

# **BIRMINGHAM CITY COMMISSION AGENDA**

**APRIL 20, 2020**

**MUNICIPAL BUILDING, 151 MARTIN**

**7:30 P.M.**

## **I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor

## **II. ROLL CALL**

Alexandria Bingham, City Clerk Designee

## **III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

### **ANNOUNCEMENTS:**

- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The City has created a hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Baldwin Public Library is now offering four weekly virtual story times for children from birth to second grade. Watch these story times online at [www.baldwinlib.org/storytime](http://www.baldwinlib.org/storytime).

## **IV. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

- A. Resolution approving the City Commission regular meeting minutes of April 6, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated April 8, 2020 in the amount of \$268,794.33.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated April 15, 2020 in the amount of \$264,361.36.
- D. Resolution authorizing the City Manager to sign the Service Order form initiating the purchase of an 200mb internet connection from Crown Castle Fiber for a term of 36 months with a monthly payment of \$643.00 contract total of \$23,148.00. Funds are available in the IT connectivity fund 636-228.000-933.0700.

**V. UNFINISHED BUSINESS**

- A. Public Hearing to consider the proposed Lot Combination of 1680 S. Bates Street & 1698 S. Bates Street
  - 1. Resolution approving an agreement between the City and Mr. and Mrs. Pearce to approve the lot combination of 1680 & 1698 S. Bates with conditions to limit the size and placement of future building(s).

**VI. NEW BUSINESS**

- A. Resolution directing the EM bistro application to the Planning Board for full site plan and design review and Special Land Use Permit review.
- B. Resolution approving the amendment to the Beverly Hills Racquet Club and authorizing the Mayor and City Clerk to sign on behalf of the City.
- C. Resolution to meet in closed session to:
  - 1. Review pending litigation in the matter of Coulston v City of Birmingham and Toroyan v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275,
  - AND**
  - 2. Discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

**VII. REMOVED FROM CONSENT AGENDA****VIII. COMMUNICATIONS****IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA****X. REPORTS**

- A. Commissioner Reports
  - 1. Notice of Intention to Appoint to the Martha Baldwin Park Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

**XI. ADJOURN**

**PLEASE NOTE: Due to building security, public entrance during non-business hours is through the Police Department – Pierce St. entrance only.**



*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.*

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:(248)530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*

**BIRMINGHAM CITY COMMISSION MEETING MINUTES**  
**APRIL 6, 2020**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor, called the virtual meeting to order at 7:30 p.m. with the reciting of the Pledge of Allegiance.

**II. ROLL CALL**

Alexandria Bingham, City Clerk Designee, called the roll:

PRESENT	Mayor Boutros Mayor Pro Tem Longe Commissioner Baller Commissioner Hoff Commissioner Host Commissioner Nickita Commissioner Sherman
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ADMINISTRATION	City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Planning Director Ecker, City Clerk Designee Bingham, and Acting City Clerk Arft.
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**III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

**04-059-20 ANNOUNCEMENTS**

Mayor Boutros made the following announcements:

- All City offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The City has created a hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m.
- Some of your favorite Birmingham restaurants offer take-out or delivery. Per Gov. Whitmer's most recent executive order 2020-21, restaurant carryout is still allowed. View a complete list of restaurants offering take-out at on the city's website.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- Commissioner Baller's birthday.

- The spring session of Citizen's Academy Class has been postponed to an undetermined date.

#### **IV. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

#### **04-060-20 APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

Mayor Pro Tem Longe                      Item L,                      Elevator repair and replacement projects at the  
Chester Street and Park Street garages.

**MOTION:**                      Motion by Commissioner Hoff, seconded by Commissioner Sherman:  
To approve the Consent Agenda with the exception of Item L.

ROLL CALL VOTE:                      Ayes,                      Mayor Boutros  
   Mayor Pro Tem Longe  
   Commissioner Baller  
   Commissioner Hoff  
   Commissioner Host  
   Commissioner Nickita  
   Commissioner Sherman

   Nays,                      None

- A. Resolution approving the City Commission regular meeting minutes of March 9, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated March 11, 2020 in the amount of \$1,540,080.83.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 18, 2020 in the amount of \$1,467,933.18.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated March 25, 2020 in the amount of \$306,300.39.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated April 1, 2020 in the amount of \$174,090.61.
- F. Resolution approving the purchase of holiday lights from Sassin Management Services LLC & Xpress Holiday Lighting for a total cost not to exceed \$26,250.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account # 101-441.003-729.000 for this purchase.
- G. Resolution approving the purchase and planting of fifty (50) trees from County Line Nurseries, Inc. for the Spring 2020 Tree Purchase and Planting Project for a total project cost not to exceed \$29,750.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000, the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 and the Parks- Other Contractual Services account

#101-751.000-811.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

- H. Resolution approving the contract amendment with Anderson, Eckstein & Westrick, Inc. for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- I. Resolution approving the contract amendment with Hubbell, Roth & Clark Engineers for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- J. Resolution approving the cost sharing agreement with the City of Royal Oak to proceed with resurfacing the section of 14 Mile Road between Greenfield Road and Crooks Road at the estimated amount of \$444,586.00 to be from account number 202-449.001-981.0100 (Major Street Fund) and further; approving the appropriation and amendment to the fiscal year 2019-2020 Major Street Fund budget. (Complete resolution can be found in the agenda packet).
- K. Resolution approving the Program Year 2020 High Intensity Drug Trafficking Area (HIDTA) Sub Recipient agreement between the County of Oakland and the City of Birmingham. Further, authorizing the Mayor and the City Manager to sign the agreement on behalf of the City.
- M. Resolution awarding the Closed Captioning contract to Clearview Captioning & Interpreting, LLC, in the amount of \$145.00 per hour from the account 101-215.000-811.000, and further authorizing the Mayor and Clerk to sign the agreement.

**04-061-20                      ELEVATOR REPAIR AND REPLACEMENT PROJECTS AT THE CHESTER STREET AND PARK STREET GARAGES (ITEM L).**

Mayor Pro Tem Longe commented that the work proposed for the parking decks is important and much needed. She noted that a three-year warranty was listed for the parts being used for the repairs at the Chester Street parking deck and no warranties were mentioned for the Park Street elevator repairs.

Assistant City Manager Gunter replied that the parts needed for the Chester Street garage would automatically come with warranties. Conversely, the parts being used (sensors) on the Park Street elevator does not automatically come with a warranty.

Commissioner Hoff noted that many of the residents of the Balwin House use the Chester Street parking deck and notice should be given to make them aware of the duration that the elevators will be out of service.

**MOTION:**                      Motion by Mayor Pro Tem Longe, seconded by Commissioner Nickita: Authorizing the elevator repair and replacement projects to be performed at the Chester and Park Street garages by Kone, Inc. for an amount not to exceed \$40,363.00 to be paid from accounts 585-538.003-930.0200 (Park Street) and 585-538.008-930.0200 (Chester).

ROLL CALL VOTE:                      Ayes,                      Mayor Boutros  
   Mayor Pro Tem Longe

Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman  
Nays, None

## **V. UNFINISHED BUSINESS**

### **04-062-20 PUBLIC HEARING TO CONSIDER THE CONTINUATION OF THE PUBLIC HEARING TO APRIL 20, 2020 FOR LOT COMBINATION OF 1680 S. BATES STREET & 1698 S. BATES STREET**

Planning Director Ecker presented this item.

Section 84, Chapter 102 Subdivisions, of the City Code allows for approval with conditions for the commission to designate:

- Front and rear property line for the development.
- Location, placement, and size of the building envelope.
- Restricting the lot coverage size.

If the concerns from the last meeting have been addressed by the above conditions, the City Attorney would draft an agreement between the City and Mr. and Mrs. Pearce.

Commissioner Host commented that Mr. and Mrs. Pearce made a very good presentation. He went on to say that because there could be limits set after the lot combination, shows that this commission could be amenable in working with them to achieve their goals knowing that the City does not want a giant structure built on the two lots.

Mayor Boutros agreed.

Commissioner Hoff asked if this would be an amendment to the City Code or Zoning Ordinance. She also asked if it would be a permanent lot combination or specific to the current owner; and would the proposed agreement allow Mr. and Mrs. Pearce to build a structure that would occupy both lots.

Director Ecker confirmed that it would not be an amendment at all. There is an existing section in the Subdivision Ordinance of the City code that would govern. A lot combination would be required and recorded on the title based on conditions imposed by this body. The City code also allows for application to return back to separate lots at any time in accordance with any conditions that might be imposed.

Commissioner Baller expressed concern about moving forward with an agreement for the proposed lot combination. He went on to say that the characteristics of a private recreational area and the unforeseen consequences should be the issue as opposed to the size of the home that may be built in the future. Commissioner Baller asked if City Attorney Currier knew of a precedent set in any other community similar to this situation; and asked for clarity with respect to his process. Commissioner Baller felt that any agreement drafted should be acceptable to the community as well as Mr. and Mrs. Pearce.

City Attorney Currier responded that once a listing of the types of uses are received for the property, an agreement would be drafted to share with Mr. & Mrs. Pearce and the City

Commission for review. He expressed that the key would be to tailor it to the neighborhood, the people involved, and the limits to the size of the proposed structure.

Commissioner Nickita asked would a lot split be required if construction were desired on the second lot in the future, and would the agreement be considered a SLUP or similar.

City Attorney Currier affirmed that a lot split would be required. This instance is a lot combination with conditions pursuant to the subdivision ordinance.

Commissioner Nickita clarified that it is different from a SLUP because it is specific to the lot and legal details of the lot. He asked how large of an extension or addition could be built, and how would the details be determined.

City Attorney Currier expressed that he and Director Ecker have been in discussions about developing a building envelope that would include all additions moving forward.

Commissioner Nickita asked for clarification on how envelope size would be determined; and the basis for the determination.

City Attorney Currier further explained that having two lots does not increase the envelope of the single lot. He went on to say there would only be one building envelope.

Commissioner Baller asked for clarification of the proposed agreement, including what could be done with the accessory structures in the future.

Director Ecker clarified that the relevant issues are lot coverage and limiting the side setback. She further suggested that the commission could increase the side setback and limit the lot coverage, which includes accessory structures.

Commissioner Hoff expressed concern about making this a permanent lot combination. She went on to ask if there were a way to give them what they are asking for without combining the lot. She suggested a SLUP agreement or simple contract.

Director Ecker spoke to an ordinance amendment and the length of time required to change it, and the far-reaching implications and unforeseen complications with other properties. She also spoke to conditional zoning which has never been done in the past due to unforeseen complications.

City Attorney Currier felt that the concept that Commissioner Hoff is suggesting would create some pre-existing uses of property that would be non-conforming.

Mrs. Pearce expressed thanks for the consideration that the commission has given this project.

Commissioner Sherman asked if Mr. & Mrs. Pearce had their own counsel; and whether or not April 20, 2020 would be a reasonable date to bring this issue back to commission.

City Attorney Currier did not know if they had representation, but felt that April 20, 2020 was reasonable under the current circumstances.

Commissioner Baller asked why Director Ecker and City Attorney Currier decided to recommend a lot combination with conditions specified in an agreement. He expressed concern that it would set a precedent for additional special agreements.

City Attorney Currier, again, explained that there is an ordinance that provides for the suggested resolution; and does not require an amendment. He agreed that it would set a precedent.

Commissioner Hoff expressed that before the commission required lot combinations to come before their body for approval, residents were combining lots and doing as they pleased with the properties. She expressed concern that the commission is going back down that path by the recommended solution.

Commissioner Nickita clarified that lot combinations were done administratively in the past, and then an ordinance was created that was not thoroughly thought through. He expressed agreement with an ordinance change for the long term. Commissioner Nickita does not agree with approvals based on criteria being met. All in all, he went on to say that the proposed resolution does address fundamental concerns, but is not a perfect solution. In terms of Commissioner Hoff's concerns, conditions would be appropriate and the best approach. He expressed support for an amendment to the ordinance as a permanent solution.

Mayor Boutros expressed, in response to Commissioner Baller wanting this decision noted as transitional, in 10 years or so the Pearce family will still occupy the home. Therefore, he would like to see this family enhance an existing property. He further believes that each lot would have to be judged on its own merit and the commission should look at these requests on a case-by-case basis.

**MOTION:** Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe: To continue the public hearing to April 20, 2020 at 7:30 PM, and directing staff to prepare an agreement between the City and the owners of 1680 and 1698 S. Bates to establish conditions of approval for the lot combination to limit the size and placement of future buildings, to be brought back to the City Commission for approval.

Commissioner Hoff asked if accessory structures would be allowed under this agreement.

Commissioner Sherman clarified that City Attorney Currier would draft a SLUP agreement to address those concerns.

City Attorney Currier noted that each lot combination is unique and tailored to its neighborhood.

ROLL CALL VOTE:     Ayes,                      Mayor Boutros  
   Mayor Pro Tem Longe  
   Commissioner Baller  
   Commissioner Hoff  
   Commissioner Host  
   Commissioner Nickita  
   Commissioner Sherman

Nays,                      None

<b>VI.     NEW BUSINESS</b>
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<b>04-063-20                      PUBLIC HEARING TO CONSIDER APPROVAL OF SPECIAL LAND USE AMENDMENT AND FINAL SITE PLAN AND DESIGN REVIEW – 160 W. MAPLE – DICK O'DOW'S</b>
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Director Ecker presented this item.

Commissioner Hoff asked had the Willits residents been notified of the proposed change and, if approved what time would the rear patio close.

Director Ecker expressed that she presented a site plan to the manager of the Willits and she was happy with the plan. She went on to say the rear doors of the establishment must be closed by midnight, which is a condition of the existing SLUP agreement.

Commissioner Sherman noted that Chris Longe was the architect on this project and asked if Mayor Pro Tem Longe has a conflict that would require recusal from the discussion.

Mayor Boutros deferred to City Attorney Currier for a determination.

City Attorney Currier referred to the ethics ordinance, which states that if a marital relationship exists there is an automatic conflict of interest when there is an economic interest for either spouse.

Mayor Pro Tem Longe offered to recuse herself; although she claimed there was no economic interest, just a friendly gesture by her husband to move the item along.

Mayor Boutros, asked City Attorney Currier to weigh in again because the site plan was the result of a friendly gesture and not one of economic interest.

City Attorney Currier recommended recusal because a personal relationship with the owner of an establishment is also considered a conflict of interest in matters relative to the establishment.

Mayor Pro Tem Longe recused herself from the discussion and vote.

Commissioner Hoff asked if the rear patio closes at midnight, would patrons be able to sit outside after the rear doors are closed.

City Attorney Currier replied that under the LCC, patrons are not allowed to take drinks outside of an establishment when the doors are closed.

Commissioner Hoff asked when the construction is completed would both outdoor seating areas remain open.

Director Ecker expressed that it was her understanding that the existing platform used in the front, would not fit the new configuration of Maple Road post construction. She suggested putting conditions in the SLUP agreement that should govern this property. If there were changes after construction, there would need to be an application to planning and approval by the commission.



Commissioner Host noted that the back dining area is in lieu of the front platform during the Maple Road construction project and should not be confused with a permanent situation without additional approvals.

Commissioner Nickita expressed that approval should be based on conditions established by the commission. He went on to say the intent is to provide an alternative to what the restaurant would be losing during construction; therefore, the conditions could align with what was already in place for the outdoor dining platform in the front of Dick O'Dows.

Director Ecker affirmed that 2 A.M. was the closing time of record for Dick O'Dows' dining platform on the front of the building. She went on to say the proposed outdoor dining is in the rear of the building and due to its proximity to the Willits, it would be reasonable to add the condition of closing the rear by midnight to be in line with the live music restriction that is currently in place.

Commissioner Nickita noted that when outdoor seating is adjacent to a residential building, timelines and conditions have been determined in the past. He went on to ask if a standard had been established with respect to outdoor seating adjacent to property zoned residential; if so it should be applied to this situation.

Director Ecker expressed that the ordinance requires outdoor activity to cease by 10:00P.M. when immediately adjacent to single/multifamily zoned property. In this instance, the area is zoned for mixed-use and is not governed by the same requirement.

Mayor Boutros is in support of this resolution with a midnight closing.

Mr. Black of Dick O'Dows expressed that his intention is to keep the patio open until midnight. He also said that when the doors close in the rear, outdoor seating would also close.

Commissioner Hoff asked if the rear patio would be for this season only.

Mr. Black expressed that his intent is to keep his business viable during the outdoor dining season. He went on to say that the demand for the back is unknown and an analysis will be done this season. Management does not intend to support a front patio this season.

Commissioner Baller commented that he would support outdoor dining in both the front and rear of Dick O'Dows. He does not support staying open until midnight in the back due to the noise potential. He asked Mr. Black how he would feel about having both patios, after construction, going forward and closing the rear at 10 P.M. He further asked if the back door is currently open until midnight and if there were complaints.

Mr. Black noted that it is an option that would be considered, but he would like to stay open in the back until midnight. While there is currently no seating in the rear, the door is open until midnight without complaints from the Willits. He went on to say that his intent is to continue to be a good neighbor and remain in business in Birmingham for many years to come.

Kim Beydoun, Manager of the Willits, is in favor of the proposed plan for Dick O'Dows by written memo.

Mayor Boutros closed the public hearing.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Baller:  
Approving a Special Land Use Permit Amendment and Final Site Plan and Design Review for Dick O'Dows at 160 W. Maple to allow outdoor dining at the rear of the building from April 1 through November 15, 2020 during construction on E. and W. Maple.

ROLL CALL VOTE:   Ayes,       Mayor Boutros  
  Commissioner Baller  
  Commissioner Hoff  
  Commissioner Host  
  Commissioner Nickita  
  Commissioner Sherman  
                  Nays,       None  
                  Recused,   Mayor Pro Tem Longe

**04-064-20                   PUBLIC HEARING TO CONSIDER FILING OBJECTION WITH MLCC  
                                  – TOWNHOUSE & ROJO**

Mayor Boutros opened the public hearing.

City Manager Valentine presented this item, noting that all of the issues with respect to the two properties have been abated.

Mayor Boutros closed the public hearing.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Nickita;  
Renewing for the 2020 licensing period, the liquor license held by Townhouse Kitchen & Bar.

**AND**

Resolution renewing for the 2020 licensing period, the liquor license held by RoJo Mexican Bistro/Sidecar Slider Bar.

ROLL CALL VOTE:   Ayes,       Mayor Boutros  
  Mayor Pro Tem Longe  
  Commissioner Baller  
  Commissioner Hoff  
  Commissioner Host  
  Commissioner Nickita  
  Commissioner Sherman  
                  Nays,       None

**VII.   REMOVED FROM CONSENT AGENDA**

**VIII.   COMMUNICATIONS**

**IX.   OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

**X.   REPORTS**

A.   Commissioner Reports

1. Notices of intent to appoint to Board of Building Trades Appeals, and Multi-Modal Transportation Board
- B. Commissioner Comments
  1. Commissioner Sherman expressed his appreciation for City staff who are working above and beyond to keep the City's essential services running.
  2. Mayor Pro Tem Longe expressed appreciation for the support of the Birmingham business' who have been supporting the front line workers and the community through this COVID19 crisis.
  3. Mayor Boutros wished safety and good health for staff and the entire community during these unprecedented times. He urged everyone to take the Governor's order seriously and follow the guidelines set forth to help mitigate this disease. He went on to express that the commissioner workshops are on pause until they could be implemented in an effective way, while keeping in line with social distancing practices.
  4. City Manager Valentine expressed that in February, serious considerations and discussions with staff were held in trying to prepare the community for what was to come. Not knowing how bad it would be, there were several initiatives to use resources to help the community.
    - a) Revamp the City website to provide a single source of resources for the public to access information.
    - b) Created COVID19 hotline (248)530-1805 avail M-F 8:00 a.m. – 5:00 p.m.
    - c) Created a citywide email distribution system. Sign up on the City's website homepage to receive information as it is released.
    - d) Reassigned staff to align to meet resources, changed work schedules to stagger employees (DPS), and cross training to back up firefighters.
    - e) Hired temporary employees to assist firefighters and backfill paramedic resources.
    - f) Executed a temporary mutual aid agreement with the Village of Beverly Hills to share public safety officers w/EMT qualifications. Putting a third ambulance in service. In early May, there will be four ambulances in service.
    - g) Created COVID care packages (masks, etc.) to leave with people whose symptoms are not severe enough for transport to the hospitals.
    - i) Established a quarantine area at the ice arena in the event that public safety personnel contract the virus; there is a place to go to avoid infecting their families.
    - j) Reassign several staff to a call center to assist the public during normal business hours.
    - k) Began the practice of video meetings hosted by Zoom which are listed on the website.
  5. Mayor Boutros commended City Manager Valentine on his commitment, and dedication to the Birmingham community of businesses, residents, boards, and staff. He does it unselfishly and with genuine concern.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  1. Annual Golf Report, submitted by Golf Manager Brito

2. Community Development Department/Planning Division Annual Report & Planning Board, Historic District Commission, and Design Review Board Action Lists for 2020-2021, submitted by Planning Director Ecker

INFORMATION ONLY

<b>XI. ADJOURN</b>
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Mayor Boutros adjourned the meeting at 9:45 p.m.

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Alexandria Bingham, City Clerk Designee  
/vc

# City of Birmingham

## Warrant List Dated 04/08/2020

Meeting of 04/20/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
272705		005123	2400 LINCOLN, LLC	26,066.04
272706		008201	AINSWORTH DBA MECHANICAL DESIGN &	502.00
272706	*	008201	AINSWORTH DBA MECHANICAL DESIGN &	80,708.00
272707	*	003708	AIRGAS USA, LLC	19.50
272708	*	MISC	ALEXEY ANISIMOVA	107.00
272709	*	MISC	ANDREA APPEL	107.00
272710	*	006759	AT&T	1,876.90
272711		008165	B5 INVESTMENTS, LLC	204.02
272712	*	006534	BADER AND SONS CO	124.50
272713	*	003839	MATTHEW J. BARTALINO	1,610.08
272714	*	003012	BATTERIES PLUS	30.00
272715		004931	BIDNET	771.30
272716	*	002231	BILLINGS LAWN EQUIPMENT INC.	38.00
272717		000525	BIRMINGHAM PUBLIC SCHOOLS	10.65
272718		003526	BOUND TREE MEDICAL, LLC	1,252.15
272719		MISC	BRIXNSTONE, LLC	2,500.00
272720	*	007365	BSN SPORTS	500.00
272722		MISC	CEI MICHIGAN LLC	500.00
272723	*	000912	MARK CLEMENCE	65.65
272724	*	004188	COFFEE BREAK SERVICE, INC.	85.25
272725	*	008955	COMCAST	171.86
272726	*	007774	COMCAST BUSINESS	1,233.96
272727	*	002668	CONTRACTORS CLOTHING CO	579.50
272728		008512	COOL THREADS EMBROIDERY	2,057.48
272730		009170	DC DENTAL	179.95
272731		MISC	DEAN WINFRED THURMAN JR	10.00
272732	*	MISC	DOC'S APPLIANCE SERVICE	89.95
272733	*	MISC	DOUGLAS G. ASHLEY PHOTOGRAPHER	75.00
272734	*	000179	DTE ENERGY	56.78
272735	*	000179	DTE ENERGY	216.54
272736	*	000179	DTE ENERGY	305.48
272737	*	000179	DTE ENERGY	1,031.29
272738	*	000179	DTE ENERGY	1,748.84
272739	*	000179	DTE ENERGY	99.25
272740	*	000179	DTE ENERGY	72.86
272741	*	000179	DTE ENERGY	61.38
272742	*	000179	DTE ENERGY	1,970.69
272743	*	000179	DTE ENERGY	158.02
272744	*	007538	EGANIX, INC.	1,795.00
272745	*	007136	FERGUSON ENTERPRISES, INC.	187.16
272746	*	006654	FLEETPRIDE INC	299.99
272747	*	007172	GARY KNUREK INC	370.00

**City of Birmingham**  
**Warrant List Dated 04/08/2020**

Meeting of 04/20/2020

Check Number	Early Release	Vendor #	Vendor	Amount
272748		007342	H2A ARCHITECTS, INC.	2,496.00
272749	*	001447	HALT FIRE INC	223.62
272751	*	000948	HYDROCORP	1,315.00
272752	*	008564	JERRY'S TIRE	981.00
272753		007423	K/E ELECTRIC SUPPLY	523.50
272754		008413	KARANA REAL ESTATE, LLC	570.88
272755	*	007827	HAILEY R KASPER	89.25
272757	*	000362	KROGER COMPANY	370.40
272758	*	MISC	LEIA ATHANAS	214.00
272759	*	MISC	LINDA AJLUNI	107.00
272760		009046	M. SHAPIRO MANAGEMENT COMPANY LLC	32,534.13
272761		MISC	MARGARET ELLEN SHUSTER	100.00
272762	*	009124	ALEXANDRA MERCURIO	131.25
272763		008793	MERGE MOBILE, INC.	73.00
272764	*	008869	HALLE MISRA	24.00
272766		007755	NETWORK SERVICES COMPANY	1,382.60
272767	*	MISC	NEVEEN AWAD	162.00
272771		MISC	ON DUTY GEAR	375.00
272773		MISC	OVERLAND CONTRACTING	200.00
272774	*	009151	PARAGON LABORATORIES INC	1,271.00
272775	*	009151	PARAGON LABORATORIES INC	1,394.00
272776	*	009151	PARAGON LABORATORIES INC	1,394.00
272777	*	009151	PARAGON LABORATORIES INC	1,599.00
272778	*	009151	PARAGON LABORATORIES INC	820.00
272779	*	001753	PEPSI COLA	257.72
272781		008028	PK SAFETY SUPPLY	266.50
272782	*	003629	PREMIUM AIR SYSTEMS INC	141.00
272783		006729	QUENCH USA INC	240.00
272784		008852	REDGUARD FIRE & SECURITY	300.00
272785	*	005344	RESERVE ACCOUNT	8,000.00
272786	*	000218	ROYAL OAK P.D.Q. LLC	260.57
272787	*	008983	BRENNA SANDLES	31.50
272788		MISC	SEFTON, SAMUEL W	816.00
272789		003483	SHERWIN WILLIAMS COMPANY	252.72
272790		009009	SIGNATURE CLEANING LLC	6,404.00
272791	*	008073	SITEONE LANDSCAPE SUPPLY, INC	3,850.16
272792		MISC	SOLDIER BUILDING	500.00
272795	*	000256	SUBURBAN BUICK GMC INC	631.66
272796	*	004355	SYMETRA LIFE INSURANCE COMPANY	35,889.12
272797		007586	TELEFLEX LLC	1,115.50
272799	*	009144	RICHARD TRUDO	3,600.00
272800	*	003760	UNUM LIFE INSURANCE CO. OF AMERICA	23,555.77
272801	*	MISC	VARUJAN ARMAN	194.00

**City of Birmingham**  
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Check Number	Early Release	Vendor #	Vendor	Amount
272802	*	000158	VERIZON WIRELESS	76.02
272803	*	000158	VERIZON WIRELESS	754.87
272804	*	000158	VERIZON WIRELESS	1,037.20
272805	*	000158	VERIZON WIRELESS	152.97
272807	*	006491	VILLAGE AUTOMOTIVE	1,398.75
272808	*	MISC	VIRGINIA AUCUTT	174.00
272809	*	000301	PAUL WELLS	251.08
272812	*	000309	ZEP SALES AND SERVICE	383.81
272813		008902	ZORO TOOLS, INC.	59.76

SUBTOTAL PAPER CHECK \$268,794.33

EFT TRANSFER

" "		008732	AMAZON.COM, INC	979.07
" "		002429	BIRMINGHAM BLOOMFIELD CHAMBER	45.00
" "		MISC	BRICEPAC	1,125.00
" "		MISC	BRYCER LLC	15.00
" "		008730	FACEBOOK HEADQUARTERS	337.73
" "		MISC	GO DADDY	629.98
" "		MISC	GO TO MY PC	792.00
" "		006389	GREAT WOLF LODGE	566.10
" "		MISC	HOLIDAY INN- MT PLEASANT	89.25
" "		MISC	IAED	50.00
" "		MISC	ICHAT	10.00
" "		005741	INTERNATIONAL CODE COUNCIL	219.00
" "		001497	MICHIGAN STATE POLICE	700.00
" "		000758	SCHOOLCRAFT COLLEGE	350.00
" "		000646	STATE OF MICHIGAN	230.00
" "		008734	SURVEYMONKEY	553.00
" "		MISC	VIMEO	900.00

SUBTOTAL EFT TRANSFER \$7,591.13

ACH TRANSACTION

2264	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	17,497.24
2266	*	003243	AMERICAN PRINTING SERVICES INC	3,545.00
2269	*	007345	BEVERLY HILLS ACE	95.49
2270		007875	CANFIELD EQUIPMENT SERVICE INC.	9,902.93
2272	*	009181	DELTA TEMP SERVICES INC	1,650.20
2274	*	000207	EZELL SUPPLY CORPORATION	114.90
2275		001230	FIRE SYSTEMS OF MICHIGAN LLC	826.25
2276	*	008851	INSIGHT INVESTMENT	5,157.96
2277	*	002407	J & B MEDICAL SUPPLY	1,791.18
2278	*	000261	J.H. HART URBAN FORESTRY	10,180.63
2279	*	003458	JOE'S AUTO PARTS, INC.	265.93
2281		001864	NOWAK & FRAUS ENGINEERS	34,485.00

**City of Birmingham**  
**Warrant List Dated 04/08/2020**

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Check Number	Early Release	Vendor #	Vendor	Amount
2282		006359	NYE UNIFORM COMPANY	769.50
2282	*	006359	NYE UNIFORM COMPANY	1,211.48
2283	*	002767	OSCAR W. LARSON CO.	607.72
2285	*	000254	SOCRRA	141,357.00
2286	*	001097	SOCWA	127,586.57
2287	*	002037	TOTAL ARMORED CAR SERVICE, INC.	736.27
SUBTOTAL ACH TRANSACTION				\$357,781.25
GRAND TOTAL				\$634,166.71

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.



**City of Birmingham**  
**Warrant List Dated 04/15/2020**

Meeting of 04/20/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
272814	*	000801	POSTMASTER	1,788.58
272815	*	008649	ROBERT ABRAHAM JR.	26.49
272816	*	MISC	ADAM LOUNSBURY	87.00
272817	*	MISC	ADVANCED AIR CARE, LLC	700.00
272818	*	007266	AETNA BEHAVIORAL HEALTH LLC	430.56
272819		MISC	AIRE EXCHANGE INC	386.38
272820	*	003708	AIRGAS USA, LLC	276.83
272821	*	MISC	AISHA QAZI	194.00
272822	*	MISC	ALFONSO PINEDA	187.00
272823	*	MISC	ALISON BURNS	107.00
272824		007745	ALL COVERED	2,208.85
272826		000167	ANDERSON ECKSTEIN WESTRICK INC	129.75
272827	*	MISC	ANNA ZYWICKI	107.00
272828	*	MISC	ANNE CUBERA LIPP	249.00
272829	*	MISC	ANNE MCCARTHY	107.00
272830	*	MISC	ANNE SCHWARTZ	162.00
272831	*	MISC	ANNIE MONIGOLD	87.00
272832	*	008977	JOBMATCH LLC DBA APPLICANTPRO	717.00
272833	*	MISC	AUBBY SHERMAN	87.00
272834	*	004027	AUTOMATED BENEFIT SVCS INC	23,317.79
272835	*	MISC	BARBARA MURPHY	107.00
272836	*	MISC	BARRIE SCHOESSEL	162.00
272837		003012	BATTERIES PLUS	230.20
272838	*	MISC	BENJAMIN GREENBERG	214.00
272839	*	MISC	BLAIN REINKENSMeyer	269.00
272840	*	MISC	BORIS PEREHODNIK	107.00
272841	*	000546	KAREN D. BOTA	1,680.00
272842		003526	BOUND TREE MEDICAL, LLC	692.02
272843	*	MISC	BRANDON REINKENSMeyer	107.00
272844	*	MISC	BRYCE ROSETT	107.00
272845		009078	CANON SOLUTIONS AMERICA INC	529.50
272846	*	MISC	CARMEN HOLTHAUS	194.00
272847	*	MISC	CARRIE KLUCZYKE	107.00
272848	*	MISC	CATHARINE KOSIN	214.00
272849		009168	CHET'S CLEANING INC	200.00
272850	*	MISC	CHRIS TWAROG	107.00
272851	*	MISC	CHRISTIAN COLLINS	87.00
272852	*	MISC	CHRISTIE CURTIS	107.00
272853	*	MISC	CHRISTINA HENDERSON	31.90
272854	*	MISC	CHRISTINE SIMS	107.00
272855	*	MISC	CHRISTINE TRAN	107.00
272856	*	MISC	CHUN HE	107.00

# City of Birmingham

## Warrant List Dated 04/15/2020

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Check Number	Early Release	Vendor #	Vendor	Amount
272857	*	007710	CINTAS CORP	262.76
272858	*	001318	CLOVERDALE EQUIPMENT CO	2,542.14
272859	*	004026	COFINITY	1,440.00
272860	*	008955	COMCAST	74.77
272862		008512	COOL THREADS EMBROIDERY	351.98
272863	*	009145	CREATIVE COLLABORATIONS	3,800.00
272864	*	MISC	D MET DESIGN LLC	100.00
272865	*	MISC	DAVID BREAUGH	107.00
272866	*	MISC	DAYNA RATLIFF	107.00
272867	*	006907	DENTEMAX, LLC	151.20
272868	*	MISC	DOMINIC DALLO	87.00
272869	*	007538	EGANIX, INC.	1,225.00
272870		008504	ELECTIONSOURCE	206.91
272871	*	MISC	EMILY KAUFMAN	174.00
272872	*	MISC	EMILY KRAVETZ	107.00
272873	*	MISC	EMILY PITT	107.00
272874		006876	ENFORCEMENT PRODUCTS INC	3,141.00
272875	*	MISC	ERICA KOORY	214.00
272876	*	MISC	EVA ELKINS	174.00
272877		MISC	FISHMAN, RYAN J	135.70
272878	*	007172	GARY KNUREK INC	1,085.40
272879		000249	GUARDIAN ALARM	246.80
272880	*	MISC	HANGYU MAO	87.00
272881	*	MISC	HANS EICHEL	107.00
272882	*	000948	HYDROCORP	13,413.75
272883	*	MISC	JACK SERDA	107.00
272884	*	MISC	JACKIE DENT	107.00
272885	*	MISC	JACQUELINE COLEMAN	87.00
272886	*	MISC	JAMIE REVITZ	87.00
272887	*	MISC	JASON DALEY	194.00
272888	*	003823	JAY'S SEPTIC TANK SERVICE	86.00
272889	*	MISC	JAYNE ESSAKI	162.00
272890	*	MISC	JENNIFER BRODJESKI	162.00
272891	*	MISC	JENNIFER ORTWEIN	87.00
272892	*	MISC	JENNIFER ROBERTSON	107.00
272893	*	MISC	JENNIFER ROSENTHAL	107.00
272894	*	MISC	JEREMY MORTON	107.00
272895	*	MISC	JEROME CHURLET	107.00
272896	*	MISC	JERRY A. YALDOO	162.00
272897	*	MISC	JESSICA PULIS	107.00
272898	*	MISC	JESSICA STILGER	107.00
272899		MISC	JOE PIZIK ELECTRIC, INC.	753.00
272900	*	MISC	JORDAN BOLTON	297.00

**City of Birmingham**  
**Warrant List Dated 04/15/2020**

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Check Number	Early Release	Vendor #	Vendor	Amount
272901	*	MISC	JULIE STRICKLAND	87.00
272902	*	MISC	JUNTAGARN MUSSELMAN	107.00
272903		005291	KAESER & BLAIR INC	1,054.85
272904	*	MISC	KAMELA BELLAMKONDA	162.00
272905	*	MISC	KAREN GRAY	107.00
272906	*	MISC	KARI SKUBIK	107.00
272907	*	MISC	KATHERINE ROTHSTEIN	107.00
272908	*	MISC	KATHRYN CHRISTENSEN	87.00
272909	*	MISC	KATIE BRAUN	194.00
272910	*	MISC	KATIE CORDEN	174.00
272911	*	MISC	KELLIE SCHNURLEIN	107.00
272912	*	000353	KNAPHEIDE TRUCK EQUIPMENT	1,870.72
272913	*	MISC	KRISTIN WITT	107.00
272914	*	000362	KROGER COMPANY	104.48
272916		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	326.00
272917	*	MISC	LINDSEY DUNN	245.00
272918	*	MISC	LOEK BECKERS	107.00
272919	*	008158	LOGICALIS INC	9,700.00
272920	*	MISC	LORENE BRANCH	107.00
272921	*	MISC	LORI HANDZEL	107.00
272922	*	MISC	LOWELL WEISS	214.00
272923	*	MISC	LYNNE PARKIN	214.00
272924	*	MISC	LYNNE RIVERA	55.00
272925	*	MISC	MAKI HAYAMA	107.00
272926	*	MISC	MARC SWANSON	261.00
272927	*	MISC	MARKO BERISHAJ	214.00
272928	*	MISC	MARYANN BRUDER	194.00
272930	*	MISC	MEG KEVANE	107.00
272931	*	MISC	MEGHAN SWONDER	162.00
272932	*	MISC	MELISSA FRASER	170.00
272933	*	MISC	MELISSA PURDY	87.00
272934	*	008207	METAL MART U.S.A.	82.62
272935	*	MISC	MICHAEL COVER	107.00
272936	*	MISC	MICHAEL VAN HYFTE	518.00
272937		MISC	MICHAEL, DEBORAH A	188.95
272938	*	MISC	MICHELE PHILLIPS	107.00
272939	*	000377	MICHIGAN MUNICIPAL LEAGUE	85.08
272940	*	000230	MIKE SAVOIE CHEVROLET INC	1,944.71
272941	*	MISC	MIN HU	107.00
272942		000649	MML WORKERS' COMP FUND	38,793.00
272943		007163	MOBILE HEALTH RESOURCES	1,696.28
272946	*	MISC	NATALIE PARIS	107.00
272947	*	MISC	NEIL GRAY	194.00

**City of Birmingham**  
**Warrant List Dated 04/15/2020**

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Check Number	Early Release	Vendor #	Vendor	Amount
272948	*	007755	NETWORK SERVICES COMPANY	551.25
272949	*	MISC	NICOLE CLUGSTON	107.00
272950	*	MISC	NICOLE VELLA	107.00
272951	*	MISC	NIKKI CASADY	107.00
272952	*	MISC	NIVEDITA DHAR	107.00
272953		001686	OAKLAND CO CLERKS ASSOC	25.00
272954	*	004370	OCCUPATIONAL HEALTH CENTERS	835.00
272955		001626	OXFORD OVERHEAD DOOR SALES CO.	170.00
272956	*	MISC	PAMPA MCLOUGHLIN	107.00
272957		006959	PHOENIX COMMUNICATIONS & CABLING	1,356.00
272958		006625	PACIFIC TELEMAGEMENT SERVICES	78.00
272959	*	MISC	RACHAEL DOMSIC	87.00
272960	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
272961	*	MISC	REBECCA CASCADE	214.00
272962	*	MISC	REBECCA GALLOWAY	517.00
272963	*	MISC	ROSE BOLYARD	87.00
272964	*	MISC	RYAN JANZ	301.00
272965	*	MISC	SANDRA BRAND	214.00
272966	*	MISC	SANDRINE DESFLEURS	281.00
272967	*	MISC	SARA TRUSCOTT	107.00
272968	*	MISC	SARAH STEMPLY-KIME	87.00
272969	*	MISC	SCOTT STRICKLAND	194.00
272970	*	MISC	SEBASTIAN FEHRENBACH	107.00
272971		007527	SHEPPARD ENGINEERING P.C.	1,430.00
272972	*	003483	SHERWIN WILLIAMS COMPANY	194.82
272973	*	004202	SHRED-IT USA	142.94
272974		009184	SPECTRUM PRINTERS INC	651.33
272975	*	MISC	STACIE PATRICK	87.00
272976	*	MISC	STACY CITKO	107.00
272977		006783	STATE OF MICHIGAN	30.00
272978	*	000256	SUBURBAN BUICK GMC INC	30.58
272979	*	MISC	SUDHA SADASIVAN	107.00
272980	*	MISC	SUSANNA PINELIS	194.00
272981	*	MISC	TATIANA FRACZ	87.00
272982	*	MISC	TIM MILLER	214.00
272983		005806	ULINE	267.47
272985	*	MISC	VERONICA RUEDA	107.00
272986	*	005794	WINDSTREAM	6,147.38
272987	*	MISC	WING CHU	107.00
272988		009128	WITMER PUBLIC SAFETY GROUP INC	290.54
272989	*	008391	XEROX CORPORATION	331.00
272990	*	MISC	YASMINE POLES	194.00
272991	*	008955	COMCAST	258.35

**City of Birmingham**  
**Warrant List Dated 04/15/2020**

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Check Number	Early Release	Vendor #	Vendor	Amount
272992	*	MISC	JULIE SANCHEZ	107.00
SUBTOTAL PAPER CHECK				\$146,856.46
<u>ACH TRANSACTION</u>				
2290	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	45,578.31
2291	*	002284	ABEL ELECTRONICS INC	170.99
2293	*	009186	BILL PEASLEY	1,838.25
2294	*	000517	BEIER HOWLETT P.C.	43,732.25
2295	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	78.75
2296		001077	DUNCAN PARKING TECH INC	3,749.23
2296	*	001077	DUNCAN PARKING TECH INC	11,202.75
2297	*	000207	EZELL SUPPLY CORPORATION	1,797.66
2298		006181	FIRST CHOICE COFFEE SERV	205.50
2299	*	002407	J & B MEDICAL SUPPLY	144.70
2300	*	000186	JACK DOHENY COMPANIES INC	1,965.28
2301	*	003458	JOE'S AUTO PARTS, INC.	535.60
2302	*	005550	LEE & ASSOCIATES CO., INC.	204.64
2303		001089	MUNICIPAL CODE CORP.	500.00
2304		001062	QUALITY COACH COLLISION	4,030.00
2305	*	001062	QUALITY COACH COLLISION	557.00
2306		006832	SAFEWARE INC.	390.00
2307	*	005787	SOUTHEASTERN EQUIPMENT CO. INC	823.99
SUBTOTAL ACH TRANSACTION				\$117,504.90
GRAND TOTAL				\$264,361.36

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

**DATE:** 04/15/2020

**TO:** Joseph A. Valentine, City Manager

**FROM:** Eric Brunk, IT Manager

**SUBJECT:** Increase Internet connection speed

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**INTRODUCTION:**

As a proactive measure, with the increase in connections from outside of the City buildings due to the Governor's shelter at home mandate and the associated City work from home policy the IT department is requesting an increase in the internet connection bandwidth the City has to the internet.

