

MARION TOWNSHIP  
BOARD OF TRUSTEES  
REGULAR MEETING  
Thursday, July 9, 2020  
7:30 p.m.

Call to Order  
Pledge of Allegiance  
Members Present/Members Absent  
Electronic Voting Policy  
Call to the Public

- 1) Approval of Agenda
- 2) Consent Agenda
  - a. Approval of June 25, 2020 Regular Meeting Minutes
  - b. DPW Report
  - c. Zoning Report
  - d. Financial Report
- 3) Hometown Matter
- 4) Marion D-19 Special Use Drive-in Establishment
- 5) Parking Lot
- 6) Lisa Maher Agreement
- 7) Crown Castle Proposal
- 8) ZBA Report

Correspondence and Updates  
Foster Swift Letter

Call to the Public  
Adjournment

Reminder: Next Board Packet will be ready after 3pm on Thursday, July 16, 2020

**DRAFT**

**MARION TOWNSHIP  
BOARD OF TRUSTEES  
REGULAR MEETING  
JUNE 25, 2020**

**MEMBERS PRESENT:** Les Andersen, Tammy Beal, Duane Stokes, Scott Lloyd, Greg Durbin, Dan Lowe, and Bob Hanvey

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Phil Westmoreland, Spicer

\*\*\*\*\*

**CALL TO ORDER**

Bob Hanvey called the meeting to order at 7:30 pm.

**PLEDGE OF ALLEGIANCE**

**BOARD MEMBERS PRESENT**

The board members introduced themselves.

**CALL TO THE PUBLIC**

No response.

**APPROVAL OF AGENDA**

Item #8—Perkins' Mud Bog was added to the agenda and Bob Hanvey asked to have salaries added to Item #7. Les Andersen motioned to approve the agenda as amended. Scott Lloyd seconded. **Motion carried.**

**CONSENT AGENDA**

Greg Durbin motioned to approve the consent agenda. Les Andersen seconded. **Motion carried.**

**TOWNSHIP PARKING LOT**

A proposal was presented from DeBottis Development & Asphalt Maintenance LLC to seal some cracks, apply a sealer and restripe the parking lot. After discussion, Dan Lowe motioned to leave the parking lot as is. Scott Lloyd seconded. **Motion carried.**

**REAFFIRMATION OF ONLINE MEETING ACTIONS**

Tammy Beal motioned to adopt a resolution to reaffirm all business that was conducted during online meetings. Les Andersen seconded. Roll call vote: Lowe, Lloyd, Beal, Hanvey, Durbin, Andersen, Stokes—all yes. **Resolution passed 7-0.**

**JONES SEWER CREDIT REQUEST**

Les Andersen motioned to approve a \$344.38 sewer credit for 63 Schroeder Park Drive. Scott Lloyd seconded. **Motion carried.**



## HOMETOWN MATTER

Bob Hanvey provided the board members with a five-page summary. The attorneys will be discussing, but it needs to be coordinated with several different attorneys. No action required on this item.

## BUDGET PUBLIC HEARING AND MILLAGE RATE

Bob Hanvey opened the budget and millage rate public hearing at 7:50 pm. Bruce Powelson, 3466 Pingree Rd., asked what the millage rate is; Mr. Hanvey said it is .7686 for 2020; it was .7804 for 2019. Mr. Powelson said it shouldn't be reduced. Mr. Hanvey said it is determined by the state, not the township.

The public hearing was closed.

Les Andersen motioned to adopt a resolution to accept the 2020 tax millage rate of .7686, as presented. Scott Lloyd seconded. Roll call vote: Stokes, Durbin, Hanvey, Lloyd, Beal, Andersen, Lowe—all yes. **Resolution passed 7-0.**

Greg Durbin motioned to adopt a resolution to approve the General Fund FY 2020-21 proposed budget, by activity, with income of \$1,436,626 and expenses of \$1,478,700, as presented. Les Andersen seconded. Roll call vote: Beal, Andersen, Stokes, Durbin, Lowe, Hanvey, Lloyd—all yes. **Resolution passed 7-0.**

Tammy Beal motioned to adopt a resolution to keep the supervisor's salary at \$47,490 per year. Les Andersen seconded. Roll call vote: Hanvey, Lowe, Durbin, Beal, Lloyd, Stokes, Andersen—all yes. **Resolution passed 7-0.**

Les Andersen motioned to adopt a resolution to keep the clerk's salary at \$47,490 per year. Duane Stokes seconded. Roll call vote: Stokes, Beal, Andersen, Lowe, Hanvey, Lloyd, Durbin—all yes. **Resolution passed 7-0.**

