

CITY COUNCIL AGENDA
Tuesday, March 4, 2019



5:30 p.m. Closed session as provided by Section 2.2-3712 of the Virginia Code
Second Floor Conference Room (Boards & Commissions; Personnel)

6:30 p.m. Regular Meeting - CALL TO ORDER
Council Chambers

PLEDGE OF ALLEGIANCE
ROLL CALL
ANNOUNCEMENTS
PROCLAMATIONS

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

PASSED 5-0 (HILL/BELLAMY) with amended resolutions for g, h and i.

- a. Minutes February 19, 2019 Regular Meeting; February 20, 2019 Special Meeting
- b. APPROPRIATION: Dockless Mobility Funds for Bicycle and Pedestrian Improvements - \$50,575 (2nd of 2 readings)
- c. APPROPRIATION: Capital Fund Transfer for Completion of the Standards and Design Manual Rewrite - \$66,680 (2nd of 2 readings)
- d. RESOLUTION: Approval of 2018-2022 Analysis of Impediments to Fair Housing Choice Report (1st of 1 reading)
- e. RESOLUTION: Business Equity Fund Donation Agreement(1st of 1 reading)
- f. RESOLUTION: Acquisition of Hartman's Mill Road Land (1st of 1 reading)
- g. RESOLUTION: Support of Friendship Court Redevelopment – Phase 1 (1st of 1 reading)
- h. RESOLUTION: Support for Crescent Halls Redevelopment (1st of 1 reading)
- i. RESOLUTION: Support for South 1st Street Redevelopment (1st of 1 reading)
- j. RESOLUTION: City Market Lease (1st of 1 reading)
- k. ORDINANCE: Encroachment and Aerial Easement from City for CODE Building on West Main (Mall) (2nd of 2 readings)
- l. ORDINANCE: Telecommunications Franchise to MCI Communications (1st of 2 readings)

CITY MANAGER RESPONSE TO COMMUNITY MATTERS (FROM PREVIOUS MEETINGS)

COMMUNITY MATTERS Public comment is provided for up to 16 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 8 spaces, and pre-registered speakers are announced by noon the day of the meeting. The number of speakers is unlimited at the end of the meeting.

2. REPORT: School Board's Adopted FY2020 Budget

3. REPORT: City Manager's Proposed FY2020 Budget

4. RESOLUTION*: South First Street Redevelopment – Critical Slopes Waiver (1st of 1 reading) **PASSED 5-0 (GALVIN/BELLAMY)**

5. ORDINANCE*: Imposition of Fee for Fire Department Inspections (1st of 2 readings)

OTHER BUSINESS
MATTERS BY THE PUBLIC

*ACTION NEEDED

APPROPRIATION
Dockless Mobility Funds for Bicycle and Pedestrian
Improvements
\$50,575

WHEREAS, the Dockless Mobility Pilot Program establishes a \$500 application fee and \$1/day/device fee to operate in the city;

WHEREAS, the fees may be used by the City for any costs associated with administering the pilot program, such as but not limited to, monitoring of compliance with Permit and program requirements, manipulation and evaluation of data submitted, communications with Operator and the public, public property repair or maintenance related to the services, and installation of infrastructure, signs or markings to address operations of devices and compatibility with other mode users;

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

Revenues

| | | | |
|----------|-----------|-------------|---------------------|
| \$50,575 | Fund: 426 | WBS: CP-083 | G/L Account: 422150 |
|----------|-----------|-------------|---------------------|

Expenses

| | | | |
|----------|-----------|-------------|---------------------|
| \$50,575 | Fund: 426 | WBS: CP-083 | G/L Account: 599999 |
|----------|-----------|-------------|---------------------|

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of the funds from permit and application fees for the Dockless Mobility Program; and that any future fees collected for the above purposes shall automatically appropriate to the Bicycle and Pedestrian Infrastructure project upon receipt of funds.

APPROPRIATION

**Capital Fund Transfer for Completion of the Standards and Design Manual
Rewrite \$66,680**

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the additional funding for the completion of the Standards and Design Manual rewrite is hereby transferred in the following manner:

Transfer From:

| | | | |
|----------|-----------|--------------|-------------|
| \$66,680 | Fund: 428 | WBS: P-00341 | G/L: 599999 |
|----------|-----------|--------------|-------------|

Transfer To:

| | | | |
|----------|-----------|-------------------------|-------------|
| \$66,680 | Fund: 105 | Cost Center: 3901001000 | G/L: 530560 |
|----------|-----------|-------------------------|-------------|

RESOLUTION

Adoption of 2018 Analysis of Impediments to Fair Housing Choice Report

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the report entitled “Analysis of Impediments to Fair Housing Choice”, as presented to City Council on February 19, 2019, is hereby approved as a companion document to the Consolidated Plan.

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, attached hereto, in form approved by the City Attorney or his designee.

Donation Agreement between the City of Charlottesville (Donor) and the Community Investment Collaborative for administration of the Business Equity Fund loan program.

DONATION AGREEMENT

THIS DONATION AGREEMENT is made and entered into this ____ day of March, 2019, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter “the City”) and **COMMUNITY INVESTMENT COLLABORATIVE**, a Virginia not-for-profit 501(c)(3) corporation, and its successors and assigns (hereinafter “CIC”).

WHEREAS, CIC is a not-for-profit corporation operated exclusively for charitable and educational purposes; and

WHEREAS, CIC intends to provide a loan program to socially disadvantaged individuals within the City of Charlottesville.

