

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

**In the Matter of:**

BTS Two, LLC  
t/a Burger Tap & Shake

Applicant for a New  
Retailer's Class CR

at premises  
4445 Wisconsin Avenue, N.W.  
Washington, D.C. 20016

Case No. 15-PRO-00009  
License No. ABRA-097478  
Order No. 2015-148

BTS Two, LLC, t/a Burger Tap & Shake (Applicant)

Jonathan Bender, Chairperson, Advisory Neighborhood Commission (ANC) 3E

**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Herman Jones, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND  
WITHDRAWAL OF PROTEST OF ANC 3E**

The Application filed by BTS Two, LLC, t/a Burger Tap & Shake, for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on March 2, 2015, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 3E have entered into a Settlement Agreement (Agreement), dated March 12, 2015, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Jonathan Bender, on behalf of ANC 3E, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 3E of this Application.

Accordingly, it is this 22nd day of April, 2015, **ORDERED** that:

1. The Application filed by BTS Two, LLC, t/a Burger Tap & Shake, for a new Retailer's Class CR License, located at 4445 Wisconsin Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 3E in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 5 (Entire Agreement) – The following sentence shall be modified to read as follows: “This Agreement may be changed by either a writing signed by both parties or a unilateral termination with prior Board approval.”

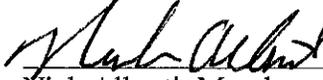
Section 6 (Successor and Partial Invalidity) – The following sentence shall be modified to read as follows: “This Agreement shall be binding on and inure to the benefit of the parties and their respective successors.”

4. Copies of this Order shall be sent to the Applicant and ANC 3E.

District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member

Mike Silverstein, Member



Hector Rodriguez, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433, 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, 2000 14<sup>th</sup> Street, N.W., Suite 400S, Washington, DC 20009.

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, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) 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) (2004).

**ADVISORY NEIGHBORHOOD COMMISSION 3E**

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS

c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015

[www.anc3e.org](http://www.anc3e.org)**SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** (the "Agreement") is dated March 12, 2015, and is by and between **BTS TWO LLC** (operating as **Burger Tap & Shake**) and referred to herein as the Applicant, and **Advisory Neighborhood Commission 3E ("ANC 3E")**.

**WHEREAS**, the Applicant has applied to District of Columbia Alcohol Beverage Administration ("**ABRA**") for a new Retailer's Class C license in connection with the opening of a restaurant at 4445 Wisconsin Avenue NW, ABRA-097478 ("**Application**"); and

**WHEREAS**, the Applicant has also applied to the Public Space Management Branch of the District Department of Transportation ("**DDOT**") for approval of certain improvements and modifications to the outdoor café of the restaurant ("**Public Space Application**"); and

**WHEREAS**, at its meeting on February 19, 2015, ANC 3E adopted a resolution to protest the Application based on the belief that granting the Application – in particular, an outdoor bar in public space and the applied-for hours of alcohol services – would be a detriment to peace, order, and quiet, especially to residents of the condominium, Cityline at Tenley, directly across Wisconsin Avenue; and

**WHEREAS**, the Applicant and the Commission have negotiated this Agreement to address these concerns.

**NOW, THEREFORE**, the parties agree as follows:

**1. Amendment to ABRA-097478**

The Applicant shall amend its Application as follows to limit the hours during which alcoholic beverages will be served to:

- a. **Weeknights (Sunday through Thursday) 8 AM – 12 Midnight indoors and 8 AM – 11 PM on the sidewalk café.**
- b. **Weekends (Friday and Saturday) 8 AM – 1 AM indoors and 8 AM – 12 Midnight on the sidewalk café.**

Further, the Applicant agrees that:

- **The kitchen shall remain open until one hour prior to closing; and**

- To the extent the Applicant plays recorded music or any other amplified sound in the café area, the levels shall not be audible from any point that is north of the southern wall, and an imaginary line extending east and west from the southern wall, of the building located at 4501 Wisconsin Avenue, NW.

## **2. Acceptance and Incorporation of Agreement by ABRA.**

In consideration of the representations made in Paragraph 1, ANC 3E agrees to withdraw its protest to the Applicant's ABRA Application. However, if ABRA does not accept the terms of this Agreement and incorporate the limits set forth in Paragraph 1 into its order, this Paragraph shall be null and void and ANC 3E will continue to protest the Application.

## **3. Applicant's Public Space Application**

The Applicant has agreed to amend its Public Space Application to eliminate the bar in the sidewalk café. This Agreement applies only to Applicant's ABRA Application, and shall not prejudice the ANC's ability to raise any issues or concerns before any other administrative agency in connection with the subject premises.

## **4. Notices.**

In the event of a violation of this Agreement, the Applicant shall be notified in writing of such violation. Any notices required to be given under this Agreement shall be in writing and mailed by certified mail or hand delivered to the other parties at the addresses shown below. Notice is deemed given upon receipt.

### **To Applicant:**

BTS TWO, LLC  
c/o Passion Food  
1010 Massachusetts Avenue NW, Suite 1213  
Washington, DC 20001

### **With a copy to:**

Andrew Kline  
The Veritas Law Firm  
1225 19<sup>th</sup> Street NW, Suite 320  
Washington, D.C. 20036

### **To ANC 3E:**

ANC 3E  
c/o Lisner Home  
Suite #219  
Washington DC 20016

All parties may change the address to which notice is given by written notice to the other parties as provided above. Failure to give notice shall not constitute waiver of acquiescence to the violation but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

**5. Entire Agreement.**

This Agreement sets forth the entire understanding of the parties. This Agreement may be changed only in a writing signed by both parties. This Agreement shall be construed in accordance with the laws of the District of Columbia.

**6. Successors and Partial Invalidity.**

This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. In the event any part of this Agreement should be determined by a court of competent jurisdiction or the ABRA to be invalid or unenforceable, the validity of the rest of the Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the part held invalid or unenforceable.

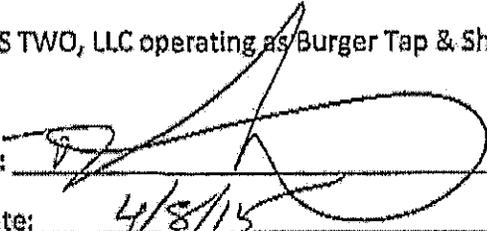
**7. Authority.**

Each party who signs the Agreement warrants that he or she is authorized to do so.

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

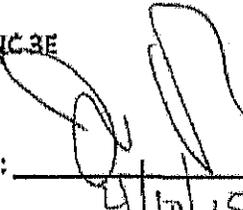
Applicant

BTS TWO, LLC operating as Burger Tap & Shake

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

Date: 4/8/15

ANC 3E

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

Date: 4/10/15