Les Andersen motioned to adopt a resolution to keep the treasurer's salary at \$47,490 per year. Tammy Beal seconded. Roll call vote: Lowe, Durbin, Lloyd, Stokes, Andersen, Beal, Hanvey—all yes. **Resolution passed 7-0.**

Duane Stokes motioned to adopt a resolution to keep the trustees' salaries at \$7,799 per year. Tammy Beal seconded. Roll call vote: Lowe, Lloyd, Beal, Hanvey, Durbin, Andersen, Stokes—all yes. **Resolution passed 7-0.**

Scott Lloyd motioned to adopt a resolution to approve the Sewer Fund budget for FY 7/1/20-6/30/21, by activity, with income of \$485,000 and expenses of \$514,100, as presented. Greg Durbin seconded. Roll call vote: Stokes, Durbin, Hanvey, Lloyd, Beal, Andersen, Lowe—all yes. **Resolution passed 7-0.**

Tammy Beal motioned to adopt a resolution to approve the Assessment Revolving Project Fund budget, by activity, for FY 7/1/20-6/30/21, with income of \$59,500 and expenses of \$104,000, as presented. Les Andersen seconded. Roll call vote: Beal, Andersen, Stokes, Durbin, Lowe, Hanvey, Lloyd—all yes. **Resolution passed 7-0.**

Les Andersen motioned to adopt a resolution to approve the Escrow Fund budget, by activity, for FY 7/1/20-6/30/21 with income of \$220,000 and expenses of \$220,000, as presented. Greg Durbin seconded. Roll call vote: Hanvey, Lowe, Durbin, Beal, Lloyd, Stokes, Andersen—all yes. **Resolution passed 7-0.**

Tammy Beal motioned to adopt a resolution to approve the Water New User Fund budget by activity for FY 7/1/20-6/30/21, with income of \$5,000 and expenses of \$3,000, as presented. Scott Lloyd seconded. Roll call vote: Stokes, Beal, Andersen, Lowe, Hanvey, Lloyd, Durbin—all yes. **Resolution passed 7-0.**

Les Andersen motioned to adopt a resolution to approve the proposed Parks Fund budget by activity for FY 7/1/20-6/30/21, with income of \$12,000 and expenses of \$8,600, as presented. Greg Durbin seconded. Roll call vote: Lowe, Durbin, Lloyd, Stokes, Andersen, Beal, Hanvey—all yes. **Resolution passed 7-0.**

Tammy Beal motioned to adopt a resolution to approve the proposed Cemetery Fund budget by activity for FY 7/1/20-6/30/21, with income of \$15,000 and expenses of \$12,500, as presented. Les Andersen seconded. Roll call vote: Lowe, Lloyd, Beal, Hanvey, Durbin, Andersen, Stokes—all yes. **Resolution passed 7-0.**

**PERKINS MUD BOG**

Scott Lloyd questioned whether the township should approve this activity. Bob Hanvey said the sheriff's department will be on-site and the township is not authorized to enforce the governor's orders.

**GENERAL APPROPRIATIONS ACT**

Les Andersen motioned to adopt a resolution to approve the Marion Township General Appropriations Act, which includes provisions for providing the township board with "expense to actual" reports on a quarterly basis, monthly for the last quarter, as presented. Greg Durbin seconded. Roll call vote: Stokes, Durbin, Hanvey, Lloyd, Beal, Andersen, Lowe—all yes. **Resolution passed 7-0.**

**CORRESPONDENCE & UPDATES**

Bob Hanvey gave an update on the sewer plant projects; three bids have been received.

Mike Spitler will get prices on an upgraded communications system for the sewer pump stations.

The board members discussed the engine braking signs and possibly having them installed without an agreement with the sheriff's department.

**CALL TO THE PUBLIC**

No response.

