05 at 109-110.) Since November 2003, Mr. Reynolds has rented out his parking space in the alley and he parks in a garage space he purchased at 2370 Champlain Street, N.W. (Tr. 8/10/05 at 109-110, 149.) Mr. Reynolds admits he is foregoing income by not using his space in the alley, but he believes that it is more important to be able to get out of his parking space when he needs to without having to wait for other people. (Tr. 8/10/05 at 110.)
34. Mr. Reynolds and Mr. Stavropoulos have been in communication with each other over the delivery truck issue for about two (2) years, including: written correspondence that Mr. Reynolds has sent directly to Mr. Stavropoulos complaining about the noise and congestion

problems caused by the delivery trucks, and Mr. Stavropoulos' responses explaining all the efforts he has undertaken with his vendors. (Protestant's Exhibit No. 7-9; Tr. 8/10/05 at 113-126.)

35. With regard to noise, Mr. Reynolds described the sounds made by the delivery trucks, which echo throughout the alley, including "beep, beep, beep" sounds, the sounds made by the trucks' brake systems, the sounds of the truck ramps as they are pulled out and then dropped on the ground, etc. (Tr. 8/10/05 at 101-102.) He admitted that Mr. Stavropoulos moved the designated parking area of the delivery trucks to an area behind the City Paper to eliminate as much noise as possible from behind Mr. Reynolds' apartment building. (Tr. 8/10/05 at 152, 156.)
36. Mr. Reynolds stated that there are six (6) loading zones along the 2400 block of 18<sup>th</sup> Street, N.W., with three (3) on the east side and three (3) on the west side. (Protestant's Exhibit No. 12; Tr. 8/10/05 at 141-142.) He indicated that in the early morning hours, the traffic conditions on 18<sup>th</sup> Street, N.W., are light. (Protestant's Exhibit No. 12; Tr. 8/10/05 at 142.) Mr. Reynolds contended that the early morning traffic pattern on the northbound side of 18<sup>th</sup> Street, N.W., is much lighter than in the afternoon and that delivery trucks parked in the loading zones on 18<sup>th</sup> Street, N.W., would not impede traffic. (Tr. 8/10/05 at 161-162.)
37. Mr. Reynolds admitted that Mr. Stavropoulos is the only business owner that has worked with him in connection with the alley problems. (Tr. 8/10/05 at 157.) Mr. Reynolds and the Protestants are not against the renewal of the Applicant's license but want the Board to issue an order instructing the Applicant to use the delivery zones on 18<sup>th</sup> Street, N.W., and prohibit all deliveries from the alley. (Tr. 8/3/05 at 24-25; Tr. 8/10/05 at 161.)
38. The Protestant's concerns with the Applicant involve in large part concerns regarding perceived violations by delivery trucks in the alley between 18<sup>th</sup> Street N.W. and Champlain Street, N.W., of Title 18 of the District of Columbia Municipal Regulations, including sections 2402 and 2405. (See Protestors Memorandum in support of protest; Tr. 8/10/05 at 8-14, 169.)

### **CONCLUSIONS OF LAW**

39. Pursuant to D.C. Official Code § 25-313(a) (2001), an Applicant must demonstrate to the satisfaction of the Board that the establishment for which a liquor license is sought is appropriate for the neighborhood in which it is located. Having considered the evidence upon which this determination must be made and the findings of fact adduced at the protest hearings, the Board concludes that the Applicant has demonstrated that the renewal of its Retailer's Class "CR" License – with the condition imposed by the Board as listed below – would be appropriate for the delineated area in which the establishment is located.
40. Pursuant to D.C. Official Code § 25-313(b)(2) (2001) and Title 23 of the District of Columbia Municipal Regulations ("23 DCMR") § 400.1(a) (2004), the Board must determine whether renewing the Applicant's license will have an adverse effect on the peace, order, and quiet of the neighborhood.

