

CHARLESTON CITY COUNCIL

Regular Meeting

January 22, 2019

at 7:00 PM



Council Chambers, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. Claims

COMMUNICATIONS

MISCELLENOUS RESOLUTIONS

1. Resolution No. 160-19 - Adopting the Rules of Council to govern the proceedings of Council

PUBLIC HEARINGS

1. Resolution No. 159-19- A Resolution authorizing the City Manager to enter into a lease for space in 601 Morris Street with Ristorante Abruzzi, LLC, for the purpose of operating a restaurant, for a term of one (1) year with an option to renew for two additional terms of two (2) years each, a copy of the proposed lease is attached hereto as Exhibit A. The monthly rental for the lease of 4,815 square feet for Ristorante Abruzzi, LLC, is \$3,000.00.

REPORTS OF STANDING COMMITTEES

FINANCE

1. Resolution No. 157-19 - requested a refund in the amount of \$ 10,160.03 for the overpayment of B&O Taxes for 4th quarter 2015. After a review of the Taxpayer's records, by the Auditing Division of the City Collector's Office, the auditors found that the Taxpayer reported revenue generated outside the City to the City of Charleston. The error resulted in an overpayment of taxes. (At the request of the City Manager and City Attorney, taxpayer identity information will be stricken from all records of Council and will not be made available to the public. The Clerk's Office will redact any pertinent information before making it available to the public.)
2. Resolution No. 158-19 - Authorizing the Mayor or City Manager to submit grant applications to the West Virginia State Police Commission on Drunk Driving Prevention during the spring, summer and fall 2019 grant cycles for funds in the amount of \$15,000 each. Funds will be utilized for DUI checkpoints and road patrols by the Charleston Police Department.
3. Resolution No. 159-19- A Resolution authorizing the City Manager to enter into a lease for space in 601 Morris Street with Ristorante Abruzzi, LLC, for the purpose of operating a restaurant, for a term of one (1) year with an option to renew for two additional terms of two (2) years each, a copy of the proposed lease is attached hereto as Exhibit A. The monthly rental for the lease of 4,815 square feet for Ristorante Abruzzi, LLC, is \$3,000.00.

REPORTS OF OFFICERS

1. City Treasurer's Report to City Council Month Ending December, 2018.

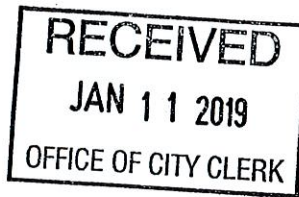
NEW BILLS

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

ROLL CALL

ADJOURNMENT

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk>**



AFFIDAVIT City of Charleston

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,

Nikki Boatwright Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 410 Maryland Ave (has, WV 25302)

Telephone Number: _____

and that on the _____ day of _____, 2018/2019, at approximately _____ am/pm
in the City of Charleston, West Virginia, he/she sustained

Nature Of Injury And/Or Damage

As A Result Of:

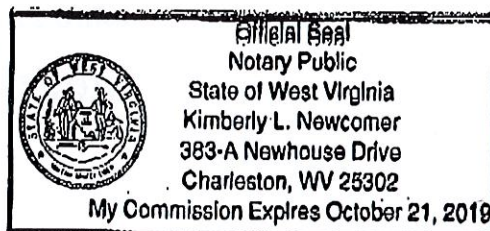
Car damage P/T collision c City of Charleston
Ambulance

As a result of which accident the Claimant, Nikki Boatwright, does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

Nikki Boatwright
Signature of Claimant

Taken, subscribed and sworn to before me this 11th day of January, 2019.
My commission expires October 21, 2019.

Kimberly L. Newcomer
Notary Public



Resolution No. 160-19:

Introduced in Council:

January 22, 2019

Adopted by Council:

Introduced by:

Jeanine Faegre

Referred to:

Resolution No. 160-19: Adopting the Rules of Council to govern the proceedings of Council.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That the Rules of Council be adopted as follows and shall govern the proceedings of the Council until amended:

Rule No. 1. - Time and place of meetings.

(a) The city council shall meet in regular public session at the council chamber in the city building at 7:00 p.m. on the first and third Mondays of each month.

(b) If the city council shall determine that the council chamber in the city building is not or will not, for any reason, be an appropriate place for the holding of a meeting, the council may, upon motion, designate another place open to the public within the city for the holding of such meeting.

Rule No. 2. - Committees.

(a) The city council shall have the following standing committees:

Committee on Finance.

Committee on Ordinance and Rules.

Committee on Planning, Streets, and Traffic.

Committee on Public Safety.

Committee on Parks and Recreation.

~~Committee on Streets and Traffic.~~

Committee on Environment and Recycling.

Committee on Urban Renewal and Economic Development.

Committee on Facilities.

Committee on Parking Facilities.

(b) All standing committees shall consist of not less than three nor more than nine members unless the city council by resolution specifically provides otherwise. All standing committees shall be appointed by the mayor. The members of the Committee on Parking Facilities shall be the same as those appointed and serving as the members

1 of the Committee on Finance.