**ADJOURNMENT**

Les Andersen motioned to adjourn at 8:30 pm. Tammy Beal seconded. **Motion carried.**

Submitted by: S. Longstreet

\_\_\_\_\_  
Tammy L. Beal, Township Clerk      Date

\_\_\_\_\_  
Robert W. Hanvey, Township Supervisor      Date



2020 ZONING REPORT

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTAL
Homes	7	11	4	4	22	4							48
Condo Units													0
Accessory Bldgs.	3	2	3	3	4	3							15
Decks	1		3	3	12	13							29
Pools					2	3							5
Additions			3		3	3							9
Land Balancing													0
Other		1				1							2
<b>TOTAL LAND USES</b>	11	14	13	0	43	27	0	0	0	0	0	0	108
Waivers	5	5	3		9	4							26
Finals	18	6	14		7	11							56
Site Plans													0
Pre-Planning Meetings													0
Sewer Inspections	2	4	4			10							

**GENERAL FUND CHECKING**

Previous Balance	\$	1,492,480.66
Receipts	\$	96,413.81
Interest	\$	559.55
	\$	<u>1,589,454.02</u>
Expenditures	\$	117,218.04
Balance	\$	<u>1,472,235.98</u>

**CEMETERY FUND**

Previous Balance	\$	15,327.77
Receipts	\$	2,600.00
Interest		
	\$	<u>17,927.77</u>
Expenditures	\$	641.45
Balance	\$	<u>17,286.32</u>

**PARKS & RECREATION FUND**

Previous Balance	\$	2,038.53
Receipts	\$	12,000.00
Interest		
	\$	<u>14,038.53</u>
Expenditures	\$	848.90
Balance	\$	<u>13,189.63</u>

**WATER - NEW USER**

Previous Balance	\$	477,860.42
Receipts	\$	16,388.40
Interest	\$	165.55
	\$	<u>494,414.37</u>
Expenditures	\$	41,500.00
Balance	\$	<u>452,914.37</u>

**SEWER OPERATING & MANAGEMT**

Previous Balance	\$	141,783.19
Receipts	\$	63,811.17
Interest		
	\$	<u>205,594.36</u>
Expenditures	\$	53,601.20
Balance	\$	<u>151,993.16</u>

**SEWER - NEW USER**

Previous Balance	\$	209,671.42
Receipts	\$	37,000.00
Interest		
	\$	<u>246,671.42</u>
Expenditures	\$	41,735.04
Balance	\$	<u>204,936.38</u>

**SPEC ASSESS. FUND**

Previous Balance	\$	235,093.27
Receipts	\$	6,940.31
	\$	<u>242,033.58</u>
Expenditures	\$	25,903.75
Balance	\$	<u>216,129.83</u>

**SUMMARY TOTALS**

General Fund	\$	1,472,235.98
Cemetery Fund	\$	17,286.32
Parks & Rec Capital Chk	\$	13,189.63
Water - New User	\$	452,914.37
Sewer Operating & Mana	\$	151,993.16
Sewer - New User	\$	204,936.38
Special Assess. Fund	\$	216,129.83
TOTAL	\$	<u>2,528,685.67</u>



