RESOLUTION 2018-15

A RESOLUTION AUTHORIZING AND APPROVING THE EXECUTION OF A RIGHT OF ENTRY COOPERATIVE AGREEMENT WITH JAMES CANNON REGARDING RIGHT OF ENTRY, PARTIAL VACATION OF RIGHT OF WAY, AND SPECIAL RIGHT OF WAY PERMIT AND DECLARING AN EMERGENCY

WHEREAS, pursuant to a Tax Increment Financing Agreement, M/I Homes is cooperating with the Village of Minerva Park (“Village”) with regard to realigning the intersection of Minerva Lake Road and East Shore Drive; and

WHEREAS, James Cannon, owner of 2920 Minerva Lake Road, has agreed to enter into a Right of Entry Agreement with M/I Homes of Central Ohio; and

WHEREAS, in connection therewith and in consideration thereof, the Village intends to vacate a portion of the East Shore Drive and Minerva Lake Road right of way upon completion of the improvements and issue a special right of way permit;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF MINERVA PARK, OHIO, THAT:

Section 1. The Mayor is authorized to enter into a Right of Entry Cooperative Agreement with James Cannon to secure the right of entry and partially vacate the right of way of East Shore Drive and Minerva Lake Road, in a form substantially similar to the Agreement attached hereto as Exhibit A and incorporated herein by reference.

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

Section 3. That this resolution is hereby declared to be an emergency measure, necessary for the preservation of the public health, safety and welfare and specifically in order to begin construction in a timely manner; WHEREFORE, this resolution shall take effect and be in force from and after its passage.

Lynn Eisentrout, Mayor

First Reading: July 9, 2018
Second Reading: Waived
Third Reading: Waived
Passed: July 9, 2018

ATTEST
Kimberly Pulley, Fiscal Officer

APPROVED AS TO FORM
Solicitor
RIGHT-OF-ENTRY
COOPERATIVE AGREEMENT

This Agreement is entered into on the ___ day of May, 2018, by and between James Cannon (hereinafter referred to as "Owner") and the Village of Minerva Park, an Ohio municipal corporation (hereinafter referred to as "the Village").

1. Right of Entry Agreement with M/I Homes. Owner hereby agrees to enter into a Right of Entry Agreement with M/I Homes of Central Ohio ("M/I"), in a form substantially similar to the agreement attached hereto as Exhibit 1 and incorporated herein by reference, granting access to 2920 Minerva Lark Road for the purpose of completing certain driveway and other improvements in connection with realignment of the East Shore Drive/Minerva Lake Road intersection.

2. Partial Vacation of Right of Way. In consideration thereof, the Village intends to vacate a portion of the East Shore Drive and Minerva Lake Road right-of-way. The approximate area to be vacated is set forth on the map attached hereto as Exhibit 2 and incorporated herein by reference. Following completion of construction and a survey to delineate the metes and bounds of the area to be vacated, Village Council hereby agrees to enact appropriate legislation to effectuate the partial vacation of the affected right-of-way. Pursuant to Ohio law, easements for existing utilities in the vacated right-of-way area shall be reserved upon vacation of the right-of-way.

3. Special Right-of-Way Permit. Owner desires to retain a portion of an existing stone wall and concrete steps/sidewalk that is located within the Minerva Lake Road right-of-way, which portion is identified on the map attached as Exhibit 2. Pursuant to Chapter 1477 of the Codified Ordinances of the Village, Uses of Rights of Way (copy attached hereto as Exhibit 3 and incorporated herein by reference), Owner agrees to file an appropriate application and the Village agrees to issue a Special Permit to permit this portion of the stone wall and concrete steps/sidewalk to remain in the right-of-way.

4. Notices. All notices which are required or permitted hereunder shall be delivered by mailing such notice, first-class mail, postage pre-paid, or by other appropriate carrier, to the address of each party first set forth above.

5. Entire Agreement. This Agreement embodies the entire agreement between the parties hereto and shall not be modified, changed or altered in any respect, except in writing, executed in the same manner as this Agreement by the parties hereto.

6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original of this Agreement, but all of the counterparts taken together shall constitute one and the same instrument.

7. Governing Law. All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the parties with respect to
performance under this Agreement, shall be construed and resolved under the laws of the State of Ohio.

8. **Agreement Binding.** This Agreement shall be binding upon Owner and Owner's heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Village, its successors and assigns.

**OWNER:**

Date: **May 9, 2018**

James Cannon

**VILLAGE OF MINERVA PARK:**

By: _________________

Lynn Eisentrout, Mayor

Approved as to form:

_______________________

Eugene L. Hollins, Village Solicitor
RIGHT-OF-ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT (the “Agreement”), dated to be effective May __, 2018, is made by and between M/I HOMES OF CENTRAL OHIO, LLC, an Ohio limited liability company ("M/I"), and JAMES A. CANNON (the “Property Owner”).