**BACKGROUND:**

The internet connection for the City of Birmingham is currently run through a Comcast Business connection and has a connection bandwidth of 100mbps download and 20mbps upload. The current configuration has worked well for the City but as we have increased the use of software as a service, external applications and other leveraged online services we have been steadily using up the bandwidth afforded to us by the Comcast connection. Over the past year the IT department has been reviewing quotes from different companies that handle internet connectivity, looking to increase the internet connection bandwidth the city uses. Those quotes either had a high installation cost or a high monthly cost as the installation cost was rolled into the monthly contract. With the current change in how the City staff handles day to day business operations, the IT department is concerned that we may max out our current connection. Crown Castle Fiber put together a quote to double our download bandwidth to 200mbps and to increase our upload bandwidth to 200mbps, ten times our current connection, on a 36 month contract for a monthly cost of \$643.00. Unlike other vendors, they can do this at no installation costs and a significant monthly saving over the previously reviewed quotes as they already have connectivity in City Hall having installed the high speed fiber connection for the Police Department's 911 system upgrade last year.

**LEGAL REVIEW:**

I have sent their master agreement and the Service Order request documents to the City Attorney for review. Attached is the service order request with the negotiated changes. It has been approved by the city attorney and Signed by the Crown Castle Representative.

**FISCAL IMPACT:**

The IT department during last year's budget cycle put money in the budget for this fiscal year, anticipating making a change to our internet provider and increasing our bandwidth and this price falls within the budgeted amount.

**SUMMARY:**

The IT department would like authorization to purchase an increased internet connection from Crown Castle Fiber for 36 months term with a monthly payment of \$643.00 Funds available in the IT connectivity fund 636-228.000-933.0700.

**ATTACHMENTS:**

Attached is the Service order from Crown Castle Fiber showing the monthly price and the length of term.

**SUGGESTED RESOLUTION:**

Authorize the City Manager to sign the Service Order form initiating the purchase of an 200mb internet connection from Crown Castle Fiber for a term of 36 months with a monthly payment of \$643.00 contract total of \$23,148.00. Funds are available in the IT connectivity fund 636-228.000-933.0700.





## Customer or Licensee Information

## IP Address Request Form

**Business Name:** City of Birmingham  
**Technical Contact:** Eric Brunk  
**Title:**  
**Service Address:** 151 Martin St, 1st Floor, Birmingham, MI 48009

**Request Date:** 03/25/2020  
**Tech. Contact Email:** ebrunk@bhamgov.org  
**Phone Number:**  
**Reference #** OC179367-01

## Instructions:

This form must be completed by the customer or licensee ("You") so that the Crown Castle entity providing Internet service to the You ("Crown Castle Fiber") can properly configure and activate the ordered Crown Castle Fiber Service(s). If also running BGP with Crown Castle Fiber, complete the IP Configuration Form. A new form must be completed by You and submitted to Crown Castle Fiber each time You request additional IP addresses.

## Crown Castle Fiber IPv4 Address Policy

Crown Castle Fiber conforms to the North American IP Registry (ARIN) policies regarding IP address assignments. As part of its standard service, Crown Castle Fiber will assign only the amount of IP addresses that You can sufficiently justify with this form for use on your local area network (LAN). Crown Castle Fiber reserves the right to perform network scans across your allocations to verify compliance. IP addresses assigned to customers by Crown Castle Fiber are in conjunction with their Crown Castle Fiber Service. Upon termination of service, the assigned IP addresses must be returned to Crown Castle Fiber. Crown Castle Fiber explicitly reserves the right to recall without customer recourse any public space not used in the fashion herein delineated. If you have any questions about the IP assignment policy or process, please review ARIN's Address Assignment Policy and Procedures (<https://www.arin.net/policy/nrpn.html>).

You MUST use 25% of the IP addresses requested on the day of installation, with a one-week grace period to cover equipment problems.

You MUST use 50% of assigned addresses within 6 months, or the addresses will be withdrawn.

You MUST use 80% aggregate of assigned addresses before Crown Castle Fiber will issue any additional addresses. Proof of 80% aggregate utilization with detailed host break down or IP SWIP of existing space is required with the new request.

Will you require IP addresses from Crown Castle Fiber other than the default provided /30 WAN allocation? ☒ Yes ☐ No

## Current Address Allocation and Usage (List both IPv4 and IPv6 address space in use in your network from all sources)

Network	Assigned By	Date Assigned	% Currently in Use	Being renumbered to Crown Castle?
173.13.19.241/28	Comcast	2013	57	yes

## IP Address Space Requested

## IPv4 Addresses Requested:

/24 Requests: Crown Castle Fiber will provide a maximum of one /24 equivalent space which can be discontiguous. Crown Castle Fiber will only provide a contiguous /24 subnet to multi-home with BGP under ARIN NRPM 2017.4 section 4.2.3.6, Crown Castle Fiber must be the primary connection, and as such must have no AS-Path padding or local preference setting that would prefer another path. You must also have your secondary provider confirm they are providing You with service and that they are not providing You with routable space, only link or WAN addresses. For requirements other than stated herein, You must work with ARIN directly.

Will you be requesting BGP peering with Crown Castle Fiber? ☐ Yes ☒ No

If yes, please provide ASN

If yes, please list secondary IP transit provider(s)

IPv4 CIDR Size Requested (Refer to Table Below)	IP Addresses Required	Description (Routers, Firewalls, Servers, etc. Including host counts in each)
/28	Minimum of 8	firewall 1, servers 7, vpn 1, monitoring Software 3

Please Note: Any prefix /29 and larger will be statically routed over a directly connected /30 or /31

Cidr Size	Subnet Mask	Number of usable IPv4 Addresses	Cidr Size	Subnet Mask	Number of usable IPv4 Addresses
/24	255.255.255.0	254	/28	255.255.255.240	14
/25	255.255.255.128	126	/29	255.255.255.248	6
/26	255.255.255.192	62	/30	255.255.255.252	1 *
/27	255.255.255.224	30	* 1 of 2 IP's is allocated to CCF WAN Router		

## IPv6 Addresses Requested:

An organization may request a /48 for each site in its network, and any sites that will be operational within 12 months. A site is a discrete location that is part of an organization's network. A campus with multiple buildings may be considered as one or multiple sites, based on the implementation of its network infrastructure. For a campus to be considered as multiple sites, reasonable technical documentation must be submitted describing how the network

Number of /48 Requested	Number of Sites Now	Number of Sites in 12 Months

You, through your duly authorized representative, represent and warrant that the above information is true and correct. You agree and understand that Internet Protocol Version 4 address space is limited and that users of the Internet are responsible for conserving address space and ensuring that space is utilized efficiently. You agree that each Crown Castle Fiber company reserves and shall have the right, without liability, to recall any space allocated to You not used after the initial six (6) months of the applicable term for the respective service(s).

Eric Brunk

IT Manager

Name (printed)

Title (printed)



03/30/2020

Signature

Date

## **TELECOMMUNICATIONS LICENSE TERMS AND CONDITIONS**

The following terms apply to fiber and related products licensed by Crown Castle Fiber LLC or any Affiliate thereof, where incorporated by reference in a contract or order form executed by any of those provider entities and by the customer or licensee. For purposes of this Agreement, the term “Company” shall mean the entity identified as the “Company” or “Provider” on the Order Form, or the Affiliate of Company actually licensing the Product pursuant to Section 1.3 below.

### **PART I--GENERAL TERMS APPLICABLE TO ALL FIBER PRODUCTS**

**The following terms apply to all products licensed by Company:**

#### **1. PRODUCTS, ORDER FORMS, AND SUPPLEMENTS.**

**1.1 Products and Order Forms.** This Agreement applies to each telecommunications facility, or product, provided or licensed by Company to Licensee (each a “Product”). Each Product will be specified in an order form executed by the Parties (each an “Order Form”). Purchase orders issued by Licensee shall not be deemed to amend, modify or supplement this Agreement or any Order Form issued hereunder and shall not be legally binding on Company unless otherwise agreed in writing by Company. The term “Customer” or “Licensee” shall mean the entity identified on the Order Form. Company and Licensee are collectively referred to as the “Parties” or individually as a “Party”.

**1.2 Supplemental terms.** As further detailed herein, specific types of Services are subject to additional terms and conditions as detailed in Parts II, III, IV, V and VI of these terms and condition (each of Part II, Part III, Part IV, Part V and Part VI is sometimes referred to herein as a “Supplement”).

**1.3 Company Affiliates.** Licensee acknowledges and agrees that at Company’s option, Products may be provided or licensed by Company, or by an Affiliate of Company, and that any charges or other amounts received by the Company under this Agreement, to the extent attributable to Products provided or licensed by an Affiliate of the Company, shall be received by the Company in its capacity as an agent on behalf of such Affiliate. Internet access will be provided by Company’s affiliate, Crown Castle Fiber Enterprise LLC (f/k/a Sunesys Enterprise LLC). In addition, Order Forms may be executed by an Affiliate of Company, and in such event, any and all references to “Company” herein shall be deemed to be a reference to the applicable Affiliate of Company that executed such Order Form. The term “Affiliate” as used hereunder shall mean, with respect to either Party, any entity controlled by, in control of, or under common control with such Party.

#### **2. TERM.**

**2.1 Product Term.** The term (each a “Product Term”) for each Product begins on the Acceptance Date (as defined below) applicable to such Product, and remains in effect until the expiration of the initial Product Term specified in the applicable Order Form unless earlier terminated as provided herein. The Product Term shall automatically extend for consecutive one-year renewal terms, unless either Party notifies the other of its intent not to renew at least ninety (90) days prior to the expiration of the then-current initial or renewal Product Term.

**2.2 Acceptance Date.** The “Acceptance Date” for each Product shall be the earliest of (a) the date on which Licensee delivers written

notice of acceptance, (b) the date on which Licensee begins to use the Product, other than for testing purposes, or (c) the second (2<sup>nd</sup>) business day following Company’s delivery of notice of the installation of the Product (such notice, a “Connection Notice”), unless Licensee notifies Company in writing within said two-day period of a Defect in the Product, specifying in detail the nature of such Defect. A “Defect” exists if the Product fails to perform materially in accordance with its technical specifications as set forth in the applicable Supplement (“Specifications”). Upon receipt of notice of a Defect, Company and Licensee shall work cooperatively to promptly remedy such Defect, and Company shall deliver another Connection Notice, whereupon the process described in the first sentence of this Section shall apply again. If the Acceptance Date is delayed as a result of any failure, act or omission of Licensee, Company will give Licensee written notice to cure such failure within five (5) calendar days. If Licensee fails to cure within such period, the Acceptance Date will be deemed to be the end of such five (5) calendar-day period.

#### **3. PAYMENT TERMS.**

**3.1 Charges.** Company will invoice Licensee for any non-recurring charge (“NRC”) associated with the Product upon or after execution of the applicable Order Form. The monthly-recurring charge (“MRC”) associated with the Product shall begin to accrue on the Acceptance Date of such Product. Company will invoice Licensee the MRC associated with the Product in advance, except Company will invoice Licensee usage based charges (if any) associated with the Product in arrears. An MRC for a partial month will be pro-rated. Licensee shall be responsible for payment of the MRC for the entire Product Term specified in the applicable Order Form.

**3.2. Payments; Late Payments.** Licensee shall pay each invoice within thirty (30) days of the date of the invoice (the “Due Date”), without setoff or deduction. In the event Licensee fails to make any payment by the Due Date, Licensee shall pay a late charge on all past due amounts at the rate of one and one-half percent (1.5%) per month, compounded monthly (or, if lower, the maximum rate allowed by law). Further, Company shall be entitled to recover from Licensee all collection costs, including attorney fees.

**3.3 Disputed Payments.** Licensee may in good faith dispute charges set forth in an invoice, provided Licensee notifies Company of such dispute in writing no later than sixty (60) days after the date of the invoice. Failure of Licensee to so notify Company of any dispute shall constitute a waiver by Licensee of any dispute. In the event Licensee so disputes any amount in good faith, Licensee must submit a documented claim in writing for the disputed amount and pay the undisputed amounts in accordance with Section 3.2. Licensee shall submit all documentation as may reasonably be required to support the claim. If the dispute is resolved in favor of Licensee and Licensee previously paid the disputed amount to Company, Company will apply a credit to Licensee’s account in the amount of the dispute in the next billing cycle. If the dispute is resolved in Company’s favor and Licensee has withheld the disputed amount, Licensee must pay the disputed amount (together with the late payment charge pursuant to

Section 3.2) within five (5) business days following notice of the resolution of the dispute.

#### **4. TAXES AND FEES.**

**4.1 Taxes and Fees.** All charges set forth in an Order Form(s) are exclusive of, and Licensee shall be responsible for and agrees to pay, any and all applicable international, federal, state and local use, excise, sales, value added, consumption, gross receipts, access, franchise and other taxes, fees, assessments, duties and surcharges (including, without limitation, any universal service fund surcharge) in connection with the provision, sale or use of the Product or facility furnished to Licensee (collectively referred to as "Taxes"). Licensee shall not be responsible for, and Taxes will not include, taxes on Company's net income. If Licensee believes it is exempt from Taxes, Licensee shall provide Company with a valid and duly executed exemption certificate and any other information with respect to such exemption as Company may require; such certificate will be honored from the date that Company receives such certificate and additional information from Licensee. If any such exemption is ruled invalid by the tax or governmental authority for any reason, Licensee shall reimburse Company for any Taxes, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

**4.2 REIT Status.** Licensee acknowledges that: (i) Company is directly or indirectly owned in whole or in part by an entity ("REIT Owner") that qualifies as a "real estate investment trust" ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"); and (ii) Company and REIT Owner are therefore subject to operating and other restrictions under the Code. The Parties intend that this Agreement shall constitute a lease of the Products for purposes of Section 856 of the Code, and the Parties shall not take any position on any tax return inconsistent therewith except as required by law.

#### **5. COMPANY EQUIPMENT AND NETWORK; LICENSEE EQUIPMENT.**

**5.1 Company Equipment; Company Network.** The telecommunications devices, apparatus and associated equipment owned, leased, or otherwise obtained by Company to provide Products ("Company Equipment") and Company's fiber optic cable network and associated optical/electronic equipment used to deliver Products, whether owned, leased or otherwise obtained by Company (the "Company Network") shall remain the sole and exclusive property of Company notwithstanding that it may be or become attached or affixed to real property, and nothing contained herein or in any Order Form grants or conveys to Licensee any right, title or interest in any Company Equipment or the Company Network. Licensee may not, and may not permit others to, alter, adjust, encumber, tamper, repair, rearrange, change, remove, relocate, or damage any Company Equipment or the Company Network without the prior written consent of Company. Licensee may not cause any liens to be placed on any Company Equipment or the Company Network, and will cause any such liens to be removed within ten (10) days of Licensee's knowledge thereof. Licensee shall be liable to Company for any loss or damage to the Company Equipment or Company Network caused by Licensee or Licensee's employees, contractors, agents or end users. Nothing herein shall prevent Company from using the Company Network and Company Equipment to provide products to other customers.

**5.2 Extension of Network.** To the extent an Order Form requires Company to complete construction, extend the Company Network and/or obtain additional Underlying Rights, Licensee shall

use commercially reasonable efforts to assist Company in obtaining such Underlying Rights as necessary to provide the Product. Company may, without liability to either Party, terminate a Product prior to delivery, if Company encounters unexpected construction costs, or unavailability of or excess costs for Underlying Rights, that make the construction economically or legally unfeasible. Following the Acceptance Date of the Product, in the event that Company is unable to maintain any necessary Underlying Rights without incurring additional costs, unless Licensee bears the costs of obtaining such Underlying Rights, Company may cancel the applicable Order Form and shall incur no liability to Licensee hereunder. Without limiting the foregoing, Company shall not be deemed to be in breach of this Agreement for its failure to meet any anticipated Product installation or delivery date if such failure is caused, in whole or in part, by (i) a Force Majeure Event, (ii) failure to obtain, or delay in obtaining, any required Underlying Rights, (iii) construction delays, or (iv) any other circumstances beyond the control of Company. "Underlying Rights" means any and all agreements, licenses, conduit use agreements, pole attachment agreements, leases, easements, rights-of-way, franchises, permits, governmental and regulatory approvals and authorizations, and other rights, consents, and approvals that are necessary to construct, install, maintain, operate, and repair the Company Network and/or for Company to provide a Product other than building access rights described in Section 7.1. Without limiting the foregoing, Underlying Rights include agreements for Off-Net Products that are necessary for Company to provide a Product. "Off-Net Products" shall mean any products provided by a third-party. "On-Net Products" shall mean Products that use transmission and related facilities owned and controlled by Company.

**5.3 Licensee Equipment.** Licensee shall, at its own expense, procure any equipment necessary to implement or receive each Product ("Licensee Equipment"). Company will have no obligation to install, maintain, or repair Licensee Equipment. Promptly upon notice from Company, Licensee shall eliminate any hazard, interference or Product obstruction that any such Licensee Equipment is causing or may cause as reasonably determined by Company.

#### **6. MAINTENANCE.**

**6.1 Scheduled Maintenance.** Company will endeavor to conduct (or cause to be conducted) scheduled maintenance that is reasonably expected to interrupt the Product between 12:00 midnight and 6:00 a.m. local time or, upon Licensee's reasonable request, at a time mutually agreed to by Licensee and Company. Company will use commercially reasonable efforts to notify Licensee of scheduled maintenance that is reasonably expected to interrupt the Product via telephone or e-mail, no less than five (5) days prior to commencement of such maintenance activities. Licensee shall provide a list of Licensee contacts for maintenance and escalation purposes, which may be included on the Order Forms, and Licensee shall provide updated lists to Company, as necessary.

**6.2 Emergency Maintenance.** Company may perform emergency maintenance in its reasonable discretion, with or without prior notice to Licensee, to preserve the overall integrity of the Company Network. Company will notify Licensee as soon as reasonably practicable of any such emergency maintenance activity that materially and adversely impacts a Product.

**6.3 Product Issues.** Licensee may notify Company's Network Operating Center ("NOC") of Product problems by telephone 888-LT-FIBER, or at the contacts listed in Company's Customer Support Information provided to Licensee, which may be updated by Company from time to time. If Company dispatches a field technician to

Licensee or an end-user location and the problem is caused by (i) the Licensee Equipment or any end-user's equipment or (ii) any acts or omissions of Licensee or its end user, or of any of its or their invitees, licensees, customers or contractors, Licensee will pay Company for any and all associated time and materials at Company's then-standard rates.

## **7. IMPLEMENTATION REQUIREMENTS.**

**7.1 Access to Premises.** Unless otherwise provided for in the applicable Order Form, Licensee, at its own expense, shall secure throughout the Product Term any easements, leases, licenses or other agreements necessary to allow Company to use pathways into and in each building at which Licensee's or its end-user's premises is located, to the Demarcation Point. Such access rights shall grant to Company the right to access such premises to the extent reasonably requested by Company to install, maintain, repair, replace and remove any and all equipment, cables or other devices Company deems necessary to provide the Product. Upon expiration or termination of the applicable Product Term, Licensee shall grant Company access to its premises as necessary to enable Company to remove the Company Equipment. Company, its employees, contractors and agents shall have access to any Company Equipment or facilities at a Licensee or end user premises. Notwithstanding anything to the contrary herein, Company shall have no liability for any delay or failure in its performance to the extent caused by any delay or failure of Licensee (including, but not limited to, the failure to provide Company prompt access) and/or caused by any notice or access restrictions or requirements. "Demarcation Point" shall mean the network interface point where Company hands off the Product to Licensee. The Demarcation Point delineates where responsibility for the Parties' respective networks, equipment and/or maintenance obligations begin and end. Licensee is responsible, at its sole cost and expense, for connecting to the Demarcation Point.

**7.2 Space and Power.** Licensee shall procure and make available to Company, at Licensee's locations and at end user locations where a Product is provided or licensed, at Licensee's sole cost and expense, adequate space, AC power and HVAC for Company Equipment.

**7.3 Property Owner Not Liable.** Neither Licensee nor any of Licensee's end-users shall have any recourse against any property owner or property manager of any premises to which any Product is delivered and/or at which Company Network or Equipment is located, as a result of or in reliance upon this Agreement. Without limiting the foregoing, this provision shall not be construed to impose any liability on Company, nor shall Company have any liability, for or on behalf of such property owner or property manager.

## **8. DEFAULT & REMEDIES**

**8.1 Default By Licensee; Suspension.** In the event (i) Licensee fails to timely and fully make any payment required hereunder, and such payment breach is not cured within five (5) days after written notice thereof, or (ii) Licensee breaches any other provision of this Agreement and such breach is not cured within thirty (30) days after receipt of written notice thereof, then Company may, at its sole option, either (a) terminate any and all Products, (b) suspend the affected Product to which the breach is related without further notice to Licensee, and/or (c) pursue any other remedies available to Company at law, or in equity.

**8.2 Default By Company.** Licensee may terminate a Product in the event Company breaches this Agreement with respect to such

Product and such breach is not cured within thirty (30) days after Company's receipt of written notice thereof, provided that if a breach subject to this Section 8.2 cannot be cured within thirty (30) days, but is capable of being cured within a reasonable time thereafter, then Licensee may not terminate the Product if Company commences to cure within said thirty (30) days and thereafter diligently and continuously pursues such cure to completion, or Company provides Licensee reasonable assurance that the same breach to the same Product will not subsequently occur.

## **9. INSURANCE.**

**9.1 Insurance.** Each Party shall procure and maintain the following insurance coverage:

- Commercial General and Umbrella Liability Insurance. Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000 for each occurrence. CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Each Party shall name the other Party as an additional insured to provide coverage for the additional insured on a primary and non-contributory basis. The coverage provided to the additional insured shall apply to the extent of the indemnification obligation identified in paragraphs 10.2.
- Workers Compensation Insurance. Workers compensation and employers liability insurance as required by the laws and regulations applicable to the employees who are engaged in the performance of any activities hereunder or under an Order Form.

**9.2 Type and Proof of Insurance.** The insurance coverage required by this Section 9 shall be obtained on an occurrence basis from carriers having a Best Rating Product rating of A- or better. Upon request, a Party will provide the other Party a certificate of insurance or other proof of such insurance.

## **10. LIMITATION OF LIABILITY; INDEMNIFICATION.**

**10.1. LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OF DATA, OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCT OR ANY ORDER FORM, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S TOTAL LIABILITY TO LICENSEE IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL CAUSES OF ACTION AND CLAIMS, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE LESSER OF: (A) PROVEN DIRECT DAMAGES OR (B) THE AGGREGATE AMOUNT OF PAYMENTS MADE BY LICENSEE TO COMPANY FOR THE AFFECTED PRODUCT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE CIRCUMSTANCES GIVING RISE TO THE CLAIM OCCURRED. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE ACTS





OR OMISSIONS OF THIRD PARTIES, INCLUDING UNDERLYING PRODUCT PROVIDERS, OR ANY THIRD-PARTY EQUIPMENT OR PRODUCTS NOT PROVIDED OR LICENSED BY COMPANY.

**10.2. Indemnification.** Except to the extent of the other Party's negligence or willful misconduct, each Party shall indemnify, defend, release, and hold harmless the other Party, its Affiliates, directors, members, officers, employees, managers, agents, representatives, and contractors (collectively, "Indemnitees") from and against any third-party action, claim, suit, judgment, damage, demand, loss, or penalty, and any cost or expense associated therewith (including but not limited to reasonable attorneys' fees, expert fees and costs) (collectively, "Claims") imposed upon such Indemnitee(s) by reason of damage to real or tangible personal property or for bodily injury, including death, as a result of any willful misconduct or negligent act or omission on the part of the indemnifying Party in connection with the performance of this Agreement. In addition to the foregoing, Licensee shall indemnify, defend, release, and hold harmless Company and its Indemnitees from and against any third-party Claims brought against such Company and its Indemnitees arising from or in connection with Licensee's (or its end users') unlawful use of a Product.

**10.3. Indemnification Process.** If a Party ("Indemnifying Party") is required to indemnify the other Party ("Indemnified Party") pursuant to Section 10.2, the Indemnified Party shall promptly notify the Indemnifying Party. The Indemnifying Party will be permitted to assume primary control of the defense of the action with counsel of the Indemnifying Party's choice. The Indemnified Party will cooperate in the defense of the action as requested by the Indemnifying Party. The Indemnified Party may, but shall not be required to, participate in the defense of the action with its own counsel, at its own expense. The Indemnifying Party will assume the cost of the defense on behalf of the Indemnified Party and its Affiliates (other than the expense of Indemnified Party's counsel pursuant to the immediately preceding sentence) and will pay all expenses and satisfy all judgments which may be incurred or rendered against the Indemnified Party or its Affiliates in connection therewith, provided that without the Indemnified Party's written consent, the Indemnifying Party shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, or wrongdoing on the part of the Indemnified Party, which would otherwise adversely affect the Indemnified Party, or which results in less than a full release of all claims.

## **11. REPRESENTATIONS AND WARRANTIES.**

**11.1** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, COMPANY MAKES NO REPRESENTATIONS AND WARRANTIES UNDER THIS AGREEMENT, EITHER EXPRESS, IMPLIED OR STATUTORY, AND COMPANY HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, (i) NON-INFRINGEMENT, (ii) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND (iii) PERFORMANCE OR INTEROPERABILITY OF THE PRODUCT WITH ANY LICENSEE OR END-USER EQUIPMENT. NO WARRANTY IS MADE OR PASSED ON WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY OR FURNISHED BY ANY THIRD PARTY.

**11.2** Each Party represents and warrants to the other that (a) it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, (b) it will comply with all applicable federal, state and local laws, statutes, rules and regulations

in connection with the provision and use of the Products, and (c) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms.

## **12. CONFIDENTIALITY; SERVICE MARKS; PUBLICITY.**

**12.1 Confidentiality.** Neither Party, without the other Party's prior written consent, shall disclose to any third party, including but not limited to its customers or prospective customers, any information supplied to it relating to the disclosing Party, its Affiliates, and/or its customers by the other Party which has been designated as confidential, proprietary or private or which, from the circumstances, in good faith should be treated as confidential ("Proprietary Information"). Proprietary Information shall not include any of the following: (i) information that has been, or is subsequently, made public by the disclosing Party; (ii) information that is independently developed by the receiving Party; and (iii) information that has been previously known by or disclosed to the receiving Party by a third party not bound by confidentiality restrictions. Pricing information exchanged in connection with this Agreement, or included in any Order Form hereunder, and the terms and conditions of this Agreement, are hereby designated as confidential without further obligation on the part of either Party to mark or designate it as such. Neither Party shall permit any of its employees, Affiliates nor representatives to disclose Proprietary Information to any third person, and it shall disclose Proprietary Information only to those of its employees, Affiliates, and representatives who have a need for it in connection with the use or provision of Products required to fulfill this Agreement. If a receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then to the extent permitted by applicable law, such receiving Party shall provide the disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or shall waive the receiving Party's compliance with the requirements of the foregoing sentence with respect to all or part of such Proprietary Information.

**12.2 Service Marks, Trademarks and Publicity.** Neither Party shall: (a) use the name, service mark, trademark, trade name, logo, or trade dress of the other Party; or (b) refer to the other Party in connection with any advertising, promotion, press release or publication, unless it obtains the other Party's prior written approval.

**13. ASSIGNMENT.** Neither Party will assign or transfer this Agreement or any license or Order Form hereunder without the other Party's prior written consent, such consent not to be unreasonably withheld. Any assignment made in violation of this requirement shall be void and invalid. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a person or entity (i) that controls, is controlled by or is under common control with the assigning Party, (ii) which purchases all or substantially all of its assets or equity, or (iii) resulting from any merger, consolidation or other reorganization involving such Party. Moreover, and notwithstanding anything to the contrary herein, Company may freely delegate its obligations hereunder, and assign or pledge its rights hereunder to one or more lenders for financing purposes.

**14. FORCE MAJEURE.** Neither Party shall be liable, nor shall any credit or other remedy be extended, for any delay or failure to fulfill any obligation under this Agreement or any Order Forms due to any cause beyond a Party's reasonable control, including, but not limited to: acts of God, flood, extreme weather, fire, natural calamity,

terrorism, any moratorium, law, order, regulation, action or inaction of any governmental entity or civil or military authority, power or utility failures, fiber or cable cuts caused by third parties, unavailability of rights-of-way, national emergencies, insurrection, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties, pole hits, or material shortages (each a “Force Majeure Event”).

**15. NOTICES.** Any request to terminate this Agreement, or any claim for breach thereof, shall be in writing and transmitted either via (i) overnight courier or hand delivery, or (ii) certified or registered mail, postage prepaid and return receipt requested. Notices shall be deemed delivered upon receipt. Notices to Licensee shall be sent to the address specified in the Service Order. Notices to Company shall be sent to the following address:

Crown Castle Fiber  
55 Broad Street  
New York, NY 10004  
Att’n: Deputy General Counsel – Fiber

A Party may change the address for notices by notice to the other Party provided pursuant to this Section 15. All other notices, requests, or communications may be transmitted by email as specified in the invoice or Order Form, at <http://fiber.crowncastle.com/support>, or as otherwise directed by Company.

## **16. MISCELLANEOUS**

**16.1 Governing Law.** This Agreement shall be governed by the laws of the State of Delaware without regard to its choice of law principles.

**16.2 No Third-Party Beneficiaries.** The covenants, undertakings, and agreements set forth in this Agreement are solely for the benefit of and enforceable by the Parties or their respective successors or permitted assigns. It is the explicit intention of the Parties hereto that no person or entity other than the Parties (and, with respect to the provisions of Section 10, the Indemnitees) is or shall be entitled to any legal rights under this Agreement.

**16.3 Relationship of the Parties.** The relationship between the Parties hereunder is not that of partners or agents for one another and nothing contained in this Agreement shall be deemed to constitute or create a partnership, joint venture or similar relationship. Nothing in this Agreement shall be construed to authorize either Party to represent the other Party for any purpose whatsoever without the prior written consent of such other Party.

**16.4 Order of Precedence.** If any conflict or contradiction exists between these general terms and conditions and a Supplement, the terms of a Supplement will control. If any conflict or contradiction exists between a Supplement and the terms of an Order Form, the terms of the Order Form will control. If any conflict or contradiction exists between these general terms and conditions and the terms of an Order Form, the terms of the Order Form will control.

**16.5 Non-Exclusivity.** This Agreement is non-exclusive. Both Parties may enter into similar arrangements with others, and Company may, as part of its normal business undertakings, actively market its products to any person or entity anywhere in the world, including but not limited to in competition with Licensee and/or Licensee's end users.

**16.6 Non-Waiver.** The waiver by any Party hereto of a breach or a default under any of the provisions of this Agreement, any Supplement or any Order Form, or the failure of any Party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall not thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provision, right or privilege hereunder.

**16.7 Survival.** The terms and provisions contained in this Agreement that by their nature and context are intended to survive the performance thereof by the Parties hereto shall so survive the completion of performance and termination or early termination of this Agreement, including, without limitation, provisions for indemnification, confidentiality, and the making of payments due hereunder.

**16.8 Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

**16.9 Severability; Void or Illegal Provisions.** If any part of this Agreement, Supplement or an Order Form shall be determined to be invalid or unenforceable by a court of competent jurisdiction, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of this Agreement or such Order Form. The remainder of this Agreement will continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the Parties. The Parties will replace the severed provision with a provision that reflects the initial intention of the Parties.

**16.10 Entire Agreement; Amendment.** This Agreement, including all Supplements, Order Forms, exhibits and addenda attached hereto is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings and agreements, whether oral or written, with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties.

**16.11 Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. The Parties agree that fully-executed electronic copies or facsimile copies of this Agreement and corresponding Order Forms are legally binding and shall act as originals for the purpose thereof.

**16.12 Disconnection Notice Requirement.** Licensee shall submit all requests for disconnection of Products in writing to Company. Such disconnection effective date will be the later of (i) thirty (30) days from Company's receipt of such disconnection request, or (ii) the date requested by Licensee in the disconnection request. Each disconnection request must specify the Licensee name and address, email address and telephone number of the person authorizing the disconnect, the circuit ID for the Product to which the disconnect request applies, the product type, and requested disconnection date. Upon termination of a Product, Company shall have the right (but not the obligation) to act on behalf of and as agent for Licensee to terminate all cross-connects relating to such Product, including cross-connects ordered by Licensee. Upon request Licensee shall confirm to the applicable supplier of the cross-connect(s) that Company is authorized to terminate such cross-connects on Licensee's behalf.



Disconnections shall not affect Licensee's obligation to make payments as agreed in each Order Form.

## **PART II—TERMS APPLICABLE TO DARK FIBER**

1. The terms in this Part II apply only to dark fiber licensed to Licensee under an Order Form that specifies Dark Fiber. This Part shall not apply to other products, including Ethernet, wavelength, Internet, or colocation.

2. **ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the provision of licensed dark fiber.

“Cable” means fiber optic cable with fiber optic filaments contained in any suitable jacketing or sheath that is already in place, or is yet to be installed, and to which Company has or will have access by ownership, lease, right to use, or otherwise.

“Dark Fiber” or “Fibers” means one or more specified strands of dedicated optical fiber within a Cable without optronics or electricity, subject to the terms of the Agreement.

“Licensee Fibers” or “Product” means the Fibers that are licensed to Licensee under an Order Form.

“Location” is an address wherein Company will hand off Licensee Fibers to Licensee.

“Product Credit” means a credit that Licensee may be eligible to receive pursuant to Section 7 below.

“Product Outage” means a loss of continuity or other material degradation of the Licensee Fibers such that Licensee is unable to utilize the Licensee Fibers for transmission of optical signals..

“Route” means the geographic path along which the Cable and Licensee Fibers are located.

“Route Segment” means a portion of the Route between any two Locations.

3. **FIBER SPECIFICATIONS**

- 3.1. **Type and Constitution.** Single-mode Fibers are made of high grade doped silica core surrounded by a silica cladding; and coated with a dual layer, UV-cured acrylic-based coating.

<b>Properties</b>	<b>Units</b>	<b>Single Mode</b>	<b>Single Mode Enhanced</b>	<b>MetroCor</b>	<b>NZDSF</b>
<u>Glass Geometry</u>					
Mode Field Diameter at 1310 nm	(μm)	9.2 ± 0.4	9.2 ± 0.4	N/A	N/A
Mode Field Diameter at 1550 nm	(μm)	10.4 ± 0.8	10.4 ± 0.8	8.1 ± 0.5	9.2 ± 0.8
<u>Fiber Attenuation (Loose Tube/Ribbon)</u>					
Maximum value at 1310 nm	(dB/km)	0.35/0.40	0.35/0.40	0.5	N/A
Maximum value at 1550 nm	(dB/km)	0.25/0.30	0.25/0.30	0.25/0.30	0.25/0.30

- 3.2. **Fiber Optic Specification**

- (a) Bi-directional splice value (“Splice Value”) ≤ 0.20 dB at 1550 nm. In exceptional cases, a Splice Value may be accepted if its value is higher than 0.20 dB at 1550 nm. An exception case is, for instance, when three (3) re-trials of a splice cannot improve the Splice Value. The Splice Value will be given by the equation:

$$\frac{(\text{Splice attenuation from A to B}) + (\text{Splice attenuation from B to A})}{2}$$

- (b) Splice attenuation average (“Splice Attenuation Average”) ≤ 0.15 dB at 1550 nm. The Splice Attenuation Average is given by:

$$\frac{\sum \text{Splice Values}}{\text{Number of splices in the Route Segment}}$$

- (c) It is recognized by the Parties that due to the use of ribbon fiber optic cable on some of the segments, the Splice Value of individual splices may exceed 0.20 dB. However, the Splice Attenuation Average for any Route Segment as designated in (b) above shall supersede all other splicing requirements in cases where Splice Values that 0.20 dB exist.



### 3.3. Connectors

- (a) Maximum Unitary ODF/S Connector (1 connector + 1 adapter + 1 connector)
- (b) Maximum Connector/pigtail loss. The attenuation contribution of each pigtail with associated connector is considered to be 1.0 dB, comprised of 0.8 dB connector loss and 0.20 dB splice loss (pigtail to cable splice).

