



CITY COUNCIL AGENDA
October 5, 2015

6:00 p.m. – 7:00 p.m.

Closed session as provided by Section 2.2-3712 of the Virginia Code

*Second Floor Conference Room (CRHA Board Interviews; Boards and Commissions Appointments)
Council Chambers*

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

**AWARDS/RECOGNITIONS
ANNOUNCEMENTS**

Proclamations (Imagine a Day Without Water; 150th Anniversary of Jefferson School; Charlottesville as Welcoming City for Immigrants; BozArt 20th Anniversary); Energize!Charlottesville (National Energy Awareness Month)

MATTERS BY THE PUBLIC

Public comment permitted for the first 12 speakers who sign up before the meeting (limit 3 minutes per speaker) and 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.

COUNCIL RESPONSE TO MATTERS BY THE PUBLIC

1. CONSENT AGENDA*

(Items removed from consent agenda will be considered at the end of the regular agenda.)

- a. Minutes for September 21 and September 24 (West Main Work Session)
- b. APPROPRIATION: Hillsdale Drive Funding - \$15,309,596 (2nd of 2 readings)
- c. APPROPRIATION: Virginia Juvenile Community Crime Control Act Grant (VJCCCA) - \$452,704 (1st of 2 readings)
- d. APPROPRIATION: Adult Drug Treatment Court Grant Award - \$205,000 (1st of 2 readings)
- e. APPROPRIATION: State Criminal Alien Assistance Program (SCAAP) Grant for 2015 - \$7,697 (1st of 2 readings)
- f. APPROPRIATION: Charlottesville Area Transit FY2016 Grants – (\$480,486) (1st of 2 readings)
- g. ORDINANCE: Development Code Changes for Application Review Process (2nd of 2 readings)
- h. ORDINANCE: Franchise Agreement for Overhead Fiberoptic Cable on Harris Street (2nd of 2 readings)
- i. ORDINANCE: Short Term Rental Tax amendment (1st of 2 readings)
- j. ORDINANCE: Increase Limit of Maximum Financial Worth for Rent Relief Program (1st of 2 readings)
- k. ORDINANCE: Franchise Agreement with Intellifiber (formerly Dominion Telecom) (1st of 2 readings)

2. RESOLUTION*

Special Use Permit Amendment - Market Plaza (1st of 1 reading)

**3. PUBLIC HEARING
ORDINANCE***

Sale of Land on Water Street and South Street and City Right-of-Way to Market Plaza LLC (1st of 2 readings)

4. ORDINANCE*

Approval of Ragged Mountain Natural Area Rules of Use (1st of 2 readings)

5. REPORT

Citizens Advisory Panel (CAP)

OTHER BUSINESS

MATTERS BY THE PUBLIC

COUNCIL RESPONSE TO MATTERS BY THE PUBLIC

*ACTION NEEDED

**CITY OF CHARLOTTESVILLE, VIRGINIA.
CITY COUNCIL AGENDA.**



Agenda Date:	September 21, 2015
Action Required:	Appropriation
Presenter:	Jeanette Janiczek, U.C.I. Program Manager
Staff Contacts:	Jeanette Janiczek, U.C.I. Program Manager Tony Edwards, Development Services Manager
Title:	Hillsdale Drive Extension - \$15,309,596

Background: On May 16, 2005, the City entered into an agreement with the Virginia Department of Transportation to participate in the Urban Construction Initiative (“First Cities”) Program (U.C.I.). Through this program, the City is responsible for administering its urban system construction program – design, right-of-way acquisition, utility relocation, and construction. In addition, accounting of the U.C.I. program funds must reconcile with the V.D.O.T. six-year plan. This appropriation involves the state and federal funds necessary to fund the City’s projects as outlined in the V.D.O.T. six-year plan.

State funds are received upfront from the state each year as they are allocated. Federal funding, however, must be spent first by the City and is later reimbursed by Federal Highway Administration (F.H.W.A.) through V.D.O.T. Reimbursement requests are submitted to V.D.O.T./F.H.W.A. quarterly.

Discussion: Preliminary Engineering (P.E.) is the phase of the roadway project “that includes all project initiation and development activities undertaken after its inclusion in the approved State Transportation Improvement Program through the completion of (construction bid submittal). It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.” Activities include design, plan development, environmental evaluation and public participation process. Right of Way is the phase of the roadway project that “includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.” Currently this project is in the Preliminary Engineering and Right of Way phases, with the construction phase to follow.

An appropriation of \$15,309,596 in federal and state funds is needed to appropriate the awarded funding of the Hillsdale Drive Extended project as noted:

State and Federal Funding Sources:

Total State/Federal Appropriated Amount	\$	19,982,271
<u>Previously Appropriated</u>		<u>(4,672,675)</u>
Remaining Amount to be Appropriated	\$	15,309,596

\$11.2 million is budgeted for the construction phase, of which \$9.0 million in funding is remaining to be appropriated by the State. The remaining funds necessary for the construction phase will be appropriated by the City closer to the beginning of that phase and upon confirmation/appropriation by V.D.O.T. for the final construction funding amounts.

Alignment with City Council’s Vision Areas and Strategic Plan: Approval of this agenda item upholds the City’s commitment to create “a connected community” by improving upon our existing transportation infrastructure. In addition, it would contribute to Goal 2 of the Strategic Plan, Be a safe, equitable, thriving, and beautiful community; Objectives 2.3. Provide reliable and high quality infrastructure and 2.6. Engage in robust and context sensitive urban planning.

Community Engagement: A public hearing on this appropriation of funds is being held, as required by Va. Code Sec. 15.2-2507, because the amount of the appropriation exceeds 1% of current budgeted expenditures. Though no community engagement has been held specific to the right of way process, there has been significant engagement throughout project planning.

Budgetary Impact: None. Appropriation is composed of state allocations that are received quarterly and federal allocations that are reimbursed once expended. Local share of projects are funded through the C.I.P. budget process.

Recommendation: Staff recommends approval and appropriation of the funds.

Alternatives: If state/federal funds are not appropriated, the Hillsdale Drive Extension cannot advance or acquire right of way.

Attachments: Appropriation
Six Year Improvement Program

APPROPRIATION.

Hillsdale Drive Extension - \$15,309,596.

WHEREAS, a total of \$15,309,596 in state and federal funds for the Urban Construction Initiative requires appropriation;

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

\$3,973,218 Fund: 426 WBS: P-00216 (Hillsdale) G/L Account: 430120 Federal

\$11,336,378 Fund: 426 WBS: P-00216 G/L Account: 430080 State

Expenditures

\$15,309,596 Fund: 426 WBS: P-00216 (Hillsdale) G/L Account: 599999



Six-Year Improvement Program

Home User's Guide About

All Projects Major Projects MPO Fund Reports

Line Item Details

Project Summary

UPC	60233
Project	HILLSDALE DRIVE EXTENDED (3 LANES)
Scope of Work	New Construction Roadway
Description	FROM: GREENBRIER DRIVE TO: HYDRAULIC ROAD
Report Note	Urban Construction Initiative Project. State matching funds included in quarterly payment.
Fund Source	STP

Project Location

District	Culpeper	Jurisdiction	Charlottesville
Road System	Urban	Length	0.8500 MI
Route		Street	HILLSDALE DRIVE
MPO Area	Charlottesville		
Zip Code	22901		

Estimates & Schedule

	Estimated Cost (Thousands)	Schedule
Prelim. Eng. (PE)	\$3,500	Complete
Right of Way (RW)	\$14,972	Underway
Construction (CN)	\$11,198	FY2016
Total Estimate	\$29,670	

Required Allocations

Fund Sources	Previous	Values in Thousands of Dollars						Required
	Allocations	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	After FY2021
(X)Local Project Contributions: State Match	\$168	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Bond Match: State Bond Match	\$37	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Bond Proceeds: CPR Bonds	\$12,518	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CTB Formula: High Priority - State	\$0	\$0	\$160	\$5,335	\$0	\$0	\$0	\$0
Federal Formula STP: Federal	\$1,019	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Local Project Contributions: Local	\$16	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Local Project Contributions: Urban - Local Match	\$3	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Minimum Guarantee: Federal	\$1,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenue Sharing Funds: Local Match	\$500	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenue Sharing Funds: State Match	\$500	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Soft Match: Federal	\$263	\$0	\$0	\$0	\$0	\$0	\$0	\$0
STP: NHPP Statewide - Soft Match	\$36	\$0	\$0	\$0	\$102	\$0	\$0	\$0
STP: Statewide - Federal	\$1,865	\$0	\$0	\$0	\$2,400	\$0	\$0	\$0
STP: Statewide - Federal	\$143	\$0	\$0	\$0	\$407	\$0	\$0	\$0
STP: Statewide - Soft Match	\$466	\$0	\$0	\$0	\$600	\$0	\$0	\$0
Urban Formula: Federal	\$862	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Urban Formula: Federal	\$1,071	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Funding	\$20,666	\$0	\$160	\$5,335	\$3,509	\$0	\$0	\$0

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**CITY OF CHARLOTTESVILLE, VIRGINIA.
CITY COUNCIL AGENDA.**



Agenda Date:	October 5, 2015
Action Required:	Appropriation
Presenter:	Rory Carpenter, Community Attention
Staff Contact:	Rory Carpenter, Community Attention Leslie Beauregard, Assistant City Manager
Title:	Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.) - \$452,704

Background:

In July 2010, the City of Charlottesville became the fiscal agent for the Virginia Juvenile Community Crime Control Act (V.J.C.C.C.A.) funds for both Charlottesville and Albemarle County. This funding stream was established by the 1995 Virginia General Assembly to create balanced, community-based systems of sanctions, programs and services for juvenile offenders. These funds are used to support the Community Attention programs. In F.Y. 2016, \$292,058 in V.J.C.C.C.A. funds will be received from the Virginia Department of Juvenile Justice with a required local maintenance of effort of \$52,231 from Albemarle County, and \$108,415 from the City. The grant period is from July 1, 2015 through June 30, 2016.

Discussion:

The V.J.C.C.C.A. grant funds the delinquency prevention and youth development services provided by Community Attention for Charlottesville/Albemarle youth involved in the juvenile justice system. These services include the following programs: The Attention Home that provides residential treatment services; the Teens GIVE service learning program that provides community service opportunities during both the school year and the summer; the Community Supervision Program that provides pro-social skills training like anger management, individual and group counseling services and case management services for youth on electronic monitoring; the C.A.Y.I.P. paid internship program; and the Juvenile Court Case Manager position providing supervision and case management services for youth identified by the court as truant.

Alignment with City Council's Vision and Strategic Plan:

The VJCCCA grant aligns with the Council Vision Areas including **America's Healthiest Cities** and a Community of Mutual Respect and it aligns with Goal 2, Objective 2.1 as follows:

Goal 2: Be a safe, equitable, thriving and beautiful community

Objective 2.1: Provide an effective and equitable public safety system

Community Attention's V.J.C.C.C.A. funded programs provide residential and community based services that prevent delinquency and promote the healthy development of youth. Expected outcomes include decreased delinquent behavior during and after program participation.

Community Engagement

The V.J.C.C.C.A. funded programs engage youth involved in the juvenile justice system and their families by providing delinquency prevention and youth development programs. The programs also engage and coordinate with other local agencies and organizations in the provision of services to the youth.

Budgetary Impact:

The required contribution has already been appropriated as part of the F.Y. 2016 Council Adopted Budget so no new funds are required to cover the match.

Recommendation:

Staff recommends approval and appropriation of funds.

Alternatives:

If the V.J.C.C.C.A. funds are not appropriated, Community Attention would have to serve less youth and eliminate programs and staff.

Attachments: N/A

APPROPRIATION.
Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.)
\$452,704.

WHEREAS, the City of Charlottesville has been awarded \$292,058 from the Virginia Department of Juvenile Justice; and

WHEREAS, this grant requires local maintenance of effort funds in the amount of \$52,231 from Albemarle County and \$108,415 from the City; and

WHEREAS, the grant award covers the period from July 1, 2015 through June 30, 2016.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$452,704 is hereby appropriated in the following manner:

Revenue – \$452,704

\$292,058	Fund: 220	Cost Center: 3523001000	G/L Account: 430080
\$52,231	Fund: 220	Cost Center: 3523001000	G/L Account: 432030
\$108,415	Fund: 220	Cost Center: 3523001000	G/L Account: 498010

Expenditures - \$452,704

\$ 52,035	Fund: 220	Cost Center: 3523001000	G/L Account: 519999
\$400,669	Fund: 220	Cost Center: 3523001000	G/L Account: 530010

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$292,058 from VA Department of Juvenile Justice, and \$52,231 from Albemarle County.

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**CITY OF CHARLOTTESVILLE, VIRGINIA.
CITY COUNCIL AGENDA.**



Agenda Date:	October 5, 2015
Action Required:	Approve and appropriate grant funds
Presenter:	Susan Morrow, Offenders Aid and Restoration
Staff Contact:	Susan Morrow, Offenders Aid and Restoration Leslie Beauregard, Assistant City Manager
Title:	Charlottesville/Albemarle Adult Drug Treatment Court Grant Award - \$205,000

Background:

The City of Charlottesville, on behalf of the Charlottesville/Albemarle Adult Drug Treatment Court, has received the Byrne Grant from the Supreme Court of Virginia in the amount of \$205,000 for operations of the drug court program, which is operated by Offender Aid and Restoration (O.A.R.). The City of Charlottesville serves as fiscal agent for the Drug Court Byrne Grant.

Discussion:

In its eighteenth year of operation, the Charlottesville/Albemarle Adult Drug Treatment Court is a supervised 12 month drug treatment program that serves as an alternative to jail time for offenders. Drug Court is a specialized docket within the existing structure of the court system given the responsibility to handle cases involving non-violent adult felony offenders who are addicted to drugs. The program uses the power of the court to assist non-violent drug offenders to achieve recovery through a combined system of intensive supervision, drug testing, substance abuse treatment, and regular court appearances.

The total program budget is **\$326,316** and includes three funding sources:
Supreme Court of V.A. - \$205,000
City of Charlottesville: \$68,179, which has already been appropriated
Albemarle County: \$53,137, which has already been appropriated

Alignment with City Council Vision and Strategic Plan:

This program supports the Council's Goal C2: Be a safe, equitable, thriving and beautiful community and Objective C2.1: Provide an effective and equitable public safety system. The drug court is a valuable, less expensive alternative to incarceration for certain substance dependent criminal offenders which utilizes a blend of court-ordered supervision, drug testing, drug and mental health treatment services, court appearances, and behavioral sanctions and incentives to reduce recidivism and drug use among participants beyond what is observed after incarceration alone.

Community Engagement:

The Drug Treatment Court is a direct service provider and is engaged daily with non-violent criminal offenders with drug driven crimes who are at a high level of risk for reoffending due to active addictions and long standing patterns of criminal behavior. By collaborating with the Court system, Region Ten Community Services Board, and the Sheriff's department, the Drug Treatment Court provides these offenders with a highly structured, rigorously supervised system of treatment and criminal case processing that results in a significant reduction in recidivism rates for program participants and graduates. Participants gain access to the Drug Treatment Court through referrals from police, probation, magistrates, defense attorneys and other local stakeholders. Participants have active criminal cases pending in the Circuit Court. If they successfully complete the program which takes a minimum of 12 months and requires a minimum of 12 months substance free, participants may have their pending charges reduced or dismissed. If participants are unsuccessful and have to be terminated from the program, they return to court to face their original charges. Successful Drug Treatment Court participants return the community's investment in them by maintaining full time, tax paying employment, providing for and taking care of their children and families including paying off back child support, behaving as good role models in the community, and supporting the recovery community in Charlottesville.

Budgetary Impact:

The City's match for this grant, \$68,179, was appropriated as part of the F.Y. 2016 Council Approved Budget and is part of the City's contribution to Offender Aid and Restoration.

Recommendation: Staff recommends approval and appropriation.

Alternatives: N/A

Attachments: N/A

APPROPRIATION.
Charlottesville/Albemarle Adult Drug Treatment Court Grant Award
\$205,000.

WHEREAS, the Supreme Court of Virginia awarded the Byrne Grant in the amount of \$205,000 for the Charlottesville/Albemarle Drug Court Treatment Court in order to fund salaries, benefits, and operating expenses; and

WHEREAS, the City of Charlottesville serves as the fiscal agent for this grant program; and

WHEREAS, the City of Charlottesville and Albemarle County both have dedicated local matches to this grant, totaling \$121,316; and

WHEREAS, the grant award covers the period July 1, 2015 through June 30, 2016.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$205,000, received as a grant from the Supreme Court of Virginia, is hereby appropriated in the following manner:

Revenues

\$205,000 Fund: 209 Internal Order: 1900255 G/L Account: 430120

Expenditures

\$205,000 Fund: 209 Internal Order: 1900255 G/L Account: 530550

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$205,000 from the Supreme Court of Virginia.

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**CITY OF CHARLOTTESVILLE, VIRGINIA.
CITY COUNCIL AGENDA.**



Agenda Date:	October 5, 2015
Action Required:	Approval and Appropriation
Staff Contacts:	Leslie Beauregard, Assistant City Manager Gail Hassmer, Grants Accountant
Presenter:	Leslie Beauregard, Assistant City Manager
Title:	State Criminal Alien Assistance Program (S.C.A.A.P.) Grant for 2015- AP-BX-0450 - \$7,697

Background: The City of Charlottesville has received the State Criminal Alien Assistance Program Grant (S.C.A.A.P.), on behalf of the Charlottesville Albemarle Nelson Regional Jail, in the amount of \$6,629. These are federal funds to reimburse the Charlottesville Albemarle Nelson Regional Jail for F.Y. 2014 expenses of housing alien inmates. Albemarle County is appropriating funds received under the same program that will also be passed through to the Regional Jail.

Discussion: The State Criminal Alien Assistance Program (S.C.A.A.P.) provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating certain undocumented criminal aliens. The award amount is based on the number of undocumented persons incarcerated at the Charlottesville Albemarle Nelson Regional Jail. As this is not a one-time grant, the Jail will receive future payments from the City as they are granted.

Community Engagement: N/A

Alignment with City Council Vision and Strategic Plan: Smart, Citizen-Focused Government -- Acceptance of these funds will support quality services at our Regional Jail and will help ensure that services are provided in the most efficient and cost effective way to citizens.

Recommendation: Approve and Appropriate funds to the Regional Jail.

Budgetary Impact: There is no budgetary impact as 78% of these funds will be passed through directly to the Regional Jail. The remaining 22% will be sent to Justice Benefits, Inc., which provides administrative support for the regional jail.

Alternatives: N/A

Attachments: N/A

APPROPRIATION.
State Criminal Alien Assistance Program (S.C.A.A.P.) Grant for 2015
\$7,697.

WHEREAS, the State Criminal Alien Assistance Program (S.C.A.A.P.) grant, providing federal payments for correctional officer salary costs incurred for incarcerating certain undocumented criminals has been awarded the City of Charlottesville, on behalf of the Albemarle-Charlottesville-Nelson Regional Jail, in the amount of \$7,697.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that a total of \$6,004 be appropriated and passed through to the Albemarle-Charlottesville-Nelson Regional Jail and \$1,693 be appropriated and passed through to Justice Benefits, Inc.

Revenues

\$7,697	Fund: 211	Internal Order: 1900241	G/L Account: 431110
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Expenses

\$6,004	Fund: 211	Internal Order: 1900241	G/L Account: 530550
\$1,693	Fund: 211	Internal Order: 1900241	G/L Account: 530670

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$7,697 from the U. S. Bureau of Justice Assistance.

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**CITY OF CHARLOTTESVILLE, VIRGINIA.
CITY COUNCIL AGENDA.**



Agenda Date:	October 5, 2015
Action Required:	Appropriation of Project Funding for Transit Division
Staff Contact:	John Jones, Transit Manager
Presenter:	John Jones, Transit Manager
Title:	Appropriation of F.Y. 2016 Transit Grants - \$(480,486)

Background: With its February 17, 2015 Resolution Authorizing the Application for State Aid to Public Transportation, City Council authorized the Transit Division to apply for Federal and State grants to fund Charlottesville Area Transit (C.A.T.) Division Operating and Capital expenses. The final award amounts for F.Y. 2016 from Virginia Department of Rail and Public Transportation (D.R.P.T.) and Federal Transit Administration (F.T.A.) were not announced until six months later. Since the final award amounts are different from the budgeted amounts in these categories, a supplemental appropriation of the change is necessary.

A supplemental appropriation is requested for project revenues/expenses which include:

Transit Grants by Type	F.Y. 2016 Budget	Grants Awarded	Change to Appropriate
State operating assistance	\$1,366,366	\$1,481,019	\$114,653
Federal operating assistance	\$1,881,095	\$1,630,775	\$(250,320)
Federal Job Access - Night Routes 1, 3, 4, 5,6,7, 10, 11, T	\$0	\$138,781	\$138,781
TOTAL OPERATING CHANGE	\$3,247,461	\$3,250,527	\$3,114
TOTAL JAUNT OPERATING CHANGE	\$0	\$488,332	\$488,332
State capital award	\$265,164	\$103,175	\$(161,989)
Federal capital award	\$1,325,818	\$515,875	\$(809,943)
Local C.I.P. match P-00334	\$66,291	\$66,291	\$0
TOTAL CAPITAL CHANGE	\$1,657,273	\$685,341	\$(971,932)
TOTAL APPROPRIATION REQUEST			\$(480,486)

Discussion: The final D.R.P.T. Operating award is \$114,653 greater than appropriated in the F.Y. 2016 budget. The final F.T.A. Operating award is \$250,320 less than appropriated in the F.Y. 2016 budget. However, the F.T.A. provided \$138,781 in Job Access Reverse Commute (J.A.R.C.) grant funding in another award, which was not previously budgeted. Additionally, the F.T.A. awarded \$488,332 to JAUNT, with the City acting as pass-through fiscal agent.

The Capital portion of the award is for the purchase of one <30-foot B.O.C. bus, two C.A.T. support vehicles, a new Automatic Vehicle Locator System (A.V.L.), and various bus stop amenities and improvements. When budget planning started in the fall of 2014, C.A.T. had

planned to include the purchase two replacement buses with the F.Y. 2016 award. However, it was found that the replacement of these particular buses had been budgeted in the prior year. Therefore, the F.Y. 2016 Capital Award application did not include replacing the buses, so the final award amount was \$971,932 less than originally planned last fall. It was an oversight that this reduction in the Capital Award request was not communicated last February when the City's budget was still being determined.

Community Engagement: Charlottesville Area Transit published its capital and operating Program of Projects in the Daily Progress which included an opportunity for members of the public to request a public hearing on the matter. No public hearing was requested.

Alignment with City Council's Vision and Strategic Plan: Approval of this agenda item aligns directly with Council's vision for Charlottesville as a *Connected Community*, where the City is part of a comprehensive, transportation system that enables citizens of all ages and incomes to easily navigate our community.

Recommendation: Approve appropriations.

Budget Impact: The City's contribution from general funds and Albemarle County's contribution as already budgeted cover the local match requirement for Operating Assistance and J.A.R.C. for F.Y. 2016. There is no need to change the C.I.P. match for Capital Assistance.

The pass through of grant funds for JAUNT has no budget impact.

Alternatives: City Council may choose not to appropriate funds for these Transit Division projects. Without an appropriation these projects will not be implemented and staff will work with the Federal Transit Administration and the Virginia Department of Rail and Public Transportation to de-obligate the grants.

Attachments: N/A

APPROPRIATION

Appropriation of F.Y. 2016 Transit Grants \$(480,486)

WHEREAS, a Federal Operating Grant of \$1,630,775 and State Operating Grant of \$1,481,019 have been awarded to the City of Charlottesville, and the previously unbudgeted Federal J.A.R.C. Operating Grant of \$138,781 has been awarded, the combined amounts of operating grants are \$3,066 more than previously budgeted; and

WHEREAS, a Federal Grant has been awarded to JAUNT in the amount of \$488,319 and these funds must pass through the City of Charlottesville; and

WHEREAS, a Federal Capital Grant of \$515,875 and a State Capital Grant of \$103,175 have been awarded to the City of Charlottesville, and the combined amounts of capital grants are \$971,932 less than the amount budgeted; and

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

Revenue (Operating)

\$ 114,653	Fund: 245	Cost Center: 2801001000	G/L: 430080 St Assist.
\$(250,320)	Fund: 245	Cost Center: 2801001000	G/L: 431010 Fed Assist.
\$ 138,781	Fund: 245	Cost Center: 2801001000	G/L: 431505 JARC Asst.

Expenditures (Operating)

\$ 3,114	Fund: 245	Cost Center: 2801001000	G/L: 599999 Lump Sum
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Revenue (JAUNT)

\$488,332	Fund: 245	Cost Center: 2821002000	G/L: 431010 Fed Assist.
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Expenditures (JAUNT)

\$ 488,332	Fund: 245	Cost Center: 2821002000	G/L: 540365 JAUNT Pymt
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Revenue (Capital)

\$(161,989)	Fund: 245	Cost Center: 2804001000	G/L: 430110 St Grant
\$(809,943)	Fund: 245	Cost Center: 2804001000	G/L: 431110 Fed Grant

Expenditures (Capital)

\$(971,932)	Fund: 245	Cost Center: 2804001000	G/L: 541040 Acq. Com-Veh.
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BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$1,584,194 from the Virginia Department of Rail and Public Transportation and \$2,773,702 from the Federal Transit Administration.

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**CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES
MEMO**

To: Charlottesville City Council
From: Brian Haluska, Principal Planner
Missy Creasy, Assistant Director
Date: September 28, 2015
Re: October 5, 2015 Council meeting - Development Application review process– 2nd Reading

The attached ordinance has been updated to reflect changes outlined by Council at first reading.
Updates include:

1. Removal of references to site plan and subdivision regulations
2. Update to ensure use of gender neutral references throughout the text.



**CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES
MEMO**

To: Charlottesville City Council
From: Brian Haluska, Principal Planner
Missy Creasy, Assistant Director
Date: September, 11, 2015
Re: ZT15-00002 – Application review process update

At the June 15, 2015 meeting, City Council reviewed ZT15-0002 (An ordinance to amend City Code Chapter 34 (Zoning) to modify certain development review procedures and to include a requirement for community meetings** prior to development application approvals). At the first reading of the proposed ordinance, Council expressed concern about a provision that would allow the Director of NDS to waive the requirement for community meetings in certain circumstances. Council directed staff to draft a document that would provide further guidance to the Director of NDS and staff about when it may be appropriate to waive the requirement for these community meetings.

Staff has drafted administrative regulations (attached) to guide the Director of NDS in making decisions as to when a community meeting might not be necessary. On September 9, 2015 these regulations were reviewed and recommended to City Council for approval by the Planning Commission. In addition, Planning Commission has asked staff to recommend to City Council that it should include within the Proposed Ordinance a provision that requires City Council to review the effectiveness of the community meeting process, after two years.

****Note:** the “community meetings” that are the subject of the proposed ordinance are in addition to the public hearings required by law for certain zoning and development approvals. (The Director of NDS could not waive any public hearing required by law). As proposed, the community meetings would take place before an application is accepted for review within the normal review processes, so that the public would have an opportunity to review and comment in advance of the official submission and city review of particular proposals.

ORDINANCE
AMENDING CHAPTER 34 (ZONING) OF THE CODE OF THE CITY OF
CHARLOTTESVILLE (1990), AS AMENDED, TO MODIFY THE PROCESS BY
WHICH CERTAIN ZONING AND DEVELOPMENT APPLICATIONS ARE
SUBMITTED AND REVIEWED

WHEREAS, this City Council desires to enhance opportunities for citizens to obtain information about proposed developments within the City, and to allow expanded opportunities for public discussions of development applications; and

WHEREAS, Council believes that revising its established application review processes for certain types of applications will have the effect of improving citizens' opportunities to understand, review and comment on applications seeking development approvals, and will assure that Council, the Planning Commission, the BAR and other public bodies can make their decisions based on more detailed application materials and public comments, and

WHEREAS, Council desires to expedite the time frame in which changes to the City's procedures for review of development applications can be implemented; and

WHEREAS, a joint public hearing on the zoning and subdivision ordinance text amendments that are the subject of this Ordinance was held before the City Council and Planning Commission on May 12, 2015, following notice to the public as required by law; and

WHEREAS, legal notice of the public hearing held on May 12, 2012 was advertised in accordance with Va. Code Sec. 15.2-2204; and

WHEREAS, on May 12, 2012, the Planning Commission voted to recommend approval of the proposed zoning and subdivision ordinance text amendments, finding that such amendments are required by the public necessity, convenience, general welfare or good zoning practice, and this Council concurs with the Planning Commission's recommendation and hereby adopts the Planning Commission's findings as its own; **NOW THEREFORE**,

BE IT ORDAINED THAT Council hereby adopts, amends and re-ordains the Charlottesville City Code, Chapter 34 (Zoning), to approve and incorporate the amendments set forth following below:

I. THE FOLLOWING ZONING TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE THE APPLICATION REQUIREMENTS FOR SPECIAL USE PERMITS AND REZONINGS (INCLUDING PUD AND PUD AMENDMENT)

Sec. 34-8. Disclosure of real parties in interest.

- (a) An applicant for a special exception, a special use permit, an amendment to the zoning ordinance or a variance shall make complete disclosure of the equitable ownership (i.e., the real parties in interest) of the real estate to be affected. The applicant shall provide the names

and addresses of all of the real parties in interest, including, without limitation: each of the stockholders, officers and directors of a corporate entity (corporations, professional corporations, limited liability companies, professional limited liability companies, etc.). However, the requirement of listing names of stockholders shall not apply to a corporation whose stock is traded on a national or local stock exchange and which corporation has more than five hundred (500) shareholders.

- (b) All petitions initiated by property owners or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or their immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or their immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or their immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships.

Sec. 34-41. Amendments to the zoning ordinance.

- (a) Whenever the public necessity, convenience, general welfare or good zoning practice require, the city council may, by ordinance, amend, supplement or change the city's zoning district regulations, district boundaries or zoning district classifications of property. Any such amendments may be initiated by:
- (1) Resolution of the city council;
 - (2) Motion of the planning commission; or
 - (3) Petition of any person who is the owner, owner's agent, or contract purchaser (with the owner's written consent) of property, where such petition proposes a change of the zoning district classification of such property ("zoning map amendments"). For purposes of this section, the term zoning map amendment includes, without limitation: petitions seeking to establish or to amend a planned unit development; petitions to amend established proffers; and petitions for approval of a special use permit.
- (b) Petitions for zoning map amendments shall be made in writing, shall be addressed to the city council, and shall be filed in the department of neighborhood development services; and shall be submitted to the city's department of neighborhood development services at least forty nine (49) days prior to a regular meeting of the planning commission. Each application shall be accompanied by the required application fee, as set forth within the most recent fee schedule adopted by city council. Each application shall be composed of a completed city-provided application form and supplemental information required in order for the city to review and act on the application. At a minimum, a complete application shall include:

(1) Verification of the applicant's attendance at a pre-application meeting with a City planner, at which the applicant was provided a list of the application materials, including required supplemental information, required for an application;

(2) A city-provided application form, signed by the owner of the property. Alternatively, the application form may be signed by the owner's authorized representative, if the application form is accompanied by the owner's written authorization;

(3) Written certification of compliance with sec. 34-10(b);

(4) The required application fee, as set forth within the most recent fee schedule adopted by city council;

(5) All information required by any provision of this zoning ordinance (including, without limitation: sec. 34-158 and 34-other applicable city ordinances, or state law;

(6) All required supplemental information.

The director of neighborhood development services shall establish and maintain appropriate uniform application forms for zoning map amendments. documents and informational requirements for making such petition, as well as a list identifying all materials required to be submitted along with the petition, which shall include any information the director deems necessary for the planning commission and city council to adequately evaluate the request which is the subject of the petition. Upon receipt of an application, the director shall within ten (10) business days review the application for completeness. Incomplete applications shall be rejected and shall not proceed for review or decision, and the applicant shall be notified in writing of the rejection and the reasons therefor.

(c) All petitions initiated by property owners, contract purchasers, or the agents thereof, shall be sworn to under oath before a notary public, stating: (i) whether or not any member of the planning commission, or his immediate family member, has any personal interest in the property or transaction that is the subject of the application; and (ii) whether or not any member of the city council, or his immediate family member, has any such interest. A personal interest arises when a financial benefit or liability may accrue to a member of the planning commission or city council, or his immediate family member, as a result of an individual or business interest in the subject application. For the purposes of this section, the term "personal interest" shall have the meaning set forth within the State and Local Government Conflicts of Interests Act, Code of Virginia, § 2.2-3101, and may refer to an interest accruing to a person individually, as a result of business or professional relationships. Following receipt of a complete application for a zoning map amendment:

- (1) Either the city council or the director may request work sessions or other public presentations to be scheduled before the city council, the planning commission, the board of architectural review (if property is within an historic district), or other public bodies, as the director determines to be appropriate, taking into consideration the nature of the approval requested, the acreage affected, potential impacts of an approved application, applicable legal requirements, and any other factors consistent with good zoning practices. The purpose of a work session or other public presentation is to allow an applicant to present a proposed project, to allow the department of neighborhood development services to present a preliminary scoping of major issues, to seek directions as to the board's or commission's expectations in addressing those issues, and to allow the board or commission to receive public comments. The applicant's consent to a work session is required, if the work session would extend the time for action by the board or commission beyond applicable deadlines established by law.

- (2) The applicant shall hold a community meeting for the application. The purposes of a community meeting are to provide citizens an opportunity to receive information about a proposed project, about applicable zoning processes and procedures, about applicable policies of the comprehensive plan and city ordinances or regulations that may apply to the project, and to give citizens an opportunity to ask questions about the project. The director of neighborhood development services is authorized to establish written guidelines pertaining to which applications should have community meetings, when in the process such meetings should be conducted, the manner in which the meeting should be conducted, and how (and to whom) notice of the community meeting should be given. The applicant's consent to a community meeting is required, if the community meeting cannot, due to no fault of the applicant, be scheduled in sufficient time to allow action by the board or planning commission within applicable deadlines established by law. The director may waive the requirement for a public meeting, upon a determination that the meeting is not likely to achieve the public purposes intended to be served, after consideration of the following: (i) the nature of the approval requested, the acreage affected, the proposed density, the proposed scale, and potential impacts, (ii) any other factors deemed relevant upon applying sound zoning principles, (iii) whether other public work sessions or meetings have already been held regarding the application, so as to make a community meeting unreasonably duplicative.

- (3) Unless otherwise directed by city council, upon the director's receipt of proof by the applicant that a community meeting has been held in accordance with applicable policies and procedures, the director is authorized to refer the matter to the planning commission's for review in accordance with sec. 34-42(c), by written notice given to the planning commission chair.

- (d) ~~Once a proposed amendment has been initiated as set forth within this section, it shall be deemed referred by the city council to the planning commission for study and recommendation reviewed by the director of neighborhood development for completeness. Incomplete applications shall be rejected and shall not proceed for review or decision. For each application for a zoning map amendment, the director may require supplemental~~

information to be submitted along with the application. In determining what supplemental information must be submitted, the director shall consider the proposed use, the proposed density, the proposed zoning district classification, and other considerations the director determines to be relevant according to sound zoning practices. Required supplemental information may consist of any or all of the following:

- (1) Project Proposal Narrative, consisting of a detailed written statement of the proposal, its public need or benefit, and of how the project satisfies the purpose, intent or objectives of the applicable zoning district classification.
- (2) Comprehensive Plan Analysis, consisting of a detailed written statement of the project's consistency with the comprehensive plan, including the land use map and any small area, strategic investment area or other plan for the applicable development area.
- (3) Impacts on Public Facilities and Infrastructure. A detailed narrative statement detailing the project's impacts on public facilities and infrastructure, including, without limitation: sidewalks and other pedestrian facilities; bicycle, public transit and motor vehicle transportation facilities; storm sewers; existing platted rights-of-way which have not previously been improved or accepted by the city for maintenance, etc.
- (4) Maps. One or more maps showing the proposed project's neighborhood context, existing natural and man-made conditions, and existing topography. If the proposal is to amend an existing planned unit development district, and the proposed amendment would affect less area than the entire district, the applicant shall submit a map showing the entire existing PUD and identifying any area to be added to or deleted from the district, or identifying the area to which the amended PUD plan or any amended proffers, would apply. If the proposal is for a special use permit, and the area proposed to be subject to the special use permit is less than an entire lot (or less than an entire PUD, if applicable) a map shall be provided showing the area proposed to be subject to the special use permit.
- (5) Impacts on Environmental Features. A narrative of environmental features of the property that would be affected by the project, including, without limitation: trees, existing pervious surfaces, steep slopes, streams, etc. Photographs shall be provided of features described in the narrative.
- (6) Project Concept Plan. For any zoning map amendment to establish a conventional zoning district (i.e., a district other than a PUD) or seeking approval of a special use permit, a conceptual plan shall be provided showing, as applicable: (i) street network, including circulation within the project and connections to existing and planned streets within and outside the project; (ii) general location of pedestrian and bicycle facilities; (iii) building envelopes; (iv) parking envelopes; (v) public spaces and amenities; (vi) conceptual stormwater management facility locations and types; (vii) conceptual

grading; (viii) conceptual landscape plan, (ix) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (x) general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities.

- (7) PUD Concept Plan. In addition to any information required by city code sec. 34-517, a PUD concept plan shall include: (i) typical cross-sections to show proportions, scale, and streetscape/cross-sections/ circulation; (ii) conceptual stormwater management facility locations and types; (iii) conceptual grading; (iv) a use table listing the specific uses to be included by right, and the number of dwelling units, by type; (v) building envelopes; (vi) topography, and identification of the source of the topographical information, supplemented where necessary by spot elevations, and identification of areas of the site containing slopes in excess of 25%; (vii) general layout for water and sewer systems; (viii) the general location of central features or major elements within the project that are essential to the design of the project, such as parking areas and structures, civic areas, open spaces, green spaces, recreation areas and other amenities; (viii) a code of development identifying standards for proposed yards, open space characteristics, and any landscape or architectural characteristics relating to scale, proportions, and massing; and (ix) a conceptual lot layout.
- (8) Proposed Proffers to Address Impacts, consisting of a written statement of conditions, limitations, restrictions or amenities that the property owner offers as a means of mitigating impacts of a project or enhancing the public benefits of a project.
- (9) Other Information, including, without limitation, special studies or documentation, identified by the director as being necessary for a full and complete review of the proposed zoning map amendment consistent with good zoning practices.

Sec. 34-42. Commission study and action.