Recitals

WHEREAS, the Property Owner owns the real property commonly known as 2920 Minerva Lake Road, more specifically described in Exhibit A attached hereto and made a part hereof by this reference (the “Property”); and

WHEREAS, M/I and Property Owner, in order to provide for M/I to have access to the Property for the purpose of completing certain construction obligations, have agreed that the Property Owner shall grant certain rights to M/I with respect to a portion of the Property (the “Right of Entry”); and

WHEREAS, M/I and the Property Owner wish to memorialize their respective duties, obligations, and responsibilities with respect to the use of the Property; and

WHEREAS, in connection with M/I’s use of the Property, M/I’s agents, employees, independent contractors, or other persons (the “Third Parties”) will be entering upon the Property;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, M/I and the Property Owner hereby agree as follows:

Section 1. Grant and Scope of License. The Property Owner hereby grants to M/I a non-transferable license to enter upon the Property for purposes of constructing and reconfiguring Property Owner’s driveway and completing improvements described below as shown on Exhibit A attached hereto (the “License”). Said License shall extend to Third Parties who are duly authorized by M/I to carry out any of the foregoing activities on behalf of M/I. The improvements include: (1) removing and replacing the existing 3” asphalt driveway with a new 3” asphalt driveway with a more moderate slope as shown on Exhibit A; (2) Add a new 3” asphalt turn-around as shown on Exhibit A; (3) Regrade a portion of the lot as shown on Exhibit A; (4) Haul away and properly dispose of all debris from the site; and (5) Extending all storm drains to the new curb-cut. Within thirty days following completion of construction, M/I shall cause restoration of the described affected area to include, but not be limited to, the replacement or repair of damaged sidewalk or pavement, re-seeding of damaged lawn areas, and returning the surface area to its former grade as much as possible. Property Owner retains the right to approve any changes to final grading on the lot so that it is compatible with the grading of the adjacent lot and/or the right-of-way.

Section 2. Liability and Indemnity. M/I agrees to indemnify and hold Property owner and each of its past, present and future, directors, officers, members, agnts,
employees, representatives, and assigns harmless from any and all losses, claims, damages arising out of the use of the Property by the M/I and the Third Parties.

Section 3. **M/I’s Interest.** M/I acknowledges that M/I has no interest, and that this Agreement does not confer upon M/I any interest in the Property. This Agreement and the rights granted to M/I hereunder shall not restrict, prohibit or impair the Property Owner’s use of the Property or the conduct of the Property Owner’s business thereon; provided, however, that the Property Owner shall not unreasonably interfere with the License.

Section 4. **No Assignment.** Except as specifically set forth in Section 1, above, all rights granted to M/I hereunder are personal to M/I and M/I shall not sell, assign, encumber, mortgage, sublicense, or transfer the License and/or this Agreement.

Section 5. **Miscellaneous.** M/I hereby warrants, represents and agrees that it has the full authority to enter into this Agreement and that the person executing this Agreement on behalf of M/I has the requisite authority to so act. This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior understandings or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated into this Agreement. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

Section 6. **Duration of Agreement.** This right of entry agreement shall have a term of four (4) months commencing upon M/I’s entry upon the described property, and terminating four (4) months thereafter.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives as of the date first above written.

M/I HOMES OF CENTRAL OHIO, LLC
an Ohio limited liability company

By: ____________________________

Print Name: ______________________

Its: ______________________________

JAMES A CANNON

By: ____________________________

2
CHAPTER 1477  
Uses of Rights of Way

1477.01 Purpose; scope.
1477.02 Definitions.
1477.03 Types of permits and franchises.
1477.04 Permit application.
1477.05 Criteria for granting permits.
1477.06 Terms of permits.
1477.07 Obligations of permittees.
1477.08 Permit fees.
1477.09 Construction and technical standards.
1477.10 Use of facilities by Village.
1477.11 Indemnification and insurance.
1477.12 Removal of facilities.
1477.13 Revocation.
1477.14 Reservation of rights by Village.
1477.15 Temporary removal of facilities.
1477.16 Permit non-transferable; exception.
1477.17 Separability.
1477.99 Penalty; equitable remedies.

CROSS REFERENCES
"Property" defined to include cable television service - see GEN. OFF. 606.01(o)
"Services" defined to include cable television service - 642.01(a), (r)
Cable television - see B.R. & T. Ch. 808
Water - see S.U. & P.S. Ch. 1040
Sewers - see S.U. & P.S. Ch. 1042
Gas - see S.U. & P.S. Ch. 1044
Electricity - see S.U. & P.S. Ch. 1046

1477.01 PURPOSE; SCOPE.
(a) The purpose of this chapter is to provide requirements for the use or occupation of any and all rights of way in the Village, the issuance of permits to persons for such use or occupancy, and to set forth the policies of the Village relating thereto.

