**NEIGHBORHOOD COOPERATION AGREEMENT**

This AGREEMENT, made as of this ____ day of _____, 2002, by and among the Tutorsky Mansion, LLC, a District of Columbia Corporation, represented by Mr. Humberto Gonzalez, its President, (collectively referred to herein as "Mr. Gonzalez"), Advisory Neighborhood Commission 2B (hereinafter referred to as "ANC 2B"), The Dupont Circle Citizens Association (Hereinafter referred to as "DCCA")and the undersigned neighbors of Mr. Gonzalez: _____ _____ (hereinafter, with their successors in interest, collectively referred to as the "Neighbors").

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WITNESSETH:

WHEREAS, Mr. Gonzalez is the owner of 1720 16th Street, N.W., the Tutorsky Mansion, (herinafter "the building") which is formally known as Lot 800 in Square 178 and which is a contributing building to the Sixteenth Street Historic District; and

WHEREAS, pursuant to the application filed with the District of Columbia Board of Zoning Adjustment ("BZA") as BZA Application No. 16823, Mr. Gonzalez seeks variances (1) to permit up to 11 bed and breakfast guestrooms (he has a certificate of occupancy for 6 units), (2) to expand the number of permitted employees from 1 to 6 (on site at one time), and (3) occasionally to use the building for events; and

WHEREAS, the Neighbors, DCCA, and ANC 2B consider the retention of peace, order and quiet of the neighborhood of paramount importance; and

WHEREAS, the Neighbors, ANC2B, and the DCCA are concerned that unless the proposed operation of the Tutorsky Mansion as a bed and breakfast is in accordance with this agreement that the peace, order and quiet of the neighborhood may be severely undermined; and

WHEREAS, Mr. Gonzalez desires to address the various concerns raised by Neighbors, DCCA, and ANC 2B and recognizes the importance of living in harmony with his neighbors, and seeks to contribute toward the improvement of the neighborhood; and

WHEREAS, Mr. Gonzalez intends to minimize the impact of the building on the community arising from its expanded operations; to operate with consideration for the neighborhood with respect to noise, parking, trash, and other factors; and to maintain communication with Neighbors, DCCA, and ANC 2B to the fullest extent possible; and

WHEREAS, Mr. Gonzalez desires to obtain the support of Neighbors, DCCA, and ANC 2B as necessary to fully implement the proposed use of the building as modified under this Agreement; and

WHEREAS, Mr. Gonzalez, Neighbors, DCCA, and ANC 2B recognize the importance and necessity of working together closely to ensure, on a continuing basis, the compatibility of the proposed development with the qualities of the adjoining neighborhood.

BZA
Case No. 16823
Exhibit No. 38
Board of Zoning Adjustment
District of Columbia
CASE NO.16823
EXHIBIT NO.38

NOW, THEREFORE, in consideration of the foregoing and of the agreements herein contained, and for other good and valuable consideration, as further described herein, the mutual receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**Rules for Events**

1. Events and functions (hereinafter referred to as "events"), are defined as receptions, weddings (with or without receptions); fund-raisers, conferences and meetings (with or without receptions); art openings; and other similar gatherings, whether arranged by Bed and Breakfast guests or non-guests. In any event there shall be no more than 33 events per year, further limited as follows:

2. Daytime events shall be limited to 60 guests, 15 per year and 2 per month. A daytime event shall be an event at any time between the hours of 8:30 a.m. and 5 p.m., Monday through Friday. There shall be no events after 5:00 p.m., Monday through Thursday.

3. Weekend events on Saturday and Sunday shall begin no earlier than 11:00 a.m. and end no later than 8:30 p.m.Weekend events on Fridays shall begin no earlier than 5:00 p.m. and end no later than 8:30 p.m. Weekend events for up to 110 guests shall be limited to 14 per year and 2 per month. Additionally, weekend events for up to 150 guests (but no more than permitted by the Fire Code in force at the time) shall be limited to 4 per year and one per month. Caterers for all weekend events may set up no earlier than 9:30 a.m. and will be cleared by 9:30 p.m. Friday evening events may begin as early as 2:00 p.m. if a single event. No events will be permitted for more than 150 guests.

4. Event organizers will be required to provide appropriate security.

5. If a wedding and reception are held at the Mansion, only the wedding portion of the event may be in the courtyard along with unamplified music. Pictures may also be taken in the courtyard. Otherwise no events will be held in the courtyard and there will be no music or speeches at any time

6. Events will not be scheduled in the courtyard. Reasonable efforts will be made to limit event guest access to the courtyard, including, but not limited to, posting and maintaining signs at the entrance to the courtyard stating that guests are restricted to the interior of the house, and prohibiting bar or food service in the courtyard. In the event of complaints from neighbors about loud talking or other objectionable noise, event guests will be required to return to and remain in the house. Moreover, whenever there is music or amplified speeches in the house, windows will remain closed.

