



## RIGHT-OF-WAY MANAGEMENT

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I. DEFINITIONS.

For purposes of this Ordinance, the following terms, phrases, words, and their derivations have the meanings set forth herein.

**APPLICANT.** Any person applying for a right-of-way permit hereunder.

**APPROVED.** Approval by the Village pursuant to this Ordinance or any service agreement adopted hereunder.

**BEST EFFORTS.** The best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.

**ORDINANCE.** Ordinance \_\_\_\_\_ of the Ordinances of the Village, as amended from time to time, and any administrative regulations adopted hereunder.

**VILLAGE.** The Village of Lithopolis, Ohio.

**VILLAGE ADMINISTRATOR.** The Lithopolis Village Administrator or his/her designee.

**FORCE MAJEURE.** A strike, act of God, act of public enemy, order of any kind of a government of the United States of America or of the State of Ohio or any of their departments, agencies or political subdivisions; riot, epidemic, landslides, lightning, earthquake, fire, tornado, storm, flood, civil disturbance, explosion, partial or entire failure of a utility or any other cause or event not reasonably within the control of the party disabled by such Force Majeure, but only to the extent such 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.

**PERMITTEE.** Any person issued a right-of-way permit pursuant to this Ordinance to use or occupy all or a portion of the right-of-way in accordance with the provisions of this Ordinance and said right-of-way permit.

**PERSON.** Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

**PUBLIC PROPERTY.** Any real property owned by the Village or easements held or used by the Village, other than a right-of-way.

**REGULATION or ADMINISTRATIVE REGULATIONS.** Any rule adopted by the Village Administrator pursuant to the authority of this Ordinance, and the procedure set forth in Section X to carry out its purpose and intent.

**RESIDENTIAL PURPOSES.** Residential use of right-of-way for such uses as mailboxes, trees, landscaping, lawn sprinklers, decorative purposes or any curb cuts and driveways, and as may be further defined in any administrative regulations promulgated pursuant to Section III.

**RIGHT-OF-WAY.** The surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public path, public bikepath, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the Village which shall, within its proper use and meaning in the sole opinion of the Village Administrator, entitle a permittee, in accordance with the terms hereof and of any right-of-way permit, to the use thereof for the purpose of installing or operating any poles, wires, cables, transformers, conductors, ducts, lines, mains, conduits, vaults, manholes, amplifiers, appliances, attachments or other property or facilities as may be ordinarily necessary and pertinent to the provision of utility, cable television, communications or other services as set forth in any service agreement or any right-of-way permit. RIGHT-OF-WAY shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit or by administrative regulation.

**RIGHT-OF-WAY PERMIT.** The non-exclusive grant of authority to use or occupy all or a portion of the Village's right-of-way granted pursuant to this Ordinance.

**SERVICE AGREEMENT.** A valid service agreement, franchise agreement or operating agreement issued by the Village pursuant to the Lithopolis Village Codes or Constitution and laws of Ohio or the United States, and accepted by any person, pursuant to which such person may operate or provide utility, cable television, communication or other such service to consumers within the Village.

## II. PURPOSE AND SCOPE OF ORDINANCE.

(A) The purpose of this Ordinance is to regulate of the use or occupation of all right-of-ways in the Village, the issuance of right-of-way permits to persons for such use or occupancy and to set forth the policies of the Village related to its rights-of-way (ROW).

(B) A right-of-way permit issued pursuant to this Ordinance does not take the place of any service agreement, franchise, license, or permit which may be additionally required by law. Each permittee shall obtain any and all such additional state, federal or Village franchises, licenses or permits necessary to the operation and conduct of its business or the occupation or use of any right-of-way.

(C) The Mayor, Village Administrator, and their designees are hereby directed and empowered to enforce the provisions of this Ordinance.