(b) This chapter does not take the place of any franchise, license or permit which may be additionally required by law. Each permittee shall obtain any and all such additional franchises, licenses or permits necessary to the operation and conduct of its business.
(c) No person shall use, occupy, own or operate facilities in, under or over any rights of way within the Village unless such person first obtains a franchise and/or permit conforming to the requirements set forth therein and in this chapter.

(d) The policy of the Village with regard to rights of way is hereby declared to be:
(1) To promote public safety and protect public property;
(2) To promote the utilization of rights of way for the public health, safety and welfare and to promote economic development in the Village;
(3) To promote the availability of a wide range of utility, communication and other services, including the rapid deployment of new technologies and innovative services, to the Village's citizens and taxpayers at reasonable rates;
(4) To promote cooperation among the Village and the franchisees and permittees in the occupation of rights of way, and work therein, in order to minimize public inconvenience during work in the rights of way and avoid uneconomic, unneeded and unsightly duplication of facilities;
(5) To ensure adequate public compensation for the regulation of the private use of the rights of way and regulation thereof; and
(6) To promote and require reasonable accommodation of all uses of the rights of way and to establish the following priority of use of the rights of way, when all requested usage of the rights of way by permittees cannot be accommodated:
   A. Use by the Village shall have first priority;
   B. Use by another governmental entity with the Village's concurrence or other uses required by law, and utility permittees and franchisees shall have second priority;
   C. Telecommunications permittees and franchisees shall have third priority;
   D. Special permittees shall have fourth priority; and
   E. Residential permittees shall have the fifth priority;
   Provided, however, that the Mayor may reasonably require right of way permittees and franchisees to cooperate to accommodate use by other permittees and franchisees, and provided, further, that the Mayor may alter these priorities when the Mayor reasonably determines a deviation therefrom to be in the public interest.

(e) Nothing in this chapter should be construed to apply the provisions of this chapter to facilities owned or operated by the Village or any of its operations.

(f) Unless otherwise specifically stated in a permit, all permits granted hereunder shall be non-exclusive.

(g) This chapter shall have no effect on any existing permit until the expiration of same. (Ord. 6-97. Passed 7-14-97.)

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1477.02 DEFINITIONS.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this chapter. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Applicant" means any person applying for a permit hereunder.
(b) "Approved" means approval by the Village pursuant to this chapter or any regulations adopted hereunder.
(c) "Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.
(d) "Cable Television Service" means the one-way transmission to subscribers of video programming or any other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or any other programming service.
(e) "Council" means the Council of the Village of Minerva Park.
(f) "Emergency" means a reasonably unforeseen occurrence with the potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
(g) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of the government of the United States of America or the State of Ohio or any of its departments, agencies or political subdivisions, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent that the disabled party notifies the other party as soon as practicable regarding such force majeure, and then for only so long as and to the extent that the force majeure prevents compliance or causes non-compliance with the provisions hereof.
(h) "Mayor" means the Director of Public Services (or the equivalent).
(i) "Permit" means the non-exclusive grant of authority to use or occupy all or a portion of the Village's rights of way granted pursuant to this chapter.
(j) "Permittee" means any person issued a permit pursuant to this chapter to use or occupy all or a portion of the rights of way in accordance with the provisions of this chapter and said permit.
(k) "Person" means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not-for-profit.
(l) "Regulation" means any rule adopted by and pursuant to the authority of this chapter.

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"Residential Related Purposes" means residential use of a right of way for mailboxes, decorative purposes, curb cuts, driveways, irrigation systems and other uses permitted in the right of way by ordinance.

"Right of Way" or "Rights of Way" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or right of way now or hereafter held by the Village which shall, within its proper use, entitle a permittee, in accordance with the terms hereof and any permit, to the use thereof for the purpose of installing or operating any facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any permit. "Right of way" shall also include publicly owned property, but only to the extent that the use or occupation thereof is specifically granted in a permit or by regulation.

"Right of Way Work Permit" means a permit granted by the Director, authorizing actual physical work by a permittee in the right of way.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of the government of the United States of America or the State of Ohio or any of its departments, agencies or political subdivisions, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, but only to the extent that the disabled party notifies the other party as soon as practicable regarding such force majeure, and then for only so long as and to the extent that the force majeure prevents compliance or causes non-compliance with the provisions hereof.

(Ord. 6-97. Passed 7-14-97.)

1477.03 TYPES OF PERMITS AND FRANCHISES.

(a) The following types of permits and franchises are available for the use of rights of way:

(1) **Cable television franchise.** A cable television franchise shall be granted to providers of cable television service.

The specific terms and conditions of a cable television franchise shall be contained within such franchise. This chapter shall be applicable to such franchises to the extent specified within the franchise.

(2) **Telecommunications or utility permit.** A telecommunications or utility permit shall be granted to persons who desire and are granted authority to utilize rights of way to provide a public utility and/or telecommunications service, other than cable television service.
(3) **Special permit.** A special permit shall be granted to persons for a specific, limited use of the rights of way or a specific portion thereof; and

(4) **Residential permit.** A residential permit shall be granted to an adjacent or proximate residential landowner to occupy or use a portion of the right of way for residential-related purposes.