# #101 General Fund

## Account QuickReport

As of June 30, 2020

Date	Num	Name	Memo	Amount
<b>001 - CASH - GENERAL - FNB</b>				
06/01/2020	ATT- April20		AT&T CELL TOWER LEASE PAYMENT April 2...	2,281.31
06/01/2020	ATT- May...		AT&T CELL TOWER LEASE PAYMENT May 2...	2,281.31
06/01/2020	CHA JAN...		CHARTER PAYMENT Jan 1-May 31, 2020	33,067.95
06/01/2020	10997	MICHIGAN TOWNSHIPS ASSOCIATION	MTA Dues 7-1-2020 thru 6-30-2021	-5,990.05
06/01/2020	ATT- JUN...		AT&T CELL TOWER LEASE PAYMENT JUNE ...	2,281.31
06/02/2020	10999	Culligan of Ann Arbor	ACCOUNT 760611 / INVOICE# 613124	-9.00
06/02/2020	11000	Duane Stokes	FEBRUARY 2020 MILEAGE	-62.10
06/02/2020			Deposit	35,326.31
06/03/2020	11001	AT&T -General	ACT# 517 546 6622 125 8 / INVOICE# 5175466...	-285.29
06/03/2020	11002	MICHAEL J. KEHOE, P.C.	INVOICE # 3159 May 2020	-59.50
06/03/2020	11003	MARION TOWNSHIP CURRENT TAX AC...	Overpayment form Current Tax	-65.00
06/03/2020			Deposit	250.00
06/04/2020	10998	Total Security Solutions	Acrylic Window/counter shield	-4,490.00
06/04/2020	11004	ALERUS PAYMENT SOLUTIONS	DIVISION# 400381 / PLAN ID# 628223 / #4720-...	-3,613.81
06/04/2020	11005	VOYA Institutional Trust	MAY 2020 PAYROLL	-400.00
06/04/2020	11006	Marion Township Flex Fund	MAY 2020 PAYROLL	-1,376.93
06/04/2020			Deposit	12,257.81
06/08/2020	May 20 F...		ADP FEE - MAY 2020 PAYROLL	-178.95
06/08/2020	11007	Chloride Solutions	INVOICE# 652	-7,917.33
06/09/2020	11008	DTE ENERGY	ACCOUNT# 9100 104 3211 0 / 05/05/20 - 06/0...	-416.18
06/09/2020	11009	FOWLerville NEWS & VIEWS	INVOICE# 39064 / 05/03/20 - 05/24/20	-150.00
06/09/2020	11010	QUADIENT FINANCE USA, INC.	VOID: ACCOUNT# 7900-0444-4962-6229 - ELE...	0.00
06/09/2020	11011	QUADIENT FINANCE USA, INC.	ACCOUNT# 7900-0444-4962-6229 - ELECTIO...	-1,104.91
06/10/2020	May 2020...		TOTAL TAXES FOR May 2020 PAYROLL	-9,426.72
06/10/2020	5786704	TAMMY L. BEAL	May 2020 PAYROLL	-2,572.25
06/10/2020	5786705	JESSICA S. TIMBERLAKE	May 2020 PAYROLL	-1,841.17
06/10/2020	5786706	THOMAS A. LLOYD	May 2020 PAYROLL	-501.38
06/10/2020	5786707	KITSEY A. RENNELLS	May2020 PAYROLL	-2,269.77
06/10/2020	5786709	GAIL A. BURLINGAME	May 2020 PAYROLL	-2,561.91
06/10/2020	5786710	DUANE M. STOKES	May 2020 PAYROLL	-2,964.48
06/10/2020	5786711	SANDRA J. LONGSTREET	April 2020 PAYROLL	-1,820.61
06/10/2020	76132232	LESLIE D. ANDERSEN	May 2020 PAYROLL	-375.57
06/10/2020	5786712	GREGORY L. DURBIN	May 2020 PAYROLL	-1,075.37
06/10/2020	761322331	SCOTT R. LLOYD	May 2020 PAYROLL	-260.31
06/10/2020	76132234	DANIEL F. LOWE	May 2020 PAYROLL	-508.20
06/10/2020	5786713	DAVE HAMANN	May 2020 PAYROLL	-2,350.51
06/10/2020	5786714	LAWRENCE W. GRUNN	May 2020 PAYROLL	-132.15
06/10/2020	761322361	BRUCE V. POWELSON	May 2020 PAYROLL	-92.35
06/10/2020	76132237	CHERYL A. RANGE	May 2020 PAYROLL	-92.35
06/10/2020	76132235	JAMES L. ANDERSON JR.	May2020 PAYROLL	-88.10
06/10/2020	5786715	ROBERT W. HANVEY	May 2020 PAYROLL	-3,674.23
06/10/2020	5786716	KAREN D. HAWKINS	May 2020 PAYROLL	-1,932.26
06/10/2020	5786717	LOREEN B. JUDSON	May 2020 PAYROLL	-3,159.34
06/15/2020	11012	LIV CO TREASURER'S ASSOCIATION	2020 ANNUAL DUES	-10.00
06/15/2020			Deposit	6,760.50
06/16/2020	11013	DeBottis Development and Asphalt Coating	INVOICE06-11-2020 /CUT and REPAIRPARKI...	-2,957.50
06/17/2020	11014	B&L Services	LAWN SERVICES 05/25/20, 06/01/20, 06/08/20...	-740.00
06/17/2020	11015	ECONO-PRINT INC.	INVOICE# 65624 / 2020 SUMMER TAX BILLS ...	-2,388.02
06/17/2020	11016	CONSUMERS ENERGY	ACT# 1000 1974 2632 / GNERAL OFFICE 05/0...	-65.58
06/17/2020	11017	Chloride Solutions	INVOICE# 662 / CEDAR LAKE, DAVIS, HINCH...	-14,268.90
06/17/2020	11018	ALLSTAR ALARM	CUSTOMER# 4515 / INVOICE 285745 / 07/01/...	-300.00
06/17/2020	11019	BEAR WATER TREATMENT	TICKET# 1421437 / SERVICE DATE: 06/17/2020	-86.44
06/18/2020			Deposit	100.00
06/22/2020			Deposit	75.00
06/22/2020			Deposit	250.00
06/23/2020	11020	NUQ Networks LLC	INVOICE# 40631 POWER HOSTING 07/01/20 -...	-200.00
06/23/2020	11021	Applied Imaging Systems Inc.	ACT# AMI-MARTOWN / SERVICE INVOICE# 1...	-573.01
06/23/2020	11022	ECONO-PRINT INC.	INVOICE# 65624 (2) / 2020 SUMMER TAX BI...	-2,223.87
06/23/2020	11023	DONNA HALL	HALL RENTAL REFUND 6/21/20 (NEVER USE...	-100.00
06/23/2020	11024	CARLISLE/WORTMAN, Inc.	CLIENT# 266 / INVOICE# 2157222	-492.50
06/23/2020	11025	Brighton Area Fire Authority	Invoice #20-006 2 Tornado Sirens reprograming...	-223.08
06/23/2020	11026	Chloride Solutions	INVOICE# 21371	-873.58
06/24/2020			Deposit	600.00
06/24/2020	11038	Tammy Beal	MARCH 2020 - JUNE 2020 MIELAGE AND EX...	-97.67
06/24/2020	11039	Karen Hawkins	JUNE 2020 MILEAGE	-107.53
06/24/2020	11040	Jessica Timberlake	APRIL 2020 - JUNE 2020 EXPENSES	-35.46
06/24/2020	11041	DAVID HAMANN	APRIL 2020 - JUNE 2020 MILEAGE	-144.33

