

## AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of this \_\_\_\_\_ day of January, 2013, by PINSTRIPES, INC., a Delaware Corporation, (“Pinstripes”); AG GEORGETOWN PARK HOLDINGS I LLC, a Delaware Limited Liability Company, (“Landlord”); and GEORGETOWN PARK UNIT OWNERS’ ASSOCIATION, a District of Columbia unincorporated condominium association (the “Association”) (collectively, the “Parties”).

### RECITALS:

Recital No. 1. Pinstripes is interested in locating its restaurant/bowling alley in certain space (the “Premises”) within property in the District of Columbia known as the Georgetown Park Mall and comprising a portion of Lot 868 of Square 1200, (“GTP Mall”).

Recital No. 2. The Association represents the interests of the individual condominium unit owners in the residential condominiums located above the GTP Mall and across the C & O Canal from the GTP Mall (the “Residences”).

Recital No. 3. The Landlord of GTP Mall is undertaking a complete renovation of the GTP Mall. The renovation will include the construction of a Pinstripes Restaurant, a bowling, bocce and bistro venue in the Premises (“Pinstripes”).

Recital No. 4. Landlord has filed Application No. 18486 (the “Application”) with the Board of Zoning Adjustment (“BZA”) for approval of a special exception to include a bowling alley in the GTP Mall.

BOARD OF ZONING ADJUSTMENT  
District of Columbia  
CASE NO. 18486  
Board of Zoning Adjustment  
EXHIBIT NO. 37  
District of Columbia  
CASE NO. 18486  
EXHIBIT NO. 37

Recital No. 5. In order to facilitate the inclusion of Pinstripes in the GTP Mall and to address the Association's various concerns about the proposed use, Pinstripes and Landlord are offering certain commitments to the Association regarding the operation of Pinstripes.

Recital No. 6. Pinstripes and Landlord are entering into this Agreement based upon the assumption that a lease between them will be finalized enabling Pinstripes to locate within the GTP Mall.

Recital No. 7. Pinstripes, Landlord, and the Association are entering into this Agreement to set forth the terms and conditions that will guide the operation of Pinstripes, with the intention that all of the conditions herein will be incorporated into either a BZA Order approving the Application, or any approval or authorization for Pinstripes by the D.C. Alcoholic Beverage Control ("ABC") Board.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Parties hereby agree as follows:

1. Incorporation of Preamble and Recitals. The Preamble and Recitals are incorporated by reference as if fully set forth herein.
2. Conditions of Operation. Pinstripes hereby agrees that it will abide by the following conditions in the operation of the Premises, and Landlord hereby agrees to request of the BZA at the January 15<sup>th</sup> hearing that conditions (a) –(n) be included in any BZA Order. Further Pinstripes will request that conditions (a)-(n) are included in any Alcoholic Beverage Control Board approval:

- a. No Smoking. No smoking shall be permitted in any portion of Pinstripes, including any outdoor patio space.
- b. Noise Restrictions. Except as otherwise further limited by the terms of this Agreement, any noise relating to the operation or the use of the bowling lanes or the bocce courts or the operation of the restaurant, including the patios and the banquet facilities, shall comply with Section 25-725 of the District of Columbia Code (“District Code”). The bowling lanes and other fixtures within the Premises shall be located substantially as represented in the floor plans submitted to the BZA. The furniture layout for the outdoor seating areas shown in the attached plan dated January 7, 2013, and attached as Exhibit A and Exhibit B is offered for illustrative purposes. Pinstripes shall construct the Premises in a way that assures that no noise will be heard in any residence, in accordance with the language above.
- c. Hours of Operation. Pinstripes shall not open before 8 am on any day. On Friday or Saturday, Pinstripes shall not serve alcohol after 12:30 am and shall close no later than 1 am. On Sunday through Thursday, Pinstripes shall not serve alcohol later than 11 pm and shall close no later than 11:30 pm.
- d. Kitchen Exhaust. All kitchen exhaust from Pinstripes shall be vented through a code compliant vertical duct off of the roof. Pinstripes shall offer the Association the opportunity to review and comment on the plans for the kitchen exhaust and shall give due consideration to any comments.
- e. Upper Patio. The upper patio (“Upper Patio”) shall have a retractable enclosure which Pinstripes guarantees, per this Agreement, shall, when

closed, contain an inaudible level of noise coming from the Upper Patio and from the interior of the Premises (the “Enclosure”). The Association has not reviewed Pinstripes’ plans for the Enclosure at the time of this Agreement. If, for any reason, the Enclosure is not sufficiently sound proof when closed, Pinstripes agrees to close the Upper Patio at 10:00 p.m. on Friday and Saturday and at 9:00 p.m. on Sunday-Thursday. When the Upper Patio is not completely enclosed, it shall not be used and it shall not be occupied after 10 p.m. on Friday - Saturday or after 9 p.m. Sunday - Thursday. When the Upper Patio is completely enclosed, use of the Upper Patio shall be subject to the same time limitations provided in Condition 1.c. above. Neither the Lower Patio nor the Upper Patio (when unenclosed) may be used before 8 am. There shall be no doorway directly from any banquet room into the Upper Patio unless such a doorway is required for Building Code purposes.

