

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

In the Matter of:)	
)	
Daikaya Shaw, LLC)	
)	Case No. 16-PRO-00002
Applicant for a New)	License No. ABRA-100621
Retailer's Class CR License)	Order No. 2016-066
)	
at premises)	
805 V Street, N.W.)	
Washington, D.C. 20001)	

Daikaya Shaw, LLC (Applicant)

James A. Turner, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 1B

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 1B'S PROTEST**

The Application filed by Daikaya Shaw, LLC (Applicant), 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 January 19, 2016, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 1B have entered into a Settlement Agreement (Agreement), dated February 4, 2016, 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 James A. Turner and Commissioner Rob Hudson, on behalf of ANC 1B, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 1B.

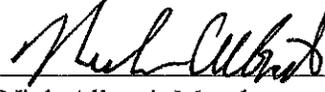
Accordingly, it is this 11th day of February, 2016, **ORDERED** that:

1. The Application filed by Daikaya Shaw, LLC, for a new Retailer's Class CR License, located at 805 V Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 1B in this matter is hereby **WITHDRAWN**;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; and
4. Copies of this Order shall be sent to the Applicant and ANC 1B.

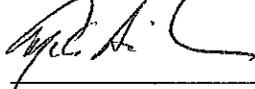
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



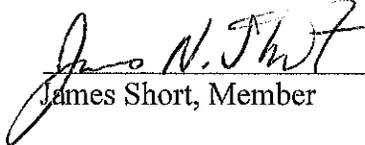
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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 14th 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).

Settlement Agreement Concerning Issuance of License 100621
to Daikaya Shaw, LLC, 805 V Street, N.W., Washington, D.C.

THIS AGREEMENT made and entered into on Feb. 4, 2016 by and between Daikaya Shaw, LLC ("Applicant") and ANC 1B ("Protestant").

WHEREAS, Applicant has filed Application No. 100621 with the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for a new class "C" Restaurant license for premises to be known as TBD, and located at 805 V Street, N.W., Washington, D.C. (hereinafter the "Premises"); and

WHEREAS, Protestant has concerns opposing the granting of this application; and

WHEREAS, in recognition of the ABC Board's policy of encouraging parties to a contested proceeding to settle their differences by reaching settlement agreements, by their signatures below, the parties hereto desire to enter into a settlement agreement whereby (1) Applicant will agree to adopt certain measures to address Protestant's concerns and to include this Agreement as a formal condition of its Application, and (2) Protestant will agree to the issuance of the new license and withdraw any protest provided that this Agreement is incorporated into the ABC Board's order issuing the license, which license is conditioned upon compliance with this agreement; and

WHEREAS, Applicant has recently taken or intends to take certain measures designed to ameliorate Protestant's concerns,

THEREFORE, in consideration of the mutual covenants and undertakings memorialized herein, the Applicant and Protestant hereby agree as follows:

- 1) NOISE. Applicant acknowledges familiarity with and agrees to comply with the noise-control provisions required by District of Columbia law and regulations. In addition, Applicant agrees to comply with the following:
 - a) Summer Garden Area: Applicant will ensure no temporary or permanent speakers will be present on or in the summer garden. Applicant will restrict patrons from using electronic devices as speakers to play music at all times. Applicant agrees not to have any live or recorded music or entertainment on or in the summer garden. Applicant agrees to post signage notifying patrons that business is located in residential area and request patrons to be respectful.
 - b) Summer Garden Materials: Applicant will use enclosed bussing stations to mitigate noise of outdoor restaurant activity, and construct and maintain box planters as a separation between restaurant patrons dining on private land and the public space. As per the diagram attached, the box planters will include a mix of medium (L: 11" x W: 20" x H: 19") and large (L: 16" x W: 44" x H: 16") sizes arranged as a border for Summer Garden.

- c) Other Noise Provisions:
 - i) Applicant will regularly monitor sound to ensure there is no impact on nearby residents.
 - ii) There will be no live musical performances or DJs on the premises.
 - iii) Licensee shall discourage dancing by staff and patrons.
- 2) CAPACITY & SEATING. Applicant shall at all times adhere to its occupancy limit as specified in its Certificate of Occupancy Permit, which shall remain posted in public view at all times.
 - a) Applicant shall post a conspicuous sign at each exit advising patrons of the residential neighborhood and the necessity of quiet departure.
 - b) Summer Garden Area: Applicant agrees to restrict total capacity to 40 people on the summer garden. Tables and chairs shall be located within the summer garden area during all hours of operation. The summer garden area shall, at all times, be operated for the service of seated patrons. At no time shall tables and chairs be cleared to use the summer garden area as a standing cocktail area. Only seated patrons shall be served in the summer garden area.
- 3) TRASH/GARBAGE/RODENTS. Applicant acknowledges familiarity with and agrees to comply with the waste management and other related provisions required by District of Columbia law and regulations. In addition, Applicant agrees to comply with the following:
 - a) Applicant shall maintain trash/garbage removal service at least three times weekly and see that the trash and dumpster area remains clean. Applicant shall request that its trash and recycling contractors pick up the trash and materials no earlier than 9:00 AM and no later than 5:00 PM. No recyclables will be dumped outside of the building between 10:00 PM and 9:00 AM.
 - b) Trash dumpster(s) shall be properly maintained so that they close properly and do not leak. Applicant shall deposit trash and garbage only in rodent-resistant dumpsters and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant is strongly encouraged to use a trash compactor.
 - c) Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster nor dispose of them down the sink. Applicant will work towards solutions removing dumpsters and grease barrels from public space on site and collectively in surrounding block.