(D) The Village's objectives regarding right-of-ways is:

- (1) Promote cooperation among telecommunications service providers and the Village to minimize public inconvenience during ROW work and disruption of public property; and ensure safe and efficient use of the Village's streets, right-of-ways', and easements;
- (2) Promote the availability of a wide range of utility, communications, and other services, including the rapid deployment of new technologies and innovative services to Village businesses and residents at reasonable costs;
- (3) Enhance the Village's economic development programs;
- (4) Ensure adequate public compensation for private use of the ROW and related costs;
- (5) Promote and require reasonable accommodation of all users of ROW;
- (6) To comply with the Telecommunications Act of 1996 and all applicable laws, rules and regulations;
- (7) To promote the utilization of right-of-ways for the public health, safety and welfare; and,
- (8) To assure that applicants have the financial, technical and managerial resources to comply with this Ordinance and the provisions of any right-of-way permit issued hereunder.

(E) All right-of-way permits granted hereunder shall be non-exclusive and no property right of any nature shall be created by the granting of a permit under this Ordinance.

(F) This Ordinance does not apply to structures or facilities owned or operated by the Village or any Village operations that occupy or use the right-of-way.

### III. PROHIBITION; TYPES OF PERMITS.

(A) No person shall use, occupy, construct, own or operate structures or facilities in, under or over any right-of-way or any public property within the Village unless such person first obtains a right-of-way permit and conforms to the requirements set forth therein and in this Ordinance; provided, however, that right-of-way permits shall not be required for the following uses:

- (1) Newspaper stands;
- (2) Carts;
- (3) Residential purposes
- (4) Sidewalk cafes; and
- (5) Parking lots;

so long as, in the opinion of the Village Administrator, these facilities:

- (a) Have received or will receive all other necessary permits;
- (b) Are not inconsistent with policy of the Village;
- (c) Do not adversely affect the public health, safety or welfare; and
- (d) Do not materially interfere with other lawful uses of the right-of-way.

The Village Administrator may adopt administrative regulations controlling and further defining "residential purposes" and to otherwise implement the determinations to be made under this section.

(B) The following types of right-of-way permits are available:

- (1) General right-of-way permit. Right-of-Way permit granted to persons who desire and are granted authority to utilize right-of-way generally, provided, however, that nothing in this Ordinance or in any general right-of-way permit shall be construed to authorize the permittee to provide any utility, cable television, communications or other services for which the Village may lawfully require a service or franchise agreement should the Village determine to require the same; and
- (2) Special right-of-way permit. Right-of-Way permit granted to a person for a specific, limited use, including but not limited to residential purposes, of the rights-of-way or a specific portion thereof.

(3) Utility permit. Right-of-Way permit granted to a person who is a traditional monopoly provider of essential services, who possesses a valid operating, service, or franchise agreement and who desire and is granted authority to utilize right-of-way generally. As of the date of this Ordinance, gas, electric, water, and sewer are such utilities. The Village Administrator may adopt regulations controlling and defining "traditional monopoly provider of essential services". A utility permittee may be granted a waiver of some or all the requirements by this Ordinance at the discretion of the Village Administrator.

(C) Any such right-of-way permit may also allow the use of specified public property for the uses set forth in the right-of-way permit and in this Ordinance.

(D) Each right-of-way permit shall specify the use or uses for which it is granted and contain such other non-discriminatory terms and conditions as are appropriate and as are set forth in the service agreement.

(E) Right-of-Way permits or the rights of a permittee thereunder are not transferable without the prior express written approval of the Village Administrator upon a showing that the recipient has the financial, technical and managerial resources to comply with the obligations of this Ordinance and its right-of-way permit. The Village Administrator may adopt administrative regulations providing procedures for transfer of right-of-way permits.

#### IV. APPLICATION PROCEDURE, APPEAL.

(A) Applications for a general right-of-way permit by a holder of a service or franchise agreement with the Village shall be filed in such form and in such manner as the service agreement requires. There shall be no application fee. Any person holding a valid service agreement shall be granted a general right-of-way permit. Such general right-of-way permit shall be valid so long as the underlying service agreement is valid and the applicable provisions of that service agreement, the general right-of-way permit and of this Ordinance are complied with; provided, however, that such general right-of-way permit shall only entitle the permittee to utilize the right-of-way, in accordance with this Ordinance, for purposes directly related to the provision of the specific services for which it has a service agreement. Any other right-of-way use by such permittee shall require a separate or amended general right-of-way permit issued pursuant to Section IV(C).

