



CITY COUNCIL AGENDA
October 19, 2015

6:00 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, City Manager Review, Acquisition of utility easement along McIntire Road)

7:00 p.m. **Regular Meeting**

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

AWARDS/RECOGNITIONS ANNOUNCEMENTS VML Award; Gold Status for HEAL; EPA WaterSense Partner of the Year

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 October 5
- b. APPROPRIATION: Virginia Juvenile Community Crime Control Act Grant (VJCCCA) – \$452,704 (2nd of 2 readings)
- c. APPROPRIATION: Adult Drug Treatment Court Grant Award – \$205,000 (2nd of 2 readings)
- d. APPROPRIATION: State Criminal Alien Assistance Program 2015 Grant – \$7,697 (2nd of 2 readings)
- e. APPROPRIATION: Charlottesville Area Transit FY2016 Grants – \$480,486 (2nd of 2 readings)
- f. APPROPRIATION: Runaway Emergency Shelter Program Grant – \$212,000 (1st of 2 readings)
- g. RESOLUTION: Sidewalk Waiver Request for 219 Lankford Avenue (1st of 1 reading)
- h. RESOLUTION: Initiate ZTA for Microbreweries (1st of 1 reading)
- i. RESOLUTION: VDOT Transportation Alternative Program Grant Application for Water Street Shared Use Path (1st of 1 reading)
- j. ORDINANCE: Short Term Rental Tax amendment (2nd of 2 readings)
- k. ORDINANCE: Increase Limit of Maximum Financial Worth for Rent Relief Program (2nd of 2 readings)
- l. ORDINANCE: Franchise Agreement with Intellifiber (formerly Dominion Telecom) (2nd of 2 readings)

2. PUBLIC HEARING / RESOLUTION* McGuffey Art Center Lease (1st of 2 readings)

3. PUBLIC HEARING / ORDINANCE* Specimen Tree Designation in McIntire Park (1st of 2 readings)

4. PUBLIC HEARING / ORDINANCE* Ragged Mountain Natural Area Rules of Use (2nd of 2 readings)

5. PUBLIC HEARING / ORDINANCE* Easement to RWSA for Water Line in Towe Park (1st of 2 readings)

6. RESOLUTION* Market Plaza Utility Agreement between City and CEDA (1st of 1 reading)

7. RESOLUTION* Market Plaza Lease for City Market (1st of 1 reading)

8. ORDINANCE* Sale of City Property at 200 2nd Street SW (Market Plaza) (2nd of 2 readings)

9. ORDINANCE* Development Code Changes for Application Review Process (2nd of 2 readings)

10. REPORT ONLY Solar Energy (*written report only*; no verbal presentation)

OTHER BUSINESS
MATTERS BY THE PUBLIC
COUNCIL RESPONSE TO MATTERS BY THE PUBLIC

*ACTION NEEDED

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

GUIDELINES FOR PUBLIC COMMENT

**We welcome public comment;
it is an important part of our meeting.**

Time is reserved near the beginning and at the end of each regular City Council meeting for Matters by the Public.

Please follow these guidelines for public comment:

- If you are here to speak for a **Public Hearing**, please wait to speak on the matter until the report for that item has been presented and the Public Hearing has been opened.
- Each speaker has **3 minutes** to speak. Please give your name and address before beginning your remarks.
- Please **do not interrupt speakers**, whether or not you agree with them.
- Please **refrain from using obscenities**.
- If you cannot follow these guidelines, you will be escorted from City Council Chambers and not permitted to reenter.

**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 Easement to Rivanna Water & Sewer Authority – Darden Towe Park

Background:

The Rivanna Water and Sewer Authority is in the process of installing flow meters across the network of water supply in the City and Albemarle County. This easement is for a small area of Darden Towe Park along a main water distribution line where the line crosses jurisdictional boundaries to better allocate proportional water use in the City and the County.

Discussion:

The installation of these meters is one component to better allocate proportional use of the water supply per the four party agreement. Units are being installed where ever a main distribution lines crosses jurisdictional lines; and are is designed to measure amount of water being distributed to the county. Similar units measure how much is going into the City of Charlottesville so that cost sharing can be determined. There are multiple units being installed in multiple locations in the region, however this easement is required due to its location within Darden Towe Park, which is jointly owned by the City and Albemarle County.

Alignment with City Council’s Vision and Strategic Plan:

The granting of this easement support the City Council’s “Green City” and “America’s Healthiest City” visions.

Community Engagement:

No specific community engagement was conducted prior to consideration of granting of this easement. The location of this easement within Darden Towe Park does not impact any current recreational facility or future facility development.

Budgetary Impact:

This report has no impact on the General Fund.

Recommendation:

Staff recommends granting of this easement to the Rivanna Water and Sewer Authority at Darden Towe Park.

Attachments:

Attachment 1
Attachment 2

Ordinance
Deed of Easement

ATTACHMENT 1

AN ORDINANCE GRANTING A PERMANENT EASEMENT TO THE RIVANNA WATER AND SEWER AUTHORITY FOR THE INSTALLATION OF WATER LINE FACILITIES IN DARDEN TOWE PARK

WHEREAS, the Rivanna Water and Sewer Authority (“RWSA”) has requested the City of Charlottesville (“City”) to grant a permanent easement across a portion of Darden Towe Park, located in the County of Albemarle on Stony Point Road and jointly owned by the City and the County of Albemarle, as shown on the attached plat dated May 12, 2015; and,

WHEREAS, the proposed easement will allow for the installation and maintenance of water line facilities to serve Towe Park; and,

WHEREAS, in accordance with Virginia Code Sec. 15.2-1800(B), a public hearing was held to give the public an opportunity to comment on the conveyance of this easement; and

WHEREAS, City staff have reviewed the request and have no objection to the conveyance of said easement to RWSA.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a Deed of Easement and such other documents as may be requested by RWSA, in form approved by the City Attorney, to convey the above-described easement to the Rivanna Water and Sewer Authority.

ATTACHMENT 2

This document was prepared by:
Rivanna Water and Sewer Authority
695 Moores Creek Lane
Charlottesville, Virginia 22902

Tax Map and Parcel Number 06200-00-00-02300

This **DEED OF EASEMENT**, made this ____ day of _____, 2015 by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA AND THE COUNTY OF ALBEMARLE, VIRGINIA**, Grantor (collectively, the “Property Owner”) and **RIVANNA WATER AND SEWER AUTHORITY**, a body politic and corporate created pursuant to the Virginia Water and Waste Authorities Act, whose address is 695 Moores Creek Lane, Charlottesville, Virginia 22902, Grantee (the “Authority”).

WITNESSETH:

WHEREAS, the Property Owner has agreed to grant the Authority the easement shown on the plat attached hereto and recorded herewith entitled “PLAT SHOWING A RWSA PERMANENT WATERLINE EASEMENT TO BE ACQUIRED BY RIVANNA WATER AND SEWER AUTHORITY ON TRACT A OF THE LAND OF CITY OF CHARLOTTESVILLE, VIRGINIA AND THE COUNTY OF ALBEMARLE, VIRGINIA, RIVANNA MAGISTERIAL DISTRICT, ALBEMARLE COUNTY, VIRGINIA”, prepared by Rinker Design Associates, P.C., dated May 12, 2015 (the “Plat”); and

WHEREAS, as shown on the Plat, the proposed easement crosses a portion of the property conveyed to Property Owner by deed recorded in the Clerk’s Office of the Circuit Court of the County of Albemarle in Deed Book 872, page 1, and Property Owner is the fee simple owner of the said property as of the date hereof.

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, Property Owner

does hereby GRANT and CONVEY with SPECIAL WARRANTY of TITLE unto the Authority a perpetual right of way and easement to construct, install, operate, maintain, repair, replace, relocate and extend a water line consisting of pipes, equipment, and appurtenances to such pipes and equipment, over, under and across the real property of Property Owner located in the County of Albemarle, Virginia, and to access any other adjacent easement held by the Authority, the location and width of the easement hereby granted and the boundaries of the property being more particularly described and shown on the Plat as “RWSA Permanent Water Line Esmt. (Hereby Granted)” (the “Easement”). Reference is made to the Plat for the exact location and dimensions of the Easement hereby granted and the property over which the same crosses.

Easement Obstructions

Property Owner, its successors or assigns, agree that trees, shrubs, fences, buildings, overhangs or other improvements or obstructions shall not be located within the Easement; provided, however, Property Owner shall be permitted to (i) retain the asphalt walking path existing as of the date of this Easement (the “Existing Park Improvement”) and (ii) install additional Park improvements (“Additional Park Improvements”, and together with the Existing Park Improvement, the “Park Improvements”) within the Easement which do not interfere with any activities reasonably necessary to allow the Authority to maintain, repair or replace the pipe, meter vault, and structures within the meter vault to be installed by the Authority within the Easement or to read the meter within the vault. The Easement shall include the right of the Authority to cut any trees, brush and shrubbery, remove obstructions, including any Park Improvements, and take other similar action reasonably necessary to provide economical and safe water line construction, installation, operation, maintenance, repair, replacement, relocation and extension. Following the removal of the Existing Park Improvement, the Authority shall restore said improvement as nearly as practical to the same condition as prior to such removal, but otherwise the Authority shall have no responsibility to Property Owner, its successors or assigns, to replace or reimburse the cost of trees, brush, shrubbery,

or other obstructions or Park Improvements located in the Easement if cut or removed or otherwise damaged.

Easement Access and Maintenance

As part of the Easement, the Authority shall have the right to enter upon the above-described property within the Easement for the purpose of installing, constructing, operating, maintaining, repairing, replacing, relocating and extending the above-described water line and appurtenances thereto, within the Easement; and in addition, the Authority shall have the right of ingress and egress thereto as reasonably necessary to construct, install, operate, maintain, repair, replace, relocate and extend such water lines. If the Authority is unable to reasonably exercise the right of ingress and egress over the right-of-way, the Authority shall have the right of ingress and egress over the property of Property Owner adjacent to the right-of-way, and shall restore surface conditions of such property adjacent to the right-of-way as nearly as practical to the same condition as prior to the Authority's exercise of such right.

Excavation

Whenever it is necessary to excavate earth within the Easement, the Authority agrees to backfill such excavation in a proper and workmanlike manner so as to restore surface conditions as nearly as practical to the same condition as prior to excavation and consistent with the provisions of the section titled "Easement Obstructions" above, including restoration of such paved surfaces as may be damaged or disturbed as part of such excavation.

Ownership of Facilities

The facilities constructed within the Easement shall be the property of the Authority, its successors and assigns, which shall have the right to inspect, rebuild, remove, repair, improve and make such changes, alterations and connections to or extensions of its facilities within the boundaries of the Easement as are consistent with the purposes expressed herein.

WITNESS the following signatures and seals:

PROPERTY OWNER:

CITY OF CHARLOTTESVILLE, VIRGINIA

_____(SEAL)

Name: Maurice Jones

Title: City Manager

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Maurice Jones, City Manager, on behalf of the City of Charlottesville, Virginia, Property Owner.

Notary Public

My Commission Expires: _____

Commission No.: _____

Approved as to form:

By: _____
City Attorney

PROPERTY OWNER:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____ (SEAL)
Thomas C. Foley, County Executive

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Thomas C. Foley, County Executive, on behalf of the County of Albemarle, Virginia, Property Owner.

Notary Public

My Commission Expires: _____

Commission No.: _____

Approved as to form:

By: _____
County Attorney

AUTHORITY:

RIVANNA WATER AND SEWER AUTHORITY

By: _____(SEAL)
Thomas L. Frederick, Jr., Executive Director

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE, to wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Thomas L. Frederick, Jr. as Executive Director of Rivanna Water and Sewer Authority.

Notary Public

My Commission Expires: _____ Commission No.: _____

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



Agenda Date: October 19, 2015

Action Required: Approval of Resolution

Presenter: Chris Engel, Economic Development Director

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

Title: **Market Plaza Utility Agreement between City and CEDA**

Background: At the direction of City Council staff has been working to negotiate the sale of city property including five parcels bounded by Water Street, South Street, First Street and Second Street and the adjacent section of right-of-way along First Street. The sale will facilitate the development of Market Plaza a significant 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.