2 (c) In addition to the foregoing standing committees, the city council may
3 authorize such select committees as may be provided by resolution.
4

5 **Rule No. 3. - Filing of papers to be introduced at city council meetings, and action**
6 **thereon by clerk of council.**
7

8 In order to promote the orderly conduct of the business of the city council and the
9 timely preparation of an accurate agenda, the following rules are hereby established:

10 (a) All bills, resolutions, petitions, committee reports, communications and other
11 documents for consideration by the city council must be filed in the office of the clerk of
12 the council not later than 12:00 noon on Friday immediately preceding the day of the
13 meeting at which it is intended they be considered; provided that this restriction shall not
14 apply to the mayor or ~~his~~ the mayor's designated deputy.

15 (b) Nothing herein shall be construed to prohibit any member of the city council,
16 at the proper order of business, from introducing or submitting any bill, resolution,
17 petition, committee report or communication during any regular meeting.

18 (c) The clerk of the council shall assign a serial number to each bill and
19 resolution introduced and shall have authority to edit and correct them as to form.

20 (d) No bill or resolution shall be filed with the clerk of the council or introduced
21 from the floor unless it bears the signature of at least one member of the city council as
22 sponsor. Any member of the city council, for this purpose, may verbally authorize the
23 clerk of the council or any of ~~his~~ the clerk's deputies to sign ~~his~~ the member's name
24 thereto.
25

26 **Rule No. 4. - Order of business at regular meetings; special order of business.**
27

28 (a) The order of business for each regular meeting shall be:

29 (1) Roll call.

30 (2) To read, correct and approve of the minutes of previous meetings.

31 (3) To receive and dispose of communications.

32 (4) To receive and dispose of petitions.

33 (5) To receive and dispose of resolutions.

34 (6) To receive reports of standing committees and act thereon.

35 (7) To receive reports of select committees and act thereon.

36 (8) To receive reports of city officials.

37 (9) Bills introduced and referred to the appropriate committees.

38 (10) Unfinished business and miscellaneous matters.

39 (11) Adjournment.

40 (b) The presiding officer may order any question a special order of business
41 irrespective of the order of business set forth in subsection (a).
42

43 **Rule No. 5. - Reading the journal.**
44

45 Following the roll call, the journal of the proceedings of the previous meeting
46 shall be read and any alterations or corrections may be submitted and entered of

1 record. Upon motion, duly approved, reading of the journal of the preceding of the
2 previous meeting may be dispensed with.

3
4 **Rule No. 6. - Draft of bills and resolutions.**

5
6 (a) All bills and resolutions introduced in the city council shall be typewritten on
7 one side only, on plain white paper, measuring eight inches by 11½ inches, single
8 spaced and in such form as prescribed by the clerk of the council.

9 (b) No bill may be introduced in the city council proposing to amend any existing
10 law unless the bill sets forth the section or sections to be amended in their entirety, and
11 indicates:

12 (1) The language in existing law, if any, which the bill would eliminate by
13 striking through such language; and

14 (2) Any language which the bill would add to said section or sections by
15 underlining all such additional language.

16
17 **Rule No. 7. - Procedures for enacting ordinances.**

18
19 A proposed ordinance shall be read by title at not less than two meetings of the
20 city council with at least one week intervening between each meeting.

21 No proposed ordinance shall be materially amended at the same meeting at
22 which finally adopted. No proposed amendment shall be construed as materially
23 amending the proposed ordinance except by order of the presiding officer either upon
24 his the presiding officer's own motion or that of any member of the city council.

25 The city council may enact an ordinance at the same meeting at which it is
26 introduced in the case of a pressing public emergency in the event delay would
27 endanger the public health, safety or morals. The nature of such emergency shall be set
28 out in full in the proposed ordinance. No motion to suspend the rules shall be necessary
29 or in order but any such proposed ordinance must be approved by an affirmative vote of
30 two-thirds of the members elected to the city council except when otherwise provided in
31 the Code of West Virginia.

32
33 **Rule No. 8. - Reference of bills, resolutions, etc., to committees.**

34
35 No bill, resolution, petition, communication or report may be divided among two
36 or more committees although it contains subjects properly within the jurisdiction of
37 several committees but must be referred to one committee in its entirety.

38 When the presiding officer is of the opinion that a bill, resolution, petition,
39 communication or report should be considered by more than one committee, at the time
40 of referring it he the presiding officer may direct that when the committee to which it is
41 referred completes its consideration thereof and makes a recommendation with respect
42 thereto, such bill, resolution, petition, communication or report shall be automatically
43 referred to such other committee as directed by the presiding officer upon making the
44 initial referral.

45 This provision shall not be construed as limiting the right of any member of the
46 city council to move, or the presiding officer to order, the reference of any bill,

1 resolution, petition, communication or report to another committee upon receipt of the
2 report of the committee to which initially referred, or to recommit to the committee to
3 which initially referred.