### 3.4 Fiber Optic Test Results

#### (a) Bi-directional OTDR

- (i) span traces will be captured at 1310nm and 1550nm. Traces will be provided in native format and / or PDF.

#### (b) Bi-Directional Power Meter.

- (i) Bi-Directional power meter results will be furnished with light source data at 1550nm. Data will be supplied in a excel format with all locations clearly identified including demarcation details.

#### (c) Optical Return Loss / Reflectance

- (i) The ORL value measures the total light reflected back to the transmitter caused by the system components of the fiber under test and can degrade the performance by affecting the stability of the laser; this in turn can create bit errors.
- (ii) Specifications – ORL

**Vendor and Telcordia specifications regarding Optical Return Loss are as follows:**

Parameter	Telcordia	Manufacturer Minimum	Optimum (desired)
Optical Return Loss	>27 dB	>27 dB	>30 dB

The maximum reflectance per event as measured by an OTDR, shall not exceed (-30db).

#### (d) Polarization Mode Dispersion.

- (i) PMD is caused by different polarizations of the light pulse traveling along the fiber at slightly different speeds due to imperfections of size and material properties along the length of the fiber. This causes the light pulses or waveforms to spread out or broaden causing possible bit error rate of the transmission signal. The higher the bandwidth, the shorter the pulse and the increase of importance of testing prior network turn up.
- (ii) Polarization-Mode Dispersion Measurement for Single-Mode Optical Fibers by Interferometry Method.
- (iii) Specifications – PMD

**PMD coefficient of the tested fiber should not exceed:**

Value	Typical	Range	Notes
PMD	<0.1 ps/km	<0.2 ps/km	Identify fiber as High PMD if <0.2 ps/km is exceeded

#### (e) Chromatic Dispersion

- (i) Chromatic Dispersion is the broadening or spreading of a pulse of light due to the nonzero spectral width of a transmission signal. The effects of chromatic dispersion can limit the network transmission rate or the length of fiber a signal can be transmitted before requiring re-generation.
- (ii) Specifications – Chromatic Dispersion
- (iii) Record the total Chromatic dispersion for the tested span, the value per kilometer should be within the range specified below.

Type	Dispersion @ 1550nm	Range ps/(nm/km)	Dispersion Slope (ps/km/nm^2)
SMF	17 ps/(nm/km)	14-19	0.06
ELEAF	4 ps/(nm/km)	2-6	0.083
TrueWave RS	4.5 ps/(nm/km)	2-6	0.045
TrueWave Classic	2 ps/(nm/km)	1-3	0.07
DSF	0 ps/(nm/km)	See Note 1	See Note 1
SMF-LS	-1 ps/(nm/km)	-3.5-0	0.075
<b>Note 1:</b> DSF not recommended for DWDM			

#### **4. USE OF AND ACCESS TO LICENSEE FIBERS; RELOCATION**

**4.1 License.** Subject to the terms and conditions set forth in the Agreement and this Supplement, Company and Licensees may from time to time execute one or more Order Forms pursuant to which Company grants to Licensee a license to use Licensee Fibers designated on the Order Form. Each Order Form will specify the number, identity, type, and route of the Licensee Fibers, and the permitted Locations where Licensee may access the Licensee Fibers. Company may not be the owner of the Licensee Fibers but may instead lease, license, or acquire a right to use such Licensee Fibers from a third party together with the right to sub-lease Licensee Fibers to Company's Licensees.

**4.2 Limitations on Rights and Obligations.** In addition to, and not in limitation of, any limitations set forth in the Agreement, the Parties agree that:

**4.2.1 Use by Licensee.** Licensee shall have no right or interest in the Licensee Fibers other than a license to use the Licensee Fibers. A license of Licensee Fibers does not convey any ownership interest in the Licensee Fibers or the Cable. Licensee is solely responsible for all optical and other equipment required to enable Licensee to utilize the Licensee Fibers for optical communications.

**4.2.2 Use by Company.** Nothing herein shall be construed as limiting or restricting Company or its Affiliates in any manner from using its or their own Cables, fibers, or any other facilities, easements and/or rights of way for the installation of additional fiber optic cables, for use as telecommunications facilities, or for any other purpose.

**4.2.3 Subordination.** Licensee understands and agrees that Company's ability to grant Licensee the license to use the Licensee Fibers pursuant to this Agreement, and to attach, install, construct, operate, and maintain the Company Network and the Licensee Fibers, is at all times subject and subordinate to, and limited by, the Underlying Rights, applicable laws, rules, ordinances, codes, and regulations. By virtue of the Agreement, Licensee shall only have a license to use the Licensee Fibers or related facilities, expressly granted herein, and in no event shall such license be construed to be greater than the Underlying Rights to use such Licensee Fibers. Company shall not be liable for any acts or omissions by Company, its employees or affiliates that interfere with or otherwise affect Licensee's use of the Licensee Fibers to the extent such acts or omissions are required by the Underlying Rights, including, without limitation acts or omissions that deny the use of, alter or remove the Cable.

**4.2.4 Sublicensing.** Licensee shall not assign, sell, transfer, lease, sublease, license, sub-license, or otherwise grant a right to use the Licensee Fibers to any third party without the prior written consent of Company.

**4.2.5 Access to Licensee Fibers.** Licensee may access the Licensee fibers only at the Demarcation Points specified in the applicable Order Form. Licensee may not access or take any action that impacts the Licensee Fibers or the Cable at any other locations.

#### **4.3 Relocation.**

**4.3.1 Relocation Required By Company.** In the event that Company is required by any underlying service Company, public authorities, or lawful order or decree of a regulatory agency or court or any other reason beyond Company's reasonable control, to relocate or modify any or all Cable on the Route upon which the Licensee Fibers are located, Company's costs for any such work shall be shared on a pro rata basis with Licensee. Company shall not be responsible for the costs of, nor shall it be liable for, the removal, relocation or replacement of any Licensee Equipment or other Licensee property on the Licensee's side of the Demarcation Point. If the relocation or replacement of the Cable is requested or caused by a third party, Company shall attempt to obtain reimbursement of Company's costs from said third party. Notice to Licensee will be provided as soon as reasonably practicable. Neither Company nor any of its affiliates or agents shall incur liability for any Product Outage, disruption, degradation, interference, or interruption of any Product in connection with any such removal or relocation. Company and Licensee shall cooperate in performing such relocation or modifications so as to minimize any interference with the use of the Licensee Fibers and the Cable and to avoid conflicting physically or otherwise interfering with joint users of the Cable or any other property impacted by the installation, construction, maintenance or use of the Cable, to the extent reasonably possible. Any such relocation shall be accomplished consistently with the Specifications.

**4.3.2 Relocation Requested By Licensee.** Licensee may request relocation of the Licensee Fibers. Any such relocation shall be subject to Company's approval (which shall be in Company's sole discretion), the execution of an Order Form, and Licensee's payment to Company of such additional charges as Company may require. No relocation or replacement of the Cable or related facilities shall be performed without the prior written agreement of Company, which shall be in Company's sole discretion.

#### **5. TERMINATION AND CONDEMNATION**

**5.1 Termination of Route Segment.** In addition to, and not in limitation of, any rights set forth in the Agreement, any Route Segment may be terminated by Company without liability (unless due to a default by Company under any applicable Underlying Rights agreement), upon reasonable notice to Licensee, to the extent Company is no longer authorized under the Underlying Rights to install, construct, maintain, operate, or convey the license to use the Cable or other property as contemplated by the Agreement. If a Route Segment is terminated pursuant to this Section, Company shall make reasonable efforts to find alternate capacity or facilities owned or controlled by Company to meet Licensee's needs, but under no circumstances shall Company be obligated to contract for or to construct new facilities, or otherwise incur any additional cost or expenses, to replace the Cable or Licensee Fibers on the Route Segments terminated under this Section 5.1.

**5.2 Condemnation Proceedings/Termination Rights.** If at any time during the Product Term, all or any significant portion of the Cable is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain and, after exercise of the Parties' commercially prudent efforts, the Cable cannot be relocated pursuant to Section 4.3 herein, either Party may elect to terminate the impacted Licensee Fibers upon giving the other thirty (30) days prior written notice. If Licensee Fibers are terminated in accordance with this Section, the applicable license shall be deemed canceled and neither Party shall have any further obligations to the other, except that both Parties shall be entitled to participate in any condemnation proceedings to seek to obtain compensation via separate awards for the economic value of their respective interest in the Cable.

## **6. FEES**

Licensee shall pay the fees set forth in Order Forms executed hereunder. On January 1 of each year, the MRCs shall be escalated by the greater of (i) increase in the Consumer Price Index – All Urban Consumers (CPI-U) issued in December of the previous year (any such adjustment will reflect any increase, but not any decrease, in the Consumer Price Index for the previous 12 months) or (ii) three percent (3%). In addition, in the event that amounts charged to Company under any Underlying Rights are increased or Company's costs or expenses are increased due to any Underlying Rights, Company shall have the right to charge Licensee for its pro rata share of such increases, which shall be added to the MRCs to be paid by Licensee for the applicable Product Term.

## **7. SERVICE LEVEL AGREEMENT**

### **7.1 MTTR Objectives.**

**7.1.1 Mean Time to Respond.** "Mean Time to Respond" is the average time required for Company to begin troubleshooting a reported failure. The Mean Time to Respond objective is two (2) hours from Company's receipt of notice of such failure.

**7.1.2 Mean Time to Repair.** "Mean Time to Repair" is the average time required to restore the Licensee Fibers to an operational condition as defined herein. The Mean Time to Repair objective is eight (8) hours from Company's receipt of notice of such failure.

**7.2 Product Outage.** Subject to this Section 7, in the event of an Product Outage, Licensee may be entitled to an Product Credit as provided in Section 7.3 below. An Product Outage shall be deemed to begin upon the earlier of Company's actual knowledge of the Product Outage or Company's receipt of notice from Licensee of the Product Outage, and end when the Licensee Fibers are operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Order Form, in no event shall an Product Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

**7.3 Service Level Objective.** If Company fails to repair an Product Outage within eight (8) hours of notice from Licensee of such Product Outage ("Repair Window"), Licensee may be entitled to an Product Outage Credit as follows:

Measurement Timeframe	Product Credit for Affected Product
Per Incident	1/30 <sup>th</sup> of the MRC of the affected Product for each consecutive twelve (12) hour period (or fraction thereof) after the Repair Window up to a maximum of 50% of the MRC

**7.4 Product Credits.** The number of minutes of separate and discrete Product Outages will not be cumulated to determine the applicable Product Credit. Product Credits hereunder may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Licensee by Company. Product Credits issued to Licensee hereunder shall be Licensee's sole and exclusive remedy at law or in equity on account of any Product Outage. Product Credits will not be issued to Licensee if Licensee's account with Company is in arrears. Notwithstanding anything to the contrary herein, the above-stated Product Credits shall not apply to Off-Net Products, and in the event of an Product Outage or other failure of any Off-Net Product provided by Company to Licensee, Company agrees to pass through a credit equal to the credit received by Company from its underlying Company(s) for such Product Outage, in lieu of the above-stated Product Credits. In no event shall Company's total liability for all Product Outages and/or failure to meet any objectives or parameters set forth in this Supplement in any month exceed a credit equal to fifty percent (50%) of the MRC for the affected Product for such month.

**7.5 Product Credit Request.** Licensee must submit a written request to claim an Product Outage Credit no later than thirty (30) days following the event that gives rise to Licensee's right to request the Product Credit. Failure to request a credit within such period shall constitute a waiver of any claim for an Product Outage Credit.

**7.6 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Licensee's (including its agents, contractors and vendors) acts or omissions;

- b. Failure on the part of Licensee Equipment, Licensee provided optical fiber, End User equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Licensee Fibers for testing and repair;
- e. Company's inability to obtain access required to remedy a defect in a Product, including lack of access due to utility safety restrictions;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Product at the request of Licensee;
- h. Force Majeure Event; or
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement.

## **PART III-TERMS APPLICABLE TO ETHERNET**

1.0 The terms in this Part III apply only to Ethernet licensed to Licensee under an Order Form that specifies Ethernet. This Part shall not apply to other products, including dark fiber, wavelength, Internet, or colocation.

1.1 “Ethernet” or “Product” means a method of switched communication between or among two or more Locations using the Ethernet protocol defined by IEEE 802.3. Ethernet may be ordered and provisioned either as On-Net Products or Off-Net Products. Ethernet includes, without limitation, the following types of Products:

- (a) **E-Line**: a port-based Product providing dedicated UNIs for point to point connections. E-Line supports a single EVC between two (2) UNIs.
- (b) **Ethernet Virtual Private Line (EVPL)**: a VLAN based Product providing multiplexed UNIs allowing multiple EVCs per UNI.
- (c) **Ethernet LAN (E-LAN)**: a VLAN based meshed Product providing many-to-many communication with dedicated or service-multiplexed UNIs. E-LAN supports transparent LAN and multipoint Layer 2 VPNs.
- (d) **Metro-E Advanced Private Line**: dedicated point-to-point switched Ethernet provided within a metro area over dedicated fiber transport.
- (e) **ENNI (External Network to Network Interface)**: an interconnection point between the Company and Licensee Ethernet networks as defined in MEF Specification 26.

1.2 “Class of Service” or “CoS”: Company offers CoS with Ethernet. CoS enables Licensee to differentiate traffic by assigning Bandwidth with various classes of network priority designated by Licensee. If Licensee elects CoS, (i) Licensee’s traffic must be marked by Licensee in accordance with Company’s available classes of network priority, and (ii) Licensee traffic will be prioritized in accordance with the assigned network priority. If Licensee does not elect CoS, Licensee’s traffic will be treated with the default network priority level. Company offers the following classes of CoS ranging from highest to lowest in terms of network priority:

- Mission Critical
- Business Critical
- Business Priority
- Standard (Default class for all Ethernet)

### 1.3 **Protection Options.**

Protection Option	Description	Minimum Location Requirements			
		Space	Power	Environmental Control	Back Up Power
Unprotected (Level A Access)					
1	Level A Access means the access portion of the Ethernet (i.e. the segments from the last Company Network switching hub (or for Metro-E Advanced Private Line the lateral segments from the Company Network backbone) to the point of entry of the Location) is provided over a single fiber path without protection. Level A Access consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Licensee from the Company Equipment.	(1)	(2)	(4)	Not applicable
Optical Protection (Level AA Access)					
2	Level AA Access means the access portion of the Ethernet (i.e. the segments from the last Company Network switching hub to the point of entry of the Location) is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Company is responsible for managing the Failover Switching at each Location. Level AA Protection consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Licensee from the Company Equipment.	(1)	(2)	(4)	(6)
Dual Path Protection (Level AAA)					

3	<p>Level AAA Access means the access portion of the Ethernet (i.e. the segments from the last Company Network switching hub to the point of entry of the Location) is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Failover Switching at each Location will be provided by Licensee or by Company as specified in the Order Form. Level AAA Protection consist of the following minimum requirements at each Location: (i) two (2) separate points of entry into the Location; (ii) two (2) Company Equipment chassis; (iii) one (1) line card per chassis; (iv) 4-fiber handoff to the Licensee from the Company Equipment, with two fibers handed off from one of the Company Equipment chassis and two fibers handed off from the other Company Equipment chassis; and (v) Licensee Equipment must have dual-card redundancy (i.e., separate cards, one for one of the 2-fiber handoffs and the other for the second 2-fiber handoff).</p>	(1)	(3)	(5)	(7)
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(1) Secure space for Company Equipment at each Location with 24x7x365 access.

(2) Dedicated electrical circuit for Company Equipment (i.e. the circuit has no other load from the Company Equipment to a circuit breaker) at each Location from the public utility.

(3) Redundant, dedicated electrical circuit at each Location from the public utility (i.e. each power circuit is fed from a different circuit breaker panel and has its own circuit breaker).

(4) Substantially dust free with temperature control that maintains temperature between 50 and 80-deg F and humidity control that maintains relative humidity below 80%.

(5) Substantially dust free with temperature control that maintains temperature between 60 and 80-deg F and humidity control that maintains relative humidity between 40% and 60%

(6) Company(or Licensee if the Parties agree) to install and maintain a minimum of four (4) hours of standby power

(7) Company(or Licensee if the Parties agree) to install and maintain a minimum of eight (8) hours of standby power and Licensee shall provide emergency power generation

## 2. ADDITIONAL DEFINITIONS

“Bandwidth” or “BW” means the amount of data (quantified as “Mbps” or “Gbps”) made available to Licensee.

“Ethernet Virtual Connection” or “EVC” is a logical connection between two or more UNIs.

“Failover Switching” means the automatic restore and reroute of a Product to an alternate transmission path.

“Location” is an address wherein Company will hand off Ethernet to Licensee.

“Product Credit” means a credit that Licensee is eligible to receive if Company fails to meet the parameters set forth in Section 5.2 below,

“Product Failure” means a complete interruption of communications between any two (2) or more Locations.

“User Network Interface” or “UNI” means the interface used to interconnect Licensee to the Company Network which provides a reference point for demarcation between the Licensee’s network and the Company Network.

“Virtual Local Area Network” or “VLAN” means a data communication network, configured using the IEEE 802.1q standard that logically interconnects computers and network devices, allowing a group of hosts to communicate, regardless of Location, as if they were attached to the same physical media.

“VPN” means a virtual private network.

## 3. SPECIFICATIONS

3.1 The Specifications applicable to Ethernet are as follows:

Technical Specifications:

- IEEE 802.3

#### 4. USE BY LICENSEE

**4.1 Interstate Traffic.** Licensee acknowledges that Company has no ability to determine whether the communications traffic carried via the licensed Ethernet is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Order Form, Licensee acknowledges and agrees that the communications traffic to be carried via the Company Network shall be treated as jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule" (47 CFR 36.154, 4 FCC Rcd. 1352).

**4.2 Permitted Use.** Licensee may use the Ethernet for its own use. Licensee acknowledges that Company does not monitor the content of the Ethernet traffic unless required by law and Licensee shall be solely liable and responsible for the content of any communications transmitted via the Ethernet.

#### 5. SERVICE LEVEL AGREEMENT

**5.1 Product Failure.** Subject to this Section 5, in the event of an Product Failure to any licensed Ethernet or a failure to meet any performance parameters set forth in Section 5.2 B, C or D below, Licensee may be entitled to a Product Credit in accordance with the applicable Quality Level Objective set forth in section 5.2 below. A Product Failure shall be deemed to begin upon the earlier of Company's actual knowledge of the Product Failure or Company's receipt of notice from Licensee of the Product Failure, and end when the Ethernet is operational and in material conformance with the applicable Specifications, as documented by Company's records. Notwithstanding anything to the contrary in this Supplement, the Agreement or any Order Form, in no event shall a Product Failure, defect or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

#### 5.2 Service Level Objectives.

##### A. Availability

"Availability" refers to the percentage of time during a calendar month that the licensed Ethernet is available for use by Licensee. Available for use is defined as the time during which there is no Product Failure.

Availability is calculated as follows =  $\frac{43,200 - (\text{number of minutes of Product Failure during the calendar month})}{43,200}$

If the total minutes of Product Failure in any month exceeds the number of minutes or hours set forth in the table below, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

Quality Level		Availability Objective	Measurement Timeframe	Product Credit	
				Cumulative Duration of Product Failure(s)	% of MRC
On-Net - Level A Access					
1	Availability	99.9%	One Month	0 to 43.2 mins.	0%
				>43.2 mins. to 10 hrs.	5%
				>10 hrs. to 16 hrs.	10%
				>16 hrs. to 24 hrs.	20%
				>24 hrs. to 36hrs.	40%
				> 36 hrs.	50%
On-Net - Level AA Access					
2	Availability	99.99%	One Month	0 to 4.32 mins.	0%
				>4.32 mins. to 30 mins.	5%
				>30 mins to 1 hr.	10%
				>1hrs. to 8 hrs.	20%
				>8 hrs. to 16 hrs.	30%
				>16 hrs. to 24 hrs.	40%
				>24 hrs.	50%
On-Net - Level AAA Access					
3	Availability	99.999%	One Month	0 to 43 secs.	0%
				> 43secs. to 4 mins.	5%
				>4 mins. to 10 mins.	10%
				>10 mins. to 2 hrs.	20%
				>2 hrs to 8 hrs.	40%
				>8 hrs	50%



## B. Network Latency

“Network Latency” is the average round-trip transmission time (in milliseconds) for packets to travel on the Company Network (including, but not limited to, link insertion delays, propagation delays and queuing delays in the Company Network). Network Latency is determined by Company by averaging sample measurements taken each calendar month between Company’s designated points of presence.

If Network Latency in any month exceeds the number of milliseconds set forth in the table below and such failure is quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>NETWORK LATENCY</b>				
	<b>CoS Designation -</b>		<b>% of MRC</b>	
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
45ms or less	No Credit	No Credit	No Credit	No Credit
>45ms to 50ms	No Credit	No Credit	No Credit	10%
>50ms to 65ms	No Credit	No Credit	10%	20%
>65ms to 70ms	No Credit	10%	20%	30%
>70ms	10%	20%	30%	50%

## C. Frame Delivery Rate (Packet Delivery)

“Frame Delivery Rate” is the ratio of performance test frames successfully received from the Company Network relative to the number of performance test frames offered to the Company Network. Frame Delivery Rate is determined by Company by averaging sample measurements taken each calendar month between Company’s designated points of presence.

If Frame Delivery Rate in any month is less than the percentages set forth in the left column of the table below and such failure is quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>FRAME DELIVERY RATE</b>				
	<b>CoS Designation -</b>		<b>% of MRC</b>	
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
99.999% or greater	No Credit	No Credit	No Credit	No Credit
99.99% to 99.998%	No Credit	No Credit	No Credit	10%
99.9% to 99.98%	No Credit	No Credit	10%	20%
99% to 99.8%	No Credit	10%	20%	30%
Less than 99%	10%	20%	30%	50%

## A. Frame Delay Variation (Jitter)

“Frame Delay Variation”, also known as packet jitter, is a measurement of the average variation (measured in milliseconds) in the time delay for packet transfers between two performance test frames. Frame Delay Variation is determined by Company by averaging sample measurements taken each calendar month between designated points of presence.

If Frame Delay Variation in any month exceeds the number of milliseconds set forth in the table below and such failure is quality-impacting, Licensee shall be entitled to a Product Credit equal to the percentage of the applicable MRC set forth in the following table:

<b>FRAME DELAY VARIATION</b>				
	<b>CoS Designation -</b>		<b>% of MRC</b>	
<b>Domestic US</b>	<b>Standard</b>	<b>Business Priority</b>	<b>Business Critical</b>	<b>Mission Critical</b>
2ms or less	No Credit	No Credit	No Credit	No Credit
>2ms to 3ms	No Credit	No Credit	No Credit	10%
>3ms to 4ms	No Credit	10%	15%	30%
>4ms	10%	20%	30%	50%



**5.3 Product Credits.** Product Credits hereunder are calculated as a percentage of the MRC set forth in the Order Form. Product Credits issued to Licensee hereunder shall be Licensee's sole and exclusive remedy at law or in equity on account of any Outage and/or failure to meet any objectives or parameters (including, without limitation, Network Latency, Frame Delivery Rate (Packet Delivery) or Frame Delay Variation (Jitter)) set forth in this Supplement. If an incident affects the performance of the Ethernet and results in a period or periods of interruption, disruption, failure or degradation in quality, entitling Licensee to one or more credits under multiple quality level standards, only the single highest credit with respect to that incident will be applied, and Licensee shall not be entitled to credits under multiple quality level standards for the same incident. Notwithstanding anything to the contrary herein, the above-stated Product Credits shall not apply to Off-Net Products; in the event of a Product Failure or other failure of any Off-Net Product provided by Company to Licensee, Company agrees to pass through a credit equal to the credit received by Company from its underlying Company(s) for such Product Failure, in lieu of the above-stated Product Credits. In no event shall Product Credits in any month for any and all interruptions, disruptions, failures, and/or degradations in quality (including, without limitation, any Product Failures or failure to meet any Network Latency, Frame Delivery Rate (Packet Loss), Frame Delay Variation (Jitter) or other objectives or parameters set forth in this Supplement) exceed fifty percent (50%) of the MRC for the affected Product for that month.

**5.4 Product Credit Request.** Licensee must submit a written request to claim a Product Credit no later than thirty (30) days following the event which gives rise to Licensee's right to the Product Credit. Failure to request a Product Credit within such period shall constitute a waiver of any claim for a Product Credit.

**5.5 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product Failure, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, end user equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company's inability to repair due to utility safety restrictions.

## **PART IV--TERMS APPLICABLE TO INTERNET SERVICES**

1. The terms in this Part IV apply only to Internet access provided under an Order Form that specifies Internet. This Part shall not apply to other products, including Ethernet, wavelength, dark fiber, or colocation..

### **2. ADDITIONAL TERMS**

“Access Port”: The port on Company’s handoff utilizing IP Core Network equipment which is the point of attachment and entry into the IP Core Network.

“Bandwidth” or “BW” means the amount of data (quantified as “Mbps” or “Gbps”) made available to Licensee.

“Internet Service” or “Product”: The Internet connectivity and Bandwidth provisioned by Company to Licensee pursuant to a Order Form.

“IP Core Network”: Any Layer-3 equipment owned and operated by Company that is managed in strict accordance with defined Company Network Operations’ parameters.

“Latency”: The round-trip time it takes for a packet to travel between the IP Core Network and Access Port.

“Network Availability”: A period of time during which Licensee port(s) are able to transmit and receive IP Packets to/from the On-Net IP Core Network.

“Network Unavailability”: A period of time during which (i) the Access Port(s) cannot exchange packets with the IP Core Network, and (ii) periods referred to in Sections 5.2.4 and 5.4.4 below.

“On-Net”: For purposes of this Supplement and any Internet Service, On-Net is defined as residing within Company’s IP Core Network only.

“Packet Delivery”: The successful bi-directional delivery of packets between the IP Core Network and Access Port.

“Throughput”: The maximum transmission rate at which packets, inclusive of calculated protocol overhead, can be successfully delivered between the IP Core Network and the Access Port.

### **3. SPECIFICATIONS**

Company’s target Network Availability and performance objectives for the duration of each calendar month in a year shall be as follows:

<b>Metric</b>	<b>Goal (Monthly Average)</b>	<b>Description</b>
IP Core Network Network Availability	99.99%	Less than 4.5 minutes total Network Unavailability per calendar month
IP Core Network Latency	< 30ms	Less than 30 milliseconds round-trip latency
IP Core Network Packet Delivery	≥ 99.9%	Less than 0.1% packet loss
IP Core Network Throughput	≥ 95%	Greater than or equal to 95% of Bandwidth as defined in the Order Form

### **4. USE BY LICENSEE**

4.1 The Internet Service provides IP transit service via the Company Network to the public Internet. The Company Network is comprised of equipment and wiring located in the Company’s IP Core Network.

4.2 The Product is configured at designated speeds on a port(s) on the Company’s handoff utilizing IP Core Network equipment. This Access Port(s) shall be the point of demarcation for purposes of the applicable Product and for purposes of measurements in connection with said Product. The selected speed of service, physical handoff type on the Licensee Premise Equipment (“CPE”) to the Licensee, pricing and length of the initial Product Term shall be set out in the individual Order Form.

4.3 Licensee shall utilize the Product(s) in compliance with all applicable international, federal, state and local laws and regulations, as well as abide by Company’s Acceptable Use Policy, which is posted on Company’s website at [fiber.crowncastle.com](http://fiber.crowncastle.com) and incorporated herein by reference.

**4.4** To the extent applicable, Licensee acknowledges that Company has no ability to determine whether the communications traffic carried via the Product is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Order Form, Licensee acknowledges and agrees that the communications traffic to be carried via the Company Network shall be jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule" (47 CFR 36.154, 4 FCC Rcd. 1352).

**4.5** Upon expiration or termination of a Product for any reason, Licensee agrees to return to Company any IP addresses or address blocks assigned to Licensee by Company.

## **5. SERVICE LEVEL AGREEMENT**

**5.1 Network Unavailability.** Subject to this Section 5, in the event of Network Unavailability to any Internet Service, Licensee may be entitled to a credit (a "Product Credit") in accordance with the applicable Service Level Objective set forth below in this Section 5.1. Network Unavailability shall be deemed to begin upon the earlier of Company's actual knowledge of the Network Unavailability or Company's receipt of notice from Licensee of the Network Unavailability, and end when the Product is operational such that the Product is again able to transmit and receive packets to/from the IP Core Network and Access Port or Ports, as documented by Company's records. Where Licensee provides its own local access circuits, any periods of Network Unavailability caused by failure of such local access circuits shall be excluded from any calculation of Network Unavailability. Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Order Form, in no event shall any Network Unavailability or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

Duration of Network Unavailability	Product Credit
Up to 45 Minutes	No credit
> 45 Minutes to Four Hours	10% of applicable MRC
> Four Hours to Eight Hours	20% of applicable MRC
> Eight Hours to Twelve Hours	40% of applicable MRC
> Twelve Hours to Twenty-Four Hours	50% of applicable MRC
> Twenty-Four Hours	100% of applicable MRC

## **5.2 Latency**

**5.2.1 Parameter.** Company shall use commercially reasonable efforts to maintain a monthly average Latency less than 30 milliseconds measured within the IP Core Network to the Access Port. Traffic traversing the public Internet is not subject or applicable to this Section 5 or this Supplement.

**5.2.2 Measurement.** Latency is measured between the IP Core Network and Access Port and does not apply to local access circuits. Latency is measured using Company's network management systems or testing hardware. Company's network management systems or testing hardware shall be the sole and conclusive source of measurements for the purposes of measuring Latency. Performance measurements will be accomplished using Y.1731, its logical equivalent, and/or through the use of industry standard dedicated test sets, as elected by the Company at its sole discretion. Specifically, the Company places severe limitations on response packets sent using the ICMP Echo protocol, such as ping and traceroute; times returned by those two programs while traversing core network equipment are known to be misleading and will not be used for performance measurements. Upon request, Company will provide copies of measurements and tests performed for the purposes of determining credits to Licensee hereunder.

**5.2.3 Product Credit.** If monthly average Latency exceeds the parameters set forth in Section 5.2.1, Licensee shall be entitled to a Product Credit of ten percent (10%) of the applicable MRC.

**5.2.4 Excessive Degradation.** If, at any time, the Product experiences Latency greater than 35 milliseconds for a sustained period of two hours or more, the time for which that Latency is experienced shall be considered a period of Network Unavailability, entitling Licensee to the applicable Product Credit under Section 5.1, in lieu of a Product Credit under Section 5.2.3.

## **5.3 Packet Delivery**

**5.3.1 Parameter.** Company shall use commercially reasonable efforts to maintain a monthly average Packet Delivery of no less than ninety-nine point nine percent (99.9%).

**5.3.2 Rate Shaping:** Products delivered over fixed rate interfaces as defined in the applicable specifications and in the situation where the contracted Product level is lower than the physical interface speed, rate enforcement will be done by the application of 'rate shaping' which involves random packet discard. Packets discarded in this fashion are not subject to this Section 5 or this Supplement.

**5.3.3 Product Credit.** If monthly average Packet Delivery fails to meet the parameters set forth in Section 5.3.1, Licensee shall be entitled to a Product Credit of ten percent (10%) of the applicable MRC.

## **5.4 Throughput**

**5.4.1 Parameter.** Company shall use commercially reasonable efforts to maintain a monthly average Throughput at no less than ninety-five percent (95%) of Bandwidth set forth in the Order Form.

**5.4.2 Measurement.** Throughput is measured at Company's demarcation device at the Licensee's premises using industry standard tests and Company network based throughput beacons. Only measurements by dedicated test sets are used for measuring the parameters set forth in this Section 5.4 and this Supplement.

**5.4.3 Product Credit.** If, at any time, the Product experiences Throughput below the ninety-five percent (95%) monthly average set forth in Section 5.4.1, Licensee shall be entitled to a Product Credit of ten percent (10%) of the applicable MRC.

**5.4.4 Excessive Degradation:** If, at any time, the Product experiences Throughput below ninety-five percent (95%) for a sustained period of two hours or more, the period for which such reduced Throughput is experienced shall be considered a period of Network Unavailability, entitling Licensee to the applicable Product Credit under Section 5.1, in lieu of a Product Credit under Section 5.4.3.

**5.5 Service Credits.** Service Credits hereunder are calculated as a percentage of the MRC set forth in the Service Order, and may not be applied to usage charges, government fees, taxes, or surcharges, or any third party charges passed through to Customer by Provider. Service Credits hereunder may be paid only once per any given billing cycle. Service Credits issued to Customer hereunder shall be Customer's sole and exclusive remedy at law or in equity on account of any Network Unavailability and/or failure to meet any objectives or parameters set forth in this Supplement. Service Credits will not be issued to Customer if Customer's account with Provider is in arrears. Notwithstanding anything to the contrary herein, the above-stated Service Credits shall not apply to Off-Net Services, and in the event of any Network Unavailability or failure to meet any objectives or parameters of any Off-Net Service provided by Provider to Customer, Provider agrees to pass through a credit equal to the credit received by Provider from its underlying provider(s) for such Network Unavailability, in lieu of the above-stated Service Credits. In no event shall Provider's total liability for any and all interruptions, disruptions, failures, and/or degradations in Service (including, without limitation, any Network Unavailability or failure to meet any objectives or parameters set forth in this Supplement) exceed one hundred percent (100%) of the MRC for the affected Service.

**5.6 Service Credit Request.** Customer must submit a written request to claim a Service Credit no later than thirty (30) days following the event which gives rise to Customer's right to request the Service Credit. Failure to request an allowance within such period shall constitute a waiver of any claim for a Service Credit.

**5.7 Multiple Applicable Service Standards.** If an incident affects the performance of the Service and results in a period or periods of interruption, disruption, failure or degradation in Service, entitling Customer to one or more credits under multiple service level standards, only the single highest credit with respect to that incident will be applied, and Customer shall not be entitled to credits under multiple service level standards for the same incident.

**5.8 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Network Unavailability, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, Licensee provided optical fiber, End User equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect in Product;
- f. Scheduled maintenance and emergency maintenance periods;
- g. Scheduled upgrade of Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company's inability to repair due to utility safety restrictions.

**5.9 Disclaimer of Third Party Actions.** At times, actions or inactions caused by third parties (e.g. denial of service attacks and unauthorized network intrusions) can produce situations in which Licensee connections to the Internet (or portions thereof) may be impaired or disrupted. In addition, third parties may attempt to intrude into or hack into Licensee's network. Company has no control over or responsibility for the security of Licensee's network or unauthorized intrusions into and/or unauthorized uses of Licensee's network and/or IP addresses used by Licensee. Company cannot guarantee that such situations will not occur, and accordingly Company disclaims any and all liability resulting from or related to such events. In the event that Licensee's use of the Product or such third parties is causing harm to the Network or its operations, Company shall have the right to suspend the Product. Company shall restore the Product at such time as it reasonably deems that there is no further harm or threat to the Company network or its operations. This Section 5 shall apply only to Products that are provisioned on the IP Core Network.

## **PART V--TERMS APPLICABLE TO WAVELENGTH SERVICES**

The terms in this Part V apply only to Wavelength licensed to Licensee under an Order Form that specifies Wavelength. This Part shall not apply to other products, including dark fiber, Internet, Ethernet, or colocation.

### **1. PRODUCT DEFINITION; PROTECTION AND ENCRYPTION OPTIONS**

This Supplement applies to Wavelength Service as further defined in this Section.

1.1 “Wavelength” or “Product” means a telecommunications circuit enabled by wavelength division multiplexing (WDM) equipment. Wavelength may be ordered and provisioned either as an On-Net Product or an Off-Net Product. Wavelength includes, without limitation, the following types of Products:

- (a) **Point to Point; DC to DC Connectivity-Inter Market; and DC to DC Connectivity-Intra Market:** Dedicated circuit between two (2) Locations over a shared optical fiber infrastructure; or
- (b) **Managed Private Optical Network (“MPON”):** Dedicated circuit(s) between two (2) or more Locations over dedicated optical fiber infrastructure and dedicated Company Equipment at each Location.

#### **1.2 Protection Options.**

Protection Option	Description	Minimum Location Requirements			
		Space	Power	Environmental Control	Back Up Power
Unprotected (Level A)					
1	Level A Protection means the Product is provided over a single fiber path without protection. Level A Protection consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to the Licensee from the Company Equipment.	(1)	(2)	(4)	Not applicable
Protection (Level AA)					
2	Level AA Protection means the Product is provided over two (2) separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Company is responsible for managing the Failover Switching between the working and protect paths. Level AA Protection consists of the following minimum requirements at each Location: (i) a single point of entry into the Location; (ii) one (1) Company Equipment chassis; (iii) one (1) port; and (iv) a 2-fiber handoff to Licensee from the Company Equipment.	(1)	(2)	(4)	(6)
Protection (Level AAA)					
3	Level AAA Protection means the Product is provided over two (2) wavelengths utilizing separate fiber paths, one of which is the working (primary) path and the other the protect (secondary) path. Failover Switching at each Location will be provided by Licensee or by Company as specified in the Order Form. Level AAA Protection consist of the following minimum requirements at each Location: (i) two (2) separate points of entry into the Location; (ii) two (2) Company Equipment chassis; (iii) one (1) line card per chassis; (iv) a 4-fiber handoff to the Licensee from the Company Equipment, with two fibers handed off from one of the Company Equipment chassis and two fibers handed off from the other Company Equipment chassis.	(1)	(3)	(5)	(7)

(1) Secure space for Company Equipment at each Location with 24x7x365 access.

(2) Dedicated electrical circuit for Company Equipment from the public utility. (i.e., the circuit has no other load from the Company Equipment to a circuit breaker) at each Location.

(3) Redundant, dedicated electrical circuit at each Location from the public utility (i.e. each power circuit is fed from a different circuit breaker panel and has its own circuit breaker)

(4) Substantially dust free with temperature control that maintains temperature between 50 and 80-deg F and humidity control that maintains relative humidity below 80%.

- (5) Substantially dust free with temperature control that maintains temperature between 60 and 80-deg F and humidity control that maintains relative humidity between 40% and 60%
- (6) Company (or Licensee if the Parties agree) to install and maintain a minimum of four (4) hours of standby power
- (7) Company (or Licensee if the Parties agree) to install and maintain a minimum of eight (8) hours of standby power and Licensee shall provide emergency power generation

1.3 **Encryption Option.** If a Wavelength Product is ordered with Layer 1 encryption, the following additional terms shall apply:

- a. Company is not responsible for encryption beyond the port on the Company Equipment (in which the encryption card resides), at the Location(s);
- b. Product Outages resulting from Licensee's administration of encryption including, but not limited to, encryption keys and certifications, shall not be eligible for Product Credits;
- c. Licensee assumes all responsibility for administration of encryption, including, but not limited to, encryption policies.
- d. Subject to the foregoing, a failure of the encryption function on a Wavelength Product ordered with encryption will be deemed a Product Outage and eligible for Product Credits to the extent and subject to the limitations provided in Section 5 below.
- e. Company will procure in its name any cross connections between Company's optical fiber distribution point at each Location and the Licensee hand-off site at the Location (at which Company Equipment with encryption capability will reside ("Encryption Cross-Connections")) and Licensee will pay the cost of such Cross-Connections on a pass-through basis; provided that in the event Company is unable to procure the Encryption Cross Connection due to restrictions at the applicable facility, then Licensee will procure such Encryption Cross-Connection in Licensee's name and at Licensee's expense. Product Outages resulting from failure of or defect in the Encryption Cross Connections shall not be eligible for Product Credits.