Discussion: 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 a Development Cost Reimbursement Agreement with the Charlottesville Economic Development Authority. The developer of 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 \$2,625,000.

Work will begin as soon as possible following the execution of the reimbursement agreement. To pay for this work, funds are proposed to come from two sources and

the money be allocated to CEDA to implement the project.

It is proposed that funding come from the following sources:

P-00167	Strategic Investment Fund	\$1,000,000
P-00127	Utility Undergrounding Fund	<u>250,000</u>
		\$1,250,000

A draft of the Development Cost Reimbursement Agreement to be approved by CEDA has been drafted and is attached along with a Funding Agreement between the City and CEDA.

Alignment with City Council’s Vision and Priority Areas: This agenda item aligns with the City Council vision related to economic sustainability and current priority related to the City Market.

Citizen Engagement: This matter has been discussed at several City Council meetings including a public hearing at the October 5, 2015 meeting. It has also been discussed in conjunction with the reviews performed by Planning Commission and Board of Architectural Review.

Budgetary Impact: The City contribution to the project is \$1,250,000. This will leverage an equal or greater contribution from the developer to complete the utility work. Funds previously appropriated in City CIP funds will be used for this project.

Recommendation: Staff recommends that the attached resolution be approved.

Alternative: City Council could decide for the City to bid the project and make the improvements without the involvement of the Market Plaza development.

Attachments: Funding agreement between City and CEDA
Draft Development Cost Reimbursement Agreement

**FUNDING AGREEMENT
BETWEEN THE CITY OF CHARLOTTESVILLE AND
THE CHARLOTTESVILLE ECONOMIC DEVELOPMENT AUTHORITY**

THIS AGREEMENT is entered into this ____ day of _____, 2015 by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation (hereafter “City”), and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF CHARLOTTESVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereafter “Authority”).

WHEREAS, the City is authorized pursuant to Virginia Code sec. 15.2-953 (B) to make gifts, donations and appropriations of money to industrial development authorities for the purposes of promoting economic development; and,

WHEREAS, the Authority is authorized pursuant to Virginia Code sec. 15.2-4905 (13) to make grants or loans to any person or entity for the purpose of promoting economic development in the City; and,

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 that the City desired the undergrounding of utilities around 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 (hereafter referred to as “the Property”), and the parties have negotiated an Agreement for the sale and development of the Property; and,

WHEREAS, the City and Market Plaza agree that it is in the best interests of both parties to relocate underground certain aboveground utilities in the rights-of-way adjacent to and on the Property, and 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; and,

WHEREAS, construction of the mixed use development project will provide additional infill residential and commercial space, will create jobs in the Downtown business district; 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 will provide a permanent improved location in Downtown Charlottesville for the operation of the City Market for a term of 99 years; and,

WHEREAS, the undergrounding of utilities will contribute to a more attractive development, is consistent with the aesthetics of the surrounding historic district, will further the City's longstanding policy that encourages undergrounding where possible, and will improve the reliability of utility services in the area; and,

WHEREAS, Market Plaza has agreed that with financial assistance from the Authority it will be responsible for designing and managing the undergrounding of certain designated utilities, with the work to be performed either by the affected utility or third party contractors employed by Market Plaza.

NOW, THEREFORE, the City and the Authority do hereby agree as follows:

1. The City shall make available to the Authority funding in the amount of One Million, Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00) for the design, engineering, management, and relocation underground of certain aboveground utilities. The funds made available to the Authority pursuant to this Agreement shall be used for no purpose other than those specified herein.

2. From the funding made available to it pursuant to this Agreement the Authority shall, from time to time, make reimbursement payments to Market Plaza up to a maximum amount of \$1,250,000.00 for the reasonable and necessary expenses incurred by Market Plaza in the utility undergrounding work. The Authority shall have no obligation to make any payments to Market Plaza other than with funds provided to it by the City under this Agreement.

3. As used herein, the term "reasonable and necessary expenses" subject to reimbursement by the Authority include, but are not limited to:

- (a) the cost of designing and engineering the utility undergrounding work;
- (b) the cost of surveying, submittals and site preparation work necessary for the utility undergrounding;
- (c) all costs associated with the work required to relocate the existing utilities underground and to adjust existing City utilities if required by the relocation work, including the cost of all labor, materials, machinery and equipment; and,
- (d) the cost of managing and supervising the work, including related costs such as the costs for bonding, insurance and legal services.

For purposes of this Agreement the costs incurred by Market Plaza and subject to reimbursement by the Authority shall be at rates consistent with standard market rates paid in the Charlottesville, Virginia area for projects of similar design and complexity.

4. The Authority and Market Plaza shall enter into an agreement that provides the terms and conditions under which funding will be made available to Market Plaza. At a minimum, the Agreement shall provide for:

(a) Market Plaza's obligation to perform the utility undergrounding work in accordance with all applicable laws, regulations, standards, requirements and specifications of the Commonwealth of Virginia and the City of Charlottesville, and with the final approved site plan for the Market Plaza project;

(b) The submission by Market Plaza of a proposed project budget to the Authority;

(c) Monthly progress payments by the Authority to Market Plaza upon Market Plaza's submission of a payment request with supporting documentation, statements, receipts and invoices for the expenses and costs sought to be reimbursed;

(d) Retainage by the Authority of a specified portion of each payment request from Market Plaza until substantial completion of the work by Market Plaza;

(e) A limitation on the funding available from the Authority in the amount of \$1,250,000.00;

(f) Market Plaza's unconditional obligation to pay when due all costs of the utility undergrounding work that are in excess of the funding provided by the Authority.

The agreement between the Authority and Market Plaza may also include such additional terms and conditions as may be agreed upon by Market Plaza and the Authority.

5. This Agreement shall terminate upon:

(a) written notice from the City that the contemplated funding, or any part thereof, will not be made available to the Authority by the City;

(b) the termination of the Development Cost Reimbursement Agreement between the Authority and Market Plaza prior to completion of all obligations of Market Plaza thereunder;

(c) abandonment of the development project by Market Plaza;

(d) the appointment of a guardian for, dissolution of, termination of existence of, appointment of a receiver for, assignment for the benefit of creditors of, insolvency, or commencement of any bankruptcy or insolvency proceeding by or against Market Plaza;

(e) payment by the City to the Authority of all funding contemplated by this Agreement; satisfactory completion of the construction of the utility undergrounding work by Market Plaza in accordance with its agreement with the Authority.

8. At the time of termination of this Agreement the Authority shall provide the City with an accounting of all funds paid by the Authority to Market Plaza. Any funds in the possession of the Authority pursuant to this Agreement which have not been paid to Market Plaza at the time of termination shall, upon demand, be promptly returned to the City.

9. No part of this Agreement may be assigned or subcontracted by the Authority without the prior written approval of the City of Charlottesville, which approval may be granted or withheld in the sole discretion of the City.

10. The Authority agrees that duly authorized representatives of the City shall have access to any books, documents, papers and records which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

11. No failure on the part of the City to enforce any of the terms or conditions set forth in this Agreement shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by the Authority shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance of the performance of all or any part of this Agreement by the City, for or during any period(s) following a default or failure to perform by the Authority, shall not be construed as or deemed to be a waiver by the City of any rights hereunder, including, without limitation, the City's right to terminate this Agreement.

12. Neither the Authority, nor its agents, employees, assignees nor subcontractors, shall be deemed employees or agents of the City by virtue of any services performed pursuant to this Agreement.

13. In the event that any term, provision, or condition of this Agreement, or the application thereof to any person or circumstance shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of any term, provision or condition contained herein to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

14. This Agreement may be modified by the parties during performance, but no modification shall be valid or enforceable unless in writing and signed by each of the parties hereto in the same manner and with the same formality as this Agreement.

15. The payment obligations of the City of Charlottesville in future fiscal years are expressly conditioned upon the availability of and appropriation by the City Council of sufficient public funds therefore in succeeding fiscal years. When public funds are not appropriated or are otherwise unavailable to support continuation of payment by the City in a subsequent fiscal year, this Agreement and the City's obligations hereunder shall automatically expire, without liability or penalty to the City. Within a reasonable time following City Council's adoption of a budget, the City shall provide the Authority with written notice of any non-appropriation or unavailability of funds affecting this Agreement.

16. The only obligation of the Authority pursuant to this Agreement is to disburse funding as provided herein. Nothing herein shall be construed as making the Authority responsible for any part of the obligations or performance of Market Plaza, or as a guarantor of Market Plaza's development.

17. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. All litigation arising out of this Agreement shall be commenced and prosecuted in the federal, state or local court(s) having jurisdiction within the City of Charlottesville, Virginia.

18. This Agreement represents the entire agreement between the parties and there are no other agreements or understandings between the parties, either verbal or written, which have not been incorporated herein.

WITNESS the following authorized signatures:

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Title: _____

Date: _____

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Title: _____

Date: _____

Funds are available:

Approved as to form:

Director of Finance

City Attorney

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Manager is hereby authorized to sign the following document, in form approved by the City Attorney or his designee.

Funding Agreement between the City of Charlottesville and the Economic Development Authority of the City of Charlottesville, setting forth the terms of an agreement to share the costs of undergrounding utilities for the Market Plaza project.

DEVELOPMENT COST REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT COST REIMBURSEMENT AGREEMENT (“Agreement”) is entered into this ____ day of October, 2015, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF CHARLOTTESVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“**CEDA**”), and **MARKET PLAZA LLC**, a Virginia limited liability company (“**Market Plaza**”) (hereinafter each of the foregoing parties being individually referred to as “Party” or collectively referred to as “Parties”). This Agreement shall be effective upon its execution by both Parties (the “Effective Date”).

RECITALS

WHEREAS, Market Plaza has entered into an agreement with the City of Charlottesville to purchase City-owned property identified as Parcels 71, 72, 73, 74 and 75 on City Real Property Tax Map 28 and the First Street, South right-of-way between Water Street and South Street (the “Property”); and,

WHEREAS, the agreement between the City and Market Plaza provides further that Market Plaza will develop the Property as a mixed use development with residences, offices, retail space, underground parking and an improved area that will be leased to the City for the operation of the City Market; and,

WHEREAS, in furtherance of the development the City and Market Plaza have agreed that certain designated utilities currently located in the public rights-of-way and on the Property should be placed underground, and that the City and Market Plaza should share in the costs of the undergrounding; and,

WHEREAS, Market Plaza has expressed a willingness to design and engineer the undergrounding work; to arrange for the work to be performed by the affected utilities or third party contractors; and to manage and supervise the work through completion, if financial assistance for the work is provided through CEDA; and,

NOW THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the payment of ten dollars (\$10.00) and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 - DEFINITIONS

For all purposes of this Agreement, the following terms shall have the indicated meanings, unless the context otherwise specifically requires:

1.1 “City” shall mean the City of Charlottesville, Virginia.

1.2 “Estimated Undergrounding Costs” shall mean the preliminary estimated budget for the undergrounding of utilities as shown on the Undergrounding Plan. The “Estimated Undergrounding Costs” is a one-page document entitled “Market Plaza: Utility Relocation Estimated Costs Summary”, which is attached hereto as **Exhibit A**. The parties acknowledge

that the costs shown on Exhibit A are preliminary estimates only, and that the actual costs of undergrounding or relocating the designated utilities may be greater or lesser than the estimates.

1.3 “Sales Agreement” means the agreement between the City of Charlottesville and Market Plaza entitled “Agreement for the Sale of Real Property between the City of Charlottesville, as Seller, and Market Plaza LLC, as Purchaser”, approved and authorized by an ordinance adopted by the City Council of the City of Charlottesville on October 19, 2015.

1.4 “Site Plan” means Market Plaza’s site plan for the mixed use development on the Property, which incorporates the Undergrounding Plan as defined herein. A complete and accurate copy of the final approved site plan will be maintained on file and available for public inspection in the City Department of Neighborhood Development Services.