- 7) **PARKING.** Applicant will encourage transit use, and will encourage patrons to use nearby public transit facilities rather than parking on residential streets via signage posted on the premises and on the website.
- 8) **NOTICE AND OPPORTUNITY TO CURE.** In the event that any of the parties are in breach of this Agreement, each such party shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within thirty (30) days of the date of such notice. If Applicant or the licensee fails to cure within the thirty day period (or, with respect to a breach which reasonably requires more than thirty days to cure, fails to commence cure of such breach and diligently pursues such cure) such failure shall constitute for filing a complaint with ABRA. Unless otherwise noted above, any notice required to be made under this Agreement shall be in writing postage prepaid, or hand delivered, to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt.
- 9) **MODIFICATION OF SETTLEMENT AGREEMENT.** This agreement can be modified by (a) the mutual agreement of the parties; (b) the unilateral termination sought by the Licensee pursuant to §25-446(d) with the approval of the ABC Board; or (c) the ABC Board.
- 10) **BINDING EFFECT.** This Settlement Agreement shall be binding upon and enforceable against the successors of the Applicant during the term of the license to which this Settlement Agreement applies.

If to Applicant:

Yama Jewayni
Katsuya Fukushima
Daikaya
705 6th St. NW
Washington, DC 20001

If to Protestants:

ANC1B
Attn: Robb Hudson, ANC 1B11
Frank D. Reeves Municipal Center
2000 14th St., NW, Suite 100B
Washington, DC 20009
1b11@anc.dc.gov

- d) Applicant will make every reasonable effort to eliminate accessible food sources for rodents and eliminate the rat population. Applicant will have professional extermination services or provide them as needed.
 - e) Applicant shall provide for the regular maintenance of the site during months when the Establishment is not in operation or is not using all outdoor spaces, including but not limited to snow and trash removal, landscaping, and removal of graffiti.
 - f) Applicant agrees to furnish a smoker pole or other receptacle for cigarette disposal near the business entrance. Applicant agrees to sweep outside the business establishment at opening and closing.
 - g) Summer Garden Bussing: Applicant agrees that removal of trash, recycling, glassware and dishware from the summer garden area shall be done in a manner that mitigates ambient noise; to include, but not limited to, no permanent trash and recycling receptacles on the summer garden.
- 4) SMOKING. Applicant agrees to maintain the summer garden as a non-smoking outdoor space.
- 5) SAFETY & SECURITY. Applicant agrees to file a security plan with ABRA.
- 6) HOURS OF OPERATION.

a) Indoor hours shall be governed by the license.

b) Summer Garden

Day	Hours of Alcoholic Beverage Services	Hours of Operation
Monday	10:00 AM to 12:30 AM	10:00 AM to 1:00 AM
Tuesday	10:00 AM to 12:30 AM	10:00 AM to 1:00 AM
Wednesday	10:00 AM to 12:30 AM	10:00 AM to 1:00 AM
Thursday	10:00 AM to 12:30 AM	10:00 AM to 1:00 AM
Friday	10:00 AM to 1:30 AM	10:00 AM to 2:00 AM
Saturday	10:00 AM to 1:30 AM	10:00 AM to 2:00 AM
Sunday	10:00 AM to 12:30 AM	10:00 AM to 1:00 AM

- c) The licensee may obtain ABC Board approval to sell or serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day on District and federal holidays and various holiday weekends. Licensee is encouraged to notify the ANC when filing such requests.
- d) Applicant agrees to restrict all events to those run by the establishment and will not contract the establishment for any special events to be operated by an outside contractor.
- e) Applicant agrees that patrons may not be seated after closing time in the Summer Garden regardless of alcoholic consumption.

Wherefore, by the signing of the representatives of Applicant and Protestant, Applicant hereby agrees to aforementioned covenants and Protestants agrees to the issuance of the Class C license to Applicant, provided that this agreement is incorporated into the ABRA Board's order issuing a Class C license, the issuance of which is conditioned upon compliance with the Settlement Agreement.

SIGNATURE BLOCKS

Accordingly, on this 4 day of Feb 2016 it is ordered that the Settlement Agreement between Applicant and Protestant is incorporated into the ABC Board's order issuing Applicant an amended Class C license.

Applicant:

Daikaya Shaw, LLC  2/4/16

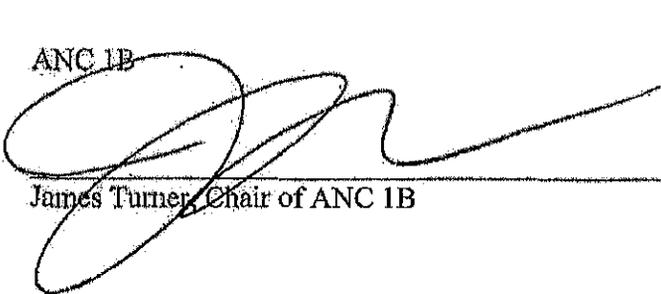
Print Name: _____ Date

Protestants:

ANC 1B11

 2/4/16
Robb Hudson, Commissioner Date

ANC 1B

 2/4/16
James Turner, Chair of ANC 1B Date