41. With respect to the issue of noise, the Board found no evidence of any problems with noise from either patrons of the establishment or employees of the establishment. However, the testimony and evidence presented by Mr. Reynolds, Mr. Huey, and Ms. Groves did reveal problems with noise from delivery trucks -- specifically, trucks delivering non-alcoholic beverage products to the establishment -- in the alley located behind the Applicant's establishment and adjacent to the residential homes on Champlain Street, N.W. Specifically, the testimony of Mr. Reynolds, Mr. Huey, and Ms. Groves revealed that the noises from delivery trucks in the alley, which include loud idling sounds, conversation between drivers, truck ramps being dropped to the ground, doors slamming, horns honking, and the "beep, beep, beep" sound of trucks reversing, begin at 5:30 a.m. and continue until after 9 a.m., and that the noises are generated by the numerous deliveries and trash service pick-ups that occur in the alley. The testimony indicated that these noise problems are attributable to truck deliveries and garbage pick-ups to and from many ABC establishments and other retailers on 18<sup>th</sup> Street, N.W., not just the Applicant's establishment. Mr. Huey also testified that on Friday and Saturday nights he can hear bags of beer bottles being dumped into the alley dumpsters between the hours of midnight and 3 a.m.
42. While the Board empathizes with the noise disturbances faced by neighboring residents, the Board is satisfied with the efforts made by Mr. Stavropoulos to minimize the severity of the noise problems that occur in the alley. Specifically, in an effort to address the issue of beer bottles being dumped into alley dumpsters between the hours of midnight and 3 a.m., the Applicant implemented a policy whereby all recycled bottles are kept inside of the establishment until the morning for placement into its recycling dumpsters. Additionally, Mr. Stavropoulos' testimony revealed that he has taken preventative measures to reduce the noise level in the alley by posting laminated signs on the back door of the establishment directing the delivery truck drivers to park at 2471 18<sup>th</sup> Street, N.W., when making deliveries before 9 a.m., and requesting that the truck drivers turn off their engines, radios, and compressors, when possible, while making deliveries. Furthermore, while the Board lacks the expertise and jurisdiction to determine where the unloading of non-alcoholic beverage deliveries should occur, the testimony of both Mr. Stavropoulos and Mr. Reynolds is clear that Mr. Stavropoulos has made a concerted effort to try and resolve this issue by making specific requests of its vendors and moving the designated delivery truck parking area twice in response to the noise complaints that he has received.
43. In making this decision, the Board notes that the testimony and evidence established that in addition to the Applicant's establishment, the alley also services approximately forty (40) other commercial businesses and numerous residential homes and that the problems raised by the Protestants are part of a bigger neighborhood problem that involves more than just the Applicant's establishment. The photographs and written logs provided by Mr. Reynolds serve as further proof of the high volume of traffic that flows through the alley and the residual noise problems that result from such heavy demand, i.e., the idling of loud engines, the honking of truck horns, the conversational volume of third party delivery persons, etc. The Board finds the evidence to reveal that delivery and service trucks, including delivery trucks to the establishment, generate the majority of the noise complained about by the Protestants. The Board notes that it maintains the authority to impose restrictions on

deliveries to the Applicant's establishment that involve alcoholic beverages. However, the Board does not find that it has jurisdiction to regulate perceived alley delivery violations of Title 18 of the DCMR, or place restrictions on the delivery of products unrelated to the Applicant's liquor license, such as baked goods and produce. Consequently, the Board cannot grant the Protestants' request that the Applicant be prohibited by Board order from accepting all deliveries in the alley, as such action would be beyond the expertise or jurisdiction of this Board and a legal determination to that effect would need to be made by the appropriate District of Columbia government agency, e.g., the Department of Public Works ("DPW") which enforces alley delivery violations under Title 18, or DDOT. *See Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 413 A.2d 152, 154 (D.C. 1980) (explaining that the Board does not have the jurisdiction or expertise to review a licensee's compliance with the law or regulations administered and enforced by a "coordinate administrative department."). Moreover, in recognizing that it will take a comprehensive plan such as the work of a BID or DDOT to significantly reduce, if not eliminate, the noise problems in the alley, the Board is limited in the remedies it can provide to the Protestants. With this understanding, the Board believes it is appropriate to impose a condition on the Applicant's license that will require the Applicant to continue its present policy of accepting no alcoholic beverage deliveries in the alley to the rear of the licensed establishment. While the Board commends the Applicant for its diligent efforts to address the concerns of neighboring residents, the Board finds that imposing this condition will help prevent any worsening of the noise problems that plague the alley. The Board notes that it has authority to place this condition on the Applicant's license pursuant to D.C. Official Code § 25-104(e) (2001). This condition is in addition to the restrictions contained in the Applicant's existing voluntary agreement with the Kalorama Citizens Association, dated May 5, 1998, as amended.