4
5 **Rule No. 9. - Requests for action; making entries in the journal.**

6
7 Requests for action made by a member of the city council shall not be
8 reproduced in the journal nor forwarded to the person or persons designated by the
9 presiding officer for action or attention unless such request is reduced to writing and
10 filed with the clerk of the council prior to adjournment of the meeting at which such
11 request is made.

12 No remarks, voting explanations or words spoken in debate by any member of
13 the city council shall be reproduced in the journal except by unanimous consent of the
14 members of the council present, upon motion by a member and unless a written copy
15 thereof is delivered to the office of the clerk of the council by 12:00 noon of the following
16 day.

17 The clerk of the council is authorized to condense and summarize any requests
18 for action, remarks, vote explanations and words spoken in debate that are to be noted
19 in the journal, but all writings filed with the clerk shall be kept and preserved as an
20 appendix to the journal.

21
22 **Rule No. 10. - Reports of committees.**

23
24 All reports of committees shall be delivered to the clerk of the council for reading
25 without comment, all statements or arguments to follow the reading thereof by the clerk.

26
27 **Rule No. 11. - Resolutions and motions to amend.**

28
29 All resolutions and motions to amend any motion, resolution or bill shall be
30 reduced to writing and shall be read by the clerk of the council before being debated.
31 Forms on which amendments are to be written shall be prescribed by the clerk of the
32 council and made available to any member.

33 A member of the city council may move to reconsider the vote on any question
34 during the meeting at which such question was voted upon or at the next regular
35 meeting of council if ~~he~~ the member voted on the prevailing side or, irrespective of how
36 ~~he~~ the member voted, if there was not a roll call vote.

37 The following motions shall be decided without debate and without amendment:

- 38 (1) Motion to adjourn.
39 (2) Motion to table.
40 (3) Motion for the previous question.
41 (4) Motion to recess.

42
43 **Rule No. 12. - Rules of debate.**

44
45 No question shall be debated until it has been propounded by the chair, and then
46 the mover shall have the right to explain his or her view in preference to any other

1 member and shall have the right to close the debate.

2 When two or more members of the city council arise at the same time, the
3 presiding officer shall name the person to speak; but in all cases, the member who shall
4 first rise and address the chair shall speak first.

5 No one shall disturb or interrupt a member who is speaking, without his the
6 member's permission, except to call to order if he the member is transgressing the
7 rules.

8
9 **Rule No. 13. - Call for a division of a question.**

10
11 Any member of the city council may call for a division of any question before a
12 vote is taken thereon if it comprehends propositions in substance so distinct that, if one
13 proposition be taken away, another substantive proposition remains for decision by the
14 city council; but a member of the city council calling for a division of a question shall
15 state in what manner the question shall be divided.

16
17 **Rule No. 14. - Use of a previous roll call.**

18
19 On any question, the roll call immediately next preceding may be used to record
20 the vote of the city council upon motion by any member, provided such previous roll call
21 was unanimous.

22
23 **Rule No. 15. - When a member abstains from voting.**

24
25 No member shall vote on any question before the city council if he the member is
26 directly and immediately interested therein other than as a citizen of the City of
27 Charleston; however, no member may abstain from voting without, prior to a vote being
28 taken, having stated his the reason for not voting and having obtained a ruling from the
29 presiding officer excusing him the member from ~~doing so~~ voting.

30
31 **Rule No. 16. - Decisions on questions of order.**

32
33 The presiding officer shall decide all questions of order, subject to an appeal to
34 the city council which shall be determined by a majority vote of those present and
35 voting.

36
37 **Rule No. 17. - Presiding officer may relinquish chair.**

38
39 The presiding officer of the city council may call any member of the city council to
40 the chair, who shall exercise its functions for the time being.

41
42 **Rule No. 18. - Demand of previous question.**

43
44 If the previous question be demanded by not less than three members, the
45 presiding officer shall, without debate, put the question: "Shall the main question be now
46 put?" If this question be decided in the affirmative, all further debate shall cease and the

1 vote be at once taken on the proposition pending before the city council. When the
2 council refuses to order the main question, the consideration of the subject shall be
3 resumed as if the previous question had not been demanded.

4
5 **Rule No. 19. - Rescission, amendment and suspension of rules.**

6
7 (a) No standing order or rule of the city council shall be rescinded or amended
8 except by a majority vote of the members elected to the city council.

9 (b) No rule of the city council shall be suspended in any case except by
10 unanimous consent of the councilmembers present, provided, that no rule shall be
11 suspended if compliance therewith is made mandatory by state law, the city Charter or
12 an ordinance of the City of Charleston.

13
14 **Rule No. 20. - Calling for a division of city council.**

15
16 The presiding officer may in case of doubt and shall upon the request of any
17 member call for a division of the city council on any vote by requiring first those voting in
18 the affirmative to stand and then those voting in the negative to stand.

