

AMENDMENT NO. 1
TO
RESOLUTION NO. RS2018-999

Mr. President –

I move to amend Resolution No. RS2018-999 as follows:

By amending the recitals clause section by adding the following as the third recitals clause thereto:

WHEREAS, a written agreement has been executed between Germantown Bar, *a/k/a* 1318 Properties, LLC and Germantown Commons HOA regarding the operations of Germantown Bar, with provisions addressing fencing, music/noise emission, sound restrictions, special occasion events/parking lot events, blackout/acoustic curtains, 3-pane windows, soundproofing fence/beer garden fence, outdoor speakers, lighting, water runoff remediation, and traffic ingress/egress. The agreement, entitled “Settlement Agreement and Mutual Release”, is attached hereto as Exhibit A. Germantown Bar has agreed therein to achieve preliminary compliance with certain conditions within the agreement prior to obtaining an exemption under Section 7.08.090.E of the Metropolitan Code. Those preliminary conditions, set forth under Section 2(m) of the agreement, have now been completed to the mutual satisfaction of Germantown Bar, *a/k/a* 1318 Properties, LLC and Germantown Commons HOA; and

INTRODUCED BY:

Freddie O’Connell
Member of Council

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement is made as of the last date of execution shown below (the "Effective Date") by and between the Germantown Commons HOA ("GC") and 1318 Properties, LLC d/b/a Germantown Bar or Germantown Restaurant or Germantown Depot ("GR") (collectively referred to as the "Parties").

WHEREAS, the GC also includes and is defined as the twenty-five-unit residential housing community and its homeowners' association ("HOA") located at 1325 5th Avenue North, Nashville, Tennessee 37208; and

WHEREAS, the GR is a restaurant which serves food, alcoholic beverages and malt beverages, and is located at 1318 6th Avenue North, Nashville, Tennessee 37208 (the "Premises"); and

WHEREAS, the GR's property directly adjoins the GC property, separated only by an alley; and

WHEREAS, the GC, concerned by certain public statements made by the GR and certain design elements of the GR, and after unsuccessful attempts to address their concerns, filed the following: (1) a Notice of Opposition to oppose the GR's Metropolitan Government of Nashville and Davidson County ("Metro") Beer Board permit Application; (2) a Notice of Opposition to oppose the GR's Tennessee Alcoholic Beverage Commission Liquor-By-The-Drink license application; and (3) a Metro Board of Zoning Appeals action challenging the zoning approval and specific use of the Premises;

WHEREAS, the Parties, via e-mail, entered into an agreement in principle on September 27, 2017 ("Agreement in Principle") with the joint intent of the Parties to resolve this dispute, with the understanding that a fully executed agreement (the "Settlement Agreement" or the "Agreement") would be entered into;

WHEREAS, in consideration of the GR agreeing to the terms contained within the Agreement in Principle, the GC withdrew its Metro Beer Board opposition via an announcement made during the Metro Beer Board's September 27, 2017 board meeting;

WHEREAS, the Parties now enter into this Settlement Agreement ("Agreement") fully compromising and settling any and all claims in the matters in controversy and fully memorializing the terms contained in the Agreement in Principle;

WHEREFORE, in consideration of the aforesaid and the covenants and promises herein, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **Settlement by the Germantown Commons HOA.** In consideration of and subject to the terms herein, the GC will: (1) withdraw its Notice of Opposition of the GR's Metropolitan Government of Nashville and Davidson County ("Metro") Beer Board permit Application; (2) withdraw its Notice of Opposition to oppose the GR's Tennessee Alcoholic Beverage Commission

Liquor-By-The-Drink license application and/or not appeal the issuance of the GR's license; and (3) dismiss the Metro Board of Zoning Appeals action challenging the zoning approval and specific use of the Premises.

2. Settlement by 1318 Properties, LLC d/b/a Germantown Bar and/or Germantown Restaurant and/or Germantown Depot.

(a) **Applicable Laws, Rules and Regulations:** GR agrees to abide by all Metro ordinances, rules and regulations pertaining to and governing the operation of the GR's business.

(b) **Fence:** The GR will agree to design, build and stain along the full length of the parking lot between the GR parking lot and GC property a wooden fence (the "Parking Lot Fence"), with a minimum height of 8 feet and a maximum height of 12 feet., and of the same type, kind and quality of the existing GR fence. The Parties understand that the final fence design and installation is subject to Metro approval. The Parties have met with Metro, on-site, and discussed a proposed design of the fence, which Metro has stated should be generally acceptable for staff approval. The base of the fence shall be raised above the ground surface by approximately 10-12 inches.