(b) All permits shall specify the use or uses for which such permits are granted and shall contain such other nondiscriminatory terms and conditions as are appropriate and as are set forth in this chapter or conditions negotiated and agreed to by the Village and the permittee to provide for the public safety or welfare.  
(Ord. 6-97. Passed 7-14-97.)

**1477.04 PERMIT APPLICATION.**

(a) Applications for cable television franchises shall be processed and granted or denied pursuant to Chapter 808 of the Business Regulation and Taxation Code, provided, however, that a cable franchise shall only entitle the franchisee to utilize the rights of way for purposes directly relating to the provision of the cable television service. Any other right of way use by such franchisee shall require a separate permit, unless specifically contained in an existing franchise agreement.

(b) Applicants for telecommunications or utility permits shall file an application therefor, in such form as the Village may require, along with an application fee as established form time to time by Council. The Mayor shall determine if the application is in order and, if so, forward the application to Council to determine whether, in accordance with the criteria set forth in Section 1477.05, the applicant should be granted a permit hereunder. Within 120 days after receiving a complete application, Council shall make a final determination as to whether or not such permit should be granted and, if so, upon what terms and conditions.

(c) Applicants for special permits shall file an application therefor, in such form as the Village requires, along with an application fee as established from time to time by Council. The Director shall determine if the application is in order and if the Mayor also finds, in accordance with the criteria set forth in Section 1477.05, that the application should be granted, the Mayor shall grant such a permit.

(d) Applicants for residential permits shall file an application therefor, in such form as the Village requires, along with an application fee as established from time to time by Council. The Mayor shall determine if the application is in order and, if so, shall grant the application so long as the Mayor also finds, in accordance with the criteria set forth in Section 1477.05, that the application should be granted. Residential permits shall be valid until canceled by the Mayor upon sixty days written notice to the permittee, provided, however, that upon a finding by the Mayor that an emergency exists, the Mayor may cancel such permit upon such lesser notice as is necessary under the circumstances.

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(e) Any applicant may appeal the failure of the Mayor to grant a permit or to recommend it to be granted upon terms and conditions acceptable to the applicant. In order to perfect such appeal, the applicant shall file, within ten days of the Mayor's determination or recommendation, or within ninety days of the filing of the application if the Mayor has taken no action, no appeal to Council. Council shall then review the matter after affording the applicant an opportunity to be heard, either in person or in writing. Except to the extent otherwise appealable by law, Council's decision shall be final.

(f) A permittee that desires to renew its permit under this chapter shall, not more than 180 days nor less than ninety days before expiration of the current permit, file an application with the Village for renewal of its permit, which shall include the information required in the original application. Within ninety days after receiving a complete application under this section, the Village shall issue a written determination granting or denying the renewal application, in whole or in part, applying the criteria set forth in Section 1477.05. If the renewal application is denied, the written determination shall include the reasons for non-renewal. No permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the permit, or of the requirements of this chapter, have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the Village.
(Ord. 6-97. Passed 7-14-97.)

1477.05 CRITERIA FOR GRANTING PERMITS.

(a) Cable television franchises shall be granted pursuant to Chapter 808 of the Business Regulation and Taxation Code.

(b) Telecommunications, utility and special permits shall be granted, or renewed, to persons based upon a determination by the Village that the following criteria are met:

1. That the granting or renewal of the permit will contribute to the public health, safety or welfare in the Village;
2. That the granting or renewal of the permit will be consistent with the policy of the Village as set forth in Section 1477.01;
3. That the applicant has and will continue to have liability insurance which names the Village as an additional insured, in effect in such amounts and for such liability as the Village may require, or will be self-insured pursuant to the terms of this chapter;
4. That the applicant is a proper person to hold a permit and will fulfill all of its obligations hereunder;
5. That the applicant possesses sufficient financial and technical ability;
6. That the application complies with applicable Federal, State and local telecommunications laws, rules and policies; and

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(7) For permit renewals, that the rights of way possess a continuing capacity to accommodate the applicant's existing facilities; the applicant's compliance with the requirements of this chapter and the permit provisions; and such other factors as may demonstrate that the continued grant to use the rights of way will serve the community interest.

(c) Residential permits shall be granted if not inconsistent with the public health, safety and welfare. (Ord. 6-97. Passed 7-14-97.)

1477.06 TERMS OF PERMITS.
(a) Telecommunications and utility permits shall be granted for a term not to exceed ten years.

(b) The terms of special permits shall be determined by the Mayor, but shall in no event exceed ten years.

(c) Residential permits shall be granted for an indefinite period, but shall be cancelable by the Village upon sixty days written notice.
(Ord. 6-97. Passed 7-14-97.)