1.5 “Site Work” means all labor, equipment and materials necessary to complete the undergrounding or relocation of utilities as shown on the Undergrounding Plan, in full compliance with all applicable laws and regulations.

1.6 “Undergrounding Plan” refers to two (2) drawings entitled “Market Plaza Utility Relocation Plan – Preliminary Demolition Plan” (page 1) and “Preliminary Utility Layout Plan” (page 2), prepared by the Timmons Group and dated September 21, 2015. This Undergrounding Plan is attached hereto as **Exhibit B**. If this Undergrounding Plan is amended or modified as a part of the final site plan approval for the Market Plaza development, the amended or modified undergrounding plan will be substituted automatically for the two sheets initially attached hereto as Exhibit A. No other changes or adjustments shall be made to the Undergrounding Plan unless such changes or adjustments are approved in writing by CEDA and Market Plaza.

SECTION 2 – SITE WORK AND UNDERGROUNDING OF UTILITIES

2.1 Site Plan; Undergrounding Plan. Market Plaza and CEDA hereby agree on all elements of the utility undergrounding and relocation work as shown on the Undergrounding Plan attached hereto, subject to the final approval of the Site Plan by the City. The final Undergrounding Plan as approved by the City as part of the final Site Plan shall establish the basis for determining the requirements for the Site Work as contemplated in this Agreement.

In the event Market Plaza fails to obtain final Site Plan approval from the City, or any other approval required to develop the Property as contemplated in the Sales Agreement, or obtains final Site Plan approval with such material changes or adjustments that Market Plaza elects, in its sole discretion, not to proceed with the Site Plan, then this Development Cost Reimbursement Agreement shall be null and void, with neither party having any further obligation hereunder.

2.2 Site Work. Market Plaza shall be responsible for the completion of the Site Work, subject to the terms and conditions of this Agreement. Subject to authorized adjustments and delays as permitted under this Agreement, Market Plaza and CEDA anticipate that all of the Site Work will be substantially completed within _____ (__) months after the final approval of the Site Plan and issuance of approvals and permits necessary to allow Market Plaza to complete the Site Work; provided, however, that the period for completion of the Site Work shall be extended

for a reasonable time commensurate with any delay from any building or construction approvals or permits not being issued by the appropriate building or regulatory authority in a timely manner due to no fault of Market Plaza or by material changes requested or ordered in the Site Work by the City or CEDA or any party other than Market Plaza, or by Force Majeure events (as defined in Section 7, *infra*) or any other cause not within the sole control of Market Plaza; provided, further, however, that Market Plaza shall have the right to extend the period for substantially completing the Site Work for two (2) additional months upon written notice provided to CEDA. Any other extension of the period for Market Plaza to substantially complete the Site Work shall be mutually agreed upon by CEDA and Market Plaza.

2.3 Scope of Site Work. Market Plaza will be solely responsible for: (i) obtaining, or requiring its contractors and subcontractors to obtain, all required licenses, permits and approvals for performance of the Site Work; (ii) completing the Site Work in a workmanlike manner and in keeping with generally prevailing engineering and construction standards and practices for projects of similar design and complexity in the Charlottesville, Virginia area, and in accordance with the Undergrounding Plan and the Site Plan together with all applicable laws, regulations, standards, requirements and specifications, including all applicable standards of the Commonwealth of Virginia and the City Departments of Neighborhood Development Services (“NDS”) and Public Works for public utilities; (iii) furnishing all necessary labor, materials and equipment required for performing the Site Work, subject to the requirements under clause (ii) above and any restrictive covenants, easements, encumbrances and conditions of record existing on property where the site work will be performed; and (iv) determining all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Site Work, subject to the requirements of clause (ii) above.

2.4 Contractors, Subcontractors and Other Agreements. Market Plaza may, in its discretion, arrange for the Site Work to be performed in whole or in part by the affected utility or utilities, or enter into an appropriate construction contract (or contracts) with a licensed general contractor (or contractors) selected by Market Plaza for the undergrounding and relocation of the utilities and completion of the Site Work. Any portion or aspect of the Site Work that Market Plaza’s contractor(s) does not customarily perform with its own personnel may be performed under subcontracts or by other appropriate agreements with the Contractor and/or Market Plaza. Market Plaza will obtain market bids and proposals for the Site Work from contractors, subcontractors and material or equipment suppliers (the “Project Bids”), which will be disclosed to and subject to approval by CEDA. Notwithstanding the foregoing, Market Plaza shall not be required to obtain bids from or contract with any particular contractor, subcontractor or supplier of materials or equipment, and Market Plaza reserves the right to determine in its sole reasonable discretion, with approval of CEDA, which contractor(s), subcontractor(s) and material or equipment supplier(s) and bids obtained from any such contractor, subcontractor or material or equipment supplier will be accepted.

2.5 Completion of Undergrounding. Within thirty (30) days following substantial completion of the Site Work, representatives of Market Plaza, the City Departments of Neighborhood Development Services (NDS) and Public Works and CEDA shall meet together and confer and prepare a written punch list setting forth any incomplete or defective items of the Site Work (if any) that require additional work by Market Plaza or its contractors (“Punch List”). Market Plaza will perform or cause all items of additional work disclosed in the Punch List to be

fully performed within thirty (30) days following approval by Market Plaza, NDS, Public Works and CEDA of the Punch List, provided that if such additional work requires more than thirty (30) days to complete, Market Plaza shall have such additional time as is reasonably necessary under the circumstances to complete the same if it has commenced to complete such Punch List items within such thirty (30) day period and diligently pursues same to completion. All such Punch List items shall be completed as Site Work in accordance with the terms and conditions of this Agreement.

2.6 Utility Relocation Provisions in the Sales Agreement. The provisions in Section VIII of the executed Sales Agreement between the City and Market Plaza related to the undergrounding of utilities are incorporated herein by reference as if fully set out as a part of this Agreement.

SECTION 3 – SITE WORK COST REIMBURSEMENT

3.1 Definitions. For purposes hereof, the term “Site Work Costs” means all hard and soft costs associated with the work required to implement and complete the Undergrounding Plan or otherwise necessarily incurred by Market Plaza in fulfilling the Undergrounding Plan or in the proper performance of the Site Work, as reflected in the Project Budget (as defined below) approved by Market Plaza and CEDA. Market Plaza agrees that all such Site Work Costs shall be at rates consistent with standard market rates paid in the Charlottesville, Virginia area for projects of similar design and complexity. For purposes of this paragraph the term “soft costs” includes design, engineering, geotechnical, testing / stormwater certification, submittal fees, surveying, legal and maintenance costs.

3.2 Project Budget. Based on the Undergrounding Plan as approved in final form by Market Plaza, CEDA and the City, and the Project Bids, Market Plaza will prepare and submit to CEDA a detailed written budget for the Site Work containing commercially reasonable estimations of and projections for the amount of all Site Work Costs (the “Project Budget”). The Project Budget shall govern the Site Work Costs until modified, corrected, supplemented, amended or replaced, in whole or in part, as herein provided. Any such adjustment or deviation, once approved by Market Plaza and CEDA shall constitute a portion of the Project Budget and the Project Budget shall be revised to reflect the same. Any other amendment, correction, adjustment or supplement to the Project Budget or replacement thereof shall be subject to the approval of CEDA. CEDA reserves the right to employ at its sole cost and expense a qualified project manager or professional costs estimator to review and evaluate the Project Budget and any amendments, corrections, adjustments or supplements thereto or replacements thereof, to monitor the progress of the Site Work and to approve Market Plaza’s applications for payment. Market Plaza agrees to allow CEDA’s representative reasonable access to the site during construction and to provide, upon request, any documentation necessary for CEDA’s representative to approve applications for payment.

3.3 Maximum CEDA Funding for Site Work Costs Market Plaza and CEDA acknowledge and agree that (i) the maximum amount of the Site Work Costs to be funded and paid by CEDA shall not exceed the sum of One Million, Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00); and (ii) Market Plaza will be responsible for the payment of all

Site Work Costs in excess of the Maximum CEDA Funding amount. CEDA's obligation to make payments to Market Plaza pursuant to this Agreement is expressly conditioned upon CEDA's receipt of funding for this project from the City of Charlottesville. By executing this Agreement Market Plaza represents and covenants that it has, or will have prior to the Work Commencement Date (defined in section 4.1, *infra*) the financial resources adequate to pay all reasonably foreseeable Site Work costs above the Maximum CEDA funding.

3.4 Payment and Reimbursement to Market Plaza for Site Work Costs. CEDA agrees to reimburse and pay Market Plaza for the full amount of the Site Work Costs incurred by Market Plaza in construction of the utility undergrounding and relocation and completion of the Site Work up to the Maximum CEDA Funding amount. CEDA shall pay and reimburse up to the Maximum CEDA Funding amount to Market Plaza based on the following payment terms:

(a) CEDA shall make monthly progress payments to Market Plaza as the Site Work progresses on the following basis.

(i) By the fifteenth day (15th) day of each month, Market Plaza will submit for review and approval to CEDA a request for payment and an invoice (or invoices) for the Site Work done during the previous month together with any supporting documentation, statements, receipts and invoices therefor (each a "Payment Request"). Upon receipt and approval of each Payment Request, CEDA shall pay Market Plaza the amount invoiced on or before the fifth (5th) day of the following month. All progress payments shall be subject to a five percent (5%) retainage.

(ii) Upon Market Plaza's notice to CEDA that the Site Work for the utility undergrounding and relocation is substantially completed and ready for final inspection, acceptance and for final payment, and upon CEDA's receipt of Market Plaza's request for final payment and invoice (or invoices together with any supporting documentation, statements, receipts and invoices therefore), CEDA, NDS, Public Works and Market Plaza shall complete the walk-through inspection and evaluation of the Site Work and agree upon the Punch List as provided in Section 2.5. Final payment, constituting the entire unpaid balance of the Maximum CEDA Funding, including, but not limited to, the full amount of all retainage from any progress payments ("Final Payment"), shall be due and payable by CEDA when (i) CEDA, Market Plaza, NDS and Public Works agree that the Site Work is substantially completed, (ii) CEDA has reviewed and approved the Final Payment request submitted by Market Plaza together with all prior payment submissions for the Site Work, and (iii) this Agreement has been fully performed by Market Plaza, except for Market Plaza's responsibility to complete or correct Punch List items and to satisfy other requirements, if any, which necessarily survive Final Payment. In the event there remain any Punch List items, CEDA may withhold from the Final Payment an amount equal to twice the agreed upon cost of completing the items remaining on the Punch List or repairing items that require repair. CEDA shall hold any such amounts in escrow and release the same immediately to Market Plaza when such remaining Punch List items are completed or repaired.

(b) By making the Final Payment under this Agreement, CEDA signifies acceptance of the Site Work and agrees that the Site Work, subject to full and timely

completion of the any Punch List items, has been completed in conformity with the Plans and Specifications and this Agreement.

3.5 CEDA's Failure to Pay for the Site Work. If CEDA shall fail to pay when due to Market Plaza all or any portion of the Site Work Costs up to the Maximum CEDA Funding amount, or if CEDA fails to pay when due any other amounts owed to Market Plaza under this Agreement, interest shall accrue on the unpaid amount at twelve percent (12%), provided interest shall not accrue on outstanding payment amounts that are the subject of a bona fide good faith dispute between the Parties. In such event, CEDA shall also be responsible for any costs of collection and reasonable attorneys' fees incurred by Market Plaza in collecting the payment of any such outstanding amounts due to Market Plaza hereunder.

3.6 Market Plaza's Failure to Perform the Site Work If after commencement of the Site Work, Market Plaza shall fail or refuse to perform or otherwise complete the Site Work, CEDA, without prejudice to any other remedy it may have at law or in equity, may cure such failure or refusal to perform or otherwise complete the Site Work, deduct the cost thereof, including, without limitation, compensation for additional services, labor or materials made necessary thereby, from the payments then or thereafter due to Market Plaza hereunder, or, at CEDA's option, terminate this Agreement and finish the Site Work by whatever method CEDA may deem expedient. If the expense of finishing the Site Work, including, without limitation, management and administrative overhead, exceeds the unpaid balance of the Maximum CEDA Funding, Market Plaza shall be obligated to pay such difference to CEDA promptly upon demand.

