



CITY COUNCIL AGENDA
March 7, 2016

- 6:00 p.m.** **Closed session as provided by Section 2.2-3712 of the Virginia Code**
Second Floor Conference Room (Boards and Commissions)
- 7:00 p.m.** **Regular Meeting**
Council Chambers
- CALL TO ORDER**
PLEDGE OF ALLEGIANCE
ROLL CALL
- AWARDS/RECOGNITIONS ANNOUNCEMENTS** GFOA Distinguished Budget Presentation Award for FY 2016; Red Cross Month; Festival of the Book; WVPT Children's Event
- MATTERS BY THE PUBLIC** Public comment provided for up to 12 speakers publicized at noon the day of the meeting (limit 3 minutes per speaker) and for an unlimited number of speakers at the end of the meeting on any item, provided that a public hearing is not planned or has not previously been held on the matter.

CITY MANAGER RESPONSE TO MATTERS BY THE PUBLIC

- 1. CONSENT AGENDA*** (Items removed from consent agenda will be considered at the end of the regular agenda.)
passed 5-0
- a. Minutes for February 16
 - b. **APPROPRIATION:** National Endowment for the Arts (N.E.A.) Our Town Grant – “Play the City” - \$30,000 Match (2nd of 2 readings) **pulled (Szakos/Bellamy)**
 - c. **APPROPRIATION:** Department of Criminal Justice Services (D.C.J.S.) Byrne Special Fund Grant – \$9,990 (2nd of 2 readings)
 - d. **APPROPRIATION:** Donations to Fire Department for Training and Safety Initiatives – \$1,350 (2nd of 2 readings)
 - e. **APPROPRIATION:** Proffer Payment for DGIF-Directed Stream Project on Moores Creek – \$10,000 (2nd of 2 readings)
 - f. **APPROPRIATION:** Funds from C.A.T.E.C. to the C.A.T.E.C. – I.T. Networking Academy Project - \$10,000 (1st of 2 readings)
 - g. **APPROPRIATION:** Department of Conservation and Recreation Trail Grant – \$175,000 (1st of 2 readings)
 - h. **APPROPRIATION:** Piedmont Workforce Network Incumbent Worker Training Matching Grant – \$3,010 (1st of 2 readings)
 - i. **RESOLUTION:** Approval of tenant improvements at the Virginia Discovery Museum (1st of 1 reading)
 - j. **RESOLUTION:** Tax Payment Refund to St. Anne's Belfield School – \$34,216.20 (1st of 1 reading)
 - k. **RESOLUTION:** Request to VDOT for street maintenance funding (1st of 1 reading)
 - l. **ORDINANCE:** Easement to Cure Encroachment – Inn at Vinegar Hill Hotel (2nd of 2 readings)
 - m. **ORDINANCE:** Authorizing Conveyance of City-owned Land on Hillcrest Road to Covenant School (2nd of 2 readings)
 - n. **ORDINANCE:** Closing, Vacating and Discontinuing Birdwood Lane Right of Way (2nd of 2 readings)
 - o. **ORDINANCE:** Ting Fiber, Inc. Telecommunications Franchise Renewal (2nd of 2 readings) **(pulled Bellamy/Szakos)**
- 2. REPORT** School Board's Adopted FY 2017 Budget
- 3. REPORT** City Manager's Proposed FY 2017 Budget
- 4. PUBLIC HEARING / RESOLUTIONS*** CDBG Annual Action Plan and HOME Funds **Passed 5-0 (Szakos/Bellamy)**
- Amendment to the 15-16 CDBG and HOME Annual Action Plan (1st of 1 reading)
 - Reprogramming of HOME Funds (1st of 1 reading)
 - Reprogramming of CDBG Funds (1st of 1 reading)
- 5. ORDINANCE*** West Main Street Mixed Use Corridors Amendment (1st of 2 readings) **carried as amended; (Szakos/Galvin)**
- 6. RESOLUTION*** **SUP at 206 Market. Street – Common House (1st of 1 reading) passed 4-1 (Galvin/Bellamy; Fenwick no)**

OTHER BUSINESS
MATTERS BY THE PUBLIC

***ACTION NEEDED**

Persons with disabilities may request reasonable accommodations by contacting ada@charlottesville.org or (434)970-3182.

APPROPRIATION
National Endowment for the Arts Our Town Grant for “Play the City”
\$30,000

WHEREAS, the City of Charlottesville appropriated a \$50,000 Our Town grant from the National Endowment for the Arts to support the implementation of project known as “Play the City” on January 20, 2015,

WHEREAS, the appropriation of January 20, 2015 specified the need to appropriate \$30,000 at a later date,

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the following is hereby appropriated in the following manner:

Revenues

\$30,000	Fund: 211	IO: 1900236	G/L: 498010
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Expenditures

\$30,000	Fund: 211	IO: 1900236	G/L: 599999
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Transfer

\$30,000	Fund: 105	CC: 1631001000	G/L: 561211
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APPROPRIATION

**Department of Criminal Justice Services, Byrne Special Fund Grant
Grant # 16-A3284BY11
\$9,990**

WHEREAS, the City of Charlottesville, through the Thomas Jefferson Area Crisis Intervention Team, has received from the Department of Criminal Justice Services, a Byrne Special Fund Grant, to be used for training.