(B) Applications for a utility right-of-way permit by a holder of a service agreement shall be filed in such form and in such manner as the administrative regulations require. There shall be no application fee. Any person who is a traditional monopoly provider of essential services and who holds a valid service agreement shall be granted a utility right-of-way permit. Such utility permit shall be valid so long as the underlying service agreement is valid and the applicable provisions of that service agreement, the utility right-of-way permit and of this Ordinance are complied with; provided, however, that such utility right-of-way permit shall only entitle the permittee to utilize the right-of-way, in accordance with this Ordinance,

for purposes directly related to the provision of the specific services for which it has a service agreement. Any other right-of-way use by such permittee shall require a separate or amended utility right-of-way permit issued pursuant to Section IV(C) of this Ordinance.

(C) All other applications for general right-of-way permits, or amendments or renewals thereof, shall be filed in such form and in such manner as the administrative regulations require, along with an application fee of \$1,000. The Village Administrator shall determine if the application is in order and shall, within 60 days of the receipt of a complete application, issue a written report regarding such application. The report shall recommend that the Village Council deny or grant the general right-of-way permit, subject to any appropriate terms and conditions, in accordance with the criteria set forth in this Ordinance. The Village Administrator's report shall be served upon the applicant by regular U.S. mail along with a notice of when the Village Council will consider the same. The Village Council shall then consider such recommendation and make a final determination in writing, within 90 days of the Village Administrator's report, as to whether or not such general right-of-way permit, amendments, and/or renewal should be granted and if so, upon what terms and conditions. The term of each such general right-of-way permit shall be for five years from acceptance, unless the applicant requests a lesser term.

(D) An application for a special right-of-way permit amendment or renewal thereof, shall be filed in such form and in such manner as the administrative regulations require, along with an application fee of \$500. If the Village Administrator determines that the application is in order and that the criteria set forth in Section V of this Ordinance have been met, and that the application should be granted, the Village Administrator shall, within 60 days of a receipt of a completed application, conditionally grant or renew such a special right-of-way permit, amendment, and/or renewal subject to any appropriate terms and conditions or deny the same. The Village Administrator's conditional grant, renewal or denial shall be served upon the applicant by regular U.S. mail. Such conditional denial, grant or renewal shall become final unless modified or rejected by the Village Council within 60 days of issuance by the Village Administrator, or unless appealed pursuant to Section IV(E) of this Ordinance. The term of such special right-of-way permit shall be three years from acceptance, unless the applicant requests a lesser term. A special right-of-way permit for residential purposes may be granted for an indefinite term from acceptance, but may be canceled by the Village Administrator with 60 days written notice.

(E) Any applicant may appeal the failure of the Village Administrator to grant a right-of-way permit or to recommend it to be granted upon terms and conditions acceptable to the applicant, to the Village Council. In order to perfect such appeal, the applicant shall file, within ten days of the Village Administrator's determination or recommendation or within 60 days of the filing of the application if the Village Administrator has taken no action, an appeal to the Village Council. The Village Council shall then review the matter and render a final determination after affording the applicant an opportunity to be heard either in person or in writing. Except to the extent otherwise applicable by law, the Village Council's decision shall be final.



(F) Any right-of-way permittee shall, within 30 days of the initial granting of any right-of-way permit hereunder, if and as applicable, pay a pro-rata portion of the fees required by Section VII(B) or (C).

V. CRITERIA FOR GRANTING PERMITS.

(A) A general right-of-way permit shall be granted to any applicant holding a valid service agreement.

(B) A utility right-of-way permit shall be granted to any applicant holding a valid service agreement and who is a traditional monopoly provider of essential services as defined by the Village Administrator.