19
20 **Rule No. 21. - Parliamentary rules of order.**

21
22 The rules of parliamentary usage comprised in the manual known as "Manual of
23 Legislative Procedure" by Paul Mason shall govern the city council in all cases not
24 provided for by the rules of city council, city Charter and state law. In any case not
25 governed by said manual, said rules, city Charter or state law, the city council shall be
26 governed by the practice in the House of Delegates of the State of West Virginia.

27 A copy of said manual shall remain on file in the office of the clerk of the city
28 council.

29
30 **Rule No. 22. - Members of the public speaking before city council.**

31
32 (a) A member of council may ask the floor for a member of the public to speak
33 before council, which said motion is nondebatable. Upon such request, the presiding
34 officer shall inquire of the councilmember the subject matter of the inquiry and ask
35 council if there is any objection to the person speaking, and, if an objection is raised,
36 then council, by majority vote, shall determine whether or not the person shall be
37 allowed to address council. Any person addressing council shall be allowed no more
38 than five minutes to ~~address his~~ make remarks, unless by unanimous consent council
39 allows a longer period of time.

40 (b) A maximum of ten minutes shall be set aside at the outset of each meeting of
41 the council to permit members of the public, without leave of council, to address the
42 council on any matter pertaining to the city's business. Any member of the public
43 wishing to address the council shall first register with the clerk of the city council, or his
44 the clerk's designated representative for such purpose, in the council's chambers not
45 earlier than 15 minutes before the beginning of each meeting setting forth his or her
46 name, the group, if any, on whose behalf he or she wishes to speak, and the subject

1 matter which he or she wishes to address. If more than one person registers to address
2 council, such persons shall be allocated time on a prorated basis, and shall be
3 permitted to speak only for the time allotted. In no event shall more than five people be
4 permitted to address the council under this rule 22(b). Nothing in this rule 22(b) shall
5 affect the ability of a member of council to request that a member of the public be
6 allowed to speak pursuant to rule ~~22(b)~~ 22(a).

Resolution No. 158-19

Introduced in Council

Passed by Council

January 22, 2019

Introduced by:
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 158-19: Authorizing the Mayor or City Manager to submit grant
2 applications to the West Virginia State Police Commission on Drunk Driving Prevention
3 during the spring, summer and fall 2019 grant cycles for funds in the amount of \$15,000
4 each. Funds will be utilized for DUI checkpoints and road patrols by the Charleston
5 Police Department.

6

7 Be it Resolved by the Council of the City of Charleston, West Virginia:

8

9 That the Mayor or City Manager is authorized to submit grant applications to the West
10 Virginia State Police Commission on Drunk Driving Prevention during the spring, summer
11 and fall 2019 grant cycles for funds in the amount of \$15,000 each. Funds will be
12 utilized for DUI checkpoints and road patrols by the Charleston Police Department.

Resolution No. 159-19:

Introduced in Council:

January 22, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Resolution No. 159-19: “A Resolution authorizing the City Manager to enter into a lease for space in 601 Morris Street with Ristorante Abruzzi, LLC, for the purpose of operating a restaurant, for a term of one (1) year with an option to renew for two additional terms of two (2) years each, a copy of the proposed lease is attached hereto as Exhibit A. The monthly rental for the lease of 4,815 square feet for Ristorante Abruzzi, LLC, is \$3,000.00.”

Now Therefore, Be it Resolved by the Council of the City of Charleston, West Virginia:

That, the City Manager is hereby authorized to enter into a one-year lease, with the option for two two-year renewals, with Ristorante Abruzzi, LLC, for space in 601 Morris Street for the purpose of operating a restaurant (a copy of the proposed lease is attached hereto as Exhibit A). The monthly rental for the lease of 4,815 square feet is \$3,000.00.

THIS INDENTURE OF LEASE, Made as of this First day of February, 2019, by and between THE CITY OF CHARLESTON, WEST VIRGINIA, a municipal corporation, whose address is P.O. Box 2749, Charleston, West Virginia 25330, party of the first part, hereinafter referred to as "Landlord", and RISTORANTE ABRUZZI, LLC, whose address will be 601 Morris Street, Charleston, WV, party of the second part, hereinafter referred to as "Tenant";

W I T N E S S E T H:

That, for and in consideration of the premises, covenants and agreements herein entered into between the parties, the parties do hereby agree to and with each other as follows:

1. DEMISED PREMISES: The Landlord does hereby rent and lease unto the Tenant, and the Tenant takes and leases from the Landlord, approximately Four Thousand Eight Hundred Fifteen (4,815) square feet of floor space, including the agreed upon common area allocations, (the "Premises") on the First (1st) Floor of 601 Morris Street in Charleston, Kanawha County, West Virginia, together with the right to use the common areas thereof. The Premises are delineated on the drawing attached hereto as "Exhibit A" and hereby incorporated in and made a part hereof.