WHEREAS, the grant award covers the period from period January 1, 2016 through September 30, 2016.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$9,990, received from the Department of Criminal Justice Services is hereby appropriated in the following manner:

Revenue

\$9,490	Fund: 209	Internal Order: 1900260	G/L: 430120 State/Fed Pass-Thru
\$ 500	Fund: 209	Internal Order: 1900260	G/L: 498010 Transfer from funds

Expenditure

\$9,990	Fund: 209	Internal Order: 1900260	G/L: 530010 Professional Services
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Transfer

\$500	Fund: 209	Internal Order: 1900225	G/L: 561209 Transfer to St Grant
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BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$9,490 from the Department of Criminal Justice Services.

APPROPRIATION
Donations for Training and Safety Initiatives - \$1,350

- 1) Peggy D Berman (\$50)**
- 2) Virginia Diodes, Inc. (\$1,000)**
- 3) Charlottesville Area Community Foundation (\$300)**

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$1,350, to be received as donations from the above donors, be appropriated in the following manner:

Revenues

\$1,350	Fund: 105	Internal Order: 2000115	G/L Account: 451999
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Expenditures - \$1,350

\$1,350	Fund: 105	Internal Order: 2000115	G/L Account: 599999
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APPROPRIATION

Proffer Payment for DGIF-Directed Stream Project on Moores Creek – \$10,000

WHEREAS, the current owner of the Rialto Beach PUD, Rialto Beach, LLC, has submitted a payment of \$10,000 in order to comply with the requirements of Proffer No. 2 of the proffered development conditions dated as of September 18, 2007.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that \$10,000 received from Rialto Beach, LLC is to be appropriated in the following manner:

Revenues - \$10,000

Fund: 631 Cost Center: 27110010000 G/L Account: 451999

Expenditures - \$10,000

Fund: 631 Cost Center: 27110010000 G/L Account: 530670

RESOLUTION
Authorizing Interior Renovations to Virginia Discovery Museum Building

WHEREAS, the Virginia Discovery Museum (“Museum”) is located at 524 E. Main Street, a property owned by the City of Charlottesville (“Premises”); and

WHEREAS, the Premises are leased to the Virginia Discovery Museum, Inc. (“Tenant”) by the City (“Landlord”), pursuant to a written lease made between the parties as of April 8, 2011 (“Lease”); and

WHEREAS, the Tenant proposes certain interior alterations and renovations of the Premises, and seeks to obtain the Landlord’s approval prior to commencement of construction, as required by Section 3 of the Lease;

NOW THEREFORE, BE IT RESOLVED by the Charlottesville City Council that the City Manager is hereby authorized to act on behalf of the Landlord to approve the details of Tenant’s proposed interior alterations, additions and improvements, subject to the following:

1. The improvements shall not involve changes to any structural building elements.
2. Tenant shall submit its proposed plans for such alterations, additions and improvements to the City Manager or his designee, for review prior to submitting any such plans to the building official.
3. As a condition of approval, the City Manager, or his designee, may direct such changes to the scope of work and drawings which, in his sole discretion, are necessary for the protection of the City’s interest in the Premises.
4. Following receipt of the City Manager’s approval, the Tenant may submit the approved plans to the building official as part of a building permit application.
5. In addition to any inspection(s) required or performed by the City’s building official, an employee of the City’s Public Works Department shall have the authority to inspect the Tenant’s work in progress for deviations from the approved construction plans.
6. The Tenant shall notify the City’s Public Works Department in the event of unforeseen circumstances which may require deviation from the approved construction plans, or that may threaten the health or safety of occupants. The City shall review proposed solutions, and the City Manager must approve any subsequent alteration to the scope of work.

RESOLUTION
AUTHORIZING REFUND TO ST. ANNE’S BELFIELD SCHOOL
OF PERSONAL PROPERTY TAXES PAID FOR 2012-2015

WHEREAS, the personal property for St. Anne’s Belfield (the “Property”) was erroneously assessed for calendar years 2012-2015; and

WHEREAS, the personal property taxes for the Property for the calendar years 2012-2015 were paid on time and as billed; and

WHEREAS, the City Commissioner of the Revenue has certified that the personal property tax assessments for 2012-2015 was erroneous as a result of tax exempt property being reported as taxable, and determined that St. Anne’s Belfield School, owner of the Property, is due a refund of \$31,014.86 plus interest in the amount of \$3,201.34; and

WHEREAS, City Code Section 30-6(b) requires City Council approval for any tax refund exceeding \$2,500.00, and payment of interest is required in accordance with Virginia Code Section 58.1-3918; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Council hereby authorizes the City Treasurer to issue a refund of \$34,216.20, representing \$31,014.86 in overpaid taxes and \$3,201.34 in interest, payable to St. Anne’s Belfield School.