(a)...[NO CHANGE PROPOSED]

(b)...[NO CHANGE PROPOSED]

(c) The planning commission shall review the proposed amendment and shall report its findings and recommendations to the city council, along with any appropriate explanatory materials, within one hundred (100) days after the proposed amendment was referred to the commission for review. Owner-initiated petitions for zoning map amendments shall be deemed referred to the commission as of the date on which: (i) city council, by motion or by resolution, refers an amendment to the commission for review, or (ii) the first planning commission meeting following the referral acceptance of the petition by the director of neighborhood development services pursuant to sec. 31-41(c)(3). Failure of the commission to report to city council

within the ~~100 one hundred~~-day period shall be deemed a recommendation of approval, unless the petition is withdrawn. In the event of and upon such withdrawal, processing of the proposed amendment shall cease without further action.

Sec. 34-158. Application generally.

(a) The procedure for filing and consideration of an application for a special use permit is the same as that required by sec. 34-41 for an owner-initiated rezoning petition for a zoning map amendment, except that ~~each~~ a complete application for a special use permit shall also include:

(b)[NO CHANGE PROPOSED]

Sec. 34-160. Review and action on application.

(a)...[NO CHANGE PROPOSED]

(b) The planning commission shall review and make recommendations to city council in the same manner as provided within sec. 34-41 for an owner-initiated petition for a zoning map amendment-rezoning application. The planning commission may concurrently approve a preliminary site plan, subject to city council's approval of a special use permit, and subject to any necessary amendments to the site plan as a result of the city council's action. Alternatively, the planning commission may choose to defer consideration of a site plan until after council has rendered a final decision on the application for a special use permit.

II. THE FOLLOWING ZONING TEXT AMENDMENTS ARE HEREBY ADOPTED, TO CHANGE PLANNED UNIT DEVELOPMENT (PUD) APPLICATION REQUIREMENTS

Sec. 34-515. Pre-application review process.

(a)...[NO CHANGE PROPOSED]

(b) Upon confirmation by the director that all materials and information submitted by the applicant satisfy the requirements referenced within paragraph (c), below, in this section, the ~~pre-application will be scheduled for a preliminary discussion to be held at a regular planning commission meeting~~ application will be reviewed and acted upon in the manner prescribed within sec. 34-41.

(c) Each application shall ~~be accompanied by the required fee, as set forth within the most recent fee schedule adopted by city council~~ satisfy the requirements of sec. 34-41 as well as all of the requirements of this article.

AND, BE IT FURTHER ORDAINED THAT, no later than two (2) years after the date on which the ordinance is adopted by City Council, the Director shall make a report to City Council as to the effectiveness of the community meeting process, as implemented pursuant to this Ordinance.

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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	September 21, 2015
Action Required:	Approval of Ordinance (1 st reading)
Presenter:	Chris Turner, Project Manager, Piedmont Telesystems Inc.
Staff Contacts:	Marty Silman, City Engineer, Neighborhood Development Services
Title:	Franchise Agreement to Allow Installation of Fiberoptic Cable Over Harris Street

Background:

Piedmont Telesystems Inc., on behalf of Eagle Real Estate LLC, has requested to install a single 12 strand fiber optic line across the City's right of way between 603 Rivanna Avenue and 1000 Harris Street. Installation of the fiber optic will require setting a new utility pole on the property at 603 Rivanna Avenue and extending the cable via aerial route across Harris Street to the building located at 1000 Harris St.

Discussion:

Neighborhood Development Services has worked with the applicant to ensure that there are no obvious conflicts with the installation. Miss Utility has confirmed that the new utility pole (to be located on the property at 603 Rivanna Ave.) will not conflict with any existing City utilities. Staff has also required that the fiber optic line be installed at a minimum height of 16.5', which meets VDOT's requirements for urban roads. The project is not expected to conflict with any current or future City projects. Miss Utility will be called again prior to installation of the utility pole.

Land disturbance associated with the project will be limited to the installation of the utility pole and does not trigger the need for Erosion & Sediment Control or Stormwater Management Plans. It is expected that installation of the fiber optic line will commence immediately after Council approval.

Alignment with Council Vision Areas and Strategic Plan:

This item aligns with the City Council Vision of Economic Sustainability by supporting the ability of a local business to utilize current technological infrastructure to maintain productivity under today's expectations of prompt services.

This item aligns with the following objectives of the City's Strategic Plan:

- Goal 2.3 Provide reliable and high quality infrastructure - Installation of fiber optic line is one of the highest quality types of communication infrastructure on the market today.
- Goal 3.3 Grow and retain viable businesses - Installation of the fiber optic lines will support the existing business.

Community Engagement:

Community engagement required as a result of this project will be limited to coordination with the private utility owners of the adjoining utility poles that this fiber optic line will be attached to. No additional community engagement is anticipated.

Budgetary Impact:

It is not anticipated that this project will have any impact on the City's budget.

Recommendation:

It is staff's recommendation to approve the request.

Alternatives:

Alternatives to installation of the fiber optic line would be to continue operations with existing communication infrastructure.

Attachments:

Request Letter from Eagle Corporation

Description of aerial fiber installation (provided by Piedmont Telesystems Inc.).

Plat of properties with locations of existing utilities (provided by Piedmont Telesystems Inc.).

Proposed Franchise Agreement

EAGLE CORPORATION
P. O. Box 1648
CHARLOTTESVILLE, VIRGINIA 22902
TELEPHONE (434) 971-2686

To: City of Charlottesville

From: Eagle Corporation

Date: July 9, 2015

We are requesting to add a utility pole to our property that will allow us to run fiber from 1020 Harris Street to 603 Rivanna Avenue.

Please let us know if you have additional questions,



Leatha Harlow

IT Coordinator

Eagle Corporation

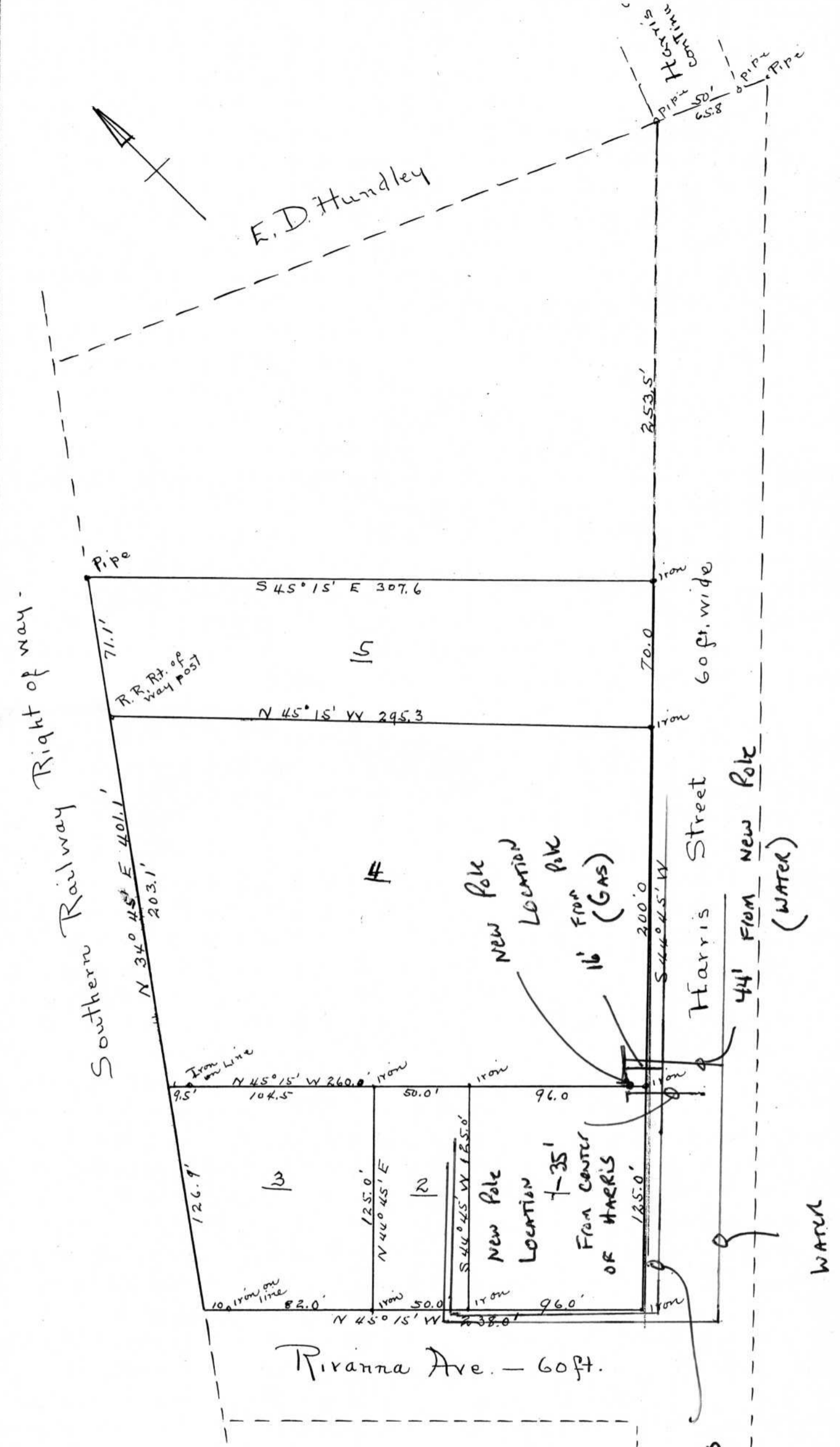
1020 Harris Street

Charlottesville VA 22903

434-971-2686

**Description of Aerial Fiber installation
from Bldg. 603 to Bldg. 1000 on Harris Street
Allied Concrete**

1. Set new pole on property 603 Rivanna Ave. (Eagle Corp.) 35 feet from center of Harris Street and 5 feet from edge of sidewalk.
2. Attach 12 Strand fiber and 12 pair copper to 603 building to new pole across Harris Street and attach to 1000 building (Allied)
3. Cables on 603 Rivanna Avenue side will travel over existing telecommunication and under power lines and on the 1000 Harris street side cables will travel under existing telecommunications lines. Cable heights will meet Federal and City height requirements.
4. There will be no road closure or lane closure for the work performed.
5. Utilities have been located and they are as follows in relation to new pole location.
 - a. Gas 16 feet from new pole location in Harris Street
 - b. Water and Sewer 44 feet from new pole location in Harris Street
 - c. Power and Telecommunications are all overhead
6. Miss Utility will be contacted again before any construction begins.



Deed Book reference
 D.B. 29 - Page 137
 D.B. 94 - Page 341

PLAT
 PROPERTY OF
 D.M. LENDING and N. E. STOWELL
 Charlottesville, Va.
 Scale 1" = 60' Oct. 9, 1944
 O. R. RANDOLPH, Engineer
 Charlottesville, Va.

VIRGINIA:- In the Clerk's Office of the Corporation Court of the City of Charlottesville.

The foregoing instrument of writing, together with certificate of acknowledgment thereto annexed, was presented and admitted to record on the 11th day of October, 1944, at 3:30 o'clock, P.M., and recorded in Deed Book No. 118, page 133.

Teste:-

Approved by City Council on _____

**EAGLE REAL ESTATE, LLC
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
EAGLE REAL ESTATE, LLC, 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 EAGLE REAL ESTATE, LLC (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 fiberoptic lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead 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 Eagle Real Estate, LLC, 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 fiberoptic 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, at 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, 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 one hundred thousand dollars (\$100,000). The Performance Bond is to guarantee that the project is done in a proper manner without damage to the PROW. The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. Upon completion of construction of the Facilities, the Company may reduce the Performance Bond to the amount of twenty-five thousand dollars (\$25,000) and made payable to the City, and 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 exchange telephone 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 FRANCHISING COSTS

Prior to the execution of this Ordinance, the City incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the City of an invoice for such costs, the Company shall pay at such time and in such manner as the City shall specify to the City or, at the direction of the City, to third parties an amount equal to the costs the City incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the City in the same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2500.00).

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:

Eagle Real Estate, LLC
Attn: President
1020 Harris Street
Charlottesville, VA 22902

To the City:

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

With a copy to:

M.E. (Dick) Gibson, Jr.
Tremblay & Smith, PLLC
105 – 109 East High Street
Charlottesville, VA 22902

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:
Eagle Real Estate, LLC
Attn: President
1020 Harris Street
Charlottesville, VA 22902
(434) 971-2686

To the City:
Gas Dispatchers
(434) 970-3800 (office)
Emergency (434) 293-9164 (leaks)
(434) 970-3817 (facsimile)

Judith Mueller, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)
(434) 971-6645 (home)

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 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 _____ day of _____, 2015.

Clerk of Council

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

EAGLE REAL ESTATE, LLC

Date: _____, 2015

By: _____

Its: _____

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CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 5, 2015
Action Required:	Approval of Ordinance
Presenter:	Todd Divers, Commissioner of the Revenue
Staff Contacts:	Todd Divers, Commissioner of the Revenue Andrew Gore, Assistant City Attorney
Title:	Change in Return/Payment Dates for Quarterly Short-term Rental Property Tax

Background:

The City of Charlottesville currently requires those engaged in a short-term rental business to submit a quarterly tax return and payment by the 20th of the months of April, July, October and January, based upon gross receipts collected for each of the respective preceding quarters. This proposed amendment to Sec. 30-320 of the City Code is necessary to align with the applicable provisions of the Code of Virginia.

Discussion:

Va. Code §58.1-3510.6 specifies that these tax returns are to be filed with the commissioner of revenue no later than the 15th day of each month following a quarter, with payment of the assessed tax due no later than the last day of the month. Although the City's current return date was likely implemented to coincide with the provision for the assessment and collection of meals tax, lodging tax, etc., Sec. 30-320 must be revised to align with Va. Code §58.1-3510.6.

Alignment with City Council's Vision and Strategic Plan:

This code change is necessary in order to bring our practices in-line with State Code. It contributes to Goal 4 of the Strategic Plan, to be a well-managed and successful organization.

Community Engagement:

N/A

Budgetary Impact:

The proposed changes will have no budgetary impact. Assessment rates will remain the same and only a change in the dates for filing the returns and remitting payment are being sought.

Recommendation:

Approve the proposed changes to align Sec. 30-320 of the City Code with the provisions of Va. Code §58.1-3510.6.

Alternatives:

There are no alternatives available as local ordinances must align with state statutes.

Attachments:

Proposed Ordinance

**AN ORDINANCE AMENDING AND RE-ORDAINING
SECTION 30-320, ARTICLE XI, CHAPTER 30
OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
RELATING TO SHORT-TERM RENTAL TAX**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Section 30-320, Article XI, Chapter 30 of the Charlottesville City Code, 1990, as amended, is hereby amended and re-ordained as follows:

Section 30-320. Collection, return and remittance generally.

Any person engaged in the short-term rental business shall collect the rental tax levied by this article from the lessee of the property at the time of the rental. The lessor of the daily rental property shall transmit a quarterly return to the commissioner of revenue, indicating the gross proceeds derived from the short term rental business ~~and shall remit therewith the payment of such tax as is due for the quarter. The quarterly returns and payment of tax shall be filed with the commissioner of revenue~~ on or before the ~~twentieth~~ fifteenth day of each of the months of April, July, October and January, representing, respectively, the gross proceeds and taxes collected during the preceding calendar quarters ending March 31, June 30, September 30 and December 31. The return shall be upon such forms and setting forth such information as the commissioner may require, showing the amount of gross receipts and the tax required to be collected. The commissioner of the revenue shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the treasurer no later than the last day of the month following the end of the calendar quarter. The taxes required to be collected under this article shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

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CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 5, 2015
Action Required:	Ordinance Approval
Presenter:	Todd Divers, Commissioner of the Revenue
Staff Contacts:	Todd Divers, Commissioner of the Revenue
Title:	Proposed Change in Maximum Financial Worth for Rent Relief Program

Background:

Under the authority of Va. Code §63.2-802, the City of Charlottesville administers a program of rent relief to eligible elderly and/or disabled citizens. Currently the maximum combined financial worth of a household qualifying for rent relief is \$100,000.

Discussion:

Va. Code §63.2-802 gives localities broad discretion in determining eligibility for general relief. Currently, the maximum financial worth of a household qualifying for real estate tax relief is \$125,000. Increasing the threshold for rent relief to the same amount would create a more equitable program that would be easier to administer.

Alignment with City Council’s Vision and Strategic Plan:

This ordinance change aligns with the City Council Vision by helping to provide quality housing opportunities for all and delivering smart, citizen-focused government.

It also aligns with the Strategic Plan goal of “Enhancing the self-sufficiency of our residents” by increasing affordable housing options.

Community Engagement:

N/A

Budgetary Impact:

This change will have virtually no budgetary impact. There will be no changes in the process for administering the program and those who qualify for rent relief do not reach the proposed maximum financial worth level.

Recommendation:

Approve the proposed change to the financial worth limit.

Alternatives:

Keep the maximum financial worth level at \$100,000.

Attachments:

Proposed Ordinance

**AN ORDINANCE AMENDING AND RE-ORDAINING
SECTION 25-58, ARTICLE III, CHAPTER 25
OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
RELATING TO QUALIFICATIONS FOR GRANTS FOR RENTAL RELIEF
FOR ELDERLY AND DISABLED PERSONS**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Section 25-58, Article III, Chapter 25 of the Charlottesville City Code, 1990, as amended, is hereby amended and re-ordained as follows:

Section 25-58. Qualifications for Grant.

Grants pursuant to this article shall be made to persons complying with the following provisions:

- (1) The applicant has paid rent for his dwelling within the city during the grant year and was a resident of the city on December thirty-first of the grant year;
- (2) The applicant, or his spouse if they reside together, is sixty-five (65) years of age or older, or permanently and totally disabled, as of December thirty-first of the grant year;
- (3) The dwelling for which the rental relief grant is sought was occupied as of December thirty-first of the grant year as the sole dwelling place of the applicant.
- (4) The gross combined income during the grant year from all sources of such applicant and all relatives of the applicant living in such dwelling does not exceed the sum of fifty thousand dollars (\$50,000.00); provided that the first seven thousand five hundred dollars (\$7,500.00) of any income, (a) received by the applicant, or the applicant's spouse if they reside together, and classified as permanent disability compensation, or (b) received by any applicant who is at least sixty-five (65) years of age, is permanently and totally disabled, and can show that he or she did receive permanent disability compensation for at least twenty-four (24) consecutive months immediately prior to his or her sixty-fifth birthday, shall be excluded from such total; and provided, that the first eight-thousand five hundred dollars (\$8,500.00) of income of each relative other than spouse of such applicant who is living in such dwelling and does not qualify for rent relief shall be excluded from such total. If the applicant has been a resident of the city for less than the full grant year, the gross combined income for such year and the maximum allowable income shall be prorated for the period of actual residency.
- (5) The net combined financial worth of such applicant and relatives of such applicant living in such dwelling as of December thirty-first of the grant year does not exceed one hundred twenty-five thousand dollars (~~\$100,000.00~~ 125,000.00). Net combined financial worth shall include all assets, including equitable interests.

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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date: October 5, 2015

Action Required: Ordinance Approval (Consent Agenda – 1st of 2 readings)

Presenter: S. Craig Brown, City Attorney

Staff Contacts: Andrew Gore, Assistant City Attorney

**Title: Intellifiber Networks, LLC
Telecommunications Franchise Renewal**

Background: Intellifiber Networks, LLC, successor to Dominion Telecom, Inc., has requested a renewal of its current franchise to maintain its existing fiber lines and equipment. The locations of these existing lines are reflected on the attached map. Intellifiber is not seeking to install additional telecommunications lines at this time.

Discussion: The proposed franchise ordinance contains the same terms as the model telecommunications franchise ordinance developed by the City Attorney's Office and used in other franchises granted by the City. The purpose of the franchise will not change. In accordance with the franchise terms, Intellifiber is prepared to comply with the bonding and insurance requirements set forth in the agreement.

Budgetary Impact: The proposed franchise has no anticipated budget impact. However, the franchise agreement reserves the right to impose a public right-of-way use fee as allowed by Virginia law through the passage of an ordinance providing for such fee. Previously, Council has declined to adopt such a fee.

Recommendation: Approve the renewal of the franchise agreement.

Alternatives: Council may decline to adopt the ordinance and decline to renew the franchise agreement with Intellifiber.

Attachments: Letter requesting Franchise renewal
Proposed Intellifiber Franchise Agreement Ordinance



City of Charlottesville, VA

Charlottesville City Council

P.O. Box 911

Charlottesville, VA 22902

Date: 8/28/15

Dear Madam of Sir,

Enclosed please find a draft Telecommunications Franchise Agreement between Intellifiber Networks, LLC, and the City of Charlottesville, VA. We are also including a route map identifying the location of our fiber facilities in the City. We have reviewed the draft and are in agreement with the terms. If you find everything in order, please place the Franchise Agreement on the City Council's agenda for consideration and approval. Once approved, you may email a document for signature to me at the address listed below. If any other issues need to be addressed, please feel free to contact me. It has been a pleasure working with you.

Thank you,

A handwritten signature in blue ink that reads "Autry L. Meeker".

Autry L. Meeker

Sr. Analyst, OSP Engineering

Easements, Franchises, ROWs

Windstream Communications, Inc.

11101 Anderson Drive

Little Rock, AR 72212

P: 501-748-5234

autry.meeker@windstream.com

Approved by City Council on _____

**INTELLIFIBER NETWORKS, LLC
TELECOMMUNICATIONS FRANCHISE**

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**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
INTELLIFIBER NETWORKS, LLC, 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 INTELLIFIBER NETWORKS, LLC (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 Intellifiber Networks, LLC, 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, at 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, Board 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 Board, 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 one hundred thousand dollars (\$100,000). The Performance Bond is to guarantee that the project is done in a proper manner without damage to the PROW. The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. Upon completion of construction of the Facilities, the Company may reduce the Performance Bond to the amount of twenty-five thousand dollars (\$25,000) and made payable to the City, and 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 exchange telephone 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 FRANCHISING COSTS

Prior to the execution of this Ordinance, the City incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the City of an invoice for such costs, the Company shall pay at such time and in such manner as the City shall specify to the City or, at the direction of the City, to third parties an amount equal to the costs the City incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the City in the same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2500.00).

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:

Intellifiber Networks, LLC.
Attn: Franchises & Easements
11101 Anderson Drive
Little Rock, AR 72212

To the City:

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

With a copy to:

Intellifiber Networks, LLC.
Attn: Legal
4001 N. Rodney Parham Road
Little Rock, AR 72212

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:

Jerry Richardson
(804) 422-4258 (office)
(804) 641-0240
(804) 422-4506 (office
fax)

Glen Esenwein, Manager
– OSP Engineering
(610) 404-6239 (office)
(610) 587-3653 (cell)
(610) 404-6366 (office
fax)

To the City:

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

Judith Mueller, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)
(434) 971-6645 (home)

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 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 ____ day of _____, 2015.

Paige Rice, Clerk of Council

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

INTELLIFIBER NETWORKS, LLC

Date: _____, 2015

By: _____

Its: _____

Intellifiber Networks, LLC.
 Aerial Mileage: 1.91
 Buried Mileage: .51

PLACEMENT
 Aerial
 Underground

City Boundary
 Proprietary and Confidential
 Subject to Change Without Notice

Albers Projection
 Central Meridian: -96
 Standard Parallel: 20
 False Easting: 0
 Latitude of Origin: 40



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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**

Agenda Date: October 5, 2015

Action Required: Consideration of a Special Use Permit

Presenter: Brian Haluska, Neighborhood Planner, Neighborhood Development Services

Staff Contact: Brian Haluska, Neighborhood Planner, Neighborhood Development Services

Title: SP14-00003: Market Plaza (200 2nd Street SW)

Background:

Market Plaza, LLC has submitted an application to modify the conditions applicable to a special use permit previously granted by the City on December 1, 2014. The applicant proposes changes to the conditions related to the plaza portion of the site. Specifically, the applicant is requesting that the conditions requiring public access to the plaza at all hours be modified to permit the applicant some control over the plaza.

Discussion:

The Planning Commission considered this application at their regular meeting on September 9, 2015. After reviewing the application, the Commission asked a number of questions of the applicant regarding the change in public access to the plaza, and whether or not the changes would preclude expansion of the City Market to additional days of the week. The Commission also asked about whether or not the changes to the special use permit would allow the applicant to block off the plaza from the public for extended periods of time. The applicant indicated that the plaza would only be blocked off during private events, but that the ability to control the plaza was key to the viability of the residential units proposed in the building.

The Commission also raised concerns about the regulations that might be applied to the plaza. Several Commissioners indicated that their initial support of the special use permit in December 2014 was based on the fact that the outdoor plaza was going to be a public space, and that the changes altered the project to the point where they would not have supported the additional height and density in the project.

Citizen Engagement:

The City held a preliminary site plan review conference on September 4, 2014. Seventeen members of the public attended along with the applicant. One of the chief points raised in the meeting was regarding the process, as the building as shown would require the sale of City land and the closure of 1st Street. The attendees also expressed concern about the scale of the building, particularly in relationship to the adjacent structures, as well as the traffic impact on the nearby streets. There was also discussion about the possibility of changes to 2nd Street and South Street in conjunction with the West Main Street study's recommendations for the intersection of Water Street, South Street, McIntire Road, 5th Street and West Main Street.

The Planning Commission held a joint public hearing with City Council on the original special use permit application at their meeting on October 14, 2014. Several members of the public expressed concern about and opposition to the project. The comments cited the impacts to parking in the area around the project, the impact to the historic district, and the inappropriateness of the scale of the building.

The Planning Commission held a joint public hearing with City Council on the proposed changes to the special use permit on September 9, 2015. Several members of the public spoke in opposition to the changes on the basis that the public interest in the property would not be protected by the changes proposed to the SUP.

Alignment with City Council's Vision and Priority Areas:

The City Council Vision of Economic Sustainability states that “The Downtown Mall, as the economic hub of the region, features arts and entertainment, shopping, dining, cultural events, and a vibrant City Market.”

The City Council Vision of A Connected Community states that “An efficient and convenient transit system supports mixed use development along our commercial corridors, while bike and pedestrian trail systems, sidewalks, and crosswalks enhance our residential neighborhoods.”

Budgetary Impact:

No direct budgetary impact is anticipated as a direct result of this special use permit.

Recommendation:

The Commission took the following action:

Mr. Rosensweig moved to recommend approval of the proposed modification of the special use permit as requested in SP15-00003 subject to the conditions listed in the staff report with the following exceptions to condition 4a:

1. There will be a public right of access to the site, subject to the hours agreed upon by the City and the owner.
2. The amount of programed private space will be limited to the total square footage of the retail space or 50% of the plaza, whichever is less.
3. The plaza can be restricted for private events for a maximum of 52 times per calendar year.
4. The width of the pedestrian right of way may be no less than the current 1st Street right-of-way.

Mr. Lahendro seconded the motion. The Commission voted 4-2 to recommend approval of the special use permit. Ms. Green and Mr. Keesecker voted against the motion.

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached resolution (granting an SUP as recommended by the Planning Commission);
- (2) by motion, request changes to the attached Resolution, and then approve an SUP in accordance with the amended Resolution;
- (3) by motion, defer action on the SUP, or
- (4) by motion, deny the requested SUP.

Attachment:

Conditions recommended for the approval of SP-14-08-08 by the Planning Commission on November 11, 2014.
Staff Report dated August 28, 2015.

**RESOLUTION
AMENDING A SPECIAL USE PERMIT
AS REQUESTED BY APPLICATION NO. SP14-00003
FOR A PROPOSED MIXED USE DEVELOPMENT ON WATER
STREET PROPOSED BY MARKET PLAZA, LLC**

WHEREAS, Market Plaza, LLC (“Applicant”) has submitted application SP14-00003 (“Application”) seeking approval of An amended special use permit for property located between Water Street and W. South Street, bounded by the existing 2nd Street, S.W. and 1st Street South, identified on City Tax Map 28 as Parcels 69, 71, 72, 73, 74 and 75, and the undeveloped portion of the undeveloped right-of-way of 1st Street, S. (“Subject Property”), consisting of approximately 1.18 acres; and,

WHEREAS, the original special use permit approved by City Council (application no. SP-14-08-08) authorized the following: **(i)** additional height, up to 101 feet, per City Code §34-742(3); **(ii)** density of up to 60 dwelling units per acre, per §34-744; **(iii)** modification of the setback and streetwall regulations of §34-743(b), per §34-162(a); and **(iv)** authorization of the following special uses of the Subject Property, pursuant to §34-796: an auditorium/ theater with capacity for 300 or more persons, and a farmer’s market (retail) use; and

WHEREAS, the Subject Property is zoned “WSD” (Water Street Corridor District), subject to the requirements of the City’s Parking Modified Zone, per § 34-971(e)(3), and of the Downtown architectural design control (ADC) overlay district; and the City’s Board of Architectural Review has previously been given an opportunity to make findings and recommendations on whether the proposed development would have an adverse impact on the ADC district, as required by City Code §34-157(a)(7); and

WHEREAS, following a joint public hearing before this Planning Commission and City Council, duly advertised and held on October 14, 2014, the Planning Commission reviewed application no. SP-14-08-08 and determined that the proposed special use permit, under suitable regulations and safeguards set forth within a list of recommended conditions, would serve the interests of the public necessity, convenience, general welfare or good zoning practice, and will conform to the criteria generally applicable to special permits as set forth within §§ 34-156 et seq. of the City Code, and the Planning Commission has transmitted its recommendation to City Council; and

WHEREAS, this Council found and determined that, under suitable regulations and safeguards, the special use permit would serve the interests of the public necessity, convenience, general welfare or good zoning practice, and would conform to the criteria generally applicable to special use permits as set forth within §§ 34-156 et seq. of the City Code, and on December 1, 2014 this Council approved and adopted a resolution approving the issuance of the proposed special use permit and setting forth conditions applicable thereto (“December 1, 2014 Resolution”); and

WHEREAS, the City and the Applicant have not yet completed negotiations for a sale of the Subject Property to the Applicant, and in the course of completing those negotiations, the City and the Applicant have identified additional considerations which were not resolved at the time of the special use permit approval, and the Applicant has proposed that the conditions of the special use permit be revised to more closely align with the desired terms of a proposed purchase/ sale agreement; and

WHEREAS, following a joint public hearing before this Council and the Planning Commission, duly advertised and held on September 9, 2015, the Planning Commission voted to recommend approval of the Application based on finding that the proposed amendment is required by the public necessity, convenience, general welfare or good zoning practice, subject to several

recommended changes; and

WHEREAS, this this Council likewise finds and determines that the special use permit amendment proposed by the Application is required by the public necessity, convenience, general welfare or good zoning practice, and Council further finds and determines that, under suitable regulations and safeguards, the proposed amended special use permit will conform to the criteria generally applicable to special use permits as set forth within §§ 34-156 et seq. of the City Code;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlottesville, that the special use permit previously granted to the Applicant is hereby ratified as authorizing the proposed mixed use development that is the subject of SP-14-08-08, as follows: **(i)** height of up to 101 feet; **(ii)** density up to 60 dwelling units per acre; **(iii)** modification of setback and streetwall regulations, as more specifically set forth within the conditions referenced below; and **(iv)** authorization of the following special uses an auditorium/ theater with capacity for 300 or more persons, and a farmer’s market (retail) use, but City Council does hereby amend the conditions under which such mixed use development will be allowed;

NOW, THEREFORE, BE IT RESOLVED that the conditions of this special use permit are hereby amended, to read as follows:

SPECIAL USE PERMIT CONDITIONS (AMENDED):

[Changes from the original approved conditions are shown as ~~strikeout~~ and underlined text]

*[Additions recommended by the Planning Commission are shown in **yellow highlighted** text]*

General

- 1. The design, height, density, and other characteristics of the Development shall remain essentially the same, in all material aspects, as described within the application materials dated October 14, 2014 and November 11, 2014, submitted to the City for and in connection with SP- 13-10-19 (“Application”). Except as the design details of the Development may subsequently be modified to comply with requirements of a certificate of appropriateness issued by the City’s BAR, or by any other provision(s) of these SUP Conditions, any substantial change of the Development that is inconsistent with the Application shall require a modification of this SUP.
- 2. As used within these conditions, the term “Applicant” shall include the applicant’s successors and assigns.

Massing and Scale

- 3. The Applicant shall work with staff and the Board of Architectural Review in the process of obtaining a certificate of appropriateness for the Development, to achieve a final design that will minimize the visual impacts of the building on the South Street, Second St., S.W. and First Street elevations to the satisfaction of the BAR.
 - a. In the design and layout of the Development, the City’s historic street grid pattern shall

be respected. Although First Street may not ultimately be used or maintained by the City for vehicular traffic, site design shall nevertheless reinforce, visually or otherwise, the historic layout which connected Lee Park and the Downtown Mall, on the north, to Garret Street, on the south. Visual and Pedestrian access shall be maintained as part of the development, by leaving the area of First Street unoccupied by buildings or structures above the level of the open-air plaza (“Plaza”), with the exception of an elevator on Water Street.

- b. All outdoor lighting and light fixtures shall be full cut-off luminaires.
- c. To encourage active uses and building access, a minimum of 3-5 entrances/openings shall be established on Water Street, 2nd Street SW, and South Street as determined by the Board of Architectural Review. On South Street, these will lead to the Plaza.
- d. Balconies: Throughout the life of the Development, the owner of the Subject Property shall establish enforceable rules to regulate the use and appearance of balconies. Such rules shall be set forth within written instruments that will be binding upon the occupants of the building (for example: recorded covenants or restrictions for condominium or homeowners’ associations; written leases; etc.).

Uses

4. The Plaza shall be and remain an open-air plaza throughout the life of the Development and shall include pedestrian links.
 - a. The Plaza may not be designed, constructed or used as surface parking for motor vehicles. The Plaza should be perceived as ~~a plaza/public~~ an open space, not as a private parking lot, when not in use. The Plaza shall be maintained as an attractive, user-friendly open-air space. The Plaza will not be a traditional public forum such as a street or public park; however the public will be invited to use and enjoy the Plaza as an invitee of the Applicant, subject to rules and regulations established by the Applicant in its discretion to ensure the quiet enjoyment of residents and other users of the Development. Except for temporary periods of time during the events referred to in paragraph (4) (b) following below, the amount of programmed private space within the Plaza shall not exceed (i) fifty percent (50%) of the area of the Plaza, or (ii) the gross floor area of the retail space within the adjacent building, whichever is less. For the purpose of this requirement “programmed private space” refers to use and occupancy of the space by the owner of the development or its tenants, for example (without limitation): outdoor cafés, restaurants and bars, and related facilities.
 - b. The Plaza will be closed to other uses and users during specified time periods for events scheduled by the Applicant or its lessees or licensees; however, the Plaza shall not be closed for such events more than 52 times per calendar year. Following any such event, the Plaza shall promptly be returned to a clean and attractive condition, and public access to the site shall be restored to the use referenced in paragraph (4)(a), above, subject to hours agreed upon by

the City and the Applicant. The general public shall have a right of access to and use of the Plaza pedestrian access connecting Water Street and South Street, which shall include a ~~16-~~ 30-foot wide pedestrian walkway and handicap access via elevator, and this right of public access shall be recognized within a written instrument recorded within the City's land records prior to the issuance of any building permit for the project. A copy of the recorded instrument, with deed book and page references, shall be submitted to the City along with the first request for a building permit for the Development. ~~The public's right of access shall be subject to a right of the property owner, or its tenants, to reserve the Plaza, during discreet time periods, for events which may not be open to the general public. Following any such event, the Plaza shall promptly be returned to a clean condition, suitable and attractive for use as a public gathering space.~~ First Street pedestrian access will remain open at all times (even during private events, except if closed for City-sponsored events such as the Farmers Market, or by temporary street closure permit).

c. ~~In order for~~ The design and construction of the Plaza and market ~~to be such that it invites and facilitates its use as a public gathering space,~~ the Plaza shall incorporate public amenities such as, but not limited to ~~a water feature,~~ art, trees, benches or other seating areas, and/or other amenities that encourage public invitees invite individuals to utilize and enjoy the Plaza ~~a manner similar to an urban, public park~~ in accordance with rules and regulations established by the Applicant pursuant to paragraph (4)(a), above.

d. A plan prepared to a scale of 1 inch = 10 feet shall be provided as part of the proposed final site plan for the Development, depicting the Plaza and all amenities to be included in the Plaza ("Plaza Layout"), such as: ~~water features,~~ paving surfaces and materials, benches, trash receptacles, trees and landscaping, etc. Included in this plan shall be a schedule of site furnishings to be provided on the Plaza, including any shelter areas or shading devices, benches, bicycle racks, trash and recycling receptacles, and other associated furnishings. All amenities and furnishings shall be of a scale and nature that ~~encourages public use of the Plaza and that~~ is compatible with the character of the Development and the City's Historic District guidelines. The Plaza Layout shall include the layout for vendor stands to be located within the Plaza on City Market days ("Market Plan"). The Market Plan may be changed, from time to time and any such change in the Market Plan can be approved by the Director of NDS as a minor modification not requiring approval of a site plan amendment by the City Parks and Recreation Department with the agreement of the Applicant. Any such change approved by the Parks and Recreation Department will be submitted to the Director of Neighborhood Development Services for administrative approval as a minor site plan amendment.

5. On and within the open air Plaza, and other exterior areas of the Subject Property, no human voice, and no instrument, machine or device, including any device that amplifies sound, shall be used or operated in a manner that causes a sound generation of seventy-five (75) db (A) or more, at a distance of ten (10) feet or more from the source of the sound generation. The prohibition of this condition shall not apply to any sound generation which occurs as part of the Farmer's Market authorized by this permit. This condition regulating sound generation shall remain in effect until such time that the City's noise ordinance is amended to apply to the exterior areas of

the Subject Property.

6. The on-site parking garage shall meet the following requirements:
 - a. To facilitate and encourage the provision of a future access easement, the garage shall be designed to accommodate potential future access to/from the Property located to the east of the Development site (“Adjacent Property”) through provision of alternate access design, such as knock out panels. The accommodation for the potential future access shall be depicted and labeled on any proposed final site plan and building construction plans submitted to obtain any building permits. The owner of the Property shall negotiate an agreement regarding operating and construction costs, maintenance, liability, hours of operation, design and traffic flow, etc. for such access, with the owner of the adjacent property, at such time as the Adjacent Property is developed or redeveloped.
 - b. Water Street serves as part of the City’s east-to-west bike corridor. To maintain ease of pedestrian and bicycle movement on Water Street, there shall be no more than one (1) vehicular entrance or exit for the Development on Water Street. This single entrance/ exit shall have no more than 2 lanes of traffic, unless a traffic impact analysis denotes that more lanes are necessary. The parking garage will provide a separate entrance/exit for pedestrians.