1477.07 OBLIGATIONS OF PERMITTEES.
(a) In addition to the other requirements set forth herein, each telecommunications and/or utility and special permittee shall:

(1) Use its best efforts to cooperate with other franchisees and permittees and the Village for the best, most efficient, most aesthetic and least obtrusive use of the rights of way, consistent with public safety, and to minimize traffic and other disruptions, including street cuts.

(2) Participate in joint planning and advance notification of right of way work, except such work performed in emergencies or other exigent circumstances.

(3) Cooperate with other nonresidential permittees and franchisees in the utilization of, construction in, and occupancy of, private rights of way, but only to the extent that the same is not inconsistent with the grant thereof or State or Federal law.

(4) Upon written notice by, and at the direction of, the Director, and at the permittees sole cost, promptly remove or rearrange facilities as necessary, e.g. during any construction, repair or modification of any street, sidewalk, Village utility or other governmental use, or if additional or subsequent Village or other public uses of the rights of way are inconsistent with then current uses of franchisees and permittees or for any other reasonable cause as determined by the Mayor.
(5) Provide maps or other information in such form (including digital form) and at such times as the Village may reasonably require. Said maps and information shall locate, describe and identify all structures and facilities of such permittee, including pole attachments, above and in the rights of way.

(6) Perform all work, construction, maintenance or removal of structures and facilities within the rights of way in accordance with good engineering and construction practices, including any appropriate safety codes, and in accordance with the best efforts to repair and replace any street, curb or other portion of the right of way, or facilities or structures located therein, to a condition materially equivalent to this condition prior to such work, and to do so in a manner which minimizes inconvenience to the public, the Village and other franchisees and permittees, all in accordance with all applicable regulations.

(7) Register with all appropriate underground reporting services.

(8) Unless otherwise set forth in a permit, not enter into leases or other agreements for physical space, in or on the permittee's facilities located within the rights of way, without prior notice to the Mayor, to include a general description of the uses to be made of the rights of way.

(9) Designate a single point of contact for all activities relating to the permit in the Village.

(10) Ensure subcontractor compliance with all permit provisions.

(Ord. 6-97. Passed 7-14-97.)

1477.08 PERMIT FEES.
Permit fees shall be as established from time to time by Council.
(Ord. 6-97. Passed 7-14-97.)

1477.09 CONSTRUCTION AND TECHNICAL STANDARDS.

(a) Upon the granting of a permit and in order to construct, operate and maintain a telecommunications system or utility in the Village, the permittee may enter into contracts with any public utility company or any other owner or lessee of any poles or underground facilities located within or without the Village; obtain right of way permits from appropriate Village, State, County and Federal officials necessary to cross or otherwise use highways or roads under their respective jurisdiction; obtain permission from the Federal Aviation Administration to erect and maintain antennas; and obtain whatever other permits a Village, County, State or Federal agency may require.

(b) In those areas of the Village where telephone and electric services are provided by underground facilities, all new facilities of a permittee shall be placed underground. In all other areas, the permittee, upon request by the Village, shall use its best efforts to place facilities underground. However, the term "facilities", as used in the preceding sentence, shall not include equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities (e.g. splice
and terminal pedestals, equipment cabinets and transformers). Where not otherwise required to be placed underground by this chapter, the permittee's system shall be located underground at the request of the adjacent property owner, provided the placement of such system shall be consistent with the permittee's construction and operating standards, and provided, further, that the excess cost over the aerial location shall be borne by the property owner making the request. All cable to be installed under the roadway shall be installed in conduit. Under no circumstance shall a new pole be located in any area of the Village, where it is not replacing an existing pole, without written approval of the Director, which approval shall not be unreasonably withheld.

(c) A permittee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, construction standards, governmental requirements and FCC technical standards, which standards are incorporated herein by reference.

(d) The permittee shall comply with the Village's normal permitting process prior to commencing any work in the rights of way, except for emergencies and as otherwise provided in this chapter. No work in the rights of way shall be commenced until such time as any and all required permits have been issued by the Village. The Village shall not unreasonably withhold the granting of any permit.

(e) Any contractor proposed for performing the work of construction, installation, operation, maintenance and repair of system equipment must be properly licensed under the laws of the State and all local ordinances. The contractor's or permittee's system and associated equipment erected by the permittee within the Village shall be so located as to cause minimal interference with the proper use of streets, alleys and other public ways and places, and to cause minimal interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. No pole or other fixture placed in any public way by the permittee shall be placed in such a manner as to interfere with normal travel on such public way.

(f) The Village does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In the rights of way, where necessary, the location shall be verified by excavation.

(g) Construction, installation, operation and maintenance of a utility or telecommunications system shall be performed in an orderly and workmanlike manner. When consistent with the safety codes and standards set forth in this chapter, all cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
(h) The permittee shall at all times comply with the applicable National Electrical Safety Code (National Bureau of Standards); the applicable National Electrical Code (National Fire Protection Association); applicable FCC or other Federal, State and local regulations; and standards as set forth in the permit.