Attached as Exhibit A is the site plan of the Parking Lot Fence.

The Parties shall work in good faith together towards seeking final approval for the fence from Metro. This will involve proposing a fence to Metro that meets the conditions that Metro has previously stated should be generally acceptable for staff approval. However, if the design of the fence is not approved by Metro and the fence application requires an appeal, the Parties shall jointly support and participate in said appeal.

Within 48 hours from the date of the execution of this Agreement, the GR shall submit to the GC a signed contract with a design company for the design of the Parking Lot Fence. Such design will, in the judgment of the design company, be likely approved by Metro. GR shall also submit to GC a signed contract with a build contractor for the build of the Parking Lot Fence. The contracts shall include a schedule for performance of the fence design and build to be completed by March 1, 2018. Within five (5) business days from the execution of this Agreement, the GR shall provide the GC with proof that the appropriate documents have been submitted to Metro in order to obtain the necessary approval for the construction of the fence. On-site construction of the Parking Lot Fence shall begin by January 26, 2018. In exchange for construction of the Parking Lot Fence commencing by January 26, 2018, and visible progress having been made by February 1, 2018, the GC shall not request the Metro District 19 Councilman to defer the Metro City Council's consideration of the GR's City Council resolution requesting a waiver of Metro's beer permit location restriction ordinance (the "Resolution").

If the GC feels that any of the aforesaid conditions of this section 2b have not been met or if construction of the Parking Lot Fence has not begun by January 26, 2017, and visible progress having been made by February 1, 2018, the GC shall have the right to



request the Metro District 19 Councilman to defer by one month the consideration of the Resolution.

The GR shall be responsible for maintaining the fence. Construction and all finishing details (staining, etc.) of the fence shall be completed by March 1, 2018.

(c) **Ordinary Music/Noise Emission:** The GR will agree to not emit sound from speakers or any other source which will disrupt any resident of the GC when said resident is inside of said resident's home with the windows closed. Noises elevated beyond 30 dB inside of the GC resident's homes, which continue for more than 10 minutes, shall be presumed to be a disruption. An exception shall exist for appropriately permitted, special occasion events in the GR parking lot where live bands or disc jockeys may perform. As is stated in additional detail in Section 4 of this Agreement, if a dispute occurs and no resolution can be achieved and upon the written request by either party, the Parties shall submit their respective positions to the sitting Metro councilmember for the district prior to initiating a legal proceeding. In addition to the language in this provision, all applicable Metro ordinances relating to sound emission still apply. For any ticketed special events hosted by the GR, the GR agrees to provide complimentary tickets to any and all residents of the GC after receiving a written request for said tickets (e-mail is acceptable) at least ten (10) days prior to the ticketed event.

(d) **Applicable Laws, Rules and Regulations:** All Metro ordinances and sound restrictions shall apply and govern regarding the levels of sound which are acceptable to be emitted onto the GC property.

(e) **Special Occasion Events/Parking Lot Events:** The GR shall only permit and allow a maximum of five (5) specially permitted events or special occasion permitted events ("Special Occasion Events" or "Special Events") to occur on its premises and/or its parking lot., or to host on any adjacent property, per year. For the purpose of clarity, Special Occasion Events or Special Events will be defined as events which require any type of special event permit from Metro, regardless of whether beer or alcoholic beverages are being sold. This includes but is not limited to permits issued by the Metro Beer Board for Special Events. GR shall provide advance written notice to the GC of a planned Special Occasion Event, said notice to be provided upon the execution of a contract for said event and at least fourteen (14) days prior to the GR's application for a Special Event/Special Occasion Permit from Metro and/or at least fourteen (14) days prior to the event, whichever comes first. In the event that a contract for a Special Occasion Event is signed within fourteen (14) days from the event date, the GR shall provide notice to the GC of the event contract on the day that the contract is entered into. The GR shall also provide to the GC a copy of the Special Occasion Permit Application upon filing said application.

For any ticketed special events hosted by the GR, the GR agrees to provide complimentary tickets to any and all residents of the GC after receiving a written request for said tickets (e-mail is acceptable) at least ten (10) days prior to the ticketed event.