2. TERM: The term of this lease shall be for a period of one (1) year, commencing on the first day of February, 2019, and ending on the 31st day of January, 2020. Provided Tenant is not in default in the performance of its obligations under this Lease, this Lease will automatically renew for two additional terms of twenty-four (24) months each, each of which shall be referred to as a "Renewal Term", unless Tenant provides Landlord with written notice of Tenant's intention to not renew this Lease at

least sixty (60) days prior to the end of the term or any Renewal Term, or Landlord, with approval of City Council, provides Tenant with written notice of Landlord's intention to not renew this lease at least sixty (60) days prior to the end of the term or any Renewal Term.

3. RENTAL AMOUNT: The Landlord agrees to accept, and the Tenant agrees to pay a Base Rental for the one year lease term in the amount of Thirty-six Thousand Dollars (\$36,000.00), payable in amounts of Three Thousand Dollars (\$3,000.00) monthly beginning February 1, 2019. The Landlord agrees to accept, and the Tenant agrees to pay an annual Base Rental for each Renewal Term of Thirty-six Thousand Dollars (\$36,000.00), payable in amounts of Three Thousand Dollars (\$3,000.00) monthly.

4. RENTAL PAYMENTS: Said rentals are to be payable in advance on the first day of each and every month during the term of this lease; said payments to be made at the office of the City Manager, 501 Virginia Street East, Charleston, West Virginia 25301, or at such other location as the Landlord may designate in writing to the Tenant.

5. GENERAL COVENANTS: The parties hereby covenant and agree as follows:

a. The Tenant shall pay said rentals and any other amounts payable hereunder punctually and promptly.

b. Unless the Landlord consents thereto in writing, which consent shall not be unreasonably withheld, the Tenant:

(i) Shall not use or permit the Premises, or any part thereof, to be used for any purpose other than for a restaurant, bar, and related uses, or such purpose as may be approved in writing by Landlord.

(ii) Shall not make any alterations, additions or improvements without the prior written consent of the Landlord, and any and all such alterations and improvements shall at the option of the Landlord become and be the property of the Landlord upon the termination of the lease.

(iii) Shall not assign nor mortgage this lease, nor re-let or sublet the Premises, or any part thereof.

(iv) Shall not suffer any act of commission or omission which will increase the rate of fire or general liability insurance of the Premises or of the building of which the demised premises are a part.

6. TENANT'S USE OF THE PREMISES. Tenant shall occupy and use the Premises as a restaurant, bar and entertainment complex, or for such other purposes as may be approved in writing by the City and for all incidental and related uses. Tenant shall not occupy or use the Premises or permit the use or occupancy of the Premises for any purpose which:

- (a) Is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule;
- (b) May be dangerous to persons or properties; or
- (c) May create a nuisance, disturb any other tenants or the occupants of neighboring property.

Notwithstanding the foregoing, the City may designate to Tenant in writing given at least 30 days in advance, certain time periods on which City-held events will be conducted in the ball field during which parties utilizing the ball field have required that the City prohibit the sale or consumption of alcoholic beverages in the outside colonnade space utilized by Tenant. The Tenant shall not permit the sale or

consumption of alcoholic beverages in said outside colonnade space during such periods.

7. COMPLIANCE WITH LAWS:

a. The Tenant shall comply with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the use of the Premises.

b. The Landlord shall at all times and at their own cost keep and maintain the common areas and fixtures in a condition comparable to common areas in first-class commercial office space and in compliance with all statutes, ordinances, orders, requirements and regulations, present and future, of any Federal, State, County or Municipal authority, or agency or subdivision thereof having jurisdiction over or affecting the common areas.

8. INDEMNIFICATION:

a. Tenant shall indemnify, hold harmless and defend Landlord from and against any and all costs, expenses (including reasonable attorney fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind and asserted by or on behalf of any person or governmental authority arising out of or in any way connected with the Lease or the Premises, and Landlord shall not be liable to Tenant on account of, (i) any failure by Tenant to perform any of the agreements, terms, covenants or conditions of this Lease required to be performed by Tenant, (ii) any failure by Tenant to comply with any statutes, ordinances, regulations, requirements or orders, present and future, of any governmental authority, or (iii) any accident, death or personal injury or damage, including fire or water damage, or loss or theft of property, which shall occur

in the Premises or as a result of any act or omission by Tenant or its employees or agents, except as the same may be caused by the negligence or act of Landlord, its employees or agents. In all cases in which Tenant is required to obtain insurance, Tenant shall be responsible for all deductibles, and its insurance shall provide primary coverage.

b. In addition to and not in lieu of the above provisions, Tenant agrees to defend, indemnify and hold harmless the Landlord and its agents from any claims, liabilities, fines, alleged damages, and/or any types of actions whatsoever, including attorneys' fees, arising out of alleged injury to property or contamination of the environment (including, but not limited to, injury or contamination related to asbestos), whether or not prosecuted by a governmental entity, to the extent such claims arise out of Tenant's business activities on the Premises. Tenant further agrees to defend, indemnify and hold harmless Landlord and its respective agents in connection with any administrative proceeding arising out of alleged damage to person, property, or the environment, including, but not limited to notification that Landlord, or its agents, are potentially responsible parties for any alleged damage to any environmental hazard created by Tenant as a result of its performance under this Lease to the extent such claims arise out of Tenant's business activities on the Premises.