(C) (1) A general or a special right-of-way permit shall be granted to an applicant upon a determination that:

- (a) The granting of the right-of-way permit will contribute to the public health, safety or welfare in the Village; and
- (b) The granting of the right-of-way permit will be consistent with the policy of the Village as set forth in Section II(D); and
- (c) The applicant is not delinquent on any taxes or other obligations to the Village or Fairfield County and has the requisite financial, managerial and technical ability to fulfill all its obligations hereunder.

(2) A special right-of-way permit for residential purposes may be granted at the Village Administrator's discretion if the Village Administrator finds that granting such permit will not be inconsistent with the policy of the Village set forth in Section II(D) and the Village policies, ordinances and regulations.

(D) The Village Administrator or the Village Council may impose such conditions on the granting of a permit as deemed reasonably required to be consistent with the criteria set forth in this Section and to promote the policy of the Village set forth in Section II(D).

VI. OBLIGATIONS OF PERMITTEES; CONDITIONS OF PERMITS.

(A) In addition to the other requirements set forth herein and in the administrative regulations each permittee, shall:

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

(2) Participate in such joint planning, construction and advance notification of right-of-way work, excepting such work performed in an emergency; provided the permittee uses its best efforts to contact the Village at the earliest possible time after beginning such work, as may be required by this Ordinance and as may be more specifically set forth in administrative regulations promulgated pursuant to this

Ordinance;

- (3) Cooperate with other Permittees in utilization of, construction in and occupancy of private right-of-way, but only to the extent the same is consistent with the grant thereof or is not additionally burdensome to any property owner;
- (4) Upon reasonable written notice of and at the direction of the Village Administrator, and at the permittee's sole cost, promptly remove or rearrange facilities as necessary, such as during any construction, repair or modification of any street, sidewalk, Village utility or other public improvement, or as part of the Village Administrator's determination that designated portions of Village right-of-way should accommodate only underground facilities or that facilities should occupy only one side of a street or other public way, or if an additional or subsequent Village or other public use of right-of-way is inconsistent with the then current uses of such permittee or for any other reasonable cause as determined by the Village Administrator pursuant to Section XIV(B) of this Ordinance.
- (5) Provide maps and other information relating to a permittee's facilities and operations within the right-of-way and compliance with this Ordinance in such form, including digital or other form compatible with any Village geographic information system, as the administrative regulations require. Said maps and information shall, at a minimum, locate, describe and identify all uses of, and "as built" structures and facilities of such permittee in, the right-of-way;
- (6) Perform all work, construction, maintenance or removal of structures and facilities within the right-of-way, including tree trimming, in accordance with good engineering and construction practice including any appropriate safety codes and in accordance with the administrative regulations and use its best efforts to repair and replace any street, curb or other portion of the right-of-way, or facilities or structure located therein, to a condition to be determined by the Village Administrator to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the Village and other permittees, all in accordance with the administrative regulations adopted hereunder or under Village codes.
- (7) Register with underground reporting services as set forth in the administrative regulations;
- (8) Use its best efforts to cooperate with the Village in any emergencies involving the right-of-way in such manner as the administrative regulations shall require including the maintenance of a 24 hour emergency contact;
- (9) Using distinct identification, identify all structures and facilities in the right-of-way in accordance with the administrative regulations; and

(10) Designate a single point of contact for all purposes hereunder, as well as comply with such other contact and notice protocols as the administrative regulations require.

(B) Each permittee shall assure that any subcontractor or other person performing any work or service in the right-of-way on behalf of said permittee will comply with all applicable provisions of this Ordinance and its right-of-way permit and will identify the permittee for whom such subcontractor is working. Said permittee shall be responsible and liable hereunder for all actions of any such subcontractor or others as if said permittee had performed or failed to perform any such obligation.