- f. Maintenance of Equipment. Any routine maintenance of rooftop equipment associated with Pinstripes, such as the kitchen vent or HVAC shall be conducted between the hours of 9 am and 6 pm.
- g. Upper Patio Roof. The Upper Patio shall, at all times, whether enclosed or not, contain a patio roof that blocks views of the Upper Patio from the Residents in units above the Upper Patio. The patio roof and enclosure plans are subject to the review and approval of the Old Georgetown Board.
- h. Upper Patio Use and Capacity. Tables on the Upper Patio shall be generally consistent with the floor plan attached hereto as Exhibit A, although the exact location of the tables and seating may vary. The maximum seating capacity

for the Upper Patio shall be forty-two (42). The maximum aggregate capacity for the Upper Patio, whether seated or standing, shall be fifty (50) persons.

There must be tables in the Upper Patio when it is in use. Regardless of whether the Upper Patio is enclosed or open, the doors to the Upper Patio from the interior of the Premises shall remain closed at all times, to be opened only for ingress and egress. Music shall be permitted on the Upper Patio only when the Upper Patio is fully and completely enclosed. The Upper Patio shall be enclosed at all times when the banquet rooms are used for a private party during which the sound level from music needs to be attenuated, such as weddings and bar mitzvahs.

- i. Lower Patio. The lower patio (the “Lower Patio”) shall be closed and kept unoccupied after 10 pm on Friday – Saturday and no later than 9 pm on Sunday - Thursday. The layout of this space shall at all times be generally consistent to the floor plan dated January 7, 2013, and attached hereto as Exhibit B, although the exact location of the tables and seating may vary. The plans are also subject to reasonable adjustments as the final building permit plans are finalized. The maximum seating capacity for the Lower Patio shall be thirty (30). The maximum aggregate capacity for the Lower Patio, whether seated or standing, shall be thirty-six (36) persons. The fire pit intended for this space shall be a gas-burning fixture only and shall not be lit at any time when the Lower Patio is closed or unoccupied. Music shall not be permitted on the Lower Patio at any time. To the extent possible, Pinstripes shall prohibit loitering in areas adjacent to the Premises. If such loitering occurs

and disrupts the Association's Residents, Pinstripes agrees to meet with the Association to discuss and implement possible solutions. Pinstripes also agrees to take measures to prevent any unauthorized use of the Lower Patio.

- j. Screening. Pinstripes shall use screen walls or landscaping or a combination of both to limit the effect on the privacy of nearby properties of the Upper and Lower Patios.
- k. Noise and Vibration Within the Premises. The Premises shall be constructed in such a manner that operation of the bowling lanes, including bowling, setting pins, rolling balls, interaction among patrons, or any other noise or vibration associated with the operation of the Premises, shall not be heard or felt in any of the Association Residences. All such noise and vibration shall be contained within the Premises. Soon after Pinstripes commences its design efforts, Pinstripes shall provide the Association with a copy of the specific sound attenuation design plans it intends to include in its detailed building permit plans, to be prepared and submitted in the future ("Plans"). The Association shall have the opportunity to have its acoustic consultants review the Plans to ensure that the Premises will be designed in a manner such that all noise and vibration associated with the operation of the Premises shall be confined in the Premises. The Association shall submit all comments on the Plans in writing to Pinstripes within ten (10) days. Pinstripes shall give due consideration to the comments provided by the Association. Nothing in this paragraph shall relieve Pinstripes of its obligation to comply with the restrictions outlined in subparagraphs above. Further, during the course of

construction, Pinstripes shall provide the Association's acoustic consultants with reasonable access to the Premises upon reasonable notice to allow the consultants to confirm whether the sound attenuation measures are being implemented. Also, Pinstripes' acoustic consultant shall analyze the effect of the human voice on properties that confront the canal in an effort to minimize sound impacts of the use of the Upper and Lower Patios to the extent reasonably feasible.

1. Condominium Liaison. Pinstripes shall provide to the Association both a phone number and an e-mail address of a Pinstripes representative, so that any Resident may contact Pinstripes in the event of disturbances from noise or other aspects of the Pinstripes operation. Pinstripes will use best efforts to address those concerns immediately. In addition, Pinstripes agrees to have a management representative attend a meeting with the Association on a monthly basis (or less often, at the Association's election) during build-out of the Premises and for the first six months after Pinstripes opens for business, and thereafter at least twice a year, to work together to resolve any concerns.
- m. Construction Hours. Pinstripes will neither undertake any concrete demolition or any outdoor work involving the Upper Patio prior to 9 a.m., Monday through Saturday. Pinstripes will otherwise use good faith efforts to commence with any construction generating excessive noise after 9 am. Any other construction shall be performed within the hours permitted on the building permit issued to Pinstripes.
- n. Exterior Signage and Lighting. All exterior signage shall be designed in a

manner that is sensitive to the building's location in the Georgetown Historic District. Further, all exterior signs shall be subject to approval by the Old Georgetown Board. All exterior signage that has lighting must be turned off within thirty (30) minutes of closing. There shall be no flashing lights outside the Premises.