c. Tenant shall maintain general liability insurance during the term of this Lease and any extensions thereof in the amount of not less than \$1,000,000.00 and shall name City as an additional insured for purposes of this Lease and the indemnity provisions herein. Tenant shall be responsible for the payment of all deductibles. Tenant shall also purchase and maintain all such other kinds of insurance and minimum amounts required to be purchased and maintained by Tenant throughout the term of

this Lease. All policies shall provide primary coverage, shall reflect that Tenant is responsible for any and all deductibles. Tenant agrees to provide City with a copy of its insurance policies prior to the commencement of this Lease and any extensions thereof. In the event that Tenant's insurer denies coverage or terminates Tenant's insurance coverage, the City may, at its option, terminate this Lease immediately.

d. If the Premises or the building of which the demised premises are a part are partially damaged by fire or other casualty, unless caused by the negligence or willful actions of Tenant, the damages shall be repaired by and at the expense of Landlord and the rent, until such repairs shall be made, shall be apportioned from the date of such fire or other casualty according to the part of the Premises which is usable by Tenant. Subject to the terms herein, Landlord agrees to repair such damage within a reasonable period of time, except that Tenant agrees to repair and replace its own furniture, furnishings and equipment at Tenant's expense.

e. If the Premises are totally damaged or are rendered wholly untenable by fire or other casualty, and if Landlord in its sole discretion shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide not to restore or not to rebuild the same, or if the Building shall be so damaged that Landlord shall decide to demolish it, then or in any such events Landlord shall, within thirty (30) days after such fire or other casualty, give Tenant written notice of such decision and thereupon, the term of this Lease shall expire by lapse of time upon the third day after such notice is given, and Tenant shall vacate the Premises and surrender the same to Landlord. Upon the termination of this Lease under the conditions hereinbefore provided, Tenant's liability for rent shall cease as of the date following the casualty. In addition, under any such circumstance Tenant may, within thirty (30) days

after such fire or other casualty, elect to terminate this Lease by giving written notice thereof to Landlord, in which event this Lease shall expire as of the date of such fire or other casualty. No damages shall be owed by Landlord arising from election and/or termination.

9. CONDEMNATION: In the event that the land or building in which the Premises are located, or any part of said land or building be condemned, or the right of entry be granted as a part of the condemnation proceeding, for public use (irrespective of whether or not any portion of the demised premises is condemned), the Landlord, at its option, may terminate this lease upon one hundred twenty (120) days' notice in writing of its election so to do and upon the date set forth in said this lease shall cease, terminate and come to an end in the same manner and to the same effect as if such date were fixed herein for the expiration of the term. The Tenant shall have no claim against the Landlord nor be entitled to any portion of the amount which may be awarded as damages or paid as a result of such condemnation; provided, however, that nothing contained herein shall impair the Tenant's right to pursue a claim against the condemning authority for Tenant's relocation expenses. Landlord agrees to promptly advise Tenant of the filing of such proceeding advise Tenant of the filing of such proceeding.

10. BREACH: Upon the continuance of any breach or violation by the Tenant of any of the terms, covenants or conditions of this lease, for a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, the Landlord may, at its election, terminate this lease and upon such election, this lease and all of the estate of the Tenant in the Premises shall come to an end and the Landlord may thereupon reenter the premises

as of its former estate. The Landlord shall not be entitled to elect to terminate this lease unless the Tenant fails, within a period of twenty (20) days after written notice, unless the breach is one for payment of rent in which case the period is ten (10) days after written notice, to begin use of all commercially reasonable efforts to remedy the breach or violation complained of or thereafter fails to diligently and promptly complete the remedying thereof, to the satisfaction of Landlord. Provided, however, that if the breach or violation complained of shall be the result of an action taken under any statute, ordinance, rule or requirement of any governmental body, then if the Tenant shall institute and prosecute diligently, any bona fide action to establish the invalidity thereof, the period of twenty (20) days shall be suspended until the final determination of such proceedings. Any waiver by the Landlord of any breach shall not be deemed a waiver of any similar or other further breach. The rights and privileges herein reserved shall be in addition to the remedies afforded to the Landlord in the courts of law and equity.