(i) In any event, the system shall not endanger or interfere with the safety of persons or property in the permit area or other areas where the permittee may have equipment located.

(j) All worker facilities, conditions and procedures that are used during construction, installation, operation and maintenance of the utility or telecommunications system shall comply with applicable standards of the Federal Occupational Safety and Health Administration.

(k) The permittee shall provide either a performance record (or self-bonding by the permittee having capitalization in excess of fifty million dollars ($50,000,000) as determined by the Director), an irrevocable letter of credit acceptable to the Village, or a certified check in an amount determined by the Mayor, to pay the cost of restoration of the right of way should the permittee fail to perform restoration required by this chapter or the permit or to pay for the cost of removal or relocation of the system required by this chapter should the permittee fail to perform said removal or relocation.

(l) All permittees shall obtain a right of way work permit from the Director prior to beginning the erection, installation or maintenance, including tree trimming, of any lines or equipment. Prior Village approval shall not be required for emergency repairs, routine maintenance and repairs, operations which do not require excavation in the rights of way, blockage of any street or alley, or material disruption to any landscaping or structures and/or irrigation systems. The permittee and/or its subcontractors shall leave rights of way where such work is done in as good a condition or repair as they were before such work was commenced and to the reasonable satisfaction of the Village. Such right of way work permit shall be issued in writing and is subject to conditions that may be attached by the Director, including, but not limited to, requirements concerning traffic control, safety, scheduling, notification to adjoining property owners, and restoration with seed, sod or specific plant materials as directed by the Village. The permittee and/or its subcontractors shall endeavor to complete, in a timely manner, repairs to the rights of way. All workmanship and materials used by the permittee and/or its subcontractors to repair the streets and roadways shall be subject to the inspection and approval of the Director or his or her authorized agent and shall be warranted for a period of one year from the date of completion for any failure due to workmanship or quality of materials.
(m) The permittee shall furnish the Village "as built" drawings not later than 120 days after construction has been completed. Drawings shall show ownership of conduits, ducts, poles and cables used for the telecommunications or utility system. Drawings shall be drawn to a scale of one inch equals 100 feet using the standard format adopted by the Village. The permittee shall provide one set of such diskettes and one set of blue or black line "as built" drawings to the Mayor, and one set of drawings and diskettes to the Village Engineer. State plane coordinates shall be shown for benchmarks, curb lines and structures. Drawings shall show horizontal dimensions from the curb line and elevations. (Ord. 6-97. Passed 7-14-97.)

1477.10 USE OF FACILITIES BY VILLAGE.

(a) The Village shall have the option to request the right to install and maintain, free of charge, upon any poles and within any underground pipes and conduits or like facilities of any telecommunication and utility or special permittee, communications facilities ("Village facilities") solely for governmental use desired by the Village unless:

1. Such installation and maintenance unreasonably and materially interferes with existing and future operations of the permittees; or

2. Such installation and maintenance would be unduly burdensome to such permittee. Each permittee shall cooperate with the Village in the planning and design of its facilities so as to accommodate the Village's reasonably disclosed governmental requirements. Neither the Village facilities nor the capacity or bandwidth thereon shall be leased, licensed or otherwise made available to third parties. The Village's use and occupancy of a permittee's conduit shall be limited to the right to occupy a single inner duct in any given conduit and a single attachment to any given pole.

(b) The Village's right to use and occupy a permittee's poles or conduit shall be subject to any and all reasonable terms and conditions the permittee requires of other third party users of its poles and conduit. The Village shall pay the permittee the reasonable cost to make the poles or conduit ready for the Village's use and occupancy. Nothing herein shall be construed to require a permittee to construct poles or conduits where none exist or to rearrange, modify or alter its facilities on a pole or conduit in order to provide space for Village facilities where space is not otherwise available.

(Ord. 6-97. Passed 7-14-97.)

1477.11 INDEMNIFICATION AND INSURANCE.

(a) To the fullest extent permitted by law, all permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the Village, its officers, public officials, boards, commissions, agents and employees, from and against any and all lawsuits, claims (including, without limitation, worker's compensation claims against the Village or others), causes of actions, actions, liability and judgments for injury or damage (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the Village in connection therewith):
(1) To persons or property, in any way arising out of or through the acts or omissions of the permittee, its subcontractors, agents or employees, attributable to the occupation by the permittee of the right of way, to which the permittee's negligence shall in any way contribute, and regardless of whether the Village's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage.

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or for the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm or corporation by the permittee, but excluding claims arising out of or relating to Village programming.

(3) Arising out of the permittee's failure to comply with the provisions of any Federal, State or local statute, ordinances or regulations applicable to the permittee in its business hereunder.