RESOLUTION
MAINTENANCE PAYMENTS FOR CITY STREETS

WHEREAS, it is necessary that a resolution be adopted by the City of Charlottesville Council requesting the Virginia Department of Transportation to accept streets in the City of Charlottesville for maintenance payments, namely the following:

1. Amherst Commons (0.0648 miles) from Amherst Street cul-de-sac to dead end
2. Bing Lane (0.0809 miles) from Rainier Road to Rainier Road
3. Brookwood Lane (0.0405 miles) from Brookwood Drive to Raymond Road
4. Hillsdale Drive (0.1091 miles) from Hydraulic Road to dead end
5. Kelsey Court (0.0449 miles) from Madison Avenue to dead end
6. Keystone Place (0.0549 miles) from Linden Avenue to cul-de-sac
7. Locust Lane (.0559 miles) from Locust Lane to end of road
8. Morris Paul Court (0.0095 miles) from Westerly Avenue to cul-de-sac
9. Rainier Road (0.4687 miles) from Cherry Ave to intersection with itself including loop at SW corner
10. Riverdale Drive (0.0871 miles) from East High Street to Willow Drive
11. Roy's Place (0.1009 miles) from Rougemont Avenue to end of road
12. Tripper Court (0.0449 miles) from Madison Avenue to dead end
13. East Water Street (0.3507 Miles) from 10th Street NE to Carlton Road

WHEREAS, the Virginia Department of Transportation has agreed to accept these streets, or portions thereof, into the State system of roadways, and

WHEREAS, said streets have a total centerline length of 1.7380 miles;

NOW THEREFORE, BE IT RESOLVED, that the Council of the City of Charlottesville, Virginia, this 7th day of March 2016, that the Virginia Department of Transportation be, and hereby is, requested to accept these streets and authorize maintenance payments on a lane mile basis.

ADOPTED this 7th day of March, 2016.

**AN ORDINANCE
AUTHORIZING THE CONVEYANCE OF A PERMANENT EASEMENT
TO INN AT VINEGAR HILL, LLC ACROSS THE
PUBLIC RIGHT-OF-WAY ON RIDGE-McINTIRE ROAD**

WHEREAS, the Inn at Vinegar Hill, LLC has requested this Council to grant a permanent easement, as shown on the attached plat, across public right-of-way on Ridge-McIntire Road to cure an existing encroachment of the hotel building located at the intersection of West Main Street and Ridge-McIntire Road (Tax Map Parcel 320198000); and

WHEREAS, the Director of Neighborhood Development Services and the City Engineer have reviewed the plat showing the encroachment area, and determined there is no apparent detrimental effect of the encroachment into the City right-of-way, and recommend approval of the request to grant the easement; and

WHEREAS, in accordance with Virginia Code Sec. 15.2-1800(B), a public hearing was held on February 16, 2016, to give the public an opportunity to comment on the possible conveyance of said easement; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a deed of easement, in form approved by the City Attorney, granting the above-described easement to the Inn at Vinegar Hill, LLC.

*Prepared by: Valerie W. Long, Esq.
Williams Mullen, PC
321 East Main Street, Suite 400
Charlottesville, VA 22902*

*Return to:
Charlottesville City Attorney's Office
P.O. Box 911, Charlottesville, VA 22902
Tax Map Reference No. 320198000*

DEED OF EASEMENT

THIS DEED OF EASEMENT is made as of this _____ day of February, 2016, by the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation, Grantor, and **THE INN AT VINEGAR HILL, LLC**, a Virginia limited liability company, Grantee.

WITNESSETH

WHEREAS, the Grantee is the owner of the following described tract or parcel of land lying and being situate in the City of Charlottesville, being more particularly described on Exhibit A, attached hereto and by this reference incorporated herein, and having a street address of 315 West Main Street (the "Hotel Property").

WHEREAS, the Grantor is the owner of certain public right-of-way adjacent to the Hotel Property, identified as Ridge McIntire Road; and

WHEREAS, the Grantee obtained the City's approval of a site plan authorizing development of the Hotel Property, and a building permit authorizing the construction of a building immediately adjacent to the right-of-way along Ridge McIntire Road (the "Building"), and the construction of the Building is nearly complete; and

WHEREAS, Grantee has determined that a portion of the Building, comprising a total of 2.81 square feet, encroaches 0.24' over the property line of the Hotel Property into the public right-of-way along Ridge McIntire Road, in the area shown as "Building Encroachment Easement" on the plat prepared by Lincoln Surveying entitled "Plat Showing Building Encroachment Easement, Tax Map 32, Parcel 198, Along Ridge McIntire Road, Charlottesville, Virginia," which plat is dated February 3, 2016, and is attached hereto and incorporated herein (the "Plat"); and

WHEREAS, the Grantor has agreed to convey a permanent easement to the Grantee to permit the minor encroachment of the Building into the public right-of-way as shown on the Plat in perpetuity, subject to the provisions of Virginia Code Sec. 15.2-2009;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, Grantor does hereby GRANT and CONVEY unto the Grantee a perpetual building encroachment easement for the area shown as “Building Encroachment Easement” on the Plat. The easement shall run with the land described herein as the Hotel Property, and shall be binding on Grantor, its successors and assigns.