SECTION 4 - TERMINATION

4.1 Termination Events After Commencement of the Site Work. Once Market Plaza commences the Site Work as contemplated in the approved Undergrounding Plan (the "Work Commencement Date") and except for termination by CEDA based on any uncured breach or default of this Agreement by Market Plaza, this Agreement shall terminate upon satisfaction of all the following conditions:

(a) Market Plaza's completion of the Site Work as provided in Section 2, above, in accordance with the Undergrounding Plans and Specifications, and any agreed changes thereto (including Punch List items), and the written approval and acceptance of the Site Work by CEDA; and,

(b) CEDA's payment to Market Plaza of the full amount of the Site Work Costs up to the Maximum CEDA Funding amount, due under this Agreement as provided in Section 4, above.

When the above conditions have been met, the Parties will, at the request of either Party, execute an appropriate instrument confirming that this Agreement has been fully performed, that the obligations hereunder have been satisfied and discharged, and that this Agreement is terminated by the Parties hereto.

4.2 Limitation on CEDA Funding. CEDA's obligation to make payments to Market Plaza under the terms of this Agreement is expressly conditioned on CEDA's receipt of funding from the City of Charlottesville pursuant to an Agreement between the City of Charlottesville and CEDA, approved by the Charlottesville City Council on October 19, 2015. Funds in the amount of the Maximum CEDA Funding for Site Work Costs, as defined herein, have been appropriated by the City Council for Fiscal Year 2016. Any requests for payment by Market Plaza after June 30, 2016 shall be subject to further appropriation by the Charlottesville City Council. In the event the City Council fails or refuses to appropriate the necessary funding contemplated by this Agreement, CEDA shall provide immediate written notice to Market Plaza of any such determination of non-appropriation by the City.

SECTION 5 – CONSENTS AND APPROVALS

5.1 Consents and Approvals. Whenever in this Agreement a Party is, or may be, called upon to give its consent or approval to any action, instrument, document or other matter, except as otherwise specifically provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except to the extent such action, instrument, document or other matter is reasonably anticipated in good faith to result in a material or adverse change in the rights and obligations of a Party under this Agreement in which case a Party may withhold, condition or delay its approval in its sole and absolute discretion.

5.2 Consent and Approval Request Process.

(a) With respect to any matter presented under this Agreement by one Party for the approval or consent from the other Party (each a "Request"), the Party making the Request (the "Requesting Party") will provide written notice of the matter presented for approval or consent to the other Party (the "Reviewing Party"), together with any additional information, documents or materials reasonably requested in good faith by the Requesting Party and necessary to fully and fairly evaluate the Request ("Supplemental Materials), the Reviewing Party will either approve or disapprove the Request within fifteen (15) days after receipt of the notice of the Request from the Requesting Party (including any Supplemental Materials).

(b) If the approval or consent to the Request is denied by the Reviewing Party, then the Reviewing Party shall provide written notice to the Requesting Party within five (5) days after such disapproval specifying in detail the reasons and basis for such disapproval and any additional requirements or remedies reasonably necessary for the Reviewing Party to approve or consent to the Request, and the Requesting Party shall have the right to re-submit a revised Request addressing any additional requirements or remedies, and again seeking the proposed consent or approval from the Reviewing Party. The submittal and review process for the revised Request shall be the same as stated above in subsection (a) above and this subsection (b).

(c) Notwithstanding any other provision in this Agreement to the contrary, a Dispute (as defined below) shall be deemed to exist among the Parties with respect to Request if the approval or consent to the Request is denied a second time by the Reviewing Party after completing the steps described in subsections (a) and (b) above, and the Parties are unable in

good faith to resolve their respective differences with respect to the Request (as originally proposed or revised) within five (5) days of the notice of the second denial.

(d) If the Reviewing Party fails or refuses to respond to a Request within the original 15 day period described in subsection (a) above, then the Requesting Party may provide an additional written notice to the Reviewing Party seeking consent or approval of the Request, and such Request shall be deemed approved automatically and without the action of any Party if the Reviewing Party fails or refuses to respond within ten (10) days after receipt of the second notice of the Request from the Requesting Party.

SECTION 6 - GENERAL PROVISIONS

6.1 Limitations on Transfer and Assignment. Market Plaza hereby covenants and agrees that it will not, prior to the completion of the Site Work, transfer or convey all or any part of its interest in the Sales Agreement or assign to a third party any of its rights or obligations hereunder without the prior written consent of CEDA. CEDA shall not assign to a third party any of its rights or obligations hereunder without the prior written consent of Market Plaza.

6.2 Binding Effect. Subject to any provision hereof restricting assignment, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

6.3 Costs and Attorneys' Fees. If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the substantially prevailing party in such action shall be entitled to recovery of all costs and expenses of litigation, including reasonable attorneys' fees and costs, as part of its judgment. The substantially prevailing party shall also be entitled to recovery of all costs and expenses, including reasonable attorneys' fees, in enforcing any judgment awarded to it.

6.4 No Recording. This Agreement shall not be recorded without the prior written consent of each Party.

6.5 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto, by any third party or otherwise, to create the relationship of principal and agent or create any partnership, joint venture or other association between Market Plaza and CEDA.

6.6 Notices. All notices, including deliveries of documentation for review and approval herein shall be sent by either personal delivery, a reputable overnight courier which keeps receipts of delivery (such as UPS or Federal Express), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above. Notices to the respective Parties shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

To Market Plaza: Keith O. Woodard
224 14th Street
Charlottesville, VA 22903

with a copy sent simultaneously by similar means to:

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

To CEDA: Economic Development Authority of the City of Charlottesville, VA
Attn: Chris Engel
City Hall
605 East Main Street
Charlottesville, VA 22902

with a copy sent simultaneously by similar means to:

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

6.7 Exhibits Incorporated. Each exhibit attached hereto and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to (by letter or description) herein.

6.8 Injunctive and Other Remedies. In the event of a breach by any Party of any obligation of this Agreement, the non-breaching Party shall be entitled to obtain an order specifically enforcing the performance of such obligation or an injunction prohibiting any such breach. In connection with any such remedy, each Party hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach, and/or to relief by other available legal and equitable remedies from the consequences of such breach.

6.9 Nonwaiver. No delay or omission of any Party in the exercise of any right accruing upon any default of any other Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement, and (ii) all remedies at law or in equity shall be available.

6.10 Nonterminable Agreement. No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this Agreement.

6.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be modified or changed except in writing, signed by the Parties.

6.12 Governing Law. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia, without regard to its choice or conflicts of law rules.

6.13 Counterpart Delivery. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SECTION 7 - FORCE MAJEURE EVENTS

In the event any Party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other Party, adverse weather conditions preventing the performance of the Site Work, war or any other force majeure event or reason beyond such Party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay, provided any such cause in all instances shall not be due to the willful act or omission of the Party seeking to excuse performance hereunder or extend the period therefor. In order to claim the benefits of this Section 8, the Party claiming any such excuse for its performance hereunder must have given the other Party reasonable notice of the cause and anticipated duration of such failure of performance and shall have been diligent in its efforts to effect such performance or completion in a full and timely manner absent the occurrence of the event or cause. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of any Party.

SECTION 8 – MARKET PLAZA INDEMNITY AND INSURANCE

8.1 Indemnity by Market Plaza. Market Plaza shall indemnify against and hold CEDA and the City and their respective officers, directors, agents, employees, licensees and contractors (together, the "CEDA Indemnities") harmless from any and all losses, damages, liabilities, demands, claims, suits, actions, fines, penalties, costs and expenses, including, without limitation, attorney's fees, arising out of or in connection with or in any way related to any act or omission of Market Plaza, its agents, employees or licensees or any contractors in the performance of the Site Work, excluding any such matters arising from personal injuries, death or property damage caused by the negligent acts or omissions of any of the CEDA Indemnities.

Market Plaza shall require any of its contractors or subcontractors performing any portion of the Site Work to also execute a written indemnification of the CEDA indemnities.

8.2 Additional Insured. Market Plaza agrees to obtain and maintain throughout the performance of the Site Work liability insurance with the following coverages:

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-
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The policy or policies shall name CEDA and the City as additional insureds with respect to the Site Work performed pursuant to this Agreement.

[Remainder of this Page is Intentionally Blank]
[Signatures Follow on the Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

MARKET PLAZA LLC:
a Virginia limited liability company,

Date: _____

By: _____

Name: _____

Title: _____

CEDA:

ECONOMIC DEVELOPMENT AUTHORITY OF THE
CITY OF CHARLOTTESVILLE, VIRGINIA, a political
subdivision of the Commonwealth of Virginia,

Date: _____

By: _____

Name: _____

Title: _____

ESTIMATED UNDERGROUNDING COSTS

EXHIBIT B

UNDERGROUNDING PLAN

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



Agenda Date: October 19, 2015

Action Required: Approval of Resolution

Presenter: Chris Engel, CEcD, Director of Economic Development

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

Title: **Market Plaza – Lease for City Market**

Background: It has long been a City priority to establish a permanent home for the City Market. 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 sufficient 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 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 Market Plaza development is proposed for the block bounded by Water Street, First Street, South, South Street and Second Street West. The project represents a significant opportunity to realize a mixed-use building and an outdoor plaza area of 24,000 square feet and an indoor area of 9,000 square feet for the operation of the City Market.

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.

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.

Community Engagement: There has been significant community engagement over recent years with respect to the City Market and its current and future location.

Budgetary Impact: There is no immediate budget impact as a result of this item. At the time the plaza is completed the City will have a net positive impact as the rent at the current market location exceeds the \$1 per year rent proposed at Market Plaza.

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 resolution authorizing the execution of the lease agreement with Market Plaza, LLC be approved.

Alternative: Council could choose not to approve the ordinance.

Attachment:

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

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that the City Manager is hereby authorized to sign the following document, in form approved by the City Attorney or his designee.

Lease Agreement between the City of Charlottesville (Lessee) and Market Plaza, LLC (Lessor) for the lease of property within the Market Plaza development on Water Street and South Street, to serve as the permanent location of the City Market.

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 Easements. 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. Lessor retains, for its benefit and the benefit its invitees and other users of the Project, a right of pedestrian ingress and egress over all stairways, walkways, elevators and passageways within the Premises, and a right of vehicular ingress and egress over all vehicle travel ways within the Premises (not including the areas reserved for vendor stalls and pedestrian walkways during the City Market).