07/02/20

**#101 General Fund**  
**Account QuickReport**  
As of June 30, 2020

Date	Num	Name	Memo	Amount
06/25/2020	11027	Spicer Group Inc	INVOICE# 2202051 Twp. Parking Lot Alternatives	-1,003.75
06/26/2020			Deposit	50.00
06/27/2020	11028	ShredCorp	SHRED EVENT 06/27/2020 - 10AM-1PM	-750.00
06/29/2020	11029	Renee Hocking	June 2020 Hall Cleaning	-400.00
06/29/2020	11030	Pat King	Reimbursement for Hall Rental 6-28-2020	-100.00
06/29/2020	11031	STAPLES	ACT# 6389 - 04-15-2020 thru 05-18-2020	-120.66
06/29/2020	11032	Colonial Life	BCN# E4270229 INVOICE# 4270229 - 0601487	-452.74
06/29/2020	11033	AT&T -General	ACT# 517 546 6622 125 8 / INVOICE# 5175466...	-286.28
06/29/2020	11034	Blue Cross Blue Shield of Michigan	GROUP 007017906710 / COVERAGE 07/15/20...	-10,673.28
06/29/2020	11035	PNC Bank	ACCOUNT# ENDING 0532 - 05/19/20 - 06/12/2...	-1,570.78
06/29/2020	11036	MARION TWP RECREATION FUND	BUDGET REVIEW: AT BOARD MEETING	-12,000.00
06/29/2020			Deposit	782.31
06/29/2020			Deposit	50.00
06/30/2020	11037	Howell Area Parks & Recreation Authority	INVOICE# 208.0625004- 3rd QUARTER PARTI...	-26,250.00
06/30/2020	11042	Duane Stokes	MARCH 2020 - JUNE 2020 MILEAGE	-79.93
06/30/2020			Interest	559.55
Total 001 · CASH - GENERAL - FNB				-46,419.61
<b>TOTAL</b>				<b>-46,419.61</b>

**MARION TOWNSHIP**  
**2877 W. COON LAKE ROAD**  
**HOWELL, MI 48843**  
**Phone 517-546-1588**  
**Fax 517-546-6622**

***TRANSMITTAL***

**TO:** Board of Trustees

**DATE** July 9, 2020

**PROJECT** **Special Use Permit**  
Marion-D19 LLC Mug & Bopp  
SUP#01-20

**VIA** Hand Delivery

WE ARE SENDING:  Herewith  Under Separate Cover

THE FOLLOWING:

- Special Use Permit for SUP#01-20 Marion-D19 LLC Mug & Bopp Section 17.12 Drive-In Establishment
- Carlisle/Wortman Review letter dated 5/18/2020
- Planning Commission Minutes from June 23, 2020 meeting

FOR YOUR:  approval/ denial  as requested  
 other  review & comment

REMARKS:

The attached Special User Permit for SUP#01-20 Marion-D19 LLC Mug & Bopp Section 17.12 Drive-in Establishment. This information is for **FINAL Review and approval**. Let me know if you have any questions.