44. With regard to the issue of litter, the testimony of Mr. Stavropoulos revealed that the establishment does not have a problem with litter and has two sealed dumpsters and has trash pick-up service seven days a week. Additionally, based upon the record as a whole, the Board found that the establishment did not have any problems with loitering, rowdiness, noise from patrons, or criminal activity. As a result of the above, the Board finds that the Applicant's establishment does not adversely effect the peace, order, and quiet of the neighborhood.
45. Pursuant to D.C. Official Code § 25-313(b)(2) (2001), the Board finds based upon the record as a whole that the establishment does not have an adverse impact on real property values. The Board notes that this issue was not raised by the Protestants as a protest issue.
46. Pursuant to D.C. Official Code § 25-313(b)(3) (2001), the Board must determine whether renewing the Applicant's license will have an adverse effect on the residential and vehicular parking needs of the neighborhood. Based upon the record, the Board found no evidence of residential or vehicular parking problems caused by patrons or employees of the establishment. However, the testimony of Mr. Lumpuy, Ms. Groves, Mr. Reynolds, and Mr. Huey, all residents of Champlain Street, N.W., revealed that trucks making deliveries, including to the Applicant's establishment, are often parked in the alley behind their residences blocking access to and from their private parking spaces. Specifically, Mr. Huey

testified that the delivery trucks range in size between twenty (20) to thirty (30) feet and frequently block access to and from his garage. Mr. Lumpuy, Mr. Huey, and Ms. Groves also complained that the delivery and trash trucks park on opposing ends of the alley and that the traffic congestion in the alley has often caused them to be late for work and appointments and has forced them to take cabs. Ms. Groves and Mr. Reynolds also recalled that between 5:00 a.m. and 9:00 a.m., most of the trucks in the alley are making deliveries to either the Applicant's establishment or The Diner and that the delivery times ranged from ten (10) minutes to over three (3) hours.

47. While the Board finds the noise problems caused by delivery trucks in the alley, including trucks delivering to the establishment, to be an important issue of concern, the Board does not find this issue to warrant the denial of the Applicant's liquor license for three reasons. First, the Protestants are not opposing the renewal of the Applicant's liquor license. Second, as stated above, the Applicant has made a concerted effort to work with the Protestants to address this issue. Third, the granting of the Applicant's renewal application will not adversely affect the residential parking and vehicular safety issues raised by the Protestants as none of the deliveries at issue involve alcoholic beverages. While it is true the Board can place restrictions on an Applicant's license, the Board is unwilling and unable to do so in this instance. Specifically, the Protestant's request is that the Applicant be prohibited by Board order from accepting deliveries not involving alcoholic beverages in the alley. In this case, the Board has neither the expertise or the jurisdiction to regulate commercial loading zones, including where deliveries of non-alcoholic beverages should take place, or enforce Title 18 of the DCMR, which sets forth the District's regulations on alley delivery. Rather, the appropriate government agencies with the expertise and jurisdiction to address these issues are DPW, which enforces alley delivery violations of Title 18 of the DCMR, and DDOT.
48. Based upon the record as a whole, the Board found the Applicant to have a good record of compliance during the license period with both the ABC laws and regulations and its voluntary agreement with the Kalorama Citizens Association.

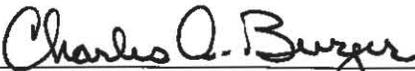
Therefore, it is hereby ORDERED on this 2nd day of August 2006, that the renewal application for a Retailer's Class "CR" license filed by Tryst, Inc., t/a Tryst, at 2459 18<sup>th</sup> Street, N.W., Washington, D.C., be and the same is hereby GRANTED.

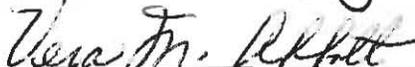
It is FURTHER ORDERED that the following condition is hereby imposed on the Applicant and shall become a term of the license:

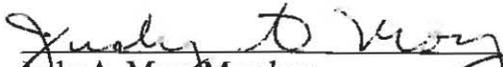
- (1) The Applicant shall not accept alcoholic beverage deliveries from trucks in the alley behind the establishment.

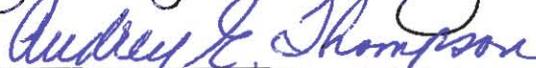
Tryst, Inc.  
t/a Tryst  
August 2, 2006

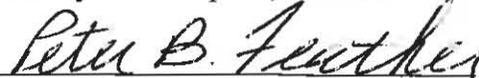
District of Columbia  
Alcoholic Beverage Control Board

  
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Vera M. Abbott, Member

  
Judy A. Moy, Member

  
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.

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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).