## 2. ADDITIONAL DEFINITIONS

"Failover Switching" means the automatic restore and reroute of the Product to an alternate transmission path;

"Location" is an address where Company will hand off the Product to Licensee;

"Product Credit" means a credit that Licensee is eligible to receive if Company fails to meet the Availability levels set forth in Section 5.2 below;

"Product Outage" means a complete interruption of communications between any two (2) or more Locations;

## 3. SPECIFICATIONS

3.1 The Specifications applicable to Wavelength are as follows:

- ITU-T G.709, Interfaces for the Optical Transport Network ( OTN )
- ITU-T G.693, Optical interfaces for intra-office systems
- ITU-T G.959.1, Optical transport network physical layer interfaces
- IEEE 802.3

## 4. USE BY LICENSEE; INCREMENTALLY DELIVERED CIRCUIT

**4.1 Interstate Traffic.** Licensee acknowledges that Company has no ability to determine whether the communications traffic carried via the Product is jurisdictionally interstate or intrastate. Unless otherwise stated in the applicable Order Form, Licensee acknowledges and agrees that the communications traffic to be carried via the Company Network shall be treated as jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed-use "10% Rule" (47 CFR 36.154, 4 FCC Rcd. 1352).

**4.2 Incrementally Delivered Circuits.** Unless otherwise specified in an Order Form, if a Product consists of more than one circuit, Company may incrementally deliver individual circuits, and billing for each circuit shall commence upon delivery and acceptance of that circuit. The Product Term for a multi-circuit Product shall begin upon delivery of the first circuit and end after the number of months specified in the Order Form have elapsed from delivery and acceptance of the final circuit.

**4.3 Permitted Use.** Licensee may use the Product(s) for its own use. Licensee acknowledges that Company does not monitor the content of Licensee's traffic unless required by law and Licensee shall be solely liable and responsible for the content of any communications transmitted via the Product(s).

## 5. SERVICE LEVEL AGREEMENT

**5.1 Product Outage.** Subject to this Section 5, in the event of a Product Outage to any Product, Licensee may be entitled to a Product Credit in accordance with the applicable Availability Level Objective set forth in Section 5.2 below. A Product Outage shall be deemed to begin upon the earlier of Company's actual knowledge of the Product Outage or Company's receipt of notice from Licensee of the Product Outage, and end when the Product is operational and in material conformance with the applicable Specifications. Notwithstanding anything to the contrary in this Supplement, the Agreement or any Order Form, in no event shall a Product Outage, defect or failure to meet any objectives





or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

## 5.2 Service Level Objectives.

"Product Availability" means the percentage of time during a calendar month that a Product is available for use by Licensee.

Available for use is defined as the time during which there is no Product Outage.

Product Availability is calculated as follows:  $\frac{43,200 - (\text{number of minutes of Product Outage during the calendar month})}{43,200}$  (number of minutes in a month)

If the total minutes or hours of Product Outages in any month exceed the number of minutes or hours set forth in the table below, Licensee shall be entitled to a Product Credit equal to the percentage of the Product MRC set forth in the following table:

Product Availability Objective		Measurement Timeframe	Product Credit	
			Cumulative Duration of Product Outage(s)	% of MRC
Level A				
1	99.9%	One Month	0 to 43.2 min.	0%
			>43.2 min. to 10 hrs.	5%
			>10 hrs. to 16 hrs.	10%
			>16 hrs. to 24 hrs.	20%
			>24 hrs. to 36hrs.	40%
			> 36 hrs.	50%
Level AA				
2	99.99%	One Month	0 to 4.32 mins.	0%
			>4.32 min. to 30 min.	5%
			>30 min, to 1 hr.	10%
			>1hrs. to 8 hrs.	20%
			>8 hrs. to 16 hrs.	30%
			>16 hrs. to 24 hrs.	40%
			>24 hrs.	50%
Level AAA				
3	99.999%	One Month	0 to 43 secs.	0%
			> 43secs. to 4 min.	5%
			>4 min. to 10 min.	10%
			>10 min. to 2 hrs.	20%
			>2 hrs to 8 hrs.	40%
			>8 hrs	50%

**5.3 Product Credits.** Product Credits hereunder are calculated as a percentage of the MRC set forth in the Order Form. If a Product consists of more than two (2) Locations, and hence more than one circuit, and the circuits experience different levels of Availability, then Product Credits shall be calculated separately with respect to each circuit and shall be based on the MRC applicable to the particular circuit. Product Credits shall be Licensee's sole and exclusive remedy at law or in equity on account of any Product Outage and/or any other defect in the Product. If an incident affects the performance of the Product and results in a period or periods of interruption, disruption, failure or degradation in quality, entitling Licensee to one or more credits under multiple quality level standards, only the single highest credit with respect to that incident will be applied, and Licensee shall not be entitled to credits under multiple quality level standards for the same incident. Product Credits will not be issued to Licensee if Licensee's account with Company is in arrears. Notwithstanding anything to the contrary herein, the above-stated Product Credits shall not apply to Off-Net Products, and in the event of a Product Outage or other failure of any Off-Net Product provided by Company to Licensee, Company agrees to pass through a credit equal to the credit received by Company from its underlying Company(s) for such Product Outage, in lieu of the above-stated Product Credits. In no event shall Product Credits in any month for any and all interruptions, disruptions, failures, and/or degradations in quality (including, without limitation, any Product Outage or failure to meet any objectives or parameters set forth in this Supplement) exceed fifty percent (50%) of the MRC for the affected Product for that month.

**5.4 Product Credit Request.** Licensee must submit a written request to claim a Product Credit no later than thirty (30) days following the event which gives rise to Licensee's right to the Product Credit. Failure to request a Product Credit within such period shall constitute a waiver of any claim for a Product Credit.

**5.5 Events Excepted From Product Credit.** Notwithstanding the foregoing, Licensee shall not receive any Product Credit for any Product Outage, failure to meet any objectives or parameters hereunder, or delay in performing repairs, arising from or caused, in whole or in part, by any of the following events:

- a. Licensee's (including its agents, contractors and vendors) acts or omissions;
- b. Failure on the part of Licensee Equipment, Licensee provided optical fiber, end user equipment or Licensee's vendor's equipment;
- c. Failure of electrical power not provided by Company;
- d. Election by Licensee, after requested by Company, not to release the Product for testing and repair;
- e. Company's inability to obtain access required to remedy a defect;
- f. Scheduled maintenance periods;
- g. Scheduled upgrade of the Product at the request of Licensee;
- h. Force Majeure Event;
- i. Disconnection or suspension of the Product by Company pursuant to a right provided under this Agreement; and/or
- j. Company's inability to repair due to utility safety restrictions.



## **PART VI--TERMS APPLICABLE TO COLOCATION SERVICES**

1. The terms in this Part VI apply only to Colocation licensed to Licensee under an Order Form that specifies Colocation. This Part shall not apply to other products, including Ethernet, wavelength, Internet, or dark fiber..

### **2. ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the provision of such Colocation.

**“Colocation” or “Product”:** The provision of Site Space and any other services (e.g. power or cross-connections) provided by Company to Licensee in the Site Space.

**“Colocation Outage”:** The period when UPS power licensed by Licensee from Company under an Order Form in the applicable Site Space is unavailable to Licensee (provided that the primary and redundant feeds are both unavailable at the time in question), as measured at the point where Company delivers the UPS power to Licensee.

**“Licensee Equipment”:** Any equipment that Licensee places in the Site Space.

**“Site”:** The specified premises listed in the applicable Order Form at which Company provides floor space or rack arrangements dedicated to Licensee Equipment.

**“Site Landlord”:** The landlord or lessor of a particular Site.

**“Site Lease”:** The applicable underlying lease agreement for a particular Site.

**“Site Space”:** The floor, cabinet, cage or rack space dedicated to Licensee Equipment at a specific Site.

### **3. LICENSE TERMS**

**3.1 License.** Subject to the terms and conditions set forth in the Agreement, pursuant to a Order Form for Colocation Company will grant to Licensee a license to occupy and use the Site Space, and any power, cabling and connectivity (if any) identified in the applicable Order Form. Licensee acknowledges that the licensing of a given Site Space under the Agreement does not grant any real property interest in such Site Space or in the building in which such Site Space is located. Licensee's occupancy of the Site Space located within a Site shall be subject and subordinate to the terms and conditions of the Site Lease applicable to such Site, including provisions regarding condemnation, damage to premises, and termination of such Site Lease.

**3.2 Use of Site Space.** Except as otherwise provided in this Supplement, each Site Space is delivered in its current condition (“as is” and “where is”), and Licensee acknowledges that it has inspected the same and found each to be satisfactory. Company makes no warranty with respect to title, condition, safety or fitness of the Site Space, and Licensee shall use the Site Space at its sole risk. Licensee shall use the Site Space only for the purpose of placing, operating and maintaining Licensee Equipment. Licensee shall exercise its rights hereunder in accordance with the terms set forth herein and applicable international, federal, state and local laws and regulations. Nothing herein shall be construed as limiting or restricting Company in any manner from using the Site, Company’s cages, cabinets, racks, cables, power and/or other facilities and equipment for any purpose. Licensee agrees that it will not permit any Site Space to be used by anyone other than Licensee or its authorized agents without the prior written consent of Company. Company agrees that it will not permit the applicable Site Space to be used by anyone other than Licensee or its authorized agents without the prior written consent of Licensee; provided, however, Company shall not be restricted in sub-leasing or licensing other portions of the applicable Site to other third parties without the prior written consent of Licensee. Licensee shall not make any alterations to the Site Space except for the installation, operation and maintenance of Licensee Equipment. Licensee shall properly maintain the Site Space and keep the Site free of any debris, waste or other obstructions.

**3.3 Access to Site Space.** Licensee shall be permitted access to the Site Space at all times subject to (i) Company’s rules and policies concerning authorized access to the Site and the presentation of appropriate identification, (ii) the Site Landlord’s rules and regulations, (iii) such other restrictions on access as may be set forth in the applicable Order Form. Company shall have no liability for Licensee’s inability to gain access to the Site Space.

**3.4 Installation.** Licensee is responsible for all aspects of installation and removal of Licensee Equipment, unless otherwise agreed in writing by the Parties. Licensee will install Licensee Equipment in the Site Space only after obtaining authorization from Company. Licensee shall give Company at least ten (10) days’ notice prior to commencing installation, and installation and testing shall at all times be under the direct supervision of an authorized employee or agent of Company (“Escort”). If Licensee uses an agent or other third party to deliver, install, or remove Licensee’s Equipment, then Licensee will be solely responsible for the acts of such agent/third party. Licensee shall engineer, furnish, install, and test, at its sole cost and expense, all of Licensee Equipment in accordance with the plans and specifications approved in advance by Company. All Licensee Equipment shall be clearly labeled as such, and Licensee shall be responsible for removal of all installation material, for daily clean-up of the Site Space during installation, and for a final clean up after completion of installation.

**3.5 Rules and Regulations.** Colocation shall be in accordance with the terms specified in an applicable Order Form and shall be governed by Company's Colocation Rules and Regulations (set forth below), which may be amended from time to time by Company. Moreover, Licensee agrees to be subject to, and comply with, all building rules, regulations, and similar requirements imposed by the Site Landlord, and not to take any action to cause a breach of the terms of such Site Lease.

**3.6 Power.** Company will provide DC power and/or AC power to the Site Space as per the allotment specified in the applicable Order Form at the rates and charges set forth in the applicable Order Form. Notwithstanding anything to the contrary in this Agreement, Licensee agrees that, in no event shall the load for the Site Space connected to any power circuit, or the draw on any power circuit, exceed eighty percent (80%) of the power circuit's breakered capacity ("**Power Limitation**"). If Company discovers that Licensee has violated Power Limitation, Company may, in its sole discretion, provide Licensee written notice of such violation requiring Licensee to pay Company a monthly excess power charge of one-hundred percent (100%) of the then-applicable power charge and/or discontinue Licensee's right to use the power circuit that exceeds the Power Limitation. Unless specified otherwise in the applicable Order Form, Company shall not have any obligation to provide the applicable Site Space with, and it shall be Licensee's responsibility to provide or install, to the extent that it determines necessary, surge protection devices, power performance monitoring devices or other electrical safety devices to protect Licensee Equipment.

**3.7 Licensee Equipment.** Licensee shall, at its own cost and expense, maintain all Licensee Equipment at such Site Space in good repair, condition and working order, and shall provide or arrange for all parts, mechanisms, devices and servicing required therefor. Licensee shall be responsible for any repairs to or servicing of such Licensee Equipment, and for any maintenance/service agreement that may cover such Licensee Equipment. Except in the case of an emergency, Company shall not relocate, move, alter, or disturb any Licensee Equipment at any Site Space without the prior written consent of Licensee, such consent not to be unreasonably withheld, denied, conditioned, or delayed. Any Licensee Equipment not removed from the Site Space within two business (2) days of the expiration or termination of the applicable Order Form shall be assumed abandoned and Company, or, if applicable, such Site Landlord, may dispose of such Licensee Equipment as Company or Site Landlord deems appropriate, in its sole discretion, and Licensee shall be responsible for any expenses associated with such disposal.

**3.8 Relocation.** Company may require Licensee to move any Licensee Equipment located in a Site Space. In such event, Company shall, to the extent reasonably possible (with consideration, if applicable, to what notice Company may have received from the applicable Site Landlord), provide Licensee with sufficient prior written notice to permit Licensee to take any actions necessary to plan for any potential service interruptions and will provide the location of the new floor space/rack arrangement to be dedicated to Licensee Equipment. Licensee shall reimburse Company for any and all reasonable costs and expenses incurred as a result of Licensee Equipment relocation.

**3.9 Interference.** Licensee agrees that its use of any applicable Site Space shall not interfere with Company's use of the Site. Company may suspend the provision of Colocation to Licensee in the event that Licensee or Licensee Equipment interferes with Company's operation or maintenance of the Site or with one or more of Company's other Licensees' use thereof, and within a reasonable time, not to exceed one (1) hour after being notified by e-mail or phone, Licensee fails to cease such interference. In the event that Company suspends Colocation hereunder, Company will resume the discontinued Colocation as soon as reasonably practicable after it is reasonably satisfied that Licensee has cured the interference. Further, Company may terminate the applicable Order Form if Colocation is suspended more than twice during the applicable Product Term. Except as otherwise provided, Company agrees to use commercially reasonable efforts to ensure that Licensee's use of such Site Space is not unreasonably interfered with by Company, its employees, agents or other Licensees, and/or the Site Landlord of any Site.

**3.10 Cross Connections.** Licensee may not run cables or wires of any kind from the Site Space to any other location in the Site without the prior written approval of Company pursuant to a Order Form describing the cross-connect and the charges applicable thereto. Licensee may not allow any carriers or other person to gain access to the Site or the Site Space. Company shall have sole control of access to the Site by carriers, contractors, service providers or others. Licensee shall not engage in or provide at the Site any meet-me-room services, or any services either directly or indirectly related to the trading of bandwidth.

**3.11 Inspections.** Company may make periodic inspections of any part of the Licensee Equipment, and Licensee shall have the right to be represented during such inspections; provided however, that if in the sole judgment of Company safety considerations require an inspection without providing such notice, Company may make such inspection immediately, but shall thereafter promptly provide notice to Licensee of such inspection. The making of periodic inspections or the failure to do so shall not operate to impose upon Company any liability and shall not relieve Licensee of any responsibility, obligations or liability under this Supplement or the Agreement.

## **4. COLOCATION TECHNICAL ASSISTANCE**

### **4.1 Colocation Technical Assistance.**

**4.1.1** If set forth on the applicable Order Form for Colocation, Company will provide Licensee certain technical support at the Site Space. Such technical support will consist of either or both of the following types of assistance, as designated on the Order Form: (1) Remote Hands Assistance ("Remote Hands") and/or (2) Smart Hands Assistance ("Smart Hands"). Such assistance shall be subject to the Agreement and the terms and conditions set forth in this Section 4 and such further terms and conditions as may be set forth in the applicable Order Form.

**4.1.2 Remote Hands.** Remote Hands is designed to provide Licensees with basic assistance requested by Licensee such as re-booting Licensee Equipment, checking indicators on Licensee Equipment, basic troubleshooting of Licensee Equipment, and similar activities that do not require the use of any tools or specialized equipment by the Company technician. With respect to Remote Hands

assistance, Company's sole obligation shall be to carry out the express instructions of Licensee, and Company reserves the right to reject Licensee's request if Company in its discretion deems the request outside the scope of the Remote Hands assistance.

**4.1.3 Smart Hands.** Smart Hands is designed to provide Licensees with onsite technical assistance of a more complex or technical nature than Remote Hands, and includes Company complying with Licensee's instructions relating to the installation of Licensee Equipment, more advanced troubleshooting, the installation or change of certain physical components within the Licensee Site Space environment (e.g., relocating equipment, cable management, Licensee Equipment installation or replacement, or other mutually agreed to work set forth within a Order Form). Smart Hands assistance generally does require the use of tools and or certain types of specialized equipment by the Company technician. With respect to the Smart Hands assistance offered by Company, Company's sole obligation shall be to carry out the express instructions of Licensee, and Company reserves the right to reject Licensee's request if Company in its discretion deems the request outside the scope of the Smart Hands assistance.

**4.2 Technical Assistance Request.** Remote Hands and Smart Hands assistance will be provided upon submission by Licensee of a request for assistance. For Smart Hands, the Order Form must contain a method and procedure for work to be performed.

**4.3 On-Demand Pricing:**

**4.3.1 Remote Hands or Smart Hands 24/7 manned Sites:**

Regular Assistance:

Response Objective: Within 2 hours of notice

Per Incident Price: \$135/hour (billed in 15 min increments after the first 15 min)

**4.3.2 Remote Hands or Smart Hands unmanned Sites:**

Regular Assistance:

Normal Business Hours: 8 AM – 5 PM, Monday through Friday, excluding holidays based on the time zone applicable to the facility

Response Objective: Within 4 hours of notice

Per Incident Price: \$135/hour (billed in 15 min increments)

Emergency Assistance:

After Normal Business Hours

Response Objective: Within 4 hours of notice

Per Incident Price: \$270/hour (billed in 15 min increments after a 2 hour minimum charge)

**4.3.3** Pricing is subject to change upon notice by Company. If the Order Form specifies pricing different from the foregoing, the pricing in the Order Form shall apply.

**4.4 Conduct.** Company warrants that it will use commercially reasonable efforts to cause Remote Hands and Smart Hands assistance to be performed in a workmanlike manner. If Licensee claims a breach of the foregoing warranty, Licensee must: (a) immediately report the issue to the Company Network Operations Center (at 888-LT-FIBER) and open a trouble ticket; and (b) make a written request for a re-performance of the Remote Hands within seven (7) days following the end of the month in which the alleged breach occurred. Upon receipt of Licensee's request, Company will investigate the claim under the terms described in this Article. If Company finds that it failed to satisfy the foregoing warranty, Company will promptly correct any errors or deficiencies in the Remote Hands and/or Smart Hands assistance performed hereunder. Licensee shall afford Company full and free access to the Site Space for all work necessary to remedy any breach of Company's warranty. The foregoing represents Company's sole obligation and Licensee's sole remedy for any defect or deficiency in a Remote Hands and/or Smart Hands assistance. Company shall have no liability whatsoever to Licensee or anyone claiming through Licensee for any issues or equipment outages resulting from Remote Hands and/or Smart Hands assistance unless directly caused by Company's willful misconduct.

**4.5 Billing and Expenses.** Company will render invoices monthly in arrears for Remote Hands or Smart Hands that are billed on a variable basis and monthly in advance for those Remote Hands or Smart Hands that are billed on a fixed basis. Licensee shall, upon receipt of appropriate supporting documentation, reimburse Company for any and all reasonable out-of-pocket expenses incurred by Company in connection with rendering the Remote Hands or Smart Hands as applicable. Company will include all applicable expenses in its invoices to Licensee for the Remote Hands or Smart Hands.

**5. RISK OF LOSS; INDEMNIFICATION; AND INSURANCE**

**5.1 Risk of Loss.** The risk of any loss of or damage to Licensee Equipment at any Site Space shall be borne solely by Licensee. Company shall not be liable to Licensee for, and Licensee shall not be relieved of its obligations hereunder due to, any interruption or termination of any service or utilities due to any repair, installation or improvement, or any cause beyond Company's reasonable control, except that if Licensee is unable to operate its business as a result of such interruption caused by the gross negligence or willful misconduct of Company, there shall be an abatement of the applicable MRC during the period of such interruption.

**5.2 Indemnification.** Licensee shall indemnify, defend, release, and hold harmless Company, its Affiliates, directors, members, officers, employees, managers, agents, representatives, and contractors, as well as the Site Landlord and Company's other Licensees, from and against any and all claims, demands, actions, judgments, costs, expenses (including reasonable attorneys' fees), damages and/or liabilities arising out

of or in connection with Licensee's (including its agents, contractors, employees and representatives) use of the Site Space and/or exercise of its rights hereunder.

**5.3 Insurance.** Licensee shall procure, and thereafter shall maintain through the Product Term, the following insurance from carriers having a Best Rating Service rating of A- or better:

- Commercial General Insurance with a limit of not less than \$5,000,000 each occurrence, written on ISO occurrence form CG 00 01 12 07 (or a substitute form providing equivalent coverage) and covering liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Automobile Liability Insurance with a limit of not less than \$2,000,000 each accident, covering liability arising out of any auto (including owned, hired and non-owned autos). Such insurance amount may be satisfied through a combination of primary and umbrella insurance.
- Workers Compensation and Employers Liability Insurance as required by the laws and regulations applicable to the employees who are engaged in the performance hereunder.
- Commercial Property Insurance covering Licensee's property and equipment at Company's location, in an amount equal the full replacement cost of Licensee's property and equipment.

Licensee shall deliver to Company standard form insurance certificates evidencing the coverage required herein and stating that the insurer will provide at least thirty (30) days' written notice to Company if such coverage is to be cancelled, non-renewed or materially and adversely modified. Company shall be included as an insured on the associated policies and this insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded Company (there shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured). Licensee waives all rights against Company and its agents, officers, managers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this Agreement.

If any insurance coverage is not secured and maintained or is canceled, Company reserves the right to procure such insurance and to add the cost thereof to any sum due Company from Licensee under the applicable Order Form(s). Nothing contained in these insurance requirements is to be construed as limiting Licensee's responsibility or liability for damages resulting from Licensee's use of the Site Space or Licensee's indemnification obligations.

## **6. EMINENT DOMAIN AND CASUALTY**

Should a substantial portion of the Site Space, or of the Site, be damaged by fire or other casualty, or be taken by eminent domain, Company may elect to terminate the license for any Site Space hereunder. When such fire, casualty, or taking renders the Site Space substantially unsuitable for its intended use, a just and proportionate abatement of the applicable monthly recurring charge shall be made, and Licensee may elect to terminate the license for the affected Site Space hereunder if: (a) Company fails to give written notice within forty-five (45) days after such fire, other casualty or taking, of Company's intention to restore the Site Space, or (b) Company fails to restore the Site Space to a condition substantially suitable for its intended use within one hundred and eighty (180) days after said fire, casualty or taking. Company reserves, and Licensee grants to Company, all rights which Licensee may have for damages or injury to the Site Space for any taking by eminent domain, except for damage to the Licensee Equipment.

## **7. LIENS**

Licensee may not cause or permit any liens to be placed on the Site or any Site Space for labor, services or materials performed or delivered by or on behalf of Licensee (including, without limitation, any party that may make any claim or seek any lien by or through Licensee), and shall cause any such liens to be removed within ten (10) days of Licensee's knowledge thereof.

## **8. FEES**

Licensee shall pay the fees set forth in Order Forms executed hereunder. On January 1 of each year, the MRCs shall be escalated by the increase in the Consumer Price Index – All Urban Consumers (CPI-U) issued in December of the previous year (any such adjustment will reflect any increase, but not any decrease, in the Consumer Price Index for the previous 12 months). In the event that the CPI is no longer available, such MRCs shall be escalated by three (3) percent annually. In addition, in the event that amounts charged to Company under any Underlying Rights are increased or Company's costs or expenses are increased due to any Underlying Rights, Company shall have the right to charge Licensee for its pro rata share of such increases, which shall be added to the MRCs to be paid by Licensee for the applicable term. In the event that a Order Form includes electrical power or HVAC, fees for such electrical power and HVAC may be increased by Company from time to time during the Product Term or any renewal thereof, as necessary to reflect Company's costs, upon prior written notice to Licensee.

## **9. LIMITATION**



Notwithstanding anything to the contrary in this Supplement, in the Agreement or in any Order Form, in no event shall a Colocation Outage or failure to meet any objectives or parameters under this Supplement be deemed to be or constitute a breach by Company of this Supplement, the Agreement or any Order Form.

### **COLOCATION RULES AND REGULATIONS**

The following constitute rules and regulations (“Rules and Regulations”) governing the use and operation of colocation facilities (“Facility” or “Facilities” or “Building” or “Buildings”) owned or operated by Company and licensed or leased for use by Company’s telecommunications licensees and ISP customers and carriers (“Licensee” or “Licensees”). The individual cabinet, rack or cage space licensed to Licensee within the Facility shall be referred to as the “Space.” By entering into this Agreement, Licensee agrees to abide by the Rules and Regulations, as they may be amended from time to time. In the event of any conflict between the Rules and Regulations and the Agreement, the terms and provisions of the Agreement shall control. Whenever, under the Rules and Regulations, or an Agreement, Company’s approval is required, such approval will be given or withheld in Company’s sole discretion.

### **INTRODUCTION**

Standard operating procedures and protocols have been established to further safe and reliable operation of Licensee owned and operated equipment within the Facilities. Specific Facilities may be subject to special considerations based, among other things, on local jurisdiction and a Facility’s design and configuration. Licensees are encouraged to contact Company’s Facilities Manager with any questions or concerns regarding a particular work operation or installation procedure.

### **STANDARDS OF OPERATION**

The following standards of operation are required to be observed by all Licensees. Company may change or augment these standards from time to time to better serve the Licensee base.

### **OCCUPANCY AND SPACE UTILIZATION**

Customer may use the Space only for the purposes of installing, maintaining and operating telecommunications equipment.

### **OCCUPANCY AND SPACE UTILIZATION**

Licensee may use the Space only for the purposes of installing, maintaining and operating telecommunications equipment.

### **NETWORK INTERCONNECTIONS AND INTERFACE TO THIRD PARTIES**

Licensee interconnections with telecommunications services provided by third parties will only be permitted with the prior written approval of Company, subject to the applicable Agreement. **It is imperative that Licensees understand that only Company personnel, or its subcontractors, are allowed to perform work on the common ladder rack and in common wireways.**

Company will also install all fiber optic connections connecting Licensees to outside plant fiber optic cables entering the Company Facility. Company will provide Licensee with fiber jumpers or fiber cable from the Building interface bay to the “demarcation” point, if Licensee is licensing fiber from Company. The Licensee demarcation point is always in the Licensee Space.

Licensees with multiple racks, cage space, or “raw” space that have made provision for Licensee cable racks are required to use the best, most effective and economic resources to provision their own cross-connections relevant to interconnecting their own equipment within their Space or cabinet line-ups. The higher of Company, Telcordia GR-1275-CORE, or Licensee standards shall be strictly maintained, provided that Licensee shall not perform any work on the common ladder rack or in common wireways.

### **LICENSEE RESPONSIBILITIES**

Licensee technicians must be certified by industry and Company standards and approved by Company in order to perform any work in Company Facilities that directly affects common systems elements. Licensee contractors must be familiar with and adhere to the Company methods and procedures for operating and conducting business within Company Facilities. Licensee shall be responsible for any failure of Licensee’s contractors to do so.

Licensee or its representative shall coordinate major equipment deliveries with the Facilities Manager. Major deliveries shall be scheduled and executed so as not to interfere with the operations of Company or other Company Licensees within the Facility. Doors shall not be propped open or left unattended.

Local telephone company connections shall be ordered directly by Licensee, and Licensee will become the Licensee of record. The Facility is configured to accommodate services from the local exchange carrier demarcation to Licensee’s Space. The telephone or terminal block shall be located within the Licensee Space. Interface wiring on common ladder racking shall be performed by Company and billed to Licensee as provided in the applicable Agreement.

Connections to other carriers and or Licensees within Company facilities shall be subject to the applicable Agreement and payment by Licensee of the applicable cross-connect charges.

Company, on a regular basis or at its sole discretion, shall perform inspections of Licensee connections and/or general space conditions. If such Licensee connections and/or general Space conditions are deemed to be non-compliant, Licensee shall be notified of the specific nature of the non-compliance which shall be rectified immediately. Company reserves the right, in all cases, to remedy the non-compliance at Licensee’s expense.





Specifications for the provisioning of other services such as, but not limited to, power, overhead racking, mounting and overall Space allocation, conditioning and operations will be provided to the Licensee by the Facilities Manager.

In all cases Licensee shall provide and keep current a single point of contact for interface with the Facilities Manager for all Space matters including emergency call-out or service restoration issues.

Licensee shall pay for any damage to Company facilities or equipment, or to its other licensees' facilities and equipment caused by Licensee's equipment failure, or other acts or omissions of Licensee, or its representatives. This shall include the cost of all labor and materials associated with the restoration or repair of building common systems equipment or services, plus the applicable administrative and overhead costs associated therewith.

COMPANY INTENDS TO ALLOW OTHER LICENSEES TO INSTALL EQUIPMENT AROUND AND ABOUT THE FACILITIES, SO LONG AS NOT DIRECTLY INCONSISTENT WITH THE RIGHTS EXPRESSLY GRANTED TO LICENSEE. BY USING THE SPACE, LICENSEE EXPRESSLY AGREES THAT COMPANY WILL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS OR LOSSES INCURRED BY LICENSEE OR ANY THIRD PARTIES CAUSED BY THE EQUIPMENT, ACTS OR FAILURE TO ACT OF SUCH OTHER LICENSEES OR THEIR RESPECTIVE AFFILIATES, EMPLOYEES, CONTRACTORS OR AGENTS.

#### **IMPROVEMENTS TO SPACE**

Licensee shall not alter the structural integrity of the Facility, affect any power, HVAC or other systems within the Facility, physically alter the Facility or the Licensee space in any way, or affect the normal functioning of the Facility or another Licensee in any way.

All work performed within the Facility will comply with all state, federal, municipal, and regional codes, laws, ordinances, rules, regulations or directives.

#### **EMERGENCY CONTACT NUMBERS**

Licensee shall post contact telephone numbers conspicuously at the entrance to its Space. Licensee shall provide Company with means of access to the Space in case of emergency. Company reserves the right to enter the Space at any time in cases of emergency to assess possible ramifications to the Facility. Company shall provide Licensee with 72 hours advance notice of planned inspections of the Licensee's Space, in non-emergency situations.

#### **COLOCATION RAW SPACE AND CAGE SPACE WORK REQUIREMENTS**

All work within Licensee's raw Space and/or cage Space shall be performed by Licensee in a manner to ensure no interference with the normal functioning of the facility and other Licensees and be approved by the Crown Castle Facilities Manager as previously set forth herein above. The following applies to all work performed by or on behalf of Licensee:

Initial Licensee design requirements must be reviewed and approved by the Facilities Manager prior to commencement of any work. Company reserves the right to audit all work and shall inspect equipment and/or systems prior to connection to common systems power or fiber. All work shall be confined to the area within the Space. If staging area is required it must be pre-approved by the Facilities Manager.

#### **BUILDING COMMON AREA**

The building common areas are established primarily for access and egress to Licensee equipment. Licensee and/or Licensee's vendors must keep all driveways, entrances and passageways serving the Facility clear and available for use by Company and other Licensees or vendors.

Licensee shall provide and maintain all necessary guards, rails, fences, and protective coverings to preserve building integrity and appearance during any work operation. Any and all work operations that adversely impact normal access or egress from the Facility shall be performed outside of normal business hours. Licensee will take special care to protect adjoining property and equipment from damage or injury.

Licensee's materials and equipment shall be confined to the area in which the work is actively being performed. Licensee shall provide adequate lockers or locked sheds for the storage of equipment or materials. All tools and equipment shall be stored neatly in approved storage lockers and the space shall be cleaned before the end of each work day. Trash and debris shall be removed from the facility before the end of each workday.

Licensee or Licensee's vendor(s) are required to protect all finished surfaces from dirt and damage, including walls, ceilings, jambs, and soffits of openings used as passageways through which materials are handled. Based on the type of work operation, temporary partitions or curtains between the work area and other spaces may be required by Company. Partitions shall be constructed, maintained, and sealed in a complete and tight condition at all times. Polyethylene shall not be used for dust partitions or curtains. Fire resistant Servico vinyl shall be used. Prior to removal of any dust partition the Licensee or its vendor shall vacuum clean the area using an approved HEPA vacuum.

#### **PROTECTION OF COMPANY SERVICES**

No work shall be started, walls or partitions removed or built, heat, water or plumbing or electric services temporarily disconnected, nor shall construction work be carried on near the telephone wires or equipment, without first discussing the procedures and protection to be provided with Company and receiving Company's prior approval. The contractor must notify Company at the first indication of an electrical interruption or switchover to the temporary generator which occurs during any work activity whether caused directly by a work activity, or incidental to any work activity during construction.

Any work activity which may cause or require a temporary power shut down of AC or DC power or reliance on the standby power system shall be pre-approved and scheduled by Company. The request shall be accompanied by a detailed method of procedure for the work activity. Notice



of the work activity shall require a minimum of 30 days' lead time for notification to other Licensees that may also be affected. This class of work shall require supervision by Company or its representative. Scheduling of Licensee required power shutdowns shall be coordinated by the Facilities Manager, at Licensee's expense.

#### **COMPANY POWER WORK - AC & DC**

Company operates and maintains both the AC and the DC power systems for 24x7 operations. Company reserves the right to maintain and augment these systems at its sole discretion. Routine maintenance and testing may be conducted during normal work hours under a method of procedure specific to the work operation.

Company will provide Licensee with telephone or e-mail notice of all non-emergency planned Facility maintenance prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting Licensee's colocation facilities.

1. Company will undertake repair efforts on all environment equipment or interconnecting fiber or copper circuits when Company first becomes aware of it, or when notified by Licensee and Licensee has released all or part of the service for testing.
2. Contact Information:  
Company Network Operations Center – 1-888-LT-FIBER

#### **PROTECTION OF FLOORS**

Non-flammable tight wood sheathing shall be placed under materials that are stored on finished surfaces. Non-flammable tight wood sheathing installed over reinforced Kraft building paper must be placed over finished floor surfaces before moving materials over finished floors, especially in the building common entrance and foyer areas.

#### **PRESERVATION OF ENVIRONMENTAL CONDITIONS FOR TELECOMMUNICATIONS EQUIPMENT**

At no time shall the interior of the building be directly exposed to the outside environment without the prior written approval of Company. Existing exterior walls, doors, or windows shall not be removed until construction of any associated addition or interlock facility has been completed.

#### **AC POWER SERVICES AND REQUIREMENTS**

Company provides dedicated AC power circuits for Licensee operating equipment. Determination of the proper AC power requirement to be provisioned for operation of Licensee provided equipment is the responsibility of Licensee and shall be identified with the Order Form request. AC circuits shall be provided and fused according to the applicable Order Form. All AC service to Licensee is protected by a standby engine generator. Momentary interruption of power will occur during a power failure due to the transition interval to the standby power system. All Licensee provided AC powered equipment shall be UL listed. Conditions that cause AC power interruption such as faults, shorts or overload of Licensee circuits due to Licensee equipment shall be cleared and tested prior to restoration of the AC service by Company.

#### **DC POWER SERVICES**

Company provides dedicated DC power circuits for Licensee operating equipment. Determination of the proper power requirement (total load amps draw) of DC power for operation of Licensee provided Equipment is the responsibility of the Licensee and shall be identified with the Order Form request. DC circuits shall be provided and fused according to Licensee provided load data and in accordance with the applicable Order Form. All DC service to Licensee equipment is protected by battery backup to provide uninterrupted service. All Licensee provided DC powered equipment shall be NEBS compliant and approved by type for use by Company prior to installation. Conditions that cause DC power interruption such as faults, shorts or overload of Licensee circuits due to Licensee equipment shall be cleared, tested and verified "safe for operation" by (a) the Licensee representative and b) the Facilities Manager prior to restoration of the DC service by Company.

#### **SAFETY**

Company requires all Licensees and their vendors to practice good workplace safety. All electrical equipment and tools must be properly grounded before becoming operational.

Licensee shall ensure that its equipment and surrounding areas do not pose safety hazards to any person. OSHA and local laws, rules, regulations, ordinances and codes shall be complied with at all times.

#### **FIRE SAFETY**

Fire safety is critical. If there is a fire alarm in a Licensee Space, Company Building control center will dispatch the fire department. Licensee shall monitor its own alarms in fully compartmentalized and separately alarmed spaces and shall dispatch a company representative upon a fire alarm indication, at Licensee's expense. All fire alarms shall require investigation as to the cause and resolution. Fire alarm systems shall not be reset to normal without a full and thorough survey of the facility.

Any and all work in Licensee fire alarm panels shall be pre-scheduled with Company prior to the performance of the work.

#### **SECURITY AND PERSONNEL IDENTIFICATION**

Licensee shall complete and submit to Company Company's application form for all employees, agents and vendors seeking access to the Facility on Licensee's behalf. No one, other than employees, agents and vendors of Licensee who have been approved by Company, may access the Facility. Company will provide to Licensee up to 10 building access cards at no charge. Additional cards may be purchased for \$50.00



each (minimum of two per request). Individual card access administration is the responsibility of Licensee for card assignments to individual employees, agents and vendors, provided that only those employees, agents and vendors approved by Company may be given an access card. Access cards may only be used by the individual to whom the access card is assigned. Failure to adhere to the Company security protocol may result in card deactivation. Reissuance of a card for breach of security shall be made only after a \$50.00 charge. All employees, agents and vendors entering Company Facilities shall wear, prominently displayed, a picture identification card which provides the person's name and company name. Building keys shall not be issued to Licensees; Licensee access shall be card key only.

#### **MISCELLANEOUS**

Licensee's employees, agents and vendors shall take all necessary precautions for the safety of Licensee's employees, agents and vendors when accessing the Facility and using the Space and shall comply with all applicable provisions of federal, state and municipal laws, codes, regulations and ordinances and any successor laws, codes, regulations and ordinances thereto, in order to prevent accidents or injury to persons and property on, about or adjacent to the Space or the Facility, including, without limitation, the National Electric Safety Code and the OSHA requirements for working clearances from energized lines.

Licensee shall otherwise comply with all applicable federal, state or municipal laws, regulations, codes and ordinances affecting the Space and its occupancy, operation and the use thereof pursuant to the terms hereof and Licensee shall not use the Space in any unlawful, improper, noisy or offensive manner.

Licensee shall provide all equipment needed to conduct its business at the Space which is capable of confinement within the Space without adversely affecting its function. Licensee shall be solely responsible for the installation, modification and maintenance of Licensee's equipment. Licensee shall also insure that neither vehicles nor equipment are parked or stored at the Facilities, except as approved by Company.

