

Prepared By:

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Sands Anderson PC
919 East Main Street, Suite 2300
Richmond, VA 23219

Return To:

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

Tax Map Parcel: 57-22

Prepared without the benefit of a title examination.

ENCROACHMENT AGREEMENT

This Encroachment Agreement ("Agreement") is made this ____ day of _____, 2024 by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), having an address of P.O. Box 911, Charlottesville, Virginia 22902, Grantor for indexing purposes, and **TRIMONT, LLC**, a Virginia limited liability company ("Trimont"), having an address of 455 2nd Street SE, 5th Floor, Charlottesville, Virginia 22902, Grantee for indexing purposes.

WHEREAS, Trimont is the owner of that certain property located in the City of Charlottesville, Virginia, identified as Tax Map Parcel 57-22 (the "Property");

WHEREAS, an existing fence on the Property which delineates an outdoor seating area currently encroaches into the public right of way along Carlton Road (the "Existing Encroachment") as further shown on that certain plat titled "Physical Survey Tax Map 57, Parcels 22 & 23, Charlottesville, Virginia" prepared by Roudabush, Gale, & Associates, Inc., dated November 11, 2003, a copy of which is attached hereto and incorporated herein as Exhibit A (the "Plat");

WHEREAS, Trimont desires to construct a canopy on the Property using the existing fence, new poles, corrugated metal roof sheathing and footers installed below ground in order to provide shade for the outdoor seating area (collectively, the "Canopy Improvements");

WHEREAS, the proposed location of several of the below ground footers and other Canopy Improvements including roof eaves would extend into a public right of way as shown on the engineered drawing attached hereto as Exhibit B (the "Encroachment"), and

WHEREAS, the City desires to approve the Existing Encroachment and further permit the Encroachment pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

1. **Existing Encroachment.** The City hereby acknowledges and approves the Existing Encroachment as shown on the Plat. The City and Trimont hereby agree that the Existing Encroachment is required to complete the installation of the Canopy Improvements.

2. **Authorization to Encroach/Temporary Construction Easement.** Provided the proposed footers remain below ground and the Canopy Improvements do not interfere with pedestrian or vehicular traffic in the public right of way, the City hereby consents to the Encroachment, as further shown on Exhibit B attached hereto. The City hereby grants Trimont a temporary construction easement over, under, through, and across the public right of way for purposes of installing the Canopy Improvements. Upon completion of the Canopy Improvements, this temporary construction easement shall automatically terminate and Trimont, at its sole cost and expense, shall restore the public right of way to its original condition within thirty (30) days. To the extent the Encroachment or Canopy Improvements cause any damage to the public right of way, Trimont, at its sole cost and expense, shall be responsible for repairing any and all such damage within thirty (30) days after receipt of written notice of such damage.

3. **Removal/Destruction of Encroachment/Canopy.** In the event of the removal or destruction of the Encroachment, this Agreement shall automatically terminate and Trimont must apply for a permit to reconstruct the Encroachment under the then existing regulations. Additionally, in the event Trimont ceases use of the Canopy Improvements or otherwise removes the Canopy Improvements (in which event the Encroachment shall no longer be necessary), Trimont, at its sole cost and expense, shall be required to remove the Encroachment and restore the public right of way to its original condition within thirty (30) days. In the event that the City needs to move the footers or any part of the Encroachment in the future in order to make improvements in the public right of way, the City will provide prior written notice to Trimont. Within one hundred eighty (180) days of receipt of such written notice, Trimont, at its sole cost and expense, will remove the Canopy Improvements which are part of the Encroachment and restore the public right of way to its original condition.

4. **Indemnification.** Trimont shall indemnify and hold harmless the City and its agents, employees, successors and assigns, for any claim or loss, including reasonable attorneys' fees, relating to or about the Encroachment or the construction of the Canopy Improvements. Trimont shall maintain general liability and builder's risk insurance in the forms and amounts that may be required by the City and shall ensure that any contractors and sub-contractors retained to complete the Canopy Improvements maintain such insurance as well. Trimont agrees to provide proof of such insurance upon request by the City.

5. **Notices.** Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by (i) United States certified or registered mail, return receipt requested, postage prepaid; (ii) a nationally recognized overnight delivery service using next day delivery; or (iii) personal delivery, to the address set forth above. Notices delivered (i) by the United States Postal Service shall be deemed delivered five (5) days after being deposited with the United States Postal Service; (ii) by a nationally recognized overnight delivery service using next business day delivery shall be deemed delivered the business day after depositing with such carrier; and (iii) by hand shall be deemed delivered upon actual delivery to the recipient. Each party to this Agreement shall notify the other party of a new address to which to provide notice, which

notice shall be given in the manner provided above, and unless and until such notice of a new address is given, notices to a party hereto shall be sufficient if provided to such party's address as specified in this Section.

6. **Breach.** In the event that Trimont breaches this Agreement, the City shall be entitled to (a) all remedies provided for by Virginia law; (b) money damages for any and all damages caused by the breach; (c) attorneys' fees incurred by the City as a result of the breach; and (d) litigation expenses and court costs incurred by the City, as a result of the breach. No act of the City shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, or an election of remedies to bar any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

7. **Governing Law.** It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Virginia.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

9. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if it is in writing and signed by each party or an authorized representative of each party.

10. **Successors and Assigns.** The terms and conditions of this Agreement shall be covenants running with the land and shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

[Signatures Appear on the Following Page]

WITNESS the following signatures and seals.

TRIMONT, LLC
a Virginia limited liability company

By: _____
Name: Andrew J. Dondero
Title: Vice President

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____ to-wit:

The foregoing Encroachment Agreement was acknowledged before me this ____ day of _____, 2024, by Andrew J. Dondero, as Vice President of Trimont, LLC, a Virginia limited liability company.

My Commission Expires: _____

Notary Registration No.: _____

Notary Public

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
Name: _____
Title: _____

STATE OF VIRGINIA
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged before me on this _____ day of _____, 2024 by _____, on behalf of the City of Charlottesville, Virginia.

Notary Public

Registration No: _____

My Commission Expires: _____

Approved as to Form:

Sands Anderson PC
Acting City Attorney

Exhibit A

The Plat

Exhibit B

Drawing showing Encroachment