11. ABANDONMENT: If the Premises shall become vacant or abandoned, or if the Tenant or any assignee or subtenant to whose assignment or sublease the Landlord shall have consented, shall be dispossessed or removed from the Premises, or if the term hereof shall terminate prior to the expiration date fixed herein because of any act or omission of the Tenant or such assignee or subtenant, or because of the happening of any contingency or of the abandonment herein provided for, or as a result of any election exercised by the Landlord pursuant to the terms hereof, the Tenant does hereby authorize and empower the Landlord, at its option, to reenter the Premises as agent of the Tenant or for any occupant of the Premises under the Tenant, or for its own account or otherwise, and to re-let the same for any term expiring either prior to the original expiration date hereof or simultaneously therewith, or beyond such date and to

repair the same if necessary or desirable for re-letting purposes and to receive and apply the rent so received to the cost of reentry, repair, and re-lett and to the payment of the rent and other charges due hereunder. The Tenant shall not be entitled to any surplus accruing from such re-letting. Moreover, unless an Early Termination shall be executed as provided at paragraph 6, herein, Tenant shall remain liable for any deficiency, which deficiency shall be, at the Landlord's option, payable monthly as the amount thereof shall be ascertained, or in a single payment, with reasonable allowance for acceleration, on demand.

12. QUIET ENJOYMENT: The Landlord hereby covenants that if the Tenant shall perform all the covenants and agreements herein stipulated to be performed on the Tenant's part, Tenant shall at all times during the term hereof have the peaceful and quiet enjoyment and possession of the Premises without any manner of let or hindrance from the Landlord, or any persons lawfully claiming said Premises.

13. SURRENDER OF PREMISES: Tenant shall, at expiration or termination of the term, or any renewal term, peaceably surrender the Premises with all the improvements and additions thereto, broom-cleaned and in good condition, excepting ordinary wear and tear. All repairs, alterations and additions made either by the Landlord or Tenant to the demised premises except unattached moveable business fixtures, shall, at the option of the Landlord, be the property of the Landlord and remain upon and be surrendered with the Premises as part thereof at the termination of this lease or any renewal term thereof.

14. SUBORDINATION:

a. This Lease shall be subject, junior and subordinate to that certain Contract of Lease-Purchase dated as of November 1, 2004 (the "Primary Lease"), between the West

Virginia Economic Development Authority as lessor (the "Authority") and City as lessee, which expires on November 1, 2026, subject to annual termination as provided for below. The Primary Lease is of record in the office of the Clerk of the County Commission of Kanawha County, West Virginia, in Lease Book 251 at page 191.

b. Under the terms of the Primary Lease, the City has the right to terminate the Primary Lease at the end of any fiscal year upon 30 days' prior written notice to the Authority and to WesBanco Bank, Inc, as trustee (the "Trustee") under that certain Indenture, Credit Line Deed of Trust and Security Agreement (the "Indenture"), dated as of November 1, 2004, between the Authority and the Trustee. The Indenture constitutes a deed of trust on the baseball stadium complex known as "West Virginia Power Park," including the Premises. The Indenture is of record in the aforesaid Clerk's office in Trust Deed Book 3194 at page 567.

c. Notwithstanding the above, and in addition thereto, this lease shall be subject and subordinate at all times to the lien of any mortgages and/or deeds of trust and/or bond issues and/or trust debentures in any amount or amounts whatsoever now or hereafter placed on the land and buildings of which the Premises form a part and/or on the Landlord's interest or estate therein without the necessity of any further instrument or act on the part of the Tenant to effectuate such subordination, provided, however, the Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this lease to the lien of any such mortgage or mortgages and/or deeds of trust and/or bond issues and/or deeds of trust and/or bond issues and/or trust debentures as may reasonably be desired, and Tenant's execution of any and all documents necessary and proper to effectuate a subordination shall not be unreasonably withheld by Tenant.

15. UTILITIES: The parties recognize that the common areas may be serviced by certain utilities in common with other tenants or the building in general. It is agreed that Landlord shall make all arrangements for utilities and services for such spaces and shall be responsible for and pay such utility bills. Tenant shall be solely responsible for and shall make all arrangements for utilities and services to its Premises. Tenant shall pay for all utilities, including gas, electricity, water, telephone, sewer, incinerator, garbage, fire services, cable television, as well as any other utility or service used on or supplied to the building on the Premises. Tenant shall be responsible for the installation and maintenance of separate meters for utility services to its Premises.

Tenant understands and acknowledges that all utilities and services shall be furnished to the Premises by third parties and that Landlord shall not be liable or responsible for any damage on account of the failure at any time of the third parties to supply such utilities.

16. MAINTENANCE: The Landlord agrees to keep, maintain and repair the outside of the building and all common areas, including the sidewalk, the parking area, lawns and shrubbery, in a neat and tidy condition. Tenant shall, at its sole cost and expense, keep and maintain the Premises in a clean, healthful, and sanitary condition, free from all pests, vermin and odors (other than those odors normally associated with the restaurant/bar business), and in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules, including providing customary janitorial services within the Premises, keeping all windows clean and orderly. Tenant shall, at its sole cost and expense, repair and maintain the interior of the portion of the building comprising the Premises, except that which is common to other tenants, during the Term of this Lease, including all interior electrical and utility

apparatus, all heating, ventilation and air conditioning systems and all mechanical systems and all component parts; Provided, that Tenant shall also be responsible, after coordination with the Landlord, to make all necessary replacements, repairs and perform all necessary maintenance and custodial service for the restrooms located on the same floor the building in which the Premises are situated and used by Tenant, its patrons and invitees.