Licensee shall not place a load upon any floor in the Space that exceeds the load bearing capacity of such floor, as determined by Company, in its sole discretion. Company reserves the right to determine the location and weight of any of Licensee's equipment.

No signage shall be permitted by Licensee on the interior or exterior of the Space or the Building, except for identification tags or nameplates on the outside of the cabinets which have been approved by Company in its sole discretion.

#### **HAZARDOUS MATERIALS**

Neither Licensee nor any person claiming under Licensee, nor the employees, agents, or vendors of Licensee or any such person shall bring onto, store, generate, or permit to be stored or generated on the Facility, including but not limited to the space, any oil, Hazardous Material, as defined in any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*, the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E, as amended, and the Massachusetts Hazardous Waste Management Act, as amended, M.G.L. c. 21C.



**DATE:** April 15, 2020

**TO:** Joseph A. Valentine, City Manager

**FROM:** Jana Ecker, Planning Director

**SUBJECT:** Public Hearing for a Lot Combination of 1680 S. Bates Street, Parcel # 19-36-331-038 - T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2 FT and 1698 S. Bates Street, Parcel # 19-36-331-039 – T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 193 EXC E 2 FT. (All new comments in blue type)

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**INTRODUCTION:**

The owner of 1680 and 1698 S. Bates is seeking approval for a lot combination of two parcels into one.

**BACKGROUND:**

The subject properties are located on the southwest corner of S. Bates Street and W. Southlawn Blvd. The owner of both properties has applied to combine the two lots into one in order to demolish the northern house at 1680 S. Bates to create a larger yard space with a patio and sport court for the existing house at 1698 S. Bates Street. According to Article 2.07(C)(1)(j) Accessory Permitted Uses, Items such as patios and sport courts are considered accessory uses "incidental to the permitted principal use," and therefore are not permitted on a vacant lot without a principal use.

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

- (1) The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.

The subject properties are zoned R2, Single Family Residential. The applicant constructed their new, two-story home on 1698 S. Bates in 2008 where the applicant lives, and is proposing to continue to live in the same home. No changes to the building envelope at 1698 S. Bates are proposed.

In regards to lot size, the minimum lot area per unit in the R2 Zone is 6,000 SF. The applicant has proposed a lot combination that would total 13,750 SF of lot area which conforms to the Zoning Ordinance standards for minimum lot area. The maximum lot coverage for the R2 Zone is 30%, which would be 4,125 SF for the combination of the two proposed lots. The applicant

will maintain their current building envelope on 1698 S. Bates with a lot coverage of 1,191 SF which conforms to the Zoning Ordinance standards for lot coverage.

In regards to setbacks, the applicant is maintaining their front setback of 41.58 feet which conforms to the minimum front setback regulation of 39.78 for the subject property. The applicant has also proposed to maintain their rear setback of 64.60 feet which conforms to the minimum rear setback requirement of the Zoning Ordinance. In regards to accessory uses in the rear yard, the applicant has proposed an extended patio and sport court in the rear yard area. Such uses will be subject to Impervious Surface and Open Space standards review by the Engineering and Building Departments if the lot combination is approved.

The applicant is required to maintain a total side yard setback of 21.92 feet. The proposed side yard setback has increased from 17.06 feet to 61.88 feet; 11.22 on the southern side and 50.60 on the northern side which satisfies the requirements of the Zoning Ordinance. There are no accessory uses proposed in the side yard.

In regards to the character of the area, the 1980 Master Plan recommends the area as a single family residential zone. The applicant has proposed to maintain a single-family residential use on the corner of S. Bates and Southlawn. The corner property across the street from the subject site has a similar sized lot as the applicant's proposal, but has a larger footprint. The proposed lot satisfies all use and setback requirements of the R2 Residential Zone requirements. Therefore, the proposed lot size appears to be consistent with the character of the area where the property is located. **Accordingly, the proposal meets this requirement.**

- (2) All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.

The average lot width of all lots in the same zone district within 300 feet on the same street is 45.17 feet, making the maximum lot width 90.33 feet. The applicant is proposing a lot width of 87.68 feet. **Accordingly, the proposal meets this requirement.**

- (3) All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.

The average lot area of all lots in the same zone district within 300 feet on the same street is 6,257 square feet, making the maximum lot area 12,515 square feet. The applicant is proposing a combined lot area of 13,750 square feet. **Accordingly, the proposal does not meet this requirement.**

It is of note that the subject property, as well as all other properties on the east side of S. Bates for this block have a lot depth of 156.79 which is the longest lot depth of properties within 500 feet, therefore the larger lot area. The surrounding properties within 500 feet have lot depths between 119 feet to 140 feet.

- (4) The combination will result in building envelopes on the combined parcels that will allow

for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.

The applicant is proposing to remove one home at 1680 S. Bates Street, but they are not proposing to expand the existing envelope of their home at 1698 S. Bates Street. The Planning Division refers to the Zoning Ordinance as the standard for rhythm and pattern of development as it provides the guidelines for lot size and setbacks. Lots in the R2 Residential Zone may not be smaller than 6,000 square feet and may not have lot widths less than 30 feet. Buildings may not be closer than 14 feet and are subject to the setbacks of the R2 Residential Zone. It is of note that although the space between two homes may be increasing, the current Zoning Ordinance requirements for the R2 Residential Zone does not regulate the maximum lot size or maximum building setback standards. Although the applicant is not proposing to expand their existing building envelope, if they were to do so, it would be consistent with the home directly across the street from them at 1698 S. Bates. The proposed lot size and building footprint appears to satisfy all of the Zoning Ordinance requirements for the R2 Residential Zone. **Based on the attached survey, the proposed lot combination and building envelope appear to meet this requirement.**

- (5) Any due or unpaid taxes or special assessments upon the property have been paid in full.

There are no outstanding taxes due on this property. **The proposal meets this requirement.**

- (6) The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:

- a.) The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.

**Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.**

- b.) The effect of the proposed combination upon any floodplain areas, wetlands and other natural features and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbances of such natural features.

**The property is not located in a floodplain or wetlands, nor adjacent to a floodplain or wetlands.**

- c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

**The proposed lot combination does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential**

**services.**

On March 9, 2020, the City Commission conducted a public hearing on the proposed lot combination. After much discussion, the City Commission moved to postpone consideration of the lot combination to April 6, 2020. This was to allow the City Attorney to research potential avenues to approve the use of the second lot by the applicant for play space, while at the same time limiting the size of any future home that could be developed on both lots should they be sold in the future.

Under Chapter 102, Subdivisions, section 84 provides authority for the City Commission to impose conditions on the approval of an application for lot consolidation, including but not limited to, the location and placement of the building envelope, and a determination of the front and rear property lines. Should the City Commission impose such conditions of approval, section 84 also states that the conditions must be illustrated and recorded with the City and/or county as part of the lot combination process.

Accordingly, the City Commission may wish to consider approval of the lot combination to allow the applicants to demolish the northern house at 1680 S. Bates to create a larger yard space with a patio and sport court for the existing house at 1698 S. Bates. This approval could be granted with one or more of the following conditions added in accordance with Chapter 102, section 84:

- The property line along Bates Street shall be designated as the front property line (Determination of front and rear property lines);
- No side yard shall be less than an agreed upon size larger than the minimum otherwise permitted under the Zoning Ordinance (Establishing a larger minimum interior side lot setback);
- The building envelope of any future construction on the combined lots shall be limited to an agreed upon maximum size envelope, centrally located upon the lots (Location and placement of building envelope); and / or
- The allowable lot coverage shall be less than otherwise permitted under the Zoning Ordinance (Size of building envelope).

**On April 6, 2020, the City Commission again discussed the proposed lot combination and considered the use of an agreement between the applicant and the City to impose conditions on the approval of a lot combination under Chapter 102, section 84 of the City Code. The City Commission directed staff to draft an agreement for conditional approval of the lot combination with conditions designating the front property line, and controlling the size, location and placement of future building envelopes. In addition, the City Commission asked staff to consider additional limits on the type of uses/structures permitted on the property in the future. This matter was continued to April 20, 2020.**

**Since the City Commission meeting on April 6, 2020, the City Attorney has drafted**

an agreement for your review and consideration. As discussed on April 6, 2020 the agreement proposes the following conditions should you wish to approve a lot combination:

- Designation of Bates Street as the front property line;
- Imposing a minimum 15' interior side setback to the north (5' minimum required currently), which shifts the future building envelope towards the center of the lot;
- Imposing a maximum 20% lot coverage for the combined lots (30% maximum required currently), which reduces the area of the overall future building envelope and thus reduces the size of a future home or addition; and
- Requiring that any future structures or additions on the combined lot must comply with all other Zoning Ordinance regulations, including open space requirements (side setback and lot coverage provisions in the agreement superseding any conflicting standards).

To assist in illustrating the impacts of a lot combination please find attached drawings that show the size and placement of one home if the lots are combined (scenario 1) and the size and placement of two homes if the lots are developed individually (scenario 2).

#### Lot Combination with no Conditions of Approval

In the illustration of scenario 1, the colored areas represent the potential footprint size and placement for either a brand new home, or an addition to the existing home on the corner. The pink area (which includes the green box) shows the potential building footprint that could be added to the existing footprint (in brown) if the lots are combined with no conditions, and only the current zoning standards apply. This potential footprint (all colored areas) could be built if the existing house was demolished and a new home built, or the pink area of the footprint could be used for an addition to the existing house.

#### Lot Combination with Conditions of Approval in Agreement

In the illustration of scenario 1, the green area shows the potential building footprint that could be added to the existing footprint (in brown) if the lots are combined with the conditions proposed above in the draft agreement. This potential footprint (green and brown area) could be built if the existing house was demolished and a new home built, or the green area of the footprint could be used for an addition to the existing house. Should the lot combination be approved with the conditions noted above, it is clear that the buildable area of the lot will be significantly reduced, and the interior side setback will be increased.

#### No Lot Combination – Development of Individual Lots

In the illustration of scenario 2, the blue colored areas represent the potential

footprint sizes of a new home and garage that could be constructed on the second lot by right under the current zoning standards. The brown areas are the existing home and garage on the corner lot. Should the existing home on the corner be demolished, a larger footprint would be permitted. The Pearce home was actually built with a smaller footprint than what is permitted.

	<b>Lot Area (W x L)</b>	<b>Size of Building Envelope (Lot Coverage)</b>	<b>Side yard setback (northern property line)</b>
<b>Lots Combined without conditions (demolish all &amp; build new or with addition to existing home)</b>	13748.15 sq.ft.	4124.4 sq.ft.	5' minimum
<b>Lots Combined with proposed conditions (demolish all &amp; build new or with addition to existing home)</b>	13748.15 sq.ft.	2749.63 sq.ft.	15' minimum
<b>Lots developed individually as platted</b>	(1) 42.68' x 156.74' = 6689.9 sq.ft. (corner lot) (2) 45' x 156.85' = 7058.25 sq.ft. (north interior lot)	(1) 2006.97 sq.ft.  (2) 2117.47 sq.ft.	5' minimum  5' minimum

Under the provisions of the draft agreement, the types of uses/structures permitted on the property in the future continue to be governed by the Zoning Ordinance, as it may be amended. The City Commission did discuss providing additional limitation on accessory structures/uses such as pools, sport courts, patios, etc. in the draft agreement. However, Chapter 102, section 84 of the City Code does not specifically permit conditions that limit such uses as part of an agreement to approve a lot combination. The type of structures/uses discussed at the April 6, 2020 City Commission meeting are permitted on all single family zoned properties throughout the City, and without specific authorization in the City Code to limit these as a condition of a lot combination, doing so may be akin to a taking or spot zoning, and thus is not recommended by the City Attorney.

It is important to note however, that uses/structures such as swimming pools, sport courts, patios, pool houses etc. are regulated through the Zoning Ordinance under the open space regulations that currently limit the percentage of a property that can be used for buildings, structures and impervious surfaces, thus requiring a

**significant portion of a lot to remain open and pervious. In all single family residential zoning districts, the minimum required open space is 40% of the lot area. This means that no more than 60% of the lot can be used for buildings, structures (including pools and pool houses, etc.) or impervious surfaces (including driveways, patios, sport courts etc.) This requirement is separate and in addition to the maximum lot coverage permitted and applies to all lots as originally platted or when combined or split from the original plat lines.**

**Should the City Commission wish to consider approval of the lot combination with any of the above condition(s), the applicant would be required to record the agreement on title for the property.**

**LEGAL REVIEW:**

The City Attorney has reviewed the application and has no concerns.

**FISCAL IMPACT:**

Not applicable.

**PUBLIC COMMUNICATIONS:**

The applicant has spoken with her neighbors prior to submitting the lot combination request, and has included letters of support, which are attached to this memo. In addition, prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300' of both 1680 and 1698 S. Bates seeking public comment on the proposal.

**SUMMARY:**

The Planning Division recommends that the City Commission direct staff to prepare an agreement between the City and the owners of 1680 and 1698 S. Bates to establish conditions of approval for the lot combination to limit the size and placement of future buildings, to be brought back to the City Commission for approval.

**ATTACHMENTS:**

- ✓ Letter to the City
- ✓ Application
- ✓ Proof of ownership
- ✓ Applicant's summary of project
- ✓ Letters from Residents
- ✓ Registered Land Survey & Landscaping Drawings

In addition, the applicant has provided a short video which will be available for public presentation by staff if requested.

**SUGGESTED ACTION:**

To approve an agreement between the City and Mr. and Mrs. Pearce to approve the lot combination of 1680 & 1698 S. Bates with conditions to limit the size and placement of future building(s).

## **LOT COMBINATION AGREEMENT**

**THIS AGREEMENT** is entered into by and between **HARRY PEARCE AND KATHERINE PEARCE** who reside at 1698 S. Bates St., Birmingham, MI, 48009, hereinafter referred to as the "Applicant", and the **CITY OF BIRMINGHAM**, a Michigan municipal corporation, who maintains its offices at 151 Martin Street, Birmingham, MI, 48009, hereinafter referred to as the "City."

### **WITNESSETH:**

**WHEREAS**, the Applicant has requested a lot combination for the properties commonly known as 1698 S. Bates St. and 1680 S. Bates St. in the City of Birmingham; and,

**WHEREAS**, the Applicant and the City are agreeable to enter into this Agreement pursuant to Chapter 102 – Subdivisions, Article V. Combination of Land Parcels, Sec. 102.83 – Standards of Approval and Sec. 102.84 – Conditions of Approval wherein conditions can be applied to the lot combination as a matter of approval.

**NOW, THEREFORE**, the City and Applicant agree as follows:

1. Lots 1680 and 1698 S. Bates Street shall be and are hereby combined pursuant to the conditions set forth hereinafter.

2. The parcels are described as follows:

- Parcel 1680 S. Bates Street bearing Parcel Identification No.: 19-36-331-038 and more specifically described as follows:

T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2 FT

- Parcel 1698 S. Bates Street bearing Parcel Identification No.: 19-36-331-039 and more specifically described as follows:

T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 193 EXC E 2FT

The foregoing lot combination is subject to the zoning classifications and uses that are set forth in the Birmingham Zoning Ordinance as may be amended from time to time.



3. The following conditions are agreed to between the Applicant and the City to induce the City to permit the combination of the aforementioned lots. These conditions shall run with the land and shall be recorded with the Register of Deeds Office. The conditions are as follows:

- a. The property line along Bates Street shall be designated as the front property line for purposes of determining the front and rear property lines.
- b. The side yard interior setback adjacent to the non-combined properties shall be fifteen feet (15 ft.) on the interior side of the lot line.
- c. Any future construction on the combined lots shall be limited such that the total lot coverage shall not exceed Twenty percent (20%). The combined lots have been determined to be Thirteen Thousand Seven Hundred Fifty (13,750) square feet, thereby limiting the lot coverage to no greater than Two Thousand Seven Hundred Fifty (2,750) square feet. In the event of a discrepancy in the calculations, the Two Thousand Seven Hundred Fifty (2,750) square feet shall control the total size of the lot coverage.
- d. Any additions or new structures must comply with the Zoning Ordinance, as amended, and the terms of this Agreement shall hereinafter supersede the Zoning Ordinance requirements for interior side setback and lot coverage.
- e. Nothing in this Agreement shall prohibit or preclude any current or subsequent owner of the subject lots, as combined herein, from petitioning or requesting of the City of Birmingham, from time to time, for a mutual amendment or modification of this Agreement, including but not limited to a petition or request for a re-split of the aforementioned lots to their original condition or for any other mutually agreeable amendment or modification of the conditions of the Agreement.

4. Each party has represented to the other that it has full authority to enter into this Lot Combination Agreement.

5. This Agreement is approved by the Birmingham City Commission on \_\_\_\_\_ day of \_\_\_\_\_ with the Mayor and Clerk authorized to execute same on behalf of the City.

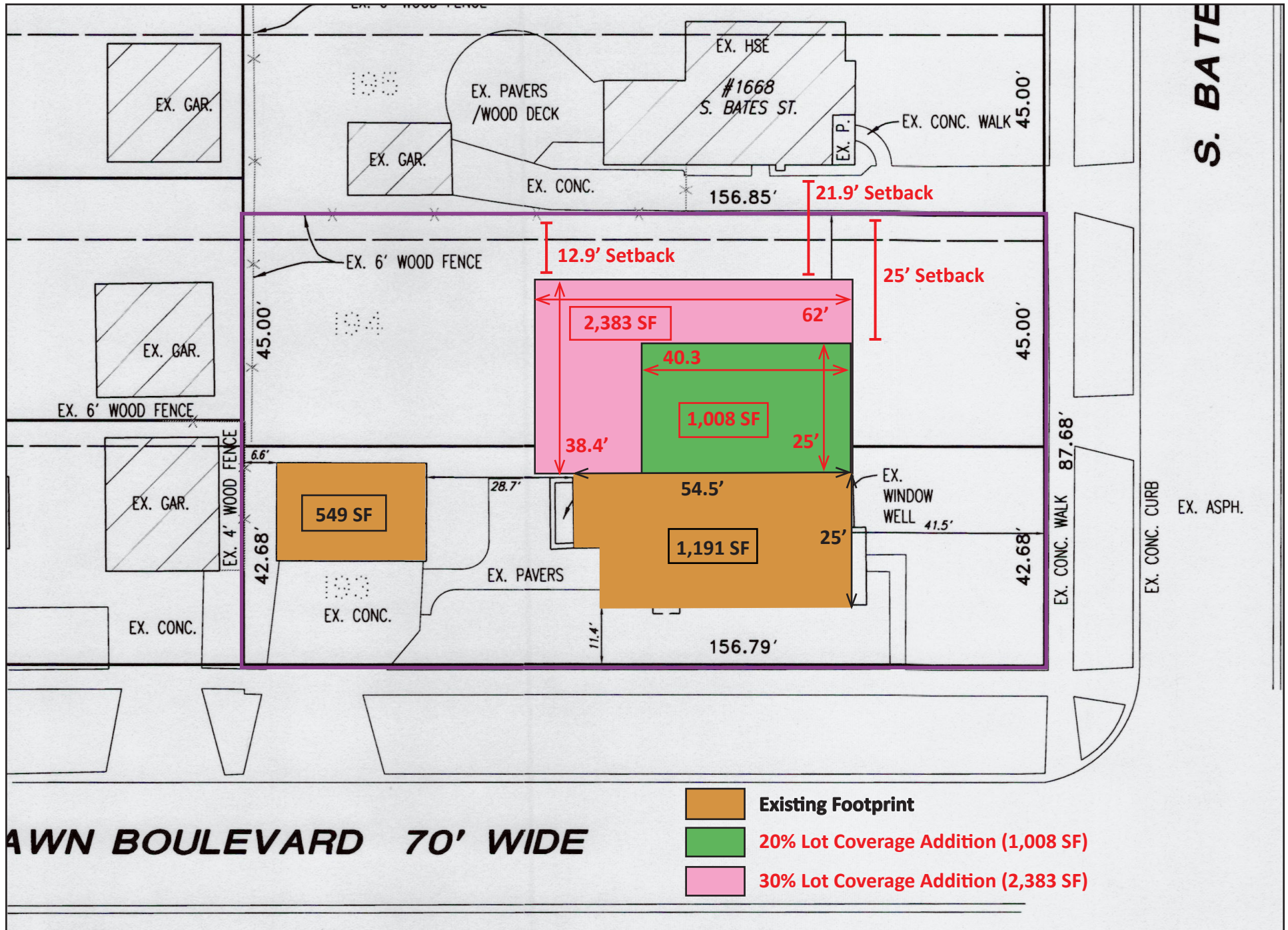


this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Harry Pearce and Katherine Pearce, Applicants.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_, County, MI  
My commission expires: \_\_\_\_\_

Drafted by and when recorded return to:  
Timothy J. Currier, Esq.  
Beier Howlett, P.C.  
3001 W. Big Beaver Rd., Ste. #200  
Troy, MI 48084  
(248) 645-9400

# Scenario 1: Lot Combination Approved





**1668 S. BATES ST.**

**EXISTING STRUCTURES AND FEATURES:**

- EX. GAR. (Multiple)
- EX. PAVERS / WOOD DECK
- EX. HSE
- EX. CONC.
- EX. CONC. WALK
- EX. P.
- EX. 6' WOOD FENCE
- EX. 4' WOOD FENCE
- EX. WINDOW WELL
- EX. ASPH.
- EX. CONC. CURB

**POTENTIAL NEW CONSTRUCTION FOOTPRINTS:**

- 550 SF (Blue rectangle)
- 549 SF (Orange rectangle)
- 1,191 SF (Orange rectangle)
- 1,567 SF (Blue rectangle)

**LOT DIMENSIONS:**

- Top Lot: 156.85' (width), 45.00' (depth)
- Middle Lot: 156.82' (width), 45.00' (depth)
- Bottom Lot: 156.79' (width), 42.68' (depth)

**SETBACKS AND DISTANCES:**

- 14' (between top and middle lots)
- 9' (between middle and bottom lots)
- 5' (between middle and bottom lots, side)
- 6.6' (between middle and bottom lots, side)
- 28.7' (between middle and bottom lots, side)
- 11.4' (between middle and bottom lots, side)
- 41.5' (between middle and bottom lots, side)
- 87.68' (between middle and bottom lots, side)

**ADJACENT STREETS:**

- S. BATES ST.** (top)
- LAWN BOULEVARD 70' WIDE** (bottom)

**LEGEND:**

- Existing Footprint (Orange)
- Potential Footprint of New Construction (Blue)

**AWN BOULEVARD 70' WIDE**

January 23, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates Lot Combination Application

To whom it may concern:

My name is Katherine Pearce and I live at 1698 S. Bates with my husband Harry and our two young sons. We have lived in our home for 12 years and intend to stay here for many decades more. Harry's family has lived in the area since the 1980's and my family has been in the metro Detroit area since the 1800's. My grandmother was raised at a farmhouse on 12 Mile & Telegraph back in the 1940's when that area still had a Birmingham mailing address. We love Michigan, we love Detroit, and we especially love Birmingham. Our children are in Kindergarten and 4<sup>th</sup> Grade in Birmingham Public Schools, at Pierce and Covington. I am the PTA Treasurer at Birmingham Covington School, the Chairman of Cub Scout Pack 1007 at Pierce, and founder of the neighborhood playgroup GoPlay!-Birmingham, which has hosted over 30 outdoor playground meet-ups at City of Birmingham parks since 2018. Harry and I share a common goal of providing the best childhood possible to our sons, and we intend to do that here in Birmingham.

We recently purchased the rental property directly north of us, at 1680 S. Bates. We respectfully request approval from the City to combine 1680 and 1698 S. Bates into one lot, for the purpose of improving the property by providing an outdoor patio space with a gas fireplace, a sports court, a concrete pad and post for our hot tub, and a safe usable yard for our growing sons to play sports. The combination of these two lots will allow our family to continue to enjoy our home and outdoor space for many years to come.

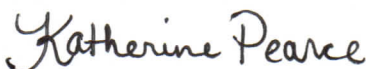
Upon approval of this application, we will work closely with the Community Development department to ensure our plans meet all required standards. We will submit for the necessary permits so that our family can begin using the improved property as soon as possible.

Please find attached:

- Presentation detailing our proposal
- 20 letters of support from neighbors
- Landscaping plans
- 6 short traffic videos
- Application forms
- Proof of ownership and tax information
- Registered surveys
- Additional supporting documents

In conclusion, we hope our proposal is found to be reasonable and acceptable. Thank you kindly for your time reviewing these materials and also for serving our beautiful City.

Sincerely,



Katherine Pearce





## Combination of Platted Lots Application

### Planning Division

*Form will not be processed until it is completely filled out.*

#### 1. Applicant

Name: Katherine Pearce  
Address: 1698 S. Bates St.  
Phone Number: 248-444-9146  
Fax Number:  
Email address: katherine\_alice@yahoo.com

#### 2. Property Owner

Name: Harry & Katherine Pearce  
Address: 1698 S. Bates St., Birmingham, MI 48009  
Phone Number: 248-444-9146  
Fax Number:  
Email address: katherine\_alice@yahoo.com

#### 3. Applicant's Attorney/Contact Person

Name: As above  
Address:  
Phone Number:  
Fax Number:  
Email address:

#### 4. Project Designer/Developer

Name: As above  
Address:  
Phone Number:  
Fax Number:  
Email address:

#### 5. Project Information

Address/Location of Property: 1680 and 1698 S. Bates  
Sidwell #:  
Parcel #: 1680: 19-36-331-038 and 1698: 19-36-331-039  
Current Zoning:

Legal Description: 1680: T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2 FT  
1698: T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS SUB LOT 193 EXC E 2 FT

#### 6. Required Attachments

- I. Two (2) copies of a *registered* land survey showing:
  - i. All existing and proposed platted lot lines;
  - ii. Legal descriptions of proposed lots;
  - iii. Locations of existing/surrounding structures for at least 500 ft. in all directions;
  - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked;
- II. One (1) digital copy of plans;
- III. Proof of ownership;
- IV. Written statement of reasons for request;
- V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;
- VI. Sketches of proposed development (*optional*);
- VII. Other data having a direct bearing on the request.
- VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

#### 7. Details of the Proposed Development (attach separate sheet if necessary)

We respectfully request approval from the City to combine 1680 and 1698 S. Bates into one lot, maintaining the R-2 zoning designation, for the purpose of improving the property by providing an outdoor patio space with gas fireplace, a sports court for basketball, a concrete pad and post for our existing hot tub, and a safe usable yard for our growing sons to play sports.

The combination of these two lots will allow our family to continue to enjoy our home and outdoor living space for many years to come. Please see attached.

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan.  
(I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

*By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*

Signature of Property Owner: Katherine Pearce Date: 1/23/2020

Print Name: Katherine Pearce

Signature of Applicant: Katherine Pearce Date: 1/23/2020

Print Name: Katherine Pearce

*Office Use Only*

Application#: _____	Date Received: _____	Fee: _____
Date of Approval: _____	Date of Denial: _____	Reviewed By: _____





## Notice Sign Rental Application Community Development

### 1. Applicant

Name: Katherine Pearce  
Address: 1698 S. Bates St., Birmingham, MI 48009  
Phone Number: 248-444-9146  
Fax Number:  
Email address: katherine\_alice@yahoo.com

### 2. Property Owner

Name: Harry and Katherine Pearce  
Address: 1698 S. Bates St., Birmingham, MI 48009  
Phone Number: 248-444-9146  
Fax Number:  
Email address: katherine\_alice@yahoo.com

### 3. Project Information

Address/Location of Property: 1680 & 1698 S. Bates  
Name of Development: Lot Combination  
Area in Acres: 0.16 acres & 0.155 acres

Name of Historic District, if any: N/A  
Current Use: Residential  
Current Zoning: R2

### 4. Date of Board/Commission Review

City Commission:  
Planning Board:  
Historic District Commission:  
Design Review Board:

Board of Zoning Appeals:  
Board of Building Trades Appeals:  
Housing Board of Appeals:  
Other:

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: Katherine Pearce Date: 1/23/2020

#### Office Use Only

Application#: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_  
Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Reviewed By: \_\_\_\_\_

CLINE COUNTY TREASURERS CERTIFICATE  
 HEREBY CERTIFY that there are no TAX LIENS or TITLES  
 held by the state or any individual against the within description  
 and all TAXES on same are paid for five years previous to the  
 date of this instrument as appears by the records in the office  
 except as stated.

NOV 27 2007

1.00 DE PATRICK M. DOHANY, County Treasurer  
 Sec. 125, Act 208, 1893 as amended

247467  
 LIBER 39795 PAGE 156  
 \$10.00 DEED - COMBINED  
 \$4.00 REMONUMENTATION  
 \$2,365.00 TRANSFER TX COMBINED  
 11/29/2007 10:15:25 A.M. RECEIPT# 120408

PAID RECORDED - OAKLAND COUNTY  
 RUTH JOHNSON, CLERK/REGISTER OF DEEDS

010829

## Warranty Deed

Know all men by these presents that Randall P. Cline, Trustee of THE RANDALL P. CLINE TRUST, under  
 Agreement dated May 25, 2001  
 Whose Street Number and Post Office Address is 572 W. Lincoln, Birmingham, MI 48009

Warrants and conveys to Harry M. Pearce and Katherine K. Pearce, husband and wife  
 Whose street Number and Post Office address is

Land in the City of Birmingham, Oakland County, Michigan, described as:

Lot 193, EXCEPT the Easterly 2.00 feet of THE RESUB OF LOTS 1 THROUGH 84, INCLUSIVE AND  
LOTS 104 THROUGH 149, INCLUSIVE OF BIRMINGHAM-LINCOLN LOTS SUBDIVISION, as  
 recorded in Liber 37, Page 5 of Plats, Oakland County Records.

Commonly known as: 1694 S. Bates, Birmingham, MI 48009

For the sum of Two Hundred Seventy Five Thousand and 00/100 Dollars, (\$275,000.00) being the full consideration;  
 subject to the existing building and use restrictions, easements, encroachments and zoning ordinances, if any.

Dated: 11/09/07

Signed and Sealed:

THE RANDALL P. CLINE TRUST, under Agreement dated May 25, 2001

*[Signature]*  
 Randall P. Cline, Trustee

STATE OF MICHIGAN )  
 COUNTY OF OAKLAND )SS.

On this 9th day of November, 2007 before me personally appeared Randall P. Cline, Trustee of THE RANDALL P.  
 CLINE TRUST, under Agreement dated May 25, 2001, to me known to be the person(s) described in and who  
 executed the foregoing instrument and acknowledged that (s)he/they executed the same as his/her/their free act and deed.

*[Signature]*  
 Susan L. Fisher

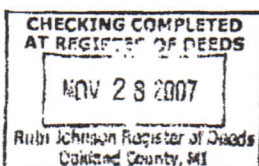
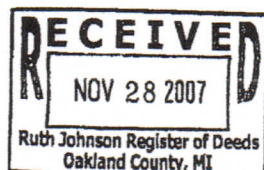
Susan L. Fisher, Notary Public Oakland County Michigan  
 Acting in Oakland County  
 My Commission Expires: 02/08/13

Prepared by: Randall P. Cline  
 572 W. Lincoln, Birmingham, MI 48009

STATE OF MICHIGAN REAL ESTATE  
 TRANSFER TAX  
 OAKLAND \$302.50 CO  
 11/29/2007 \$2,062.50 ST  
 120408 492719

Tax I.D. No.: 19-36-331-039  
 Recording Fee: \$15.00  
 Transfer Tax: County: \$302.50  
 State: \$2,062.50

File No. FA07110960



Return to and Send Tax Bills to:  
 Harry M. Pearce, 1694 S. Bates, Birmingham,  
 MI 48009 3039 Camden Dr.  
 Troy, MI 48064  
 R.P.C. HMP  
 KKP

O.K. - LG



RECEIVED

L-4260

# Property Transfer Affidavit

This form is issued under authority of P.A. 415 of 1994. Filing is mandatory.

This form must be filed whenever real estate or some types of personal property are transferred (even if you are not recording a deed). **The completed Affidavit must be filed by the new owner with the assessor for the city or township where the property is located within 45 days of the transfer.** The information on this form is NOT CONFIDENTIAL.

1. Street Address of Property 1680 S. Bates St., Birmingham, MI 48009	2. County Oakland	3. Date of Transfer (or land contract signed) January 10, 2020
4. Location of Real Estate (Check appropriate field and enter name in the space below.) <input type="checkbox"/> City <input type="checkbox"/> Township <input type="checkbox"/> Village City of Birmingham	5. Purchase Price of Real Estate 350,000.00	
7. Property Identification Number (PIN). If you don't have a PIN, attach legal description. <b>PIN.</b> This number ranges from 10 to 25 digits. It usually includes hyphens and sometimes includes letters. It is on the property tax bill and on the assessment notice. 19-36-331-038	6. Seller's (Transferor) Name Harvard Dreams, LLC	
	8. Buyer's (Transferee) Name and Mailing Address Harry Pearce and Katherine Pearce 1698 S Bates St., Birmingham, MI 48009	
9. Buyer's (Transferee) Telephone Number		

Items 10 - 15 are optional. However, by completing them you may avoid further correspondence.

10. Type of Transfer. <b>Transfers</b> include, but are not limited to, deeds, land contracts, transfers involving trusts or wills, certain long-term leases and business interest. See page 2 for list. <input type="checkbox"/> Land Contract <input type="checkbox"/> Lease <input checked="" type="checkbox"/> Deed <input type="checkbox"/> Other (specify) _____		
11. Was property purchased from a financial institution? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	12. Is the transfer between related persons? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	13. Amount of Down Payment
14. If you financed the purchase, did you pay market rate of interest? <input type="checkbox"/> Yes <input type="checkbox"/> No	15. Amount Financed (Borrowed)	

## EXEMPTIONS

Certain types of transfers are exempt from uncapping. If you believe this transfer is exempt, indicate below the type of exemption you are claiming. If you claim an exemption, your assessor may request more information to support your claim.

- ☐ Transfer from one spouse to the other spouse
- ☐ Change in ownership solely to exclude or include a spouse
- ☐ Transfer between certain family members \*(see page 2)
- ☐ Transfer of that portion of a property subject to a life lease or life estate (until the life lease or life estate expires)
- ☐ Transfer between certain family members of that portion of a property after the expiration or termination of a life estate or life lease retained by transferor \*\* (see page 2)
- ☐ Transfer to effect the foreclosure or forfeiture of real property
- ☐ Transfer by redemption from a tax sale
- ☐ Transfer into a trust where the settlor or the settlor's spouse conveys property to the trust and is also the sole beneficiary of the trust
- ☐ Transfer resulting from a court order unless the order specifies a monetary payment
- ☐ Transfer creating or ending a joint tenancy if at least one person is an original owner of the property (or his/her spouse)
- ☐ Transfer to establish or release a security interest (collateral)
- ☐ Transfer of real estate through normal public trading of stock
- ☐ Transfer between entities under common control or among members of an affiliated group
- ☐ Transfer resulting from transactions that qualify as a tax-free reorganization under Section 368 of the Internal Revenue Code.
- ☐ Transfer of qualified agricultural property when the property remains qualified agricultural property and affidavit has been filed.
- ☐ Transfer of qualified forest property when the property remains qualified forest property and affidavit has been filed.
- ☐ Transfer of land with qualified conservation easement (land only - not improvements)
- ☐ Other, specify: \_\_\_\_\_

## CERTIFICATION

I certify that the information above is true and complete to the best of my knowledge.