Section 2.4 — Water and Electricity. The Outdoor Plaza shall be constructed with 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 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

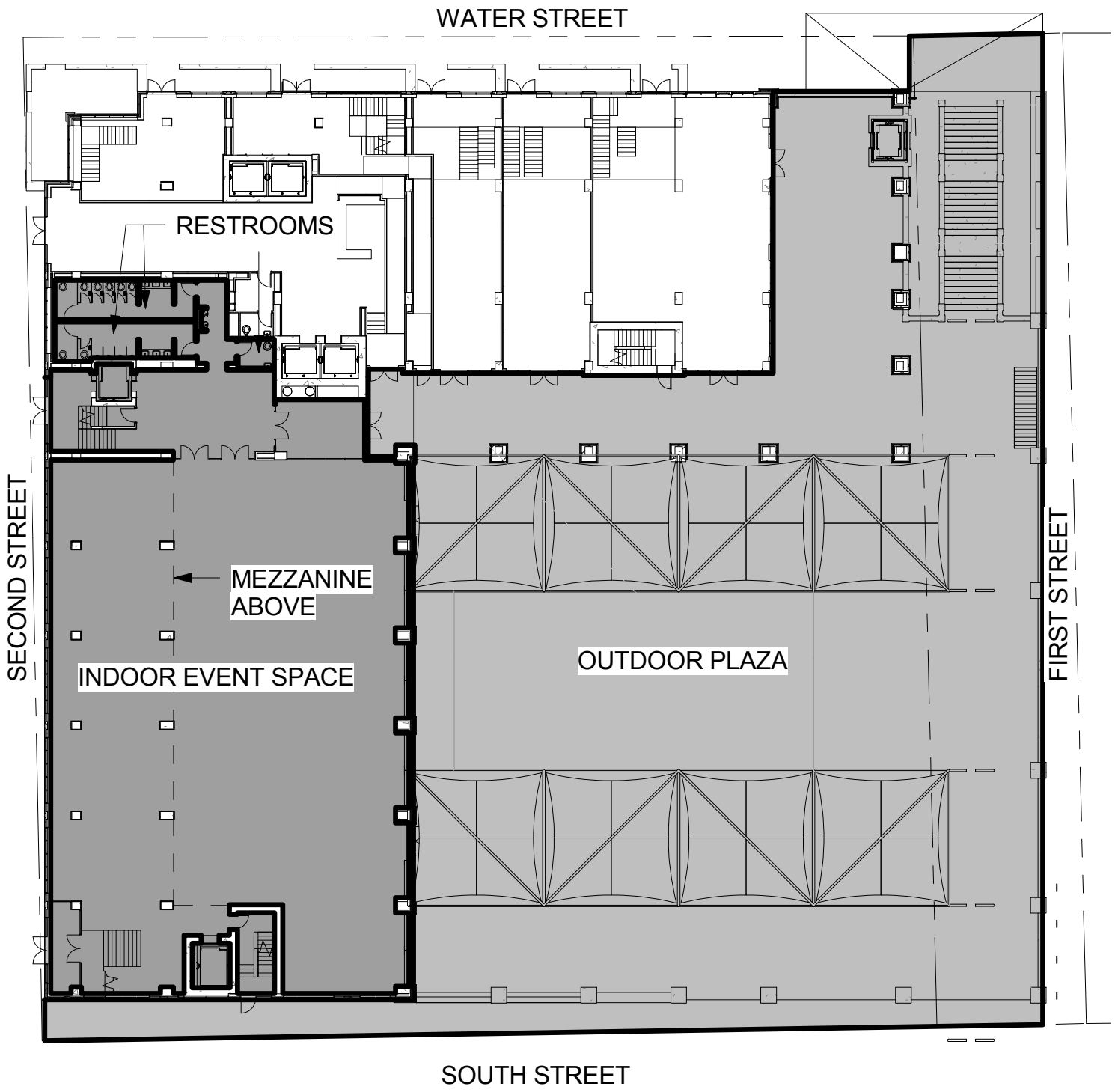
By: _____
Name: Maurice Jones
Title: City Manager
Date: _____

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__.

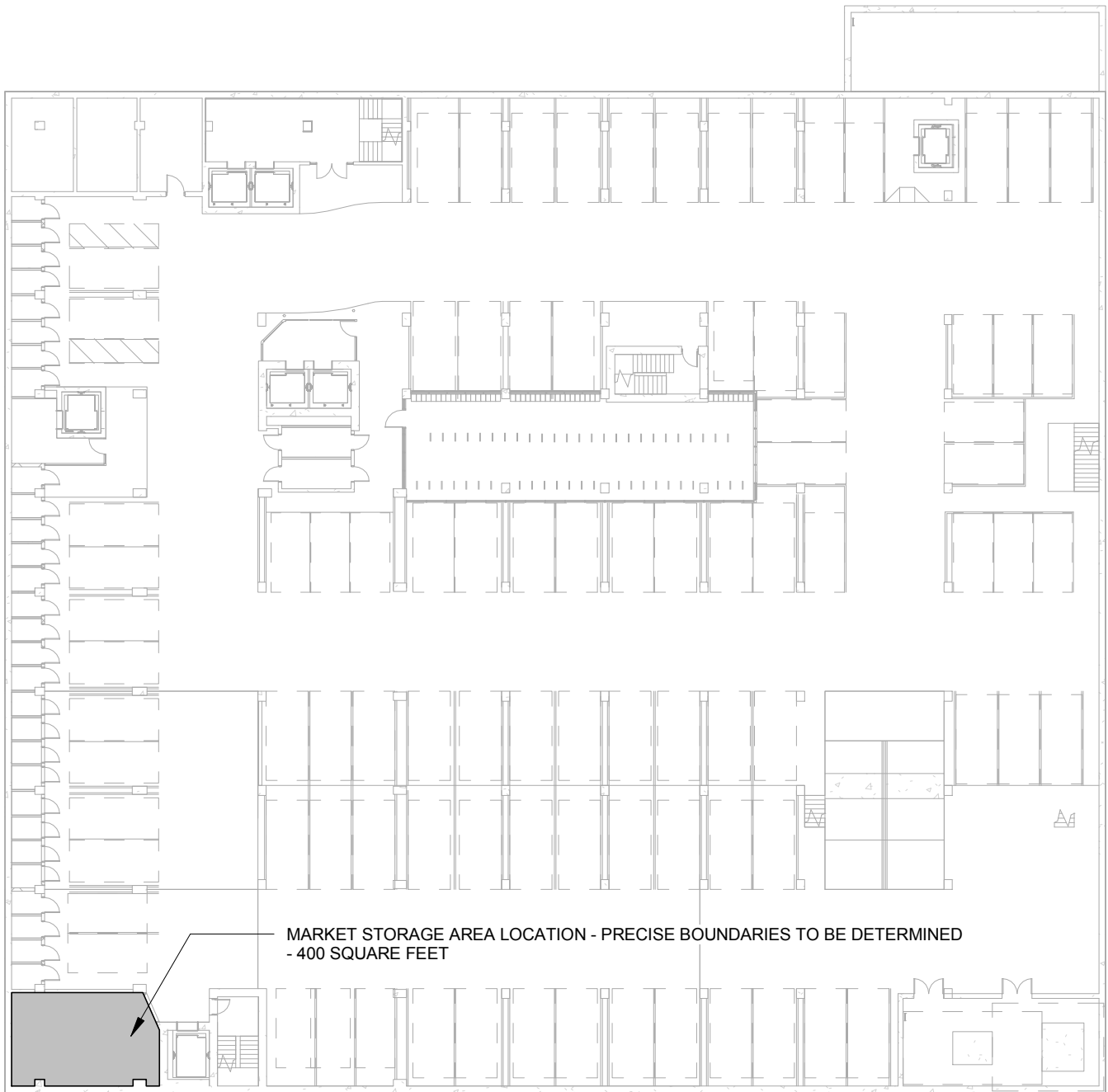
SEAL:

Notary Public Registration No. _____
My commission expires: _____

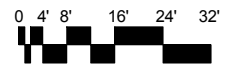
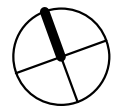


AREAS SHADED ARE ACCESSIBLE TO MARKET USERS ON DESIGNATED MARKET DAYS (EXCLUDING MEZZANINE)

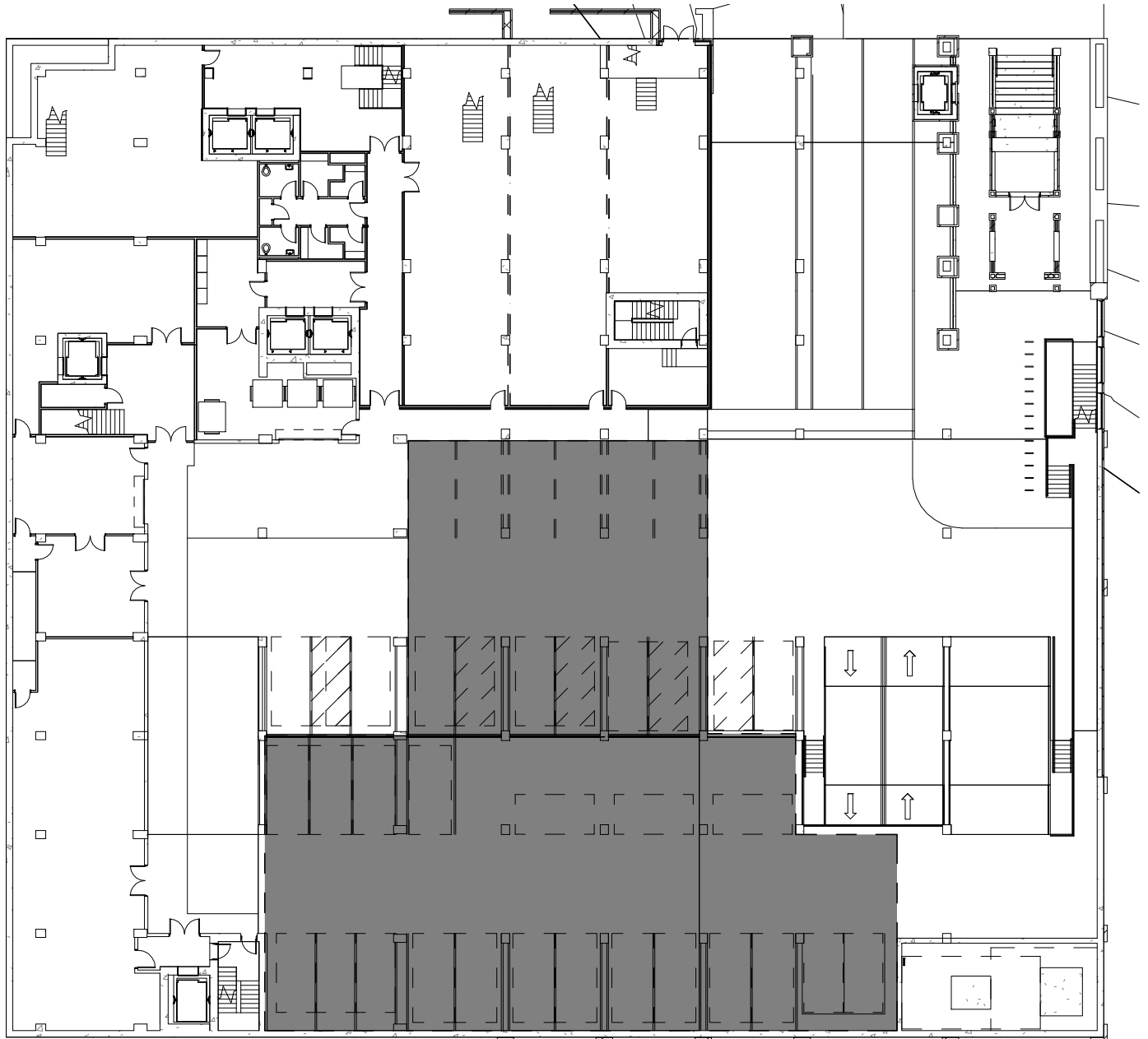
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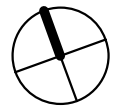
P2 PARKING LEVEL