Massing and Scale

7. The required building setback along the property line adjacent to Water Street shall be a minimum 7 feet and a maximum of 12 feet.
8. Along Water Street there shall be provided a setback of a minimum of 5 feet and a maximum of 10 feet, at the height of the streetwall. The minimum height of the streetwall on Water Street shall be 25 feet, and the maximum height shall be 45 feet.
9. Along 2nd Street SW there shall be provided a setback of a minimum of 5 feet and a maximum of 10 feet, at the height of the streetwall. The minimum height of the streetwall on 2nd Street SW shall be 25 feet, and the maximum height of the streetwall shall be 45 feet.

Use

10. **Farmer’s Market**: The Plaza shall be designed and constructed with materials and amenities that make it desirable and convenient for use as a Farmer’s Market open to the public at times and dates to be determined by a separate lease agreement between the Applicant and the City.
 - a. The Farmer’s Market shall be visible from adjacent vehicular rights-of-way, accessible from adjacent sidewalks, and shall be arranged in a manner that facilitates a flow of pedestrians among the various vendor stands within the Market and provides area(s) in which pedestrians may stand or sit out of the “flow” of circulation.

- b. The Farmer's Market shall accommodate no fewer than 102 vendors and the entire area of the Plaza area shall be available to the market on market days, including the convertible indoor space. Unless otherwise acceptable to the Farmer's Market operator, all such spaces shall be located adjacent or contiguous to each other, all on the same level/ grade, in order that all vendors participating in the Farmer's Market clearly appear to be part of one coordinated "event."
- c. The Plaza shall be designed and constructed of materials from which wear and tear reasonably to be anticipated from the Farmer's Market use can easily be removed or repaired. Outdoor hose connections shall be provided, in a number and location that is easily accessed by Farmer's Market users for the purposes of cleaning the Plaza area after each Farmer's Market day. The Applicant or its successors shall ensure, either itself, or through agreements with the Farmer's Market or third parties, that upon conclusion of the Farmer's Market, the Plaza will be restored to a clean condition.

11. Construction

- a. Prior to commencement of any land disturbing activity on the Property, the Applicant shall hold a meeting with notice to all adjoining property owners and the City's Downtown Business Association, to review the proposed location of construction worker parking, plan for temporary pedestrian and vehicular circulation, and hours and overall schedule for construction activities. The city's director of neighborhood development services shall be provided with evidence that such meeting was held, and of the required notices, prior to the issuance of any building permit for the Development.
- b. The Applicant shall submit a Traffic Control Plan as part of the proposed final site plan, detailing measures proposed to control traffic movement, lane closures, construction entrances, haul routes, idling of construction vehicles and equipment, and the moving and staging of materials to and from, and (if planned, in public rights-of-way adjacent to the site, during the construction process. This Traffic Control Plan shall be amended, as necessary, and submitted along with any application or a building permit or other development permit applications.
- c. The Applicant shall provide the city's director of neighborhood development services, adjoining property owners and the Downtown Business Association with written notice of a person who will serve as a liaison to the community throughout the duration of construction of the Development. The name and telephone number, including an emergency contact number, of this individual shall be provided.
- d. If the City's existing public infrastructure (public streets, sidewalks, curb, gutters, utilities, etc.) is damaged during construction of the Development, then the Applicant ~~or its successor~~ shall be responsible for repair and/or reconstruction of the same in accordance with applicable City standards.

- e. The Applicant shall submit a foundation inspection, prior to commencement of construction of the first floor above-grade framing for the Building(s). The foundation inspection shall include (i) the building footprint, as depicted within the approved final site plan, (ii) the top-of-slab elevation, and (iii) the first floor elevation. The foundation inspection shall be prepared and sealed by a registered engineer or surveyor, and shall be approved by the zoning administrator prior to the commencement of construction of the first-floor above-grade framing.
- f. Any structural elements that are proposed to extend into the public right-of-way, including, but not necessarily limited to, footings, foundations, tie-backs, etc., must be shown on the proposed final site plan and the Applicant ~~or its successor~~ shall be required to enter into a written encroachment easement, in a form approved by the City Attorney, suitable for recording in the City's land records. A copy of the recorded instrument shall be submitted to the City along with the first request for a building permit for the development.

11. Traffic

- a. A Traffic Plan, showing the layout of signs, details, signals, turning lanes, entrances and exits, and pavement markings, shall be submitted to the City as part of the proposed final site plan for the development.
- b. The Applicant shall be responsible for the cost of constructing, in areas adjacent to the Property, any turning lane(s), traffic signals, or other public street improvements or traffic regulation devices, the need for which is substantially generated by the proposed Development.
- c. The Development shall include one or more off-street loading docks/ areas. To the maximum extent feasible, all loading shall occur off-street, within such docks/ areas. Loading schedules shall be coordinated to facilitate off-street loading and to minimize idling by waiting vehicles.
- d. The Applicant shall provide the City with a Traffic Impact Analysis (TIA), as part of its proposed final site plan for the Development, if the trip generation data for the subject Property is over 100 vehicles in any peak hour for any adjacent street.
- e. The Applicant shall provide the City with a Traffic Impact Analysis (TIA), as part of its proposed final site plan for the Development, if the trip generation data for the subject Property is over 100 vehicles in any peak hour for any adjacent street.
- f. Trip generation data shall be separately provided for each and every category of use anticipated within the proposed development. Consistent with requirements of Chapter 5 of the City's Standards and Design Manual, "projected traffic" figures and data shall

include trip generation data for traffic projected to result from the complete build-out of all land to be served by adjacent public streets, including traffic which may be forecasted to be generated by development, both internal and external to the Development Site.

- g. Except as otherwise required by these conditions, the TIA shall conform to the requirements of Chapter 5 of the City's Standards and Design Manual. The Applicant shall meet with the City's Traffic Engineer and Director of Neighborhood Development Services, or designee, to determine the scope of the TIA, prior to submission.

Affordable Housing

- 12. The Applicant must declare how it intends to comply with City Code 34-12, prior to the issuance of a building permit for the Development.
- 13. In the event that the Applicant chooses to make a contribution to the City's Affordable Housing Fund to comply with City Code 34-12, no building permit shall be issued for the development until the amount of the contribution has been calculated by the Applicant and confirmed by the City's Director of Neighborhood Development Services, or designee, and until such contribution has been paid in full to the City.

Landscaping

- 14. The landscaping plan required as a component of final site plan approval for this Development shall include native or appropriate tree plantings along all street frontages, as well as trees on the Public Plaza subject to BAR approval. Trees on the Public Plaza shall be planted using roof planting methods and not hinder the operations of the Farmers' Market.

BAR Design Review

- 15. The following conditions shall guide the Board of Architectural Review in its review of the application for a certificate of appropriateness for this development, and shall be applied in conjunction with applicable BAR guidelines:
 - a. **Massing and Scale.**
 - 1) Building massing and scale should respond to the very different building scales along Water Street, South Street, Second Street SW and First Street without losing the integrity and simplicity of its own massing.
 - 2) First Street should be maintained as a separate urban component. Soften the impact of the retaining wall on First Street and create interest with opening or putting something in front of it. (ex: Trees, Public art, murals that are incorporated in the design of the building).
 - 3) The development should provide ~~Planning Commission is in favor of having a~~

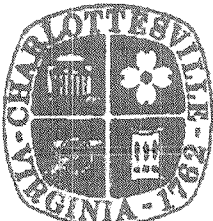
sufficient number of openings along street frontages to encourage the activation of street and pedestrian experience. The opening allow for flexibility and variability for changes of use over time.

- 4) The Request that the BAR should discuss the vertical piers on South Street, as part of its review of the proposed development.
- 5) Brick detailing will be evaluated across all four (4) facades of the proposed development.

- b. **Open-Air Plaza:** Market space/Plaza should contribute positively to the City's open space network. ~~Market plaza and/or street should be a memorable public space worthy of Lee Park and the Downtown Mall.~~

AND BE IT FURTHER RESOLVED that this amended special use permit is expressly conditioned upon City Council's separate consideration and approval of a sale of the Subject Property to the Applicant, and upon final closing and settlement of any such sale as evidenced by recordation within the land records of the Circuit Court of the City of Charlottesville of a deed transferring title to the Subject Property to the Applicant.

NEIGHBORHOOD DEVELOPMENT SERVICES



SPECIAL USE PERMIT APPLICATION

Please Return To: City of Charlottesville
 Department of Neighborhood Development Services
 Post Office Box 911, City Hall
 Charlottesville, Virginia 22902
 Telephone (434) 970-3182 Fax (434) 970-3359

JUL 21 2015
RECEIVED

For Non-Residential and Mixed Use projects, please include \$1,800 application fee. For Residential projects, please include \$1,800 application fee; checks payable to the City of Charlottesville. All petitioners must pay \$1.00 per required mail notice to property owners, plus the cost of the required newspaper notice. Petitioners will receive an invoice for these notices and approval is not final until the invoice has been paid.

I (we) the undersigned property owner(s), contract purchaser(s) or owner's agent(s) do hereby petition the Charlottesville City Council for a special permit to use the property located at: 200 2ND ST SW (address), zoned: WATER STREET DISTRICT, for: _____

A. Property Information – Please note on the back of this form any applicable deed restrictions.

1. 198 feet of frontage on E WATER ST (name of street)
2. Approximate property dimensions: 198 feet by 260 feet
3. Property size: 1.179 AC (square feet or acres)
4. Present Owner: CITY OF CHARLOTTESVILLE (Name) as evidenced by deed recorded in Deed Book Number 170 Page 132, with the Clerk of the Circuit Court.
5. Mailing Address of Present Owner: PO BOX 911 CHARLOTTESVILLE, VA 22902
6. City Real Property Tax Map Number 28 Parcel(s) _____; Lot(s): _____
69, 71, 72, 73, 74, 75

B. Adjacent Property Owners' Addresses (Use the back of this form if necessary.)

Property Owner Name	Mailing Address	City Tax Map and Parcel #
1. <u>SEE ATTACHED SHEET FOR ADJACENT PROPERTY INFORMATION</u>		
2. _____		
3. _____		
4. _____		

C. Applicant Information – Please note that if the applicant is not the owner, proof of status as contract purchaser or owner's agent must be furnished. (Office Use: Proof Furnished _____)

Applicant's Name MARKET PLAZA LLC / C/O KEITH WOODARD
 Mailing Address 224 14TH ST CHARLOTTESVILLE, VA 22903
 Applicant's Phone Number(s): 434-971-8860 Work _____ Home _____
 Applicant's Signature [Signature]

W.P. South Street LLC [Signature], Manager

D. Attachments Submitted by the Applicant

1. A required site plan was previously submitted on 08/12/2014 (Date) with the required fee, for a pre-application review conference on _____ (Date). This site plan was prepared by: Name: POWE STUDIO ARCHITECTS PC / GREGORY POWE, AIA Address: 208 3RD ST NE, CHARLOTTESVILLE, VA 22902 Phone: 434-979-0979
2. Other attachments as required by Section 34-158 of the City Code (Office Use: Submitted _____).
3. The correct application fee (see above).

For Office Use Only
 I certify that the sign(s) as required by Section 34-44 of the City Code as amended has been posted on the following date: _____ Signature: _____ (Zoning Administrator)

Amt Paid \$1,500⁰⁰ Date Paid 7/28/15 Cash/Check # 0135 Received by [Signature]

NEIGHBORHOOD DEVELOPMENT SERVICES

RECEIVED

AMENDED AND RESTATED
SUP CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION
FOR THE PROPOSED WATER STREET PLAZA DEVELOPMENT
_____, 2015

SPECIAL USE PERMIT CONDITIONS:

General

1. The design, height, density, and other characteristics of the Development shall remain essentially the same, in all material aspects, as described within the application materials dated October 14, 2014 and November 11, 2014, submitted to the City for and in connection with SP-13-10-19 (“Application”). Except as the design details of the Development may subsequently be modified to comply with requirements of a certificate of appropriateness issued by the City’s BAR, or by any other provision(s) of these SUP Conditions, any substantial change of the Development that is inconsistent with the Application shall require a modification of this SUP.
2. As used within these conditions, the term “Applicant” shall include the Applicant’s successors and assigns.

Massing and Scale

3. The Applicant shall work with staff and the Board of Architectural Review in the process of obtaining a certificate of appropriateness for the Development, to achieve a final design that will minimize the visual impacts of the building on the South Street, Second St., S.W. and First Street elevations to the satisfaction of the BAR.
 - a. In the design and layout of the Development, the City’s historic street grid pattern shall be respected. Although First Street may not ultimately be used or maintained by the City for vehicular traffic, site design shall nevertheless reinforce, visually or otherwise, the historic layout which connected Lee Park and the Downtown Mall, on the north, to Garret Street, on the south. Visual and Pedestrian access shall be maintained as part of the development, by leaving the area of First Street unoccupied by buildings or structures above the level of the open-air plaza (“Plaza”), with the exception of an elevator on Water Street.
 - b. All outdoor lighting and light fixtures shall be full cut-off luminaires.
 - c. To encourage active uses and building access, a minimum of 3-5 entrances/openings shall be established on Water Street, 2nd Street SW, and South Street as determined by the Board of Architectural Review. On South Street, these will lead to the Plaza.
 - d. Balconies: Throughout the life of the Development, the owner of the Subject Property shall establish enforceable rules to regulate the use and appearance of balconies. Such rules shall be set forth within written instruments that will be binding upon the occupants of the building (for example: recorded covenants or restrictions for condominium or homeowners’ associations; written leases; etc.).

Uses

4. The Plaza shall be and remain an open-air plaza throughout the life of the Development and shall include pedestrian links.
 - a. The Plaza may not be designed, constructed or used as surface parking for motor vehicles. The Plaza should be perceived as an open space, not as a private parking lot, when not in use. The Plaza shall be maintained as an attractive, user-friendly open-air space. The Plaza will not be a traditional public forum such as a street or public park; however the public will be invited to use and enjoy the Plaza as an invitee of the Applicant, subject to rules and regulations established by the Applicant or its successor in its discretion to ensure the quiet enjoyment of residents and other users of the Development. The Plaza will be closed to other uses and users during specified time periods for events scheduled by the Applicant or its lessees or licensees. Following any such event, the Plaza shall promptly be returned to a clean and attractive condition. The general public shall have a right of access to and use of the pedestrian access connecting Water Street and South Street, which shall include a 16 foot wide pedestrian walkway and handicap access via elevator, and this right of public access shall be recognized within a written instrument recorded within the City's land records prior to the issuance of any building permit for the project. A copy of the recorded instrument, with deed book and page references, shall be submitted to the City along with the first request for a building permit for the Development. First Street pedestrian access will remain open at all times (even during private events, except if closed for City-sponsored events such as the Farmers Market, or by temporary street closure permit).
 - b. The design and construction of the Plaza and market shall incorporate amenities such as, but not limited to, art, trees, benches or other seating areas, and/or other amenities that invite individuals to utilize and enjoy the Plaza in accordance with rules and regulations established by the Applicant.
 - c. A plan prepared to a scale of 1 inch = 10 feet shall be provided as part of the proposed final site plan for the Development, depicting the Plaza and all amenities to be included in the Plaza ("Plaza Layout"), such as: paving surfaces and materials, benches, trash receptacles, trees and landscaping, etc. Included in this plan shall be a schedule of site furnishings to be provided on the Plaza, including any shelter areas or shading devices, benches, bicycle racks, trash and recycling receptacles, and other associated furnishings. All amenities and furnishings shall be of a scale and nature that is compatible with the character of the Development and the City's Historic District guidelines. The Plaza Layout shall include the layout for vendor stands to be located within the Plaza on City Market days ("Market Plan"). The Market Plan may be

AMENDED AND RESTATED
SUP CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION
FOR THE PROPOSED WATER STREET PLAZA DEVELOPMENT
_____, 2015

changed from time to time by the City Parks and Recreation Department with the agreement of the Applicant. Any minor change to the approved final site plan for the City Market shall be submitted to the director of neighborhood development services for administrative approval.

5. On and within the open air Plaza, and other exterior areas of the Subject Property, no human voice, and no instrument, machine or device, including any device that amplifies sound, shall be used or operated in a manner that causes a sound generation of seventy-five (75) db (A) or more, at a distance of ten (10) feet or more from the source of the sound generation. The prohibition of this condition shall not apply to any sound generation which occurs as part of the Farmer's Market authorized by this permit. This condition regulating sound generation shall remain in effect until such time that the City's noise ordinance is amended to apply to the exterior areas of the Subject Property.
6. The on-site parking garage shall meet the following requirements:
 - a. To facilitate and encourage the provision of a future access easement, the garage shall be designed to accommodate potential future access to/from the Property located to the east of the Development site ("Adjacent Property") through provision of alternate access design, such as knock out panels. The accommodation for the potential future access shall be depicted and labeled on any proposed final site plan and building construction plans submitted to obtain any building permits. The owner of the Property shall negotiate an agreement regarding operating and construction costs, maintenance, liability, hours of operation, design and traffic flow, etc. for such access, with the owner of the adjacent property, at such time as the Adjacent Property is developed or redeveloped.
 - b. Water Street serves as part of the City's east-to-west bike corridor. To maintain ease of pedestrian and bicycle movement on Water Street, there shall be no more than one (1) vehicular entrance or exit for the Development on Water Street. This single entrance/exit shall have no more than 2 lanes of traffic, unless a traffic impact analysis denotes that more lanes are necessary. The parking garage will provide a separate entrance/exit for pedestrians.

Massing and Scale

7. The required building setback along the property line adjacent to Water Street shall be a minimum 7 feet and a maximum of 12 feet.
8. Along Water Street there shall be provided a stepback of a minimum of 5 feet and a maximum of 10 feet, at the height of the streetwall. The minimum height of the streetwall on Water Street

AMENDED AND RESTATED
SUP CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION
FOR THE PROPOSED WATER STREET PLAZA DEVELOPMENT
_____, 2015

shall be 25 feet, and the maximum height shall be 45 feet.

9. Along 2nd Street SW there shall be provided a setback of a minimum of 5 feet and a maximum of 10 feet, at the height of the streetwall. The minimum height of the streetwall on 2nd Street SW shall be 25 feet, and the maximum height of the streetwall shall be 45 feet.

Use

10. **Farmer's Market:** The Plaza shall be designed and constructed with materials and amenities that make it desirable and convenient for use as a Farmer's Market open to the public at times and dates to be determined by a separate lease agreement between the Applicant and the City.
 - a. The Farmer's Market shall be visible from adjacent vehicular rights-of-way, accessible from adjacent sidewalks, and shall be arranged in a manner that facilitates a flow of pedestrians among the various vendor stands within the Market and provides area(s) in which pedestrians may stand or sit out of the "flow" of circulation.
 - b. The Farmer's Market shall accommodate no fewer than 102 vendors and the entire area of the Plaza area shall be available to the market on market days, including the convertible indoor space. Unless otherwise acceptable to the Farmer's Market operator, all such spaces shall be located adjacent or contiguous to each other, all on the same level/ grade, in order that all vendors participating in the Farmer's Market clearly appear to be part of one coordinated "event."
 - c. The Plaza shall be designed and constructed of materials from which wear and tear reasonably to be anticipated from the Farmer's Market use can easily be removed or repaired. Outdoor hose connections shall be provided, in a number and location that is easily accessed by Farmer's Market users for the purposes of cleaning the Plaza area after each Farmer's Market day. The Applicant or its successors shall ensure, either itself, or through agreements with the Farmer's Market or third parties, that upon conclusion of the Farmer's Market, the Plaza will be restored to a clean condition.

11. **Construction**

- a. Prior to commencement of any land disturbing activity on the Property, the Applicant shall hold a meeting with notice to all adjoining property owners and the City's Downtown Business Association, to review the proposed location of construction worker parking, plan for temporary pedestrian and vehicular circulation, and hours and overall schedule for construction activities. The city's director of neighborhood development services shall be provided with evidence that such meeting was held, and of the required notices, prior to the issuance of any building permit for the Development.

AMENDED AND RESTATED
SUP CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION
FOR THE PROPOSED WATER STREET PLAZA DEVELOPMENT
_____, 2015

- b. The Applicant shall submit a Traffic Control Plan as part of the proposed final site plan, detailing measures proposed to control traffic movement, lane closures, construction entrances, haul routes, idling of construction vehicles and equipment, and the moving and staging of materials to and from, and (if planned, in public rights-of-way adjacent to the site, during the construction process. This Traffic Control Plan shall be amended, as necessary, and submitted along with any application or a building permit or other development permit applications.
- c. The Applicant shall provide the city's director of neighborhood development services, adjoining property owners and the Downtown Business Association with written notice of a person who will serve as a liaison to the community throughout the duration of construction of the Development. The name and telephone number, including an emergency contact number, of this individual shall be provided.
- d. If the City's existing public infrastructure (public streets, sidewalks, curb, gutters, utilities, etc.) is damaged during construction of the Development, then the Applicant shall be responsible for repair and/or reconstruction of the same in accordance with applicable City standards.
- e. The Applicant shall submit a foundation inspection, prior to commencement of construction of the first floor above-grade framing for the Building(s). The foundation inspection shall include (i) the building footprint, as depicted within the approved final site plan, (ii) the top-of-slab elevation, and (iii) the first floor elevation. The foundation inspection shall be prepared and sealed by a registered engineer or surveyor, and shall be approved by the zoning administrator prior to the commencement of construction of the first-floor above-grade framing.
- f. Any structural elements that are proposed to extend into the public right-of-way, including, but not necessarily limited to, footings, foundations, tie-backs, etc., must be shown on the proposed final site plan and the Applicant shall be required to enter into a written encroachment agreement, in a form approved by the City Attorney, suitable for recording in the City's land records. A copy of the recorded instrument shall be submitted to the City along with the first request for a building permit for the development.

11. Traffic

- a. A Traffic Plan, showing the layout of signs, details, signals, turning lanes, entrances and exits, and pavement markings, shall be submitted to the City as part of the proposed final site plan for the development.

AMENDED AND RESTATED
SUP CONDITIONS RECOMMENDED BY THE PLANNING COMMISSION
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- b. The Applicant shall be responsible for the cost of constructing, in areas adjacent to the Property, any turning lane(s), traffic signals, or other public street improvements or traffic regulation devices, the need for which is substantially generated by the proposed Development.
- c. The Development shall include one or more off-street loading docks/ areas. To the maximum extent feasible, all loading shall occur off-street, within such docks/ areas. Loading schedules shall be coordinated to facilitate off-street loading and to minimize idling by waiting vehicles.
- d. The Applicant shall provide the City with a Traffic Impact Analysis (TIA), as part of its proposed final site plan for the Development, if the trip generation data for the subject Property is over 100 vehicles in any peak hour for any adjacent street.
- e. The Applicant shall provide the City with a Traffic Impact Analysis (TIA), as part of its proposed final site plan for the Development, if the trip generation data for the subject Property is over 100 vehicles in any peak hour for any adjacent street.
- f. Trip generation data shall be separately provided for each and every category of use anticipated within the proposed development. Consistent with requirements of Chapter 5 of the City's Standards and Design Manual, "projected traffic" figures and data shall include trip generation data for traffic projected to result from the complete build-out of all land to be served by adjacent public streets, including traffic which may be forecasted to be generated by development, both internal and external to the Development Site.
- g. Except as otherwise required by these conditions, the TIA shall conform to the requirements of Chapter 5 of the City's Standards and Design Manual. The Applicant shall meet with the City's Traffic Engineer and Director of Neighborhood Development Services, or designee, to determine the scope of the TIA, prior to submission.

Affordable Housing

- 12. The Applicant must declare how it intends to comply with City Code 34-12, prior to the issuance of a building permit for the Development.
- 13. In the event that the Applicant chooses to make a contribution to the City's Affordable Housing Fund to comply with City Code 34-12, no building permit shall be issued for the development until the amount of the contribution has been calculated by the Applicant and confirmed by the City's Director of Neighborhood Development Services, or designee, and until such contribution

AMENDED AND RESTATED
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has been paid in full to the City.

Landscaping

14. The landscaping plan required as a component of final site plan approval for this Development shall include native or appropriate tree plantings along all street frontages, as well as trees on the Plaza subject to BAR approval. Trees on the Plaza shall be planted using roof planting methods and not hinder the operations of the Farmers' Market.

The following conditions shall guide the Board of Architectural Review in its review of the application for a certificate of appropriateness for this development, and shall be applied in conjunction with applicable BAR guidelines:

Massing and Scale

1. Building massing and scale should respond to the very different building scales along Water Street, South Street, Second Street SW and First Street without losing the integrity and simplicity of its own massing.
2. First Street should be maintained as a separate urban component. Soften the impact of the retaining wall on First Street and create interest with opening or putting something in front of it. (ex: Trees, Public art, murals that are incorporated in the design of the building).
3. The Planning Commission is in favor of having a sufficient number of openings along street frontages to encourage the activation of street and pedestrian experience. The opening allow for flexibility and variability for changes of use over time.
4. Request that the BAR discuss the vertical piers on South Street.
5. Brick detailing will be evaluated across all four (4) facades of the proposed development.

Uses

6. **Open-Air Plaza:** Market space/Plaza should contribute positively to the City's open space network.

AND BE IT FURTHER RESOLVED that this amended special use permit is expressly conditioned upon City Council's separate consideration and approval of a sale of the Subject Property to the Applicant, and upon final closing and settlement of any such sale as evidenced by recordation within the land records of the Circuit Court of the City of Charlottesville of a deed transferring title to the Subject Property to the Applicant.

CITY OF CHARLOTTESVILLE
DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES
STAFF REPORT

APPLICATION FOR A SPECIAL USE PERMIT
PLANNING COMMISSION AND CITY COUNCIL JOINT
PUBLIC HEARING

DATE OF MEETING: September 9, 2015
APPLICATION NUMBER: SP15-00003

Project Planner: Brian Haluska, Principal Planner

Presenter: Brian Haluska, Principal Planner

Date of Staff Report: August 28, 2015

Applicant: “Market Plaza, LLC”, by Keith Woodard, its authorized member. Another limited liability company (“WP South Street LLC”) joins in the application, as indicated by the signature of its authorized member, also Keith Woodard.

The City of Charlottesville previously authorized Market Plaza, LLC to make application involving the City-owned property.

Current Property Owners:

City of Charlottesville: 200, 210, 212 2nd St., SW and 207 1st Street, S.; ROW for 1st St. S, between Water Street and W. South St. (As of the date of this staff report, there has of yet been no final sale/ purchase agreement between the City and Market Plaza, LLC or WP South Street LLC)

Application Information

Property Tax Map/Parcel # and Street Addresses:

Tax Map 28

Parcel 69: 101 W. South St.

Parcel 71: 207 1st St., S

Parcel 73: 2nd St. SW

Parcels 72, 74, and 75: 200, 210 and 212 2nd St. SW

Also: the proposed development contemplates possible future use and occupancy of the ROW of 1st St., South, between Water Street and W. South Street

Total Square Footage/Acreage Site: 1.18 acres

Comprehensive Plan (Land Use Plan) Designation: Mixed-Use

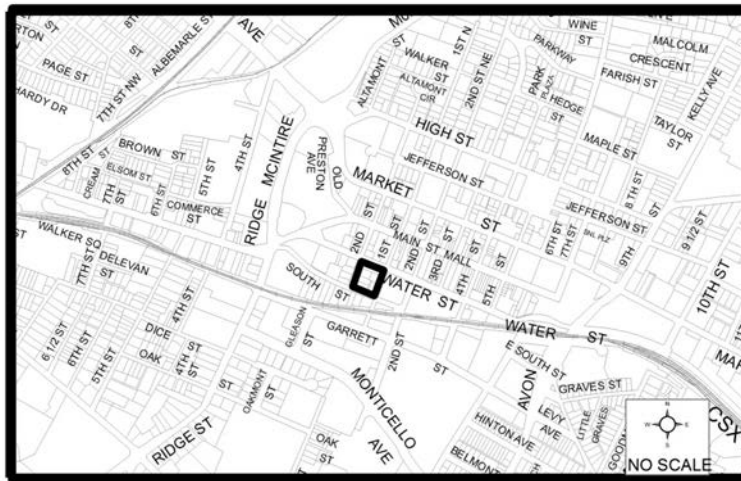
Current Zoning Classification: Water Street Corridor with Architectural Design Control District and Parking Modified Zone Overlays

Tax Status: The City Treasurer’s office confirms that the taxes for the properties were current as of the drafting of this report.

Applicant’s Request

The applicant requests a modification of the conditions applicable to the special use permit previously granted by the City on December 1, 2014. The applicant proposes changes to the conditions related to the plaza portion of the site. Specifically, the applicant is requesting that the conditions requiring public access to the plaza at all hours be modified to permit the applicant private control over the plaza.

Vicinity Map



Background/ Details of Proposal

The Applicant has submitted an application seeking to amend the conditions of a Special Use Permit in conjunction with a site plan for a new mixed-use building located at the 100 block of West Water Street.

The Property has additional street frontage on 2nd Street SW, 1st Street S, and West South Street. The proposed development plan shows a 101 foot tall building with 70 residential units (i.e., density of 60 DUA); 56,660 square feet of office space (inclusive of the events space for which SUP approval is requested); 19,311 square feet of interior retail space; and a 24,390 square foot open plaza that is proposed to host a weekly Farmer’s Market. The building would have parking for 279 cars located in structured parking located under the building.

The proposed modifications to the existing special use permit are as follows:

Condition 2: Define the term “applicant” to emphasize that the word means and includes the successors in interest of the applicant, so that the conditions and obligations cannot be read to be limited to just the applicant.

Condition 2a: Revise the language of the restriction of structures above plaza level along the First Street right-of-way.

Condition 3: Revise the description of the plaza so that it will be designed to feel as open space when not in use for an event. The revisions further stipulate that the First Street right-of-way will remain as an open publicly accessible walkway, while the plaza will be a privately maintained open space that the public will be permitted to use as an invitee of the applicant.

Conditions 3b and 3c: Remove all mention of a water feature in the plaza, and all reference to public accessibility to the plaza. Also reassigns the responsibility for review of the layout plan for the City Market from the Director of NDS to the Department of Parks and Recreation.

Condition 9: Stipulate that the time and dates of the Farmer’s Market will be determined in a lease agreement between the City and the applicant. Also eliminates language that designates the plaza as a public gathering place.

Condition 10: Replace the words “developer” with the word “applicant”, so that one term (“applicant”) will be used consistently throughout the document.

Condition 11: Consolidate two conditions referencing the Traffic Impact Study.

Condition 12: Change the term “developer” to the “applicant”, so that one term (“applicant”) will be used consistently throughout the document.

Condition 13: Change the term “developer” to the “applicant”, so that one term (“applicant”) will be used consistently throughout the document.

Condition 14: Remove the adjective “public” in reference to the plaza.

Condition forwarded to the BAR: Remove all reference to the plaza as a public space.

Land Use and Comprehensive Plan

EXISTING LAND USE; ZONING AND LAND USE HISTORY:

The properties are currently used as surface parking lots. Parcel 71 (207 1st St., S.) was the location of an office building that had previously housed H&R Block, and was used by the City until it was destroyed by a fire in 2013.

Section 34-541 of the City Code describes the purpose and intent of the Water Street Corridor zoning district:

“The intent of the Water Street Corridor District is to provide for a mix of commercial, retail and entertainment uses in a way that complements and supports the Downtown Pedestrian Mall area. As the Downtown Pedestrian Mall develops, the natural spillover will be to this area. While not a complete pedestrian zone, it contains many characteristics thereof. Development therefore should blend the pedestrian scale with a slightly more automobile oriented feel to achieve this supportive mixed-use environment.”

Zoning History: In 1949, the property was zoned **B-2 Business**. In 1958, the property was zoned **B-3 Business**. In 1976, the property was zoned **B-4 Business**. In 1991, the property was zoned **B-4 Business**. In 2003, the property was rezoned to **Downtown Corridor**. In 2008, City Council rezoned the property to the **Water Street (Mixed Use Corridor)** district.

SURROUNDING LAND USES AND ZONING DISTRICTS

North: Immediately north of the property are several mixed-use multi-story structures. The ground floors of these buildings are used for retail and restaurant uses, and the upper stories are apartments. One block further north is the Downtown Pedestrian Mall. These properties are zoned Downtown Corridor with ADC District Overlay.

South: Immediately south of the property are multi-story structures that house a mix of uses. These properties are zoned Water Street Corridor with ADC District Overlay. Further south are the Buckingham Branch Railroad lines, and properties zoned Downtown Extended.

East: Immediately adjacent to the east is a surface parking lot zoned Water Street Corridor. Further east is the Water Street Parking Garage, a five-level structured parking facility that serves the downtown area. These properties are zoned Water Street Corridor with ADC district Overlay.

West: Immediately adjacent to the west are several two-story structures that are used for commercial purposes. The lone exception is the property that fronts on Water Street across 2nd Street SW, which houses the Mono Loco restaurant, and is a single-story. The other structures on 2nd Street SW exhibit a residential character despite their use as commercial establishments, and have long served to frame the western edge of the void of the two parking lots. These properties are zoned Water Street Corridor with ADC district Overlay.

NATURAL RESOURCE AND CULTURAL FEATURES OF SITE:

Natural resource: The site does not have any notable natural resources. The site is mostly paved and used for parking. There are some small trees between the City-owned lot and the private owned lot on the corner of South Street and 1st Street.

Cultural features: The site does not have any notable cultural features.

COMPREHENSIVE PLAN ANALYSIS:

Specific items from the Comprehensive Plan that can be applied to the proposal are as follows:

Land Use

- Enhance pedestrian connections between residences, commercial centers, public facilities and amenities and green spaces. (Land Use, 2.3)
- Expand the network of small, vibrant public spaces, particularly in areas that are identified for higher intensity uses and/or potential higher density. (Land Use, 2.5)

- Enhance existing neighborhood commercial centers and create opportunities for others in areas where they will enhance adjacent residential area. Provide opportunities for nodes of activity to develop, particularly along mixed-use corridors. (Land Use, 3.2)

Economic Sustainability

- Continue to encourage private sector developers to implement plans from the commercial corridor study. (Economic Sustainability, 6.6)

Historic Preservation and Urban Design

- Promote Charlottesville’s diverse architectural and cultural heritage by recognizing, respecting and enhancing the distinct characteristics of each neighborhood. (Historic Preservation and Urban Design, 1.2)
- Facilitate development of nodes of density and vitality in the City’s Mixed Use Corridors, and encourage vitality, pedestrian movement, and visual interest throughout the City. (Historic Preservation and Urban Design, 1.3)
- Encourage the incorporation of meaningful public spaces, defined as being available to the general public, into urban design efforts. (Historic Preservation and Urban Design, 1.6)

Public and Other Comments Received

PUBLIC COMMENTS

The Planning Commission held a joint public hearing with City Council on the original SUP request at their meeting on October 14, 2014. Several members of the public expressed concern about and opposition to the project. The comments cited the impacts to parking in the area around the project, the impact to the historic district, and the inappropriateness of the scale of the building.

The City held a preliminary site plan review conference on September 4, 2014. Seventeen members of the public attended along with the applicant. One of the chief points raised in the meeting was regarding the process, as the building as shown would require the sale of City land and the closure of 1st Street. The attendees also expressed concern about the scale of the building, particularly in relationship to the adjacent structures, as well as the traffic impact on the nearby streets. There was also discussion about the possibility of changes to 2nd Street and South Street in conjunction with the West Main Street study’s recommendations for the intersection of Water Street, South Street, McIntire Road, 5th Street and West Main Street.

COMMENTS/RECOMMENDATIONS OF THE BAR

The Board of Architectural Review considered the Special Use Permit request at their meeting on August 18, 2015, and took the following action:

The BAR recommended (5-1-1, with Miller opposed, and Mr. Schwarz recused) that the proposed amendments to the special use permit conditions previously approved by City Council on December 1, 2014 for the redevelopment of 200 2nd Street SW into a mixed use development including City Market, regarding the elimination of the water feature and the provision for a 16 foot wide pedestrian walkway and handicapped access by elevator, will not have an adverse impact on the Downtown Architectural Design Control (ADC) district, and the BAR recommends approval of those portions of the proposed amendments to the special use permit, but the BAR has no comment on the remaining portions of the amendments. The BAR requests that the Planning Commission and City Council review other aspects of the document that concern the transition from public to private plaza space and implications to operations (usage and access, viability of the City Market) and impact on the district and the BAR asks for review (of drawings and details) of the new centerpiece and pedestrian access.

IMPACT ON CITY SERVICES:

Public Works (Water and Sewer): The proposed modifications would not impact the water or sewer service to the proposed building.

Public Works (Storm Drainage/Sewer): The modification to the conditions would delete reference to a water feature on the open air plaza. This feature had been the source of a concern from Public Works regarding how the overflow from the feature would be handled.

Staff Analysis and Recommendation

ANALYSIS

Assessment of the Development as to its relation to public necessity, convenience, general welfare, or good zoning practice:

The proposed changes are primarily concerned with the ownership and access to the plaza contained within the project. The original conditions of the special use permit designated the plaza to be similar to a public park when not in use for special events and the Farmer's Market. The modifications would remove most of the language suggested or requiring that the plaza be designed as a public urban plaza, and would substitute language that would treat the plaza as open space in a private development. The applicant has stated that the public would be invited to use the space when it is not being used for private events. As invitees, the public would be expected to adhere to any rules or regulations the applicant sets for the use of the space, or risk being asked to leave the plaza. The applicant has indicated that the First Street right-of-way would remain open and accessible to the public at all times.

The changes are primarily concerned with access and responsibility for the maintenance of the plaza. The overall usage of the property is not changing, and thus it is difficult to find any zoning related issues that arise from the requested modifications.

Assessment of Specific Potential Impacts of the Proposed Development:

1. Massing and scale of the Project, taking into consideration existing conditions and conditions anticipated as a result of approved developments in the vicinity.

The proposed changes to the special use permit would not impact the massing and scale of the proposed project.

2. Traffic or parking congestion on adjacent streets.

The proposed changes to the special use permit would not impact the traffic or parking of the proposed project.

3. Noise, lights, dust, odor, vibration

The proposed changes would give the applicant some ability to exclude disruptive persons from the plaza, potentially alleviating one possible source of noise that can result from public spaces. This is, however, difficult to quantify, and a minor change at most.

4. Displacement of existing residents or businesses

The proposal would not displace any existing residents or businesses, as the properties are currently vacant.