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING DONATION TERMS AND CONDITIONS:

1. AUTHORITY. The contribution by the City to CIC as provided in this Agreement is made pursuant to Virginia Code §15.2-953. The City, through its City Council, is enabled by Virginia Code §15.2-953 to appropriate public funds to charitable institutions if such institutions provide services to residents of the locality. CIC is a nonprofit charitable institution in the City of Charlottesville that provides services to Charlottesville residents. CIC is eligible to receive public funds pursuant to Virginia Code §15.2-953 and such funds are to be used solely for the purposes provided for in this Agreement.

2. CITY DONATION. The City agrees to contribute to CIC a total of \$109,000 pursuant to Section 4 of this Agreement.

3. PURPOSE. The City’s contribution shall be used solely for the following items and services:

CIC shall administer a Business Equity Fund loan program for socially disadvantaged individuals owning a for-profit business in existence for at least six months located within the City of Charlottesville and having a business license with the City of Charlottesville.

Socially disadvantaged individuals are individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

The loans are to be in amounts of \$5,000.00 to \$35,000.00 and the terms of the loans will range from six months to five years. The loans will be fully amortized and there will be no penalty for the early repayment of loans. The loans shall have annual interest rates ranging from zero to three percent and closing fees shall range from one percent to three percent. Should any loan be charged an interest rate of greater than zero, upon repayment, the full principal and interest shall return to the fund.

In order to be eligible for a loan, applicants must provide all requested financial documents in a timely manner; complete a loan application and interview with a loan panel; agree to a credit history check and review; and agree to technical assistance throughout the process.

4. TIMING. The City shall grant CIC \$54,500.00 upon the execution of this Agreement. An amount of \$50,000 shall be used for loans and the remaining funds may be used to defray administrative costs of issuing the loans. CIC shall provide a report to the City within three months of receiving the initial grant detailing the use of City funds. If CIC has not used any City funds within three months of this Agreement's execution, CIC shall provide a written report to the City detailing the reasons for the lack of loans. If CIC makes loans within three months of the Agreement's execution, CIC shall provide a written report detailing the loans, repayments, types of businesses receiving the loans, and other relevant information requested by the City. This written report shall be a recurring quarterly obligation for CIC so long as loans using City funds still require repayment.

Upon CIC's use of the first \$54,500.00 of City funds, it may request in writing that the City's Director of Economic Development release the additional \$54,500.00 of City funds.

5. RETURN OF CITY FUNDS. If CIC does not lend any of the first \$50,000.00 of City funds within six months of the execution of this Agreement, the City may request a refund of the funds and terminate this Agreement immediately without complying with the provisions of Section 11 of this Agreement.

6. NO AGENCY RELATIONSHIP CREATED. Neither CIC nor its agents, employees, or subcontractors shall be deemed employees or agents of the City by virtue of this Agreement. CIC shall have sole responsibility of for its employees, volunteers, and subcontractors including their work, conduct, directions, and compensation.

7. SEVERABILITY. In the event 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.

8. CITY ACCESS TO RECORDS. CIC 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 upon forty eight hours advanced request by the City.

9. INDEMNIFICATION. To the extent permitted by law, CIC agrees to defend, indemnify and save the City (including its officers, agents, officials, employees and agents) harmless from and against any and all liability loss, claim, suit, damage, charge or expense which the City may suffer, sustain, incur which may arise out of, results from, or is in any way connected with actions taken by CIC in the performance of its obligations under this Agreement, or which occurs as a consequence of any negligence, omission or misconduct of CIC and any of

CIC's subcontractors, agents, volunteers, or employees in CIC's performance of its obligations pursuant to this Agreement.

10. NON DISCRIMINATION. During the performance of this Agreement, CIC agrees that it will not discriminate against any employee or applicant for employment or in the provision of its services against any employee, applicant for employment, or service recipient on the basis of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by law. CIC agrees to post in conspicuous places, available to employees, applicants for employment, and applicants for services notices setting forth the provisions of this nondiscrimination clause. CIC shall state that it is an equal opportunity employer in all solicitations or advertisements for employment.

11. TERMINATION. Either party may terminate this Agreement by giving written notice to the other party of the termination with at least thirty days notice. Upon termination of this Agreement, CIC shall return any unexpended funds to the City.

12. NO WAIVER OF RIGHTS. Any failure on the part of the City to enforce any of this Agreement's terms and conditions shall not be construed as or deemed to be a waiver of the right to enforce such terms and conditions. No waiver by the City or any default or failure to perform by CIC 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 following a default or failure to perform by CIC shall not be construed as or deemed to be a waiver by the City of any of its rights pursuant to this Agreement.

13. ENTIRE AGREEMENT. This Agreement states all of the covenants, promises, agreements, conditions, and understandings between the City and CIC regarding the City's donation of funds.

14. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and any proceeding concerning this Agreement shall be commenced in courts having jurisdiction within the City of Charlottesville, Virginia.

15. AMENDMENTS. This Agreement may be amended by a written amendment signed by the authorized representatives of both parties.