MARKET STORAGE AREA



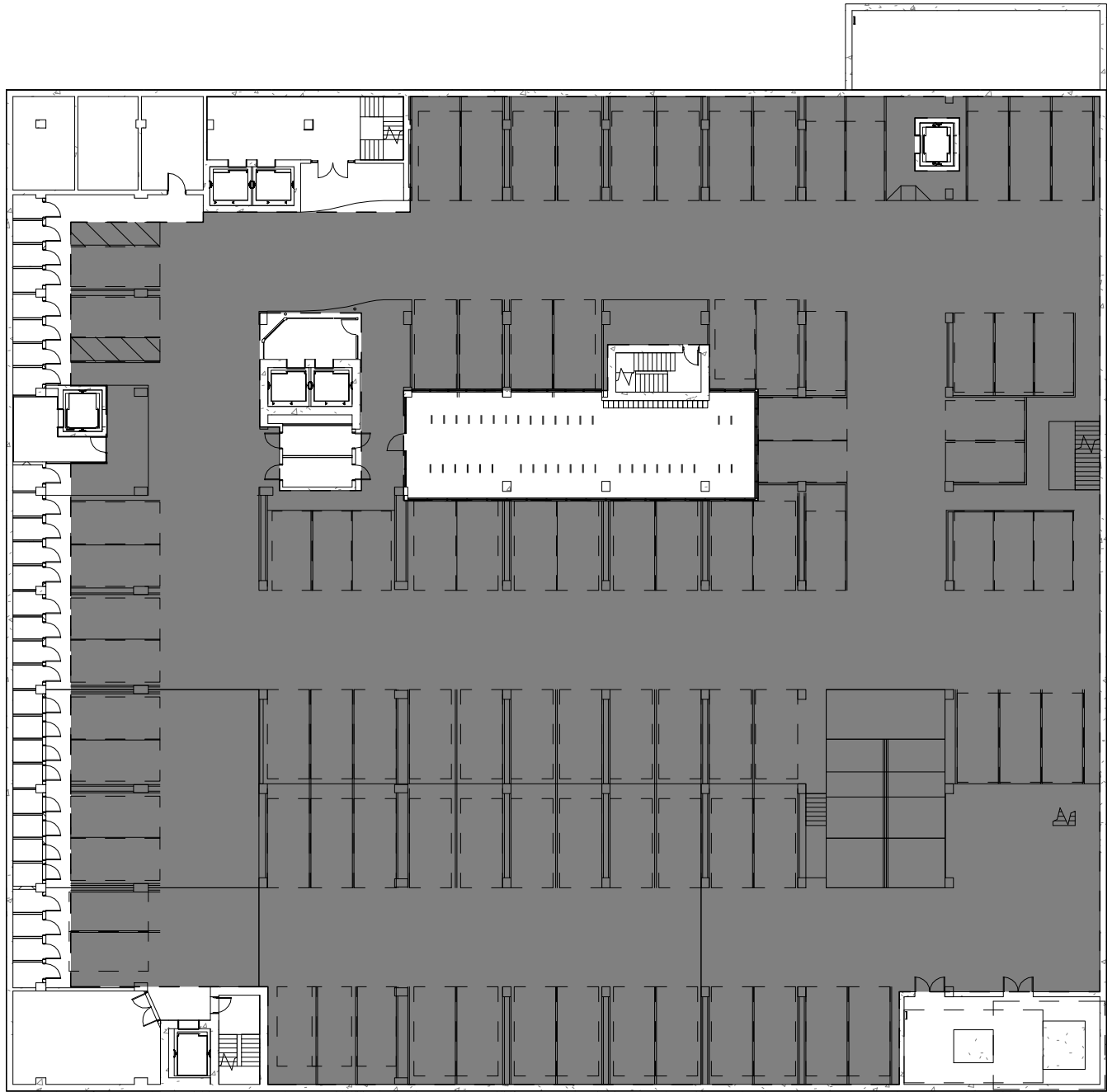
P1 PARKING LEVEL



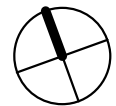
0 4' 8' 16' 24' 32'



LEASED PARKING AREA



P2 PARKING LEVEL



LEASED PARKING LEVEL P2

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.
- The Plaza opens at 8:00 a.m. and closes at 9:00 p.m.

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: 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 Market Plaza Existing Conditions Plan, prepared by Timmons Group and dated August 12, 2014, 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 ten (10) 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 ten (10) 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 16 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 16 foot easement between Water Street and South Street shall provide that Market Plaza will be responsible for routine cleaning, maintenance, repair and snow removal within the area of the easement, and the City will be responsible for 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” (2 sheets) prepared by the Timmons Group and dated September 21, 2015, attached hereto as **Exhibit C**. 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 shown on 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: _____

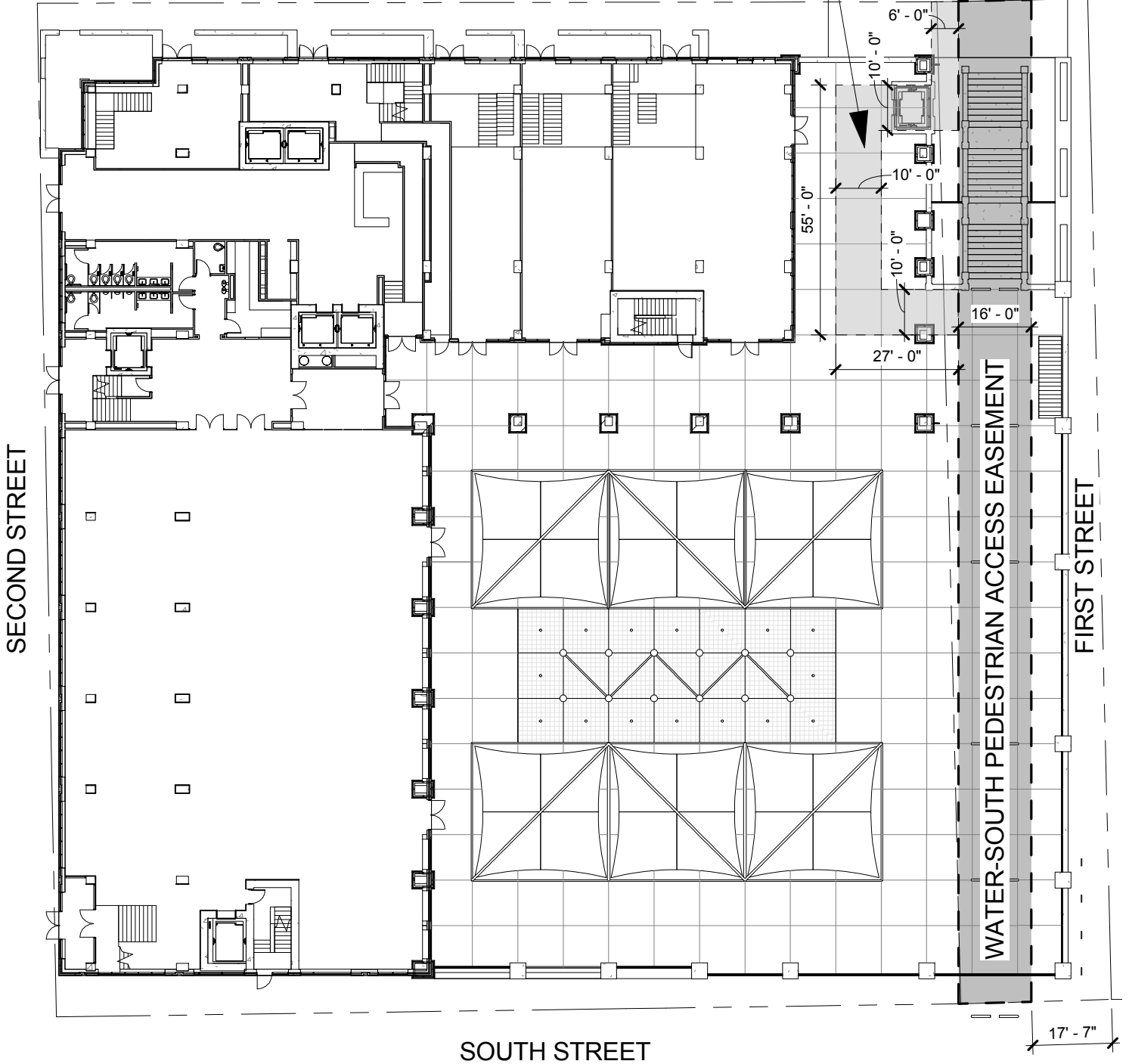
Approved as to Form:

City Attorney

WATER STREET

10' ELEVATOR ACCESS EASEMENT

12' - 5"



SECOND STREET

WATER-SOUTH PEDESTRIAN ACCESS EASEMENT

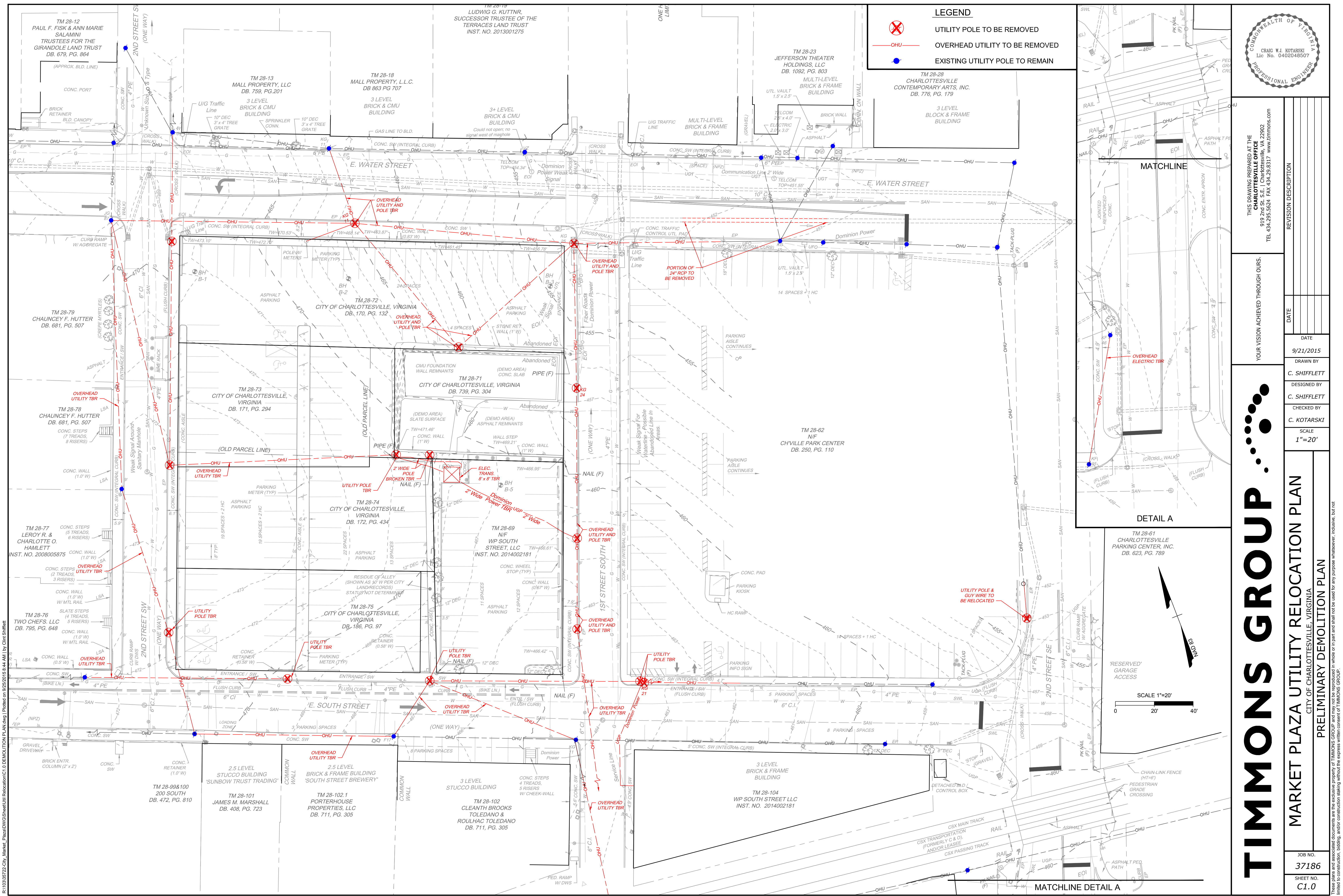
FIRST STREET

SOUTH STREET

17' - 7"



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
CHARLOTTEVILLE OFFICE
 919 2nd St. S.E. | Charlottesville, VA 22902
 TEL 434-293-5624 FAX 434-254-8317 www.timmons.com

YOUR VISION ACHIEVED THROUGH OURS.