(f) **Blackout/Acoustic Curtains/3-Pane Windows:** GR will agree to install acoustic curtains or 3-pane windows in any and all affected GC units if it is established that there is a sound/light issue with the regular business operations of the GR. If the parties cannot reach an agreed-upon solution, the sitting councilmember for the district shall serve as the sole decision-maker as to whether the complaint of the GC is reasonable and warrants a resolution, with both parties reserving all of their legal rights and remedies. Upon the councilmember determining that the concerns of the GC are reasonable, the GR shall have the obligation to install acoustic/blackout curtains, 3-pane windows, or both. The GR may choose to begin with the installation of acoustic/blackout curtains but will be obligated to install 3-pane windows as well if the curtains alone fail to remedy the issue. The GR shall have ten (10) days from the councilmember's decision to present product ideas and/or samples to the GC, after which the GC shall have ten (10) days to respond to the GR with its acceptance or rejection of product samples. The Parties shall work in good faith to come to an agreement as to the specific type(s) of product to be installed and the specific company to handle the installation of the product(s). The company selected for the installation of the product(s) shall meet all legal licensing and bonding requirements for the State of Tennessee and shall be chosen by the agreement of the Parties. Once the product(s) and the installing company are selected, installation shall begin no later than thirty (30) days from the date of product and installer selection, the decision of which shall not be unreasonably withheld.

The terms of Section (f) shall not apply to the Special Occasion Events in Section (e) above.

(g) **Soundproofing Fence/Beer Garden Fence ("Fence 2"):**

The GR will agree to design and build a second fence ("Fence 2"), to be the same height as the existing beer garden fence, in the GR beer garden area which is to run parallel to the existing fence which serves as a rear wall to the existing cabanas in the beer garden area. The purpose of Fence 2 is to work as a soundproofing measure. Fence 2 shall be installed 4"- 8" from the current fence, so as to create an "air gap" between the two fences. Fence 2 shall run the entire length from building to building, including the cabana area. Due to the construction of the cabana area, a portion of Fence 2 will run on the outside (parking lot side) of the existing fence.

Attached as Exhibit B is the site plan for Fence 2.

If for some reason Metro takes issue with the build of Fence the Parties shall work in good faith together towards seeking final approval for the fence from Metro. This will involve proposing a fence to Metro that meets the conditions that Metro has previously stated should be generally acceptable for staff approval. However, if the design of the fence is not approved by Metro and the fence application requires an appeal, the Parties shall jointly support and participate in said appeal.

Within ten (10) business days from the date of the execution of this Agreement, the GR shall submit to the GC a signed contract with a design company for Fence 2 and a signed contract with a build contract for the build of the Parking Lot Fence which design will include the design company's best estimated design that will, in the estimate of the

design company, be approved by Metro in such circumstances. The contracts shall include a schedule for performance of the fence design and build.

On-site construction of Fence 2 shall begin by February 12, 2018.

The GR shall be responsible for maintaining the fence, with the understanding that the fence is subject to Metro approval. Construction and all finishing details (staining, etc.) of the fence shall be completed by March 1, 2018 (sealing the fence(s) may take more time due to weather conditions).

(h) **Outdoor Speakers:** No speakers exceeding a wattage capacity of 64 watts (the currently installed speakers are Bose DS16SE speakers with a max SPL of 96-102 and a 64 watt peak) will be permanently installed on the exterior of the property and inside of the cabanas. All sound emission restrictions contained within the Metro Code of Ordinances shall govern all sound emitting from the GR property from any sound-emitting device.

(i) **Lighting:** The specific type(s) of lighting to be used in the parking lot of the GR and inside of the beer garden of the GR shall be designed to minimize light pollution but to also be effective for the intended purpose of providing enough light for a safe environment. The lighting that has been installed by the GR and agreed to by the GC is the Crossover LED Wall Sconce product (XPWS3). If any installed lighting results in light pollution that is not allowed under Metro law, the GR shall work with the GC, in good faith, to attempt to resolve the GC's concerns and to alter the lighting or replace it with an acceptable lighting source.

Any lighting used in the beer garden/GR outdoor area shall be low lumen lighting that is designed to not be seen from the first floor (street and alley level) of the GC property. The Parties have discussed the use of Italian bulb string lighting.