FROM: Dave Hamann, Zoning Administrator

Copy: file

MARION TOWNSHIP  
SPECIAL USE PERMIT

RECEIVED  
MAY 11 2020  
MARION TOWNSHIP

Application No: SUP 01-20  
Date: 5-11-2020

Name of Applicant: Marion - D19, LLC  
Address of Applicant: 621 S Dearborn P.O. Box 708 Howell, MI 48844  
Phone Number: 517-376-5130 office  
Parcel ID Number: 4710-15-100-029

The above applicant is:  Owner  Purchaser  Representative  
*(Purchaser or representative will need a letter of permission from owner)*

Please include the following with your request. These items are needed to determine administrative completeness:

- The current zoning of the property involved.
- Ten (10) copies of the required site plan (per Section 18.03 of the Marion Township Zoning Ordinance.)
- Supporting documentation with regard to all provisions of the Marion Township Zoning Ordinance pertaining to a Special Use Request.

The undersigned agrees to comply with all of the ordinance requirements for Marion Township. Further, the undersigned acknowledges being responsible for all costs incurred by the township in relation to this request. Such costs include, but are not limited to, engineering reviews, legal fees, newspaper notices, postage, etc. The applicant understands final approval is subject to complete payment of all incurred fees and any outstanding escrow balances.

Todd J. Lekander  
Applicant's Name (print)

Todd J. Lekander  
Applicant's Signature

Office Use Only  
Date Received: 5-11-2020 Fee Paid: 500 Escrow 3000  
Materials Received: \_\_\_\_\_ Site Plans: 1  
Application accepted by: \_\_\_\_\_

June 15, 2020



ACE  
CIVIL ENGINEERING, LLC

Marion Township Planning Commission  
2877 W. Coon Lake Road  
Howell, Mi. 48843

Re: Proposed Drive Thru Restaurant Special Use for Mug and Bopp's D-19 Gas Station

Dear Planning Commission Members:

On behalf of Todd Lekander (owner), of the Mug and Bopp's property located at 1600 Pinckney Road, we are requesting a special use review. The purpose of the special use request is to install a drive thru food service at the existing building facility. The property is currently zoned Highway Service which requires a special use for "Drive Thru Restaurants" per 17.05B. Per ordinance requirements we are providing the following statements in accordance with section 16.05 "A" of the Marion Township Zoning Ordinance:

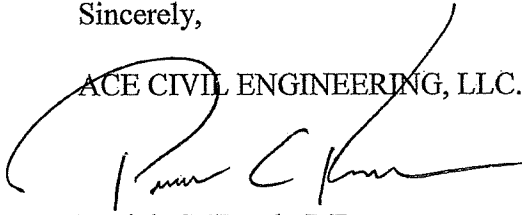
- 1 The project will be harmonious with and in accordance with the general principles and objectives of the comprehensive Plan of the Township. **The parcel is currently zoned Highway Service which does allow Drive Thru Restaurant Establishments.**
- 2 The project will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed. **The Drive Thru Restaurant proposed will be in conjunction with an existing convenience store and gas station and will not change the general character of the area.**
- 3 The project will not be hazardous or disturbing to existing or future uses in the same general vicinity and will substantially improve property in the immediate vicinity and in the community as a whole. **The proposed drive Thru Restaurant will be provide a convenience service in the general area South of I-96 and should improve overall traffic congestion in the I-96 interchange area. Cars traveling South of I-96 will no longer have to cross the bridge at I-96 to go to a Drive Thru Restaurant.**
- 4 The project will be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools. **The project was master planned for a larger development at which time all utility and driveway improvements were made.**

- 5 The project will not involve any uses, activities processes, materials and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors. **The project will consist of adding a Drive Thru Restaurant in conjunction with all local, state and federal guidelines and will not create any negative impacts to the community.**
- 6 The project will meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for land use or activity under consideration; and will be in compliance with these standards. **The proposed improvements shown on the site plan are in accordance with all ordinance standards.**
- 7 The project will ensure that landscaping shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and topographic modifications, which result in maximum harmony with adjacent areas. **There is no tree removal that is necessary for the project and the proposed grades will be very similar to the existing grades which will cause minimal disruption.**
- 8 The project will ensure that special attention shall be given to proper site surface drainage so that removal of storm waters will not adversely affect neighboring properties. **The proposed project area will be drained into an underground storm pipe and directed to an existing storm detention system that was previously designed to accommodate the storm water flow.**
- 9 The project will ensure that all exterior lighting shall be so arranged that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets. Flashing or intermittent lights shall not be permitted. **The project area will utilize down shielded lights that will prevent light pollution on adjacent properties. The location of the proposed Drive Thru is at the rear of the property where it will cause minimal impact.**
- 10 The project shall meet the site plan review requirements of Article XVIII. If the applicant chooses to submit a preliminary site plan, the special use permit may also be considered preliminary. **A Final Site Plan was submitted with the Special Use Application that is consistent with Article XVIII.**
- 11 The project shall conform to all applicable state and federal requirements for that use. **The project will conform to all applicable state and federal requirements.**

Please let me know if you have any questions in this matter.