Printed Name Katherine Pearce		
Signature Katherine Pearce		Date 01/10/2020
Name and title, if signer is other than the owner	Daytime Phone Number 248-444-9146	E-mail Address

## CITY OF BIRMINGHAM

TAX CERTIFICATION  
TAX SUMMARY FOR CALENDAR YEAR 2019

School: 63010

Property #: 08-19-36-331-039

## SITE ADDRESS:

1698 S BATES ST

PEARCE, HARRY M  
1698 S BATES ST  
BIRMINGHAM MI 48009-1983CITY OF BIRMINGHAM  
151 MARTIN STREET  
P.O. BOX 3001  
BIRMINGHAM, MI 48012-3001SEV 418,660  
AV 418,660  
TAXV 275,890Mortgage Company of Record:  
NONEProp Type : RESIDENTIAL IMPROVED  
PRE/MBT %: 100

## Summer Tax Bill

=====

MILLS	TAX TYPE	TAX AMOUNT
4.04000	COUNTY OPERATING	1,114.59
0.19340	OIS ALLOCATED	53.35
3.06050	OIS VOTED	844.36
1.53030	OCC VOTED	422.19
6.00000	STATE EDUCATION	1,655.34
8.79110	SCHOOL OPERATING	0.00
3.80000	SCHOOL DEBT	1,048.38
0.59740	SCHOOL SUPPLEMNT	992.48
0.12060	CITY OPERATING	3,068.06
0.78030	REFUSE	215.27
1.37140	LIBRARY	378.35
1.08610	CITY DEBT	299.64
8.79110	SCHOOL OPER FC	0.00

## Winter Tax Bill

=====

MILLS	TAX TYPE	TAX AMOUNT
0.23290	COUNTY PK & REC	64.25
0.21170	HCMA	58.40
0.99270	OCPTA	273.87
9.20890	SCHOOL OPERATING	0.00
3.57870	SCHOOL SUPPLEMNT	987.32
0.09730	ZOO AUTHORITY	26.84
9.20890	SCHOOL OPER FC	0.00
0.19290	ART INSTITUTE	53.21

TOTAL TAXES	10,092.01
ADMIN FEE	0.00
INTEREST	0.00
TOTAL BILL	10,092.01

## SUMMER

TOTAL PAID:	10,092.01
DATE PAID :	07/10/2019

TOTAL TAXES	1,463.89
ADMIN FEE	0.00
INTEREST	0.00
TOTAL BILL	1,463.89

## WINTER

TOTAL PAID:	1,463.89
DATE PAID :	01/07/2020

## DESCRIPTION

T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS  
SUB LOT 193 EXC E 2 FT

Date Prepared: 01/13/2020

## CITY OF BIRMINGHAM

TAX CERTIFICATION  
TAX SUMMARY FOR CALENDAR YEAR 2019

School: 63010

Property #: 08-19-36-331-038

SITE ADDRESS:  
1680 S BATES STHARVARD DREAMS LLC  
667 HANNA  
BIRMINGHAM MI 48009CITY OF BIRMINGHAM  
151 MARTIN STREET  
P.O. BOX 3001  
BIRMINGHAM, MI 48012-3001SEV 170,780  
AV 170,780  
TAXV 100,510Mortgage Company of Record:  
NONEProp Type : RESIDENTIAL IMPROVED  
PRE/MBT %: 0

## Summer Tax Bill

MILLS	TAX TYPE	TAX AMOUNT
4.04000	COUNTY OPERATING	406.06
0.19340	OIS ALLOCATED	19.43
3.06050	OIS VOTED	307.61
1.53030	OCC VOTED	153.81
6.00000	STATE EDUCATION	603.06
8.79110	SCHOOL OPERATING	883.59
3.80000	SCHOOL DEBT	381.93
3.59740	SCHOOL SUPPLEMNT	0.00
.12060	CITY OPERATING	1,117.73
0.78030	REFUSE	78.42
1.37140	LIBRARY	137.83
1.08610	CITY DEBT	109.16
8.79110	SCHOOL OPER FC	0.00

## Winter Tax Bill

MILLS	TAX TYPE	TAX AMOUNT
0.23290	COUNTY PK & REC	23.40
0.21170	HCMA	21.27
0.99270	OCPTA	99.77
9.20890	SCHOOL OPERATING	925.58
3.57870	SCHOOL SUPPLEMNT	0.00
0.09730	ZOO AUTHORITY	9.77
9.20890	SCHOOL OPER FC	0.00
0.19290	ART INSTITUTE	19.38

TOTAL TAXES	4,198.63
ADMIN FEE	0.00
INTEREST	0.00
TOTAL BILL	4,198.63

SUMMER	
TOTAL PAID:	4,198.63
DATE PAID :	07/05/2019

TOTAL TAXES	1,099.17
ADMIN. FEE	0.00
INTEREST	0.00
TOTAL BILL	1,099.17

WINTER	
TOTAL PAID:	1,099.17
DATE PAID :	12/06/2019

## DESCRIPTION

T2N, R10E, SEC 36 RESUB OF BIRMINGHAM-LINCOLN LOTS  
SUB LOT 194 EXC E 2 FT & S 5 FT OF LOT 195 EXC E 2  
FT

Date Prepared: 01/13/2020

# Lot Combination 1680 & 1698 S. Bates

Prepared by Katherine Pearce

January 2020

## Summary

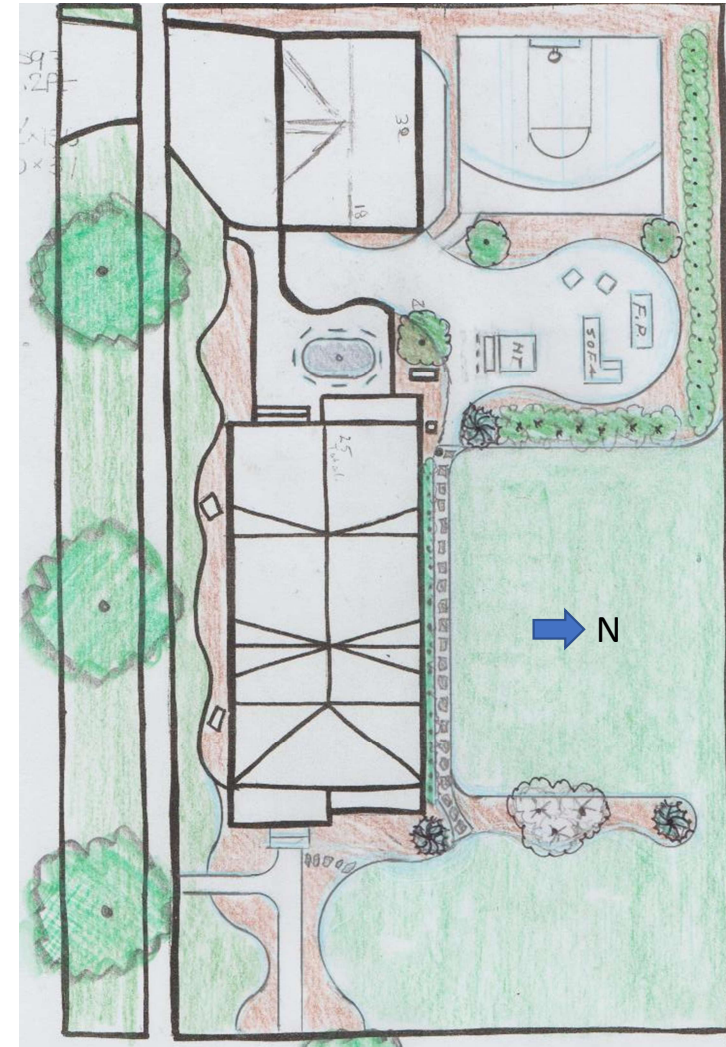
- We seek to combine our lots to enable the addition of a patio with fireplace, small sports court, and hot tub pad and post. These are accessory structures which cannot be built on a separate vacant lot.
- The combined lot will give our young children a safer and larger place to play.
- We will further address the area's flooding issue by re-grading.
- We would match the double lot directly across from us on Bates.
- Corner lots in our neighborhood are often larger than interior lots.
  - 25 nearby corner lots are wider than the interior lots on the same block.
    - Including the house across Bates and many along Southlawn.
  - City code supports larger corner lots.
- We meet the width criterion.
- We meet all other criteria except the 2x area criterion, which we exceed by 9.8% because the calculation includes smaller lots on the east side of Bates, which are in a different subdivision.
  - The main difference between the lots on the west side of Bates and the east side is lot depth. This difference is not noticeable when a person walks by or drives down our street and it does not affect the character of the neighborhood.
  - All homeowners on the west side of Bates would have a hardship trying to meet this criterion.
  - This lot depth hardship exists on at least 12 other streets throughout the city.
- We have over 20 letters of support from neighbors, including all adjacent neighbors.
- ***Thank you kindly*** for reviewing our proposal.



# Our Plan

Combine our lot with our newly acquired lot to the north to provide a safe place for our children and their friends to play sports with a family-friendly outdoor patio dining area. The plan includes:

- Keep our existing home at 1698 S. Bates as is
- Take down the recently purchased rental property at 1680 S. Bates
- In the rear yard of 1680 S. Bates, install:
  - A stone patio for dining table and sofa
  - A gas fireplace to gather around
  - Concrete pad and electric shut-off post for our existing hot tub
  - A small sports court with concrete foundation and basketball post with backboard
  - Regrade lot to fix flooding problem; may require drainage system
- Add sprinklers and new sod to 1680 to create an area to play catch/soccer
- Plant attractive natural landscaping that maintains the welcoming and open feel in our neighborhood, while discreetly shielding the patio
- Maintain open visibility in the front yard by setting back the landscaping





## Why Combine Lots?

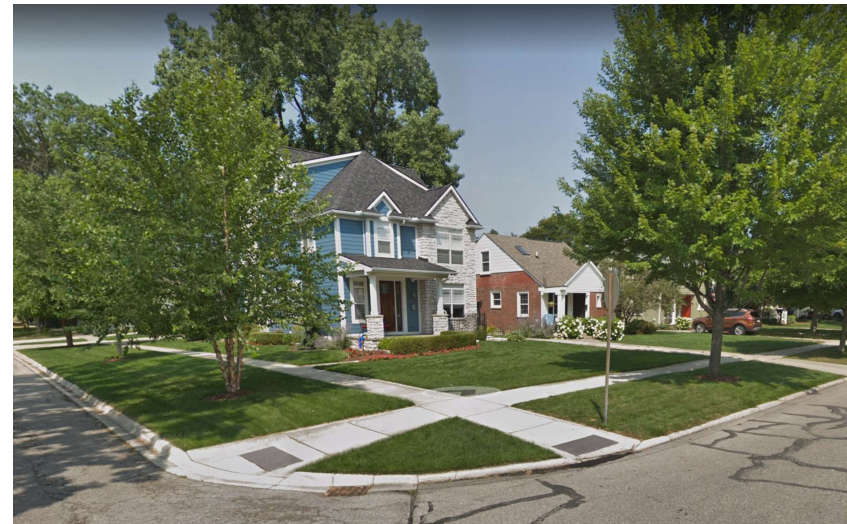
Longstanding Zoning Ordinance 2.07 C (j) prevents us from carrying out plan on an uncombined Lot

- The patio, sports court, basketball post, hot tub electrical post and concrete foundation, and gas fireplace are all **Accessory Structures**. Since a vacant lot has no Primary Building, per code, it can't have any Accessory Structures.
- One purpose of this ordinance is to prevent a vacant lot with accessories from being purchased by a non-Birmingham resident who intends to use the lot only for it's amenities without living there.
- This ordinance is not unique to Birmingham. For example, Beverly Hills, Bloomfield Twp, Franklin, and City of Rochester all have the same rule.
- Guidance from the Birmingham Building Official is that getting a variance to install accessory structures on a vacant lot would be extremely unlikely and our best path is to pursue lot combination.

**See Appendix A for full explanation of ordinance and guidance from Birmingham Building Official, Mr. Bruce Johnson.**

## 1698 S. Bates

- We built our 2,750 ft<sup>2</sup> home in 2008, with builder Thomas Sebold & Associates (TSA) and required no variances. Our 26% lot coverage is well below the 30% maximum. (Appendix B). We could have built a 4,000 ft<sup>2</sup> house on this lot, but chose not to.
- We changed the garage design to remove the proposed 2<sup>nd</sup> floor room to maintain charm.
- We have a 12ft side setback along Southlawn. The minimum required side setback for a corner is 10ft.
- Our landscape is open and welcoming to allow high visibility at the corner.
- We have invested approximately \$1M into our home at 1698 S. Bates and plan to live here for many, many years.
- Our boys have attended Birmingham Public Schools since pre-school and are now in Kindergarten and 4<sup>th</sup> grade at Pierce and Covington.



## 1680 S. Bates

- The house has seen minimal improvements over its 75 year history and is viewed as unsightly by neighbors, as noted in their letters of support.
- The basement leaks extensively in rains.
- The house has been a rental for 15 years and, as a non-owner occupied property, suffers from deferred maintenance.
- The backyard routinely floods.
- There have been a variety of tenants renting out the house in the 12 years we've lived here. None have ever had children attending BPS schools.
- Letters from neighbors support our plan to improve the property.



*A rental for 15 years, the house has not been maintained in a manner consistent with the neighborhood.*



*The garage is covered with mold.*



*There are large cracks in the foundation and extensive leaking in the basement.*

## Combined Lot Criteria

- Our home is newer and fits well with the character of the neighborhood.
- Our combined width of 87.68 ft would be less than twice the average width of 90.33 ft and thus meet the criteria.
- Our combined area of 13,750 ft<sup>2</sup> would be more than twice the average area of 12,515 ft<sup>2</sup> and thus exceeds the criterion by 9.8%.
  - Our 2 lots are of average size for our subdivision, Birmingham Lincoln Lots (Appendix C-1). The issue is that Bates St. is on the edge of the subdivision and across the street from us is a different subdivision, Brightlawn, where there are some smaller lots (Appendix C-2). If average sized lots for our subdivision (Lincoln Lots) were used in the calculation, we would meet the criterion.
  - The main difference between the lots on the west side of Bates and the east side is lot depth. This difference in lot depth is not noticeable when a person walks by or drives down the street and does not affect the character of the neighborhood.
  - All homeowners on the west side of Bates would have a hardship trying to meet this criterion.
  - This lot depth hardship exists on at least 12 other streets. On these streets, lot width is consistent, but depth varies: Henrietta, Floyd, Fairfax, Clark, Cole, Lincoln, Knox, Rivenoak, Mohegan, Derby, Haynes, and Hanna (Appendix D).



## We Want a Safer Yard for our Boys to Play

- We kept our front yard open to provide a play area, but it is too dangerous to play there.
- Our intersection has a 4-way stop, but drivers routinely disregard the stop signs. We often observe them driving through the intersection at speed. See below the 6 recent example videos from our surveillance system.
- This is a safety concern for our children as we have a narrow yard and they are constantly chasing balls into the street.

*Grey SUV & Orange Pick-up disregard stop sign.*



*White SUV disregards stop sign on Bates.*



*Black Jeep disregards stop sign on Southlawn.*



*White SUV disregards stop sign on Bates.*



*Black SUV disregards stop sign on Southlawn.*



*Sedan disregards stop sign on Southlawn.*



## We Want to Further Address the Flooding Issue

- Our block drains from north to south. We are at the south end of the block.
- As noted in letters of support, neighbors to our north and west also experience flooding problems.
- The back yard of 1680 S. Bates experiences flooding after rain and snow melt.
- This excess water from 1680 S. Bates has caused cracks in our driveway at 1698 S. Bates.
- We've spent \$2000 on a drainage system but 1680 still floods. Our landscaper says it needs to be re-graded to permanently resolve.
- We will coordinate with our neighbors to the north and west when we re-grade 1680 to give multiple homeowners the opportunity to benefit.



*1680 S. Bates routinely floods*



## Our Combined Lot Would Match the Double Lot Directly Across Bates

Combined Lot

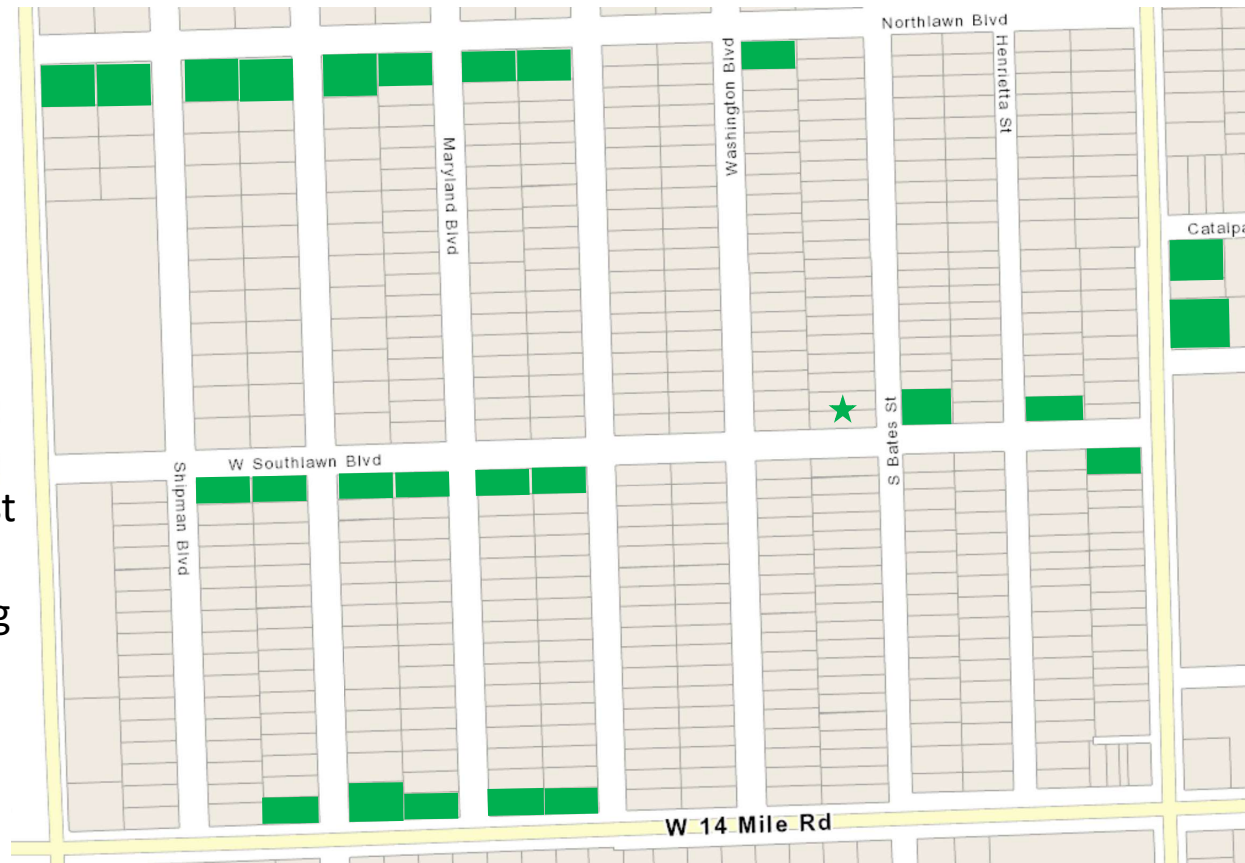


1695 S Bates



## Corner Lots are Often Larger

- There are 25 corner lots in our part of the neighborhood that are significantly wider than standard interior lots on the same block (Appendix E)
  - Including the 81.3 ft wide double lot across from us on Bates.
  - Including many lots along Southlawn.
- City code supports larger corner lots. *Sec 102-31 states, "Corner lots in residential areas shall be platted a minimum of at least ten feet wider than interior lots."*
- At 42.68 ft, 1698 S. Bates is not only among the narrowest corner lots in the overall neighborhood, it is the narrowest of all 77 single family residential lots on the west side of Bates from 14 Mile to Maple.
  - *Source: Oakland County Property Gateway 7.2*



### Legend

- Nearby corner lots that are significantly larger than interior lots on the same block



## We Have 20+ Letters of Support from Neighbors, Including All Adjacent

**Immediately adjacent neighbor comments:**

“...we live directly across the street and will certainly benefit from having a beautiful landscape to look at...”

"I welcome the opportunity to live next to green space..."

"We support the Pearce's request and believe the proposed use is consistent with the neighborhood..."

"My wife and I are both in support of the Pearce family plans."

“Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor fireplace feature is reasonable and should be approved...”

**Nearby neighbor comments:**

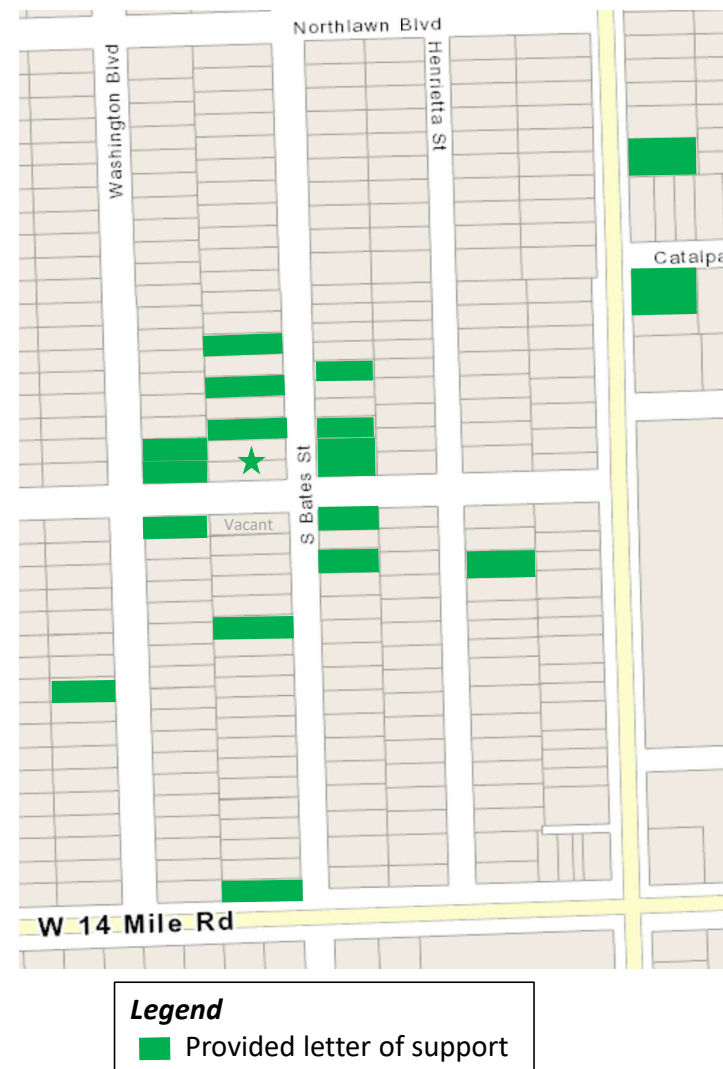
"Southlawn is not overly safe given that although there is a stop sign at Bates, there is only a yield at Washington and Southlawn...Katie and Harry take such pride in their home and property, beautifully maintaining the house itself as well as having immaculate landscaping. I am confident that anything they are allowed to do to the 1680 property will only elevate the beauty and charm of the neighborhood."

"I think it would be a great addition to the neighbors."

“...would be a great asset to our community and provide a safe oasis for their children to play.”

"I was delighted to hear the boys would have a safer space to enjoy."

“...will be a wonderful addition to the neighborhood! ... We have nothing but excitement and enthusiasm for this project.”



## Bruce Johnson - Birmingham Building Official

---

From: Katie Kennedy (katherine\_alice@yahoo.com)

To: katherine\_alice@yahoo.com

Date: Sunday, January 12, 2020, 08:59 AM EST

---

**From:** Bruce Johnson <bjohnson@bhamgov.org>

**To:** Katie Kennedy <katherine\_alice@yahoo.com>

**Sent:** Friday, January 3, 2020, 05:39:18 PM EST

**Subject:** Re: Fw: Lot Combination 1680/1698 S. Bates

Hi Katie,

It was a pleasure meeting you this morning and discussing your project. I really appreciate how well versed you are in the City regulations regarding your situation. Below I will summarize our conversation about your project and answer the questions you asked in your email below.

You are in the process of purchasing the property to the north of yours with the intention of demolishing the existing house to utilize that lot as your own space. You would like to extend your existing patio onto the vacant lot, add a free standing gas fireplace, install a sports court and move your existing hot tub over to the vacant lot. Staff informed you that all of the above items are accessory structures per the Zoning Ordinance, and that accessory buildings or structures are not permitted on a lot without a principal building (house). I confirmed that these items are structures per the definition in the Zoning Ordinance. And I confirm that they are considered accessory structures that are permitted accessory uses per Article 2 Section 2.07(C)(J) of the ordinance. Finally, an accessory use would not be permitted on a property without a principal use already established. The provisions of the Zoning Ordinance including Section 2.07(C)(J) pertaining to permitted and accessory uses have been in place for several decades.

During our meeting we discussed the possibility of you seeking variances from the Board of Zoning Appeals to allow accessory structures and uses on the lot without a principal use. These would be a use variances that are rarely granted because establishing a hardship is extremely difficult. And the BZA would most likely require that you seek a lot combination first to exhaust all your remedies prior to making a ruling. I would like to clarify that the BZA only rules on the established regulations, it cannot change the ordinance. Only the City Commission can change the provisions of the Zoning Ordinance after public hearings conducted by the Planning Board.

We also discussed the application for a lot combination that you are preparing to submit to the City Commission as suggested by Brooks Cowan. I agree this is the first step you need to take in pursuing approval for your project. You have done excellent research into the City Code and Zoning Ordinance and I'm sure your application will be complete with all the necessary details. Please let me know if you have any more questions or need further assistance.

Best regards,

Bruce

---

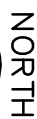
Bruce R. Johnson, B.C.O. |Building Official | 248.530.1842 (office) | 248.530.1292 (fax)  
*Get the latest news from the City of Birmingham delivered to your inbox.*

Visit <http://bhamgov.org/bhamnews> to sign up.

198.8/5 = 39.75  
PROPOSED FRONT SETBACK = 40.0'

- |     |                |
|-----|----------------|
| 02  | SETBACK DETAIL |
| G-1 | SCALE: N.T.S.  |

**1 inch = 20 ft.**



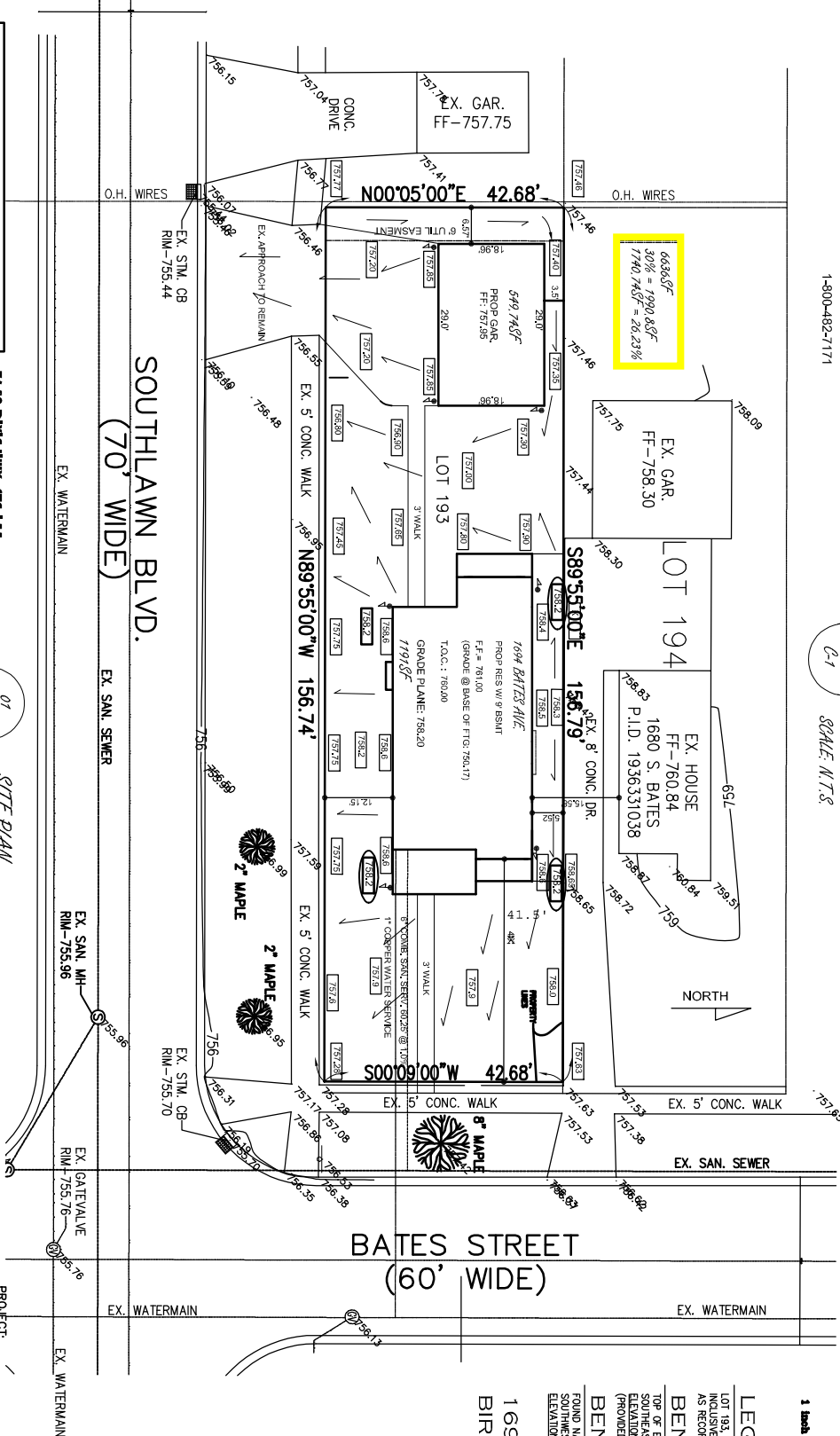
LOT 193, EXCEPT THE EASTERLY 2.00 FEET OF THE RE-SUBDIVISION OF LOTS 1 TO 84 INCLUSIVE AND LOT 104 TO 149 INCLUSIVE, OF BIRMINGHAM-LINCOLN LOTS SUBDIVISION, AS RECORDED IN LIBER 37, PAGE 5 OF PLATS, OAKLAND COUNTY RECORDS.

**BENCHMARK NO. 1**

TOP OF ELEVATION REEFERANCE MARKER LOCATED IN THE SIDEWALK AT THE  
SOUTHEAST CORNER OF LINCOLN STREET & PIERCE STREET  
ELEVATION-767.34 U.S.G.S. DATUM  
(PROVIDED BY CITY OF BIRMINGHAM ENGINEERING DEPARTMENT)

FOUND NAIL IN NORTHEAST FACE OF UTILITY POLE LOCATED AT THE  
SOUTHWEST CORNER OF BATES STREET AND SOUTHLAWN BLVD.  
ELEVATION-757.34 U.S.G.S. DATUM

PROJECT NUMBER:  
/1694



# APPENDIX C-1. Lincoln Lots Subdivision - Average Lot Size Calculation

For all 203 lots in Lincoln Lots Subdivision

Source: Oakland County Property Gateway v 7.2 (<https://gis.oakgov.com/PropertyGateway/Home.mvc>)

**The average lot size of the 203 lots in Lincoln Lots Subdivision is 6627sqft. Our survey shows that our 2 lots are right around average, at 6692.4sqft and 7057.6sqft.**

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)	Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)	Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)	
1	West side of Bates - 14 Mile to Southlawn	45	159	7155	65	East side of Washington - Northlawn to Southlawn	67.3	130	8749	132	East side of Stanley and West side of Washington - Northlawn to Southlawn	50	130	6500	
2		45		7155	66		50		6500	133		50		6500	
3		44		6996	67		50		6500	134		50		6500	
4		43		6837	68		50		6500	135		50		6500	
5		43		6837	69		50		6500	136		50		6500	
6		43		6837	70		50		6500	137		50		6500	
7		43		6837	71		48		6240	138		50		6500	
8		43		6837	72		48		6240	139		50		6500	
9		43		6837	73		47		6110	140		50		6500	
10		43		6837	74		47		6110	141		50		6500	
11		43		6837	75		47		6110	142		50		6500	
12		43		6837	76		47		6110	143		50		6500	
13		43		6837	77		47		6110	144		50		6500	
14		43		6837	78		47		6110	145		50		6500	
15		43		6837	79		47		6110	146		50		6500	
16		43		6837	80		46		5980	147		50		6500	
17		43		6837	81		46		5980	148		50		6500	
18		43		6837	82		46		5980	149		50		6500	
19		43		6837	83		46		5980	150		50		6500	
20	West side of Bates - Southlawn to Northlawn	50	160	8000	84	East side of Washington - 14 Mile to Southlawn	45	130	5850	151	East side of Stanley and West side of Washington - Northlawn to Southlawn	50	130	6500	
21		48		7680	85		45		5850	152		50		6500	
22		48		7680	86		45		5850	153		50		6500	
23		48		7680	87		45		5850	154		50		6500	
24		47		7520	88		45		5850	155		50		6500	
25		48		7632	89		45		5850	156		47		6110	
26		48		7632	90		45		5850	157		47		6110	
27		48		7632	91		45		5850	158		47		6110	
28		48		7632	92		45		5850	159		47		6110	
29		48		7632	93		46		5980	160		47		6110	
30		43		6837	94		46		5980	161		47		6110	
31		45		7065	95		46		5980	162		47		6110	
32		45		7065	96		46		5980	163		47		6110	
33		45		7065	97		46		5980	164		47		6110	
34		45		7065	98		46		5980	165		47		6110	
35		45		7065	99		46		5980	166		47		6110	
36		45		7065	100		46		5980	167		47		6110	
37		45		7065	101		46		5980	168		47		6110	
38		45		7065	102		East side of Stanley and West side of Washington - Lincoln to Northlawn		47	130		6110		169	East side of Stanley and West side of Washington - Southlawn to 14 Mile
39	43	157	6751	103	47	6110		170	50		6500				
40	W Bates - Northlawn to Lincoln	55	160	8800	104	47		6110	171		50	6500			
41		55		8800	105	47		6110	172		50	6500			
42		55		8800	106	47		6110	173		50	6500			
43		55		8800	107	47		6110	174		50	6500			
44		50		8000	108	47		6110	175		50	6500			
45		50		8000	109	47		6110	176		50	6500			
46		50		8000	110	47		6110	177		50	6500			
47		50		8000	111	47		6110	178		50	6500			
48		50		8000	112	47		6110	179		50	6500			
49		50		8000	113	47		6110	180		50	6500			
50		50		8000	114	47		6110	181		50	6500			
51		80		129	10320	115		47	6110		182	50	6500		
52		80		129	10320	116		47	6110		183	50	6500		
53		East side of Washington - Lincoln to Northlawn		60	130	7800		117	46		5980	184	50	6500	
54	60		7800	118		46		5980	185		50	6500			
55	60		7800	119		46		5980	186		50	6500			
56	64		8320	120		46		5980	187		50	6500			
57	65		8450	121		46		5980	188		50	6500			
58	65		8450	122		46		5980	189		50	6500			
59	65		8450	123		46		5980	190		50	6500			
60	65		8450	124		46		5980	191		50	6500			
61	50		6500	125		46		5980	192		46	5980			
62	50		6500	126		46		5980	193		46	5980			
63	48		6240	127		46		5980	194		46	5980			
64	48		6240	128		46		5980	195		46	5980			
					129	46		5980	196		46	5980			
					130	47.35		6155.5	197		46	5980			
					131	48		6240	198		46	5980			
								199	46	5980					
								200	46	5980					
								201	46	5980					
								202	46	5980					
								203	46	5980					
Avg. Area of a lot in Lincoln Lots (sqft)								6627							

***The proposed lot meets the area criterion if we use the average lot size for Lincoln Lots Subdivision***

**Modified Area Calculation**

Address	Width(ft)	Depth(ft)	Area(sqft)
1786 S. Bates	43	158.00	6815
1776 S. Bates	43	158.00	6817
1754 S. Bates	43	158.00	6819
1740 S. Bates	43	159.00	6820
1726 S. Bates	43	159.00	6822
1708 S. Bates	44.5	158.00	7062
1668 S. Bates	45	157.00	7059
1646 S. Bates	45	157.00	7060
1622 S. Bates	45	157.00	7061
1610 S. Bates	45	157.00	7063
1590 S. Bates	45	157.00	7064
1570 S. Bates	45	157.00	7065
1562 S. Bates	45	157.00	7066
1695 S. Bates	81.3	120.00	9778
1763 S. Bates	Replace the area of these smaller Brightlawn lots with the average area of a Lincoln Lots lot.		6627
1751 S. Bates			6627
1737 S. Bates			6627
1721 S. Bates			6627
1717 S. Bates			6627
1675 S. Bates			6627
1657 S. Bates			6627
1635 S. Bates			6627
1619 S. Bates			6627
1607 S. Bates			6627
1587 S. Bates			6627
1561 S. Bates			6627
Avg. Lot Area (sqft):			6919.0
2x Avg. Lot Area (sqft):			13838.1
Proposed Lot (sqft):			13750.0

## Appendix C-2: Brightlawn Subdivision - Average Lot Size Calculation

For all 89 lots in Brightlawn Subdivision

Source: Oakland County Property Gateway v 7.2 (<https://gis.oakgov.com/PropertyGateway/Home.mvc>)

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)
1	East side of Bates - North of Southlawn (1/2 block)	40	120	4800
2		40		4800
3		40		4800
4		40		4800
5		40		4800
6		40		4800
7		40		4800
8		44.5		5340
9		81.3		9756
10	East side of Bates - Southlawn to 14 Mile (1/2 block)	44	120	5280
11		40		4800
12		50		6000
13		50		6000
14		50		6000
15		50		6000
16		50		6000
17		50		6000
18		50		6000
19		50		6000
20		50		6000
21		50		6000
22		55		6600
23		55		6600
24		55		6600
25		55		6600
26	West side of Henrietta - North of Southlawn	40	120	4800
27		40		4800
28		40		4800
29		40		4800
30		40		4800
31		50		6000
32		50		6000
33		50		6000
34	West side of Henrietta - Southlawn to 14 Mile	56.3	120	6756
35		42.65		5118
36		50		6000
37		50		6000
38		50		6000
39		50		6000
40		50		6000
41		50		6000
42		50		6000
43		50		6000
44		50		6000
45		50		6000
46		50		6000
47		50		6000
48		50		6000
49		55		6600
50		55		6600

Lot#	Street	Width (ft)	Depth (ft)	Area (sqft)
51	East side of Henrietta - North of Southlawn (1/2 block)	50	130	6500
52		50		6500
53		50		6500
54		50		6500
55		57		7410
56	West side of Pierce - North of Southlawn (1/2 block)	60	130	7800
57		54		7020
58		53		6890
59		53		6890
60		37		4810
61	East side of Henrietta - Southlawn to 14 Mile	42.5	140	5950
62		47		6580
63		57		7980
64		50		7000
65		40		5600
66		40		5600
67		40		5600
68		60		8400
69		60		8400
70		50		7000
71		50		7000
72		50		7000
73		50		7000
74		50		7000
75		55		7700
76		55		7700
77	West side of Pierce - Southlawn to 14 Mile	61	130	7930
78		40		5200
79		40		5200
80		60		7800
81		40		5200
82		40		5200
83		60		7800
84		40		5200
85		40		5200
86		60		7800
87		40		5200
88		40		5200
89		40		5200

Avg. Area of a lot in Brightlawn (sqft)

6143

Note: As shown in gray, there are just a handful of 4800sqft lots in the Brightlawn subdivision, and 7 of them are included in our area calculation.

Note: The strip of land running between Henrietta and Bates is narrow, resulting in 120ft deep lots, which is uncharacteristic for the overall neighborhood. Only 3 out of 24 blocks in the 1/2 mile area have 120ft lots.

Appendix D: Example streets, or portions of streets, where standard lot width is consistent but depth varies from one side to the other.

Every lot on the deeper side of these streets would have a hardship trying to meet the 2x area criterion.

Street	Approx. Standard Lot depth (ft) (side A)	Approx. Standard Lot depth (ft) (side B)
Bates (14 to Lincoln)	120	157
Henrietta (14 to Lincoln)	120	131
Floyd	100	123
Fairfax (Pine to Oak)	150	160-212
Clark	126	135
Cole (Eton to Torry)	120	164
Lincoln (Taunton to Eton)	139	150
Knox	120	160
Rivenoak	130	140
Mohegan (Poppleton to Adams)	140	165
Derby (Coolidge to Eton)	127	150
Haynes (Eton to Columbia)	115	145
Hanna (Southfield to Watkins)	127	144

APPENDIX E:

**25 EXAMPLES OF WIDER CORNER LOTS in our part of the neighborhood - From 14 to Northlawn, Southfield to Pierce**

***Table comparing Corner Lot Width to Width of Standard Interior Lots on the Same Block***

*Source: Oakland County Property Gateway Version 7.2*

Address	Corner Lot Width (ft)	Interior Lot Widths (ft) for Same Block	How much wider is the corner lot?
1569 Pierce	120	50	140%
1407 Southfield Rd.	100	75	33%
1404 Shipman Blvd.	100	75	33%
1403 Shipman Blvd.	100	75	33%
1414 Birmingham Blvd.	100	75	33%
1415 Birmingham Blvd.	100	75	33%
1515 Pierce	93	50	86%
1991 Birmingham Blvd.	90.93	50	82%
1695 S Bates	81.3	No standard. 44% 40ft lots 50% 50ft lots, 6% 70ft lot. Weighted average 46.8ft	74%
1411 Maryland	75	50	50%
1414 Maryland	75	50	50%
1412 Stanley	75	50	50%
1405 Washington	67	50	34%
1990 Birmingham Blvd.	62.24	50	24%
1710 Pierce	61	Mixed. 75% 40ft lots, 25% 60ft lots. Weighted average 45ft.	36%
1990 Maryland	60.78	50	22%
1991 Maryland	60.47	50	21%
1720 Birmingham Blvd.	60	50	20%
779 Southlawn (at Shipman)	60	50	20%
1700 Maryland	60	50	20%
1701 Maryland	60	50	20%
1710 Stanley	60	50	20%
1992 Stanley	59.3	50	19%
1723 Birmingham Blvd.	58	50	16%
1699 Henrietta	57	50	14%





# Bedient Construction Inc.

GRADING & EXCAVATING

2573 Leach • Rochester Hills, MI 48309 • Phone: (248) 853-0810 • Fax: (248) 853-6289

**Katie Pearce**  
**1680 S. Bates, Birmingham**  
**December 16th, 2019**

## Description of work

Demo house, garage, front porch, bushes, tree, concrete & haul away debris

Sewer disconnect

**Total**

**\$10,542.00**

\*Sewer & water will be capped at the same day of demolition if needed.

\*A survey by a State of Michigan Asbestos Inspector must be provided to Bedient Construction prior to demolition.

\*Concrete basement walls and standard footings (16" x 42") will be removed. Any footings larger than standard will be an additional cost.