5. Ability of existing community facilities in the area to handle additional residential density and/or commercial traffic

The proposed changes to the special use permit would not impact the residential density or commercial traffic of the proposed project.

6. Impact (positive or negative) on availability of affordable housing

The proposed changes to the special use permit would not impact the provision of affordable housing in the proposed project.

RECOMMENDATION

The proposed modifications to the special use permit would roll back some of the conditions that were intended to set up the plaza in the project as a public space similar to Lee Park or the Downtown Mall.

Staff finds limited guidance on which to base a recommendation. The physical form of the plaza space will still be subject to BAR review, and none of the proposed changes suggest the applicant intends to prohibit public access to the plaza outside of the Farmer's Market. The proposed changes are coming as a result of ongoing negotiations between the City and the

applicant. It is staff's opinion that the proposed changes do not substantially alter the project originally approved by City Council, and thus these changes should be approved.

Attachments

1. Copy of City Code Sections **34-157** (General Standards for Issuance) and **34-162** (Exceptions and modifications as conditions of permit)
2. Copy of City Code Section **34-541** (Mixed-Use Districts – Intent and Description)
3. Suggested Motions for your consideration
4. Application and Supporting documentation from the Applicant

Attachment 1

Sec. 34-157. General standards for issuance.

(a) In considering an application for a special use permit, the city council shall consider the following factors:

- (1) Whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood;
- (2) Whether the proposed use or development and associated public facilities will substantially conform to the city's comprehensive plan;
- (3) Whether proposed use or development of any buildings or structures will comply with all applicable building code regulations;
- (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts. Potential adverse impacts to be considered include, but are not necessarily limited to, the following:
 - a. Traffic or parking congestion;
 - b. Noise, lights, dust, odor, fumes, vibration, and other factors which adversely affect the natural environment;
 - c. Displacement of existing residents or businesses;
 - d. Discouragement of economic development activities that may provide desirable employment or enlarge the tax base;
 - e. Undue density of population or intensity of use in relation to the community facilities existing or available;
 - f. Reduction in the availability of affordable housing in the neighborhood;
 - g. Impact on school population and facilities;
 - h. Destruction of or encroachment upon conservation or historic districts;
 - i. Conformity with federal, state and local laws, as demonstrated and certified by the applicant; and,
 - j. Massing and scale of project.
- (5) Whether the proposed use or development will be in harmony with the purposes of the specific zoning district in which it will be placed;
- (6) Whether the proposed use or development will meet applicable general and specific standards set forth within the zoning ordinance, subdivision regulations, or other city ordinances or regulations; and
- (7) When the property that is the subject of the application for a special use permit is within a design control district, city council shall refer the application to the BAR or ERB, as may be applicable, for recommendations as to whether the proposed use will have an adverse impact on the district, and for recommendations as to reasonable conditions which, if imposed, that would mitigate any such impacts. The BAR or ERB, as applicable, shall return a written report of its recommendations to the city council.

(b) Any resolution adopted by city council to grant a special use permit shall set forth any reasonable conditions which apply to the approval.

Sec. 34-162. Exceptions and modifications as conditions of permit.

(a) In reviewing an application for a special use permit, the city council may expand, modify, reduce or otherwise grant exceptions to yard regulations, standards for higher density, parking standards, and time limitations, provided:

(1) Such modification or exception will be in harmony with the purposes and intent of this division, the zoning district regulations under which such special use permit is being sought; and

(2) Such modification or exception is necessary or desirable in view of the particular nature, circumstances, location or situation of the proposed use; and

(3) No such modification or exception shall be authorized to allow a use that is not otherwise allowed by this chapter within the zoning district in which the subject property is situated.

(b) The planning commission, in making its recommendations to city council concerning any special use permit application, may include comments or recommendations regarding the advisability or effect of any modifications or exceptions.

(c) The resolution adopted by city council to grant any special use permit shall set forth any such modifications or exceptions which have been approved.

Attachment 2

Sec. 34-541. Mixed use districts—Intent and description.

- (1) *Downtown Corridor.* The intent of the Downtown Corridor district is to provide for a mixture of commercial and residential uses, and encourage such development by right, according to standards that will ensure harmony with the existing commercial environment in the city's downtown area. Ground-floor uses facing on primary streets should be commercial in nature. The area within this zoning district is the entertainment and employment center of the community and the regulations set forth within this district are designed to provide appropriate and convenient housing for persons who wish to reside in proximity to those activities. Within the Downtown Corridor district the following streets shall have the designations indicated:

Primary streets: All streets are primary.

Linking streets: None.

- (2) *Downtown Extended Corridor.* Historically, the areas within the Downtown Extended district contained manufacturing uses dependent upon convenient access to railroad transportation. In more recent times, use patterns within this area are similar to those within the Downtown district. The intent of this district is to encourage an inter-related mixture of high-density residential and commercial uses harmonious with the downtown business environment, within developments that facilitate convenient pedestrian and other links to the Downtown area. Within the Downtown Extended district, the following streets shall have the designations indicated:

Primary streets: Garrett Street, Monticello Avenue, 6th Street, Market Street, Carlton Road and 10th Street, N.E.

Linking streets: Avon Street, Dice Street, 1st Street, 4th Street, Gleason Street, Goodman Street, Oak Street, and Ware Street.

- (3) *North Downtown Corridor.* The Downtown North Corridor district is the historic center of the City of Charlottesville, and contains many historic structures. In more recent years this area has also developed as the heart of the city's legal community, including court buildings and related law and professional offices, and commercial and retail uses supporting those services. Within this area, residential uses have been established both in single-use and in mixed-use structures. Many former single-family dwellings have been converted to office use. The regulations for this district are intended to continue and protect the nature and scale of these existing patterns of development. Within the Downtown North Corridor district, the following streets shall have the designations indicated:

Primary streets: 8th Street, N.E. (between High Street and Jefferson Street), 5th Street, N.E., 1st Street, 4th Street, N.E., High Street, Jefferson Street, Market Street, 9th Street, 9th Street, N.E., 2nd Street, N.E., 2nd Street, N.W., 7th Street, N.E., 6th Street, N.E., and 3rd Street, N.E.

Linking streets: East Jefferson Street (east of 10th Street, N.E.), 8th Street, 11th Street, N.E., Lexington Street, Locust Street, Maple Street, Sycamore Street.

- (4) *West Main North Corridor.* The West Main North district is established to provide low-intensity mixed-use development at a scale that respects established patterns of commercial and residential development along West Main Street and neighborhoods adjacent to that street. When compared with the area further south along West Main Street, lots within this area are smaller and older, existing buildings (many of them historic in character) have been renovated to accommodate modern commercial uses. Within this district, established buildings are located in close proximity to the street on which they front, and one (1) of the primary goals of this district is to provide a uniform street wall for pedestrian-oriented retail and commercial uses. Within the West Main Street North district, the following streets shall have the designations indicated:

Primary streets: 4th Street, 14th Street, 10th Street, Wertland Street, and West Main Street.

Linking streets: Cream Street, Commerce Street, 8th Street, Elsom Street, 7th Street, 6th Street, 10½ Street and, 12th Street.

- (5) *West Main South Corridor.* Property on the south side of West Main Street are much deeper, and generally larger in size, than those to the north, and established non-commercial uses typically are separated from adjacent residential neighborhoods by railroad tracks and street rights-of-way. The purpose of this zoning district is to encourage pedestrian-friendly mixed-use development, at an intensity slightly greater than that to the north of West Main. The permitted uses and building heights, those allowed by-right and by special permit, respect the scenic character of the West Main Street corridor. Within the West Main Street South district, the following streets shall have the designations indicated:

Primary streets: Jefferson Park Avenue, 9th/10th Connector, Ridge Street, 7th Street, and West Main Street.

Linking streets: Dice Street, 11th Street, 5th Street, 4th Street, and 7th Street.

- (6) *Cherry Avenue Corridor.* This zoning classification establishes a district designed to encourage conservation of land resources, minimize automobile travel, and promote employment and retail centers in proximity to residential uses. It permits increased development on busier streets without fostering a strip-commercial appearance. It is anticipated that development will occur in a pattern consisting of ground-floor commercial uses, with offices and residential uses located on upper floors. This district is intended to promote pedestrian-oriented development, with buildings located close to and oriented towards the sidewalk areas along primary street frontages. Within the Cherry Avenue Corridor district the following streets shall have the designations indicated:

Primary streets: Cherry Avenue, 9th/10th Connector.

Linking streets: 4th St., 5th St., Delevan St., Estes St., Grove St., King St., Nalle St., 9th St., 6th St., 6½ St., 7th St.

- (7) *High Street Corridor.* The areas included within this district represent a section of High Street that has historically developed around medical offices and support services, as well as neighborhood-oriented service businesses such as auto repair shops and restaurants. The regulations within this district encourage a continuation of the scale and existing character of uses established within this district, and are intended to facilitate infill development of similar uses. Within the High Street corridor district the following streets shall have the designations indicated:

Primary streets: East High Street and Meade Avenue.

Linking streets: 11th Street, Gillespie Avenue, Grace Street, Grove Avenue, Hazel Street, Moore's Street, Orange Street, Riverdale Drive, Stewart Street, Sycamore Street, Ward Avenue, and Willow Street.

- (8) *Neighborhood Commercial Corridor district.* The intent of the Neighborhood Commercial Corridor district is to establish a zoning classification for the Fontaine and Belmont commercial areas that recognize their compact nature, their pedestrian orientation, and the small neighborhood nature of the businesses. This zoning district recognizes the areas as small town center type commercial areas and provides for the ability to develop on small lots with minimal parking dependent upon pedestrian access. The regulations recognize the character of the existing area and respect that they are neighborhood commercial districts located within established residential neighborhoods. Within this district the following streets shall have the designations indicated:

Primary streets: Bainbridge St., Carlton Ave., Douglas Ave., Fontaine Ave., Garden St., Goodman St., Hinton Ave., Holly St., Lewis St., Maury Ave., Monticello Rd., and Walnut St.

Linking streets: None.

- (9) *Highway Corridor district.* The intent of the Highway Corridor district is to facilitate development of a commercial nature that is more auto oriented than the mixed use and neighborhood commercial corridors. Development in these areas has been traditionally auto driven and the regulations established by this ordinance continue that trend. This district provides for intense commercial development with very limited residential use. It is intended for the areas where the most intense commercial development in Charlottesville occurs. Within this district the following streets shall have the designations indicated:

Primary streets: Bent Creek Road, Carlton Rd., Emmet Street, 5th Street, Harris Road, Hydraulic Road, Monticello Ave., and Seminole Trail.

Linking streets: Angus Road, East View Street, Holiday Drive, India Road, Keystone Place, Knoll Street, Linden Avenue, Line Drive, Michie Drive, Mountain View Street, Seminole Circle, and Zan Road.

- (10) *Urban Corridor.* The intent of the Urban Corridor district is to continue the close-in urban commercial activity that has been the traditional development patterns in these areas. Development in this district is both pedestrian and auto oriented, but is evolving to more of a pedestrian center development pattern. The regulations provide for both a mixture of uses or single use commercial activities. It encourages parking located behind the structure and development of a scale and character that is respectful to the neighborhoods and university uses adjacent. Within this district the following streets shall have the designations indicated:

Primary streets: Barracks Road, Emmet Street, and Ivy Road.

Linking streets: Arlington Boulevard, Cedars Court, Copeley Drive, Copeley Road, Earhart Street, Massie Road, Meadowbrook Road, Millmont Street and Morton Drive.

- (11) *Central City Corridor.* The intent of the Central City Corridor district is to facilitate the continued development and redevelopment of the quality medium scale commercial and mixed use projects currently found in those areas. The district allows single use development, but encourages mixed

use projects. The regulations are designed to encourage use of and emphasize proximity to natural features or important view sheds of natural features. Development allowed is of a scale and character that is appropriate given the established development that surrounds the district. Within the Central Corridor district the following streets shall have the designations indicated:

Primary streets: East High Street, Harris Street, Long Street, Preston Avenue, Rose Hill Drive, 10th Street, Preston Avenue, and River Road.

Linking streets: Albemarle Street, Booker Street, Caroline Avenue, Dale Avenue, 8th Street, Forest Street, 9th Street, and West Street.

(12) Water Street Corridor District. The intent of the Water Street Corridor District is to provide for a mix of commercial, retail and entertainment uses in a way that complements and supports the Downtown Pedestrian Mall area. As the Downtown Pedestrian Mall develops, the natural spillover will be to this area. While not a complete pedestrian zone, it contains many characteristics thereof. Development therefore should blend the pedestrian scale with a slightly more automobile oriented feel to achieve this supportive mixed-use environment.

***Primary streets:* All.**

***Linking streets:* None.**

(13) *South Street Corridor District.* Adjacent to the downtown area and wedged against the railroad tracks is a small grouping of large historic homes, many of which have been converted to offices and/or apartments. In order to preserve the rich character and style of these few remaining structures from another era, the South Street Corridor District has been created. This district is intended to preserve the historic pedestrian scale, recognizing the importance of this area to the history of the downtown area.

Primary streets: South Street.

Linking streets: None.

(14) *Corner District.* The Corner District is established to provide low-intensity missed-use development to primarily serve the area surrounding the University of Virginia. It encourages development at a scale that respects the established character of the historic commercial area adjacent to the central grounds of the University. Within the district two- and three-story buildings front the streets establishing a pedestrian scale for retail and commercial uses.

Primary streets: University Avenue, West Main Street, Wertland Street, Elliewood Avenue 13th Street and 14th Street.

Linking streets: Chancellor Street, 12th Street, 12½ Street and 13th Street.

Attachment 3

Approval without any conditions:

I move to recommend approval of the proposed modification of a special use permit as requested in SP15-00003, because I find that approval of this request is required by the public necessity, convenience, general welfare or good zoning practice.

OR

Approval with conditions:

I move to recommend approval of the proposed modification of a special use permit as requested in SP15-00003, subject to conditions, because I find that approval of this request is required for the public necessity, convenience, general welfare or good zoning practice. My motion includes a recommendation for the following conditions:

[List desired conditions]

Denial Options:

I move to recommend denial of this application for an amendment of the special use permit previously approved by City Council on December 1, 2014.

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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date: October 5, 2015

Action Required: Yes (Adoption of Ordinance – first of two readings)

Presenter: Chris Engel, CEcD, Director of Economic Development

Staff Contacts: Chris Engel, CEcD, Director of Economic Development
Craig Brown, City Attorney

Title: **Sale of City Property at 200 2nd Street SW (Market Plaza)**

Background: In December 2013, the Council directed staff to develop a Request for Proposal (RFP) to solicit interest from the development community in creating a mixed use development at the city owned parking lot on Water Street that would also include space for the City Market to operate. In January 2014, the City issued a request for proposals from qualified developers interested in presenting a viable design and development concept for the property and four responses were received. After receiving public comment for 30 days and holding a public hearing, the Council voted unanimously in June 2014 in favor of the Market Plaza concept and directed staff to begin negotiations for sale of the city property.

Discussion: The property being proposed for sale includes Parcels 71, 72, 73, 74 and 75 on Tax Map 28, containing approximately 0.81 acres, and the public right-of-way known as First Street, South, a portion of which lies between Parcels 69, 71 and 72 on Tax Map 28 to the west and Parcel 62 on said Tax Map to the east, and between Water Street to the north and South Street to the south, containing approximately 0.18 acres. With the exception of the First Street right-of-way, the property is currently being used as a metered public parking lot.

The Market Plaza development represents a significant opportunity to realize a mixed-use building with 68 residential units, 56,000 square feet of office space, 10,000 square feet of retail space and 260 underground parking spaces. In addition an outdoor plaza area of 24,000 square feet and an indoor area of 9,000 square feet will provide

space for the operation of the City Market. The estimated capital investment required for the project is \$50 million dollars.

After considerable exploration of how to best structure this transaction it was determined by mutual agreement of both parties that a sale of the City property and simultaneous long-term leaseback of the plaza area for market use would be the most appropriate. A draft sales agreement and a draft lease agreement are included herein as attachments and are discussed in summary below.

As drafted in the sales agreement, the City will convey the five parcels referenced above and the First Street right-of-way for a purchase price of \$2,400,000. The City will retain a permanent easement of approximately 30 feet in width between Water Street and South Street for the purpose of providing pedestrian access. The parties have agreed that it is in their best interests to relocate underground certain aboveground utilities surrounding the property and have agreed to share this cost. The City contribution shall be \$1,250,000 and this transfer will be facilitated through an agreement with the Charlottesville Economic Development Authority that will accompany the second reading of the sales agreement. Market Plaza will manage and coordinate all utility relocation work associated with the project and assume all costs above the City contribution. The total utility relocation costs estimated for the project are \$2,500,000.

The City's Parks and Recreation Department will continue to manage the City Market and the lease agreement defines the parameters around which the City may use the plaza and associated areas for the operation of the market. The term of the lease is 99 years and the rent is set at \$1 per year. The lease provides access to the outdoor plaza, the indoor event space, restrooms, elevators, parking spaces and a storage area for market use. The City will pay for cleaning and utilities based on usage and will be responsible for any damage attributable to its use. In addition to the regular market calendar, of Saturdays April-December, the City will have the option of adding a second market day if desired in the future. The lease also allows the City to use the plaza area for 10 additional non-market events each year. During non-event periods the plaza will be available for public use subject to rules and regulations contained in Exhibit D of the lease.

In summary, this transaction moves the City forward on two of its longstanding objectives: 1) a permanent home for the City Market and 2) a significant urban mixed-

use development of the type contemplated by the zoning ordinance adopted in 2003.

Community Engagement: There has been significant community engagement over recent years with respect to the City Market and its current and future location. Virginia Code Sec. 15.2-1800(B) requires that any time the City wishes to sell or lease public property to a private party, the City must hold a public hearing prior to doing so. A public hearing is scheduled with this item.

Budgetary Impact: The City will realize a net gain of \$1,150,000 as a result of this transaction. At the time of closing the City will receive a \$2,400,000 payment in cash. Prior to, and continuing through the time of closing, the city will make a contribution to Market Plaza for its share of the utility undergrounding costs of \$1,250,000. Once construction is complete and occupancy has occurred the City will begin to realize additional tax revenue as a result of this project, currently estimated to be \$700,000 annually.

Alignment with City Council Vision and Strategic Plan: This agenda item aligns with the City Council vision related to economic sustainability and past priority related to the City Market.

Recommendations: Staff recommends that the proposed ordinance authorizing the execution of the sales agreement with Market Plaza, LLC be approved.

Alternative: Council could choose not to approve the ordinance.

Attachment:

Sales Agreement between the City and Market Plaza, LLC
Lease, Easement and Management Agreement between Market Plaza, LLC and the City

AN ORDINANCE

AUTHORIZING THE CONVEYANCE OF APPROXIMATELY 0.81 ACRES OF LAND BOUNDED BY WATER STREET, SOUTH STREET, FIRST STREET, SOUTH, AND SECOND STREET, SW, AND FURTHER IDENTIFIED ON CITY REAL PROPERTY TAX MAP 28 AS PARCELS 71, 72, 73, 74 AND 75, AND A PORTION OF THE FIRST STREET, SOUTH, RIGHT-OF-WAY BETWEEN WATER STREET AND SOUTH STREET, CONTAINING APPROXIMATELY 0.18 ACRES, TO MARKET PLAZA LLC, FOR A MIXED USE DEVELOPMENT THAT CONTAINS THE FUTURE SITE OF THE CITY MARKET

WHEREAS, in December 2013 the City issued a Request for Proposals (“RFP”) to purchase and develop the real property identified on City Real Property Tax Map 28 as Parcels 71, 72, 73, 74 and 75, which development would be required to incorporate and provide a permanent location for the City Market; and,

WHEREAS, the RFP provided that the City would also consider the sale of the adjoining First Street, South, right-of-way if needed for the development; and,

WHEREAS, Market Plaza LLC was selected by the City Council as the potential purchaser and developer of the five City-owned parcels and the adjoining First Street right-of-way, referred to herein collectively as “the Property”; and,

WHEREAS, representatives of Market Plaza and City staff have negotiated a proposed Sales Agreement for the Property, and a long term lease of a portion of the Property for the operation of the City Market and other City-sponsored events; and,

WHEREAS, in accordance with the requirements of Virginia Code Sections 15.2-1800(B) and Section 15.2-1813, a public hearing was duly advertised and held to give interested members of the public the opportunity to comment on the proposed conveyance of the Property; and,

WHEREAS, construction of the mixed use development project will provide additional infill residential and commercial space, will replace the off street parking currently provided on the Property and also provide underground parking to support the development, will generate additional tax revenue to the City, and provide a permanent improved location in Downtown Charlottesville for the operation of the City Market for a term of 99 years.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the City Manager is hereby authorized to execute the “Agreement for the Sale of Real Property Between the City of Charlottesville, as Seller, and Market Plaza LLC, as Purchaser”, a copy of which is attached hereto, and a deed, all in form approved by the City Attorney, for conveyance of the above-described Property to Market Plaza LLC. The City Attorney is hereby authorized to take whatever steps are necessary to effect the closing of said conveyance.

**AGREEMENT FOR THE SALE OF REAL PROPERTY BETWEEN
THE CITY OF CHARLOTTESVILLE, AS SELLER,
AND MARKET PLAZA LLC, AS PURCHASER**

THIS AGREEMENT is made this ____ day of October, 2015 between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as “City”, whose address is P.O. Box 911, Charlottesville, Virginia, 22902, and **MARKET PLAZA LLC**, a Virginia limited liability company, hereinafter referred to as “Market Plaza”, whose address is 224 14th Street, Charlottesville, Virginia 22903.

WITNESSETH:

WHEREAS, the City is the owner of certain real property situated in the City of Charlottesville, Virginia, designated as Parcels 71, 72, 73, 74 and 75 on City Real Estate Tax Map 28, containing approximately 0.81 acres, more or less, and more particularly shown on a survey plat entitled _____, prepared by _____ and dated _____, attached hereto as **Exhibit A**; and,

WHEREAS, the City is also the owner of the improved public right-of-way known as First Street, South, a portion of which lies between Parcels 69, 71 and 72 on City Real Estate Tax Map 28 to the west and Parcel 62 on said Tax Map to the east, and between Water Street to the north and South Street to the south, containing approximately 0.18 acres, more or less; and,

WHEREAS, collectively the five City-owned parcels and the portion of the First Street, South, right-of-way as described herein are hereinafter referred to as “the Property”; and,

WHEREAS, in 2014 the City issued a request for proposals to develop the Property as a mixed use development that would also incorporate the operations of the City Market, and the Charlottesville City Council subsequently determined that Market Plaza had submitted the best proposal; and,

WHEREAS, the City is willing to sell and Market Plaza is willing to purchase the Property for construction of a mixed use development, with a portion of the Property leased back to the City for the operation of the City Market, all subject to the terms and conditions outlined herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City and Market Plaza do hereby set forth their agreement as follows:

I. AGREEMENT TO CONVEY

(a) The City agrees to sell and Market Plaza agrees to purchase the Property. The conveyance of Parcels 71, 72, 73, 74 and 75 on City Real Estate Tax Map 28 shall be by Special Warranty Deed, and the conveyance of the First Street, South, right-of-way shall be by Quitclaim Deed. There is no personal property included with the sale of the Property. Within thirty (30) calendar days after closing the City may, in its discretion, enter the Property for the purpose of removing the existing parking meters, retaining wall infrastructure (including, but not limited to, concrete blocks, drainage structures, stone, gravel and rebar), any other equipment utilized in the operation of the City Market, fencing, and any City-owned signage from the Property. Any such property not so removed by the City within thirty (30) calendar days after closing shall become the property of Market Plaza, and subject to use or disposal by Market Plaza in its sole discretion. The conveyances shall be free and clear of all encumbrances, tenancies, and liens except as otherwise indicated herein, and subject only to such restrictions and easements as shall then be of record which do not affect the use of the Property for its intended purposes or render the title unmarketable.

(b) The City represents and warrants as of the date of this Agreement and as of the date of closing that it has the right and the authority to enter into this Agreement and to perform its obligations hereunder. The performance of this Agreement by the City will not breach any other agreement with any other party or create a violation of any applicable law, rule, or regulation.

(c) In the Quitclaim Deed to Market Plaza for the First Street, South, right-of-way the City shall reserve and retain a permanent easement approximately 30 feet in width between Water Street and South Street, for the purpose of providing pedestrian access between those two streets, and a permanent easement of 10 feet in width for elevator access connecting Water Street to the outdoor plaza area. The locations of the two permanent easements are shown on a drawing entitled "Water-South Pedestrian

Access Easement” by Powe Studio Architects PC and dated September 29, 2015, which drawing is attached hereto as **Exhibit B**. These easements shall be depicted on the final site plan for the development, and the exact location and dimensions of the easements will also be shown on a recordable plat attached to and referenced within the Quitclaim Deed. The 30 foot easement between Water Street and South Street shall provide that the City will be responsible for routine cleaning, maintenance and snow removal within the area of the easement, and will be responsible for repair and replacement of the easement surface as required.

II. PURCHASE PRICE

The purchase price for the Property shall be Two Million, Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00), which shall be paid to the City at closing by certified bank check or by wire transfer to a bank and an account designated by the City, subject to the prorations described herein. A deposit has not been made by Market Plaza, and will not be required by the City.

III. RIGHT OF ENTRY

By letter dated July 2, 2014 the Charlottesville City Manager authorized Market Plaza and its authorized representatives to enter the Property, subject to certain conditions, for the purpose of conducting surveys, including utility location verification, and geotechnical borings. Such entry may continue, subject to the same conditions, until closing if deemed reasonably necessary by Market Plaza in the exercise of a purchaser’s due diligence; provided, however, that nothing herein shall be interpreted as authorizing Market Plaza to engage in land disturbing activity or to commence construction on the Property prior to closing, except for the work contemplated in Section VIII, *infra*..

IV. GOVERNMENTAL APPROVALS

By letter dated July 24, 2014 the Charlottesville City Manager granted consent to Market Plaza and its authorized representatives to apply for and seek any and all land use and zoning approvals necessary for the intended use of the Property. The required submittals by Market Plaza include a site plan, subdivision plat, stormwater management plan, erosion and sediment control plan, and applications for a special use permit and certificate of appropriateness. Upon the execution of this Agreement by both

parties, Market Plaza shall continue to diligently pursue all of the required final zoning and land use approvals as a contract purchaser of the Property. Market Plaza shall continue to bear all expenses associated with obtaining all required governmental approvals. The receipt of all City final approvals and permits necessary to develop the Property as described herein is a condition precedent on Market Plaza's obligation to close pursuant to Section X, *infra*. In its discretion Market Plaza may, by written notice to the City, waive this contingency in whole or in part and proceed to closing if all other contingencies are satisfied.

As contract purchaser of the Property Market Plaza may, in its sole discretion, apply for a building permit prior to closing, but in no event shall any construction or land disturbing activity take place prior to closing, except for work authorized as a part of the utility relocation described in Section VIII.

V. ENVIRONMENTAL INSPECTION AND CONDITION OF PROPERTY

Market Plaza has contracted for and received a Phase I Environmental Site Assessment for the Property, and agrees to accept the Property "AS IS" at closing. Market Plaza acknowledges that the City makes no representations or warranties, whether express or implied, concerning the absence of any "hazardous substances" (as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. sec. 9601 *et seq.*, as amended) or hazardous waste (as defined by the Resource Conservation Act, 15 U.S.C. sec. 2601 *et seq.*, as amended). Market Plaza further acknowledges that the City makes no guarantee, representation or warranty regarding the condition of the Property or that it is suitable for Market Plaza's intended development, and the City expressly disclaims any and all obligation and liability to Market Plaza regarding any physical or environmental defects which may exist with respect to the Property. Market Plaza agrees to be solely responsible for all costs and expenses arising from any required or necessary remediation of any environmental condition on the Property.

To the best of the City's and its officers' and officials' knowledge, no environmental liens, restrictions, notifications, or conditions regarding the release, treatment, storage, or disposal of Hazardous

Substances or Petroleum Products have been claimed or threatened relating to the Property. The City also represents that it has no knowledge of any past or present administrative proceedings, past or present litigation, or any notices, claims, or assertions of a violation of any environmental, health, or safety law or regulation affecting the Property.

VI. FINANCING

This Agreement is contingent on Market Plaza obtaining a written commitment or commitments, as the case may be, for third-party financing in the principal amount of no less than Forty Million and 00/100 Dollars (\$40,000,000.00). Market Plaza agrees to make written application for such financing within ninety (90) days of the execution of this Agreement by both parties, and to diligently pursue obtaining a commitment therefore. The contingency described in this paragraph may be satisfied by third party financing in a lesser amount, if Market Plaza provides documentation acceptable to the City that demonstrates adequate financing and equity to construct the development to final completion.

If Market Plaza does not obtain such a written commitment on terms satisfactory to it and so notifies the City in writing at least thirty (30) days before closing, then this Agreement shall terminate upon the giving of such notice without further obligation or responsibility of either party to the other. In the event of such termination neither party shall have any claim against the other party by reason of this Agreement.

VII. TITLE EXAMINATION

Market Plaza shall, at its own expense, have an examination of title performed prior to closing. Market Plaza shall give the City prompt written notification of any defect found during the examination of title that renders the title unmarketable or the Property unsuitable for the purpose for which it is being acquired. If the defect can be remedied by legal action within a reasonable time, the City shall, at its expense, promptly take such action as is necessary to cure the defect. If the City, acting in good faith, is unable to have such defect corrected within sixty (60) days after receipt of written notice of the defect, then this Agreement may be terminated by Market Plaza at the expiration of such sixty (60) day period, without any further obligation or responsibility of either party to the other party, or Market Plaza may, by

written notice at the expiration of such sixty (60) day period, elect to waive the defect and proceed to Closing. In the event of such termination neither party shall have any claim against the other party by reason of this Agreement. Market Plaza may, in its discretion, extend the date of closing to the extent necessary for the City to comply with this paragraph. The City will not create any lien, easement or other encumbrance on the Property prior to Closing without the prior written consent of Market Plaza.

VIII. UTILITY RELOCATION

(a) The City and Market Plaza agree that it is in the best interests of both parties to relocate underground certain designated aboveground utilities in the rights-of-way adjacent to and on the Property. To that end the parties have agreed to share the costs of undergrounding electric, telecommunication and cable television facilities currently within the public right-of-way, as well as the cost of any necessary adjustments of City-owned water, sanitary sewer, storm water or gas utility facilities. The specific utilities to be relocated as a part of the development by Market Plaza are shown on a drawing entitled “Market Plaza Utility Relocation Plan” prepared by the Timmons Group and dated September 21, 2015. The parties acknowledge that specific utility facilities and their location as shown on the Plan referenced herein may be revised or amended as part of the final site plan approval.

(b) Market Plaza shall be responsible for managing this work and obtaining all required permits, bonds and approvals that are necessary for the utility relocation work contemplated by this section, and for preparing as-built plans depicting the location of each new or relocated utility facility. Upon request by the City, Market Plaza shall prepare recordable survey plats, if necessary to adjust the location or dimensions of any permanent utility easement depicted on plats recorded at the time of closing. The utility relocation work may be started prior to closing, once all permits and approvals for the utility relocation work have been obtained. Market Plaza may, prior to closing, enter onto the property designated as Parcels 71, 72, 73, 74 or 75 on City Real Property Tax Map 28 for the purpose of removing designated aboveground utilities; provided that such entry and removal shall be done in a manner and at times that minimize the disruption to the use of the property as a City metered parking lot.

(c) The City's share of the utility relocation costs referenced within paragraph (a) shall be One Million, Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00), payable on a cost reimbursement basis. It is contemplated that this contribution will be provided to Market Plaza through an agreement with the Charlottesville Economic Development Authority ("CEDA"), upon presentation of documentation and verification of actual costs incurred by Market Plaza for such work. CEDA's obligation to provide reimbursement to Market Plaza shall be subject to appropriation of funding by the City Council of the City of Charlottesville for such purpose, which will be scheduled contemporaneously with the final adoption of an ordinance by the City Council authorizing the execution of this Agreement. Market Plaza agrees to pay, without limitation, any and all costs above the amount of the contribution from the City / CEDA that are necessary to complete the utility relocation work described herein and referenced in **Exhibit C**.

(d) Any utility undergrounding or relocation attributable to the development of any property already owned or controlled by Market Plaza prior to the execution of this Agreement shall not be eligible for reimbursement funding from the City / CEDA.

(e) If for any reason the City or CEDA fails to provide the financial contribution for utility relocation in the amount specified herein, Market Plaza may (1) terminate this Agreement prior to closing; or (2) proceed to closing, in which case Market Plaza shall be entitled to credit the City's share of utility relocation costs against the purchase price and thereafter pursue whatever legal remedies are available to it.

(f) The City and Market Plaza agree to work collaboratively to minimize any impacts that may arise as a result of the utility relocation work. At least fifteen (15) days prior to the start of the utility relocation work Market Plaza or its contractors shall submit a work plan to the City for review and comment. The work plan shall contain:

(i) A description of the location, nature, dates and duration of work to be performed within City rights-of-way, or work which requires the temporary closure of any street or sidewalk;

(ii) The proposed means of providing prior notice to adjacent property owners who may be affected by the work within the rights-of-way or by any street or sidewalk closure;

(iii) The name and contact information for a representative of Market Plaza who will be able to respond to any questions or concerns regarding the work;

(iv) The days of the week and the hours of the day that Market Plaza anticipates construction work being performed within public rights-of-ways;

(v) A plan for providing advance notice to the public (through signage) and to nearby property owners of the permanent closure of First Street, South, between Water Street and South Street.

(g) The City agrees to promptly review the proposed work plans and to offer constructive suggestions. The City may also agree to use its existing means of communication, such as email distribution lists and public service announcements, to assist in notifying the public of work to be performed by Market Plaza.

IX. THE MIXED USE DEVELOPMENT

(a) Market Plaza agrees to construct on the Property, and adjoining property already owned or controlled by Market Plaza constituting the balance of the same City block, a mixed use development with:

(i) Approximately sixty-eight (68) residential units (but in no event greater than sixty (60) dwelling units per acre);

(ii) Approximately 56,660 square feet of office space (exclusive of the “auditorium / theater” space approved in a Special use Permit granted by the Charlottesville City Council);

(iii) Approximately 9,800 square feet of interior retail space;

(iv) An open plaza of approximately 24,390 square feet and indoor event space of approximately 9,000 square feet that will be subject to a long term lease from Market Plaza to the City for the operation of the City Market. The area leased for the City Market shall be sufficient to accommodate a minimum of 115 vendor stalls of at least 100 square feet each;

(v) A permanent pedestrian access easement between Water Street and South Street within the former First Street, South right-of-way, and a public elevator providing access between Water Street and the outdoor plaza level., as described herein; and,

(vi) Structured underground parking for approximately 260 vehicles, of which no fewer than 102 spaces shall be available for daily public use at prevailing market rates.

(b) The design and construction of the mixed use development shall conform in all respects to the approved final site plan for the property; the approved final subdivision plat; the Special Use Permit approved by City Council on October 5, 2015, a copy of which is attached hereto as **Exhibit D**, and

which is fully incorporated herein by reference; and the Certificate of Appropriateness granted by the City Board of Architectural Review. If any such approvals are subsequently amended or modified by official action of the City, acting through its designated agents, commissions or boards, the provisions and requirements of the amended document or approval shall govern the design and construction of the development.

(c) The City and Market Plaza, as the owners of all property adjoining the platted alley located between Parcels 74 and 75, and Parcel 69 on City Real Estate Tax Map 28, agree to mutually cooperate to complete all procedures, and to execute all documents, as necessary to vacate the platted alley without the payment of any compensation to the City by Market Plaza.

(d) The City's approval and signature of this Agreement shall constitute the City's agreement to convey to Market Plaza the permanent right for portions of certain buildings and structures to permanently occupy space below public rights-of-way immediately adjacent to the development ("encroachments"). This permanent easement for underground encroachments shall include infrastructure such as the following: footings, foundations, transformer vaults and tie-backs, as may be necessary for buildings and structures to comply with building code requirements or zoning regulations requiring a specific building envelope. Market Plaza, its successors and assigns shall be liable for any damages, costs or loss resulting from the placement of the encroachments. All such proposed encroachments shall be shown on the final site plan and subdivision plat for the development. Market Plaza shall, promptly upon completion of construction of the encroachments, provide the City with a physical survey of their as-built location, in the form of a plat suitable for recordation in the City's land records. Upon receipt of such plat the City shall prepare a deed of encroachment, and Market Plaza shall cooperate with the City by executing all documents necessary to finalize the deed and plat and to record them in the City's land records.

(e) Prior to the issuance of a building permit for the mixed use development Market Plaza shall inform the City of how it will comply with the requirements of City Code section 34-12 ("Affordable dwelling units").

(f) Market Plaza agrees to diligently pursue all necessary permits, authorizations and final approvals without any unnecessary delay. Once all permits and final approvals are obtained, and all other contingencies are satisfied, the parties shall schedule the closing as contemplated in Section X. After closing Market Plaza shall begin and complete the construction of the development in a reasonably prompt manner, consistent with the terms and conditions of this Agreement. At or before closing on the sale of the Property, Market Plaza will provide the City Manager of the City of Charlottesville, or the Manager's designee, with an anticipated schedule for the commencement and prosecution of the development of the Property, which schedule shall include major milestones beginning with the projected dates for groundbreaking and concluding with dates for substantial completion and the issuance of certificates of occupancy. Market Plaza will provide the City with an updated schedule if there are any delays of thirty (30) days or more in the accomplishment of any specific benchmark. The parties acknowledge that there are many variables in the construction process and that any schedule submitted by Market Plaza will be an approximation that may be dependent on conditions beyond the control of Market Plaza.

The agreement of Market Plaza to develop the Property as described herein is the primary consideration for the sale of the Property by the City upon the terms set forth herein. The obligations of Market Plaza to develop the Property as a mixed use development and to provide a site for the operation of the City Market, and all of the terms, conditions, rights and privileges set forth herein relating to or necessary for such development, will therefore survive closing, and remain an obligation of Market Plaza until fully performed.

X. CLOSING

(a) Closing will take place in the Office of the City Attorney in City Hall (605 East Main Street, City Hall, Charlottesville, Virginia) within twenty-four (24) months after the execution of this Agreement by both parties. The date of closing may be extended by mutual agreement of the parties if necessary for the parties to meet all conditions precedent to closing.