7. Tables and chairs for events will be owned by Mr. Gonzalez and stored on premises.

8. To the extent that normal trash removal proves inadequate for catered events, the caterer will be responsible for removal of trash after an event.

9. Parking on premises will be for caterer, employees, guests, or family. The caterer will park its van in the garage area or across the driveway access to the garage on Riggs Place and will not block the alley or Riggs Place. Reasonable efforts will be made to assure the caterer will not double park on Riggs Place or block traffic on Riggs Place or the alley.

10. Parking for events will be in the parking lot of the Scottish Rite Temple or by valet parking at other parking garages, or both. Lineups for valet parking will be on 16th Street. Valet parkers shall not park on Riggs Place nor in the alley nor use Riggs Place or the alley as a drop-off area. Staff from the Building will supervise valet parkers to assure compliance with the rules. Mr. Gonzalez shall provide ANC 2B, DCCA and the neighbors with copies of parking agreements. Subsequently, a copy of the agreement with a parking facility shall be available to ANC 2B, DCCA, or the Neighbors on request.

**Bed and Breakfast Operations**

11. Delivery vehicles will not double-park on Riggs Place or park in or block the alley.

12. Unless it becomes impracticable, linens will be washed on premises and linen delivery will not be necessary.

13. Lighting at the rear of the premises will be sufficient to provide reasonable security but will be directed away from neighboring windows. Those lights not directed at the building will utilize low glare lights.

14. Parking for bed and breakfast guests will be at parking garages (for example, 11 DupontCircle and Universal North). Mr. Gonzalez will arrange to pay for the parking spaces as needed and will initially provide neighbors with a letter from such garages indicating the availability of such spaces. Subsequently, a copy of the agreement with a parking facility shall be available to ANC 2B, DCCA, or the Neighbors on request. Mr. Gonzalez will put up signs in the alley instructing guests and others not to park or stand in the alley.

15. Breakfast shall be served inside the house. Guests may bring food in the courtyard or occasionally have waitress service to clean away or deliver plated food. There shall be no buffet service in the courtyard. With the exception of weddings, there shall be no music in the courtyard.

**Alcoholic beverages**

16. With respect to the events contemplated herein, Mr. Gonzalez and his caterers will not seek other than a one-day license for the service or sale of alcoholic beverages and these shall be limited to 24 per year. If the ABC board by practice, law, or regulation ceases issuance of one day licenses, the parties will meet to negotiate the matter and a reasonable accomodation for the service or sale of alcohol at events will not be unreasonably denied or delayed. Beyond that, in no event will Mr. Gonzalez seek or obtain an ABC license.

**Expansion**

17. So long as the zoning of the subject property or any proposed expansion property remains residential, Mr. Gonzalez agrees not to expand his bed and breakfast or event site facility to other properties on the square or adjacent squares. Mr. Gonzalez further agrees not to initiate such a zoning change.

**Trash**

18. Trash will be kept in approximately five (5) trash cans which will be securely covered and stored in a bricked-in area adjacent to the alley. Trash pickup will be consistent with the frequency of city pickup but, in any event, no less than twice a week. However, when necessary, Mr. Gonzalez shall arrange for more frequent trash pickup. In addition, Mr. Gonzalez will take all reasonable steps to assure that trash cans are restored to the holding area after emptying and to prevent vermin.

**Enforcement and Liaison Committee**

19. The parties will establish a Liaison Committee which will include a representative of Mr. Gonzalez, a representative of ANC 2B, a representative of DCCA and two representatives of the Neighbors. The Liaison Committee will, by concensus, adopt rules for its operation consistent with the provisions of this agreement. Except for accepting its rules, the Liaison Committee will have no enforcement authority, including seeking arbitration, prior to issuance of a certificate of occupancy.

20. Mr. Gonzalez will provide the Liaison Committee with a schedule of events approximately once per month and additionally upon request. The members of the Liaison Committee who represent the Neighbors, the ANC and DCCA will receive complaints from neighbors alleging a violation of this agreement and communicate non-frivolous complaints to Mr. Gonzalez. Before initiating a proceeding, they will attempt to adjust and resolve the matter with Mr. Gonzalez. Mr. Gonzalez shall use best efforts to resolve the issue as promptly as possible. As part of such effort, Mr. Gonzalez will consider modifying its operations or take other appropriate action in such a way as to avoid further violations. If the issue is not resolved, the person or party raising the issue, or Mr. Gonzalez, shall notify the Liaison Committee. The Liaison Committee shall attempt to resolve the problem within 30 days to the satisfaction of all members of the Liaison Committee. During this process, Mr. Gonzalez, ANC 2B, DCCA and Neighbors are committed to working in good faith toward resolution of the problem. If the Liaison Committee cannot resolve an issue brought before it, any member of the Liaison Committee, may initiate arbitration.