\*Concrete floors and slabs up to 6" will be removed. Any floors thicker than this will be an additional cost.

\*Bedient Construction receives all salvageable materials from the structure listed above from the date of this bid.

\*The owner is responsible for all utility disconnects.

### The above price does not include:

- \*Dewatering, dust control, engineering fees, permits or bonds if necessary.
- \*The removal of any hazardous or contaminated materials in or around the structures.
- \*No tires, shrubs or trees to be removed.
- \*Capping of wells or pumping or removing of septic tanks.
- \*Any materials left in building such as furniture, stove, washer, dryer, etc..

\*Bid valid for 30 days.

Thank you for viewing the bid price we offer for this project. Please sign and fax back to 248-853-6289.  
If you have any questions or concerns please feel free to call me at 248-853-0810.

Sincerely,  
Jeff Bedient

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Terms: Net 30 days; Delays in payment shall be subject to interest charges of 18% per annum. If Bedient Construction is required to engage the service of a collection agency or attorney, the customer agree to reimburse Bedient Construction for any reasonable amounts expended in order to collect any unpaid balance.



+ \$3500 survey  
+ \$200 register  
vacant property  
pending hearing

### FEE SCHEDULE

Application	Fees
Administrative Approval	\$100
Administrative Sign Approval	\$100
Board of Zoning Appeals* <ul style="list-style-type: none"> <li>Single Family Residential</li> <li>All Other Zoning Districts</li> </ul>	\$310 \$510
Community Impact Study Review*	\$2,050
Design Review*	\$350
Division/Combination of Platted Lots	$\$200 \times 2 = \$400$
Historic District Review* <ul style="list-style-type: none"> <li>Single Family Residential</li> <li>All Other Zoning Districts</li> </ul>	No Charge \$350
Public Notice Sign <ul style="list-style-type: none"> <li>Notice Sign Rental</li> <li>Returnable Sign Bond</li> </ul>	\$50 \$100 → \$150 total
Preliminary/Final Site Plan Review <ul style="list-style-type: none"> <li>R4 – R8 Zoning District</li> <li>Nonresidential Districts</li> </ul>	\$850, plus \$50 per dwelling unit \$1,050, plus \$50 per acre or portion of acre
Special Land Use Permit* <ul style="list-style-type: none"> <li>Plus Site Plan Review</li> <li>Plus Design Review</li> <li>Plus Publish of Legal Notice</li> <li>Plus Sign Rental and Deposit</li> </ul>	\$800 \$1,050 \$350 \$450 \$150 → \$2,800 total
Special Land Use Permit Annual Renewal	\$200
Temporary Use Permit	\$100
Zoning Compliance Letter	\$50

**\*The fees for Board of Zoning Appeals, Community Impact Study Review, Design Review, Site Plan Review, Historic District Review and Special Land Use Permits shall be double the listed amounts in the event the work is commenced prior to the filing of an application for review by the City of Birmingham.**

Ordinance No. 1751 (Appendix A, Section 7.38 of the Birmingham City Code)

Total : \$4,150

January 5<sup>th</sup>, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Kelly Frank

Address: 1044 Clark St.

Birmingham, MI  
48009

Signature: Kelly Frank

Date: January 5<sup>th</sup>, 2020

I hope this helps!!! Keep me posted, please!

---

From: Donna Rubin (donnarubin1@me.com)

To: katherine\_alice@yahoo.com

Date: Monday, January 6, 2020, 07:21 AM EST

---

To Whom this may Concern,

I had the good fortune to live behind the Pearce family for over 7 years at 1695 Washington Blvd in Birmingham, before moving to Traverse city last summer. During that time I observed their family grow with two young boys playing in their front yard facing Bates Street. When I heard that they would like to purchase the neighboring home to the north of them for a backyard sport court and outdoor living space I was delighted to know that the boys would have a safer space to enjoy. I was always happy to see them playing ball in their front yard with their parents but worried about the safety next to the very busy intersection at Bates and Southlawn. To be able to utilize the new yard north would also benefit the neighborhood as they plan to finally correct the constant water leak that freezes on the south side of the sidewalk on Southlawn. The Pearce family have lived in their beautiful home for many years, longer than most neighbors, and are always maintaining the yard with beautiful flowers and landscaping...even planting seasonal vegetables with the boys. I feel certain that they would improve the current look of the proposed lot to make the neighborhood more appealing and unobtrusive to the cozy character of Bates Street. I hope the city will consider their creative use of the property that will allow them to continue living and thriving as a family with young children. As a retired 33 year elementary educator I know the importance of outdoor education and physical space. I have seen other neighbors leave our area due to the limited amounts of safe play for their own children and I would feel terrible to deprive the Pearce family of this much needed land. Please accept my recommendation for the Pearce project; my only concern is that I no longer have the privilege of being their neighbor and seeing this positive change come to fruition! Best of luck to them!

Donna Rubin  
967 Lake Ridge Dr. #17  
Traverse City MI 49684  
817-675-8140  
[donnarubin1@me.com](mailto:donnarubin1@me.com)

Sent from my iPhone

Sent from my iPhone



January \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: THAO ANDERSON

Address: 1786 S. BATES

Birmingham, MI  
48009

Signature: 

Date: 1/6/2020, 2020

January \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Jiani Wallace

Address: 1735 Henrietta St. ~~Bates~~ Birmingham formerly lived in  
1675 S Bates streets  
Birmingham, MI  
48009

Signature: Jiani Wallace

Date: 1-6, 2020



January 6, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Elisabeth Banks

Address: 1590 Bates

Birmingham, MI  
48009

Signature: 

Date: Jan 6, 2020

January \_\_\_\_, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Jennifer Champion

Address: 1208 S. Bates St.

Birmingham, MI  
48009

Signature: Jennifer Champion

Date: 1/7/20, 2020

January \_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name:

Rachel Hoomaian

Address:

1469 Pierce St

Birmingham, MI  
48009

Signature:

Rachel S. Hoomaian

Date:

1/7, 2020

January 7, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

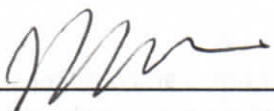
I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Julie Rosenfelder

Address: 1717 S. Bates

Birmingham, MI  
48009

Signature:  - 248.227.8321

Date: 1/7, 2020

January 7, 2020

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Tiffany Glime

Address: 1737 S. Bates St.

Birmingham, MI  
48009

Signature: Tiffany Glime

248-930-5656 cell

Date: Jan. 7<sup>th</sup>, 2020



January \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: MARTINA FATTORINI

Address: 1675 SOUTH BATES ST

Birmingham, MI  
48009

Signature: Martina Fattorini

Date: 01/08, 2020



Ralph & Christine Price

---

1695 S. Bates Street Birmingham MI 48009

January 8, 2020

Mr. Brooks Cowan  
Community Development  
City of Birmingham

Dear Mr. Cowan,

I live at 1695 S. Bates Street, directly across from neighbor Katie Pearce residing at 1698 S. Bates Street. Katie and her husband purchased the home next to theirs at 1680 S. Bates Street and plan to demolish the small bungalow on that property and improve the property by creating an attractive green living space that would expand the Pearce's property to the north.

I have seen the landscape plan and believe this will be a beautiful addition to the neighborhood. We are in full support of the Pearce's plan as we live directly across the street and will certainly benefit by having a beautiful landscape to look at instead of the unsightly small bungalow that is presently on the subject lot.

If you have any questions or require any additional information from me please feel free to contact me at 248-705-2521.

Thank you for your considerations.

Sincerely,

Ralph L. Price

1680 S. Bates

---

From: Andrew Kwietniewski (akwietni@yahoo.com)

To: bcowan@bhamgov.org

Cc: katherine\_alice@yahoo.com

Date: Thursday, January 9, 2020, 08:59 PM EST

---

Hi Brooks,

My name is Drew Kwietniewski. I live at 1679 Washington Blvd. Recently, Katie Pearce stopped by our house and shared her family's plan to demolish the existing home and use that open space to add to their yard. In addition to explaining the details, she provided a diagram of what the plan look like. Everything Katie explained - a safer play space for her children, as well as improving the state of the yard to address flooding issues - seems logical to my wife and me.

My wife and I are both in support of the Pearce family plans.

If anything further is needed from us, please feel free to reach out.

Thanks,

Drew  
586.557.0607

January 10, 2020

Mr. Brooks Cowan  
City Planner  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48009

Cc: Ms. K. Pearce

Re: Lots 1680/1698 S. Bates Combination

Dear Mr. Cowan,

I have reviewed a draft rendering of Harry and Katie Pearce's outdoor living space expansion proposal. It is my understanding the combination of the lots would not be used to expand indoor living or storage (garage) structures. I welcome the opportunity to live next to additional "green" space in area where "big-foot" houses have become the norm.

I have no objection to the Pearce's proposal. Please feel free to contact me if you would like to discuss further.

Respectively,

/s/

Debra O'Hara  
1668 S. Bates St.  
Home: (248) 540-2917

City of Birmingham  
151 Martin St.  
P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

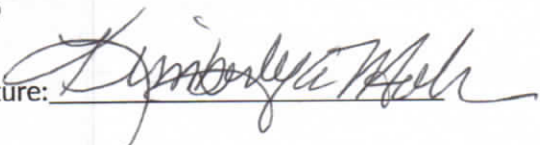

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Martin Frenkel / Kimberly Miller

Address: 1709 Washington Blvd

Birmingham, MI  
48009

Signature:  . 

Date: 1-10-, 2020

1-10-2020

*We support the Pearce's request and believe the proposed use is consistent with the neighborhood.*

1680/1698 s. Bates

---

From: Deborah Holfca (dcoughenour123@att.net)

To: bcowan@bhamgov.org

Date: Tuesday, January 14, 2020, 10:55 AM EST

---

To Whom It May Concern,

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Deborah Holfca and Paul Coughenour  
1695 Washington Boulevard  
Birmingham, MI. 48009

Sent from my iPad

## 1680/1698 S. Bates Lot combination

---

From: Courtney Monigold (courtneymonigold@gmail.com)

To: bcowan@bhamgov.org

Cc: katherine\_alice@yahoo.com

Date: Tuesday, January 14, 2020, 09:07 AM EST

---

Dear Brooks Cowan,

I am writing you on behalf of Katherine Pearce at 1698 S. Bates in Birmingham. She has made me aware of her desire to obtain the property next door to her (1680 S. Bates) to create green space for her children to play.

As a fellow neighbor (I am at 1515 Pierce St), I too, desired to create the same space for my children. We live on a very busy street, and a very busy corner. My children are unable to play in my front yard due to heavy traffic, speeding, and the risk of drivers on cell phones. When we obtained the lot next door (1525 Pierce) to expand our home, it created an oasis for our children for more outdoor play. In addition to that, it allowed us to build more equity in our home, as well as provide improvement to the neighborhood with our full home renovation. The home we took down was a revolving rental home. The home was not only an eye sore, but it often times, attracting sketchy neighbors. When we took the home down, it was full of mold and run down. Any person shopping for new home in the neighborhood would comment on such an eye sore. I can't tell you how many people stop me in my front yard to compliment us on what we've done to the neighborhood.

As a realtor in Birmingham of 10 years (I work at KW Domain), I can tell you that a run down rental home is not exactly an asset to our neighborhood. It creates unease in young families looking to buy in the neighborhood and apprehension for those that would like to park their biggest asset (which is owning a home). I work predominantly in high end new construction and I tell you first hand the first thing clients do is look out the window. And being so close to our neighbors in Birmingham, seeing a run down home next to you creates some pitfalls in resale.

In addition to that, in Birmingham, we are challenged by our smaller lot sizes. Anyone with small children first look at the yards pace. They check for size, but their main concern goes to safety. The Pearce Family's desire to create green space will not only provide them with equity in their property but also would be a great asset to our community and provide a safe oasis for their children to play.

If you have any further questions regarding this matter, please do not hesitate to reach out to me.

Thank you!

Courtney Monigold

--

Best regards,

Courtney Monigold



COURTNEY MONIGOLD

Realtor® | New Construction Consult

248.891.4334 mobile

248.590.0800 office

courtneymonigold@gmail.com

cmonigold.kw.com

**kw** | **DOMAIN**

LUXURY HOMES INTERNATIONAL

210 S. OLD WOODWARD | SUITE 200 | BIRMINGHAM, MI | 48009



January \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name:

Sue Morrison

Address:

1619 S. BATES

Birmingham, MI  
48009

Signature:

[Signature]

Date:

1-19-

2020

January \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name:

Deborah Lail

Address:

1622 Bates

Birmingham, MI

48009

Signature:

Deborah D. Lail

Date:

1-20-, 2020

✓ I think it would be a  
great addition TO the neighbors

1698/1680 South Bates

---

From: carolyn kidney (cmkidney@yahoo.com)

To: bcowan@bhamgov.org

Cc: katherine\_alice@yahoo.com

Date: Friday, January 24, 2020, 12:28 AM EST

---

Dear Mr. Cowan,

I am Katie Pearce's old neighbor. My husband and I lived at 1709 Washington Blvd., kitty corner to the Pearce family home for 14 years, only moving last February to a home in Bloomfield Village to provide a safe, fenced yard for our own two children to play in. I am writing in support of the Pearce family perhaps being able to provide a safe yard for their two children Harry and Colton. I understand that they are purchasing what has been a rental property next door to their current home with the hopes of being able to have a place to put a sports court for their boys to play without continually having to worry about balls rolling out into the road with little boys close behind. Southlawn is not overly safe given that although there is a stop sign at Bates, there is only a yield at Washington and Southlawn. My husband and I had personally always hoped that the rental property beside our old home would one day come up for sale so that we too could have stayed in that lovely neighborhood in Birmingham, while having a safe yard for our kids too.

Unfortunately, we were not so lucky. . I hope that you will see the benefits of giving Katie and Harry the opportunity to create a side yard to their home with the 1680 property thereby allowing them somewhere private to enjoy summer meals on a patio, while being able to relax knowing that their children are safe and protected. Katie and Harry take such pride in their home and property, beautifully maintaining the house itself as well as having immaculate landscaping. I am confident that anything they are allowed to do to the 1680 property will only elevate the beauty and charm of the neighborhood.

Thank you for your time,  
Carolyn Kidney

[Sent from Yahoo Mail for iPhone](#)

## Bates St - Pearce

---

From: Carey Larson (careylarson@gmail.com)

To: bcowan@bhamgov.org

Cc: katherine\_alice@yahoo.com

Date: Friday, January 24, 2020, 07:43 AM EST

---

Good morning Mr. Cowan,

I wanted to take a moment and write you in regards to the Pearce Family plan on Bates Street. We also live on Bates Street and I think that this will be a wonderful addition to the neighborhood! There is no opposition to their plan, in fact, we have nothing but enthusiasm and excitement for this project.

All the best,

Carey and Niles Larson  
1990 S Bates St, Birmingham, MI 48009

January 4, 2020

February \_\_\_\_\_, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

Dear Neighbor,

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: LONG

Address: 1570 S. Bates

Birmingham, MI

48009

Signature: Laurie Long

Date: 2/24/20, 2020

Sincerely,  
Katie Pearce  
248-444-9146

March  
February 5, 2020

City of Birmingham

151 Martin St.

P.O. Box 3001

Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: Shelby Crockett

Address: 1874 SOUTH BATES

Birmingham, MI

48009

Signature: 

Date: March 5, 2020

Sincerely,  
Katie Pearce  
248-444-9148



February \_\_\_\_\_, 2020

City of Birmingham  
151 Martin St.

P.O. Box 3001  
Birmingham, MI 48012

RE: 1680/1698 S. Bates

To Whom It May Concern:

I support the Pearce's plan to combine their properties at 1680 and 1698 S. Bates for the purpose of expanding their outdoor space and providing their children a safe place to play away from the street. Their proposal for improvements to the yard, including patio space, a small sports court, and an outdoor gas fireplace feature is reasonable and should be approved.

Thank you,

Printed Name: John Athanas

Address: 1843 S. Bates st

Birmingham, MI  
48009

Signature: John Athanas

Date: 3/5/20, 2020

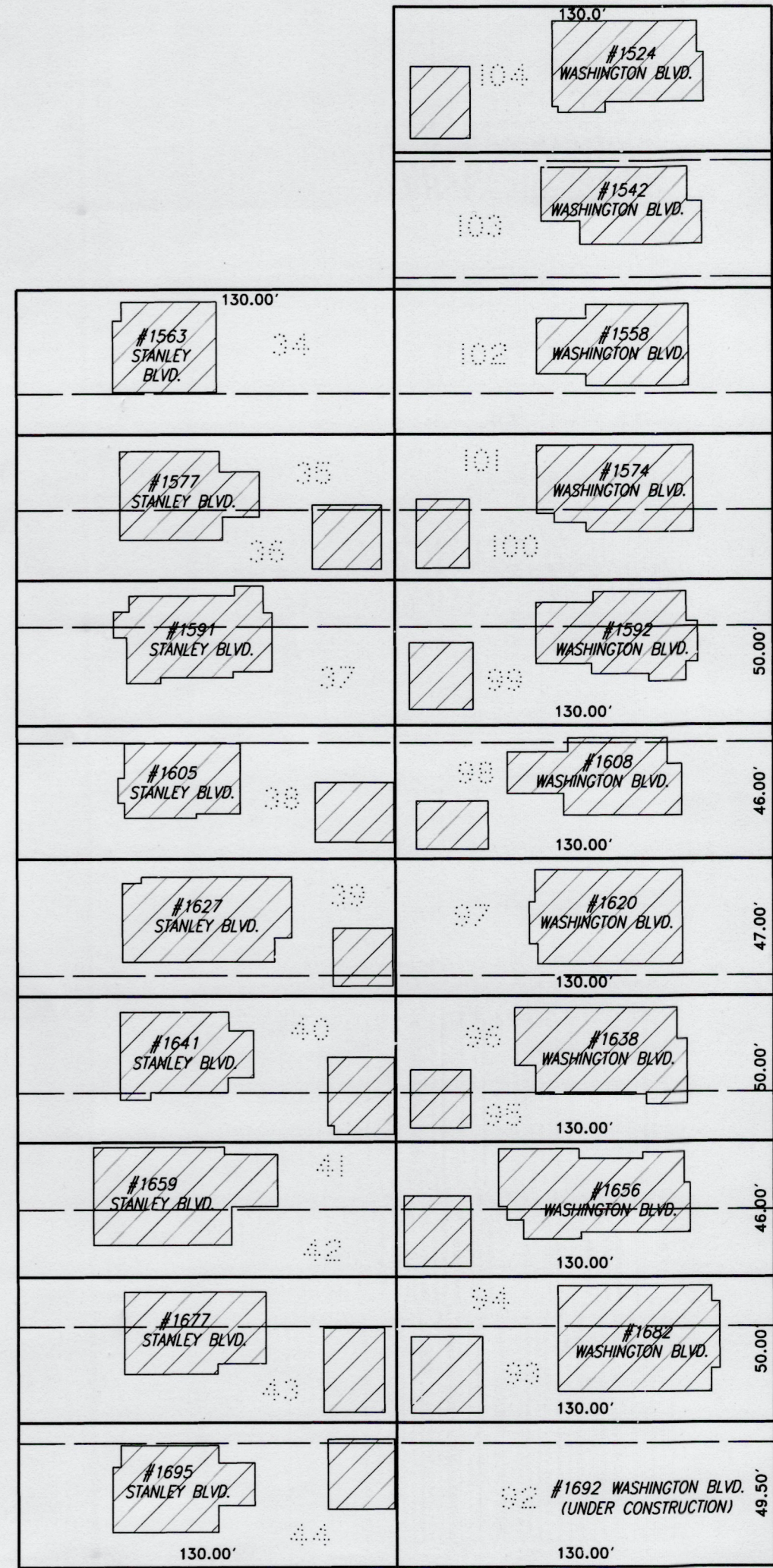
January 4, 2020

Dear Neighbor,

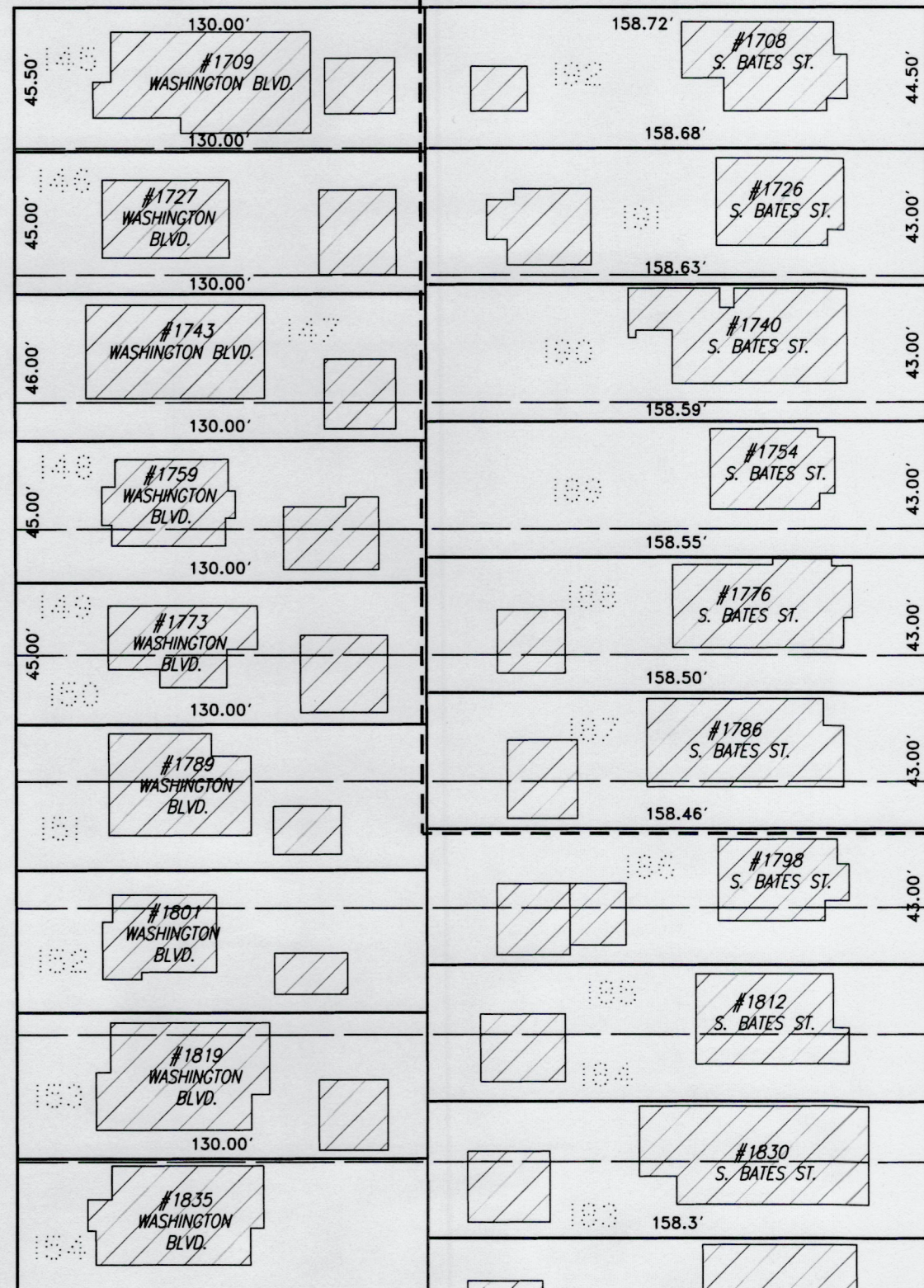
Sincerely,  
Katie Pearce  
248-444-9146



STANLEY BOULEVARD



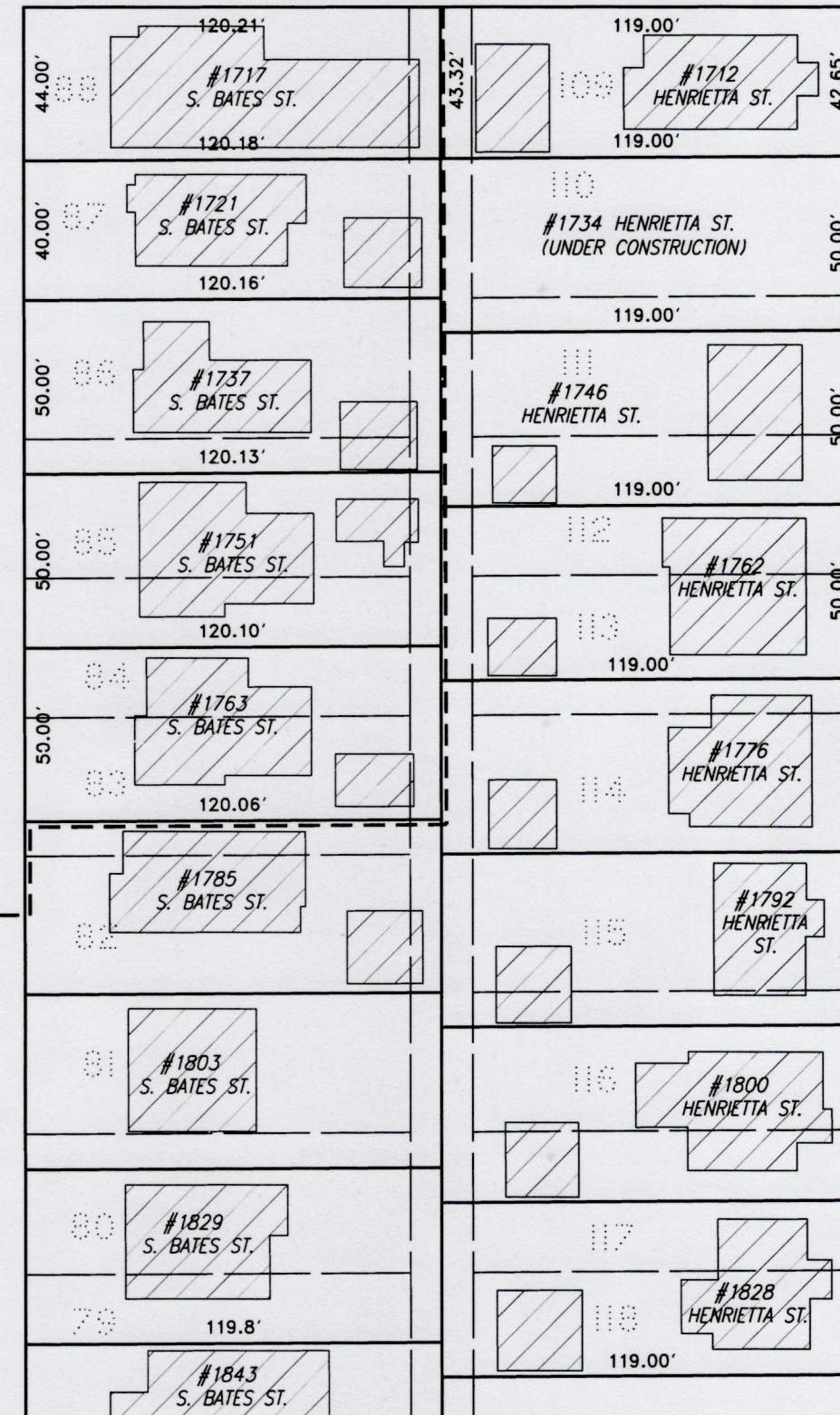
WASHINGTON BOULEVARD 70' WIDE



W. SOUTHLAWN BOULEVARD 70' WIDE

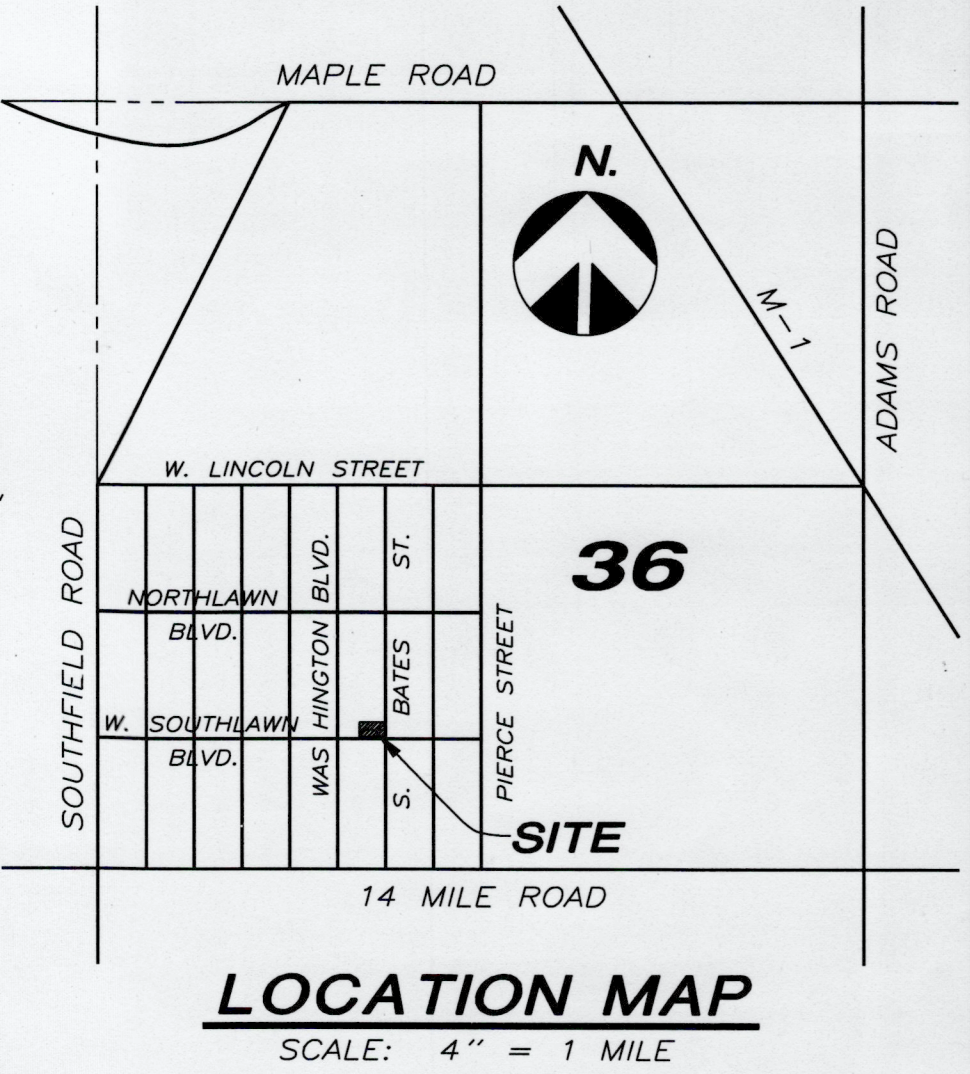
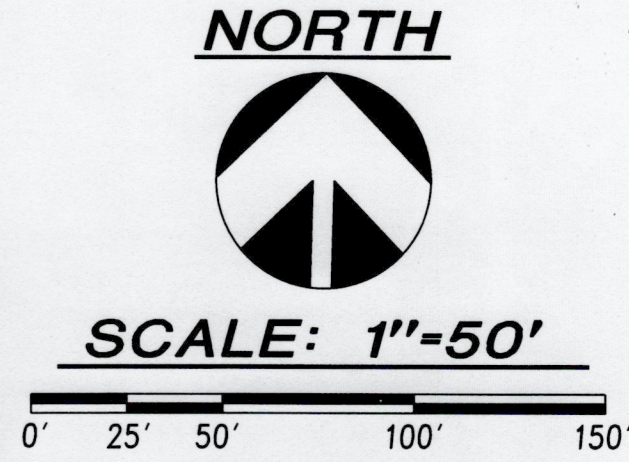
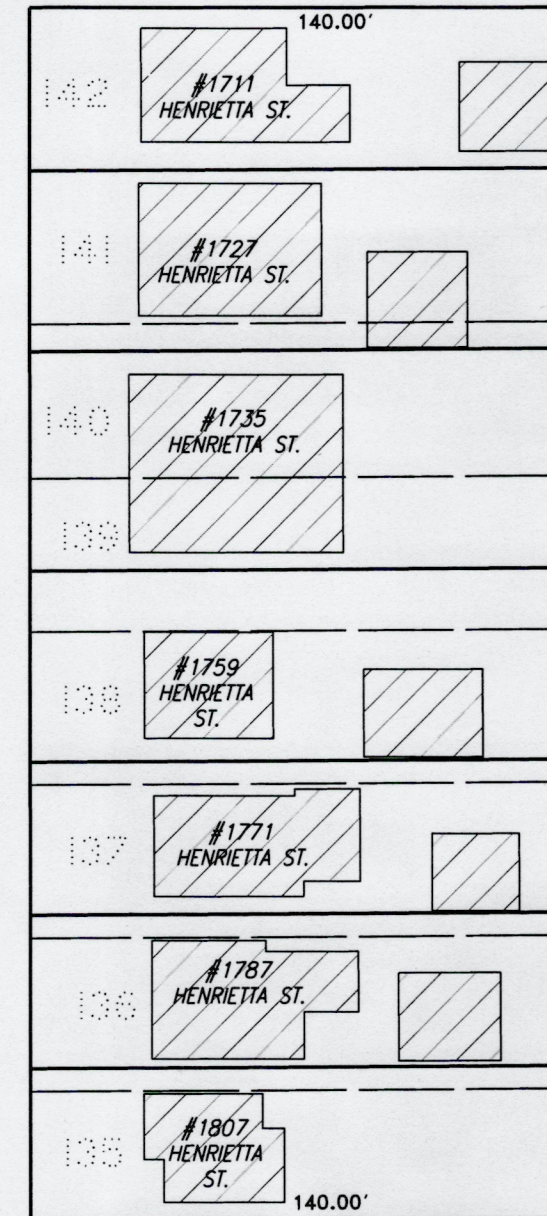
PROPOSED LOT COMBINATION.  
SEE PAGE 2 FOR DETAIL.

S. BATES STREET 60' WIDE



HOUSES WITHIN  
300' OF STREET.  
SEE TABLE FOR  
CALCULATIONS.

HENRIETTA STREET 50' WIDE



### PROPERTY DESCRIPTION

Parcel 19-36-331-038  
Lot 194 and the South five feet of Lot 195 except the East two feet of both lots according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

Parcel 19-36-331-039  
Lot 193 except the East two feet according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

Proposed Combination  
Lots 193, 194 and the South five feet of Lot 195 except the East two feet of each lot according to the plat "Re-Subdivision of Lots 1 to 84 inclusive and 104 to 149 inclusive of Birmingham-Lincoln Lots Subdivision" of part of the East 1/2 of the Southwest 1/4 of Section 36, T.2N., R.10E., Bloomfield Township, Oakland County, Michigan as recorded in the Liber 37, Page 5 of the Oakland County Records.

ADDRESS	WIDTH (FEET)	AREA (S.F.)
1786 BATES	43.0	6,815
1763 BATES	50.0	6,004
1776 BATES	43.0	6,817
1754 BATES	43.0	6,819
1751 BATES	50.0	6,006
1740 BATES	43.0	6,820
1737 BATES	50.0	6,007
1726 BATES	43.0	6,822
1721 BATES	40.0	4,807
1717 BATES	44.0	5,248
1708 BATES	44.5	7,062
1695 BATES	81.3	9,778
1675 BATES	44.5	5,354
1668 BATES	45.0	7,059
1657 BATES	40.0	4,814
1646 BATES	45.0	7,060
1635 BATES	40.0	4,815
1622 BATES	45.0	7,061
1619 BATES	40.0	4,816
1610 BATES	45.0	7,063
1607 BATES	40.0	4,817
1590 BATES	45.0	7,064
1587 BATES	40.0	4,818
1570 BATES	45.0	7,065
1562 BATES	45.0	7,066
1561 BATES	40.0	4,818
AVG.	45.17	6,257.5
2 X AVG.	90.33	12,515
PROPOSED LOT	87.68	13,750

OVERALL NEIGHBORHOOD  
PART OF THE S.W. 1/4 OF SECTION 36  
T.2N., R.10E., CITY OF BIRMINGHAM  
OAKLAND COUNTY, MICHIGAN

BY: \_\_\_\_\_  
DATE: \_\_\_\_\_  
ADDITIONS AND/OR REVISIONS: \_\_\_\_\_

191209-10185  
JOB NO.  
Date 1-22-2020  
Scale 1"=50'  
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Check W.C.A.  
Sheet 1 of 2  
Fid. Bk.