DATE
 9/21/2015

DRAWN BY
 C. SHIFFLETT

DESIGNED BY
 C. SHIFFLETT

CHECKED BY
 C. KOTARSKI

SCALE
 1"=20'

REVISION DESCRIPTION

JOB NO.
 37186

SHEET NO.
 C1.0

MATCHLINE

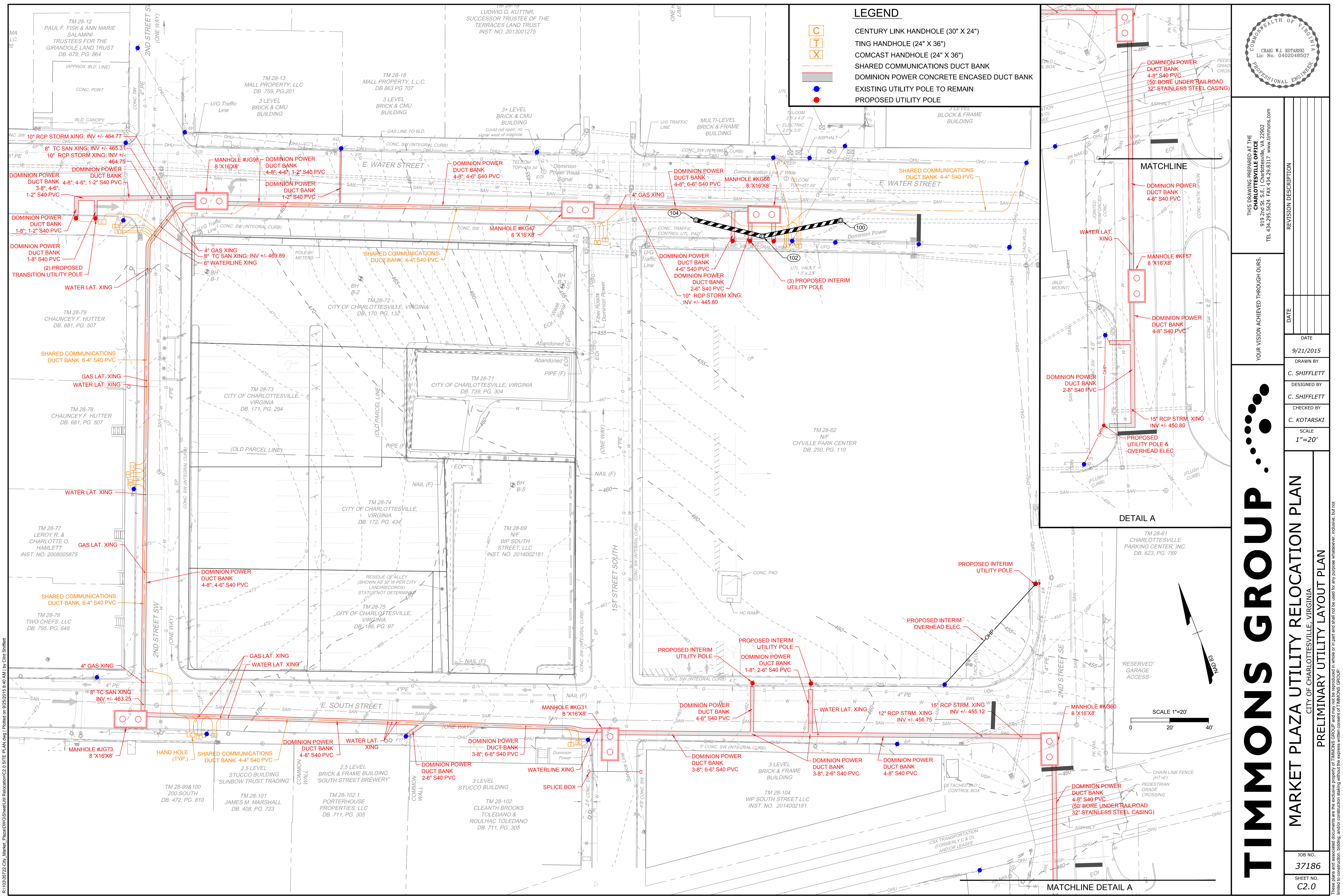
DETAIL A

SCALE 1"=20'

TIMMONS GROUP

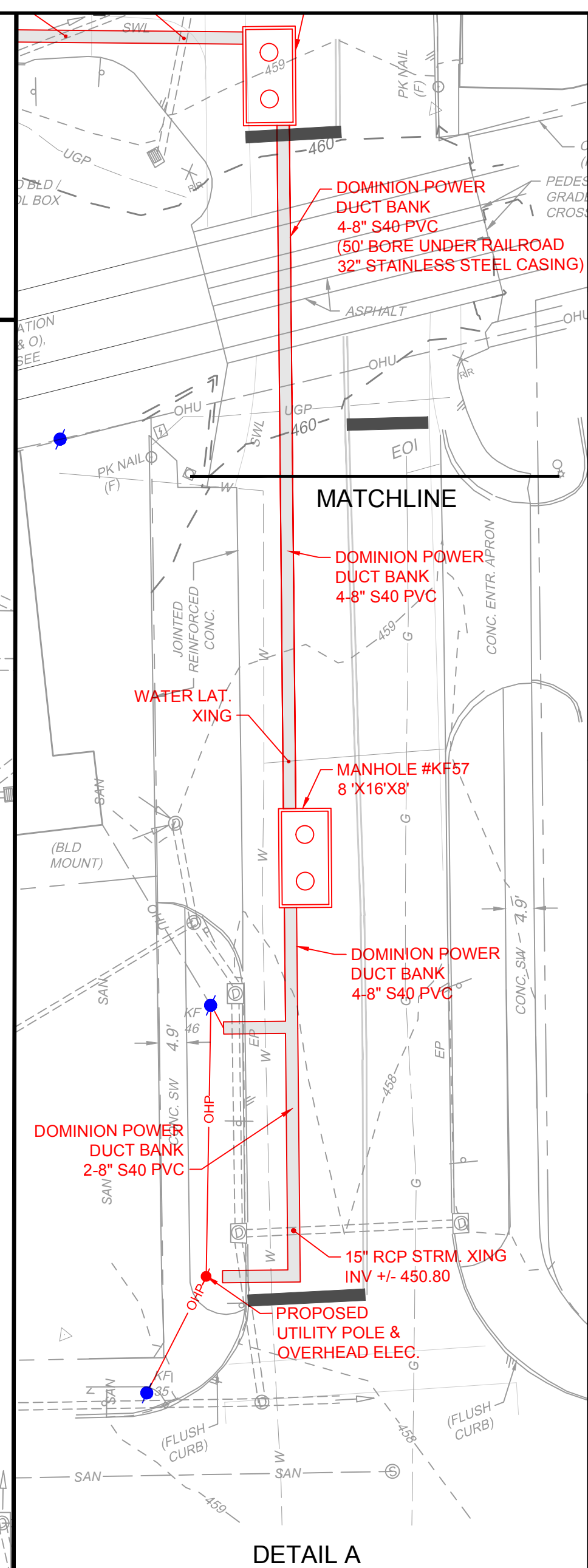
MARKET PLAZA UTILITY RELOCATION PLAN CITY OF CHARLOTTEVILLE, VIRGINIA PRELIMINARY DEMOLITION PLAN

These plans and associated documents are the exclusive property of TIMMONS GROUP and may not be reproduced in whole or in part and shall not be used for any purpose whatsoever, in whole or in part, without the express written consent of TIMMONS GROUP.



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

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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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**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):

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 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 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).

c. The design and construction of the Plaza and market shall incorporate 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 to utilize and enjoy the Plaza 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 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 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, provided such changes do not alter the conditions of Use delineated in Section 10 (Farmer's Market).

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 shall be 25 feet, and the maximum height shall be 45 feet.
9. Along 2nd Street SW 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 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 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 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 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.

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 a sufficient number of openings along street

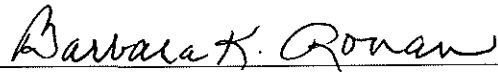
frontages to encourage the activation of street and pedestrian experience. The opening allow for flexibility and variability for changes of use over time.

- 4) The 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.

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.

Approved by City Council
October 5, 2015



Barbara K. Ronan
Acting Clerk of Council

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

Agenda Date: October 19, 2015

Action Required: Consideration of a Zoning Text Amendment

Presenter: Missy Creasy, NDS Assistant Director

Staff Contacts: Missy Creasy, NDS Assistant Director
Brian Haluska, Principal Planner

Title: ZT15-00002: Application review process

Background:

At their meeting on February 2, 2015, City Council initiated a zoning text amendment to modify the way in which the City reviews development applications. Specifically, the proposed changes would not immediately refer complete applications for development (rezoning requests, special use permits, site plans and subdivision plats) to the Planning Commission upon receipt, but would rather give the Director of Neighborhood Development Services and City Council the ability to hold off on referring the item to the Commission. The additional time in the process would be used for potential work sessions on the project with the Planning Commission, a mandatory community meeting arranged by the applicant, and staff review that could result in a request for additional information from the applicant in order to better explain their request. The proposed changes are modeled on the current procedures in Albemarle County.

Discussion:

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. At the October 5th Council meeting, it was requested that procedures be updated to reflect Council moving forward with these meetings for Rezoning and Special Use Permits only. This document has been updated to reflect that revision.

Upon several concerns being raised at the Council meeting on October 5, 2015 regarding the waiver process, staff felt that it might be helpful to cite specific examples of the types of applications where staff envisions a waiver of the community meeting being granted.

For an example of a PUD Amendment where staff feels the community meeting requirement would have been waived, see the recently approved amendment to the Lochlyn Hill PUD, which was focused on the unit type in a block of the proposed development.

For a situation where the staff would have most likely waived a community meeting for a special use permit request, see any of the requests for a family day home in a residential structure. These facilities are permitted as by-right uses throughout the City for persons caring for up to 5 children in their home. The zoning ordinance requires a special use permit for facilities that care for between 6 and 12 children in a residence.

Another application where staff may have considered waiving a community meeting is the special use permit granted to the Coca-Cola Building for the tenant space occupied by Blue Ridge Cyclery. The permit concerned the internal usage of space in an existing building.

As noted in the box below, in each of these circumstances, the project would have the standard public hearing with the required notification that accompanies such a hearing.

****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.

Citizen Engagement:

The Planning Commission held a joint public hearing with City Council on this matter at their meeting on May 12, 2015. Members of the public also spoke during matters from the public at Council meetings.

Alignment with City Council's Vision and Priority Areas:

The City Council Vision of Quality Housing Opportunities for All states that “Our neighborhoods retain a core historic fabric while offering housing that is affordable and attainable for people of all income levels, racial backgrounds, life stages, and abilities.”

The City Council Vision of Economic Sustainability states that “The City has facilitated significant mixed and infill development within the City.”

The City Council Vision of a Smart, Citizen-Focused Government states that “We continually work to employ the optimal means of delivering services, and our decisions are informed at every stage by effective communication and active citizen involvement. Citizens feel listened to and are easily able to find an appropriate forum to respectfully express their concerns.”

Budgetary Impact:

Staff anticipates that the amount of additional staff time required to administer the proposed changes would vary depending on the application. New applications subject to the proposed regulations would take more staff time, especially from the city planning staff, than these applications currently take.

Staff also notes that the proposal would increase the amount of time staff planners will be required to devote to the management of the applications covered by the proposed code change. Under the current staffing structure, this additional time will most likely mean less time for planning staff to spend on longer range planning efforts. The applications covered by the proposed code changes are submitted by applicants without regard for long range planning workload, and these applications frequently take priority in a planner's work load because of the requirements in the code that they be reviewed in a particular time frame.

Recommendation:

City Council requested changes to the ordinance first reading and at the meeting on October 5, 2015. Updates include:

1. Removal of references to site plan and subdivision regulations.
2. Update to ensure use of gender neutral references throughout the text.
3. Updated policy pertaining to waiver of community meetings.

These changes have been made and are provided for approval.

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached Ordinance,
- (2) by motion, request changes to the attached Ordinance,
- (3) by motion, defer action on the text change, or
- (4) by motion, deny the text change.

Attachments:

Waiver provision policy
Ordinance

**CITY OF CHARLOTTESVILLE
STANDARD OPERATING PROCEDURE**

Type of Policy: ZONING REGULATIONS	Department: NDS
Subject: Community Meeting Requirements (Policy for Administrative Waivers)	
Authorization: Charlottesville City Code Chapter 34	
Approval by City Council: October _____, 2015	Effective Date:

I. PURPOSE OF REGULATIONS

The purpose of these zoning regulations is to assure that community meetings will be provided in accordance with Chapter 34 of the City Code (at the beginning of the public review process, and in addition to required public hearings), when such meetings will enhance the information available to the public in connection with specific applications seeking rezonings (including PUDs), special use permits, and development plan reviews. On occasion, however, there may be good reason(s) not to require a community meeting, and City Council desires to allow the Director of NDS to waive the requirement for a community meeting in the limited circumstances described in this policy.