21. The Liaison Committee will also work in good faith with Mr. Gonzalez to preserve the peace, order and quiet of the neighborhood.

22. The Liaison Committee will appoint an Arbitrator, when needed, by mutual consent, who will interpret and enforce this Agreement.

23. On as expeditious a schedule as possible, the Arbitrator shall conduct a proceeding where, with minimum formality, the Arbitrator will hear and determine the violations of this agreement, decide whether relief shall be granted and issue an appropriate order. The ruling of the Arbitrator shall be made within 30 days after conclusion of the hearing and shall be binding and conclusive and shall not be subject to appeal. It may be entered by any party as a judgment under D.C. Code sections 16-4310, 4311 or 4312 and be enforceable through the Superior Court of the District of Columbia as provided by D.C. Code section 16-4313, as amended from time to time.

24. If the Arbitrator finds against Mr. Gonzalez, the Arbitrator may issue a warning or impose penalties with consideration for the following guidelines:

    a) for a substantial violation (that is, other than a minor non-compliance) a fine of up to $250 per infraction for the first three infractions in any one calendar year; up to $500 per infraction for each of the next three infractions per year; and up to $1,000 per infraction for each subsequent infraction;

    b) a direction similar to an injunction or cease and desist order to Mr. Gonzalez to refrain from certain conduct or to undertake certain conduct, consistent with this Agreement in cases of substantial and repeated violation.

25. Penalties will be donated to a § 501(c)(3) organization(s) selected by ANC 2B.

26. If the Arbitrator rules substantially against Mr. Gonzalez, the Arbitrator's fees shall be paid by Mr. Gonzalez. If the arbitrator rules substantially for Mr. Gonzalez, the Arbitrator's fees shall be paid one-half by the party or parties which initiated the proceeding, and one-half by Mr. Gonzalez. If the Arbitrator determines that the position of the initiating party was frivolous, the Arbitrator's fees will be imposed on the party who initiated but did not prevail.

27. It is further understood that ANC 2B may independently bring forward its own concerns under District laws and regulations.

**Neighborhood, DCCA, and ANC 2B Support**

28. The Neighbors and ANC 2B (consistent with its rules) will support, in writing, on request, Mr. Gonzalez' application no. 16823 before the BZA.

29. The parties hereto agree to request that the BZA incorporate this agreement by reference in any Final Order in Case No. 16823. In any event, all the terms of this agreement shall continue in full force and effect as an agreement among the parties, and, except as specified herein shall be enforceable as permitted by law, including through injunctive relief.

**General Provisions**

30. It is understood that this Agreement does not limit the ability of any party at any time to enforce existing law or the Zoning Regulations or to seek or oppose any change in any existing law or the Zoning Regulations, nor does it prevent Mr. Gonzalez from using his property in any manner which is permitted by law and which is not restricted by the terms of this agreement This paragrph is not intended to dilute or lessen the prohibitions against expansion as provided in paragraph 17.

31. It is expressly understood and agreed that the ability of Mr. Gonzalez to use the building in the manner described herein is a material inducement for Mr. Gonzalez to enter into this Agreement. Accordingly the terms of this Agreement will become effective upon the issuance of the certificate of occupancy for the uses described in the order of the BZA in Case No. 16823. and the time for taking an appeal from the action of the BZA has expired without any appeal having been taken. It is further understood that the obligations of this agreement will not apply when the property a) is not being used for a bed and breakfast and b) is not being used for the events described above. Moreover, this agreement will terminate and have no further force and effect when and if the premises no longer have the right to be used as a bed and breakfast of 11 rooms or as a location where events may be held as permitted by the BZA in the Order in Case No. 16823.

32. If at any time after fifteen (15) years from the date of this agreement, Mr. Gonzalez believes that there have been substantial changes in circumstances, the neighborhood or the law such that any of the provisions of this agreement (except for the expansion provisions in paragraph 17) should be reconsidered or he should be permitted relief from this agreement, he shall first bring the matter up with the Liaison Committee. If the Liaison Committee cannot agree on such requested relief, Mr. Gonzalez may petition the BZA or other appropriate District governmental agency for such changes to or relief from the conditions imposed by the BZA Order. Mr. Gonzalez will provide the members of the Liaison Committee with copies of any such petition within 5 days after it is filed.

33. If any provision of this Agreement or any application thereof shall be declared to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect. Nothing herein will supersede the laws and regulations of the District of Columbia or prevent the parties hereto from seeking enforcement of said laws and regulations.

34. This Agreement constitutes the entire agreement between the parties with respect to the subject matter described herein.

35. All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

36. During the period of this Agreement, except as otherwise provided, the parties shall not seek any order from the BZA or any other District or federal agency that is inconsistent with this Agreement.