17. ENTRY UPON PREMISES: Tenant shall permit Landlord, Landlord's agents or employees or any other person or persons authorized by the Landlord, to inspect the Premises at any time, and to enter the Premises if Landlord shall so elect for making repairs or additions thereto or for making alterations, additions or routine repairs to the building of which the Premises are a part. Landlord shall exercise due care to minimize any disruption to Tenant's business activities. Unless immediate access to the Premises is needed for emergency repairs, Landlord shall provide Tenant with at least 48 hours notice before entering the Premises to make repairs. Except as specifically provided for in Paragraph 11 herein, no diminution or abatement of rent or other compensation shall be claimed or allowed for inconveniences, discomfort or interruption of business arising from the making of repairs or improvements to the building, or any part thereof, or to the machinery, fixtures or appurtenances thereto and therein, nor for any space taken to comply with any law, ordinance or order of any governmental authority. The Landlord and Landlord's agents may enter upon the Premises at reasonable hours to examine the same, and may during the last six months of Tenant's occupancy exhibit the same to any person or persons, and during said time may also maintain "For Lease" and "For Sale" notices on the outside walls thereof. Landlord shall, however, exercise reasonable care to minimize any disruption to Tenant's business activities.

18. NOTICES: All written notices by the Landlord to the Tenant shall be sent by certified mail to the Tenant at 601 Morris Street, Charleston, WV, or at such other location as the Tenant may designate in writing. All notices by the Tenant to the Landlord shall be sent by certified mail to the Landlord in care of the City Manager at City Hall, 501 Virginia Street East, Charleston, WV, 25301, or at such other location as the Landlord may designate in writing.

19. GOVERNING LAW: The terms, covenants and conditions of the within lease shall be binding upon and inure to the benefit of each of the parties hereto, their successors and assigns. Further, the terms, covenants and conditions of the within lease are to be governed by the laws of the State of West Virginia.

Landlord and Tenant agree that any and all claims arising under this Agreement, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.

20. ACCEPTANCE OF PREMISES: The taking of possession by Tenant of the leased premises is conclusive evidence that Tenant has examined the Premises and is satisfied with its physical condition and acknowledges receipt of it in good order and repair, except as otherwise specified to Landlord in writing within ten (10) days of taking possession, and the Tenant agrees that no representation as to condition of repair has been made, except as is contained in the lease and he agrees that no promise to decorate, alter, repair, or improve the Premises has been made except as is set forth herein.

21. REPAIRS: In the event that at any time before the expiration of the term hereby granted the Tenant shall cease to occupy the Premises, and shall remove

substantially all of their furniture therefrom, the Landlord shall have the right to enter upon the Premises for the purpose of cleaning, altering or redecorating the same; and the exercise of such right by the Landlord shall in no way affect or modify the obligations and covenants of the Tenant under this lease for the remainder of the term thereof.

22. SIGNS: Tenant shall not display any signage visible from the outside of the Premises without written authorization from Landlord. Tenant may, however, place direction signage on the first floor, on the entrance door or sidelight windows to their premises, and will be identified on the common area marquee maintained by the Landlord in the first floor lobby.

23. TAXES AND FEES: Tenant shall pay any and all taxes and fees levied and assessed upon any personal property, fixtures and improvements belonging to Tenant and located upon the Premises.

24. SEVERABILITY: If any provision of this agreement is held to be illegal, invalid or unenforceable under present or future law, such provision shall be fully severable, and further the remainder of this agreement shall be fully enforceable and remain in force and effect. All covenants and representations are binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of Landlord and Tenant. Where the singular or plural member is used herein the same shall be construed to apply to the party or parties whether singular or plural, and any word used herein indicating gender shall be construed to include all person, firms, or corporations, parties hereto, of whatever gender.

25. ENTIRE AGREEMENT; EFFECTIVE DATE OF LEASE: This Agreement constitutes the entire agreement between the Landlord and the Tenant pertaining to the subject matter contained herein. The Landlord and Tenant agree to execute any and all

supplementary documents and to take all supplementary steps to give full force and effect to the basic terms and intent of this lease. Notwithstanding any agreement of this lease to the contrary, this lease is not effective until it is approved by the City Council of Landlord and duly executed by its Mayor.

IN WITNESS WHEREOF, the party of the first part, The City of Charleston, and the party of the second part, Ristorante Abruzzi, LLC, have caused these presents to be executed by their duly authorized representatives as of the date first above written:

Landlord:
City of Charleston

Tenant:
Ristorante Abruzzi, LLC

By: _____

Jonathan T. Storage

City Manager

By: _____

Name: _____

Its: _____