(C) Following the initial receipt of a right-of-way permit (general, special or utility) every permittee shall be required to apply for and obtain the Village Administrator's approval for any new placement of facilities in the right-of-way or material modification to current facilities in the right-of-way. For the purposes of this section, FACILITIES shall be mean, but not necessarily be limited to poles, transformers, conductors, conduits, ducts, cables, pipes, wires, fibers, lines, mains, vaults, manholes, amplifiers, appliances, towers, antennae, wave guides, optic fiber, microwave, and laser beams. For the purposes of this section, MATERIAL MODIFICATION shall mean, but not necessarily be limited to, a material increase, decrease, alteration, or change to current facilities regarding: type of infrastructure, capacity, size, service, technology, or delivery methodology. The application for the Village Administrator's approval shall be filed in such form and in such manner as the administrative regulations require. Within 15 days of the receipt of a completed application for such new facilities installation or material modification, the Village Administrator shall either: approve the new facilities installation or material modification as requested; deny the new facilities installation or material modification as requested; or conditionally approve the new facilities installation or material modification subject to the permittee's following certain amendments to the work as may be required by the Village Administrator. When reviewing an application for new facility installation or material modification, the Village Administrator shall take into consideration all applicable current and future right-of-way usage needs, the health and safety of the public, responsible land use planning requirements, economic development issues, aesthetics, and any other reasonable considerations as may be required by this Ordinance. When granting a conditional approval for new facilities installation or material modification that contains required amendments, the Village Administrator may require the facilities, at the permittee's sole cost: be placed in certain specific locations of the right-of-way, meet certain technological or physical parameters, and/or be located entirely underground. A permittee may appeal the Village Administrator's decision regarding the approval or denial of a request for new facilities installation or material modification of a permittee's facilities to the Village Council in accordance with Section IV(E) of this Ordinance.

VII. PERMIT FEES AND AUDITING.

(A) Except for any fees charged pursuant to the Village's annual fee ordinance, general right-of-way permittees who have a service agreement granted by Council shall not be liable for any additional right-of-way permit fees over and above any service agreement or franchise fees specified in its service agreement or franchise for uses of right-of-ways directly related to the uses for which such permittee holds its service agreement or franchise, so long as the amount of such fees due in each quarter is equal to or greater than the amounts otherwise due the Village pursuant to Section VII(B). If the amount due under Section VII(B) is more than said service agreement or franchise fees, then the permittee shall receive a credit in each quarter against such amount for all such fees paid in such quarter, and shall pay the balance to the Village as set forth in Section VII(E). Regarding service agreements that allow non cable services (as defined in said service agreement) to be provided, the provisioning of non cable services shall be subject to this Ordinance in all aspects, including all fees.

(B) (1) All general right-of-ways and utility permittees shall pay an annual fee for each calendar year based upon the miles of Village right-of-way which the permittee occupies or desires to occupy in said calendar year as follows:

Less than one mile:	\$10,000
From one to ten miles:	\$17,500
From 11 to 100 miles:	\$37,500
Over 100 miles:	\$37,000 plus \$375 for each mile over 100 miles.

(2) Quarterly payments shall be made on or before March 31, June 30, September 30 and December 31 of the calendar year.

(C) In addition to any fees charged pursuant to the Village's annual fee ordinance, special right-of-way permittees shall pay an annual fee of \$2 per lineal foot of right-of-way used or occupied, but not less than \$1,000. This fee may be waived for all special right-of-way permits for residential purposes. Such fee shall be paid in advance for each calendar year prior to January 31 of such year.

(D) Further specification regarding the determination and calculation of the fees set forth in § 98.07(B) and (C) may be set forth in the administrative regulations.

(F) Each general right-of-way permittee shall maintain books, records, maps, documents and other evidence directly pertinent to its calculation of payments to the Village in accordance with generally accepted accounting principles. The Village Administrator, the Village Fiscal Officer, or either's designated agents shall have reasonable access to any

books, records, maps, documents and other evidence for inspection, copying and audit to the extent necessary to assure that the payments hereunder are accurate and that all right-of-way permittees fully comply with the provisions of this Ordinance and their respective right-of-way permits.

(G) The fees and minimums specified in Section VII(B) and (C) may be modified or adjusted or waived by regulation; provided, however, that such fees remain reasonable and non-discriminatory and that the total revenues to the Village generated by such fees represent not more than a reasonable allocation of the total costs to the Village of planning, regulating, purchasing, maintaining and governing the right-of-way, including any costs of joint planning, joint utility and telecommunications facilities placed in the right-of-way by the Village for the future use of permittees, enforcement of this Ordinance, and related costs and overheads, including but not limited to an appropriate allocation of the costs of any geographic information systems utilized by the Village.