This deed is exempt from state recordation taxes imposed by Virginia Code Section 58.1-802 pursuant to Virginia Code Section 58.1-811(C)(3).

By ordinance approved on _____, 2016, the Charlottesville City Council authorized the Mayor to execute on behalf of the City this deed conveying the above-described easement.

[SIGNATURE PAGE FOLLOWS]

WITNESS the following signatures and seals:

Grantor: **CITY OF CHARLOTTESVILLE, VIRGINIA**

By: _____
Michael Signer, Mayor

STATE OF VIRGINIA
CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me, a Notary Public in and for the aforesaid City and State, on this ____ day of _____, 2016, by Michael Signer, Mayor of the City of Charlottesville, Virginia.

Notary Public

Registration #: _____

My commission expires: _____

Grantee: **THE INN AT VINEGAR HILL, LLC**

By: _____
Charles H. Wendell, Manager

STATE OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me, a Notary Public in and for the aforesaid City/County and State, on this _____ day of _____, 2016, by Charles H. Wendell, as Manager, on behalf of The Inn at Vinegar Hill, LLC.

Notary Public

Registration #: _____
My commission expires: _____

Approved as to Form:

Lisa A. Robertson, Chief Deputy City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

ALL THAT PIECE OR PARCEL OF LAND CONTAINING 1.124 ACRES OF LAND LYING IN THE CITY OF CHARLOTTESVILLE, VIRGINIA AND MORE PARTICULARLY SHOWN ON PLAT ENTITLED "PLAT SHOWING BOUNDARY LINE ADJUSTMENT OF THE LANDS OF THE MOONEY WEST MAIN STREET, LLC TAX MAP PARCELS 32-199, 32-198, & 32-197 STARR HILL AREA OF CITY OF CHARLOTTESVILLE, VIRGINIA", PREPARED BY TIMMONS GROUP, DATED MAY 8, 2013, A COPY OF WHICH PLAT IS ATTACHED TO THAT CERTAIN DEED FROM THE MOONEY WEST MAIN STREET, LLC, TO THE INN AT VINEGAR HILL, LLC, RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, AS INSTRUMENT NUMBER 201304835, THE METES AND BOUNDS OF WHICH ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWEST CORNER OF RIDGE McINTIRE ROAD AND WEST MAIN STREET, SAID POINT BEING THE TRUE AND ACTUAL POINT OF BEGINNING;

THENCE, ALONG THE NORTHERN LINE OF WEST MAIN STREET, S 80°46'49" W, 50.87 FEET TO A POINT;

THENCE, CONTINUING ALONG SAID NORTHERN LINE, S 85°31'54" W, 132.60' FEET TO A POINT;

THENCE, CONTINUING ALONG SAID NORTHERN LINE, N 74°23'56" W, 48.62 FEET TO A POINT;

THENCE, LEAVING SAID NORTHERN LINE OF WEST MAIN STREET, N 17°01'40" E, 103.19 FEET TO A POINT;

THENCE, N 16°28'25" E, 60.00 FEET TO A POINT;

THENCE, N 71°54'01" W, 100.27 FEET TO A POINT ON THE EASTERN LINE OF 4TH STREET;

THENCE, ALONG SAID EASTERN LINE, N 16°15'34" E, 68.99 FEET TO A POINT;

THENCE, LEAVING SAID EASTERN LINE, S 73°43'21" E, 274.05 FEET TO A POINT

THENCE, S 01°41'34" W, 171.44 FEET TO A POINT TO THE TRUE AND ACTUAL POINT OF BEGINNING AND CONTAINING 48,975 SQ. FT. OR 1.124 ACRES OF LAND.

IT BEING THE SAME PROPERTY CONVEYED TO THE INN AT VINEGAR HILL, LLC, BY THE DEED AFORESAID.