3. Consultant Expenses. Landlord shall pay for the retention of the Association's acoustic engineer up to a maximum of \$10,000. The Association has retained land use counsel and condominium association counsel specific to the issues related to this Agreement. Landlord shall pay for the services of said counsel up to a maximum of \$20,000; all invoices shall be accompanied with an itemized bill for services. Association's counsel shall only be reimbursed if this Agreement is executed prior to the public hearing on January 15, 2013.

4. Entitlement Applications. The Association agrees that it shall neither oppose BZA Case No. 18486 when it appears before the Board of Zoning Adjustment on January 15, 2013, nor shall it submit any letters or notices in opposition into the record for the case; any letters of opposition or requests for a continuance already submitted by the Association shall be withdrawn prior to or at the public hearing. Notwithstanding anything in this Agreement, Residence unit owners individually shall retain all rights to participate in the BZA, ABC, or other proceedings and oppose or support the actions of Pinstripes. The Association shall not submit any letters or notices in opposition into the record for any case before the ABC Board. Further, the Association shall not submit any letters or notices in opposition into the record for any case before the Old Georgetown

Board for plans that are consistent with the concepts addressed in this Agreement, such as the enclosure of the Upper Patio.

5. Modifications; Waivers. Modifications, waivers, and consents regarding this Agreement shall be binding only if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

6. Notices. All notices and other communications hereunder shall be in writing and either personally delivered (which will be deemed given upon delivery or upon the first refusal to accept delivery) or delivered by a nationally recognized overnight courier service (such as UPS or Federal Express) as follows:

If to Pinstripes: Dale Schwartz  
Pinstripes, Inc.  
1150 Willow Rd  
Northbrook, IL 60062

If to Landlord: Scott Milsom  
Vornado  
888 7<sup>th</sup> Ave  
44<sup>th</sup> floor  
New York, NY 10019

Copies to: Allison C. Prince  
Goulston & Storrs  
1999 K Street, NW  
Suite 500  
Washington, DC 20006

If to the Association: Georgetown Park Unit Owners' Association  
c/o Julie Dymoski  
Whiteford, Taylor, Preston, LLP

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Copies to: Martin P. Sullivan  
Sullivan & Barros, LLP  
1990 M Street, NW  
Suite 200  
Washington, DC 20036

The parties to this Agreement shall be responsible for notifying each other of any change of address or change in the persons to be notified.

7. Severability; Governing Law. The provisions of this Agreement are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions. This Agreement shall be governed by, construed and enforced according to the laws of the District of Columbia.
8. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.
9. Counterparts. This Agreement may be executed simultaneously in any number of counterparts by original or facsimile signature, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.
10. Application and Expiration. This Agreement pertains solely to the operation of Pinstripes and not to the operation of the GTP Mall. In the event Pinstripes does not obtain a certificate of occupancy for its space, this Agreement shall terminate. Neither Pinstripes nor Landlord shall oppose attaching this Agreement in whole, or the conditions herein in total, to BZA Order No. 18486 or any eventual Alcoholic Beverage Control Board Order, as set forth in Paragraph 2 above. Neither Pinstripes nor Landlord shall request a modification of these conditions

from the BZA of any of the conditions included in this Agreement, without the consent of the Association. Any condition listed in this Agreement shall be specifically enforceable by the parties to this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first  
above written:

PINSTRIPE\$:

PINSTRIPE\$, INC., a Delaware corporation

By:

Dale Schwartz, Chief Executive Officer

LANDLORD:

AG GEORGETOWN PARK HOLDINGS I,  
L.L.C., a Delaware limited liability company

By: AG Real Estate Manager, Inc.,  
a Delaware corporation, its co-manager

By: SPM

Name: SPM  
Title: 1/15/13

ASSOCIATION:

GEORGETOWN PARK UNIT OWNERS  
ASSOCIATION, a District of Columbia  
unincorporated condominium association

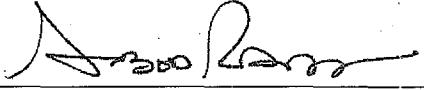
By: \_\_\_\_\_

Name:

Title:

ASSOCIATION:

GEORGETOWN PARK UNIT OWNERS'  
ASSOCIATION, a District of Columbia unincorporated  
condominium association

By: 

Name: Johnny Abedrabbo

Title: GTPCA Vice President