(b) The foregoing indemnification is conditioned upon the Village:

(1) Giving the permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought;

(2) Affording the permittee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding subject to indemnification; and

(3) Fully cooperating in the defense of such claim and making available to the permittee all pertinent information under the Village's control.

(c) The Village shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the permittee shall pay the reasonable fees and expense of such separate counsel, if employed with the approval and consent of the permittee, or if representation of both the permittee and the Village by the same attorney would be inconsistent with accepted canons of professional ethics.

(d) Each permittee shall maintain insurance coverage (or self-insurance coverage by a permittee having capitalization in excess of fifty million dollars ($50,000,000), as determined by the Mayor) in accordance with the following:

(1) General liability insurance. The permittee shall maintain, and, by its acceptance of any permit granted hereunder, specifically agrees that it will maintain, throughout the term of the permit, general liability insurance insuring the permittee in the minimum amount of:

A. One million dollars ($1,000,000) per occurrence;
B. Two million dollars ($2,000,000) annual aggregate; and
C. One million dollars ($1,000,000) excess general liability per occurrence and annual aggregate.

Such general liability insurance must be written on a comprehensive coverage form, including the following: premises/operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.
(2) **Automobile liability insurance.** The permittee shall maintain, and, by its acceptance of any permit granted hereunder, specifically agrees that it will maintain, throughout the term of the permit, automobile liability insurance for owned, non-owned or rented vehicles in the minimum amount of:

A. One million dollars ($1,000,000) per occurrence; and
B. One million dollars ($1,000,000) excess automobile liability per occurrence.

(3) **Worker's compensation and employer's liability insurance.** The permittee shall maintain, and, by its acceptance of any permit granted hereunder, specifically agrees that it will maintain, throughout the term of the franchise, worker's compensation and employer's liability insurance, valid in the State of Ohio, in the minimum amount of:

A. Statutory limit for Worker's Compensation;
B. One million dollars ($1,000,000) for employer's liability per occurrence; and
C. One million dollars ($1,000,000) excess employer liability.

(e) The liability insurance policies required by this section shall be maintained by the permittee throughout the term of the permit, and such other period of time during which the permittee is operating without a permit hereunder or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be cancelled nor the intention not to renew be stated until ninety days after receipt by the Village, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew. Within sixty days after receipt by the Village of said notice, and in no event later than thirty days prior to said cancellation, the permittee shall obtain and furnish to the Village replacement insurance policies meeting the requirements of this section. (Ord. 6-97. Passed 7-14-97.)

**1477.12 REMOVAL OF FACILITIES.**

(a) In the event any nonresidential permittee intends to remove facilities, excluding normal repairs and maintenance, or abandon any facilities within the rights of way, such permittee shall submit a notice to the Mayor describing the portion of the facilities to be removed or abandoned and the date of removal or abandonment, which date shall not be less than thirty days from the date such notice is submitted to the Mayor. The permittee may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the Mayor. The permittee shall remove and secure such facilities as set forth in the notice unless directed by the Mayor to abandon such facilities in place.
(b) Upon such abandonment, the Village may elect to accept title to the abandoned facility. Such acceptance shall be in writing and upon such acceptance, full title and ownership of such abandoned facility shall pass to the Village without the need to pay compensation to the permittee. The permittee shall, however, continue to be responsible for all taxes on such facilities or other liability associated therewith, until the date the same was accepted by the Village.

(c) Within thirty days following written notice from the Village, any permittee or other person that owns, controls or maintains any unauthorized telecommunications facility or related appurtenances within the rights of way of the Village shall, at its own expense, remove such facilities or appurtenances from the rights of way of the Village. A telecommunications facility is unauthorized and subject to removal in the following circumstances:

1. Upon expiration or termination of the permittee's permit.
2. Upon abandonment of a facility within the rights of way of the Village.
3. If the system or facility was constructed or installed without the prior grant of a permit or franchise.
4. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
5. If the system or facility was constructed or installed at a location not permitted by the permittee's permit.

(d) The Village retains the right and privilege to cut or move any telecommunications facilities located within the rights of way as the Village may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

(e) Unless directly and proximately caused by willful, intentional or malicious acts by the Village, the Village shall not be liable for any damage to or loss of any telecommunications facility within the rights of way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the rights of way by or on behalf of the Village.

(f) When a residential permit is cancelled, the permittee shall remove all facilities installed in the right of way, at the permittee's expense.

(Ord. 6-97. Passed 7-14-97.)

1477.13 PERMIT REVOCATION.

(a) In addition to any rights set out elsewhere in this chapter, the Village reserves the right to seek termination of a permit pursuant to the provisions hereof, and all rights and privileges pertaining thereto, in the event that any of the following are found to have occurred:

1. A violation of any material provision of the permit;
2. The permittee becomes insolvent, or is adjudged a bankrupt;

1999 Replacement
(3) An unauthorized sale, assignment or transfer of the permittee's permit or a substantial interest therein;
(4) Misrepresentation by or on behalf of a permittee in any application to the Village;
(5) Abandonment of telecommunications facilities in the rights of way;
(6) Failure to relocate or remove facilities as required in this chapter; or
(7) Failure to pay taxes, compensation, fees or costs when and as due the Village.