WITNESS the following authorized signatures:

COMMUNITY INVESTMENT COLLABORATIVE

Stephen Davis, President

CITY OF CHARLOTTESVILLE, VIRGINIA

Michael Murphy, Interim City Manager

Approved as to Form:

John C. Blair, II, City Attorney

**RESOLUTION
APPROVING THE ACQUISITION OF LAND
ON HARTMAN'S MILL ROAD (CHARLEY CLOSE SUBDIVISION)
FOR PARKLAND AND DEVELOPMENT OF HOUSING**

WHEREAS, Charles Young and Kendall Ruscher, the Owners of a tract of land identified on City Tax Map 26 as Parcels 67, 67.1, 67.2, 67.3, 67.4, 67.5 and 67.6, hereinafter the "Property", have indicated a willingness to convey the Property to the City of Charlottesville for parkland and housing development purposes; and

WHEREAS, the Property is comprised of six (6) separate subdivision parcels, and a wetlands tract of land, collectively assessed at approximately \$315,900; and

WHEREAS, the Owners have agreed to dedicate to the City the wetlands area (1.848 acres), and convey to the City the six (6) subdivision parcels, including a residue portion of land to make Hartman's Mill Road terminate in a cul-de-sac, for the purchase price of \$270,000; and

WHEREAS, acquisition of the Property will preserve wetlands and expand the City's park system by adding the wetlands parcel to Jordan Park; and

WHEREAS, the City's Parks and Recreation and Neighborhood Development Services Departments seek the endorsement of City Council to proceed with the purchase of the above-described land at a purchase price of \$270,000, with the funds supplied by the Capital Improvements Project Contingency Fund; and

WHEREAS, a Real Estate Purchase and Sale Agreement for the conveyance of said land has been reviewed and approved by the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Charlottesville that it hereby authorizes the purchase of the above-described Property on Hartman's Mill Road for expansion of the City's parkland and for potential development of affordable housing. The City Manager is hereby authorized to execute a purchase agreement, in form approved by the City Attorney or his designee, and the City Attorney's Office shall take whatever actions are necessary to effect the acquisition of the above-described Property, pursuant to the terms and conditions set forth in the aforementioned purchase agreement.

RESOLUTION

Financial Resolution Supporting Friendship Court Parcel Number: 280112000

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that it hereby commits up to \$5,940,000 in the form of grants for the redevelopment of Friendship Court Phase I subject to Piedmont Housing Alliance satisfying the conditions of a Memorandum of Understanding agreed to by the City and the Piedmont Housing Alliance. The commitment of up to \$5,940,000 will help to subsidize Phase I which in turn will create approximately 106 newly constructed affordable housing units in the City of Charlottesville. This commitment will be made to Piedmont Housing Alliance and NHT Communities.

RESOLUTION

Financial Resolution Supporting Crescent Halls Parcel Number: 280218000

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that it hereby commits up to \$1,875,000 in the form of grants for the redevelopment of Crescent Halls subject to the Charlottesville Redevelopment and Housing Authority satisfying the conditions of a Memorandum of Understanding agreed to by the City and the Charlottesville Redevelopment and Housing Authority. The commitment of up to \$1,875,000 will help to subsidize this project which in turn will create approximately 105 renovated affordable housing units in the City of Charlottesville. This commitment will be made to the Charlottesville Redevelopment and Housing Authority.

RESOLUTION

Financial Resolution Supporting South 1st Street Parcel Number: 260115000

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that it hereby commits up to \$1,125,000 in the form of grants for the redevelopment of South 1st Street subject to the Charlottesville Redevelopment and Housing Authority satisfying the conditions of a Memorandum of Understanding agreed to by the City and the Charlottesville Redevelopment and Housing Authority. The commitment of up to \$1,125,000 will help to subsidize this project which in turn will create approximately 63 new or replacement affordable housing units in the City of Charlottesville. This commitment will be made to the Charlottesville Redevelopment and Housing Authority.

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is made as of the **1st day of January, 2019**, by and between **SKYVIEW PARKING, LLC**, a Virginia limited liability company, Grantor, herein referred to as “Tenant”, and the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation, Grantee, herein referred to as “Subtenant”.

WITNESSETH:

- 1. Subleased Property.** Effective April 1, 2015, the Tenant will be in rightful possession of the parcel of land located in the City of Charlottesville that is bounded by 1st Street South, East South Street, 2nd Street, S.E., and East Water Street, consisting of approximately .9920 of an acre, more or less, and shown on City Real Property Tax Map 28 as Parcel 62. The Tenant shall provide proof satisfactory to the Subtenant that it is in rightful possession of the Subleased Property upon request by the Subtenant. The property that is the subject of this Sublease Agreement is herein referred to as “the Subleased Property”, and consists of all of Parcel 62, as shown on **Exhibit A**, dated December 16, 2014, and attached hereto. Tenant hereby subleases to Subtenant, and the Subtenant leases from the Tenant, the Subleased Property, under the terms and conditions set forth herein.
- 2. Warranty by Tenant.** Tenant represents and warrants to the Subtenant that, for the term of this Sublease Agreement and any extension thereof, it has the power and authority under its Lease with the owner of the Subleased Property to execute this Sublease Agreement and to carry out and perform all covenants to be performed by the Tenant under this Sublease Agreement without any requirement of consent by such owner, and that there are no outstanding uncured notices of default or termination.

Tenant agrees that Tenant shall not agree to the modification or amendment of the Lease Agreement between Tenant and the Owner of the Subleased Property during the term of this Sublease Agreement if such modification or amendment adversely affects the Subtenant’s rights under this Sublease Agreement, decreases the size of the Subleased Property, or shortens the term of this Sublease Agreement, without the Subtenant’s prior written consent.