(H) The Village Administrator may enter into agreements with permittees under which permittees may provide facilities or services, or both, to the Village in lieu of all or a portion of such fees. All such agreements shall be approved by Council.

#### VIII. JOINT PLANNING AND CONSTRUCTION.

In order to promote the purposes of this Ordinance and the policy set forth herein, the Village Administrator may adopt administrative regulations requiring and governing joint planning and construction for all right-of-way permittees except for special right-of-way permittees for residential purposes.

#### IX. VILLAGE USE OF FACILITIES.

The Village shall have the right to install and maintain, free of charge, upon any poles and within any underground pipes or conduits or other facilities of any service, general or special right-of-way permittee, any facilities desired by the Village unless:

- (A) Such installation and maintenance unreasonably and materially interferes with existing and future operations of the permittee; and
- (B) Such installation and maintenance would be unduly burdensome to such permittee. Each permittee shall cooperate with the Village in planning and designing its facilities so as to accommodate the Village's reasonably disclosed requirements in this regard.

X. ADOPTION OF ADMINISTRATIVE REGULATIONS.

- (A) In accordance with the provisions of this Ordinance, the Village Administrator may promulgate administrative regulations, as the Village Administrator deems appropriate from time to time, to carry out the express purposes and intent of this Ordinance.
- (B) Such administrative regulations shall not materially increase the obligations of any permittee hereunder; provided, however, that:
  - (1) The adoption of administrative regulations increasing fees pursuant to Section VII(G);
  - (2) Requiring the placement of facilities in designated portions of the right-of-way underground pursuant to Section VI(A)(4); or,
  - (3) Requiring the overbuilding of facilities shall not be construed as materially increasing the obligations of a permittee.

XI. INDEMNITY; INSURANCE.

- (A) Except for special right-of-way permittees for residential purposes, each permittee shall, as a condition of its right-of-way permit, indemnify, protect and hold harmless the Village from any claim, loss or damage arising in any way from permittee's occupation or use of the right-of-way, including but not limited to the construction, operation or maintenance of permittee's facilities, and from any such permittee's negligent or wrongful act or omission.
- (B) Except for special right-of-way permittees for residential purposes, each permittee, as a condition of its permit, shall keep in force a policy or policies of liability insurance, having such terms and in such amounts as are set forth in the administrative regulations, covering its facilities and operations pursuant to its right-of-way permit. The Village shall be named as an additional insured on such policy.

XII. REMOVAL OF FACILITIES.

- (A) Except for special right-of-way permittees for residential purposes, any right-of-way permittee that intends to discontinue use of any facilities within the right-of-way shall submit a written notice to the Village Administrator describing the portion of the facilities to be discontinued and the date of discontinuance, which date shall not be less than 30 days from the date such notice is submitted to the Village Administrator. The permittee may not remove, destroy or permanently disable any such facilities after such notice without the written approval of the Village Administrator. The permittee shall remove and secure such facilities as set forth in the notice unless directed by the Village Administrator to abandon such facilities in place.

- (B) Upon such abandonment and acceptance by the Village in writing, full title and ownership of such abandoned facilities 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 liabilities associated therewith, until the date the same was accepted by the Village.
- (C) Should any permittee fail, after notice, to remove or rearrange facilities at the Village Administrator's request as specified in § 98.06(A)(4), the Village may, at its option and in addition to the imposition of any penalties or other remedies hereunder, undertake or cause to be undertaken, such necessary removal or rearrangement. The Village shall have no liability for any damage caused by such removal or rearrangement and the permittee shall be liable to the Village for all costs incurred by the Village in such removal or rearrangement.