(b) At least thirty (30) days prior to closing Market Plaza shall provide written documentation to the City of its financial ability to construct the planned mixed use development on the Property, as shown on the approved final site plan, and as approved by the Board of Architectural Review and as contemplated by the Special Use Permit granted by the City of Charlottesville. Such documentation shall include, at a minimum, a written loan commitment for construction and permanent financing for the development; a statement of the equity that will be dedicated to the construction of the development by the owners; and a contract for the construction of the development between the owner and a Class A contractor. If not already provided Market Plaza shall also provide a duly executed "Lease, Easement and Management Agreement" for that portion of the Property to be used for the City Market. The City shall be under no obligation to close on the transaction until (i) Market Plaza has provided the documentation as specified in this paragraph (ii) the parties have executed the above-referenced "Lease, Easement and Management Agreement".

(c) The City agrees to pay the expenses of preparing the deed(s) to convey the Property and related easements and encroachments, and Market Plaza agrees to pay the expenses of preparing a recordable plat(s) to be attached to the deed(s). At least thirty (30) days prior to closing, and thereafter as may be contemplated by this Agreement, the City shall deliver to Market Plaza a proposed deed for review.

(d) The City shall deliver possession of the Property to Market Plaza as of the date of Closing, except that Market Plaza shall have access to the Property prior to closing for the purposes specified herein.

(e) At the Closing, the City shall deliver to Market Plaza all documents reasonably requested by Market Plaza, including, without limitation, a W-9 form, a FIRPTA, a Virginia Non-resident Reporting Form (R-5E), and an Owner's Affidavit as to Mechanic's Liens and Possession reasonably acceptable to Market Plaza's title company.

(f) The City is exempt from the payment of the Grantor's Tax. Market Plaza shall pay all other state and local costs and fees associated with the recordation of the deed and Market Plaza's financing documents, if any, for the Property. Except as specifically provided herein, Market Plaza shall also pay

all other expenses it incurs in connection with this transaction including, without limitation, engineering, soil and feasibility studies, environmental assessments, title examinations, insurance premiums, boundary survey costs, loan document preparation costs, and fees of Market Plaza's attorney.

XI. DEFAULT

If the sale and purchase contemplated by this Agreement is not consummated because of the City's or Market Plaza's default, the non-defaulting party may elect to terminate this Agreement, seek specific performance of the Agreement, or pursue all other legal rights or remedies available, including an action for damages. These remedies are cumulative and non-exclusive and may be pursued at the option of the non-defaulting party without a requirement of election of remedies.

XII. NOTICES

All notices and other communications to the parties hereto must be in writing and will be deemed properly given if (i) hand delivered, (ii) mailed via prepaid United States Postal Service Express mail or other overnight delivery service, or (iii) mailed prepaid United State Postal Service Certified Mail (Return Receipt Requested), addressed as follows:

In the case of notice to the City:

City Manager
City Hall
P. O. Box 911
605 East Main Street
Charlottesville, VA 22902

With a copy to (which shall not constitute notice):

City Attorney
City Hall
P. O. Box 911
605 East Main Street
Charlottesville, VA 22902

In case of notice to Market Plaza LLC:

Keith O. Woodard
224 14th Street
Charlottesville, Virginia 22903

With a copy to (which shall not constitute notice):

Lenhart Pettit, PC
Attn: David H. Pettit, Esq.
530 East Main Street
Charlottesville, VA 22902

Each party may by notice to the other party specify a different address for the delivery of subsequent notices. Notice is effective on the date of actual receipt or three (3) days after the date of mailing, whichever is earlier.

XIII. OTHER TERMS

This Agreement is further contingent upon the following:

(a) The Property is currently exempt from City of Charlottesville real property taxation. Market Plaza agrees to be responsible for real property taxes assessed against the property for the year of closing, prorated as of the date of closing, and for payment of the City's storm water utility fee prorated as of the date of closing or as soon thereafter as the fee may be assessed.

(b) From the date this Agreement has been executed by both parties through closing, risk of loss or damage to the Property by fire, windstorm, casualty or other caused is assumed by the City. Between the dates of the execution of this Agreement through closing the City shall not commit, or suffer any other person or entity to commit any waste or damage to the Property or any appurtenances thereto. The City shall not permit the manufacture, use, storage or disposal of hazardous wastes and/or toxic substances on or in the Property or in or near any adjoining waterways or drainage ditches.

(c) This Agreement, and the rights and obligations herein, may not be assigned or transferred by either the City or Market Plaza without the written consent of the other; provided, however, that Market Plaza may assign its interest herein to another entity wholly owned by Market Plaza, without the prior consent of the City.

(d) This Agreement shall be governed and interpreted by the laws of the Commonwealth of Virginia. The parties hereby consent to the jurisdiction and venue of the courts of the Commonwealth of Virginia, and specifically to the courts of the City of Charlottesville, Virginia, in connection with any

action, suit, or proceeding arising out of or relating to this Agreement. This Agreement is binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns.

(e) This Agreement contains the entire and final agreement between the parties hereto, and supersedes the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The parties acknowledge that there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement; provided, however, that nothing in this Agreement shall be interpreted as relieving Market Plaza from the performance of any duty, obligation or responsibility set forth within any approval, permit or authorization from the City or from any of its agencies, commissions or departments, or as otherwise may be required by law. This Agreement may not be modified except by an agreement in writing signed by the parties.

(f) The failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of the term, covenant, or condition, nor will any waiver or relinquishment of any right or power at any one or more times be deemed a waiver or relinquishment of the right or power at any other time or times.

(g) The City and Market Plaza each hereby acknowledge that neither are or have been represented by a licensed real estate agent or broker in connection with this transaction, and that neither will pay any commission in connection with this Agreement.

(h) The parties agree that each has consulted with an attorney who has actively participated in the negotiation and drafting of this Agreement and that the provisions of this Agreement will not be construed in favor of either party.

WHEREAS, on October __, 2015 the execution of this Agreement by the Charlottesville City Manager was duly approved by the adoption of an Ordinance by the Charlottesville City Council; and,

NOW, THEREFORE, WITNESS the following signatures and seals:

MARKET PLAZA LLC

By: _____

Name: _____

Title: _____

Date: _____

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Name: Maurice Jones

Title: City Manager

Date: _____

Approved as to Form:

City Attorney



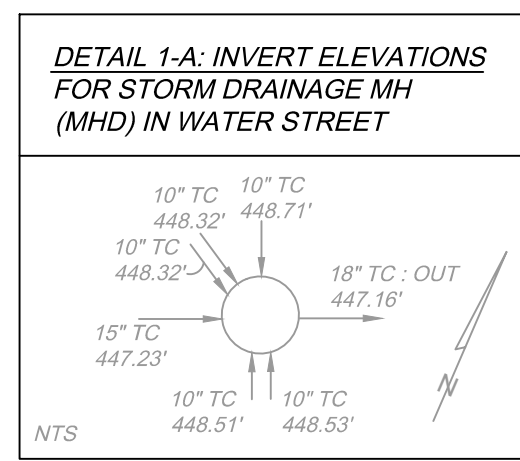
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CHARLOTTEVILLE OFFICE
919 2nd St. S.E. | Charlottesville, VA 22902
TEL 434-295-5624 FAX 434-295-8317 www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.

DATE
8/12/2014
DRAWN BY
J. SHOWALTER
DESIGNED BY
C. KOTARSKI
CHECKED BY
S. SAUNDERS
SCALE
1"=20'

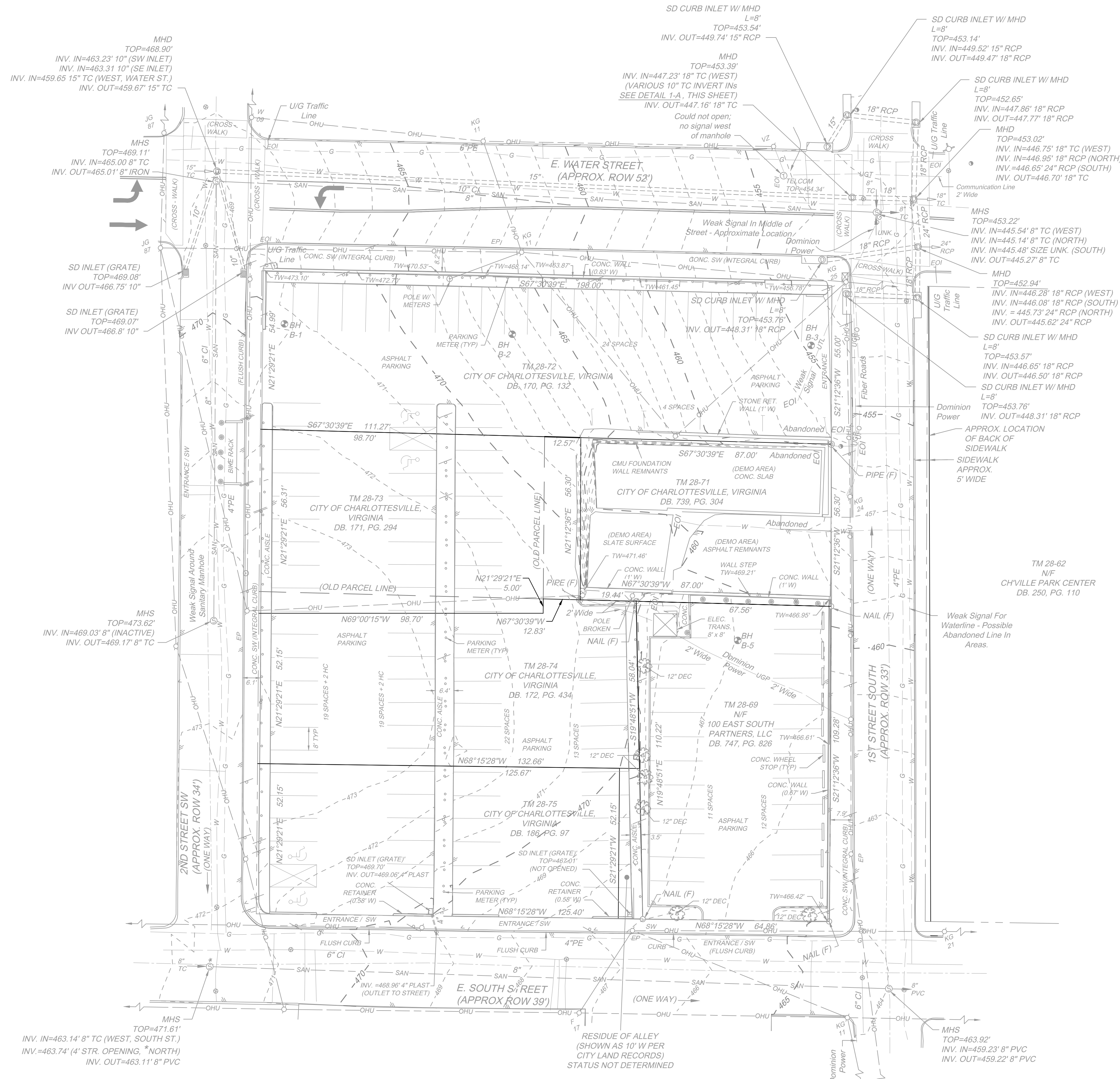
TIMMONS GROUP
MARKET PLAZA
CITY OF CHARLOTTEVILLE, VIRGINIA
EXISTING CONDITIONS PLAN

JOB NO.
35722
SHEET NO.
C1.0



SURVEY LEGEND

- WATER VALVE
 - FIRE HYDRANT
 - STORM DRAINAGE MANHOLE (MHD)
 - STORM DRAINAGE GRATED INLET
 - REINFORCED CONCRETE PIPE
 - TERRA COTTA PIPE
 - SANITARY MANHOLE (MHS)
 - CLEAN-OUT (CO)
 - POLY-VINYL CHLORIDE PIPE
 - TELECOM MANHOLE
 - TELECOM BOX / VAULT
 - UTILITY POLE
 - ELECTRIC METER
 - GUY ANCHOR
 - ELECTRIC BOX
 - ELECTRIC VAULT
 - ROLLARD
 - POLY-ETHYLENE (GAS)
 - END OF INFORMATION
-
- SAN - SANITARY PIPE
 - W - WATER-LINE
 - UGT - UNDERGROUND TELECOM UTILITY
 - UGP - UNDERGROUND POWER/ELEC UTILITY
 - UTL - UNDERGROUND UTILITY (UNK)
 - G - UNDERGROUND GAS UTILITY
 - OHU - OVERHEAD UTILITY
 - EP - EDGE OF PAVEMENT (EP)
 - DEC - DECIDUOUS TREE (DEC)
 - TMW - TOP OF WALL
 - EP - EDGE OF PAVEMENT
 - SW - SIDEWALK
 - IF - SIGN
 - BH - BORE-HOLE (AS MARKED BY OTHERS)
 - HP - HANDICAP PARKING SPACE
 - DB - FOUND (PROPERTY MONUMENT)
 - PG - DEED BOOK PAGE



SURVEY NOTES:

- HORIZONTAL DATUM IS BASED ON NAD83 (NA2011), VIRGINIA STATE GRID, NORTH ZONE. VERTICAL DATUM IS BASED ON NAVD 88. DATUM ESTABLISHED THROUGH LEICA SmartNet REFERENCING STATION LOYI, CHARLOTTEVILLE, VA.
- TOPOGRAPHIC DATA DEPICTED BASED ON A CURRENT FIELD SURVEY BY TIMMONS GROUP.
- THIS IS NOT A BOUNDARY SURVEY. BOUNDARY SHOWN IS BASED ON PROPERTY MONUMENTS LOCATED DURING FIELD SURVEY AND DEEDS AND PLATS OF RECORD. BASIS OF MERIDIAN DETERMINED AS OUTLINED IN NOTE 1.
- NO TITLE REPORT FURNISHED. EASEMENTS MAY EXIST WHICH ARE NOT SHOWN HEREON.
- BASED ON FEMA FLOOD INSURANCE RATE MAP (FIRM), MAP NO. 51003C0280D, PANEL 288, EFFECTIVE FEBRUARY 4, 2005. THE PROPERTY SHOWN LIES IN UNSHADED ZONE X, AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN

S.U.E. NOTES:

- THERE MAY BE ABANDONED UNDERGROUND UTILITY LINES IN PROJECT LIMITS THAT ARE NOT SHOWN.
- PERFORMED A ELECTRONIC SWEEP INSIDE PROJECT LIMITS FOR ANY CONDUCTIVE UNDERGROUND LINES OR PIPES.
- UTILITY MANHOLES AND HAND HOLES COULD NOT BE OPENED (COMMUNICATION MANHOLE IN WATER STREET)
- ALL SIZES AND TYPES OF UNDERGROUND UTILITY LINES ARE TAKEN FROM REFERENCE MAPPING OR PRE-EXISTING MISS UTILITY MARKINGS.

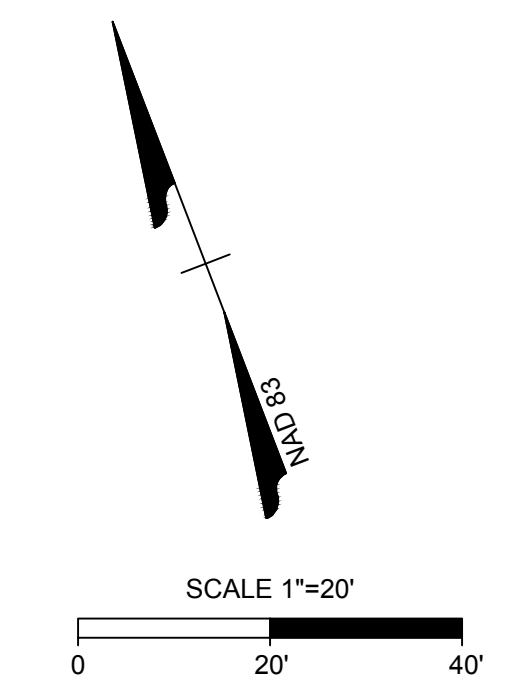
UTILITY OWNERS IN AREA:

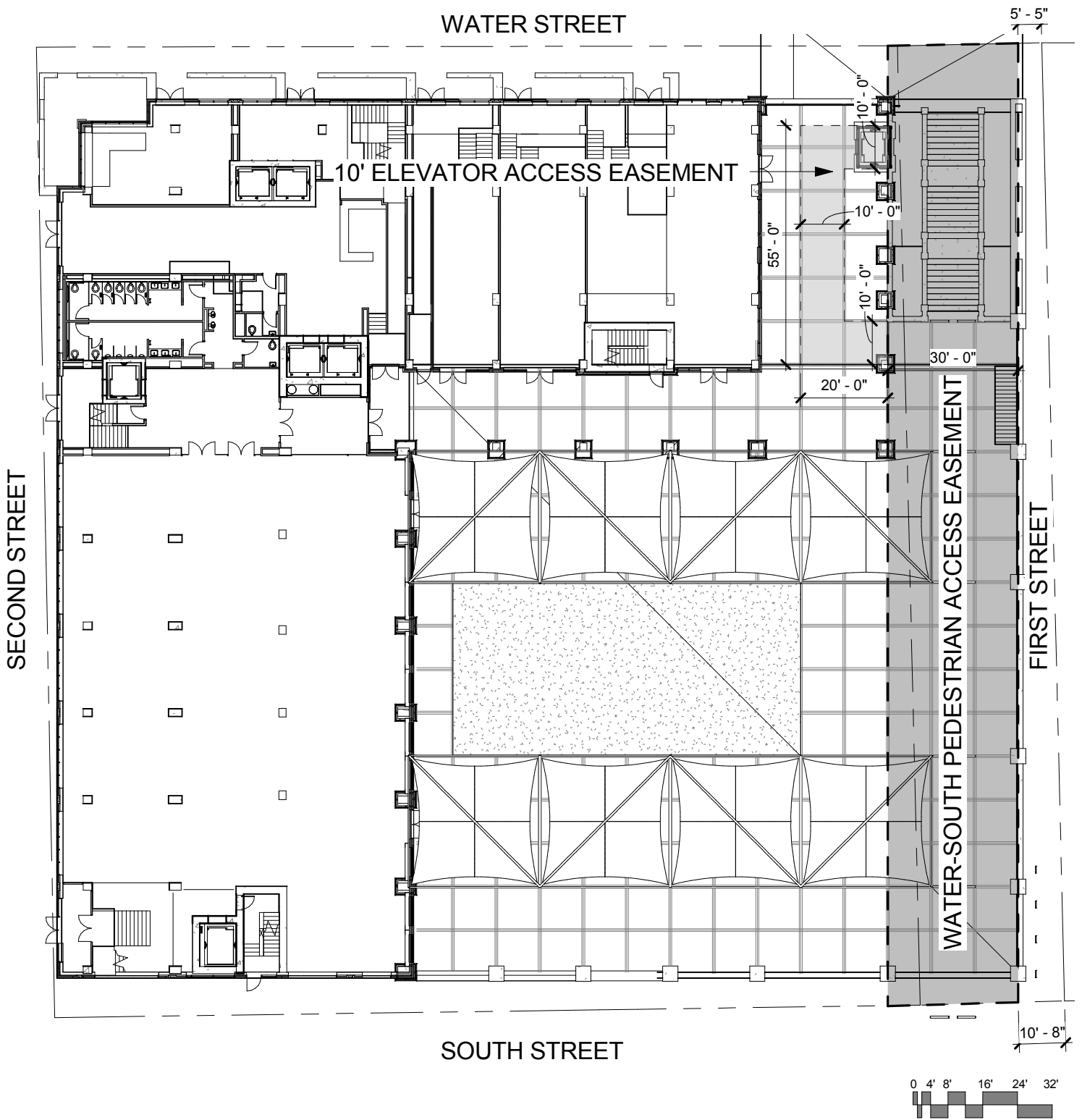
- NATURAL GAS - CITY OF CHARLOTTEVILLE, VA.
- WATERLINE - CITY OF CHARLOTTEVILLE, VA.
- SEWER - CITY OF CHARLOTTEVILLE, VA.
- COMMUNICATION - COMCAST COMMUNICATIONS
- CENTURY LINK COMMUNICATIONS
- FIBER ROADS COMMUNICATIONS
- LUMOS COMMUNICATIONS
- MCI
- POWER - DOMINION POWER

SUE LEGEND

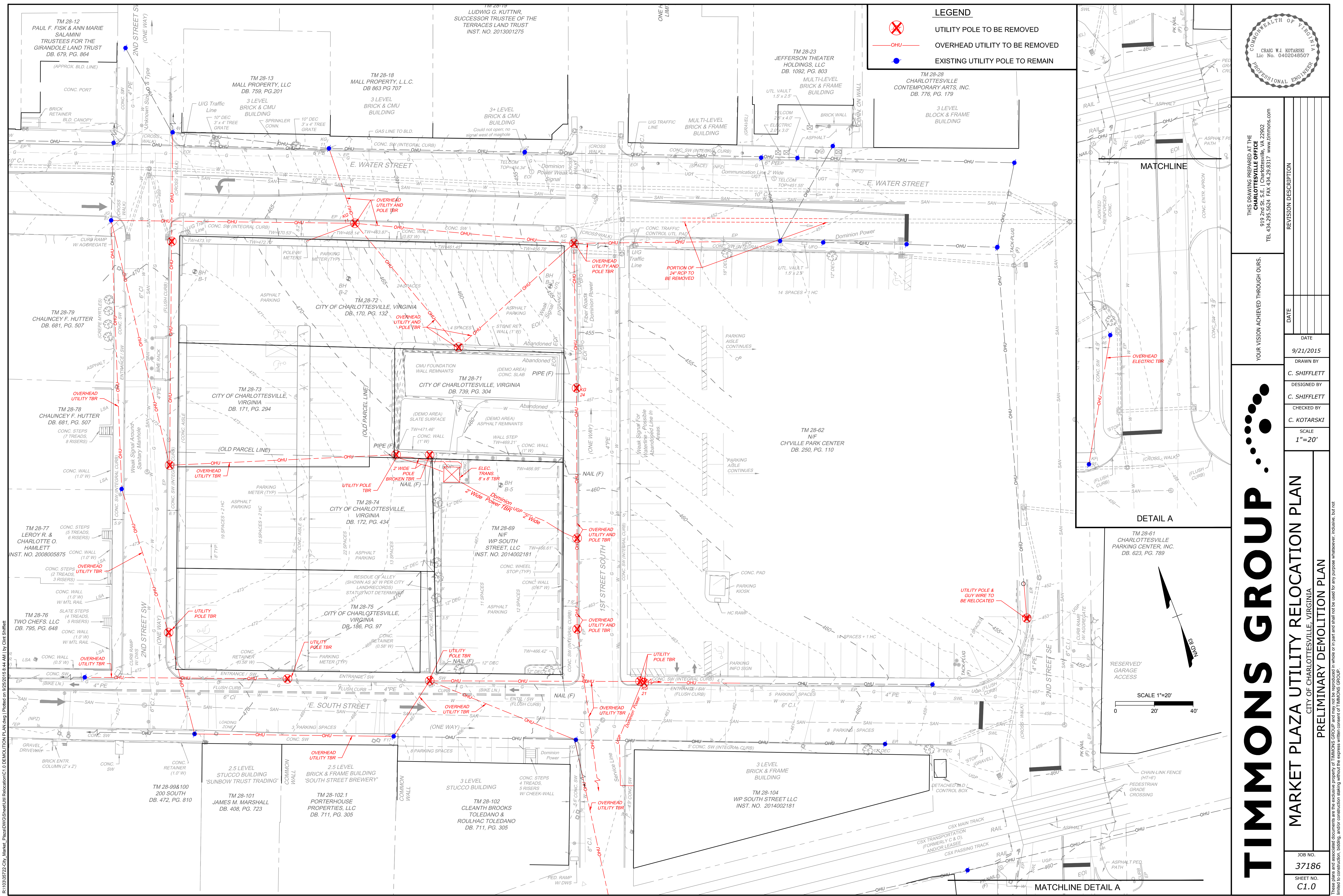
- EOI = END OF INFORMATION FOR UNDERGROUND UTILITY LINE - SIGNAL ENDED AT THIS LOCATION.
- 2' WIDE = INDICATES THE WIDTH OF THE SIGNAL / UNDERGROUND UTILITY THAT IS SHOWN.
- ABANDONED = UNDERGROUND UTILITIES THAT SERVED THE DEMOLISHED BUILDING.
- WEAK SIGNAL = INDICATES UTILITY LINES THAT DID NOT EMIT A QUALITY ELECTROMAGNETIC SIGNAL. IF "WEAK SIGNAL" IS SHOWN ON A UTILITY LINE, THAT TRANSLATES TO AN APPROXIMATE LOCATION.
- CONTOUR INTERVAL = 1'

THIS TOPOGRAPHIC SURVEY WAS COMPLETED UNDER THE DIRECT AND RESPONSIBLE CHARGE OF PAUL HUBER FROM AN ACTUAL GROUND SURVEY MADE UNDER MY SUPERVISION; THAT THE ORIGINAL DATA WAS OBTAINED ON THE FOLLOWING DATES: JULY 9-11, JULY 17. THIS BASE- MAP AND DIGITAL GEOSPATIAL DATA INCLUDING METADATA MEETS MINIMUM ACCURACY STANDARDS UNLESS OTHERWISE NOTED.


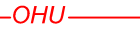



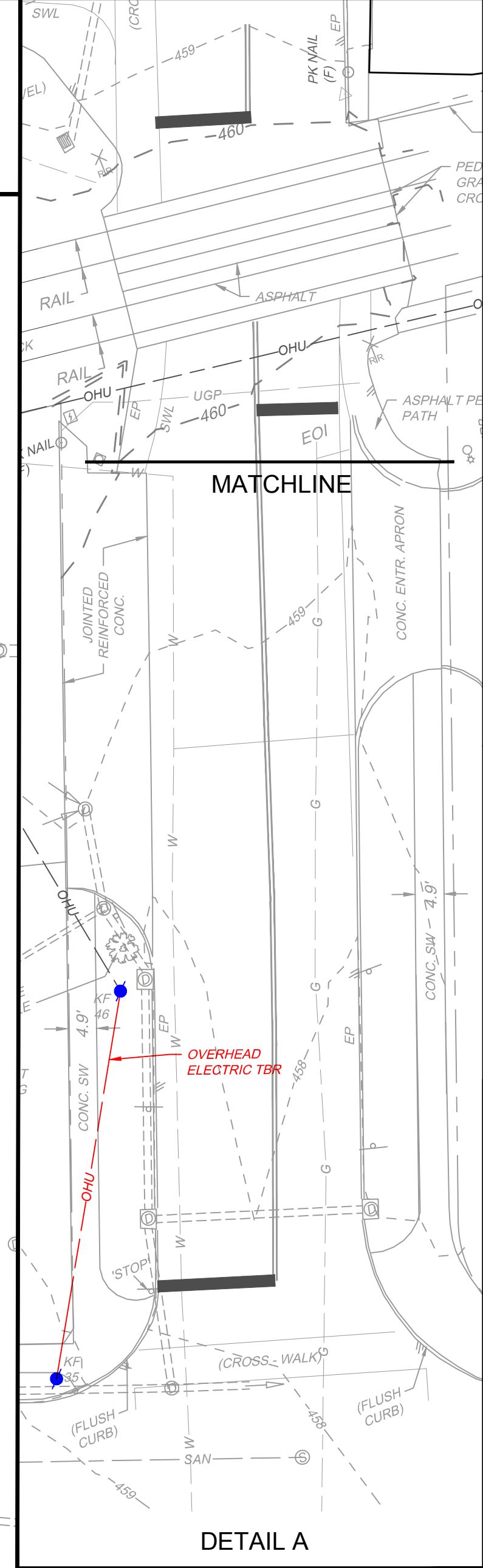


WATER-SOUTH PEDESTRIAN ACCESS EASEMENT



LEGEND

-  UTILITY POLE TO BE REMOVED
-  OVERHEAD UTILITY TO BE REMOVED
-  EXISTING UTILITY POLE TO REMAIN



THIS DRAWING PREPARED AT THE
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 919 2nd St. S.E. | Charlottesville, VA 22902
 TEL 434-293-5624 | FAX 434-253-3317 | www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.

DATE	REVISION DESCRIPTION
9/21/2015 <td></td>	

DESIGNED BY
C. SHIFFLETT

CHECKED BY
C. KOTARSKI

SCALE
1"=20'

TIMMONS GROUP

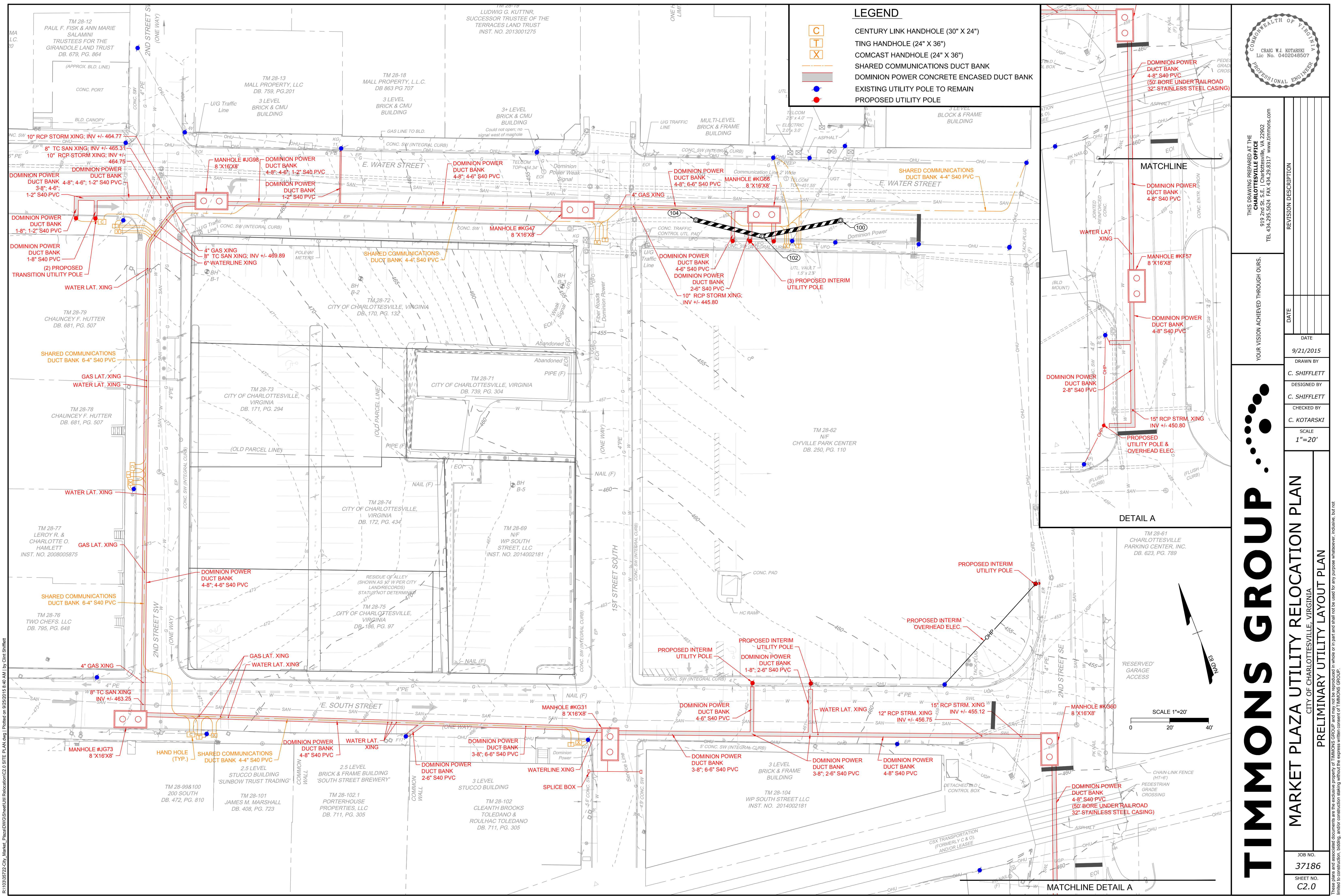
MARKET PLAZA UTILITY RELOCATION PLAN
 CITY OF CHARLOTTEVILLE, VIRGINIA
PRELIMINARY DEMOLITION PLAN

JOB NO.
37186

SHEET NO.
C1.0

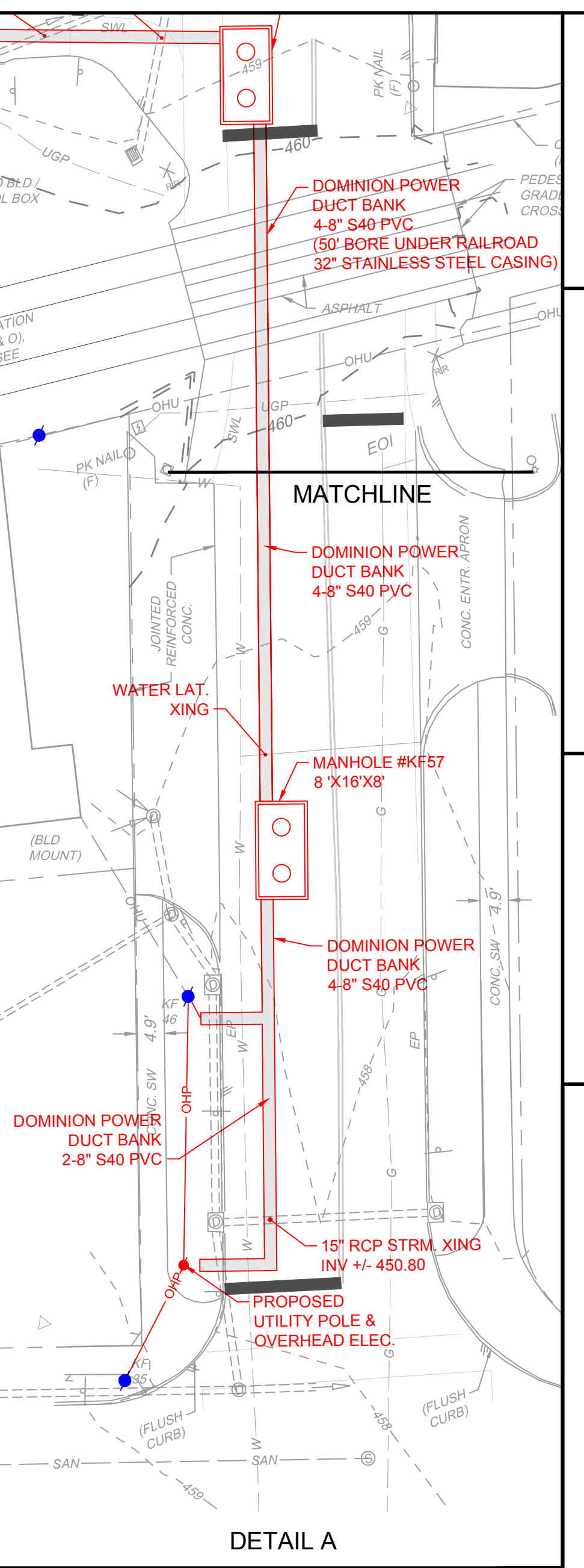
R:\10385722-City_Market_Plaza\DWG\Sheet\Utl Relocation\C1.0 DEMOLITION PLAN.dwg | Plotted on 9/25/2016 8:44 AM | by Chris Shifflett

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LEGEND

- C CENTURY LINK HANDHOLE (30" X 24")
- T TING HANDHOLE (24" X 36")
- X COMCAST HANDHOLE (24" X 36")
- SHARED COMMUNICATIONS DUCT BANK
- DOMINION POWER CONCRETE ENCASED DUCT BANK
- EXISTING UTILITY POLE TO REMAIN
- PROPOSED UTILITY POLE



COMMONWEALTH OF VIRGINIA
 CRAIG W. J. KOTARSKI
 Lic No. 0402048507
 PROFESSIONAL ENGINEER

THIS DRAWING PREPARED AT THE
CHARLOTTEVILLE OFFICE
 919 2nd St. S.E. | Charlottesville, VA 22902
 TEL 434-293-5624 | FAX 434-293-5317 | www.timmons.com

REVISION DESCRIPTION	DATE
YOUR VISION ACHIEVED THROUGH OURS.	9/21/2015

DATE: 9/21/2015
 DRAWN BY: C. SHIFFLETT
 DESIGNED BY: C. SHIFFLETT
 CHECKED BY: C. KOTARSKI
 SCALE: 1"=20'

TIMMONS GROUP

MARKET PLAZA UTILITY RELOCATION PLAN
 CITY OF CHARLOTTEVILLE, VIRGINIA
 PRELIMINARY UTILITY LAYOUT PLAN

JOB NO.	37186
SHEET NO.	C2.0

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LEASE, EASEMENT AND MANAGEMENT AGREEMENT

This LEASE, EASEMENT AND MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into as of this ____ day of _____, 2016, by and between MARKET PLAZA LLC, a Virginia limited liability company (“Lessor”) and the CITY OF CHARLOTTESVILLE, a Virginia municipal corporation (“City”) (hereinafter individually referred to as “Party” or collectively referred to as “Parties”).

RECITALS:

WHEREAS, Lessor is the owner of the Market Plaza Site (defined below, the “Site”), upon which Lessor intends to construct a multi-use project containing residential condominiums, office space, retail space, event space, underground structured parking and an outdoor plaza (as defined below, the “Project”); and

WHEREAS, City seeks to lease the Plaza (as defined below and as shown on Exhibit A), the Indoor Event Space (as defined below and as shown on Exhibit A), the Storage Area (as defined below and as shown on Exhibit B) and the Leased Parking (as defined below and as shown on Exhibit C) for the use of the City Market (as defined below) and certain other uses, all upon the terms and conditions set forth herein.

NOW, THEREFORE it is agreed as follows:

ARTICLE 1 **DEFINITIONS AND PARTIES**

Section 1.1 — Defined Terms/Interpretation.

1.1.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated:

(1) “Agreement” shall mean this Lease, Easement and Management Agreement, as the same may be amended or modified pursuant to the terms hereof from time to time.

(2) “Additional City Event” means a City-sponsored festival or other City event held at the Premises pursuant to reservation as provided in Section 5.2, but does not include the City Market or Additional City Market.

(3) “Additional City Market” means the Additional City Market described in Section 2.2.3.

(4) “Calendar Year” shall mean a twelve (12) month period commencing on the first day of January and continuing to and including the last day of December.

(5) “Casualty Event” shall mean fire, flood, earthquake, acts by terrorists, acts of war, extraordinary weather, riot, insurrection, explosion, or vandalism causing material property damage to the Premises. “Major Casualty Event” shall mean any Casualty Event that makes it impracticable or economically infeasible to utilize the Premises for one or more City Events. “Minor Casualty Event” shall mean any Casualty Event that limits the size of Events that can be held and is not a Major Casualty Event.