- 3. Condition of Subleased Property.** The Subleased Property is currently used as a commercial surface parking lot open to the public for paid parking. The Tenant makes no representation or warranty as to the condition of the Subleased Property for the intended purpose of this Sublease prior to or at the time of the execution of this Sublease Agreement, and Subtenant agrees to accept the Subleased Property “as is” on the

effective date of this Sublease Agreement, provided there is no material change in the condition of the Subleased Property between the execution of this Sublease Agreement and the Commencement Date. The parties acknowledge that Tenant plans to make various improvements to the Subleased Property as shown in the exhibits, including but not limited to installing new parking pay stations, re-sealing the pavement, and re-striping the parking lines. This work is expected to be substantially complete by the commencement date, however in the event it is not Subtenant's remedy will be to either accept the Subleased Property as is or refuse to use the Subleased Property until such time as it is substantially completed. In the event Subtenant does not use the Subleased Property, rent will not be charged for those days it is not used.

- 4. Term.** The initial term of this Sublease shall be for a period which begins on the 1st day of April, 2019 ("Commencement Date") and ends on the Saturday prior to December 25th, 2019.
- 5. Use of Subleased Property.** The Subtenant warrants and covenants that the Subleased Property will only be used by the Subtenant as the temporary site for the City Market, operated by the Charlottesville Department of Parks and Recreation pursuant to Charlottesville City Code sec. 8-1 *et seq.* each Saturday between the hours of 5:00 a.m. and 3:00 p.m., during the months of April, May, June, July, August, September, and October, November and December. The Tenant shall retain full use and enjoyment of the Subleased Property on all days and during all times when the Subleased Property is not reserved for the City Market, as specified herein. The Tenant and the Subtenant may agree in advance on additional days and times that the Subleased Property may be used by the Subtenant for a specified purpose, subject to the per diem rent set forth below. The parties agree that the pay stations which are installed by Tenant on the Subleased Property may be used during the sub-lease period by anyone who needs to obtain a parking receipt to park in an adjacent parking lot owned or controlled by Tenant. As such, Subtenant agrees to allow access as needed and signage as needed, at Tenant's expense, to accommodate such use.
- 6. Rent.** The Subtenant shall pay the Tenant rent at the rate of Two Thousand, Five Hundred and 00/100 Dollars (\$2,500.00) for each day that the City Market operates, or is scheduled to operate, on the Subleased Property. Each payment shall be due to Tenant in advance on or before the first day of each calendar month during the term of this Sublease. The monthly payment shall be calculated by multiplying \$2,500.00 times the number of scheduled City Market days during the month for which payment is being made.

- 7. Quiet Enjoyment.** The Subtenant, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Sublease Agreement on its part to be kept, shall quietly have and enjoy the Subleased Property during the term of this Agreement, and any extension thereof.
- 8. Land Use Approvals.** The Tenant and the Subtenant acknowledge that the Subtenant's intended use of the Subleased Property may require certain approvals, including, but not necessarily limited to, a special use permit and site plan approval. By its signature to this Sublease Agreement the Tenant hereby evidences its written consent for Subtenant to apply for and seek any and all land use and zoning approvals necessary for the future intended use of the property; provided, however, that Subtenant shall not be authorized to apply for or obtain any change in the land use or zoning status of the property that would be binding on Tenant after the expiration or termination of this Sublease Agreement unless Tenant shall have consented in writing in advance. The application, review and implementation of each such approval shall be at the Subtenant's sole expense.
- 9. Improvements and Signage.** The Subtenant may, at its own cost and expense, install metered electric service to the Subleased Property for use during the City Market. Any such installation shall be subject to Tenant's prior written approval of facilities and equipment to be installed. Subtenant shall be responsible for installing lockboxes or otherwise securing the electric service from unauthorized use. Tenant shall not be responsible for any costs or charges incurred for the use of electric service installed and made available by Subtenant.

If there are proposed improvements to the Subleased Property that will be mutually beneficial to both the Tenant and Subtenant, which may include but not be limited to the electrical service referenced above and a new entrance to the property from South Street, the parties may enter into a memorandum of understanding that allocates both the responsibility for constructing the improvements and the agreed-upon costs for the improvements.

Subtenant may, at its own cost and expense, at any time make such alterations, changes, replacements, improvements and additions in and to the Subleased Property as it deems advisable or necessary for operation of the City Market, subject to Tenant's prior written approval of each such action, which approval shall not be unreasonably withheld or delayed. No improvements will be permitted which would interfere with the use of the Subleased Property by Tenant during times other than the times the City Market is in operation, or with the portion of the balance of Parcel 62 that is not included in the Subleased Property. No improvements shall be undertaken on the Subleased Property

unless and until the Subtenant shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken in strict compliance with all City, state and federal rules, regulations and laws.

The Subtenant shall have the right to place signs on the Subleased Property that are allowed under the provisions of the City of Charlottesville Zoning Ordinance, and necessary for the operation of the City Market, subject to Tenant's prior written approval, which approval shall not be unreasonably withheld or delayed. Subtenant and Tenant agree that Subtenant will install signs in prominent locations on the Subleased Property that inform motor vehicle operators that all vehicles must be removed from the Subleased Property at a specified time before the beginning of the City Market hours, and that vehicles not so removed from the property will be towed at the direction of the Subtenant at the expense of the vehicle owner or operator.

The Subtenant shall permit no mechanic's liens, materialmen's liens or other statutory liens to attach to the Subleased Property as a result of any alterations, improvements, additions or repairs performed by the Subtenant or at the Subtenant's direction. If any such lien or notice of lien rights shall be filed with respect to the Subleased Property, the Subtenant shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Subleased Property until such release has been accomplished.