(b) Upon failure of the permittee to comply with the material terms of the permit, the Village may by ordinance terminate the permit in accordance with the procedures set forth in this section. Upon termination, all rights of the permittee shall immediately be divested without further act upon the part of the Village. At the Village's option and to the extent permitted or in the manner required by applicable State law, the Village shall either purchase the permittee's facilities in accordance with Section 1477.12 or the Village shall require or seek to require, as the case may be, the permittee to remove its facilities from the rights of way. If the Village requires removal, the permittee shall forthwith remove its structures or property from the rights of way and restore them to such condition as the Village may require. Upon failure to do so, the Village may perform the work and collect the cost thereof from the permittee. The cost thereof shall be a lien upon all facilities and property of the permittee. Such lien shall not attach to property of the permittee located on the poles of other utilities until removal of such property from the pole or poles.

(c) (1) Upon written recommendation by the Director, or upon its own motion, Council shall give written notice to the permittee of the existence of a material violation or failure to comply with the permit. The permittee shall have a period of sixty days after receipt of such notice from the Village in which to cease such violation and comply with the terms and provisions hereof. In the event the permittee fails to cease such violation or to otherwise comply with the terms hereof, then the permittee's permit is subject to termination under the following provisions, provided, however, that if the permittee commences work or other efforts to cure such violations within thirty days after receipt of written notice and shall thereafter prosecute each curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the permit will not be terminated. If the curative work is not completed within ninety days of commencement of such work, the permittee and the Mayor shall report to the Village with respect to the progress made on such curative work and the anticipated completion date.
(2) Termination shall be declared only by a written decision of Council after an appropriate public proceeding whereby the permittee is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The permittee shall be provided at least ten days prior written notice of any public hearing concerning the termination of the permit and, in addition, ten days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the permittee.

(3) Council, after a full public hearing, and upon finding a material violation or failure to comply, may, in its discretion, terminate the permit or impose a lesser penalty than termination of the permit, including, but not limited to, a penalty of up to one thousand dollars ($1,000) per day per violation, or excuse the violation or failure to comply upon a showing by the permittee of mitigating circumstances or upon a showing of good cause for said violation or failure to comply as may be determined by Council.

(d) The Village shall have the right to terminate the permit 120 days after the appointment of a receiver, or trustee, to take over and conduct the business of the permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of 120 days period or unless:

(1) Within 120 days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of the permit and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said 120 days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the permit.

(Ord. 6-97. Passed 7-14-97.)

1477.14 RESERVATION OF RIGHTS BY VILLAGE.

(a) Nothing in this chapter shall be construed to prevent the Village from constructing, maintaining, repairing or relocating any Village utility, communications or like facilities; grading, paving, maintaining, repairing, relocating or altering any street or right of way; or constructing, maintaining, relocating or repairing any sidewalk or other public work or improvement.

(b) Nothing in this chapter should be construed so as to grant any right or interest in any right of way, other than that explicitly set forth herein or in a permit.

(Ord. 6-97. Passed 7-14-97.)
1477.15 TEMPORARY REMOVAL OF FACILITIES.

In the event it is necessary temporarily to move or remove any of the permittee's wires, cable, poles or other facilities placed pursuant to this chapter, in order to lawfully move a large object, vehicle, building or other structure over the streets of the Village, upon five days written notice by the Village to the permittee, the permittee shall, at the expense of the person requesting the temporary removal of such facilities, comply with the Village's request. (Ord. 6-97. Passed 7-14-97.)

1477.16 PERMIT NON-TRANSFERABLE; EXCEPTION.

A permit granted hereunder may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the permittee, by operation of law or otherwise, without the prior consent of the Village, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance, and then only on such reasonable conditions as may be prescribed therein. No transfer of a permit shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own a permit pursuant to this chapter. Unless otherwise provided in a permit, the permittee shall reimburse the Village for all direct and indirect fees, costs and expenses reasonably incurred by the Village in considering a request to transfer or assign a permit. Any transfer or assignment of a permit without prior approval of the Village or pursuant to a permit shall be void and is cause for revocation of the permit. (Ord. 6-97. Passed 7-14-97.)

1477.17 SEPARABILITY.

If any section, subsection, sentence, clause, phrase or other portion of this chapter, or its application to any person, is, for any reason, declared invalid, in whole or in part, by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(Ord. 6-97. Passed 7-14-97.)

1477.99 PENALTY; EQUITABLE REMEDIES.

(a) Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than sixty days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

(b) Nothing in this chapter shall be construed as limiting any judicial remedies that the Village may have, at law or in equity, for enforcement of this chapter.