(6) “City” shall mean the City of Charlottesville, Virginia, a municipal corporation, and shall include, without limitation, the various departments of the City, and any assignee or delegates of or successor to their rights, powers and responsibilities.

(7) “City Contact” shall mean the individual appointed by the City to be the administrative contact for the City, as identified in Section 1.2.1, or any successor appointee.

(8) “City Event Expenses” shall mean expenses incurred by Lessor with respect to City Events, which are directly related to a City Event and would not have been incurred in the absence of the City Event.

(9) “City Event of Default” shall mean the City events of default described in Section 11.1.

(10) “City Events” shall mean the City Market and each additional City-sponsored Event on the Premises pursuant to the provisions of this Agreement.

(11) “City Market” shall mean the retail market managed by the City Department of Parks and Recreation held on Saturday beginning on the first Saturday in April and continuing through the last Saturday before December 25th.

(12) “Environmental Laws” shall have the meaning set forth in Section 10.3.4.

(13) “Event Attendee” shall mean an individual who attends an Event.

(14) “Event Cleaning and Utilities Fee” means the fee per City Event payable by the City to Lessor pursuant to Section 5.3.1.

(15) “Events” shall mean the events held at the Plaza and/or the Indoor Event Space and shall include both City Events and other Events.

(16) “Force Majeure” shall mean war, acts of terrorism, insurrection, judicial or governmental acts or omissions, floods, volcanic activity, earthquakes, explosions, fires, acts of God, acts of the public enemy, epidemics, and quarantine restrictions or similar events beyond the control of the Parties.

(17) “Governmental Authority” shall mean any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever concerning any governmental or quasi-governmental entity or unit (federal, state, county, district, municipal, city or otherwise), whether now or hereafter in existence, having jurisdiction over the Premises, Lessor or the City.

(18) “Hazardous Substances” shall mean any hazardous or toxic substance or material including, without limitation, asbestos, oil and petroleum products and those substances regulated, controlled or within the scope of any applicable Environmental Laws, including, without limitation, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Superfund Amendment and Reauthorization Act of 1986, as amended.

(19) “Indemnitees” shall mean a Party indemnified hereunder and their respective affiliates, elected officials, officers, directors, managers, owners, members, shareholders, employees, representatives, agents, contractors and consultants.

(20) “Indoor Event Space” shall mean the large event space and adjacent foyer and restrooms, as shown on Exhibit A, but shall not include the space labeled “Mezzanine” on Exhibit A with respect to the City Market, or, unless otherwise agreed in writing, with respect to other City Events.

(21) “Laws” shall mean (i) any and all present and future statutes, rulings, rules, regulations, orders, permits, directives, policies, findings, codes or ordinances of any Governmental Authority applicable to the Premises or the use, operation, maintenance, ownership, occupancy, possession, management, alteration, repair or reconstruction of the Premises; (ii) any and all terms, provisions, agreements or restrictions created or imposed pursuant to any lease, contract, instrument or restrictive covenant or other document, now or hereafter in existence, applicable to and enforceable against the Premises, Lessor or the City; and (iii) any and all judicial orders, decisions, findings, rulings or judgments concerning the Premises, City or Lessor.

(22) “Lease Commencement Date” shall mean the date upon which construction of the Premises has been completed in accordance with the terms of this Agreement as reasonably determined by the City and confirmed to Lessor in writing by the City, all permits and licenses required or necessary for the use of the Premises as contemplated herein have been obtained and Lessor has given the City written notice of commencement.

(23) “Leased Parking” shall mean no less than 102 parking spaces assigned to vendors at the City Market, of which up to eighteen (18) spaces for vendor vehicles may be on the Plaza and the balance of which shall be within the area of the underground parking facility in the Project designated on Exhibit C. The Leased Parking shall include no less than twelve (12) spaces in the underground parking facility which accommodate vehicles heights of up to eight (8) feet.

(24) “Lessor” shall mean Market Plaza LLC, a Virginia limited liability company, or any successor thereto or assignee thereof.

(25) “Lessor Contact” shall mean the individual appointed by Lessor to be the administrative contact for Lessor, as identified in Section 1.2.2, or any successor appointee.

(26) “Lessor Event of Default” shall mean the events of default described in Section 11.3.1.

(27) “Obligations” shall mean any and all of the covenants, warranties, representations and other obligations made or undertaken by a Party to the other Party pursuant to this Agreement.

(28) “Outdoor Dining Area” means an area designated by Lessor for use by patrons of restaurants in the Project. The Outdoor Dining area is limited to the area of the restaurant(s) in the Project, but may not exceed 50% of the gross area of the Plaza. The Outdoor Dining Area shall be exclusively occupied by the City Market during the Saturday hours of the City Market.

(29) “Permitted Rate” shall mean the prime rate of interest as indicated in the Money Rates section of The Wall Street Journal plus two percent (2%) per annum.

(30) “Person” shall mean any individual, trust, estate, partnership, joint venture, company, corporation, association, limited liability company, limited liability partnership, Governmental Authority or entity, or any other legal entity or business or investment enterprise.

(31) “Plaza” includes the outdoor plaza to be constructed by Lessor as part of the Project, as shown on Exhibit A.

(32) “Premises” shall mean the Plaza, the Indoor Event Space, the Storage Area and the Leased Parking as shown on Exhibits A, B and C.

(33) “Project” shall mean the multi-use project containing residential condominiums, office space, retail space, event space, underground structured parking and an outdoor plaza to be constructed by Lessor on the Site.

(34) “Rent” shall mean all sums, charges, and amounts to be paid by or due from City pursuant to Article 6.

(35) “Required Permits” shall mean all permits, licenses, approvals, consents and authorizations which are required or necessary in order for the City or its designees or invitees to properly use, occupy, operate, manage, repair and maintain the Premises in conformance and strict compliance with the terms and conditions of this Agreement and all Laws, including, without limitation, all building permits, business licenses, liquor licenses, sign permits, certificates of occupancy, health permits, and zoning approvals.

(36) “Rules and Regulations” means the rules and regulations adopted by Lessor regarding the occupancy and use of the Premises set forth on Exhibit D, as amended in the future by Lessor with the consent of City, which will not be unreasonably withheld.

(37) “Site” means the parcels of real property in the City of Charlottesville, Virginia in the City of Charlottesville, Virginia, encompassing the entire city block bounded on

the North by Water Street, on the West by Second Street SW, on the South by South Street, and on the East by First Street SW. First Street SW shall be closed in connection with construction of the Project.

(38) “Storage Area” shall mean the lockable room within the Project containing approximately four hundred (400) square feet, supplied with lights and electrical power, over which City shall have exclusive control and use at all times, and which is shown on Exhibit B.

(39) “Term” shall mean a period of 99 years, commencing on the Lease Commencement Date and ending on the day prior to the 99th anniversary thereof.

(40) “Trade Fixtures” shall mean all personal property, equipment and fixtures owned or utilized by the City that are located from time to time in or upon the Premises.

1.1.2 Accounting Terms. All financial or accounting terms used in this Agreement, which are not otherwise defined herein, shall have the meanings given to them pursuant to general accepted accounting principles, as uniformly applied in the United States.

1.1.3 Headings/References. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate and the masculine gender shall include the feminine and neuter and vice versa. Article and Section headings in this Agreement are for convenience and reference only and shall not affect the construction or interpretation of this Agreement. Whenever the terms “hereof”, “hereby”, “herein”, or words of similar import are used in this Agreement, they shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Whenever the words “including” or “include” are used in this Agreement they shall be construed as meaning “including, without limitation.” Any reference to a particular “Article” or “Section” shall be construed as referring to the indicated article or section of this Agreement. Any reference to an “Exhibit” shall be construed as referring to the lettered Exhibits attached to this Agreement.

Section 1.2 — Parties to Agreement.

1.2.1 City. The City shall appoint and at all times maintain an individual on the City Staff as the administrative contact with the City for this Agreement. City hereby appoints the Director of Parks and Recreation, or his or her designee, as City Contact. City shall provide prompt written notice to Lessor of a change of the City Contact. The City Contact shall be authorized to act on behalf of City only to the extent expressly set forth in this Agreement.

1.2.2 Lessor. The Lessor shall appoint and at all times maintain an individual as its administrative contact for this Agreement. Lessor hereby appoints _____ as Lessor Contact for the purposes of this Agreement. Lessor shall provide prompt written notice to the City of a change of the Lessor Contact. Lessor may, upon written notice to City, appoint a replacement Lessor Contact. The Lessor Contact shall be authorized to act on behalf of Lessor only to the extent expressly set forth in this Agreement.

Section 1.3 — Ownership of Premises and Project; Trade Fixtures.

1.3.1 Improvements. The Premises and the Project shall at all times be and remain the sole property of the Lessor free and clear of all claims, liens and encumbrances of City or any party claiming by, under or through City. City shall not have the right to make any alterations, additions or improvements to the Premises or the Project without the prior written approval of Lessor. Lessor shall not unreasonably withhold its consent to improvements in the Storage Area, or to other improvements to the Premises that are critically necessary to the operation of a public market and do not impair the use of the Premises for other purposes.

1.3.2 Trade Fixtures. City, at City's sole cost and expense, shall have the right to bring onto the Premises such Trade Fixtures as are reasonably necessary for City to use the Premises as provided in this Agreement. No Trade Fixtures shall be affixed to the Premises in any fashion, and all Trade Fixtures shall be stored in the Storage Area or removed from the Premises immediately following each City Event.

Section 1.4 — No Encumbrances. City shall not assign, sublet, transfer, encumber, mortgage, lien or pledge this Agreement without the prior written consent of Lessor.

ARTICLE 2
PREMISES AND POSSESSION

Section 2.1 — Premises. Lessor hereby leases to City, and City hereby rents, demises and leases from Lessor, the Premises on the terms and conditions set forth in this Agreement.

Section 2.2 — Possession. The City shall be entitled to exclusive possession of the Premises to conduct City Events at the following times:

2.2.1 City Market. On each Saturday from the first Saturday in April of each Calendar Year of the Term through the Saturday immediately preceding December 25 of such year, City shall have exclusive possession of (i) the Indoor Event Space from 5:00 a.m. to 2:00 p.m. local time, (ii) the Plaza from 6:00 a.m. to 3:00 p.m. local time, and (iii) the Leased Parking in the underground parking facility from 5:00 a.m. to 3:00 p.m. (2:00 p.m. for vendors exhibiting in the Indoor Event Space as provided below), and the Leased Parking which is located on the Plaza from 6:00 a.m. to 3:00 p.m. City shall not be entitled to access the Premises for setup for City Market prior to the stated starting times, and shall have completed all cleanup and vacated the Premises by the stated ending times. City shall allow Lessor access to the Premises for sweeping and cleanup during vendor breakdown adequate to enable Lessor to complete sweeping and cleanup by 3:00 p.m. Vendors exhibiting in the Indoor Event Space shall vacate the Leased Parking by 2:00 p.m. or be responsible for payment at the paid public parking rate thereafter. The Leased Parking shall be available at no charge to vendors; however, after 7:00 a.m. any unoccupied spaces in the Leased Parking may be made available by Lessor for paid public parking.

2.2.2 Additional City Events. At such times as may be established in the Event Rules and Regulations, reserved as provided in Section 5.2 hereof. For additional City Events, the Leased Premises shall not include the Leased Parking or Outdoor Dining Areas.

2.2.3 Additional City Market. Lessor agrees to cooperate with City in establishing an Additional City Market on a mutually agreeable day of the week other than Friday or Saturday within the April through December dates set forth above, during which the Plaza and the Indoor Event Space will be exclusively available for the City Market for a period of up to seven (7) consecutive hours at mutually agreed times. The Leased Parking will not be set aside for exclusive use by vendors of the Additional City Market except for the 18 spaces on the Plaza, and customary parking rates will apply to spaces in the underground parking facility unless otherwise agreed in writing by Lessor and City. During the Additional City Market, the Premises shall not include the Outdoor Dining Areas.

2.2.4 Access to Storage Area. City shall be entitled to access the Storage Area at all times. City will take appropriate measures to avoid disturbing Events when it accesses the Storage area at times outside of City Events.

Section 2.3 — Access Easement. Lessor hereby grants to City non-exclusive easements for ingress, egress, access and travel related to the operation, management and use of the Premises during City Events, and the right to control access to the Premises during City Events within such easements, through, over and across the stairways, elevators and walkways shaded on Exhibit A at the locations shown on Exhibit A and through, over and across aisles, walkways, elevators and stairways providing ingress to and egress from the Leased Parking and passage from the Leased Parking to the remainder of the Premises, such easements to terminate and be of no further effect upon the expiration or earlier termination of this Agreement.

Section 2.4 — Water and Electricity. The Outdoor Plaza shall be constructed with [REDACTED] () 110 volt electrical outlets evenly distributed on the outside walls, and three outdoor spigots with potable water. The outdoor spigots will be closed and drained by Lessor for the season prior to the onset of freezing weather to avoid freezing.

Section 2.5 — Acceptance of Premises “AS-IS.” Lessor will construct the improvements to the Premises in accordance with the terms of its approved site plan and all applicable Laws, including building code and zoning requirements, adequate for the operation of the City Market as described in this Agreement and in accordance with plans and specifications for construction of the Project. On the Lease Commencement Date, provided the improvements have been constructed as set forth in this Agreement, City shall accept all of the improvements “AS IS,” “WHERE IS,” without any warranty or representation from Lessor whatsoever, express or implied, imputed or otherwise, and City agrees to use, operate, occupy, maintain and manage the Premises at City’s sole cost and expense and at City’s sole risk and peril, in accordance with the terms and conditions of this Agreement; provided, however, that nothing herein shall be interpreted as relieving the Lessor or any other party of responsibility for their own negligence or actionable omissions.

Section 2.6 — Surrender on Termination. Upon expiration of this Agreement or other termination of this Agreement for any cause whatsoever, City shall peacefully vacate and

surrender the Premises in good order and in fully operable condition, less ordinary wear and tear. Except as Lessor agrees in writing to the contrary, City agrees to remove, at City's expense, all of its Trade Fixtures and personal property, and to promptly reimburse Lessor for the cost of repairing all damage done to the Premises during the course of any City Event.

Section 2.7 — Cessation of Use. If the City shall cease to use the Premises for the City Market for a period of 4 consecutive weeks during the period for the City Market set forth above, Lessor shall, upon written notice to City, be entitled to schedule other Events during the times set aside for the City Market. The City may recommence use for the City Market upon thirty (30) days written notice.

ARTICLE 3 **TERM**

The Term of this Agreement shall begin upon the Lease Commencement Date and shall expire upon the 99th anniversary of the Lease Commencement Date, and may be earlier terminated pursuant to the terms of this Agreement.

ARTICLE 4 **USE AND LIMITATIONS ON USE**

Section 4.1 — Use.

4.1.1 Generally. City shall use the Premises in a manner consistent with a first class outdoor urban plaza, in a manner that respects the security, privacy and quiet enjoyment of residents, tenants and users of the Project, and their guests and invitees, in accordance with all Laws, and the terms and conditions of this Agreement. Lessor shall have the exclusive right to schedule all Events at the Premises, including, without limitation, City Events (other than the City Market, which is scheduled as set forth herein), provided Lessor will use reasonable efforts to coordinate scheduling matters for City Events and other Events as provided in Section 5.2; and provided further that Lessor will not schedule more than fifty-two (52) events per Calendar Year that occupy the entire Plaza (exclusive of City Events). City shall have exclusive use of the Premises during the scheduled times for the City Market as set forth herein, during the time reserved for City Events as set forth herein, and exclusive use of the Storage Area at all times.

4.1.2 Concessions. City shall have the exclusive right to operate and/or procure concessions and to sell food, beverage and merchandise for City Events. All revenue from concessions generated during City Events at the Premises shall belong to City. City shall be responsible for collecting and remitting all applicable sales, meals or other taxes payable to any party with respect to City Events and requiring in its contracts that all of its vendors, subcontractors and employees remit all applicable taxes as required by Laws. To the extent the sponsor of the Event is the City or any other party which enjoys the benefit of exemption from collecting and remitting such sales tax, the City shall not be obligated hereunder to collect or remit sales tax amounts for such Events.

4.1.3 **Motor Vehicles.** City shall have the right to permit motor vehicles operated by vendors and staff of the City Market to access the Plaza and the Leased Parking Area free of charge during the City Market, in accordance with the access and parking plan shown on Exhibit C as such plan may be amended by written agreement of City and Lessor; provided, however, that (i) vendors must be parked by 7:00 a.m. and must have vacated by the hours set forth in Section 2.2.1 for the City Market, and (ii) parking shall not be reserved for vendors or be free of charge with respect to the Additional City Market unless otherwise agreed in writing by Lessor and City.

Section 4.2 — Right to Enter Premises. Lessor shall have the right to access any portion of the Premises during City Events, but Lessor shall exercise any such right in a fashion that does not unreasonably interfere with the conduct of the City Event then taking place.

Section 4.3 — Access During Non-Event Periods. Except during an Event, and during nighttime hours when the Plaza is closed, Lessor shall operate and manage the Premises as an outdoor urban plaza, available for use by the public for enjoyment and recreational purposes, subject to the Rules and Regulations. Notwithstanding the foregoing, the Premises may be leased or licensed for Events held by other parties, and during such Events the portions of the Plaza so leased or licensed will not be available for public user.

Section 4.4 — Permits. City shall in its name, and at its sole cost and expense, apply for, secure, obtain and keep in full force and effect at all times during the Term all Required Permits with respect to City Events. City agrees, at the request of Lessor, to provide Lessor with copies and other evidence of the existence of such Required Permits.

Section 4.5 — Compliance with Laws. City shall use, occupy and operate the Premises in compliance with all Laws and the terms and conditions of this Agreement. Any employees or independent contractors of City shall have all necessary professional licenses to perform their duties for City. Any employee of City who operates a motor vehicle shall have a commercial driver's license if required by Virginia law.

Section 4.6 — Signage. City may display temporary signage on the Premises with respect to any City Event with the prior written consent of Lessor, which shall not be unreasonably withheld. All temporary signage shall comply with applicable Laws and the Rules and Regulations, and shall not be affixed to the Premises in a fashion that would cause damage to the Premises. City may also maintain permanent signage with respect to the City Market on the Premises with the prior written consent Lessor, which may be withheld by Lessor in its sole discretion.

ARTICLE 5
**CITY'S RIGHT TO USE THE PREMISES;
REIMBURSEMENT OF LESSOR EXPENSES**

Section 5.1 — City Market. City shall have the right to use the Premises as the site for the City Market on the dates and during the times set forth in Section 2.2.1 hereof.

Section 5.2 — Reserved City Events. City shall have the right to use the Premises (exclusive of the Leased Parking), or such portion of the Premises as City may request, for up to ten (10) Additional City Events per year subject to reservation as set forth in Section 5.2. City shall provide a schedule of proposed Additional City Events to Lessor no later than January 1 and July 1 of each calendar year for Events to be held within the following six (6) months. If a proposed City Event conflicts with a previously scheduled Event, or a day Lessor desires, in its sole discretion, to keep available for a possible Event, then Lessor shall provide written notice to City, and Lessor and City shall attempt to resolve any conflict within ten (10) days of receipt of the notice by Lessor; provided, however, if Lessor and City cannot resolve the conflict, then Lessor shall have the right to determine the schedule for all Events and resolve any such conflict. City may reserve the Premises for additional Events as mutually agreed with Lessor. Lessor will not schedule more than fifty-two (52) events per year that occupy the entire Plaza.

Section 5.3 — Reimbursement of Expenses. With respect to each City Event, City shall reimburse Lessor for City Event Expenses incurred in connection with the City Event in accordance with the following provisions:

5.3.1 City will pay to Lessor an Event Cleaning and Utilities Fee for utilities, sweeping the Plaza, restroom cleaning and if needed, power washing, for each City Event. The fee will be determined in discussions between City and Landlord based on projected and historical costs per City Event during the period from the Lease Commencement Date through December 31 of the year in which the Lease Commencement Date occurs. On or before February 1 of each year thereafter, the Event Cleaning and Utilities Fee will be established by Lessor for the current Calendar Year based on Lessor's expenditures for utilities and cleaning incurred during the preceding Calendar Year, adjusted to reflect anticipated increases in such expenses, and City will be provided with documentation showing the initial calculation of the Event Cleaning and Utilities Fee and for each year thereafter during the Term.

5.3.2 With respect to other City Event Expenses, City shall reimburse Lessor in accordance with the terms of Article 7 hereof.

5.3.3 Lessor shall invoice City for Event Cleaning and Utilities Fees and City Event Expenses at the end of each calendar quarter, and City shall pay such invoices within thirty (30) days after the date thereof.

Section 5.4 — Revenue from City Events. City shall be entitled to receive and retain all revenue collected in connection with each City Event.

ARTICLE 6

RENT

Section 6.1 — Annual Rental. City shall pay to Lessor Rent in the amount of \$1.00 per Calendar Year on the Lease Commencement Date and on the first day of each Calendar Year thereafter during the Term.

Section 6.2 — Additional Rent for City Additional Events. If City reserves the Premises or a portion thereof for more than ten (10) Additional City Events during any Calendar Year (excluding the Additional City Market, which shall be provided at no additional rental), City shall pay the customary rental then in effect for the Premises or portion thereof to Lessor.

Section 6.3 — Payment of Rent. All Rent, Lessor Expenses and other charges payable hereunder by City to or for the account of Lessor are and shall be payable to the Lessor at 224 14th Street NW Charlottesville, Virginia 22903, or at such other location as Lessor shall direct.

ARTICLE 7

MAINTENANCE, MANAGEMENT AND OTHER OBLIGATIONS

Section 7.1 — Cleanup and Trash Removal after City Event. Immediately at the conclusion of each City Event, City shall remove all trash, rubbish and debris generated by the City Event from the Premises. Trash disposal shall be completed and staff and equipment removed promptly after the conclusion of each City Event, and in no event later than 3:00 p.m. after each City Market and by the end of the reservation period for other City Events.

Section 7.2 — Responsibility for Damage. City will reimburse Lessor for costs of maintenance and repair of damages resulting from the use of the Plaza for City Events. Individual maintenance items or repair of damage items in excess of \$1,000 shall be mutually discussed and agreed upon. City shall not commit or suffer to be committed any waste or impairment of the Premises during any City Event.

Section 7.3 — Lessor Obligation to Maintain and Repair. Except for the Obligations of City specifically set forth herein, Lessor shall be responsible for the maintenance and repair of the Premises, and shall maintain the Premises in good condition and repair. Lessor shall sweep the Plaza and exterior stairways and walkways, shall pressure wash the Plaza monthly during the months of April through October, and on such additional occasions as needed to maintain the Plaza in a clean and attractive condition. Lessor will provide snow removal for the Leased Premises; provided, however, that Lessor will not be responsible for inability to hold any City Event due to adverse weather conditions or other circumstances beyond Lessor's reasonable control, including, without limitation, snow that cannot reasonably be removed in time for the City Event.

Section 7.4 — Other Obligations.

7.4.1 Operating and Scheduling. Lessor or Lessor's agent shall schedule the use of the Premises and shall coordinate the use of the Premises by City and other users, including Lessor.

7.4.2 City Event Staffing and Support. City shall provide staff and support services needed to operate the Premises for all City Events, and shall be responsible for management of all City Events, including, but not limited to, management, setup, security, enforcement of Event Rules and Regulations and cleanup.

7.4.3 Event Rules and Regulations. Lessor may promulgate and enforce Rules and Regulations applicable to the use of the Plaza during Events (“Event Rules and Regulations”); provided that the Event Rules and Regulations shall not unreasonably impair or burden the operation of the City Market, and shall not be inconsistent with normal and customary operations of the City Market during the hours set forth above. Except as provided herein with respect to the City Market, the Event Rules and Regulations shall be uniformly applied to all Events and shall be consistent with this Agreement. The Event Rules and Regulations may include restrictions on noise levels and restrictions or prohibitions on the use of amplified sound systems on the Premises.

7.4.4 Alcoholic Beverages. The sale and consumption of alcoholic beverages may be permitted at the Premises during City Events in the discretion of the City, in accordance with applicable Laws and subject to the Event Rules and Regulations. With respect to City Events at which the sale of alcoholic beverages is permitted, City will supervise and manage such sale and shall require any Person engaging in such sale: (i) to have the liquor license required by Virginia law; (ii) to have a liquor liability insurance policy required by Article 8 of this Agreement; and (iii) to use commercially reasonable efforts to enforce laws regulating the sale and consumption of alcohol including enforcement of the legal drinking age.

7.4.5 Providing Concessions.

(a) Selecting Concessionaire. City shall have the authority to select one or more concessionaires for City Events subject to the approval of Lessor, which shall not be unreasonably withheld or delayed. Lessor shall not have a right of approval of vendors at the City Market or Additional City Market.

(b) Concession Service. City shall ensure that (i) any concessionaire has adequate insurance coverage, and (ii) all concessionaires shall comply with all applicable Laws including but not limited to any applicable City or state Health Department regulations.

7.4.6 Security. City shall determine and be solely responsible for providing sufficient and necessary security to maintain peace order and compliance with Laws during City Events. City will prepare a security plan for the Premises during City Events, in conjunction with the City of Charlottesville Police Department (“CPD”). City’s security responses shall be coordinated with CPD and the Charlottesville Fire Department. Nothing in this Agreement shall be construed to prevent City or Lessor from contracting with a third party for private security services.

7.4.7 Law Enforcement. City agrees that CPD is solely responsible for law enforcement activities and responses upon the Premises surrounding all City Events. Lessor will provide written authority as provided by law for the City and/or CPD to enforce trespass and other similar laws and rights regarding the Premises during City Events.

7.4.8 Drug Free Area. City shall use its best efforts to ensure that the Premises and the access easements shall be free from all illegal drugs or substances during City Events, and compliance by all Event Attendees with all Laws related to same. Smoking or chewing of tobacco or other products, or use of alternative smoking or vapor inhalation devices shall not be permitted at any time on the Premises or the access easements.

7.4.9 Pyrotechnics. The use of pyrotechnics on the Premises is subject to prior written approval of Lessor and must be approved in writing by the Charlottesville Fire Department at least three (3) business days prior to their use.

7.4.10 Non-Discrimination. With respect to City Events which are open to the public, City will not discriminate against any person because of race, religion, sex, sexual orientation, national origin, age, disability or any other basis prohibited by applicable Laws.

7.4.11 Pets. With the exception of service animals, pets will not be permitted on the Premises during City Events unless approved by the City.

7.4.12 Removal and Replacement of Furniture and Fixtures in Outdoor Dining Area. Lessor shall be solely responsible for removal, prior to the operating hours of the City Market as outlined in Paragraph 2.2.1, of all tables, chairs or other furniture, fixtures or equipment from the Outdoor Dining Area. Replacement of such items in the Outdoor Dining Area after the conclusion of the operating hours of the City Market shall be the responsibility of the Lessor.

Section 7.5 — Cost of Use. Except as expressly provided in this Agreement, all costs associated with or related to City's use of the Premises, including, but not limited to, snow removal for City Events, shall be borne entirely and exclusively by City, unless such costs shall be attributable to Lessor's sole negligence, intentional act or breach of this Agreement. City agrees to pay when due all applicable costs, fees, liabilities, claims, losses, permits, fines and expenses associated with or related to City's use of the Premises and Lessor shall have no liability whatsoever in connection with City's use of the Premises except as otherwise provided herein.

ARTICLE 8 **INSURANCE AND INDEMNITY**

Section 8.1 — Property Insurance.

8.1.1 City Insurance. City shall, at its sole cost and expense, keep and maintain in force policies of insurance on: (i) its personal property located in the Premises or the Storage Area written on an "All Risks" basis, in an amount which City shall deem appropriate. If City fails to maintain such insurance, Lessor, at its election but without obligation to do so, may procure such insurance as may be necessary to comply with these requirements, and City agrees to repay the cost of same to Lessor on demand, with interest thereon at the Permitted Rate from the date of expenditure until paid. All insurance described in this Section 8.1 may be obtained by City by endorsement or equivalent means under any blanket insurance policies maintained by City,

provided that the coverage and other terms of such insurance comply with this Section 8.1. Lessor shall have no responsibility with respect to property of the City stored in the Storage area.

8.1.2 Lessor Insurance. Lessor shall maintain an “All Risks” policy of insurance covering the Premises.

Section 8.2 — Liability Insurance – Premises Liability.

8.2.1 City’s Liability Insurance. City shall obtain and keep in force commercial general liability insurance with a minimum limit at a reasonable level approved by Lessor based on industry standards at that time (a “Lessor Approved Level”) for each occurrence and an annual aggregate limit of liability of a Lessor Approved Level for such coverage, applicable at all times to the Storage Area, and applicable to the Premises for the period from the commencement of setup for City Events until all Event cleanup is completed by City, and during any other period City uses or occupies the Premises or a portion thereof. The Lessor Approved Level shall not exceed the level of commercial general liability insurance which the Lessor maintains with respect to the Premises, and shall be adjusted as provided in Section 8.6.8. The policy shall include, without limitation, coverage for bodily injury, personal and advertising injury, fire damages, legal liability, broad form property damage, personal injury (including but not limited to coverage for contractual and employee acts), blanket contractual, independent contractors liability, stopgap/employers liability, liquor liability, incidental professional liability, premises/operations and products and completed operations. Further, the policy shall include, without limitation, coverage for the hazards commonly referred to as “XCU.” This insurance shall apply as primary with respect to any other insurance maintained by the City or Lessor.

8.2.2 Lessor Liability Insurance. Lessor shall maintain liability insurance in the amounts and with the coverages as provided in Section 8.2.1 with respect to the Premises.

Section 8.3 — Commercial Automobile Insurance. City shall obtain and keep in force at its sole cost and expense commercial automobile liability coverage for all owned, hired and non-owned vehicles. The combined single limit shall not be less than a Lessor Approved Level for such coverage and shall stay in effect during the term of this Agreement. The policy shall include contractual liability coverage.

Section 8.4 — Worker’s Compensation Insurance. City, and its contractors and subcontractors and all employers providing work, labor or materials under this Agreement who are subject employers under the Virginia State Worker’s Compensation Law shall comply with all Laws regarding Workers Compensation and shall maintain employers liability insurance with coverage limits of not less than a Lessor Approved Level for such coverage for each accident shall be included.

Section 8.5 — Umbrella Liability Coverage. Umbrella coverage in the sum of a Lessor Approved Level for such coverage shall be provided by City and will apply over all liability policies, without exception, including but not limited to, Commercial General Liability, Automobile Liability and Employers' Liability. The Lessor Approved Level, when combined with underlying coverages, shall not exceed the combined coverages under Lessor’s umbrella coverage and underlying coverages with respect to the Premises.

Section 8.6 — General Insurance Provisions.

8.6.1 Duration. All of the insurance required by Article 8 shall be in occurrence form (as opposed to claims made) and be maintained in effect until the expiration or termination of this Agreement.

8.6.2 Endorsements. All of the insurance required by Article 8 shall be endorsed to include the City and Lessor as additional insureds as their interests may appear and shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention trusts maintained or participated in by the Parties shall be excess and not contributory to insurance required. All liability insurance policies will be endorsed to show this additional coverage.

8.6.3 Certificates. City and Lessor shall provide to each other certificates of insurance acceptable to the other prior to the Lease Commencement Date, as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall identify this Agreement, specify the insurance related provisions of this Agreement and contain provisions that coverage afforded under the policies shall not be canceled, terminated, reduced, or materially changed until after forty five (45) days prior written notice has been given to City or Lessor. A renewal certificate will be sent to Lessor and City, as the case may be, fifteen (15) days prior to coverage expiration date. Any failure to comply with this provision will not affect the insurance coverage provided to Lessor or City. The requirement of forty five (45) days' notice prior to cancellation shall be set forth in an endorsement to the policy. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation provisions of all certificates provided by City. Certificates of insurance should be addressed in the manner described in this Agreement and shall show the City and Lessor as additional insureds and not simply as certificate holders.

8.6.4 Waiver of Subrogation. City shall cause insurers providing the policies required of it by Article 8 to waive all rights of recovery against the Lessor and its Indemnitees. Lessor shall cause insurers providing the policies required of it by Article 8 to waive all rights of recovery against the City and its Indemnitees.

8.6.5 Ratings of Insurer. All insurance policies required by this Article 8 shall be obtained from an insurance company with a Financial Strength Rating of not less than A+ by A.M. Best Company and which is admitted to do business in the Commonwealth of Virginia. Lessor reserves the right to reject insurance carriers which do not have the specified rating. City may propose another insurance carrier so long as it is rated at not less than A- and Lessor in its sole discretion may approve or reject such insurance carrier.

8.6.6 Cross-Liability Clause. A cross-liability clause or severability of insureds conditions will be included in all general liability, professional liability, and errors and omissions policies required by this Agreement.

8.6.7 Deductible. Lessor shall not be responsible for any claim or loss caused by the City not covered by insurance as a result of any deductible amounts from coverage.

8.6.8 Adjustment of Policy Limits. The limits of insurance coverage provided for herein, shall be increased by City from time to time at the request of Lessor, but no more frequently than once every two (2) years, to such amounts as are reasonably required with respect to similar facilities in similar markets, so long as such increased amount of coverage can be obtained at a commercially reasonable rate.

Section 8.7 — Release and Indemnity.

8.7.1 City Indemnification of Lessor. Except as expressly provided in this Article, and to the extent allowed under applicable law, City shall at all times indemnify, hold harmless, defend and release the Lessor and its Indemnitees from and against any and all losses, damages, costs, claims, charges, expenses, judgments and liabilities, including attorneys' fees, resulting from, arising out of, or related to City's negligence or breach of its obligations under this Agreement. The indemnity provided in this Article shall not apply to losses resulting from the sole negligence or intentional acts of the Lessor or its Indemnitees.

8.7.2 Lessor Indemnification of City. Except as expressly provided in this Article and to the extent allowed under applicable law, Lessor shall indemnify, hold harmless and defend City and its Indemnitees from and against any and all losses, damages, costs, claims, charges, expenses, judgments and liabilities, including attorneys' fees, resulting from or arising out of Lessor's negligence or breach of its obligations under this Agreement. The indemnity provided in this Article shall not apply to losses resulting from the sole negligence or intentional acts of City or its Indemnitees.

ARTICLE 9 **CASUALTY AND CONDEMNATION**

Section 9.1 — Casualty and Reconstruction. Each Party agrees to give notice to the other Party of any Casualty Event that occurs on the Premises within twenty-four (24) hours after it becomes aware of the Casualty Event.

9.1.2 Minor Casualty Event. Lessor shall diligently and in good faith pursue restoration of the Leased Premises if a Minor Casualty Event occurs.

9.1.3 Uninsurable Events. In the event that a Major Casualty Event is of a type for which there is no insurance coverage under the insurance required by this Agreement, there shall be no duty to rebuild unless Lessor deems it commercially reasonable to restore the Premises to its original condition. City has no duty to restore the Premises, but can elect to restore at its option. If neither Party elects to restore the Premises, then the rights of and obligations of the Parties under this Agreement shall be suspended until a new project is constructed on the Site; provided, however, that Lessor or any successor owner of the Site shall be required to include in any project constructed on the Site, facilities comparable to the Premises, which shall be made available to the City substantially on the terms set forth herein for the balance of the Term.

Section 9.2 — Election to Rebuild. If a Major Casualty Event shall occur then the following provisions shall apply:

9.2.1 Lessor Election. Lessor may elect to reconstruct the Premises.

9.2.2 City Election. In the event that Lessor elects not to reconstruct the Premises, City may compel Lessor to reconstruct the Plaza provided the proceeds from insurance are sufficient to cover the cost of reconstruction.

9.2.3 Obligation Suspended. If a Major Casualty Event occurs and neither City nor the Lessor elect to rebuild, then all future obligations of the Parties shall be suspended pursuant to the provisions of Section 9.1.3 hereof, and proceeds of insurance coverage relating to casualty to the Premises shall be the sole property of Lessor.

Section 9.3 — Condemnation.

9.3.1 Total and Partial Taking

(a) Any Condemnation proceedings of the Premises by City that adversely impacts the operation of the Premises, shall constitute a breach of the Agreement by City. If Lessor intends to claim that such condemnation is a breach of this Agreement, then Lessor shall give notice of such intent to claim breach within 30 days of receiving City's notice of condemnation.

(b) If a Governmental Entity, other than City, causes a condemnation of the Premises that makes the continued operation of the Premises as contemplated hereunder impracticable or economically not feasible, either Party may terminate this Agreement at its option. Regardless of whether a Party elects to terminate this Agreement, Lessor shall be entitled to receive the proceeds of the condemnation action attributable to the value of the Premises, and City shall be entitled to receive the proceeds of the condemnation action attributable to the value of its leasehold interest hereunder.

(c) Lessor and City shall have standing, and a right to participate in any condemnation or eminent domain proceeding affecting the Premises.

9.3.2 No Waiver. Nothing contained herein shall be construed as a waiver by City of any claim which it may have against the condemner for taking all or any part of the Premises, and City shall have the right to appear and file its claim for damages in any such condemnation proceedings, to participate in any and all hearings, trials and appeals thereon, to be represented by counsel of its choice therein, and to receive an award for the value of its leasehold interest adjudicated to be due it.

ARTICLE 10
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 10.1 — Lessor Representations and Warranties. Lessor represents and warrants to City the following:

10.1.1 Organization. Lessor is a limited liability company, duly organized and existing under the laws of the Commonwealth of Virginia. This Agreement is a legal, valid and binding obligation of Lessor, enforceable in accordance with its terms.

10.1.2 Authority. Lessor has full power and authority to enter into this Agreement, and the execution, delivery and consummation of this Agreement by Lessor have been duly authorized by all necessary action. The Manager of Lessor is the party duly authorized to execute this Agreement on behalf of Lessor and has so executed this Agreement.

10.1.3 No Conflicts. The execution, delivery and performance of this Agreement by Lessor is not prohibited by and does not conflict with any agreement, instrument, judgment or decree to which Lessor is a party or is otherwise subject.

Section 10.2 — City's Representations, Warranties and Covenants. City represents, warrants and covenants to Lessor the following:

10.2.1 Organization. City is a municipal corporation duly established and existing under the laws of the Commonwealth of Virginia.

10.2.2 Authority. City has full power and authority to enter into this Agreement, and the execution, delivery and consummation of this Agreement by the City Manager of the City have been duly authorized by all necessary action.