**AN ORDINANCE
AUTHORIZING THE CONVEYANCE OF
CITY-OWNED LAND ON HILLCREST ROAD
TO THE COVENANT SCHOOL, INC.**

WHEREAS, the City of Charlottesville is the owner of land currently designated as Parcel 6 on City Real Estate Tax Map 45, acquired by the City as part of right-of-way acquisition for the McIntire Road Interchange project (hereinafter the “Property”); and

WHEREAS, the Property faces the 250 Bypass and is otherwise surrounded by The Covenant School, Inc. (“Covenant”) property, and has a value of approximately \$24,692.00; and

WHEREAS, Covenant has requested the City to convey the Property so it can be combined with the parcel currently owned by Covenant (Tax Map Parcel 450007000) and operated as the Covenant School, an historic property; and

WHEREAS, Covenant School, Inc. conveyed land, utility easements, and construction easements to the City for fair market value as part of the right-of-way acquisition process for the McIntire Road Interchange project, and requested acquisition of the residue Property at that time; and

WHEREAS, in accordance with Virginia Code Section 15.2-1800(B), a public hearing was held on February 16, 2016 to give the public an opportunity to comment on the proposed conveyance of City land as requested by Covenant;

WHEREAS, Public Utilities has reviewed the request and has no objection to the conveyance, since all existing City utility lines across the Property are protected by easements of record; now, therefore,

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that the Mayor is authorized to execute a Quitclaim Deed, in form approved by the City Attorney, to convey said Property to The Covenant School, Inc., designated as Parcel 6 on City Real Estate Tax Map 45. The City Attorney is hereby authorized to take additional actions, as may be necessary to effect the closing of said property conveyance.

Prepared by Lisa A. Robertson (VSB #32486)
Charlottesville City Attorney's Office, P.O. Box 911, Charlottesville, VA 22902
Tax Map and Parcel Number: 450006000 (820 Hillcrest Rd)

***This deed is exempt from state and local recordation taxes imposed by
Va. Code Sec. 58.1-802 pursuant to Va. Code Sec. 58.1-811(C)(4)***

THIS QUITCLAIM DEED, made and entered into this _____ day of _____, 2016, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia ("City"), **GRANTOR**, and **THE COVENANT SCHOOL, INC.**, a Virginia non-stock corporation, whose address is 1000 Birdwood Road, Charlottesville, Virginia 22903, **GRANTEE**.

WITNESSETH:

WHEREAS, the **GRANTOR** is the owner of real property located in the City of Charlottesville and designated as Parcel 6 on City Real Estate Tax Map 45, hereinafter referred to as the "Property"; and

WHEREAS, the Property is the remainder portion of land acquired by the City for construction of McIntire Road Interchange near the Route 250 Bypass, acquired from Garrison Real Estate, LLC by deed dated March 19, 2012, of record in the Charlottesville Circuit Court Clerk's Office as Instrument #2012001103;

NOW, THEREFORE, **GRANTOR** does hereby **REMISE, RELEASE** and forever **QUITCLAIM** unto the **GRANTEE**, its successors in title and assigns, any and all right, title and interest the City possesses in and to the following described real estate, to-wit:

All that certain parcel of land, containing _____ square feet, more or less, labeled as " _____ " on a plat prepared by _____ dated _____, 2016, attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City of Charlottesville has caused this deed to be executed by its Mayor, pursuant to an ordinance approved by City Council on _____, 2016.

WITNESS the following signatures and seals.

GRANTOR: **CITY OF CHARLOTTESVILLE, VIRGINIA**

By: _____
A. Michael Signer

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE

The foregoing Quitclaim Deed was acknowledged before me by A. Michael Signer, Mayor of the City of Charlottesville, Virginia, on this _____ day of _____, 2016.

Notary Public
Registration #: _____

GRANTEE:

THE COVENANT SCHOOL, INC.

By: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
2016 by _____, on behalf of The Covenant School, Inc.,
GRANTEE.

Notary Public

My commission expires: _____

Registration #: _____

**AN ORDINANCE
CLOSING, VACATING AND DISCONTINUING
BIRDWOOD LANE RIGHT OF WAY**

WHEREAS, The Covenant School, Inc. (hereinafter “Covenant”), owner of property at 1000 Birdwood Road, designated as Parcel 7 on City Real Estate Tax Map 45, has requested the City to close and vacate Birdwood Lane, approximately 40 feet wide and 130 feet long (hereinafter “Subject Right of Way”), located adjacent to the above-described Covenant property on its northern, eastern and southern sides; and

WHEREAS, the Subject Right of Way was platted in 1935 as part of the Colonial Heights Subdivision, but was never formally accepted by the City as part of the City’s public street system; and

WHEREAS, Covenant is the only property owner adjoining the Subject Right of Way; and,

WHEREAS, following notice to the public pursuant to Virginia Code §15.2-2272, a public hearing by the City Council was held on February 16, 2016, and comments from City staff and the public were made and heard; and,

WHEREAS, after consideration of the factors set forth within the City Street Closing Policy, adopted by Council on February 7, 2005, this Council finds and determines that Covenant’s request should be granted.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the City hereby CLOSES, VACATES and DISCONTINUES the above-described Birdwood Lane right-of-way, and the Mayor is hereby authorized to execute a Deed of Vacation on behalf of the City, in form approved by the City Attorney.

