

VOLUNTARY AGREEMENT

This Voluntary Agreement (the “**Agreement**”) is made and entered into as of the ^{August}~~March~~ 15th day of ~~March~~, 201~~7~~², by McFadden & Sullivan, LLC, the applicant in ABRA-083505 (“**McFadden**”), and Advisory Neighborhood Commission 3E (“**ANC**”) (McFadden and ANC 3E each being a “**Party**” hereunder or collectively, the “**Parties**”).

WITNESSETH:

WHEREAS, McFadden has sought permission from the District of Columbia Alcoholic Beverage Administration (ABRA) to extend the hours it may serve liquor at its outside café and to permit live music at a restaurant / bar called “Kitty O’Shea’s” (“**O’Shea’s**”) it operates at 4624 Wisconsin Avenue, N.W., which is located within the boundaries of ANC 3E; and

WHEREAS, ANC 3E agrees to support McFadden’s application in ABRA-083505 (“**Application**”), in reliance in part on McFadden’s agreement to certain restrictions contained herein that will reduce potential burden on nearby residents;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. **Limited Hours for Outdoor Café.** McFadden hereby agrees that, notwithstanding any other permission from ABRA or any other agency, it will end operation of all café seating and other operations by 1:00 am on weeknights and 2:00 am on weekends. McFadden further agrees that no music, television, or other entertainment will be played in or around the café seating, or in any other spot except inside O’Shea’s.

2. **Limited Hours and Other Restrictions on Live Music.** McFadden has asked ABRA for permission to permit a 2 or 3-piece acoustic band to play live music at O’Shea’s (“**Music**”). McFadden hereby agrees that, notwithstanding any other permission from ABRA or any other agency, (a) it will not permit Music to be amplified through a public address system or otherwise at any time, (b) it will ensure that no Music can be heard at any residence in the neighborhood, and (c) it will end all Music by 12:30 am on weeknights, and by 1:00 am on weekend evenings.

3. **Attendance at ANC Meetings; Modification.** Should the ANC receive complaints from constituents related to O’Shea’s operations, one or more ANC members may ask McFadden to attend an ANC meeting. Should McFadden receive such a request, it will make every reasonable effort to ensure that an officer or senior staff member attends the meeting (or, if impracticable, the next practicable meeting) and works in good faith with the ANC and the community reasonably to address such complaints.

McFadden may ask the ANC at any time to modify this Agreement. Such a request shall be made in writing. The ANC may ask McFadden to appear at a meeting to present the request to the community. If the ANC agrees to modify the Agreement, such modification may come only pursuant to a formal ANC resolution and a writing signed by the parties.

4. **Miscellaneous Provisions.**

ABRA Adoption: The Parties agree to ask ABRA to incorporate this Agreement to fullest extent possible into any order it may issue regarding the subject application.

Waiver: The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.

Binding on Survivors: All covenants, stipulations, promises, agreements, and provisions in this Agreement shall apply to, bind and be obligatory on the Parties hereto, their heirs, executors, administrators, personal representatives, and successors.

Severability: If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Assignment and Subcontracts: Neither Party may assign any rights or delegate any duties under this Agreement without the express prior written consent of the other Party.

Headings and Paragraphs: Headings in this Agreement are for convenience only and shall not affect the meaning of this Agreement. References in this Agreement to any Section or paragraph are to the applicable numbered section of this Agreement unless otherwise noted.

Counterparts: This Agreement may be executed simultaneously in one or more counterparts, by original or facsimile signature, and when executed by all Parties shall constitute one and the same Agreement.

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

MCFADDEN LLC

By:


Name:
Title: OWNER

Advisory Neighborhood Commission 3E

By:


Name:
Title: Chair, Secretary