Upon termination of this Sublease, Tenant shall have the option to retain ownership of all or any improvements, facilities and equipment installed by Subtenant during the term of this Sublease, or to require Subtenant to remove any or all of such improvements, facilities and equipment and repair at its expense any damage resulting therefrom.

10. Maintenance/Operational Expenses. The Subtenant shall, at its own cost and expense during the term of this Sublease, leave the Subleased Property in a reasonably clean, attractive condition following each day of City Market use, and shall not commit or allow any waste or damage to be committed on or to any portion of the Subleased Property. This includes but is not limited to, removing trash from the site following each City Market Use. Subtenant agrees to keep the toilet area well maintained and to perform any maintenance or cleanup required at any time as a result of the toilets on the Subleased Property. During months when the City Market is in operation Subtenant agrees to power wash the Subleased Property up to twice a month if it becomes unsightly or unsanitary, in the opinion of Tenant, as a result of Subtenant's use of the Subleased Property.

As part of its maintenance responsibilities, Subtenant agrees to comply fully with any applicable governmental laws, regulations and ordinances limiting or regulating the use, occupancy or enjoyment of the Subleased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

- 11. Taxes and Assessments.** The Subtenant shall not be responsible for the payment of any real property taxes, special assessments or storm water utility fees applicable to the Subleased Property.
- 12. Utilities and Services.** The Subtenant shall be responsible for and pay all costs and charges for utilities and services in connection with the Subtenant's occupancy and use of the Subleased Property for the City Market, including but not limited to permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. If Subtenant, in its sole discretion, determines that the foregoing utilities and services, or any of them, are necessary for its use of the Subleased Property for the City Market, the same shall be instituted and obligated for in the name of the Subtenant, and the Tenant shall have no responsibility whatsoever for the furnishing or cost of the same. In the event electric service is on a joint meter in Tenant's name, Subtenant agrees to reimburse such costs as may be determined by a sub-meter or by a recording of the meter readings before and after City Market events.
- 13. Damage or Destruction of the Leased Property.** During the term of this Sublease Agreement or any extension thereof the Tenant shall have no responsibility for any damage caused to the Subleased Property during the operation of the City Market, except that proximately caused by the negligence or misconduct of the Tenant or its employees or agents. The Subtenant agrees that all property of every kind and description kept, stored or placed on the Subleased Property by the Subtenant shall be at the Subtenant's sole risk.
- 14. Insurance.** Subtenant covenants and agrees that it will, at its own expense and at all times during the term of this Lease and any extension thereof, keep in full force and effect a policy of commercial general liability and property damage insurance with respect to the Subleased Property and the operations of the Subtenant on the Subleased Property with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia. The limits of public liability for bodily injury and property damage shall not be less than One Million and 00/100 Dollars (\$1,000,000.00) per accident, combined single limit.

The Subtenant shall also maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as “extended coverage”, as the same may exist from time to time.

Copies of Subtenant’s policies of insurance (or certificates of the insurers) for insurance required to be maintained by the Subtenant shall be provided to Tenant on request.

15. Default. Each of the following occurrences relative to the Subtenant shall constitute default:

- a. Failure by the Subtenant in the performance or compliance with any of the terms, covenants, or conditions provided in this Sublease Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the Tenant to the Subtenant specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period such sixty (60) day period shall be extended for so long as the Subtenant is making diligent efforts to cure such default;
- b. Failure or refusal by the Subtenant to make the timely payment of rent or other charges due under this Sublease Agreement when the same shall become due and payable, provided the Tenant has given the Subtenant fifteen (15) days written notice of the same;

16. Assignment. The Subtenant shall have no right to assign or sublease, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Sublease Agreement to any other individual or entity without the prior written consent of the Tenant, which shall not be unreasonably withheld or delayed.

17. Surrender. Upon termination of the Lease, except as the parties may otherwise agree, the Subtenant shall quit and surrender to the Tenant the Subleased Property in substantially its condition as of the Commencement Date, provided that the Subtenant shall remove from the Subleased Property any personal property belonging to the Subtenant or third parties, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the Tenant, which may thereafter remove the property and dispose of it. On the termination of this Sublease, the Tenant may, without further notice enter on, reenter, possess and repossess the Subleased Property on days and at times that it would have otherwise been used by the Subtenant for the City Market.

- 18. Right of Entry.** Tenant, or Tenant's agents and designees, shall have the right, but not the obligation, to enter upon the Subleased Property or any part thereof during its use as the City Market, to inspect and examine the same to ensure compliance with the terms of this Sublease Agreement. The Tenant's failure to detect any violation or to notify the Subtenant of any violation shall not relieve the Subtenant of its obligations under the terms of this Lease.
- 19. Waiver.** The waiver by the Tenant of the Subtenant's breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The subsequent acceptance of rent hereunder by the Tenant shall not be deemed to be a waiver of any breach by the Tenant of the Subtenant of any term, covenant or condition of this Sublease regardless of knowledge of such breach at the time of acceptance or payment of such rent. No covenant, term or condition of this Sublease shall be deemed to have been waived by the Tenant or the Subtenant unless the waiver is in writing signed by the party to be charged thereby.
- 20. Entire Agreement.** This Sublease Agreement sets forth all the covenants, promises, agreements, conditions and understandings, between the Tenant and the Subtenant concerning the Subleased Property and there are no covenants, promises, agreements, conditions or understandings either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease Agreement shall be binding upon the Tenant or the Subtenant unless reduced in writing and signed by them.
- 21. Headings.** The section headings in this Sublease Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections of this Sublease nor in any way affect this Sublease.
- 22. Severability.** If any term, covenant or condition of this Sublease, or the application thereof, to any person or circumstance shall to any extent be invalid or unenforceable the remainder of this Sublease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Sublease shall by valid and be enforced to the fullest extent permitted by law.
- 23. Non-Appropriation.** Payment and performance obligations of the Subtenant (City of Charlottesville), beyond the initial year of this Sublease Agreement, are expressly conditioned upon the availability of and appropriation by the City public funds thereafter in each subsequent fiscal year. When public funds are not appropriated or are otherwise