### XIII. REVOCATION.

- (A) In addition to any other rights set out in this Ordinance, the Village reserves the right to revoke, in accordance with the procedures set forth in Section XIII(B), any right-of-way permit in the event such permittee violates any material provision of this Ordinance or its right-of-way permit.
- (B) The Village Administrator shall give a permittee 30 days prior written notice of an intent to revoke said permittee's right-of-way permit. Such notice shall state the reasons for such action. If the permittee cures the violation or other cause within the 30 day notice period, or if the permittee initiates efforts satisfactory to the Village Administrator to remedy the stated violation, the Village Administrator may rescind said notice of revocation. If the permittee does not cure the stated violation or undertake efforts satisfactory to the Village Administrator to remedy the stated violation the Village Administrator may recommend said permit be revoked. After granting the permittee an opportunity to be heard in person or in writing, the Village Council may revoke the right-of-way permit. Unless otherwise required by law, the decision of the Village Council shall be final.
- (C) Unless otherwise permitted by the Village Administrator, if a right-of-way permit is revoked, all facilities located in the right-of-way or located upon public property pursuant to such permit shall be removed at the sole expense of the permittee.

### XIV. RESERVATION OF RIGHTS.

- (A) Nothing in this Ordinance should be construed so as to grant any right or interest in any right-of-way or public property other than that explicitly set forth herein or in a permit.
- (B) Nothing in this Ordinance 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, public property or right-of-way; or constructing, maintaining, relocating, or repairing any sidewalk, bike path or other public work or improvement. To the extent that such work requires temporary or permanent relocation or rearrangement of any facilities or structures of any permittee, such relocating or rearrangement shall be accomplished at the sole cost of the permittee in such time and in such manner as set forth in the administrative regulations and in alignment with the Village's five year capitol budget process.

#### XV. TEMPORARY MOVEMENT OF FACILITIES.

In the event it is necessary to move or remove temporarily any of the permittee's wires, cables, poles, or other facilities placed pursuant to this Ordinance, in order to lawfully move a large object, vehicle, building or other structure over the streets of the Village, upon two weeks written notice by the Village Administrator to the permittee, the permittee shall, at the expense of the person requesting the temporary removal of such facilities, comply with Village Administrator's request.

#### XVI. FORECLOSURE AND RECEIVERSHIP.

- (A) Upon the foreclosure or other judicial sale of the permittee's facilities located within the right-of-way, the permittee shall notify the Village Administrator of such fact and its permit shall be deemed void and of no further force and effect.
- (B) The Village shall have the right to revoke, pursuant to the provisions of Section XIII any right-of-way permit granted pursuant to this Ordinance, subject to any applicable provisions of law, including the Bankruptcy Act, 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 said 120 days, or unless:
  - (1) Within 120 days after his election or appointment, such receiver or trustee shall leave fully complied with all the provisions of the relevant right-of-way permit and of this Ordinance 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 relevant right-of-way permit and this Ordinance.

#### XVII. NON-ENFORCEMENT AND WAIVERS BY VILLAGE

The permittee shall not be relieved of its obligation to comply with any of the provisions of its right-of-way permit or this Ordinance by reason of any failure of the Village or to enforce prompt compliance.

XVIII. PENALTY.

- (A) In addition to any other penalties set forth in this Ordinance, and the remedy of specific performance which may be enforced in a court of competent jurisdiction, the following penalties shall apply.
  - (1) Any person or permittee violating Section III(A) or Section XII(A), or failing to pay when due any forfeiture imposed pursuant to Section XIII(A)(2), shall be guilty of a misdemeanor of the fourth degree. Each day such violation continues shall be deemed a separate offense.
  - (2) For failure to comply with any other provision of this Ordinance, the penalty shall be a civil forfeiture, payable to the Village, in the amount of \$500 per day for each day of violation. In addition, for failure to timely comply with a notice by the Village Administrator to remove or rearrange facilities pursuant to Section VI(A)(4), an additional civil forfeiture equal to any costs incurred by the Village as a result of such failure, including but not limited to any penalties charged the Village by its contractors occasioned thereby, shall be imposed.
- (B) Any permittee may be excused for violations of this Ordinance and its right-of-way permit due to Force Majeure.