(j) **Water Runoff Remediation:** Through the construction process, Metro dictated and approved the GR's property storm water plan. The GC has expressed experiencing water runoff issues on the GC property. If the GC continues to experience water runoff issues on the portion of the GC property facing the alley and Taylor Street, between the GC and GR properties that is caused by GR runoff, the GR will resolve the issue, by any commercially reasonable means necessary provided the issue can be resolved for a commercially reasonable cost, subject to Metro approval, if said approval is required. Within 30 days from the execution of this Agreement, the GR shall install water curbing at the end of the driveway leading to the alley of the type and kind that is currently installed on the GR property by the dumpster.

(k) **Ingress/Egress:** The GR shall work with the GC and with Metro Public Works to control the ingress and egress of GR traffic safely and effectively, in a way which minimizes the impact of traffic flow on the GC property. In addition, within thirty (30) days from the date of execution of this Agreement, the GR shall create and install signage which will direct drivers to "Exit Left" when exiting the GR parking lot which faces the alley between the GR and GC properties. All parties recognize that this provision is subject to City approval.

(l) **Use:** The GR business shall operate as one full-service restaurant with three (3) separate buildings/concepts within the restaurant.

(m) **City Council/Beer Board Variance:** A variance from the Metro City Council is required in order for the GR to obtain a beer permit for one of the three (3) buildings on the GR property (the building farthest from Taylor Street). Prior to seeking final approval for final passage of the City Council variance, the GR shall comply with provisions herein relating to the Parking Lot Fence and to Fence 2 and, in addition, install the Exit Left signage which will direct traffic from the GR parking lot and into the alley and address any storm water issues per Section (j) above.

In addition, the Parties agree that, if allowed by Metro, the provisions, terms and requirements imposed by this Agreement shall be filed with and serve as conditions to the City Council resolution referenced in the paragraph above. In addition, the provisions, terms and requirements imposed by this Agreement shall be filed with and serve as conditions to the issuance of the GR's applied-for beer permit and existing beer permit. The GR shall be in support of the terms of this Agreement being conditions of the City Council resolution and of the terms of this Agreement being conditions to the applied-for beer permit and of the existing beer permit held by the GR. It is agreed that the GC will only petition the Beer Board for action to be taken on the GR's beer permit (s) after the dispute has been fully addressed with the councilmember pursuant to Section 3 below. If the Parties cannot resolve the dispute through the councilmember process, the GR shall have five (5) business days to rectify the issue(s) being complained of, if the issues are not resolved after the 5th day, the GC may proceed with petitioning the Beer Board.

To restate the dispute resolution process that is included in this Agreement and governs any disputes arising under this Agreement, the Parties must first communicate with each other and attempt to resolve any issues amongst themselves, if unsuccessful, the Parties must then attempt to find a resolution by using the sitting Metro Councilmember as a mediator, if unsuccessful, the Parties may then proceed with other available means of relief including but not limited to petitioning the Metro Beer Board or filing a lawsuit.

3. Default, Notice of Default and Cure. Should either party feel that the other party is in breach of any provision or term of this Agreement, the Parties shall first attempt to reach a good faith agreement in order to resolve the dispute. If no resolution can be achieved and upon the written request by either party, the Parties shall submit their respective positions to the sitting Metro councilmember for the district in which the Premises is located for resolution. This process is subject to the councilmember's willingness to participate in this process. A substitute may be selected by the agreement of the Parties. This councilmember resolution process shall in no way be viewed as a binding arbitration or mediation clause, and shall not otherwise limit the rights of the Parties. If a resolution cannot be reached through this process, either party may proceed as otherwise allowed by law.

4. No Admission of Liability. The Parties understand and acknowledge that this Agreement represents a full, final, and complete satisfaction and compromise of all claims. Neither this Agreement nor any action or acts taken in connection with this Agreement constitutes an admission by any party or any other entity or person that any conduct or action constituted any

wrongdoing of any nature whatsoever or was unlawful or in violation of any contract, agreement, understanding, custom, or obligation between or among the Parties.

5. Enforcement of Agreement. The Parties agree that any party hereto has the right to file suit or exercise other rights in order to enforce the provisions of this Agreement, notwithstanding any release of liability herein exchanged.

6. No assignment/transfer. The Parties represent and warrant that no portion of any claim, right, action, or cause of action against the other released hereunder has been assigned or transferred by the releasing Party in any manner, including by way of subrogation or operation of law.