37. The terms of this Agreement are binding on Tutorsky Mansion, LLC, Mr. Gonzalez, any and all future owners of the Tutorsky Mansion, and all subcontractors, agents, assigns and other successors in interest of Tutorsky Mansion, LLC, Mr. Gonzalez and any and all future owners of the Tutorsky Mansion; and on ANC 2B, DCCA, and Neighbors and their successors in interest.

38. No change or modification of this Agreement or any waiver of the provisions hereof shall be valid unless same is in writing and signed by Mr. Gonzalez and a majority of the other members of the Liaison Committee. Waiver from time to time of any provision or of any default hereunder shall not be deemed to be a full waiver of such provision or waiver of any other provision hereunder or a waiver of any earlier or later default. All notices and communications hereunder shall be in writing and deemed duly given if personally delivered or delivered by facsimile or certified mail, return receipt requested, postage prepaid as follows:

a) If to Neighbors:

Ms. Anne Alvarez
1612 S Street, N.W.
Washington, D.C. 20009

P Kenneth Jadin,
1614 S Street, N.W.
Washington, DC 20009

Mark Simonoff, Esq.
1609 Riggs Place, N.W.
Washington, DC 20009

_____

_____

b) If to Humberto Gonzalez:

Humberto Gonzalez
1720 16th Street, N.W.
Washington, DC 20009

c) If to ANC 2B:

Mr. Vince Micone
2007 O Street, N.W. #105
Washington, D.C. 20036
Fax: 202-861-0519

| | | |
|---|---|---|
| | With a copy to: | ANC 2B<br>9 Dupont Circle, N.W.<br>Washington, D.C. 20036<br>Fax: 202-296-7333 |
| d) | If to DCCA | Michael Fasano |

39. The parties hereto shall be responsible for notifying each other of any change of address or change of parties to be notified.

40. Any date specified in this Agreement which is a Saturday, Sunday or legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. Any reference herein to the singular shall include the plural and reference to the male, female or neuter gender shall include reference to all other genders.

41. Time shall be of the essence with regard to all matters contained within this Agreement.

42. The date on which this Agreement is accepted by the last party to accept and sign this Agreement shall be inserted as the effective date of this Agreement under the first paragraph. This Agreement may be executed in counterparts, such that all counterparts when read together shall constitute one instrument.

IN WITNESS WHEREOF, Mr. Gonzalez has executed these presents:

Witness:_____ By:_____
Humberto Gonzalez, Owner

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that HUMBERTO GONZALEZ personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of _____, 2002, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this ____ day of _____, 2002.

_____
Notary Public

My Commission Expires:_____

*IN WITNESS WHEREOF, the said* ANC 2B has caused these presents to be signed by Vince Micone, its Chair, attested by _____, its Secretary, and does hereby *constitute and appoint* said Vince Micone its true and lawful attorney in fact, for it and in its name to acknowledge and deliver these presents as its act and deed.

ANC 2B

By:_____
Vince Micone, Chair

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that VINCE MICONE, who is named as attorney-in-fact for ANC 2B, personally appeared before me in said District, the said Vince Micone being personally well known to me (or satisfactorily proved to me) as the person named as attorney-in-fact in the above instrument for the said, ANC 2B, and acknowledged the same to be the act and deed of the said ANC 2B and that he delivered the same as such, on this date, _____.

Given under my hand and seal this ____ day of _____, 2002.

_____
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, P. Kenneth Jadin has executed these presents.

Witness:_____ By:_____

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that P. Kenneth Jadinpersonally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of _____, 2002, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this ____ day of _____, 2002.

_____
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Mark Simonoff, Esq. has executed these presents.

Witness:_____ By:_____

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that Mark Simonoff, Esq. personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of _____, 2002, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this ____ day of _____, 2002.

Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written,
Anne Alvarez has executed these presents.

Witness:_____ By:_____

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that Anne Alvarez, personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of _____, 2002, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this ____ day of _____, 2002.

_____
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, the said DCCA has caused these presents to be signed byMichael Fasano, its Chair, attested by _____, its Secretary, and does hereby constitute and appoint said Michael Fasano its true and lawful attorney in fact, for it and in its name to acknowledge and deliver these presents as its act and deed.

ATTEST: DCCA

By:_____ By:_____
Secretary Chair

DISTRICT OF COLUMBIA ) ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that Michael Fasano, who is named as attorney-in-fact for DCCA, personally appeared before me in said District, the said Michael Fasano being personally well known to me (or satisfactorily proved to me) as the person named as attorney-in-fact in the above instrument for the said, DCCA, and acknowledged the same to be the act and deed of the said DCCA and that he delivered the same as such, on this date, _____.

Given under my hand and seal this ____ day of _____, 2002.

_____
Notary Public

My Commission Expires:_____