10.2.3 No Conflicts. The execution, delivery and performance of this Agreement by City is not prohibited by and does not violate or conflict with any applicable Law or agreement, instrument, judgment or decree to which City is a party or is otherwise subject.

10.2.4 Litigation. No suit is pending or threatened before or by any court or governmental or other administrative body against City with respect to the subject matter of this Agreement.

10.2.5 Laws. All actions of the City with respect to this Agreement have been in compliance with all applicable Laws.

Section 10.3 — Mutual Covenants. City and Lessor each covenant and agree with the other as follows:

10.3.1 Additional Documents. City and Lessor shall, whenever and as often as each is reasonably requested to do so by the other Party, execute or cause to be executed any further documents, as may be necessary or expedient in order to consummate the transactions provided for in this Agreement and to carry out the purpose and intent of this Agreement.

10.3.2 Good Faith. In exercising their respective rights and fulfilling its Obligations under this Agreement, Lessor and City shall each act in good faith. Each Party acknowledges

that this Agreement contemplates cooperation between Lessor and City, and each Party will use reasonable best efforts to foster and facilitate such cooperation by and between Lessor and City.

10.3.3 Notice of Matters. If Lessor or City receives knowledge regarding any material matter which may constitute a breach of any of its warranties or covenants set forth in this Article 10 which arises after the date of this Agreement, the Party receiving such knowledge will promptly notify the other Party of the same in writing.

10.3.4 Hazardous Substances. Neither Lessor nor City shall cause or permit, at any time during the Term, any Hazardous Substances to be disposed of or otherwise released on, to or under the Premises, except such materials as are incidental to the normal course of business, maintenance and repairs of the Premises and which are handled in compliance with all applicable Environmental Laws. Neither Lessor nor City shall engage in operations at the Premises that involve the generation, manufacture, refining, transportation, treatment, handling or disposal of “Hazardous Substances” or “Hazardous Wastes” as such terms are defined under any Environmental Laws.

In the event that either Lessor or City should violate this Section, the Party responsible for the violation agrees to indemnify, defend and hold harmless the other Party from any and all fines, suits, claims, expenses, penalties, demands, losses and actions (including, without limitation, any and all attorneys' fees and costs) arising out of any condition or circumstance which would not otherwise exist but for the failure of either Lessor or City to fulfill its covenant contained in this Section 10.3.4.

City and Lessor agree to fully comply with, and to take no action or fail to take any action which shall or may result in a violation of any applicable Law (including, but not limited to, consent decrees and judicial or administrative orders), relating to health or safety or the environment, all as amended or modified from time to time (collectively, “Environmental Laws”).

In the event that City is at fault for breach of any Environmental Law, all costs and expenses incurred by Lessor and its exercise of this right shall be deemed to be additional Rent payable in accordance with the terms and conditions of this Agreement. Each Party's Obligations under this Section 10.3.4 shall survive the expiration or sooner termination of this Agreement. In the event that Lessor is at fault, and City elects to perform Lessor's obligations, all costs and expenses incurred by City shall be paid by Lessor.

In the event of any “release” as defined by CERCLA 42 USC § 9601(22), as a result of City's use or operation of the Premises, City shall be responsible for the cleanup of the release, unless the release was the sole responsibility of Lessor or a contractor or invitee of Lessor.

10.3.5 Agreement to Discuss Changed Circumstances. In recognition of the length of the Term and the difficulty of anticipating changes in circumstances that can be expected to take place during the Term, the Parties will meet during the during the twentieth (20th) year of the Term and each twentieth (20th) year of the Term thereafter and discuss in good faith changing circumstances and modifications to this Agreement, if any, that would be appropriate. This

provision shall not be deemed to preclude the Parties from discussing changed circumstances at any other time during the Term.

10.3.6 Amendment upon Development of Adjacent Property. In the event that the real property lying immediately to the east of the Property shall be developed, and such development shall accommodate the location of additional vendor spaces suitable for use for the City Market and/or the Additional City Market and reasonably acceptable to City, then upon request by Lessor, City will enter into an amendment of this Agreement substituting vendor spaces on the adjacent property for an area within the Indoor Event Space and/or the Outdoor Dining Area equal in square footage to the substituted vendor spaces.

10.3.7 Survival of Covenants and Warranties. All representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the termination of this Agreement. No action taken pursuant to or related to this Agreement, including without limitation any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement herein.

ARTICLE 11 **DEFAULTS AND REMEDIES**

Section 11.1 — City Event of Default. A “City Event of Default” for purposes of this Agreement shall be deemed to have occurred if any of the Obligations of City are not performed and discharged as and when called for, and (a) the failure, refusal or neglect to perform and discharge such obligation continues for a period of fifteen (15) business days after City has been given written notice thereof or (b) if by reason of the nature of such obligation the same cannot be remedied within fifteen (15) days, and (i) corrective measures to cure are not commenced within such fifteen (15) day period, or (ii) the corrective measures to cure are not in good faith diligently and continuously prosecuted.

Section 11.2 — Lessor Remedies.

If a City Event of Default occurs, then Lessor, at any time thereafter, prior to the curing thereof, shall have, as its remedy, the right to pursue any remedy at law or in equity, including, without limitation, the right to do any one or more of the following:

11.2.1 Terminate. Terminate this Agreement by giving City fifteen (15) business days’ written notice thereof, in which event this Agreement and the leasehold estate hereby created and all interest of City and all Parties claiming by, through, or under City shall terminate upon the expiration of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 3 hereof for the expiration of the Term.

11.2.2 Take Possession. Reenter and take possession of the Premises and remove all Persons and property therefrom, after providing City fifteen (15) days’ notice of intent to reenter and take possession of the Premises.

11.2.3 Litigate. File such lawsuits against City as may be necessary to pursue rights and remedies provided by law or in equity against City for damages or mandamus and claims for damages by reason of the existence of such City Event of Default; or

11.2.4 Perform Obligations with Reimbursement from City. Perform the Obligations of City which gave rise to the existence of such City Event of Default, in which event City shall be obligated to reimburse to Lessor all reasonable expenses incurred by Lessor as the result of Lessor's performance of the Obligations of City together with interest thereon at the Permitted Rate from the date of expenditure until repaid in full.

Section 11.3 —Lessor Default.

11.3.1 Lessor Event of Default. If any of the Obligations of Lessor are not performed and discharged as and when called for and (a) the failure, refusal or neglect to perform and discharge such Obligation continues for a period of fifteen (15) days after Lessor has been given written notice thereof or (b) if by reason of the nature of such Obligation the same cannot be remedied within fifteen (15) days, and (i) performance and discharge of such Obligation is not commenced within such fifteen (15) day period, or (ii) the performance and discharge of such Obligation is not diligently and continuously prosecuted, then a “Lessor Event of Default” shall be deemed to have occurred for all purposes of this Agreement.

11.3.2 City's Remedies. If a Lessor Event of Default occurs, City, at any time thereafter prior to the curing thereof, shall have the right to pursue any remedy at law or in equity including, without limitation, the right to do any one or more of the following:

(a) Perform the Obligations of Lessor which gave rise to the existence of such Lessor Event of Default, in which event Lessor shall be obligated to reimburse to City all expenses incurred by City as the result of City's performance of the Obligations of Lessor together with interest thereon at the Permitted Rate from the date of expenditure until repaid in full; and

(b) File such lawsuits against Lessor as may be necessary to pursue rights and remedies provided by law or in equity against Lessor for damages or mandamus and claims for damages by reason of the existence of such Lessor Event of Default.

Section 11.4 — Attorneys' Fees. In the event that a Party incurs attorneys' fees or other expenses to enforce its rights under this Agreement, then the Party in default of its obligations imposed by this Agreement shall be responsible for the payment of the non-defaulting Party's reasonable attorneys' fees and expenses incurred in the enforcement of rights hereunder.

ARTICLE 12
GENERAL PROVISIONS

Section 12.1 — Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia. Each Party hereby submits to jurisdiction and venue in the Circuit Court for the City of Charlottesville, Virginia.

Section 12.2 — Notices. All notices and other communications requested by this Agreement must be in writing and will be deemed properly given if sent as follows: (i) personal delivery, (ii) USPS Express Mail or other overnight delivery service, or (iii) USPS Certified Mail/Return Receipt Requested, addressed as follows:

In the case of a notice to City to:

With a copy to (which shall not constitute notice):

City Attorney
City of Charlottesville
605 East Main Street
Charlottesville, VA 22902

In the case of a notice to Lessor to:

Market Plaza LLC
224 14th Street NW
Charlottesville, VA 22903
Attn: Manager

With a copy to (which shall not constitute notice):

Lenhart Pettit, PC
Attn: David H. Pettit, Esq.
530 East Main Street
Charlottesville, VA 22902

Each Party may by notice to the other specify a different address for subsequent notice purposes. Notice is effective on the date of actual receipt or three (3) days after the date of mailing, whichever is earlier.

Section 12.3 — Time of Essence. Time is of the essence with respect to the performance of each of the covenants, conditions and Obligations contained in this Agreement.

Section 12.4 — Relationship of Parties. No partnership, joint venture or other business relationship is established between the Lessor and City under this Agreement or any other

agreement referred to in this Agreement other than the relationship of Lessor as the landlord of the Premises and City as an independent contractor and tenant. City and its respective employees and agents shall not be considered employees or agents of Lessor or to have been authorized to incur any expense on behalf of Lessor or to act for or to bind Lessor. Lessor, its managers, members, officers, employees and agents shall not be considered employees or agents of City or to have been authorized to incur any expense on behalf of City or to act for or to bind City. No Party hereto shall be liable for any acts, omissions or gross negligence on the part of the other Party, its employees, agents, independent contractors, licensees and invitees resulting in either personal injury or property damages.

Section 12.5 — Approvals by Lessor and City. Wherever this Agreement requires Lessor or City to approve any act or other matter, such approval must not be unreasonably withheld or delayed unless otherwise expressly stated.

Section 12.6 — Severability. If any provision of this Agreement is declared void or unenforceable, such provision will be deemed severed from this Agreement, which shall otherwise remain in full force and effect, provided that this Agreement must be construed to give effect to the Parties' intent.

Section 12.7 — Entire Agreement. This Agreement is executed in counterparts, each of which is deemed to be an original. This Agreement and the referenced exhibits, each of which is incorporated herein, constitute the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement.

Section 12.8 — Exhibits. Exhibits A through D are attached to this Agreement and by this reference are incorporated and made a part of this Agreement.

Section 12.9 — Other Agreements. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations and previous agreements among the Parties with respect to the subject matter of this Agreement; provided, however, that this Agreement does not supersede or modify any condition or requirement of any land use approval or permit applicable to the Project.

Section 12.10 — Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Lessor and City, and all amendments hereto must be in writing and signed by the appropriate authorities of Lessor and City.

Section 12.11 — Limitation on City Obligation to Indemnify. With respect to each provision herein which obligates the City to indemnify Lessor, such obligation shall be deemed to provide that the City's obligation is effective to the extent permitted by law, and without waiver of sovereign immunity to the extent applicable.

Section 12.12 — Subordination. Upon the request of Lessor, City will enter into an agreement subordinating this Agreement to the lien of any deed of trust or mortgage securing Lessor's financing with respect to the Project. Any such agreement shall provide that the City shall not be disturbed in its occupancy of the Premises in accordance with the terms and conditions of this

Agreement provided a City Event of Default is not in existence which has not been cured within any applicable cure period.

Section 12.13 – Memorandum of Lease. At the request of City, Lessor will execute a Memorandum of Lease sufficient for recordation which City may record at its expense.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have hereunto set their hands as of this ____ day of _____, 20__.

MARKET PLAZA LLC
a Virginia limited liability company

By: _____
Name: _____
Its: Manager
Date: _____

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

Subscribed, sworn and acknowledged before me by _____, Manager, of Market Plaza LLC this ____ day of _____, 20__.

SEAL:

Notary Public Registration No. _____
My commission expires: _____

CITY OF CHARLOTTESVILLE, VIRGINIA
a Virginia municipal corporation

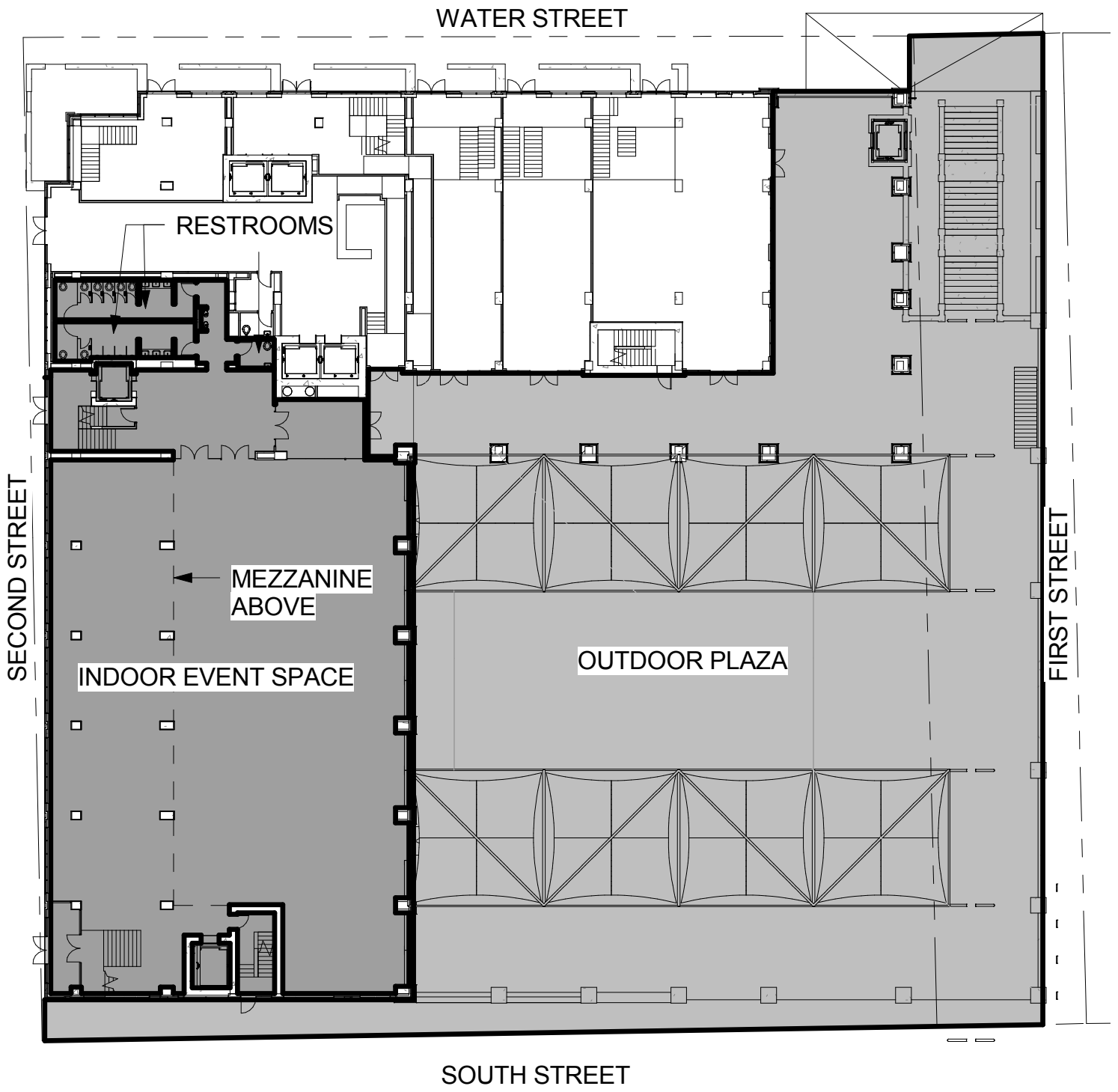
By: _____
Name: Maurice Jones
Title: City Manager
Date: _____

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

Subscribed, sworn and acknowledged before me by Maurice Jones, City Manager of the City of Charlottesville, Virginia this ____ day of _____, 20__.

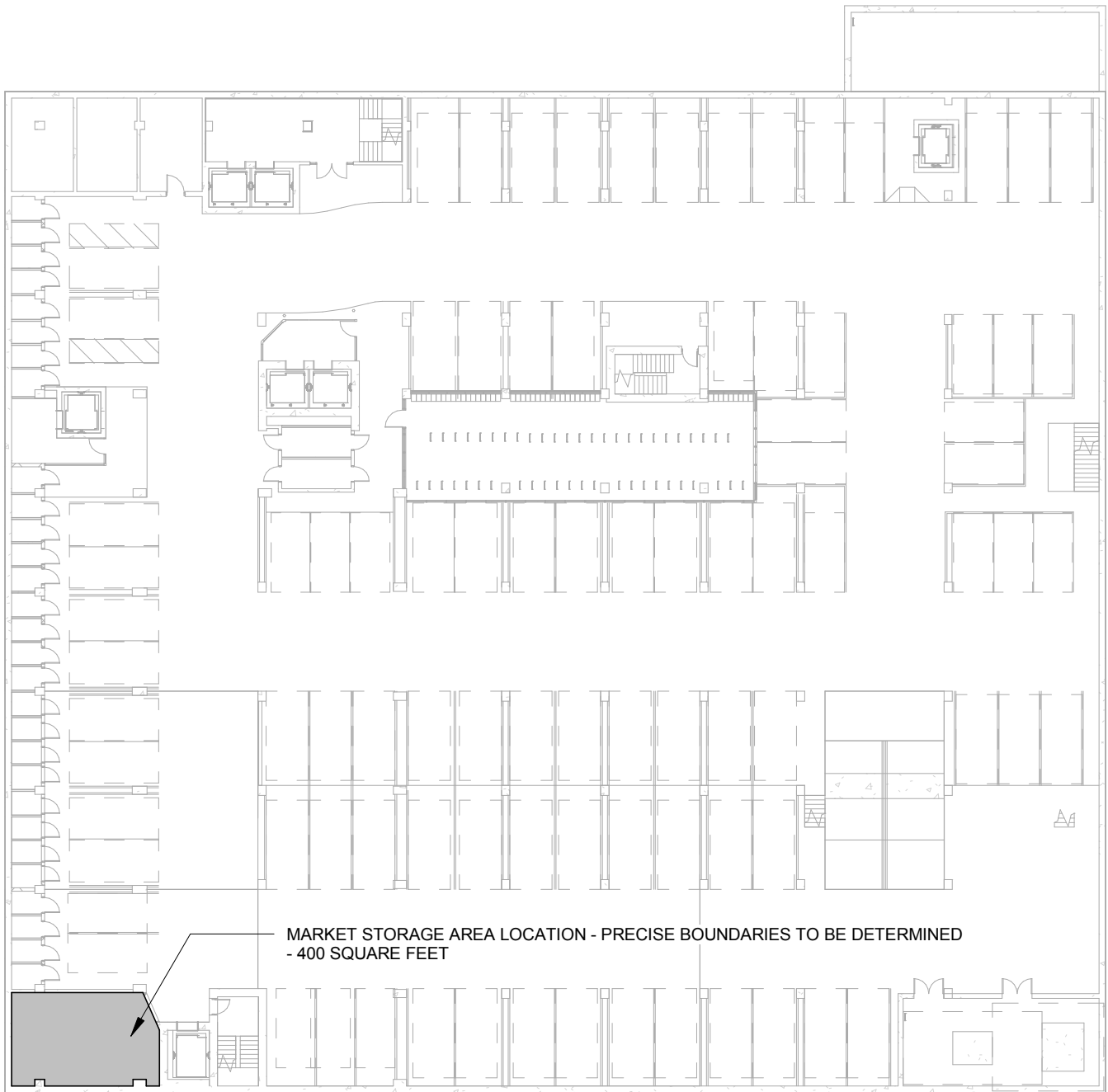
SEAL:

Notary Public Registration No. _____
My commission expires: _____



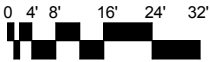
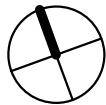
AREAS SHADED ARE ACCESSIBLE TO MARKET USERS ON DESIGNATED MARKET DAYS (EXCLUDING MEZZANINE)

PLAZA & INDOOR EVENT SPACE

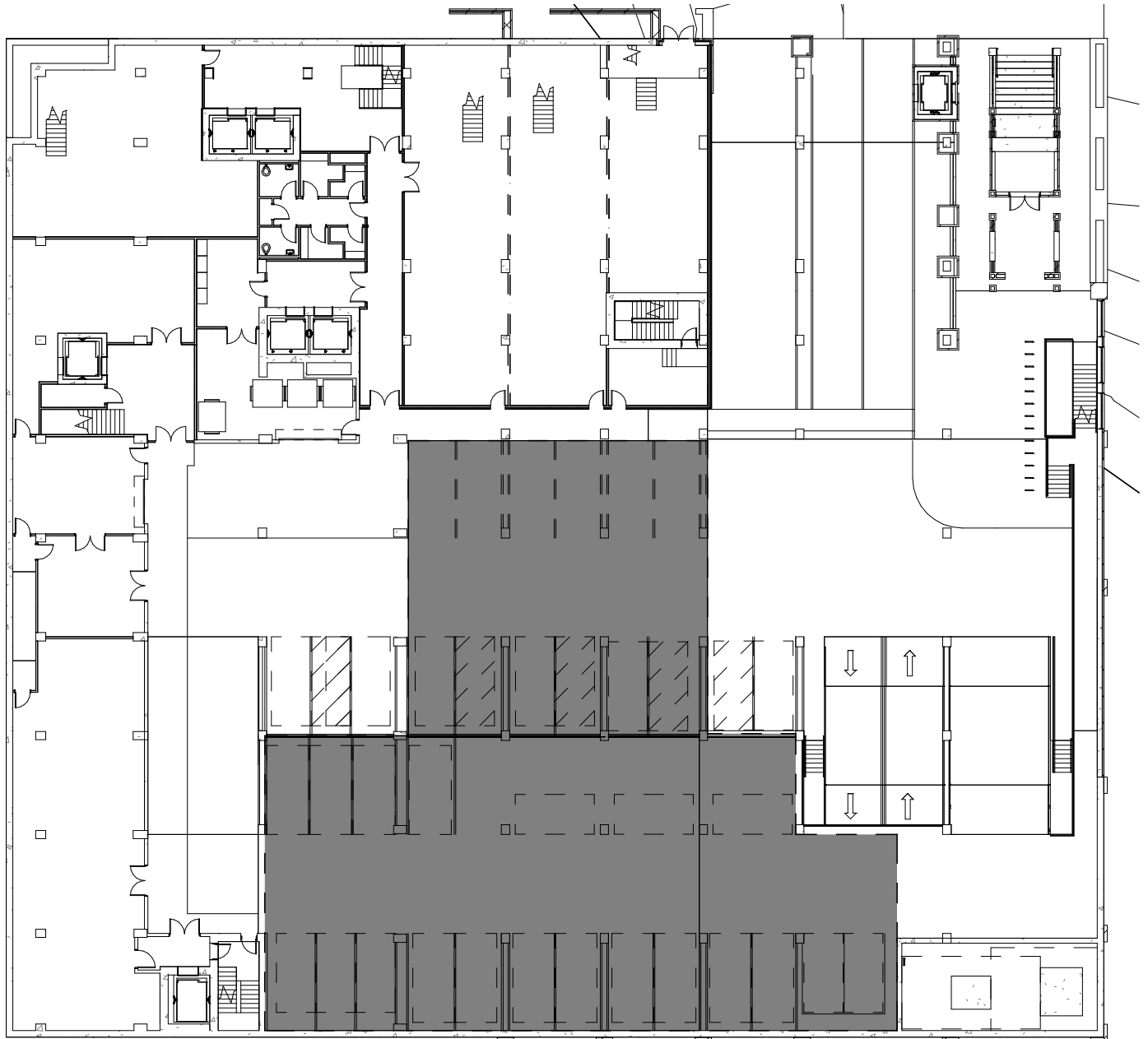


MARKET STORAGE AREA LOCATION - PRECISE BOUNDARIES TO BE DETERMINED
 - 400 SQUARE FEET

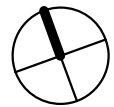
P2 PARKING LEVEL



MARKET STORAGE AREA



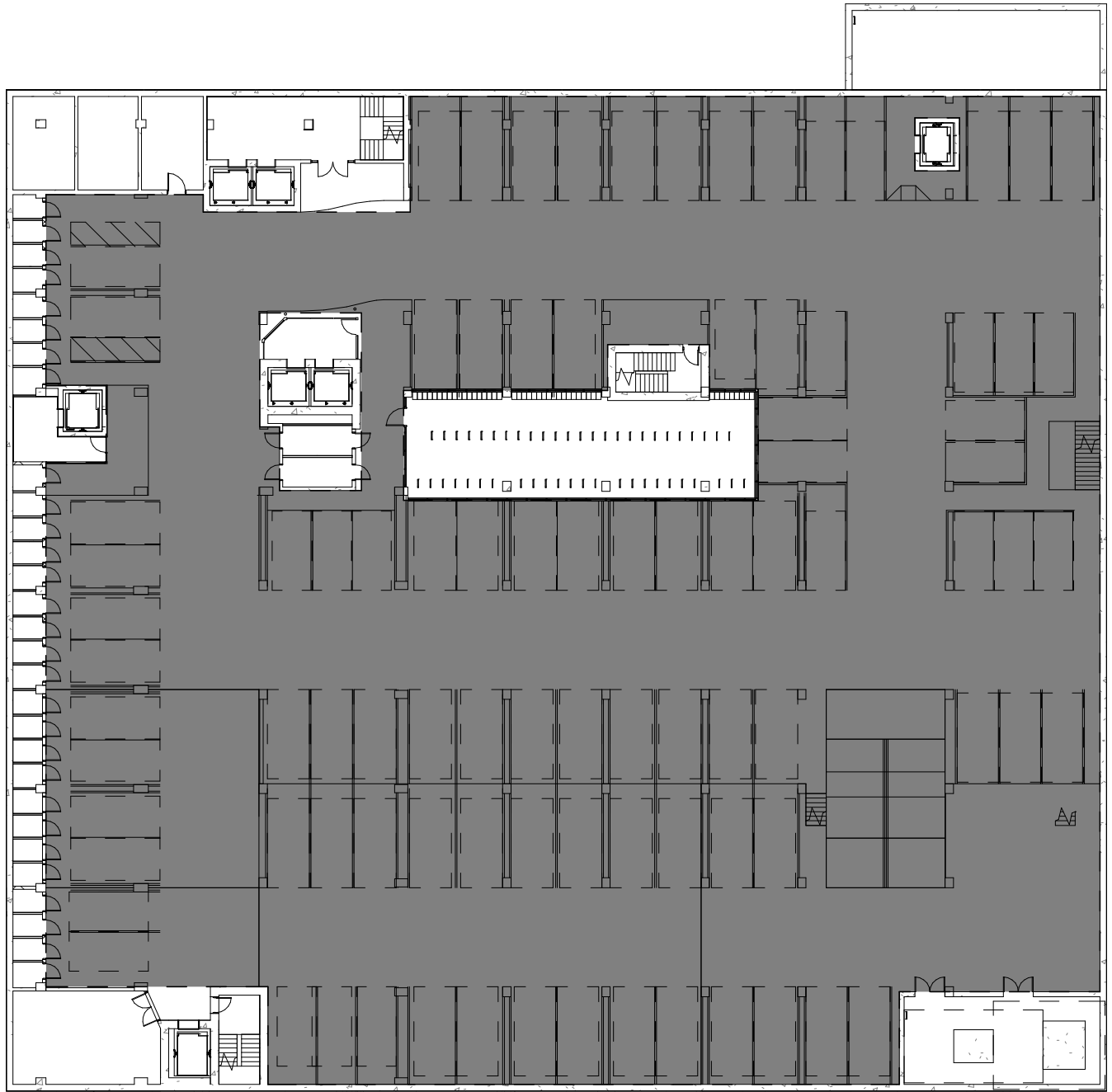
P1 PARKING LEVEL



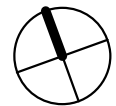
0 4' 8' 16' 24' 32'



LEASED PARKING AREA



P2 PARKING LEVEL



LEASED PARKING AREA

Welcome to Market Plaza

The Plaza is privately owned and operated by Market Plaza LLC; however, the public is welcome to enjoy the Plaza while adhering to the following rules and regulations:

Prohibited on Market Plaza Premises:

- Smoking
- Picking flowers or otherwise damaging Plaza landscaping
- Standing or climbing on any fixture unless specifically designated for climbing
- Feeding birds or other “city wildlife”
- Obstruction of entrances
- Littering
- Rummaging through trash receptacles
- Unleashed dogs
 - Dogs are welcome as long as they are leashed. All pet waste must be bagged and disposed of properly
- Drugs, unlicensed alcohol, or any illegal activity
- Fighting, violent actions, or any behavior that threatens the safety of other guests
- Lewd, indecent, or obscene language or behavior
- Unreasonable interference with other guests’ enjoyment or use of the Plaza
- Tents, plastic blankets, or tarps
 - Picnic blankets are allowed
- Coolers or glass containers
- Firearms or weapons of any kind
 - This excludes law enforcement officers and authorized security personnel
- Open flames, grills, or other portable cooking devices
- Gambling, fortune telling, or other games of chance played for money
- Defacement or graffiti
- Posting of bills, posters, or bulletins on any surface*
- Bicycle riding, rollerblading, skateboarding, or any similar activity*
- Temporary or permanent structures*
- Sports, performances, commercial enterprises or any other organized assembly*
- Amplified music, loud speakers, or other sound equipment*
- Solicitation of money or other property*
- Commercial photography*

*Requires written permission from Market Plaza LLC.

Additional Guidelines:

- Market Plaza LLC and its lessees are not responsible for lost personal items. Personal items on Plaza property may be confiscated and disposed of.
- Children must be supervised by an adult at all times.
- Enter and exit the Plaza at designated entrances/exits only.

These policies are meant to encourage the peaceful enjoyment of the Plaza for all guests and business owners. Rules and regulations are subject to change at owner’s discretion.

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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	October 5, 2015
Action Required:	Ordinance
Presenter:	Brian Daly, Parks and Recreation Department Director
Staff Contacts:	Craig Brown, City Attorney Brian Daly, Parks and Recreation Department Director
Title:	Proposed Ordinance - Ragged Mountain Natural Area Rules of Use

Background:

Ragged Mountain Natural Area (RMNA) is a water supply property owned by the City since the 1800's with water related operations being managed by the Rivanna Water and Sewer Authority. With the reopening of RMNA last year there is a great desire upon the part of the community to allow certain activities at RMNA that were 'prohibited' under the arrangement where the Ivy Creek Foundation (ICF) managed the property for the City, an arrangement that dates back almost 25 years. Certain activities such as running, walking your dog, or riding a bicycle were not permitted under that arrangement, much to the consternation of many during that time. During the planning for and the construction of the new dam, we had lengthy discussions with the ICF Board regarding their desire or non-desire to continue management responsibilities at RMNA. They ultimately chose to not re-assume those responsibilities and City Parks and Recreation has taken on the work of trail building, interacting with RWSA on site issues and coordinating extensive volunteer work on the trails.. City P&R will continue the management responsibility of the land into the future. Based on that feedback, we are proposing changes to the currently posted rules at RMNA.

Discussion:

The Department of Parks and Recreation believes more users can be accommodated at RMNA without undue impact to the resources on the site. Staff have engaged the local naturalist community to undertake an eco-survey/bio-blitz of the property to identify any special or unique habitat or geological areas either to be avoided to ensure protection of the resource, or to be brought to people's attention as environmental educational opportunities along the trails. The results of this study will inform how the Department constructs and maintains any trails or amenities such as benches or overlooks. With proper design and management, the area can be treated like all other City parks in terms of uses allowed, with the only limitations being related to the water supply lake (i.e. no swimming or gasoline motors allowed). Albemarle County Parks and Recreation staff concurs with this proposed ordinance, as indicated in a letter from Robert Crickenberger, Director of Parks and Recreation for Albemarle County. The letter is included as Attachment 3.

Alignment with City Council's Vision and Strategic Plan:

The proposed rule changes support the City Council's "Green City" and "America's Healthiest

City” visions.

Charlottesville City Council Vision 2025: A Green City :

"Charlottesville citizens live in a community with a vibrant urban forest, tree-lined streets, and lush green neighborhoods. We have an extensive natural trail system, along with healthy rivers and streams. We have clean air and water, we emphasize recycling and reuse, and we minimize stormwater runoff. Our homes and buildings are sustainably designed and energy efficient."

America's Healthiest City

All residents have access to high-quality health care services. We have a community-wide commitment to personal fitness and wellness, and all residents enjoy our outstanding recreational facilities, walking trails, and safe routes to schools. We have a strong support system in place. Our emergency response system is among the nation's best.

Community Engagement:

In November 2014, staff held a community engagement meeting that was very well attended, as well as accepted comments via phone and email, and the overwhelming desire centered around several activities:

- Permitting trail running
- Permitting dogs to be on leash
- Permitting biking
- Creating shared use trails
- Identifying areas for trails that are predominately for mountain biking, or just hiking, separated from the remaining trails
- Consistent application of rules across the park system as Ragged Mountain is considered a park by the large majority of the community

We as a staff agree with these positions advocated by the community and believe it is important that our rules be applied consistently across the system. We do not prohibit running, dogs or bicycles anywhere else in the park system and we feel that Ragged Mountain should operate in the same manner.

Budgetary Impact:

This report has no impact on the General Fund.

Recommendation:

Staff recommends approval of the ordinance to enact rules of use at Ragged Mountain Natural Area to allow bicycles, jogging, and on-leash dogs.

Attachments:

Attachment 1 – Proposed Ordinance – Ragged Mountain Natural Area Rules of Use

Attachment 2 - Comments received at public meeting and via email/phone

Attachment 3 – Letter from Albemarle County Parks and Recreation staff

**AN ORDINANCE
TO ADD A NEW ARTICLE III, SECTIONS 18-21 THROUGH 18-27,
TO CHAPTER 18 (PARKS AND RECREATION)
OF THE CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
ENTITLED RAGGED MOUNTAIN NATURAL AREA RULES OF USE**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that Chapter 18 (Parks and Recreation) of the Charlottesville City Code, 1990, as amended, is hereby amended and reordained to add a new Article III (Ragged Mountain Natural Area Rules of Use), Sections 18-21 through 18-27, to Chapter 18, which Article shall read as follows:

ARTICLE III. RAGGED MOUNTAIN NATURAL AREA RULES OF USE

Sec. 18-21. Authority.

This Article is enacted pursuant to the authority set forth in Virginia Code sections 15.2-1725 and 15.2-2109.

Sec. 18-22. Purpose.

The purpose of this Article is to establish reasonable rules and regulations that permit certain recreational uses and activities at the Ragged Mountain Natural Area, while insuring the preservation and protection of the Ragged Mountain Reservoir public water supply and the surrounding habitat.

Sec. 18-23. Definition.

As used herein the term “Ragged Mountain Natural Area” or “Natural Area” includes the Ragged Mountain Reservoir and the surrounding City-owned real property identified in County of Albemarle Real Property Tax Assessment records as Parcel ID: 07500-00-00-00100, which parcel is shown on County Tax Maps 59, 74 and 75. The City Department of Parks and Recreation shall maintain on file and available for inspection a map or maps of the boundaries of the Ragged Mountain Natural Area.

Sec. 18-24. Authorized activities.

The following activities are permitted in the Ragged Mountain Natural Area:

- (a) Hiking and jogging on designated trails, picnicking and birdwatching;
- (b) Dog walking, provided that dogs shall be kept on a leash and under control at all times, and that the person having care or custody of a dog shall remove any feces of such dog promptly from the Natural Area and dispose of it in a sanitary manner;
- (c) Bicycling on designated trails;
- (d) Kayaking, canoeing, and boating on the Reservoir; the use of electric motors is permitted, but gasoline marine motors are prohibited, except when used by the Rivanna Water and Sewer Authority employees, agents, and contractors for purposes related to the maintenance or surveillance of the dam and the water supply; and,
- (e) Fishing that is conducted in compliance with all state regulations and licensing requirements.

Sec. 18-25. Prohibited activities.

Any activity not expressly permitted by this Article is prohibited within the Ragged Mountain Natural Area. These prohibited activities include, but are not limited to:

- (a) Trapping, hunting, or the discharge of firearms;
- (b) Camping or remaining in the Natural Area after sunset;
- (c) Swimming or diving in the Ragged Mountain Reservoir;
- (d) Setting, maintaining or allowing any fire;
- (e) Consumption of alcoholic beverages;
- (f) Horse riding, except when authorized by special permit issued through the City Department of Parks and Recreation;
- (g) Using motor vehicles except on roads paved or improved for vehicular traffic and in designated parking areas; provided that the prohibition of motor vehicles shall not apply to approved ADA mobility assistance devices;
- (h) Accessing the Reservoir's auxiliary spillway;
- (i) Storing boats or other personal property at the Natural Area; allowing motor vehicles to remain in the parking area after sunset; or mooring boats on the Reservoir;
- (j) Littering or leaving trash or refuse in the Natural Area; and,
- (k) The transporting or releasing of wildlife or the disturbance of nests or nesting sites.

Sec. 18-26. Natural Area Hours.

It shall be unlawful for any person to enter or remain on the premises of the Ragged Mountain Natural Area between sunset and 7:00 a.m. without the express written permission of the Director of the City Department of Parks and Recreation. Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Sec. 18-27. Management, enforcement and penalties.

(a) The Director of the City Department of Parks and Recreation, or his or her designee, shall be responsible for the maintenance and management of the Ragged Mountain Natural Area, for the enforcement of the provisions of this Article, for posting appropriate signage at the Natural Area, and for adopting ancillary operating rules and regulations, if necessary, for the Natural Area that are not inconsistent with this Article.

(b) The City Manager or the Director of the City Department of Parks of Recreation or their respective designee may, after a hearing, prohibit any person from using the Ragged Mountain Natural Area for a reasonable period of time due to a serious or repeated violation of the provisions of this Article.

(c) It shall be unlawful for any person to violate the provisions of this Article governing the use of the Ragged Mountain Natural Area. Except as expressly provided in section 18-26, any person violating any of the provisions of this Article shall be guilty of a Class 4 misdemeanor, or as such violations may otherwise be punishable under state law.

ATTACHMENT 2

**Ragged Mountain Rules of Use
Public Input November 2014
(via email and phone)**

Please take the time to consider allowing trail runners and mountain bikers to enjoy the beauty of the Ragged Mountain Natural Area trails. Trail Runners are a responsible user group and put no more impact on the trails than hikers. While Mountain biking does increase erosion the trail work done by local mountain bike groups far exceeds any impact.