Sincerely,

ACE CIVIL ENGINEERING, LLC.

A handwritten signature in black ink, appearing to read 'Patrick C. Keogh', written over the company name.

Patrick C. Keogh, P.E.  
President

17021 (Special Use)  
06/16/20



# Carlisle | Wortman

ASSOCIATES, INC.

117 NORTH FIRST STREET SUITE 70 ANN ARBOR, MI 48104 734.662.2200 734.662.1935 FAX

## SPECIAL USE REVIEW ANALYSIS

### Marion Township

**Applicant:** Marion – D19 LLC

**Property Address:** 1644 Pinckney Road Mugg & Bopp's

**Current Zoning:** Highway Service Commercial

**Action Requested:** Approval of Special Use Permit to Construct Drive Through Lane

#### DESCRIPTION

The applicant is requesting a special use to construct a drive thru lane as part of the overall Mugg and Bopp's store site. As the Township may recall there was discussion of a drive-thru during the site plan review process for the recently constructed fueling station. The site is an existing automobile fueling/mixed use, store and station and current uses are permitted by a previous special use permit within the Highway Service District. The Mugg and Bopp's includes a canopy and five (5) gas pumps, employee and customer parking, paving, and landscaping. The site also has sufficient lighting, underground infrastructure, and drive lanes.

The applicant is proposing the new drive-thru on the west side of the building and parcel. They have indicated it will be Dunkin Donuts franchise and will only be accessed from the drive-thru window, no pedestrian customers will be permitted in the store. Most of the space will act as a bakery facility serving the other Mugg & Bopp's throughout the area.

Gasoline stations/drive-thrus have become a successful part of small stores and based on the location. This new drive-thru will be a nice amenity to Township residents accessing I-96 for work or other activities.



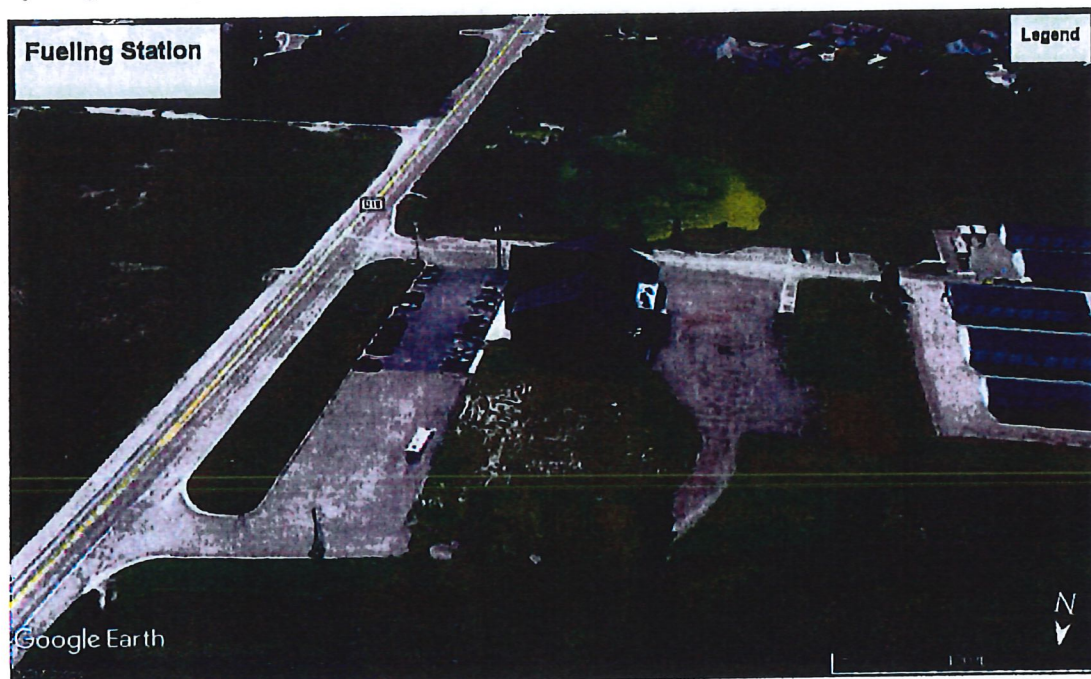
**PROPERTY BACKGROUND**

The applicant requests a use permitted by special use permit for a drive-thru lane at the mixed-use station.