II. ENABLING ORDINANCES/LEGISLATION

III. These provisions of these zoning regulations are authorized and enabled by Chapter 34 of the Charlottesville City Code.

IV.

V. DEPARTMENTS/DIVISIONS AFFECTED

VI. These regulations will primarily affect the employees and officials of the City’s Department of Neighborhood Development Services, but may also affect the City Attorney’s Office.

VII.

VIII. REGULATIONS AND PROCEDURES

Applications subject to the requirement for a Community Meeting are divided into two categories:

- The first category is for applications where the Director would not waive the public meeting requirement under any circumstances.
- The second category is for applications where the assumption is that the public meeting would be held, unless the Director specifically decides to waive the requirement

Applications for which a Community Meeting will be required in all situations (no waivers):

1. Rezonings (including PUDs)
2. Special Use Permits
 - a) Requests for additional height
 - b) Requests for density greater than by-right density

Applications for which a Community Meeting will be required, unless waived by the Director of NDS:

1. Rezoning (including PUDs)
 - a) Modifications to an existing Planned Unit Development
2. Special Use Permits
 - a) Requests for a use in an existing building
 - b) Alterations to an existing SUP

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 specific to the following provisions 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:

(a) (1) Resolution of the city council;

(b) (2) Motion of the planning commission; or

(c) (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:~~

~~(d) (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;~~

~~(e)~~

~~(f) (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;~~

~~(g)~~

- (h) (3) Written certification of compliance with sec. 34-10(b);
- (i)
- (j) (4) The required application fee, as set forth within the most recent fee schedule adopted by city council;
- (k)
- (l) (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;
- (m)
- (n) (6) All required supplemental information.
- (o)

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 community 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.

(p) 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:

(q) ...[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:	October 19, 2105
Action Required:	Report Only
Presenter:	Susan Elliott, Climate Protection Program Coordinator
Staff Contacts:	Susan Elliott, Climate Protection Program Coordinator Kristel Riddervold, Environmental Sustainability Manager
Title:	2015 City of Charlottesville State of Solar Report

Background:

The City has been promoting renewable energy sources consistent with the specific City commitments and program recommendations including:

- Climate Protection Program goals to reduce the greenhouse gas emissions associated with municipal operations' energy use at 1% per year through 2050
- Local Climate Action Planning Process (LCAPP) strategies related to the adoption of renewable energy sourcing and the integration of energy in projects and planning
- 2013 Comprehensive Plan – Environment Chapter, Goal 6: Promote effective and innovative energy and fuel management in both City and community buildings and operations; 6.2: Pursue and promote cleaner sources of electrical energy (e.g., renewable energy strategies)

Discussion:

See the attached report.

Alignment with Council Vision Areas and Strategic Plan:

This agenda item aligns with the City Council vision related to being “A Green City” and the Goal 2, Objective 2.5 of the City’s Strategic Plan: Provide natural and historic resources stewardship.

Community Engagement:

The main initiative that has involved the community are the two Solarize Charlottesville campaigns which have involved numerous outreach strategies and information sessions.

Budgetary Impact:

This has no impact on the General Fund.

Recommendation:

N/A

Alternatives:

N/A

Attachments:

2015 City of Charlottesville State of Solar Report

Summary Report of Solar PV in Charlottesville (2015)

Introduction

As part of October being Energy Awareness Month and Charlottesville nearing the midway point in the 2-year semifinal stage of the Georgetown University Energy Prize competition, staff has prepared a summary report on the state of solar photovoltaic (PV) in Charlottesville. The adoption of renewable energy sources is a strategy that increases Charlottesville's competitiveness in the Georgetown University Energy Prize and movement to achieving its Climate Protection goals. Solar PV is one of the more accessible forms of renewable energy generation for our area, particularly because of its relative ease to integrate with already developed sites.

Part 1 – Existing Solar Policy/Incentives

From a policy standpoint, several factors have supported solar PV installations in Charlottesville over the past several years. In addition to industry-wide reductions in material and installation costs, the 30% Federal Income Tax Credit has significantly reduced the financial impact to property owners. The City offers a local solar property tax credit (www.charlottesville.org/SolarTaxCredit) that equates to approximately 5% over 5 years, and the City code, while not explicit in its reference to solar PV, does not prohibit it.

Part 2 – Solar PV in the Community

Since mid-2014, staff developed an improved method to track the installation of solar PV and solar thermal systems in the City. Since that time, two rounds of the Solarize Charlottesville program have been offered by the City's Climate Protection Program partner the Local Energy Alliance Program (LEAP). The Solarize program model has been implemented in communities across the country and offers several benefits that address common barriers to residents going solar. Solarize programs

- (1) use aggregation of contracts within a short time frame to produce cost advantages for solar installers and to reduce project costs,
- (2) offer a discreet number of options, simplifying the number of choices residents need to consider, and
- (3) involve a trusted non-profit or other community partner who assumes the tasks of vetting contractors, equipment options, and negotiating lower rates on behalf of the program/participating residents.

The attached graphics show the number solar PV installations in Charlottesville, and the notable increase that occurred through the Solarize Charlottesville programs. The number of solar PV systems, as can be counted through the City's permit system, shows a four-fold increase through the 2014 Solarize Charlottesville program.

As also seen in our local experience locally, the combination of these factors increases the accessibility and adoption of solar by residents, supports local businesses, and drives a continued increase in solar PV interest.

	Solarize 2014 & 2015 Programs
# of Sign-Ups (Cville Area)	Over 1,730
# of Contracts Signed (Cville Area)	Over 110*
# of Contracts Signed (City Only)	48*
kW Capacity (City Only)	Over 220*

**Note: 2015 Solarize numbers are not yet final*

Part 3 – CitySolar

After achieving significant energy savings within City-owned facilities (29.8% reduction between 2000-2011 while also increasing the number of facilities during that time period), it was appropriate to begin investing in renewable solar energy. To date since 2010, the City has installed 6 solar PV systems, 3 of which share real time monitoring online (www.charlottesville.org/CitySolar). The CitySolar webpage includes averaged data about each system and provides the ‘real world’ ratio of energy production to system capacity, which can be used to estimate the generation capabilities of other solar PV systems (City-owned or in the community). Solar installation is continuing with the City Yard Warehouse roof beginning in October 2015. At least 15 more installations are planned for municipal facilities over the next 5 years, which will result in over 410kW of capacity generating an estimated 6% of the municipal building annual electricity use.

Part 4 – Upcoming

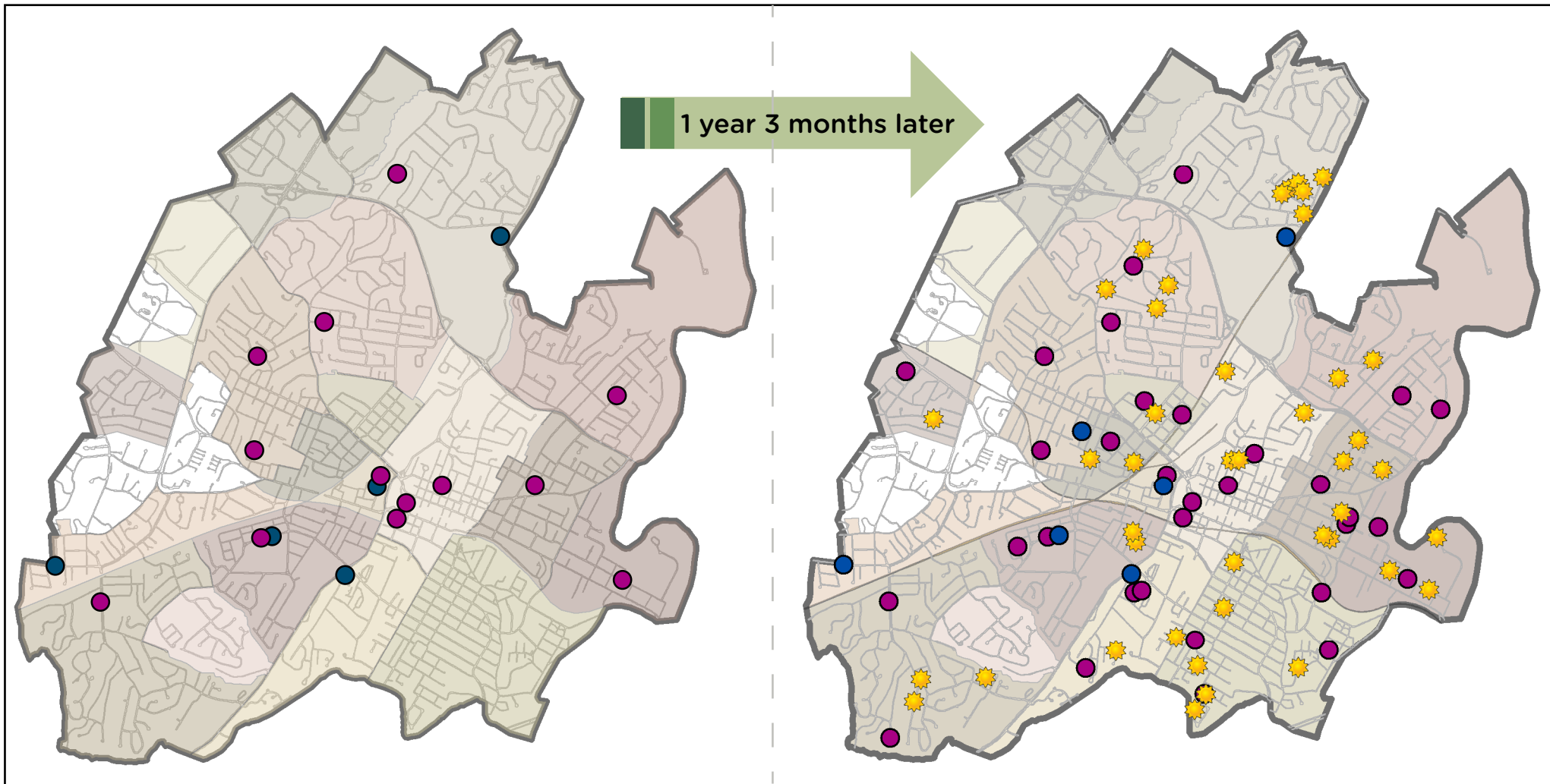
The policy and incentive landscape around solar energy systems continues to evolve. At the end of 2016, the 30% Federal Income Tax Credit is currently set to expire. Topics raised at the Virginia General Assembly last year that may resurface this year include virtual net metering within public organizations, community shared solar (which can benefit renters and properties where solar installation onsite is not possible), and net-metering regulations and fees. Policy decisions around any of these topics can significantly affect the pricing and accessibility of solar PV within Charlottesville. Additionally, through technical assistance the City received from Smart Growth America (NDS) and from the National Renewable Energy Laboratory (Public Works, Environmental), staff has received reference materials that can help inform suggestions to changes as part of the Streets that Work Code Audit and discussions about the potential for solar capacity on Charlottesville rooftops and appropriate local mechanisms to support continued solar installations.

Attachments:

- Maps: Solar PV Projects in Charlottesville (June 2014 status compared to current)
- Graph: Solar PV Projects in Charlottesville (through Sept 2015)

Solar PV Installations in Charlottesville, VA

Data Source: City Permit Database



Through June 2014

- City-Owned (5)
- Private Sector (13)

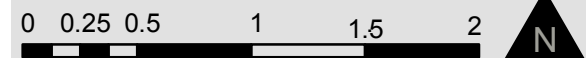
TOTAL: 18

**This data may be incomplete due to limited tracking tools through June 2014*

Current through September 2015

- ★ Solarize 2014 (42)
- City-Owned (6)
- Private Sector (32)

TOTAL: 80



Solar PV Installations in the City of Charlottesville

** Data through Sept. 2015*

■ Non-Solarize Projects ■ Solarize Projects