I wanted to take this opportunity to let you know that I oppose the no running rule at Ragged Mountain. I understand that we all want peace and tranquility, and can understand no vehicular traffic, like no mountain biking. But that foot traffic is limited to slow foot traffic is over reaching. What if I jog slower than you walk? Is speed walking allowed?

I am strongly in favor of a rule change that would allow jogging on the Ragged Mountain Natural Area trails. As I recall, the rationale to disallow jogging was to prohibit anything that might disrupt the ambience, but I disagree with the idea that running on the trails would do so. Indeed, my experience suggests very strongly that trail runners in the community are most respectful and care very deeply about the natural resources in Charlottesville. It is my sincere hope that the beautiful trails there will be opened up for joggers/runners to enjoy!

I am strongly in favor of a rule change that would allow jogging on the Ragged Mountain Natural Area trails. I understand the rationale to disallow jogging is to prohibit anything that might disrupt the ambience, but I disagree with the idea that running on the trails would do so.

I have been a resident of the area for 18 years, and 3 years ago I started trail running, during that period I have seen more bear and other wildlife during trail running activities than in my previous 15 years as a hiker and trail walker. I even saw a bald eagle while running the Old Mills Trail two weeks ago. It is my sincere hope that the beautiful trails there will be opened up for joggers/runners to enjoy!

I am a 63-year-old retiree who moved to Charlottesville six years ago. Like many others, my family and I chose C-ville because it seemed to be a progressive community just far away from DC that we could enjoy nature as well as the amenities of a larger city.

As the recent selection of Charlottesville as the nation's second fittest small city (after Boulder) demonstrates, much of that attraction stems from the availability of pleasant areas to run. After retirement, trail running has become an important part of my life. Unfortunately, right-of-way issues have made the Rivanna Trail less and less attractive for jogging, necessitating long drives to the Appalachian Trail to find real nature to run in.

Allowing jogging in the Ragged Mountain Natural Area would help ameliorate this situation (which would only get worse with the construction of the new 29 by-pass) and attract more families as well as businesses to this area. I find the running community in this area to be extremely responsible guardians of natural areas who often volunteer to maintain the natural

areas we still have.

I hope you will remove the restriction of jogging in the RMNA. Thanks for listening.

The Charlottesville Mountain Bike Community supports multi-use trails AND trails for hikers only. Ragged Mountain is a prime spot for an evolved use eco-system to include both. I believe CAMBC is in support of this position and will commit resources to trail maintenance.

Hoping for a green light on mountain biking in the Ragged Mtn area.

Congratulations to the City on finishing up all of the important utility and landscaping work at the Ragged Mountain Natural Area (RMNA). And congratulations to the City for taking on the important work of manager of RMNA.

My family loves the outdoors and all of the trail systems throughout Charlottesville and in the region. RMNA's re-opening is something we're very excited about and have been looking forward to ever since it closed for work to begin on the reservoir.

One small change we would like for the Ivy Creek Foundation, City of Charlottesville and community at large to consider with the re-opening of RMNA is to allow running on it's trails. As a "trail runner", a person who moved his family to Charlottesville because of running, and someone who volunteers on the local trails, nothing could be better and more appropriate than to allow residents the opportunity for exercise and soul searching on such beautiful land. For runners and outdoors-people connecting with the land and grounding oneself through the simple act of running through nature is an important daily regime and a necessary freedom. It truly makes us better people. And running on trails keeps us off busy roads which keeps everyone safer.

Most folks I know who enjoy running usually just run from their door. RMNA is not exactly in everyone's backyard. Opening up to RMNA to runners would not unleash any sort of floodgate (pardon the pun) of runners on the land. It would however make RMNA even more of a destination for those runners who choose to make the extra effort to get there and enjoy the trails and landscape. It would also promote additional awareness of RMNA which will encourage and influence volunteerism.

I will be out of town tomorrow during the forum, but I would like to throw my weight behind allowing runners and mountain bikers at the ragged Mountain trails.

I am strongly in favor of a rule change that would allow jogging on the Ragged Mountain Natural Area trails. As I recall, the rationale to disallow jogging was to prohibit anything that might disrupt the ambience, but I disagree with the idea that running on the trails would do so. Indeed, my experience suggests very strongly that trail runners in the community are most respectful and care very deeply about the natural resources in Charlottesville. It is my sincere hope that the beautiful trails there will be opened up for joggers/runners to enjoy!

Public health is an important issue and it seems foolish and shortsighted to limit opportunities for exercise, especially when it combines the added aesthetic value of being in the natural environment. I really see no adverse effects caused by those who simply move a little faster on two feet. Thanks for considering.

I would like to present a very strong and positive argument for allowing trail running at the Ragged Mountain Natural Area as you are reassessing the use policy for these trails.

The existing “No Jogging” policy has puzzled and frustrated our local trail running community since its inception, yet it has been respected. The idea that people running on the trails would in anyway cause more trail damage or frighten more wildlife than hikers and walkers does not hold truth or make sense. Though I can appreciate the desire to have regulations that keep Ragged Mountain Natural Area pristine and wild, broadly limiting trail use to a large group of trail-loving people is actually counterproductive to this mission. I feel it is important to hear this feedback from trail runners themselves, as we are the only ones who can give realistic feedback on how trail running impacts trails and the natural areas they course through. The following are some points I feel are important for the Parks Department to consider:

- Trail runners are some of the best trail stewards. We seek the trails for their beauty and wilderness and it is self-serving to keep them this way. The Charlottesville Area Trail Runners is a large, active group of environmentally-conscious people who regularly volunteer trail maintenance both as individuals and as a group. Allowing trail running at the RMNA will dramatically increase your volunteer pool and ultimately lead to far better trail maintenance over time. The more groups you can involve in trail maintenance and “ownership”, the better.
- Trail runners do not frighten or disturb wildlife anymore than hikers, and arguably are less disturbing. Trail running is almost always slow running, not at some aggressive, fast pace. As runners pass by wildlife, they are gone quicker and are often quieter than hikers. Our trail running community regularly runs through designated wilderness areas in Shenandoah National Park and regularly have encounters with deer, bears, birds, and other wildlife. These encounters are brief and non-stressful to the wildlife as it is almost apparent to them that our focus is getting down the trail, vs. stopping and watching them. If trail running were truly disturbing to wildlife, it would likely be illegal in these most pristine designated wilderness areas.
- Trail running is no more damaging to trails than hiking. Trails need maintenance simply because they are trails and as such are prone to erosion, however the speed at which a person is traveling makes no difference on the amount of erosion a trail is prone to. This again is a point where including a larger group of trail users will increase your volunteer pool for trail maintenance, which is the heart and soul of any good trail maintenance system.
- Trail and wilderness access should be an important part of the City of Charlottesville’s governmental mission. This benefits our citizens, it benefits our tourism, and it benefits the trail systems themselves. The City’s ownership of the RMNA needs to be handled with strong consideration to how this can best benefit its citizens. The downsides of mountain biking and horses in a wilderness area are more clear and understandable. Pardon my presumption, but a “no jogging” policy was clearly conceived by someone who never has been trail running and for some reason has an uninformed, negative view of this activity’s impact. Policies should always have a reason and a purpose, and this no jogging policy has neither.

Thank you for your time and consideration, and for holding the meeting to get other people's input. Please contact me with any questions you may have.

i have lived in charlottesville for 27 years. prior to the dam's renovation i was reluctant to use the ragged mountain natural area because i could not take my dogs. the lame reason we dog-owners were given was that somehow the dogs disrupted the nature area. now that the renovations have devastated this wonderful area i think it is time to reconsider this policy. the area would see much more use if dogs were allowed. the previous excuse does not hold water (pun intended) now that the area has been completely changed.

in addition, the city should consider allowing non-motorized boating use of the reservoir. there really is no place in town that allows for safe, convenient kayaking and canoeing. this would be an ideal spot for that.

lastly, i hope that the rwsa/city/county hope to rebuild the walking trails to encircle the new reservoir. it would be ideal if these trails stretched the length of reservoir road and connected to the RTF and O-Hill trails through foxhaven farm.

I am strongly in favor of a rule change that would allow jogging on the Ragged Mountain Natural Area trails. As I recall, the rationale to disallow jogging was to prohibit anything that might disrupt the ambience, but I disagree with the idea that running on the trails would do so. Indeed, my experience suggests very strongly that trail runners in the community are most respectful and care very deeply about the natural resources in Charlottesville. It is my sincere hope that the beautiful trails there will be opened up for joggers/runners to enjoy!

I wanted to express my big desire for the city to open up the Ragged Mountain Reservoir trails to running. We have an active trail running community here in Charlottesville and are proud of the existing trails on the RT, Fox Mountain, O-Hill, and Carter Mountain/Secluded Farms. Opening up Ragged Mountain Reservoir would help tie together the RT and Fox Mountain with outstanding, peaceful, and beautiful running trails farther down Reservoir Rd. Meanwhile, Charlottesville trail runners are great caretakers of trails and the surrounding environs, so we would be a net positive contributor to keeping the Ragged Mountain Reservoir area special. Please consider opening the trails to running!

I am writing in regards to the current prohibition of runners/joggers on the trails of the Ragged Mountain Natural Area. I am **strongly** in favor of these current rules to be changed. I've been told that the rationale behind this was to prevent disruption to wildlife and erosion; however, I disagree that running on the trails would do either of these things. I may travel the trails slightly faster than my hiking counterparts, but that does not, in any way cause more of a disruption to wildlife or erosion. In addition, my experience suggests that runners in the community are respectful of the trails and care deeply about the natural resources in Charlottesville. I hope that you will strongly consider amending the current rules of the trail at the Ragged Mountain Natural Area as to allow runners.

I am also strongly in favor of a rule change that would allow jogging on the Ragged Mountain Natural Area trails. As I recall, the rationale to disallow jogging was to prohibit anything that might disrupt the wildlife and erode the trail; however, I disagree with the idea that running on the trails would create more erosion than hiking. Indeed, my experience suggests very strongly

that trail runners in the community are most respectful and care very deeply about the natural resources in Charlottesville. It is my sincere hope that the beautiful trails there will be opened up for joggers/runners to enjoy!

I am thrilled that this area is open again. I live nearby, and for years I ran on these trails before it closed. I'm very happy to be back out there again "walking swiftly" on the new trails.

I realize that running is discouraged in this area, but I hope to see this rule officially removed. Runners have a far lower impact on the trail system than anyone else out there. As for physical impact, trailrunners usually wear lighter footwear and tread much more lightly so that we can quickly adapt to changes in balance, compared to hikers who stomp down boots or other heavy footwear with every step. As for noise level, a lone trail runner is much quieter than a group of 5 children or even a group of two adults talking with each other. Even when running in pairs, usually one runner will be quite far ahead of the other runner as a safety precaution - if one runner slips or falls, the other runner won't trip over the person in front of them. These trails are technical as running trails go, and it's best to keep a safe distance, which probably means out of earshot, and thus, no talking.

Let's talk practical matters for a moment. It's nearly impossible to enforce the 'no running' rule. If you officially removed that rule from the books, you probably won't have any more people running on the trails than you already do now with the rule in place. The upside of removing this rule is that there's a club of trailrunners here who work diligently to maintain other running-friendly trails in town that you can tap into for trail work. A good number of us have spent many hours out on the Rivanna Trail doing maintenance, weeding, etc. By removing the 'no running' rule, you'll have a large workforce of very athletic trail enthusiasts ready to whip these trails into shape. By keeping it, you're not really going to cut down on the number of people running the trails anyway.

I, for one, am extremely happy that this area is open again, and am excited to be out not running, but "walking swiftly" on the trails. I'm happy to work on the trails as my schedule allows, even if you don't rescind the 'no running' rule. This is a great resource for the area and I'm looking forward to having the trail system complete again.

I am unable to come but I hope you retain the no-dogs rule. Plenty of other parks for dogs and dog walkers as it is more disturbing of nature regardless of whether or not dog is on leash. If you take a vote or make a decision based on who makes the most noise, dogs will win every time. Please consider doing the right thing regardless and take a look at Ivy Creek's statements for further elucidation on this.

Would like to see a change to allow dogs on leashes.

Thank you for allowing public comment regarding trail access at Ragged Mountain. My comments as a local citizen, park and trail user, Charlottesville Area Mountain Bike Club President, are:

What's CAMBC's position? Our position is simple:

- *Shared use is the way to go:* there is ample space, and a long history of co-existence of all users in our area.

- *We support the development of hiker only loops and trails.* We recognize that some users want quiet solitude and totally respect that. These trails, however, should not make up the majority of the system; they should be discreet loops to special places like overlooks, peninsulas into the lake, etc. Restricted use trails should be the exception, not the norm.
- *We will commit significant CAMBC resources to trail construction and maintenance.* After all, many these trails will all be essentially from scratch, giving us the opportunity to build beautiful, sustainable, non-eroding ribbons of trail!
- *We are a consensus and community building organization.* We want access for all of our citizens, which gets more kids and adults outside, leading to a happier and a healthier community. We work with all of our partners!

Simply put, the share-use plan results in a better park! It results in better trail design (we have significant trail design and construction experience, and access to trail design professionals). It results in more people from the City, County, and UVA having access to this amazing landscape. Lastly, shared use does not, in any way, detract from an experience of someone seeking solitude. There is plenty to go around at Ragged Mountain!

I look forward to the meeting, and look forward to working with the City for years to come as we develop an access program on this amazing landscape!

I am contacting you to share my interest in having the trails at Ragged Mountain be opened for multi-purpose use. Both my wife Anne Pike and I, David Pike, believe this would be a wonderful opportunity for more city residents of all kinds to enjoy more wonderful trails accessible right here in Charlottesville. Charlottesville obviously has a thriving outdoor population, and to open up these trails for multi-purpose use would be a great step in supporting that community. If there is anything we can do to help this become a reality, please let us know.

Thank you for soliciting input on Ragged Mountain Natural Area. I am unable to attend the meeting at City Space tonight, so would like to offer a few comments via email.

When the Ivy Creek Foundation established the Ragged Mountain Natural Area in the mid/late 90's, our focus was to preserve the land as a "natural area" and not a park (I was president of ICF then). Primary concern was the protection of plant and wildlife species, while allowing public access via hiking trails - for quiet enjoyment, and fishing access. To that end, pets, bikes, jogging, roads, timber cutting, etc. were prohibited (as is the case at Ivy Creek Natural Area). We were up-front about all that with the City, County, and Water Authority from the outset, and all approvals were granted with those conditions being the policy.

The nature of the area has now changed, dramatically, but it has always been the Ivy Creek Foundation's hope that the property would remain a natural area. I understand that there is intense pressure for more "active" recreational opportunities (especially for biking and pet access), but I do hope that you will consider the tremendous volunteer effort on the part of the ICF to win approval, raise funds, construct trails, and build the parking lot - all based on the premise that the property would remain a natural area, and sanctuary for the flora and fauna that inhabit it. Bikes, pets, and the more active recreational activities are not conducive to natural area status. ICF's intention was always for hiking and passive enjoyment only.

Thank you again for seeking public input on the area.

I'm not sure what the plans for the trails for Ragged Mtn might be, but I have one comment that is important to me. I first started running around the reservoir in 1986, long before any formal trails existed. At the time this often required some cross-country work in some sections. It was a

wonderful run. I was deeply saddened when posted rules went up that said running was no longer allowed. Did this mean I had to tell my daughters they could not run for short distances? It certainly seemed like a rather capricious rule and I have never encountered such a rule on any other trail anywhere in the United States (I have hiked and run all 50 states) or anywhere else in the world. In a community that loves to run and stay and shape banning running in a public area just seems odd. Please do not bring this rule back. Hikers and runners are able to share the trail in 99.9999% of the other trails without incident.

I fully support the view that the trails should be shared use

[to benefit the most people while also protecting the land](#)

as detailed in the letter from the Charlottesville Area Mountain Bike Club (CAMBC), the Charlottesville Area Trail Runners (CAT), and the Rivanna Trails Foundation (RTF).

[Thank you for opening this up for public comment before taking action.](#)

I am writing you to express my opinion on designating Ragged Mountain Natural Area as a shared use trail system.

I am a member of the Charlottesville Area Mountain Biking Club, CAMBC, and enjoy the local trail system both as a hiker and a mountain biker. I moved here from Florida 4 years ago and I was impressed at the shared use trails in the area. The trails are well maintained, all trail users are courteous and very rarely do I see any trash or damage to the trails, people really care about the trails here!

Please designate the Ragged Mountain Natural Area as a shared use trail system!

I am not sure that I can make it to the public forum at City Space tomorrow, so I just wanted to express my thoughts as a Charlottesville citizen for > 13 years.

I am excited to see the Ragged Mountain property change management from Ivy Creek Foundation.

Mainly because the shared use trails policy in the city and the county encourages more use of recreational trails such as RTF, Preddy Creek, Walnut Creek, and every other trail in the county and city.

The current policy of shared use works everywhere in the region without conflict and should be adopted at Ragged Mountain now that there is new management with a different trail use mission.

I am a hiker, trail runner, mountain biker, paddler; and father of a son who I try to teach to appreciate the trails we have here in town and that includes hiking and cycling.

Thanks for all your efforts

Mr. Brian Daly
City of Charlottesville Parks and Recreation Department
501 East Main Street
Charlottesville, VA 22902

Dear Mr. Daly,

Thank you for the opportunity to submit comments on the user access changes to the Ragged Mountain Natural Area. This letter contains the official comments of the International Mountain Bicycling Association (IMBA).

Founded in 1988, IMBA leads national and worldwide mountain bicycling communities through a network of 80,000 individual supporters, 600 dealer members, and over 150 local Chapters. IMBA teaches sustainable trail building techniques and has become a leader in trail design, construction, and maintenance. IMBA encourages responsible riding, volunteer trail work, and cooperation among trail user groups and land managers. Each year, IMBA members and supporting organizations conduct nearly one million hours of volunteer trail stewardship on

America's public lands and are some of the best assistants to federal, state, and local land managers. Our local chapter, Charlottesville Area Mountain Bike Club (CAMBC), has proven that they are committed to these same goals and practices.

IMBA would like to express our support for a shared-use, non-motorized, human-powered recreational trail system in the Ragged Mountain Natural Area. We believe that this type of shared use management encourages cooperation among diverse user groups and creates a unified trail stewardship community. CAMBC has proven that this is the case by partnering with several local user groups to advocate for sustainable shared-use trails in the Ragged Mountain Natural Area.

IMBA and it's local chapter, CAMBC, welcome the opportunity to work with the city parks and recreation department to create a constructive partnership that will enhance the trail user experience in the Ragged Mountain Natural Area.

I would like to be able to jog on the trail.

Also, I don't love pets, but would like them to be permitted, as well. We always look for places we can go on a family hike/walk when my parents are in town inclusive of my sister's dog. It's a shame there are regulations and Ragged Mountain is out, as its beautiful and most convenient. We've settled with an out and back of a Rivanna segment for this.

However - it has been interesting discussing the possible reasons for the regulations and we're open to being convinced of environmental concerns or otherwise that explain the rules. If they stay - please post the reasons why!

I am unable to attend the meeting tonight, but wanted to offer the following comments regarding trail access at Ragged Mountain.

First and foremost, I appreciate the City's ongoing efforts and hard work establishing a great trail system in our community.

With regard to the Ragged Mtn. area, I believe that shared use is the best and most highly valued use of the area. We are lucky to have good relationships between hikers, mountain bikers, and other trail users in the community, and that relationship can and should carry on at Ragged Mtn.

Further, by allowing shared use, including mountain biking, the City and other interested parties will benefit from CAMBC's resources and volunteer base in developing well designed, sustainable trails that all can use and enjoy. CAMBC and the RTF have collaborated on several trail projects with great success, and we would love to build on that relationship at Ragged Mtn.

Thank you for the opportunity to be heard on the future of trails at Ragged Mountain.

To City of Charlottesville, Parks and Recreation and City Council,

I want to go on record as a strong advocate that trails at the Ragged Mountain Reservoir area and surrounding City owned lands be immediately opened up to “shared use”. Shared use would include, but not limited to, use by some, any, or all of the following groups:

- Hikers and walkers
- Joggers and runners
- Bicyclists and similar non-motorized human-powered recreational vehicles
- Dog walkers
- Equestrians
- Parents with strollers and family groups

Please note that I am not opposed to some restricted use trails that may allow only hiking and walking for those who are seeking a quiet respite and/or bird watching or similar activity that could be interrupted by those engaging in more active pursuits. However, such restricted trails should be the exception, and not the norm, and should be planned in such a way as to allow shared use activity to be allowed in the area while also providing a buffer of natural fauna that allows quiet and solitude on the restricted use trails.

Furthermore, I also suggest that the City owned lands surrounding Ragged Mountain Reservoir be considered for a park-like recreational facility whereby the reservoir itself is used for non-polluting recreational purposes. These activities would include, but not limited to, use for any or all of the following activities (subject to limits to protect water quality):

- Non-motorized boating, canoeing, kayaking, stand-up paddle boarding, and similar “paddle sports”
- Fishing
- Diving
- Swimming

We all recognize that non-motorized outdoor pursuits as listed in this letter are beneficial to the health and well being of the populace. Furthermore, trail amenities are an enhancement to the community and recent surveys indicate that trails are the number one facility requested by the public. Not only do trails encourage more users to participate in healthy pursuits (if you build it they will come), but they have been shown in numerous studies to increase land and property values in the vicinity, and they create a more livable community in general. The proximity of the Ragged Mountain area to Downtown Charlottesville, only a short run, bike ride, or drive from the City proper, increases the likelihood that shared use trails in this area, and/or a shared use recreational area, will be very popular and a considerable enhancement to the recreational opportunities and the overall livability for all citizens of Charlottesville. All of these benefits to the City and its citizens cannot be realized under the current restricted use that has been designated at Ragged Mountain by the previous management policies. Thus it is to the betterment of all citizens that the City adopt and immediately implement a shared use policy for the Ragged Mountain Reservoir area.

Thank you in advance for your consideration of my opinions.

I writing in support with this email of mountain biking in the ragged mountain natural area. As a member of CAMBC I know that we as a community of mountain bikers, trail users/maintainers I know that the ragged mountain natural area will flourish by our constant attention to trail upkeep, constant responsible use and constant advocates of outdoor utilization of our parks and recreational facilities. I also know that CAMBC has always shown itself as an asset to Albemarle and even surrounding counties with our trail advocacy, awareness and upkeep. Please consider opening the trails to mountain bikers so we can enjoy the natural area for years of symbiotic use and enjoyment.

I can't attend the meeting tonight, but appreciate the opportunity to offer the following comments regarding trail access at Ragged Mountain.

I've recently had a close personal friend and the incumbent Mayor of Riverside CA visit here and he was blown away by the City's trails: accessibility, on-going maintenance, and usage by multiple and varying user groups. His positive feedback was a benchmark for me (especially since Riverside is a progressive major city known for its outdoor access). I love this city and his comments made me so very appreciative of this City's ongoing efforts and the hard work that leaders have invested to establish a great trail system in our community.

With regard to the Ragged Mountain area, I believe that shared use is the best and most highly valued approach to trail and usage development. We are lucky to have good relationships between hikers, mountain bikers, and other trail users in the community, and that relationship can and should carry on at Ragged Mountain.

Further, by allowing shared use, including mountain biking, the City and other interested parties will benefit from CAMBC's resources and volunteer base in developing well designed, sustainable trails that all can use and enjoy. The Preddy Creek Trail system and the RTF are both a reflection of this great collaboration. CAMBC and the RTF have collaborated on several trail projects with great success, and we would love to further that relationship at Ragged Mountain.

Please add my name to the list of people supporting CAMBC's position regarding shared use trails in the Ragged Mtn Reservoir area. Thanks. ***(Comment submitted by 28 different people)***

We know having dogs is good for people, they live healthier lives but there is no park facility besides Riverview Pk. that legally allows you to walk your dog off leash. Because it is a paved trail bikes can be a hazzard, silent and speeding.. Without restricting other users of the Ragged Mt.Trailis, I suggest dogs under voice control be allowed to walk...think health citizenry here, paying taxes longer, their dogs off leash in the trails.

As a Charlottesville resident and frequent mountain biker, I would like to add my support for the initiative to open up the Ragged Mountain Natural Area trails for shared use – as outlined by the Charlottesville Area Mountain Bike Club (quoted below).

- *Shared use is the way to go:* there is ample space, and a long history of co-existence of all users in our area.
- *We support the development of hiker only loops and trails.* We recognize that some users want quiet solitude and totally respect that. These trails, however, should not make up the majority of the system; they should be discreet loops to special places like overlooks, peninsulas into the lake, etc. Restricted use trails should be the exception, not the norm.
- *We will commit significant CAMBC resources to trail construction and maintenance.* After all, many these trails will all be essentially from scratch, giving us the opportunity to build beautiful, sustainable, non-eroding ribbons of trail!

- *We are a consensus and community building organization. We want access for all of our citizens, which gets more kids and adults outside, leading to a happier and a healthier community. We work with all of our partners!*

As a local business owner involved extensively in bicycle and multisport, I fully support multi use trails at the ragged mtn reservoir.

I would like to offer my unequivocal support for mountain bike access to some of the trails at Ragged Mountain. I am complete agreement with the letter jointly signed by CAMBSC, the RTF, and the CAT. Joint use is the way to go!

I'm writing in support of CAMBC's position on shared use of the Ragged Mountain Reservoir property. I support shared use trails and am confident CAMBC's trail work will make this a win win.

I believe the trail system access will further increase cycling opportunities for residents of the area and in doing such provide health and well being benefits. Additional access will lead to increases in ridership, cycling participation, fitness and more in the community.

Additionally central Virginia will become known as destination for those interested in cycling and trail access. Not only will these folks be interested in visiting but also in relocating to the area. In doing such they will bring in career and business opportunities. Growth in cycling will lead to business growth and thus employment opportunities for business such as ours as well

Blue Ridge Cyclery is a locally owned independent bicycle dealer providing sales, service and rentals. We employ 12 employees and offer health care, paid time off, and a great work to life balance for our staff.

I just wanted to chime in w/ everyone and say that I support multi-use at Ragged. Some hiker only trails are okay but please make them an exception and not the norm. An example might be an in & out (as opposed to part of a loop) that goes to a spot on the lake or a view. The in & out would be easier to manage and less desirable for cyclist to use.

I was unable to attend the meeting at City Space last night concerning the future of the trails at Ragged Mountain and other potential adjacent properties, however I wanted to take a moment to share a few thoughts and comments. I'm a member of the Charlottesville Area Mountain Bike Club and I was a part of the trail building efforts at Preddy Creek Trails Park. It is my hope and desire that the Ragged Mountain properties can be developed in a similar manner as the Preddy Creek property, giving access to a more inclusive and diverse group of trail users.

I've used the Preddy Creek property in multiple capacities, as a mountain biker, hiker, jogger, bird watcher/photographer, and from my experience I've seen all of the groups coexist very well. I'm sure there are people that would like to maintain the Ragged Mountain property as a hiker/birdwatcher only area, however I feel that this unnecessarily excludes other groups from utilizing the trails.

As the City moves forward with this property please consider the trail building expertise and volunteer hours that CAMBC brings to the table. I look forward to being involved with the future development and utilization of this great property!

Thanks for the great work that Parks and Rec department does to provide the outdoor facilities for this area!

thanks for the meeting last night. I'm very encouraged by the generally unanimous support for multi-use trails in the park.

1. I believe the Ragged Mountain should be considered a park, not a wilderness site. I'm supportive of sensitivity to wildlife, but given its proximity to neighborhoods, and by a highway that can be heard from over 1/2 of the park, I'd rather not be significantly restricted by wildlife protection at the expense of access to trails, and the number of trails. I don't believe you need more parking, or playgrounds etc.
2. I support multi-use trails. The sooner we can allow this, the better.
3. I'm fine with dogs, but fully support treating dogs with the "go slow" approach.

How soon can we take down the "no biking" sign at the upper parking lot by the entrance to the old fire road?

I like the idea of several networks of trails, with connectors, and spurs to the interesting views and features in the area (like boulders/rockpiles). This makes it more fun for families to go with a destination in the park, rather than only providing a trail to walk around the lake.

I love the wood carvings of the trapper and bear at significant trail junctions.

I love the current trail as its laid out. Great sight lines and views.

Again, thanks for having the meeting last night. What can I do to have a decision on multi-use access happen as soon as possible. Do we have to wait until next year?

my two cents is that Ragged Mountain should be maintained as a passive use recreational park. There is no need for additional facilities or improvements. I think people should be able to walk, run, bike, or even ride horses on the trails. When I first moved here and saw the restriction that you could not RUN out there it struck me as the weirdest trail use limitation I had ever seen.

I would like to weigh in on behalf of mixed use trails at the Ragged Mountain Natural Area. I strongly support the building of mixed use, bike, running and walking trails along with single use walking trails. I enjoy quiet solitude on hikes as well as mountain biking opportunities. I have volunteered with CAMBC and will continue to do so to help develop the local trails system. Including groups like CAMBC, CAT and RTF will increase use of the area bringing additional people out to help with trails so more people can use this beautiful resource.

I'd like comment on the recreational plan for the "new" Ragged Mountain natural area. As an avid mountain biker, trail runner and hiker, I am excited for the potential to significantly increase the available trails right here in town. Previously, Ragged Mountain was our favorite place to

hike with the kids. While I hope that continues, I'd love to see the user-base expanded to include ALL trail users. I can appreciate the need for hiking-only trails, and completely support them. However, given the expansive land area and varied terrain, I believe that there is room for everyone to enjoy this gem. In my experience here and in other towns, shared use trails encourage people to get out and enjoy the outdoors. They bring together differing user-groups, and encourage community involvement.

I thank you for considering public input. We've seen the success of shared-use trails throughout Charlottesville and Albemarle County. The addition of Ragged Mountain can only add to that success and further boost Charlottesville's reputation as an outdoor-loving community.

One of the things that makes Charlottesville special is our unique sense of Community, and the socially responsible notion that public space should indeed be public and open to a diverse set of user groups.

For the first time in my career, we recently tore down a building at UVA and built back green space and a public use park. This is indicative of our town and what makes us separate from the average cities.

Ragged Mountain is a special piece of publically owned property and it would be counterproductive, and in fact, socially irresponsible to build amenities that cater to one small group, when **a far greater number of constituents can be satisfied by multi-use trails.**

This is a turning point. Move forward or take a step backwards.

As a citizen of Charlottesville and a board member of the Charlottesville Area Mountain Bike Club (CAMBC), I am writing to support shared use trails at Ragged Mt. I believe that done thoughtfully, shared use at Ragged Mt would provide a great benefit to the residents of the City. Although there are many urban and neighborhood trails in the City which are connected by the Rivanna Trail, there are no large parks where all users can enjoy a natural environment. Ragged Mt is a unique piece of property in the City that if managed well could fulfill this need and at the same time preserve the biology and the natural beauty of the land. Currently, any user other than hikers must drive a fair distance to enjoy local natural areas. The closest are Preddy Creek and Walnut Creek, which are each a 30 minute car ride. This distance can be prohibitive and is a barrier to many City residents.

I encourage the City to consider welcoming all user groups to thoughtfully enjoy the natural beauty of the Ragged Mt property.

As a local mountain biker and trail user, I welcome the discussion of modifying the trail use restrictions at the Ragged Mountain Natural Area. I fully support CAMBC's position of creating a network of multi-use (hiker, biker, runner, equestrian) trails at the Ragged Mountain Reservoir. There is ample space at this site and there is a long history of co-existence of trail users without conflict on Charlottesville/Albemarle public trails, e.g. Rivanna trail, Walnut Creek Park, etc. I also support the idea of creating dedicated hiker only loops and trails; however, these should be the exception of the trail network, not the norm. Despite not being a dog owner myself, I believe that dogs should have access to area also, with a dedicated midweek off leash day.

As a CAMBC member, I plan to volunteer my time to support the creation and maintenance of

these multi-use trails. I see these trail as an excellent chance to continue Charlottesville's goal of increasing the number of trail users and engaging the populace in healthy outdoor activities.

I support CAMBCs position to make shared use trails at Ragged Mountain.

I think it would add value to the area and build up Charlottesville's reputation as a bike friendly city and make it a destination for mountain bikers.

I also feel there is a need for specific use trails. Hiking only trails, for example, for those who want to relax and not be bothered by bikes or horses.

Biking only trails can also provide great value to the community. Cities across America, from Seattle to Philadelphia, have seen overwhelming success and community involvement in parks where the city and local riding clubs come together and create fun biking trails. These types of trails also bring tourists who spend money at local businesses and help support the community.

Creating a combination of shared and specific use trails on Ragged Mountain would be a valuable investment and make the city of Charlottesville an even better place to live and visit.

I understand that the management is changing with the trail system as the dam work concludes, and I welcome trails that would include cycling trails. I am an active member of the Charlottesville Albemarle Mountain Bike Club and volunteer multiple times each year for trailwork, clearing, and building at local parks including Chris Greene, Walnut Creek, and Preddy Creek.

I would like to have additional trails at Ragged Mountain that are open to cycling, running, hiking, and other mixed uses. There are two adults and one school-aged child in my family, and we all like to ride local trails and assist in the creation and maintenance of our local trail network. I think Ragged Mountain would benefit from trails that are open to all.

Please consider opening Ragged Mountain Natural Area to runners and mountain bikers. This park could make some vital connections in trails and improve our outdoor recreation and green space.

Hi I wanted to express my desire for trails to be developed in the Ragged Mountain Natural Area. I am an avid mountain biker and am hopeful that mountain biking-specific trails can be developed there. I believe that the mountain biking community would be willing to develop and maintain the trails.

Mountain biking is a healthy activity and having trails available makes the area more livable and provides a higher quality of life. My experience has been that mountain bikers are a respectful group of people who want to see the environment cared for and protected.

Thank you for the opportunity to share my opinion.

Camp Holiday Trails provides the following comments:

- We hope to have **access to some trails for our horse program** – both for trail riding with campers and also to keep our horses conditioned. Right now, our Camp is open year-round, however the riding program is June – August only.
- We hope for a **dogs on** vs. off leash rule – given proximity of trails to our camper population.
- We agree that the mt biking community has been a strong supporter of shared-use, and has helped maintain trails. We do want a distinction between bike use and bike racing and prefer the prior. We also know the mt. bike community has been eyeing (and at times using) culverts and trails on our property to extend their rides from the Ragged Mt trails and hope for some clear signage and policy to ensure more neighborly practices.
- We also wish to see strong wildlife protection practices in terms of trail and water use.
- We welcome a boat launch and pavilion AND please, please, please consider SOON a compost or other toilet at the Dam upper parking area (and lower if possible) as users come into Camp seeking a bathroom.



COUNTY OF ALBEMARLE
Parks & Recreation Department
401 McIntire Road
Charlottesville, Virginia 22902
Telephone (434) 296-5844
FAX (434) 293-0299

September 10, 2015

Mr. Brian Daly, Director
Charlottesville Parks and Recreation Department
P. O. Box 911
Charlottesville, VA 22902

Dear Brian,

Thank you for the opportunity to comment on this matter and this letter serves as support to the newly proposed rules of use by the Charlottesville Parks and Recreation Department at Ragged Mountain Natural Area.

The orientation at Ragged Mountain has now changed and the proposed changes, which I understand are citizen driven are those that are consistent with other public parks, not only in Albemarle County Parks but parks across Virginia. These much needed recreation opportunities speak to the needs and desires of all ages within our community.

Our experience over the years in working with community stakeholders in park and trail design and development, has demonstrated a keen and enthusiastic interest toward opportunities as what's being proposed, and I strongly encourage serious consideration of the proposed rules of use that will allow Ragged Mountain Natural Area to function as a public park.

Sincerely,

A handwritten signature in black ink, reading "Robert W. Crickenberger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert W. Crickenberger
Director

RWC:tp
L-20150910

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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date: October 5, 2015

Action Required: Discussion of Citizen’s Advisory Panel

Presenter: Chief Timothy J. Longo Sr., Charlottesville Police Department

Staff Contacts: Chief Timothy J. Longo Sr., Charlottesville Police Department

Title: Citizen’s Advisory Panel

Background:

Several years ago Council created the Citizen’s Advisory Panel (CAP) to serve as a liaison between the Charlottesville Police Department and the community. Upon receipt of a recent request from the Chief of Police to add a UVA student representative, Council requested an examination of how the panel will be utilized as they move forward due to concerns with regard to the whether the panel is achieving its intended purpose and is appropriately named.

Discussion:

It is the opinion of the Chief of Police that City Council has three viable options with regard to the Citizen’s Advisory Panel: (1) Direct the Citizen’s Advisory Panel and the Human Rights Commission individually to review the President’s 21st Century Policing Report and use it as a substantive road map to determine how they can work with the Charlottesville Police Department in implementing the recommendations that are set forth, (2) Merge the Citizens Advisory Panel with the Human Rights Commission and provide them with the specific direction set out in above in option 1, or (3) Retain the existing Citizens Advisory Panel and reframe their current responsibilities with a view towards specifically tasking them with a role in police recruitment, selection, retention, training, and enhancing police and community relations or some combination thereof, and further provide them specifically to review the President’s 21st Century Policing Report and use it as a substantive roadman to determine how they can work with the police department in implementing the recommendations that are set forth in the report.

City staff is of the opinion that choosing any of these options, or any combination thereof, should follow engagement and additional input from members of both the current Citizen’s Advisory Panel and the Human Rights Commission, as well as members of the public.

Alignment with City Council’s Vision and Strategic Plan:

The Chief’s recommendation aligns with Council’s Vision to be a leader in social and economic justice, and healthy race relations.

Furthermore, this recommendation is in alignment with the City's Strategic Plan, Goal 5: To Foster Strong Connections.

Lastly, it supports both building collaborative partnerships, and promoting community engagement, by reviewing the role and purpose of the Citizens Advisory Panel.

Community Engagement:

The community is engaged on the Citizens Advisory Panel and Human Rights Commission. The staff recommendation will provide opportunity for further community engagement on the name, purpose, and composition of the group.

Budgetary Impact:

This action has no impact on the budget.

Recommendation:

If Council should choose to merge the Citizens Advisory Panel with the Human Rights Commission, staff requests the opportunity to convene the Citizens Advisory Panel, the Human Rights Commission, and City staff from the Police Department, the Office of Human Rights, and the City Manager's Office with a charge to determine an appropriate name for the group, develop the roles and responsibilities, and examine membership expectations. This item could return to Council for consideration on their regular agenda in December.

Alternatives:

Council may elect to accept the staff recommendation, continue with the current group, or merge the group with the Human Rights Commission.

Attachments:

n/a