7. Entire Agreement and Understanding. This Agreement contains the entire understanding between the Parties concerning the subject matter hereof and supersedes any and all prior agreements or negotiations of the Parties, whether oral or in writing, with respect to its subject matter. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by or on behalf of any Party hereto that are not embodied herein, and that any other alleged agreement, statement, or promise not contained in this Agreement shall not be valid, binding, or enforceable. The Parties acknowledge that they understand the terms hereof and agree to be bound hereby.

8. Governing Law. This Agreement is deemed entered into in the State of Tennessee and shall be construed, interpreted, and enforced in accordance with the laws of the State of Tennessee without regard to the conflicts of law rules of Tennessee or any other state.

9. Forum Selection. Any lawsuit filed on account of, or arising out of, or related to this Agreement, shall be filed in a Court of proper jurisdiction in Davidson County, Tennessee. The Parties agree that any action subject to this provision that is not filed in conformance herewith shall be dismissed with prejudice with costs taxed to the party filing the action, and an judgment in the amount of the non-filing party's reasonable attorney's fees and costs occasioned by the filing shall be entered against the filing party.

10. Joint Drafting. This Agreement shall be deemed to have been drafted by all Parties. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to any Party. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the Parties.

11. Severability. The Parties agree that, if any court or arbitration panel finds that any provision of this Agreement is illegal, invalid, or unenforceable, the validity of the remaining parts, terms, and provisions shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, and each such unenforceable portion or provision shall be deemed not to have been a part of this Agreement.

12. Binding Nature; Amendment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and each of the Parties' respective heirs, executors, administrators, trustees, employees, agents, partners, representatives, successors, assigns, purchasers, transferees, parent companies, affiliates, subsidiaries, directors, officers, and shareholders as it pertains to this



Agreement. This Agreement may not be amended or modified except by a writing signed by all of the Parties hereto.

13. Further Assurances. The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

14. Capacity. The Parties represent and warrant that they have full capacity and authority to enter into, execute, and perform this Agreement and to compromise the claims or potential claims referenced herein, and that they are the lawful owners of all claims being settled herein and have not assigned or transferred any of the claims or other matters released herein.

15. Headings. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

16. Counterparts and Electronic Communication. The Parties may execute this Agreement in any number of copies and in separate counterparts, each of which, when so executed, shall be deemed to be an original, and all of which together shall constitute one and the same agreement. A faxed or e-mailed copy of this Agreement shall be deemed to be the same as an original.

17. Notice of Default. In addition to being communicated to the appropriate service of process agent for each respective Party, any notice of complaint or notice of default of the GR or the GC shall be communicated or delivered to:

GR Contact

Barrett Hobbs
124 Spring Valley Road
Nashville, TN 37214

With a copy to:

Angelia Van Vranken
Partner, CFO
1318 Properties, LLC dba Germantown Depot
112 2nd Ave. No.
Nashville, TN 37201

GR Phone Contact

GR will make known to the GC the names and contact information for three individual representatives of the GR which the GC shall use to communicate in the order directed thereon.



GC HOA Contact

GC will make known to GR the name and contact information for the President of the GC HOA for all notices required under this Agreement as well as the name and contact information for a designee in the event the President is unavailable.

HOA Board President:

Barbara Opyt
1325 5th Ave. N #15
Nashville, TN 372-8
Phone: (512) 965-0834
Email: barbopyt@gmail.com

Designee Contact:

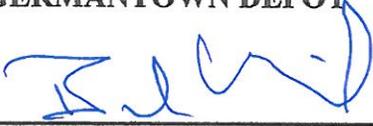
Vicki Metzger
1325 5th Ave. N. #23
Nashville, TN 37208
Phone: (615) 964-7674
Email: Vicki.Metzgar@gmail.com

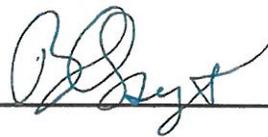
18. Attorneys' Fees. Should either party employ an attorney to enforce any of the provisions herein, or to protect its interest in any matter arising under this Agreement, or to specifically enforce this Agreement, the party prevailing shall be entitled to recover from the other party, in addition to any other relief awarded by a court of competent jurisdiction, all reasonable costs, charges and expenses, including attorneys' fees, expended in connection therewith, including expenses incurred on appeal

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the effective date:

1318 PROPERTIES, LLC d/b/a
GERMANTOWN BAR OR
GERMANTOWN RESTAURANT
OR GERMANTOWN DEPOT

GERMANTOWN COMMONS HOA

x 

x 

Date: 1/25/2018

Date: 1/24/2018