BE IT FURTHER ORDAINED that unless an appeal from Council’s enactment of this ordinance is made to the Charlottesville Circuit Court within thirty (30) days of the date of adoption, the Clerk of the Council shall send a certified copy of this ordinance to the Clerk of the Circuit Court for recordation in the current street closing book.

Prepared by Lisa A. Robertson (VSB #32486)
Parcel ID: To be added to Tax Map Parcel 450007000
Assessed Value: \$0
Consideration: \$1.00

*This deed is exempt from recordation taxes imposed by Va. Code Sec. 58.1-802,
pursuant to Va. Code Sec. 58.1-811(C)(4)*

DEED OF VACATION

THIS DEED OF VACATION is dated this _____ day of _____,
2016, by the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation (“City”) and political subdivision of the Commonwealth of Virginia, hereinafter “**GRANTOR**”; and **THE COVENANT SCHOOL, INC.**, “**GRANTEE**”, a Virginia non-stock corporation, whose address is 1000 Birdwood Road, Charlottesville, VA 22901.

WITNESSETH:

WHEREAS, a right-of-way for a 40’ wide street named Birdwood Lane was created by, and shown on, the Colonial Heights subdivision plat dated December 1935, prepared by Hugh F. Simms, entitled "Map of Colonial Heights Situated in the City of Charlottesville Va, the Property of E.D. Hundley, Jr.", of record in the Charlottesville Circuit Court Clerk’s Office in Deed Book 88, Pages 38-41; and

WHEREAS, The Covenant School, Inc. has requested the vacation of Birdwood Lane as a public right-of-way, as it is the sole owner of all property with access on Birdwood Lane; and

WHEREAS, on _____, 2016 City Council adopted an ordinance closing, vacating and discontinuing Birdwood Lane because there is no public benefit in keeping Birdwood Lane as a public right-of-way; now, therefore,

FOR AND IN CONSIDERATION of the Sum of One Dollar (\$1.00), cash in hand paid, receipt and sufficiency of which are hereby acknowledged, GRANTOR does hereby CLOSE, VACATE, RELEASE, QUITCLAIM, AND DISCONTINUE AS A PUBLIC RIGHT OF WAY in the City of Charlottesville, and CONVEY unto the GRANTEE, the following described property (the "Property"):

ALL that certain right-of-way known as Birdwood Lane, forty feet (40') in width, which right of way borders on Birdwood Road to the west and continues a distance of 130 feet to its termination on the eastern portion of the property at 1000 Birdwood Road (Tax Map Parcel 450007000); being shown on various plats of record, including the plat dated October 10, 1986, last revised December 10, 1986, of record in the Charlottesville Circuit Court Clerk's Office in Deed Book 489, Pages 52-53; said right-of-way shall be COMBINED WITH AND ADDED TO City of Charlottesville Tax Map Parcel 450007000, currently owned by Grantee.

This conveyance is made expressly subject to all easements, conditions, restrictions, reservations, and other matters contained in duly recorded deeds, plats, and other instruments constituting constructive notice in the chain of title to the property hereby conveyed, which have not expired by limitation of time contained therein or have not otherwise become ineffective.

[SIGNATURES AND NOTARY BLOCKS ON FOLLOWING PAGES]

By ordinance adopted _____, 2016, the Mayor of the City of Charlottesville was authorized to sign this deed on behalf of the City of Charlottesville.

WITNESS the following signatures and seals:

CITY OF CHARLOTTESVILLE, VIRGINIA,
a municipal corporation

By: _____(SEAL)
A. Michael Signer, Mayor

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE:

The foregoing Deed of Vacation was acknowledged before me this _____ day of _____, 2016, by A. Michael Signer, as Mayor of the City of Charlottesville, Virginia.

Notary Public

My Commission Expires: _____
Notary Registration No.: _____

APPROVED AS TO FORM:
Office of the City Attorney

By: _____

Title: _____

GRANTEE:

THE COVENANT SCHOOL, INC.

BY: _____

Title: _____

COMMONWEALTH OF VIRGINIA

CITY OF CHARLOTTESVILLE:

The foregoing Deed of Vacation was acknowledged before me this _____ day of _____, 2016, by _____, on behalf of The Covenant School, Inc., a Virginia non-stock corporation.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
TING FIBER, INC., ITS SUCCESSORS AND ASSIGNS
TO USE THE STREETS AND OTHER PUBLIC PLACES
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,
FOR A PERIOD OF FIVE (5) YEARS**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that Ting Fiber, Inc. (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

SECTION 103 DEFINITIONS

103.1 CITY means the City of Charlottesville, Virginia, a municipal corporation.

103.2 COMPANY means Ting Fiber, Inc., including its successors and assigns.

103.3 DIRECTOR means the Director of Public Works for the City of Charlottesville.

103.4 FACILITY means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to: cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

103.5 PATCH means a method of pavement replacement that is temporary in nature.

103.6 PAVEMENT means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, included other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such

installations that have been adopted by the City from time to time.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate.

