

## LEASE

THIS LEASE AGREEMENT made and entered into the 1<sup>st</sup> day of February, 2023, between the CITY OF CHARLOTTESVILLE, VIRGINIA, a municipal corporation (hereinafter "City" or "Lessor") and the OMNI CHARLOTTESVILLE VIRGINIA CORPORATION, a Virginia corporation, (hereinafter "OMNI" or "Lessee").

WHEREAS the Lessee, who operates the Omni Hotel at 212 Ridge-McIntire Road/235 West Main Street, desires to lease a 502 square foot portion of the City-owned public right of way for West Main Street adjacent to the hotel (the "Property" or "leased Property") for an outdoor cafe, as shown on the attached drawing ("Exhibit A"); and,

WHEREAS the City's zoning administrator, fire code official, and director of utilities, respectively, have verified that the Property: (i) is located outside of the established pedestrian walkway and fire lanes; (ii) there are no City utility lines located within the Property area; and (iii) the Board of Architectural Review has previously approved the design of the proposed outdoor café; and,

WHEREAS in accordance with Virginia Code Sec. 15.2-1800(B), City Council has conducted a public hearing to give the public an opportunity to comment on this proposed lease; and,

WHEREAS the City finds that leasing the Property to the Lessee for an outdoor café contributes to the vitality of the Downtown Pedestrian Mall;

NOW, THEREFORE, in consideration of the mutual benefits hereunder accruing and the mutual obligations herein acknowledged, the parties set forth their agreement for a lease of the Property upon the following covenants, terms and conditions.

1. The Leased Property: The Lessor hereby leases to the Lessee and the Lessee hereby leases from the Lessor approximately five hundred and two (502) square feet of real property located between the southern property line of the Omni Hotel and the Downtown Pedestrian Mall, as designated on the attached survey drawing dated December 3, 2004 (the "leased Property").

2. Term: The term of this Lease shall be for one (1) year, beginning February 1, 2023 and ending January 31, 2024. Unless sooner terminated as provided herein, the parties may mutually agree to renew the lease for up to four (4) additional one year terms, under such terms and conditions as may be agreed to by the parties.

3. Rent: The annual rent for the Property leased herein shall be five dollars (\$5.00) per square foot of the leased Property. Such rent shall be due and payable on the commencement date of this Lease and on the first day of every renewal term.

4. Use of the Leased Property: The leased Property shall only be used for the purpose of an outdoor cafe operated in conjunction with the restaurant located in the Omni Hotel at 235 West Main Street.

- a) The use and operation of the outdoor café shall comply with all provisions of state and local building codes and health laws and regulations regarding the service and preparation of food and, if applicable, in accordance with the regulations of the Virginia Department of Alcoholic Beverage Control.
- b) No tents or other similar structures shall be erected or utilized over or within the leased Property, unless first approved by the city's board of architectural review and inspected by the city's building code official, if required.
- c) Space heaters may be utilized within the leased Property so long as the use and operation of any such heater is in compliance with all applicable building and fire codes and does not present a threat to the health, safety or welfare of the public.

5. Maintenance: The Lessee shall maintain the leased Property in a clean and sanitary condition, shall promptly remove all food dishes and utensils after each customer has left, and shall thoroughly clean the entire area within the leased Property after the close of each business day. The Lessee shall be responsible for routine maintenance and repair of the leased Property and improvements thereon during the term of this Lease. All tables, chairs and equipment located within an outdoor café shall be maintained at all times in good, clean condition.

6. Musical Entertainment: Musical entertainment in the Cafe area shall be limited to unamplified vocal or instrumental performances and such activity shall not be conducted between 12:00 midnight and 11:00 a.m. of any day.

7. Alterations: The City's zoning administrator has verified that the design and appearance of the outdoor café have been approved by the Board of Architectural Review ("BAR"). Lessee agrees that any proposed modification or alteration of the design or appearance of the outdoor café must be reviewed and approved by the BAR prior to implementation.

8. Non-Discrimination: The Lessee shall have the right to limit access and occupancy of the leased Property to paying customers of the outdoor café who are behaving in a lawful manner and shall use the same policies, practices or standards for denial of access or service as the Lessee exercises within the indoor portion of the restaurant of which the café is a component. Notwithstanding the foregoing, no person shall be denied access or service to the cafe on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability.

9. Insurance: The Lessee shall obtain and keep in force throughout the term of this Lease, and any renewal, public liability insurance with coverage in the amount of at least One Million Dollars (\$1,000,000) combined single limit. The City shall be named an "additional insured" with respect to such insurance. Prior to the commencement of this Lease and any renewal the City may require the Lessee to provide documentation satisfactory to the City's Risk Manager demonstrating compliance with this insurance requirement.

10. Indemnification: The Lessee hereby agrees to indemnify and hold harmless the City of Charlottesville (including, without limitation, its officers, officials and employees) from and against all claims for damages or injuries of any kind whatsoever, including all costs related thereto, arising directly or indirectly out of the Lessee's use or operation of the outdoor café within the area of the leased Property.

11. Assignment/Sub-Lease: This Lease may not be assigned by either party, nor may the Property be subleased, without the prior written consent of the other party.

12. Termination:

- a) This Lease may be terminated by mutual agreement of the parties.
- b) The Lessee may terminate this Lease by providing written notice of such termination to the Lessor at least thirty (30) calendar days prior to the effective date of termination.
- c) The Lessor may terminate this Lease (i) for Lessee's violation of any provision of this Lease, including nonpayment of Rent, or (ii) for Lessee's failure to comply with any mandatory requirement of local, state or federal law, or (iii) if the leased Property has not been substantially utilized as an outdoor café for a period of six (6) months. Lessor shall give written notice to Lessee of the basis of a termination under this subparagraph and shall allow Lessee thirty (30) calendar days to remedy the violation or failure to comply. If Lessee fails to remedy the violation or to bring the operation of the Cafe into compliance with applicable law within the 30-day period, this Lease shall terminate without further notice to Lessee.

In the event of termination or expiration of the Lease, the Lessee, at its sole expense, shall remove all structures, equipment and improvements from the leased Property, and shall return the leased Property to the condition existing immediately prior to the commencement of the Lease.

13. Notices: Any notices required by or sent pursuant to this Lease, and any correspondence regarding this Lease, shall either be hand-delivered or mailed by U.S. Mail, first class, postage pre-paid to the following:

**To the Lessor:**

City Manager  
P. O. Box 911  
Charlottesville, VA 22902

**To the Lessee:**

Paul H. Maher, General Manager  
Omni Charlottesville Hotel  
235 West Main Street  
Charlottesville, VA 22902

CITY OF CHARLOTTESVILLE, VIRGINIA

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

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT: OMNI CHARLOTTESVILLE VIRGINIA CORPORATION

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

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit A

