

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT (the "Agreement") made this 11th day of September, 2013, by and between the Dancing Crab LLC (the "Applicant") and Advisory Neighborhood Commission ("ANC") 3E.

RECITALS

Whereas on August 29, 2013, the Applicant came before the ANC requesting support for its application to the Public Space Committee, tracking number 84464, for permission to enclose its sidewalk café and outlined its Phase 1 plans to expand its facilities and operations; and

Whereas the Applicant states that while it had a permit for work done to date at the site, there had been an innocent error and both they and the Department of Consumer and Regulatory Affairs had mistakenly believed use of the public space as an enclosed sidewalk cafe had already been permitted (the space had been used and while it had a covering it was not formally enclosed), they later realized that the existing permit did not allow use as an enclosed space and that a new permit authorizing such use was required; and

Whereas the Applicant agrees that while the space may be capable of being fully enclosed and may be fully enclosed in weather requiring enclosure for use, that when the weather permits the street facing windows will be open allowing for full engagement with the street; and

Whereas the Applicant (1) seeks to proceed promptly and with the requisite permissions for its Phase 1 project, (2) hopes to catalyze investments in increasing the vibrancy of and improving the streetscape on its block, and (3) plans to consider further improvements to its property in an eventual Phase 2 of the project (which we understand could entail removal, alteration and/or reconfiguration of the structure in public space, the addition of a space at (or below) ground level, as permitted by all applicable laws, with sidewalk seating out front, and additional stories above the structure currently planned); and

Whereas the ANC wishes to support and encourage all three activities; and

Whereas, the Parties understand that the ANC may enter into contracts but may not initiate suit in DC courts. The Parties nonetheless intend this Agreement to be enforceable fully.

THEREFORE, BE IT RESOLVED THAT

The ANC and Applicant have agreed:

1. The ANC will support the Application to enclose the sidewalk café.
2. The Applicant will support conditioning approval of the Application on its commitment to keep the street facing windows open when the weather permits.
3. The Applicant will work with the ANC to address community concerns and incorporate community input on the design of the building exterior.
4. Upon execution of this Agreement and within 30 days after receipt of all approvals and permits to finalize the enclosed side walk café and either 180 days or receipt of the building permit to add a third story with a roof terrace as currently being resubmitted by Maiden and Associates (Phase One) whichever is sooner, Applicant shall deposit the sum of \$50,000 into an escrow fund ("Escrow") in the District of Columbia. Within 90 days after the \$50,000 escrow fund has been funded by the Applicant pursuant to the conditions above, the ANC, in consultation with the Applicant will identify one or more streetscape improvements ("Designated Improvements") on the Applicant's block. The Designated Improvements shall be reasonably capable of implementation by the Escrow sum. The Applicant will make all good faith efforts to complete the Designated Improvements. Money shall be released from the Escrow under the following circumstances only:
 - a. to pay invoices the Applicant submits and certifies under oath are necessary to complete the Designated Improvements;
 - b. as a refund to Applicant if Applicant certifies that it has completed the Designated Improvements in good faith and funds remain in the Escrow; and/or

- c. If after making all good faith efforts to secure necessary government permissions to make the Designated Improvements, the Applicant certifies under oath that it is impossible to secure all necessary permission to make the Designated Improvements, provided that the Applicant must first appear at a public ANC meeting to detail its efforts.
5. If other business owners on Applicant's block are willing to contribute to additional streetscape improvements, Applicant agrees to match the highest amount contributed by any single business owner on the block up to an additional \$50,000 beyond the Escrow sum.
6. The Applicant will work with the ANC to develop any plans for a Phase 2 of the project.

GOVERNING RULES

Any disputes arising out of or related to this Agreement shall be decided by binding arbitration between the Parties in the District of Columbia pursuant to the rules of the American Arbitration Association. The Parties agree that they will comply with any arbitral decision within the time provided in the decision or, if no time for compliance is set therein, within 15 calendar days. The Parties agree that this Agreement is intended to benefit residents of the area within the jurisdiction of ANC 3E ("ANC Residents"); accordingly, the Parties agree that any such ANC Resident is to be considered a third-party beneficiary of this Agreement for the purposes of ensuring arbitral decisions arising out of or related to it (Arbitral Decisions) are enforced, and that any such ANC Resident may file suit in a Superior Court of the District of Columbia, or, if jurisdiction is otherwise proper there, in the United States District Court for the District of Columbia, to enforce an Arbitral Decision. Any ANC Resident who initiates suit to enforce an Arbitral Decision and who substantially prevails shall be entitled to an award of reasonable attorney fees.

This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Agreement. This Agreement shall be construed in accordance with the substantive laws of the District of Columbia

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement shall be binding upon and inure to the benefit of the parties hereto 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 Public Space Committee 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 particular part held to be invalid or unenforceable.

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 day and year stated below:

APPLICANT: Dancing Crab LLC

By:  _____

Carlos Horcasitas, Owner

Date Signed: September 12, 2013

ANC 3E

By: _____

Jonathan Bender, Chairperson

Date Signed: September 19, 2013