202.3 INSTALLATION OF OVERHEAD FACILITIES: Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

202.4 FUTURE ORDINANCES: Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 203 INSPECTION BY THE CITY

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well-being of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or

interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

SECTION 206 OBSTRUCTION OF THE PROW

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative, overhead mobilization, material, labor, and equipment related to removing the obstruction.

206.2 NO OBSTRUCTION OF WATER: The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW: Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

SECTION 303 GOOD CAUSE EXCEPTION

303.1 WAIVER: The Director, in his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

303.2 EMERGENCY WORK: The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

ARTICLE V

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the City may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the

restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

502.2 TEMPORARY SURFACING: The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director.

502.3 TIMING: After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

502.4 GUARANTEES: The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by

the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

502.6 FAILURE TO RESTORE: If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

502.8 DIRECTOR'S STANDARD: All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

601.1 SCOPE OF INDEMNIFICATION: Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City Council members, officials and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;

- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

603.1 The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before beginning installation of any lines, cable or equipment.

603.2 The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its agents or employees, or a permittee of the City.

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the City in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this Agreement.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;

- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and
- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

704.1 FEE OR PENALTY: The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

704.2 APPEAL: The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local telecommunications service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the City for late payments of real estate taxes.

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without

limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

SECTION 902 SEVERABILITY

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

SECTION 1002 TREE TRIMMING

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

ARTICLE XII

SECTION 1201 NOTICE

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

To the Company:
Ting Fiber, Inc.
Attn: Adam Eisner
321 East Main St, Ste 200
Charlottesville, VA 22902

To the City:
City of Charlottesville
Attn: City Manager
605 East Main Street
Charlottesville, VA 22902

With a copy to:
Casey Lide
Baller Herbst Stokes & Lide, P.C.
2014 P St NW, Suite 200
Washington, D.C. 20036

With a copy to:
S. Craig Brown, City Attorney
City Attorney's Office
P.O. Box 911
Charlottesville, VA 22902

All correspondences shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

SECTION 1202 EMERGENCY NOTIFICATION

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

To the Company:

Adam Eisner
Director of Networks,
Ting Internet
(416) 535-0123 x1282
(office)
(416) 432-4353 (mobile)
adam@ting.com

To the City:

Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)

SECTION 1203 REGISTRATION OF DATA

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall keep update all of the above information with the City within fifteen (15) days following its knowledge of any change.

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

ARTICLE XIV

SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any

rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company's rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to any other telecommunications provider and shall not be interpreted by the City in a less favorable manner with respect to any other similarly situated entity or person or user of the City's Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 7th day of March,
2016.

Paige Rice
Paige Rice, Clerk of Council

[Signature Page Follows]

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

Ting Fiber, Inc.

Date: _____, 2016

By: _____

Its: _____

**A RESOLUTION
AMENDING THE CITY OF CHARLOTTESVILLE'S
FY 15-16 ANNUAL ACTION PLAN**

WHEREAS, the City of Charlottesville must submit Annual Action Plans to the Department of Housing and Urban Development describing the use of Community Development Block Grant and HOME Investment funds; and

WHEREAS, the City of Charlottesville has determined that an existing HOME and CDBG project originally described in the FY 15-16 Annual Action Plans has been amended;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the FY 15-16 Annual Action Plan be amended as follows:

FY 15-16 Action Plan - HOME funds totaling \$105,400 now awarded to Habitat for Humanity for Down payment Assistance. CDBG funds totaling \$10,000 will be added to the MACAA Hope House Acquisition project and funds totaling \$10,000 will be deducted from the 10th& Page Priority Neighborhood project. The (Department of Social Services Career Training) will be amended to include training for SNAP Participants.

**RESOLUTION
AMENDMENT TO HOME ACCOUNT
Reprogramming of Funds for Habitat for Humanity Down payment Assistance**

WHEREAS, Council has previously approved the appropriation of certain sums of federal grant receipts to specific accounts in HOME Investment Partnership (HOME) funds for downpayment assistance; and

WHEREAS, Council has previously approved the appropriation of certain sums of federal grant receipts to specific accounts in HOME funds for the purpose of down payment assistance; and

WHEREAS, these funds have been recaptured due to lack of implementation and due diligence to carry out the programs in a timely manner, these funds are now needed for costs associated with other down payment assistance programs and need to be reprogrammed for the use, and therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that appropriations made to the following expenditure accounts in the HOME funds are hereby reduced or increased by the respective amounts shown, and the balance accumulated in the Fund as a result of these adjustments is hereby transferred to the respective accounts shown as follows:

Program Year	Account Code	Purpose	Proposed Revised Reduction	Proposed Revised Addition	Proposed Revised Appropriation
06-07	1900063	CRHA – Down payment Assist.	\$8,558		
06-07	1900078	CRHA – HOP	\$9,592		
11-12	1900165	CRHA – HOP	\$31,500		
11-12	1900165	CRHA – Down payment Assist.	\$15,750		
12-13	1900184*	AHIP – Homeowner Rehab	\$33,133.34		
11-12	1900167*	AHIP – Homeowner Rehab	\$1,631.00		
15-16	1900249*	PHA – Down payment Assist.	\$5235.66		
15-16	1900262	Habitat for Humanity – Down payment Assist.		\$105,400	\$105,400
		TOTALS:	\$105,400	\$105,400	\$105,400

*Indicates the accounts in which program income was applied which freed up entitlement funds. Includes program income does not require additional local match.