unavailable to support continuation of performance by the City in a subsequent fiscal period, this Sublease 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 Tenant with written notice of any non-appropriation or unavailability of funds affecting this Sublease Agreement.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

25. Notices. Any notice, demand, request, or other instrument which may be, or are required to be given under this Sublease Agreement, shall be in writing and delivered in person or by United States certified mail, return receipt requested, postage prepaid, and shall be address as follows:

If to the City:

Mike Murphy
Interim City Manager
605 East Main Street
Charlottesville, VA 22902

If to the Tenant:

Skyview Parking LLC
c/o Woodard Properties
224 14th Street NW
Charlottesville, VA 22903

or at such other address as designated by written notice of a party.

IN WITNESS WHEREOF, the Tenant and the Subtenant have signed and sealed this Lease as of the date first above written.

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Name: Mike Murphy

Title: Interim City Manager

Date: _____

Funds are available:

Approved as to form:

Director of Finance

City Attorney

SKYVIEW PARKING LLC

By: _____

Name: _____

Title: _____

Date: _____

**AN ORDINANCE APPROVING
A DEED OF ENCROACHMENT AND TEMPORARY AERIAL EASEMENT
FROM THE CITY OF CHARLOTTESVILLE, VIRGINIA TO BRANDS HATCH LLC
FOR THE CENTER OF DEVELOPING ENTERPRISES (CODE) PROJECT
AT THE WESTERN END OF THE DOWNTOWN MALL**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that the attached Deed of Encroachment and Temporary Aerial Easement between the City of Charlottesville, Virginia and Brands Hatch, LLC, is hereby approved. The Mayor is authorized to execute the Deed and any other documents necessary to consummate the transaction on behalf of the City, in form approved by the City Attorney.

Prepared by and upon recordation return to:
Williams Mullen
321 East Main Street, Suite 400
Charlottesville, Virginia 22902

City of Charlottesville Tax Map Parcels 280001000, 280009000, and 280009100

*This deed is exempt from state recordation taxes imposed by Virginia Code
Sec. 58.1-801 pursuant to Virginia Code Sec. 58.1-811(C)(4).*

DEED OF ENCROACHMENT AND TEMPORARY AERIAL EASEMENT

This **DEED OF ENCROACHMENT AND TEMPORARY AERIAL EASEMENT** (this “Deed”) is made and entered into as of this _____ day of _____, 2019, by the **CITY OF CHARLOTTESVILLE, VIRGINIA**, P.O. Box 911, Charlottesville, Virginia, 22902 (the “City”), as Grantor, and **BRANDS HATCH LLC**, a Virginia limited liability company, 0 Court Square, Charlottesville, Virginia 22902 (the “Grantee”).

WITNESSETH:

WHEREAS, the Grantee is the owner of that certain real property located in the City of Charlottesville, Virginia, containing 0.979 acres in the aggregate, more or less, shown as “TMP 28-1,” “TMP 28-9,” and “TMP 28-10” on that certain plat prepared by Timmons Group, dated July 4, 2018, entitled “Plat Showing Boundary Line Adjustment on the Lands of Brands Hatch LLC, Tax Map Parcels 28-1, 28-9, & 28-9.1, and City of Charlottesville, Virginia,” and recorded in the Clerk’s Office of the Circuit Court of the City of Charlottesville as Instrument No. _____ (hereinafter, the “Grantee’s Property”); and

WHEREAS, the City is the owner of that certain real property adjacent to the Grantee’s Property commonly known as the rights-of-way of West Main Street and Water Street (the “City’s Property”); and

WHEREAS, the Grantee is in the process of obtaining the City's approval of a site plan authorizing development of the Grantee's Property (the "Site Plan"), including the construction of a building thereon, immediately adjacent to the City's Property, and the Grantee now desires to proceed with construction of the building (the "Project"); and

WHEREAS, Grantee represents that construction of the building cannot be accomplished without certain shoring and earth retention ("Shoring") on the City's Property, and the placement of a crane or cranes (collectively, the "Crane") on the Grantee's Property; and

WHEREAS, the Shoring consists of steel piles and tie-backs driven into the City's Property, typically placed eight to ten-feet on center, and related retaining walls, berms, or other structures and improvements, and following completion of construction, the parties hereto desire to allow the steel piles and tie-backs to remain within and permanently occupy the City's Property, and Grantee understands that such piles constitute an encroachment onto the City's Property; and

WHEREAS, in consideration of its use and occupancy of the City's Property in the manner described above, the Grantee desires to bind itself, its successors and assigns, for all liabilities for and relating to the Shoring and other construction activities to be conducted by Grantee within the City's Property during construction, and the subsequent continued occupation of the City's Property by the steel piles and tie-backs following construction.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the City hereby grants the following to the Grantee, and to its successor and assigns:

1. The right and easement to encroach upon the subsurface areas of the City's Property located 25 feet from the Grantee's Property, in the area shown and labeled as "Tie-Back Extents

(Limits of Tie-Back Easement = .39 Acres)” (the “Encroachment Area”) on the exhibit entitled “Tie-Back Easement and Temporary Aerial Easement Exhibit” prepared by Timmons Group, dated August 10, 2018, attached hereto as Exhibit A, and incorporated herein (the “Exhibit”) for the purpose of installing, maintaining and removing tie-back anchors, steel piles and other construction equipment, as necessary, on those subterranean portions of the City’s Property that are along the common boundaries of the City’s Property and the Grantee’s Property, to the extent that the placement of such tie-back anchors, steel piles and other construction equipment is necessary for the construction of the Project. Upon completion of the Project, the steel piles and tie-back anchors installed by the Grantee within the Encroachment Area that are necessary for the structural support of the Project will remain undisturbed and in-place.

2. The right and easement of ingress and egress by the Grantee and its contractors and consultants onto the City’s Property, to perform the subsurface work within the Encroachment Area pursuant to the terms and conditions of this Deed.

3. The right to a temporary easement to use the air space: (i) beginning 15 feet above the current surface of the City’s Property in the area shown as “Temporary Aerial Easement Area Within City Right of Way (1.14 Acres)” on the Exhibit (the “Temporary Aerial Easement Area”) for formwork and scaffolding in connection with the installation of exterior sheathing, masonry, metal site and other construction related activities for the Project; (ii) to allow the boom of the Crane to be used on the Project to swing over the City’s Property; it being understood that no supplies or materials being hoisted by such Crane shall swing over the City’s Property.

FURTHER, the Grantee, on behalf of itself, its successors and assigns, does hereby covenant and agree as follows, for the benefit of the City:

1. The Grantee shall be liable for negligence, attributable to the Grantee and/or its agents, contractors, and subcontractors which relate to the Shoring, Crane and its encroachment within the City’s Property.

2. The Grantee shall indemnify and hold the City harmless from and against any and all liability, losses, suits, actions, judgments, claims, demands, damages, penalties, fines, expenses and costs, of every kind and nature, incurred by or asserted or imposed against the City by reason of any accident, injury (including death) or damage to any person, property, equipment or utility facilities (including, without limitation any property, equipment, or utility facilities owned by the City), however caused, resulting from or arising out of the Grantee's use and occupancy of the Encroachment Area and Temporary Aerial Easement Area during (a) Grantee's construction activities, by Grantee, its agents, contractors, and subcontractors, and (b) thereafter, during such period of time as the steel piles or other components or structures of the Grantee's Shoring continue to occupy the City's Property, except to the extent that such loss or damage is the result of the gross negligence, willful, or wanton conduct of the City.

3. The Grantee, its agents, contractors, and subcontractors shall adhere to the Underground Utility Damage Prevention Act as well as the Site Plan approved by the Grantor. The Grantor is required to locate the depth of the existing utilities by means of potholing at the designated locations on the Site Plan approved by the Grantor.

4. Upon completion of construction, Grantee shall (a) remove the steel piles, and other components and structures comprising the shoring, to a depth of six (6) feet below finished grade, and (b) provide the City with as-built plans showing existing conditions, in an electronic format acceptable to the City Engineer, such as-built plans to provide geographic information system (GIS) coordinates or a physical survey of the location and dimension(s) of each of the steel piles that will remain within the Encroachment Area.

5. The Grantee agrees that the City shall have and retain any and all legal rights it may have pursuant to Virginia Code Sec. 15.2-2009 and Sec. 15.2-2011, as such statutes exist as of the date of this Deed and as they may subsequently be amended, in addition to any other legal rights or remedies the City may have.

6. Following the exercise of any rights herein conveyed, the Grantee shall remove all trash and other debris resulting from its activities, and shall complete construction of the City's Property in accordance with the Site Plan, restoring any areas not shown on the Site Plan to their original condition, as nearly as reasonably possible, with the exception of the permanent tie-backs and the shoring that is cut back six feet below grade, as detailed herein.

7. The Temporary Aerial Easement shall automatically expire upon the completion of the aforementioned development activities or upon the Grantee's removal of the Crane.

8. The Grantee's covenants and agreements set forth within this Agreement shall run with the land described herein as the Grantee's Property, and shall be binding on Grantee, its successors and assigns.

9. By ordinance approved on _____, 2019, the Charlottesville City Council authorized the Mayor to execute on behalf of the City this Deed conveying the above-described easements.

WITNESS the following duly authorized signatures.

Grantor: CITY OF CHARLOTTESVILLE, VIRGINIA,
a municipal corporation

By: _____ (SEAL)
Nikuyah Walker, Mayor

COMMONWEALTH OF VIRGINIA
City/County of _____

The foregoing was acknowledged before me on this _____ day of _____, 2018, by
Nikuyah Walker, Mayor, on behalf of the City of Charlottesville, Virginia.

Notary Public

Registration #: _____

My commission expires: _____

Approved as to Form:

Lisa A. Robertson, Chief Deputy City Attorney

Grantee:

BRANDS HATCH LLC,
a Virginia limited liability company

By: _____ (SEAL)

Printed Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA

City/County of _____

The foregoing was acknowledged before me on this _____ day of _____, 2018, by
_____ as _____ of Brands Hatch LLC, on behalf of
the company.