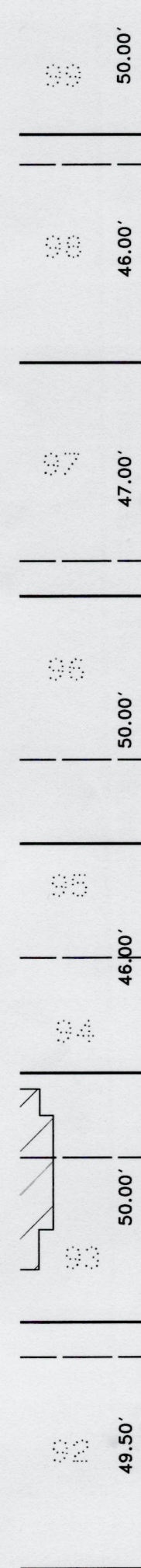
PROPOSED LOT COMBINATION  
FOR: KATHERINE PEARCE  
1698 S. BATES STREET  
BIRMINGHAM, MI 48009  
(248) 444-9146

Warren J. Veley  
PROFESSIONAL SURVEYOR  
No. 30076  
STATE OF MICHIGAN

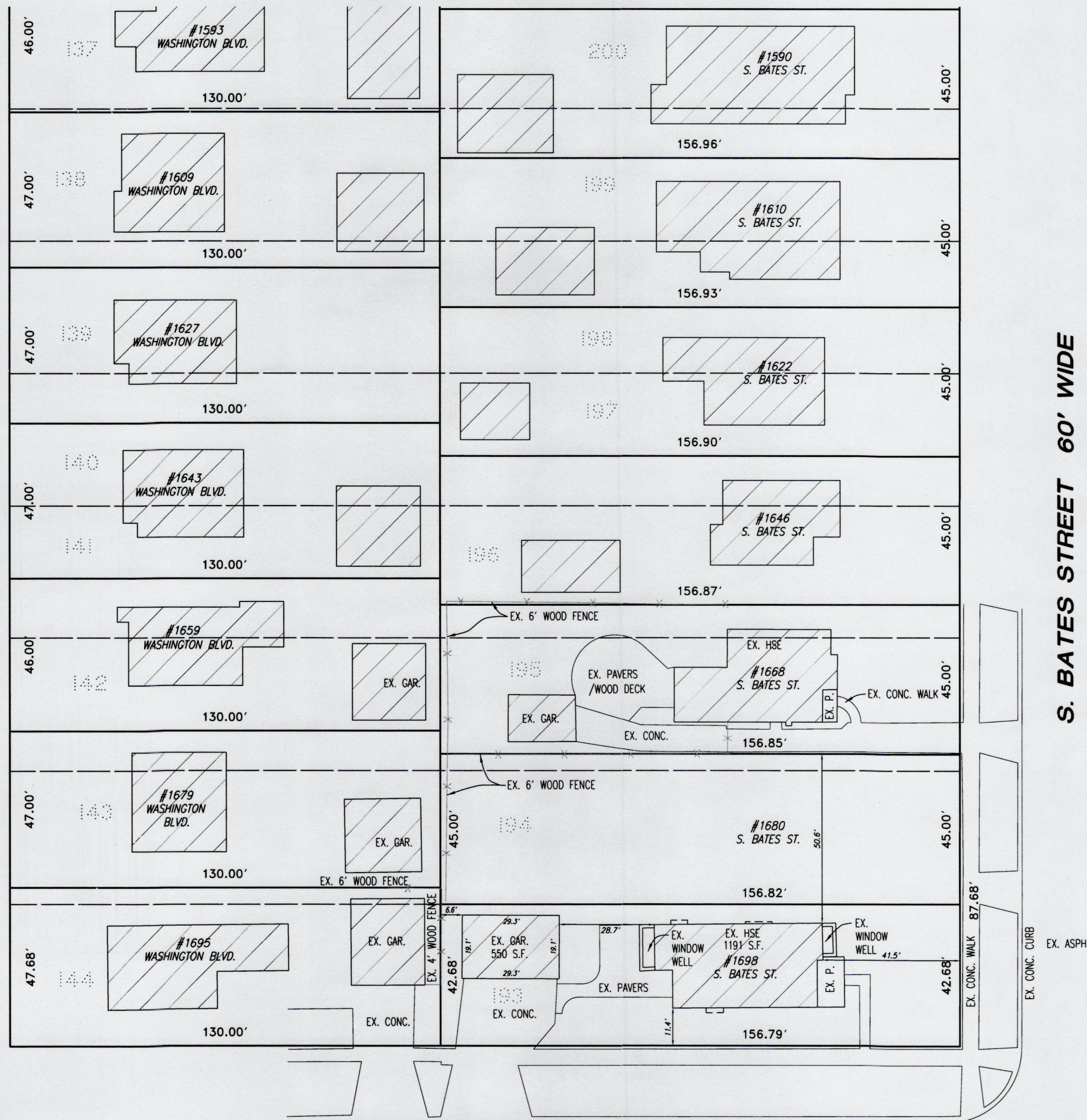
PHONE 586 731-8030  
FAX 586 731-2605  
URBAN LAND CONSULTANTS  
CIVIL ENGINEERS PLANNERS LAND SURVEYORS  
8800 23 MILE ROAD SHELBY TWP., MI 48316-4516



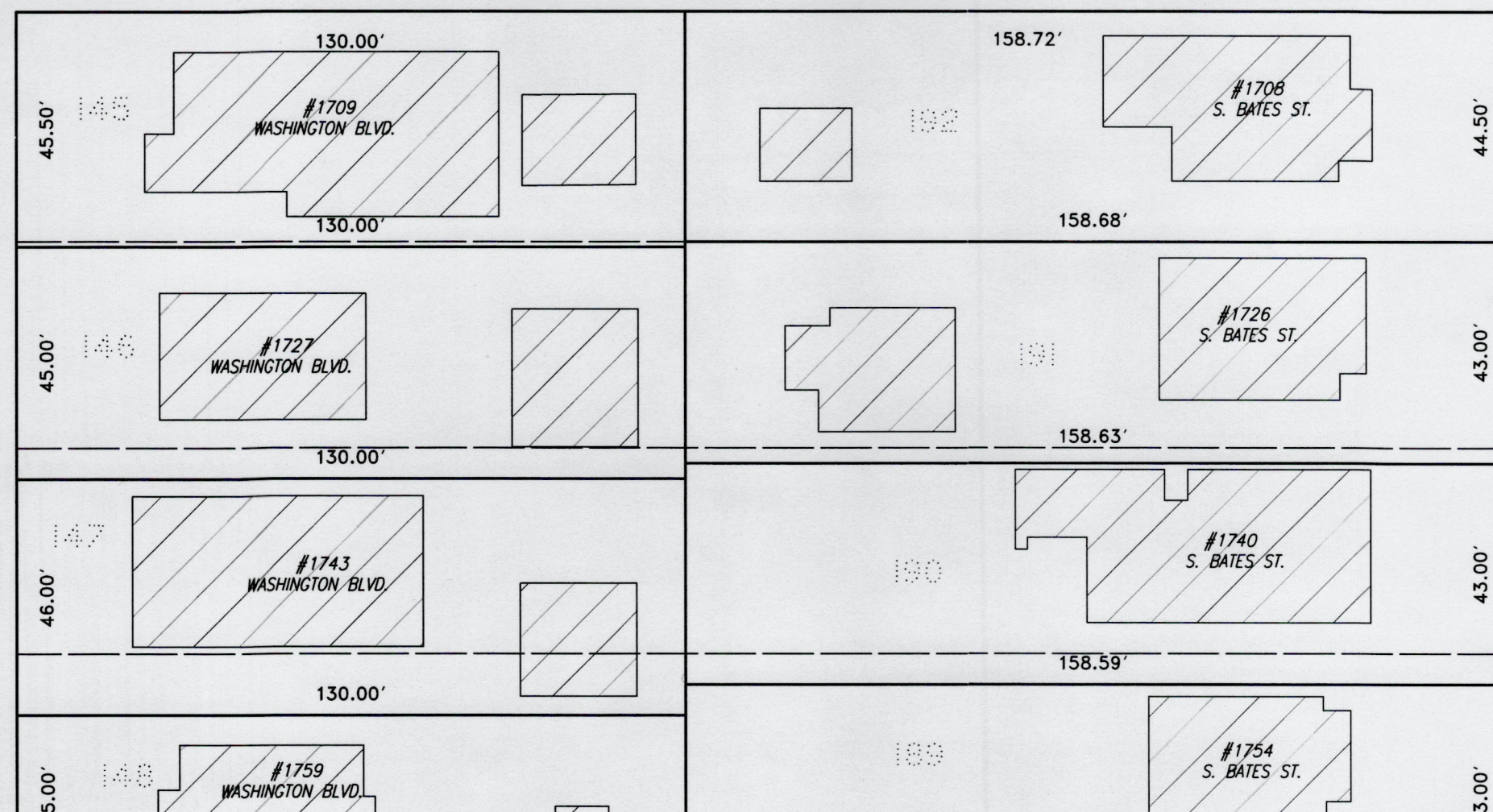
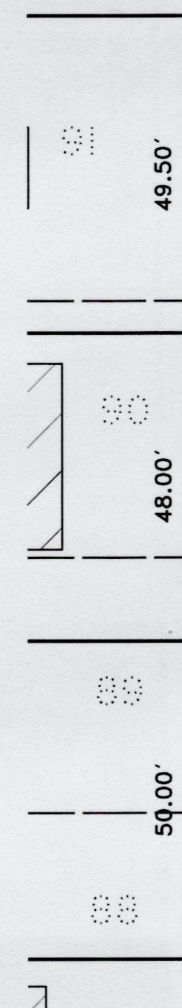
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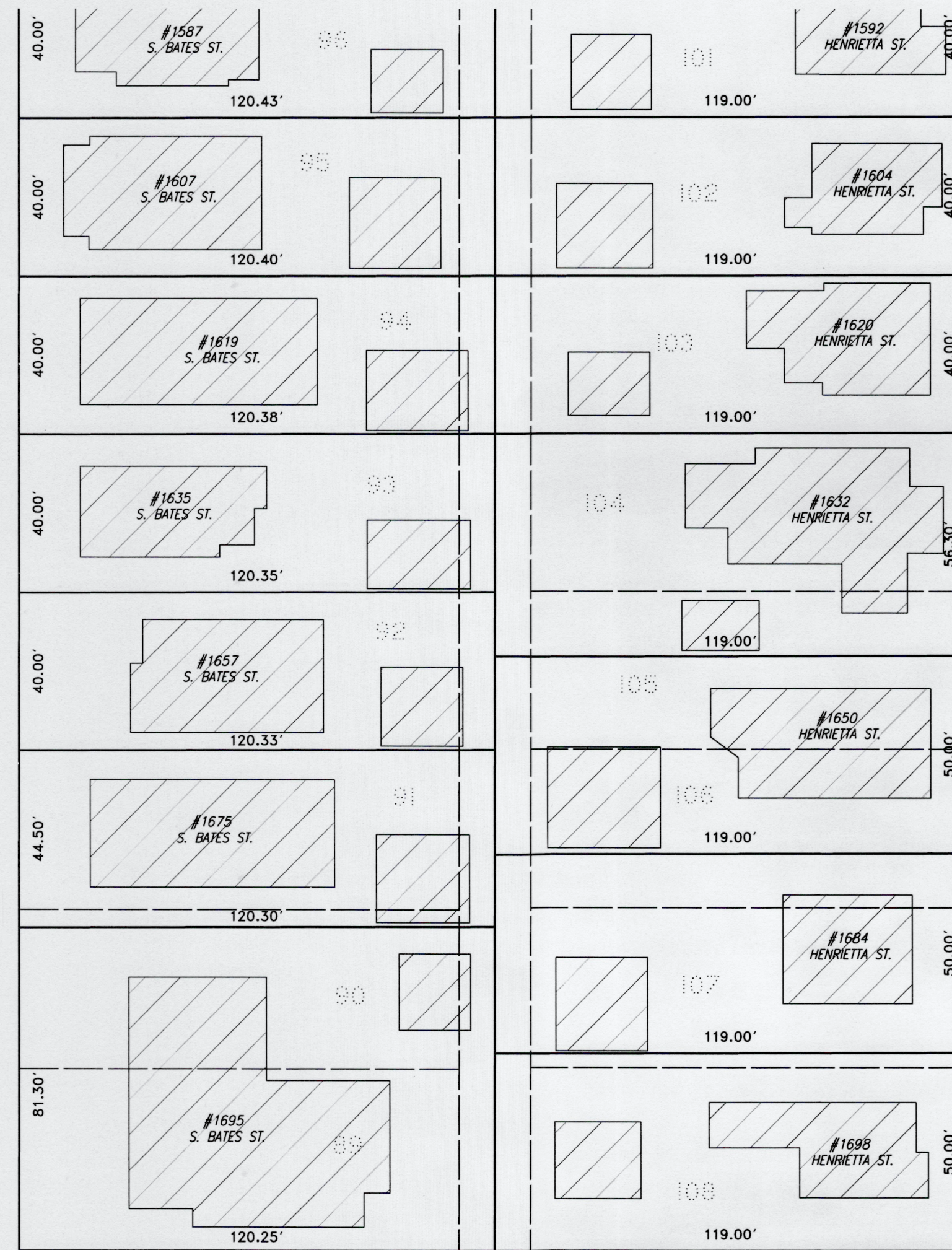
WASHINGTON BOULEVARD 70' WIDE



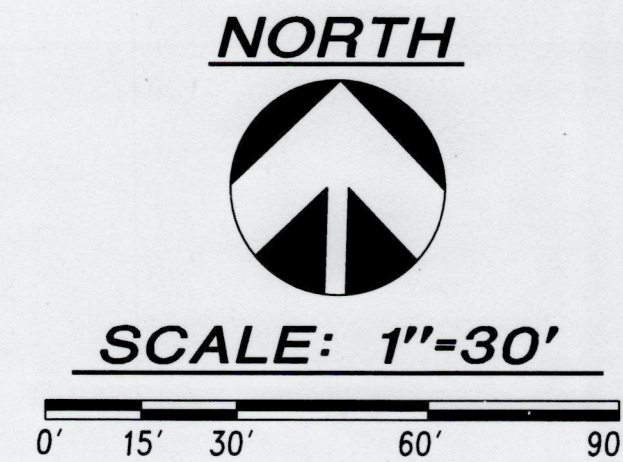
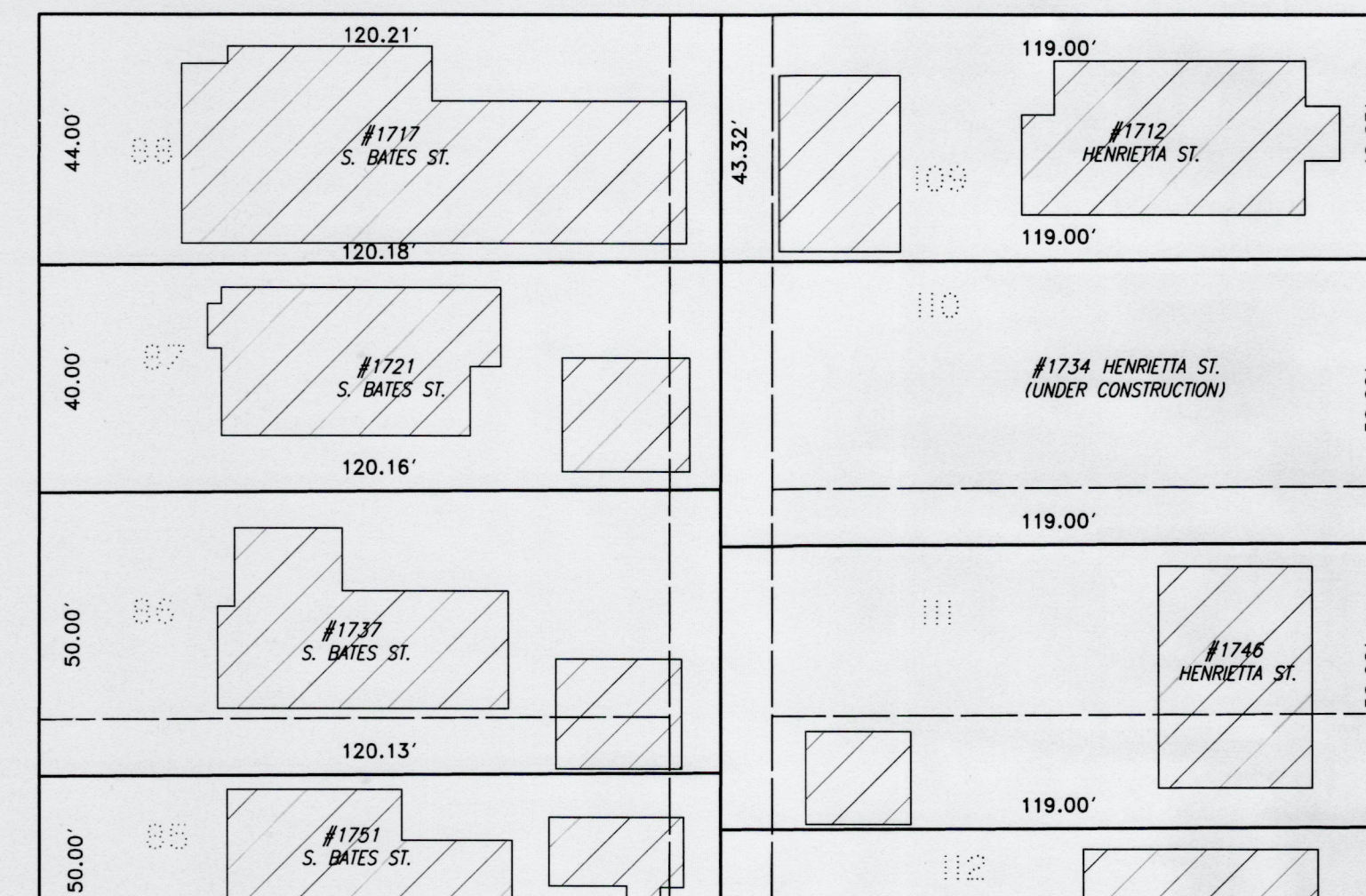
W. SOUTHLAWN BOULEVARD 70' WIDE



S. BATES STREET 60' WIDE



HENRIETTA STREET 50' WIDE



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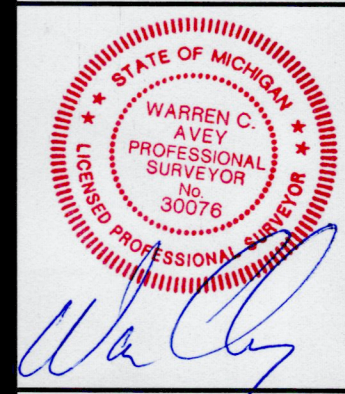
R-2 ZONING REQUIREMENTS

- MINIMUM LOT AREA: 6,000 S.F.
- MINIMUM OPEN SPACE: 40%
- MINIMUM LOT COVERAGE: 30%
- MINIMUM FRONT SETBACK: AVERAGE OF 200' OR 25'
- MINIMUM REAR SETBACK: 30'
- MINIMUM COMBINED FRONT & REAR: 55'
- MINIMUM SIDE YARD: LARGER OF 9' OR 10% OF TOT. LOT WIDTH (ONE SIDE) LARGER OF 14' OR 25% OF TOT. LOT WIDTH (BOTH SIDES)

LOCAL NEIGHBORHOOD  
PART OF THE S.W. 1/4 OF SECTION 36  
T.2N., R.10E., CITY OF BIRMINGHAM  
OAKLAND COUNTY, MICHIGAN

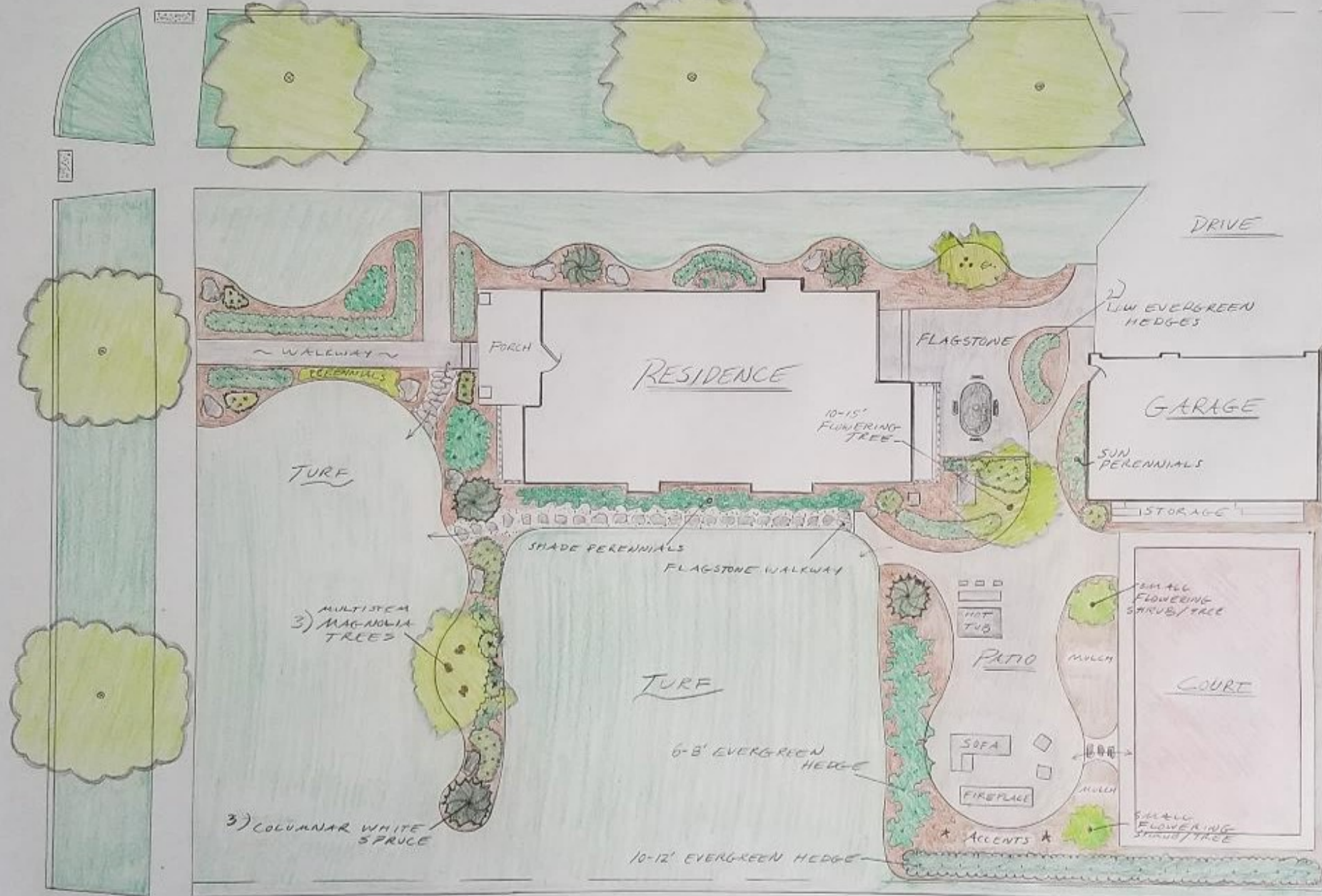
DATE	ADDITIONS AND/OR REVISIONS	BY:
19/209-10/05	Job No.	
Date 1-31-2020	Scale 1"=20'	
Drawn DKZ	Check W.C.A.	
Sheet 2 OF 2	Fld. Bk.	

PROPOSED LOT COMBINATION  
FOR: KATHERINE PEARCE  
1698 S. BATES STREET  
BIRMINGHAM, MI 48009  
(248) 444-9146



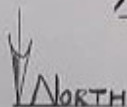
URBAN LAND CONSULTANTS  
CIVIL ENGINEERS PLANNERS LAND SURVEYORS  
8800 23 MILE ROAD SHELBY TWP., MI 48316-4516  
PHONE 586 731-8030 FAX 586 731-2605





# **KEY:**

- = MATCH EXISTING OUTCROPPING
- = VARIETIES OF ORNAMENTAL GRASS
- = SMALL FLOWERING SHRUBS
- = LOW SPREADING EVERGREENS



**PEARCE RESIDENCE**

1698 S. BATES, BIRMINGHAM, AL 35209

SCALE: 1/8" = 10'

JANUARY 2020





S. BATES ST.

EAST ELEVATION PERSPECTIVE



Item #M49900098

# Superior VRE4600 Linear Outdoor Gas Fireplace

By: Superior Products

[FAQs](#) | [Reviews\(0\)](#)

- ✓ 1. Gas Type \* Natural Gas

✓ 2. Size \* 36"

✓ 3. Fireglass \* Diamond Crystal Fire Glass

✓ 4. Weather Cover \* No Thank You

5. Remote \*

\*Required

In Stock

Add to cart for shipping information

Free Freight Shipping

Qty	1
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\$3,079.80





## MEMORANDUM

Planning Division

**DATE:** April 13, 2020

**TO:** Joseph A. Valentine, City Manager

**FROM:** Jana L. Ecker, Planning Director

**SUBJECT:** 2020 Initial Screening for Bistro Applicants

---

### INTRODUCTION:

On September 12, 2011, the City Commission established a new process that altered the bistro application process from the previous "first come, first served" policy.

### BACKGROUND:

The policy for the 2020 bistro license application process is now as follows:

1. Deadline for the initial review of 2019 bistro applications was October 1, 2019.
2. The City Commission will consider only those initial reviews that are filed with the Planning Department on or before October 1, 2019.

All bistro applications submitted for initial review must contain only the following information in 5 pages or less:

- A brief description of the bistro concept proposed, including type of food to be served, price point, ambience of bistro, unique characteristics of the operation, if any, and an explanation of how this concept will enhance the current mix of commercial uses in Birmingham;
- Proposed location, hours of operation and date of opening;
- Name of owner/operator and outline of previous restaurant experience; and
- Evidence of financial ability to construct and operate the proposed bistro.

3. All bistro applications received by October 1, 2019 that meet the requirements outlined above will be reviewed by the City Commission in October for prioritization based on the proposed bistro concept, proposed location within the City, potential impact on the City, and the capability of the proposed owner/operator. Each applicant will be given a time limit to verbally present their concepts to the City Commission. No PowerPoint presentations, display boards or other visual aids will be permitted.

4. The City Commission will prioritize all initial applications received, and will direct the top applications to the Planning Board for full site plan and design review and Special Land Use Permit review.

5. All bistro applications forwarded to the Planning Board for full review will be required to provide additional information as required for review of the bistro as a SLUP including site plans,

floor plans, sample menus, interior design details, evidence of financial capability, as well as any other information requested by the Planning Board.

6. All detailed applications directed to the Planning Board from the City Commission will be reviewed during public hearings conducted during a single Planning Board meeting within 90 days of the initial review by the City Commission.

7. All bistro applications will be evaluated by the Planning Board based on the criteria set forth in Chapter 10, Alcoholic Liquors, Division 4, Selection Criteria, and up to two applications will be recommended for approval to the City Commission. All applications will be assigned a priority ranking by the Planning Board.

8. All bistro applications reviewed by the Planning Board will be forwarded to the City Commission for a detailed review and approval/denial in the order of the ranking assigned by the Planning Board.

9. The City Commission will conduct public hearings to review the selected bistro applications and determine which, if any, bistros to approve for 2020, up to a maximum of two approvals.

10. In the event that two bistro approvals are not granted as a result of the fall review period, the City will accept additional bistro applications for the current calendar year on or before April 1st.

11. All bistro applications received in this second round will be reviewed and ranked by the Planning Board using the same review process noted in steps 2 through 9 above.

In accordance with the process outlined above, the following applicant submitted a summary for the initial review process prior to the April 1, 2020 deadline established by the City Commission:

- EM (Employee Meals adjacent to Market North).

The proposed bistro is located in the Downtown Birmingham Overlay District.

As outlined in the bistro process for 2020, please find attached the initial screening bistro application for EM. The applicant will be given a time limit to verbally present their concepts to the City Commission, without the use of PowerPoint presentations, display boards or other visual aids. A suggested time frame would be a five minute presentation of the concept by the applicant, with a five minute period for questions from the City Commission. The City Commission will then discuss the application, and consider directing the application to the Planning Board for full site plan and design review and Special Land Use Permit review.

Details on the location and number of existing bistros are also attached for your review.

#### LEGAL REVIEW:

The City Attorney has reviewed the submissions and has no concerns.

**FISCAL IMPACT:**

Not applicable.

**SUMMARY:**

In accordance with the City's initial screening process for bistros as noted above, the City Commission should review the attached submission and allow the applicant to conduct a brief presentation and respond to any questions.

**ATTACHMENTS:**

- EM bistro submission; and
- Bistro chart with details on all existing bistros.

**SUGGESTED ACTION:**

To direct the EM bistro application to the Planning Board for full site plan and design review and Special Land Use Permit review.



## Bistro Application Proposal - EM

Please consider our application for a new Bistro License for 470 N.Old Woodward. With a bit of a story.

For over 6 years our restaurant Market North End has worked to provide quality, value and enjoyable guest experiences. We believe that our approach to the restaurant has succeeded in delivering a positive dining option in our town. We fit a niche, we meld with others in our area. We try to be responsive to our closest guests and meet and exceed their expectations. We love taking care of Birmingham residents.

There is no question that many long standing members of staff are the keys to those positive experiences. We are happy to say that the restaurant has developed many individuals, provided a livelihood for everyone involved. We see Market as a place that when staff commit to it...it rewards that commitment.

Twice daily our kitchen staff prepares an 'Employee Meal'. It is an opportunity for the Front of the House and the Back of House to relax and get ready for our guests that day/night. We allow the kitchen to do what they want. Anything goes. Comfort Food, Spicy Food, Indian Cuisine...we've had it. It has inspired new dishes that our guests have had, it often gets staff notes for hoping that items to be included in the regular rotation.

The real star of our meals is anything Mexican. When the guys (and girls) cook from their heart, when they share the items that are in their background, items their Mom's taught them, things that they enjoy...that's when you reach really great meals. It can really be a comforting result. There is a whole scene to this experience, keep in mind that the kitchen, has a few amenities that others may not have...in particular a very good music system. 11 current Market staff are 5+ years.

As a result of success at Market North End, and the people that have been able to develop, the expanded experience we propose would allow growth opportunity for our employees. We have a chance to create ways for senior staff to stay with our group, grow personally and professionally. It's the single most important part of repeating great guest experiences. We value that greatly. We think our guests do too. They tell us regularly.

We are proposing a complimentary option to the Market North District. Excited that the city has recognized this area as a significant region in our town...we are experiencing significant residential population growth that features remodeled single family homes, new condos, many existing apartments and some new ones to our north. The 'secret' of the North End is out: Really great guests that reward quality and value.

Introducing EM: featuring Mexican cuisine. Fresh, traditional, coastal in nature... think Al Pastor, Ceviche, Fresh Fish, Some twists, (did you know that there is a huge middle eastern influence in Mexico?) Very authentic. Our space is small in relation to most Bistros at 1000 sqft. It would feature an attractive exterior change to an older property in an evolving part of town. Visualize rustic, cozy environment. Mid priced...always a value. Expect a personal approach, to cook with 'Love of Food', cravable items that build repeat visits. Tequilas, Palomas, Margaritas. Lot's of Cervezas, friendly faces, and a quality of experience that has been missing in our area. Inspired by seaside Mexican villages; they all specialize in something. We will too.

Sincerely,

Kristin and Joe Bongiovanni



Kristin & Joe Bongiovanni - Owners and Operators

Market North End

474 N.Old Woodward, Birmingham MI 48009

6.5 years in business

O.W.L.

27302 Woodward Ave Royal Oak Mi 48067

4 years in business

Both of us grew up in the business, over 30 years working in the service industry.

Location is at 470 N.Old Woodward

Hours of Operation 12noon-12a Daily

We would hope to open as soon as safely allowed.

We are using personal funds for this project.



**Approved Site Plan Seats - January 2020**

[illegible]

## **MEMORANDUM**

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**DATE:** April 3, 2020  
**TO:** Joseph A. Valentine  
**FROM:** Timothy J. Currier, City Attorney  
**SUBJECT:** Lease Payment Deferral for Birmingham Racquet Club

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### **INTRODUCTION:**

- The City Manager has received a request from the Birmingham Racquet Club for relief with respect to its lease payments from April 1, 2020 – August 31, 2020, due to the COVID pandemic which has led to the issuance of an Executive Order by the Governor declaring a State of Emergency in the State of Michigan (Executive Order 2020-4), as well as a second Executive Order by the Governor closing indoor sports facilities (Executive Order 2020-9).

### **BACKGROUND:**

- In addition to the foregoing introduction, the Birmingham Racquet Club is requesting a deferral of its lease payments. The deferred amounts would be allocated in equal amounts over twenty-four (24) months commencing September 1, 2020, in addition to the regular rent payments, until the total deferred amounts are paid in full.

### **LEGAL REVIEW:**

- The City Attorney has reviewed the proposal and the law in connection therewith, and it is the City Attorney's opinion that the lease payments could not be forgiven in this circumstance, but could be deferred. Forgiveness would be equivalent to a gift, which the City is not permitted to do. Deferral, however, is within the legal abilities of the City to provide.

### **FISCAL IMPACT:**

- There is no long term fiscal impact to the City in approving this Amendment to Lease Agreement. The total amount that is required to be paid under the Lease Agreement will still be paid; the monthly payments will be adjusted over the next two (2) years following the end of the deferral period.

### **SUMMARY:**

- We are requesting the City Commission vote to approve the Amendment to the Birmingham Racquet Club Lease, and authorize the Mayor to sign the same.

ATTACHMENTS:

- A copy of the Amendment to the Tennis Facility Lease dated May 11, 1998, Amended and Restated September 22, 2014.

**SUGGESTED RESOLUTION TO APPROVE THE AMENDMENT TO THE LEASE BETWEEN THE CITY OF BIRMINGHAM AND THE BIRMINGHAM RACQUET CLUB AND AUTHORIZE THE MAYOR AND CLERK TO SIGN ON BEHALF OF THE CITY.**





Joseph A. Valentine  
City Manager  
151 Martin Street  
Birmingham, MI 48009

Hi Joe,

I hope you, your family and the City of Birmingham are well. We all are truly going through a once-in-a-lifetime event right now with so many unknowns ahead. We wanted to reach out to see if it would be possible to have a deferral of our lease payment through the summer and resume payments September 1<sup>st</sup> 2020. Our hope would be to repay that roughly \$25,000 over the following 24 months in addition to our regular monthly payment. This would give us some breathing room to keep our core business intact, help take care of our employees, our clients, and some hard business expenses.

We just signed a long-term relationship with you and I know you are as committed to us as we are to you and the city. One condition in that recent signing is the resurfacing of the front four courts by 2022. We would like to ask that the time period be extended to within the contractual term as the other items read. It is in our best interest that we do this repair as soon as possible but we want to make sure we are clear and transparent on our commitments and contractual duties and are not sure how the near-term business climate will affect our timing to complete this project.

We have filed for the SBA disaster relief package and our bank Huntington is working with us on some programs that include employee payment grants and low interest loans. They have offered to defer our loan payment for three months with no negative effects on our payment history of which we are now five years in good standing on a ten-year SBA loan.

Our staff has filed for unemployment, but the hope is to take good care of them and continue to pay their medical insurance and other needs as we all try and make it through. As we have spoken many times regarding how precious it is to have a great "team" many of our people have been with us for more than ten years and we want them to know we are there for them.

The summer offers many unknowns as well. We rely on USTA adult and junior programming such as leagues and tournaments – which have already been shortened and have the potential to be canceled. This would have a significant impact on our summer programs which is already our lowest revenue portion of the year. The plan of closing schools for the rest of the year also could have a strong impact on our summer and late spring business. These programming questions will also put us in a position to make a decision whether or not to take our domes up and down this summer—the cost of which is over \$24,000 for the 3-month season.



After a difficult 2018, BRC showed improvement in 2019 that seemed to be carrying over to the first quarter of 2020. In fact, until the Governor's mandatory shutdown, we had a very busy Sunday March 7<sup>th</sup> and were expected a great week ahead with full programs and weekly and daily signups. We are now approaching our 2<sup>nd</sup> week of mandatory shut down and our weekly

revenue loss exceeds \$27,000. This is a crucial time of year for us leading into the weaker summer business.

We will be working with our customers to remunerate them for their missed tennis through credits, discounts and refunds in short order.

Please let us know if there are any other programs or possibilities to receive some assistance through our unique public private relationship. As you can imagine, bank and government programs are being stretched to their limits and are functioning in uncharted waters with uncertain benefits and eligibility rules.

Thank you in advance for your understanding. We are honored to serve the City of Birmingham and want nothing more than to get back to serving the community and keeping people fit and healthy. We look forward to hearing from you soon and wish you a safe and successful spring. Stay healthy and safe!

Jeff, Mike, Matt

**AMENDMENT TO TENNIS FACILITY LEASE  
DATED MAY 11, 1998, AMENDED AND RESTATED  
SEPTEMBER 22, 2014**

**THIS AMENDMENT TO LEASE** made the 11<sup>th</sup> day of May 1998, amended and restated on September 22, 2014, and amended this 1<sup>st</sup> day of April 2020 by and between the **CITY OF BIRMINGHAM**, a Michigan municipal corporation, having its principal municipal office at 151 Martin Street, Birmingham, Michigan (hereinafter referred to as the "City"), party of the first part, and **BIRMINGHAM RACQUET CLUB**, having its principal office at 2100 E. Lincoln (hereinafter referred to as "Lessee"), party of the second party, provides as follows:

**WITNESSETH:**

**WHEREAS**, the nation is currently experiencing a health and economic crisis due to the COVID pandemic, and the Governor has issued an Executive Order declaring a State of Emergency, (2020-4) in the State of Michigan, and the Governor issued an Executive Order closing indoor sports facilities (2020-9); and,

**WHEREAS**, due to the economic conditions created by this crisis, the Racquet Club has requested relief with respect to the lease payments owed pursuant to the Lease identified herein; and,

**WHEREAS**, the City of Birmingham believes it is in the best interest of the community as a whole that such relief be given.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RESPECTIVE AGREEMENTS AND UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:**

1. By the addition of paragraph 4.1.a, the City shall defer payments of the stated guaranteed lease amount commencing on April 1, 2020 through August 31, 2020.

2. Said deferred lease payments shall be added to the regularly guaranteed rent commencing on September 1, 2020 and paid over the following twenty-four (24) months in equal installments, in addition to the regular monthly payments as required by said Lease, in order to bring the Lease current in connection with the total guaranteed rent due on the facility.



3. The deferral shall be calculated by the Birmingham Director of Finance, which is attached hereto as Attachment A, and incorporated by reference herein, and further shows the increase rent for the twenty-four (24) month period to make up the difference of the deferred rent between April 1, 2020 and August 31, 2020.

4. The deferral of these payments does not create or constitute a waiver of the City's right to enforce the Lease, should there be any other breach of the Lease or amendments thereof, or a failure to maintain the additional lease payments as stated herein in a timely fashion as required.

5. All other terms and conditions of the current Tennis Facility Lease, Restatement dated September 22, 2014, and amendments thereto, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the said parties have caused this Amendment to Tennis Facility Lease to be executed as of the date and year above written.

LESSEE  
BIRMINGHAM RACQUET CLUB ACQUISITION  
CO., L.L.C. d/b/a BIRMINGHAM RACQUET CLUB

By: Jeff Stassen  
Jeff Stassen  
Its: OWNER - CEO

CITY OF BIRMINGHAM

By: \_\_\_\_\_  
Pierre Boutros, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham  
City Clerk

APPROVAL:

By: Joseph A. Valentine  
Joseph A. Valentine, City Manager  
As to substance

By: Mark Gerber  
Mark Gerber, Finance Director  
As to financial obligation

By: Timothy J. Currier  
Timothy J. Currier, City Attorney  
As to form

ATTACHMENT A

Amount to Defer: \$5,629/month for 5 months = \$28,145

To be paid back over 24 months = \$1,172.71/month

September 1, 2010	\$1,172.71
October 1, 2020	\$1,172.71
November 1, 2020	\$1,172.71
December 1, 2020	\$1,172.71
January 1, 2021	\$1,172.71
February 1, 2021	\$1,172.71
March 1, 2021	\$1,172.71
April 1, 2021	\$1,172.71
May 1, 2021	\$1,172.71
June 1, 2021	\$1,172.71
July 1, 2021	\$1,172.71
August 1, 2021	\$1,172.71
September 1, 2021	\$1,172.71
October 1, 2021	\$1,172.71
November 1, 2021	\$1,172.71
December 1, 2021	\$1,172.71
January 1, 2022	\$1,172.71
February 1, 2022	\$1,172.71
March 1, 2022	\$1,172.71
April 1, 2022	\$1,172.71
May 1, 2022	\$1,172.71
June 1, 2022	\$1,172.71
July 1, 2022	\$1,172.71
August 1, 2022	\$1,172.67



## MEMORANDUM

Office of the City Manager

**DATE:** April 15, 2020

**TO:** City Commission

**FROM:** Joseph A. Valentine, City Manager

**SUBJECT:** Request for Closed Session to discuss:  
1 – Pending Litigation **Coulston v City of Birmingham and Toroyan v City of Birmingham (Section 8(e))**  
2 - Attorney/Client communication (Section 8(h))

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It is requested that the city commission meet in closed session to review two items:

1. Pending litigation in the matter of Coulston v City of Birmingham and Toroyan v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act,  
**and**
2. Discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings. Act.

**SUGGESTED RESOLUTION:**

To meet in closed session to:

- (1) Review pending litigation in the matter of Coulston v City of Birmingham and Toroyan v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275,  
**and**
- (2) To discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**





## **NOTICE OF INTENTION TO APPOINT TO THE MARTHA BALDWIN PARK BOARD**

At the regular meeting of Monday, May 11, 2020 the Birmingham City Commission intends to appoint two regular members to the Martha Baldwin Park Board to serve four-year terms to expire May 1, 2024. Members must be electors of the City of Birmingham.

Interested citizens may submit an application available at the city clerk's office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the city clerk's office on or before noon on Wednesday, May 6, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

*All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

<b>Criteria/Qualifications of Open Position</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Interview</b>
Members must be electors in the City of Birmingham.	05/06/2020	05/11/2020