**RESOLUTION
 AMENDMENT TO CDBG ACCOUNT
 Reprogramming of Funds for MACAA Hope House Acquisition Project and 10th & Page
 Priority Neighborhood Project**

WHEREAS, Council has previously approved the appropriation of certain sums of federal grant receipts to specific accounts in Community Development Block Grant (CDBG) funds for MACAA Hope House acquisition and 10th & Page Priority Neighborhood projects; and

WHEREAS, Council has previously approved the appropriation of certain sums of federal grant receipts to specific accounts in CDBG funds for the purpose of acquisition and streetscape improvements; and

WHEREAS, these funds are now needed for costs associated with the MACAA Hope House acquisition project and need to be reprogrammed for the use, and therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that appropriations made to the following expenditure accounts in the CDBG funds are hereby reduced or increased by the respective amounts shown, and the balance accumulated in the Fund as a result of these adjustments is hereby transferred to the respective accounts shown as follows:

Program Year	Account Code	Purpose	Proposed Revised Reduction	Proposed Revised Addition	Proposed Revised Appropriation
15-16	P-00001-05-10	MACAA Hope House Acquisition		\$10,000	\$10,000
15-16	P-00001-05-06	10 th & Page Priority Neighborhood	\$10,000		
		TOTALS:	\$10,000	\$10,000	\$10,000

**RESOLUTION
APPROVING A SPECIAL USE PERMIT
TO ALLOW USE OF A BUILDING LOCATED AT
206 WEST MARKET STREET TO BE USED AS A “PRIVATE CLUB”**

WHEREAS, pursuant to Biarritz, LLC (“Applicant”) has requested City Council to approve a special use permit pursuant to City Code §34-796, to authorize the use of the building located at 206 West Market Street (“Subject Property”), within the “Downtown” Mixed Use Corridor zoning district, to be used as a non-residential (general/ miscellaneous commercial) use referred to within the city’s zoning ordinance as a “private club”; and

WHEREAS, the specific use requested by the Applicant is generally described within the Applicant’s November 24, 2015 application materials (“Application Materials”) as follows: a social club open only to members and their invited guests, where individuals from the creative classes of art and commerce can meet to dine together or simply to gather in-person to connect, with rules and regulations requiring members to be good neighbors by (1) being quiet when leaving the house or within the surrounding neighborhood, (2) minimizing noise when outside or on any terrace, and (3) avoiding honking, loud music or excessive engine or vehicle noise while arriving or departing the club. The club will not be a “club” in the “nightclub” or “dance club” sense. The club may include a banquet hall/ restaurant (serving breakfast, lunch and/or dinner), lounge, tea room, library, bridge room, billiard room, communal workspace (which will also serve as rentable “event space”), bars (offering alcohol for consumption), kitchen, office, rooftop terrace and restrooms. The private social club is intended to welcome members for social interaction, food service and the occasional private function (the club will, for a fee, host and cater private events within the “event space” to members or nonmembers). Programmed activities offered to members within the club will include programs of workshops and lectures, music series, and parlor games; and

WHEREAS, the Planning Commission has reviewed this application as required by City Code Sec. 34-160(b), and following a joint public hearing, duly advertised and conducted by the Planning Commission on January 12, 2016, the Commission voted to recommend that Council approve the requested special use permit, and recommended certain conditions for Council’s consideration; and

WHEREAS, following a joint public hearing, duly advertised and conducted by the City Council on January 12, 2016, and upon consideration of the Planning Commission’s recommendation as well as the factors set forth within Sec. 34-157 of the City’s Zoning Ordinance, this Council finds and determines that granting the requested special use permit subject to suitable conditions would serve the public necessity, convenience, general welfare or good zoning practice; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that, pursuant to City Code §34-796, a special use permit is hereby approved and granted to authorize the use of the building located at 206 West Main Street to be used as a private social club, subject to the following conditions:

1. The use of the Subject Property shall be as generally described in the Application Materials; and
2. There shall be no audible noise, detectable vibration, or odor beyond the confines of the Subject Property, including transmittal through vertical or horizontal party walls, between the hours of 1:00 a.m. and 8:00 a.m. every day.
3. There shall be no use of any sound amplification device(s) outdoors (including, without limitation, on the roof terrace) after 11:00 p.m. every day.