Notary Public

Registration #: _____

My commission expires: _____

EXHIBIT A

the Exhibit

(attached)

DEPENDING ON DEPTH OF EXCAVATION, TIE-BACKS WILL BE UTILIZED TO SUPPORT THE SHORING WALL SYSTEM. EXCAVATION UP TO +/- 20 FEET GENERALLY REQUIRE (1) ROW OF TIE-BACKS. EXCAVATIONS EXCEEDING 24 FEET MAY REQUIRE 2 ROWS OF TIE-BACKS. TIE-BACKS ARE GENERALLY INSTALLED 8 -10 FEET BELOW GRADE. TIE-BACKS ARE INSTALLED AT A 15 DEGREE ANGLE, BUT CAN BE INSTALLED WITH STEEPER ANGLE IF REQUIRED TO ELIMINATE UTILITIES OR OTHER KNOWN OBSTRUCTIONS.

TEMPORARY AERIAL EASEMENT AREA WITHIN CITY RIGHT OF WAY (1.14 ACRES)

213' CRANE RADIUS

TM 33-155L

OMNI HOTEL

VIOLET CROWN THEATER

TM 28-10

2ND STREET

WATER STREET

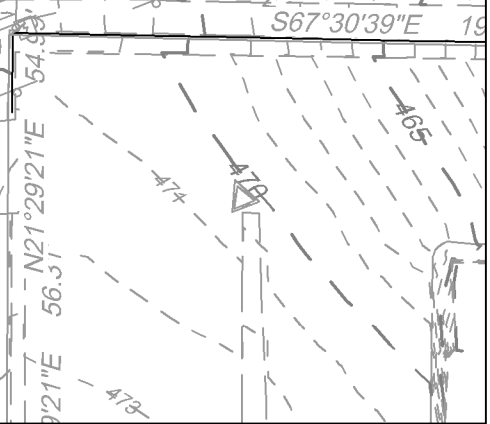
TIE-BACK EXTENTS (LIMITS OF TIE-BACK EASEMENT = 0.39 ACRES)

TM 28-801

TM 28-84F

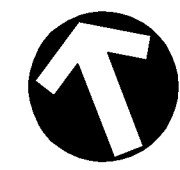
TM 28-80

TM 28-842

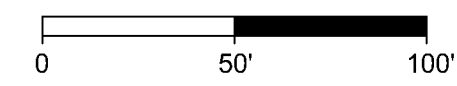


CHARLOTTESVILLE TECHNOLOGY CENTER

TIE-BACK EASEMENT AND TEMPORARY AERIAL EASEMENT EXHIBIT- 8/10/18



SCALE 1"=50'



TIMMONS GROUP
YOUR VISION ACHIEVED THROUGH OURS.

**RESOLUTION APPROVING A REQUEST FOR
WAIVER OF CRITICAL SLOPES
PROVISIONS PURSUANT TO CITY CODE SECTION 34-1120(B)(6)
FOR 900-1000 FIRST STREET SOUTH (CRHA)**

WHEREAS, Charlottesville Redevelopment and Housing Authority (CRHA), Applicant and owner of property designated on City Tax Map 26 as Parcel 115, addressed as 900-1000 First Street South (the "Property"), seeks a waiver of the critical slopes requirements of City Code Sec. 34-1120(b) to allow for construction of multi-family dwelling units, parking lots, and related improvements on the Property (the "Project"); and

WHEREAS, the Planning Commission considered this request at their regular meeting on February 12, 2019, and recommended approval of the request for a waiver of the critical slopes requirements, pursuant to City Code Sec. 34-1120(b), subject to conditions; and

WHEREAS, upon consideration of the information and materials provided by the applicant, and the recommendation of the Planning Commission, the City Council finds and determines pursuant to City Code Sec. 34-1120(b)(6)(d) that the benefits of allowing disturbance of the critical slopes in connection with the Project outweigh the public benefits of the undisturbed slopes; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia that the request by CRHA for a waiver of the critical slopes requirements for the above-described Project to be developed on the Property, is hereby granted, subject to the following conditions:

1. Landowner shall provide erosion and sediment control measures that exceed minimum requirements, in order to mitigate potential impacts to undisturbed critical slopes areas, per Section 34-1120(b)(1)(a-c), including but not limited to:

- a. Silt fence with wire reinforcement and six (6) feet stake spacing; and
- b. Other measures in excess of minimum requirements determined by City Engineering Staff to be necessary to protect Pollocks Branch from sedimentation.

2. The critical slope area outside of approved encroachment boundaries shall be clearly marked in the field, and the approved stormwater management plan and construction plan shall each include a note requiring such limits of disturbed area to remain as established for the duration of construction and land disturbing activities.

3. Final stabilization of the areas of critical slopes disturbed shall be permanent measures to include replanting of native tree and shrub species for restabilization of the critical slopes and potential wildlife habitat.

4. The final site plan shall include construction methods presented by the applicant to phase construction of the buildings, so that the first two buildings adjacent to 1st Street will be the first to be constructed, in order to create a better stabilized site during construction and to facilitate more effective erosion and sediment control measures.

5. Prior to commencing any land disturbance within the development site, Landowner

shall install a fixed, immovable barrier to protect root zones of each existing tree, at the drip line, for trees that have been identified within the final site plan as trees to be preserved. This root protection barrier shall remain in place until final completion of all construction.