Subject Site	
Current Use	Mugg & Bopps
Master Plan Recommended Use	Commercial

**PROJECT LOCATION**

**Aerial (Google 2018)**



**STREET VIEW (Google 2020)**



**ADJACENT PROPERTIES**



All parcels in the immediate vicinity that front along D-19 north of the property are zoned for a variety of commercial uses. Adjacent zoning and land use to the subject property are listed below:

Adjacent Properties		
	Existing Use	Zoning
North	Highway Service Commercial (MVS)	HS Highway Service
South	Residential Uses & Wetland	Suburban Residential
East	Vacant	HS Highway Service
West	Mini-Storage	HS Highway Service

**MASTER PLAN COMPATABILITY**

The future land use plan of the Marion Township Master Plan has designated the subject property as Commercial. The Master Plan indicates that commercial land uses could include but are not limited to: gas stations, large single-use retailers, restaurants and larger retail strip developments. The proposed use is in conformance with the Master Plan.

**Items to be Addressed: None.**

**AREA, WIDTH, HEIGHT, SETBACKS**

The Ordinance outlines the regulations for the HS Highway Service Commercial District. The following table compares the proposed development against these requirements:

	Required	Proposed	Compliance
Minimum Lot Area	1 acre	10.01 acres	✓
Minimum Lot Width	150 ft.	500 ft.	✓
Minimum Front Yard	100 ft. from D-19	114 ft.	✓
Minimum Side Yard	25 ft.	31 ft.	✓
Minimum Rear Yard	40 ft.	144 ft.	✓
Maximum Height	35 ft.	NA	NA

*Items to be Addressed: None.*

**BUILDING LOCATION AND SITE ARRANGEMENT**

The building location (store) is existing the canopy and pumps are just north. Site arrangement is reasonable with direct access off the existing access drives from D-19. The proposed drive-thru will begin at the northwest corner of the property making a semi-circle towards the gas pump area, then vehicles will have to cross a drive to get to the pickup window on the west side of the building. Vehicles will then use the back drive to exit the drive-thru and the property.

The Fire Department should review for circulation and the ability to access all sides of the building during an emergency.

*Items to be Addressed: Fire Department Review.*

**PARKING, LOADING and CIRCULATION**

We consider the site overparked in that many more spaces exist than are required. No new spaces are proposed. As indicated the new bakery will not allow pedestrian access besides employees.

We are concerned however with the entry to the drive-thru and the stub that would eventually provide access to the western portion of the site. The total drive is twenty-four (24') feet. At some point traffic may be driving west and on busy mornings cars may block anyone leaving the site to the east if anything is ever developed in the back portion of the property. This should be discussed.

The applicant had indicated that a delivery truck will be an integral part of the bakery operation. Where will this delivery truck be located when not on the road? There was some discussion that this parking site would be adjacent to the dumpster enclosure and it appears a concrete pad is there

*Items to be Addressed: 1.) Clarify parking for delivery vehicle. 2.) Discuss conflicts with stub street and drive-thru entry.*

### LANDSCAPING, FENCING, SCREENING

The current landscaping on the site is incomplete, the current proposal should address some of the issues agreed upon with the original plan.

The decorative knee wall has been installed; the plan proposes four (4) honey locust trees in front of the knee walls.

The plan indicates that six (6) parking lot landscaping trees are required when only four (4) are shown on plan fronting D-19. This should be clarified or more trees be planted.

The proposed drive-thru is screened by eleven (11) White Pines. We would recommend a combination of White Pines and White Spruce or similar, in case of blight or disease. A few of these proposed trees are near or on the property line of the self-storage facility.

The applicant is required to plant trees within the D-19 Greenbelt based on linear frontage. A plan note requests the Planning Commission waive the requirement for trees and shrubs to the 101 linear feet of wetlands that act as a form of greenbelt. The Planning Commission should discuss whether this is a reasonable trade-off for the required trees and shrubs that would typically be in a greenbelt.

**Items to be Addressed:** 1.) Mix evergreen trees to prevent total loss in case of blight or disease. 2.) Clarify required number of parking lot trees required. 2) Discuss waving greenbelt planting requirements.

### LIGHTING

No lighting plan is provided. We are especially concerned with the drive-thru lighting, if proposed, and the need for it to be down shielded. If any pole lights, wall packs or other is proposed, the applicant should provide fixture, detail including height, location and illumination levels.

**Items to be Addressed:** Provide lighting plan, if applicable.

### SIGNS

The existing signs on building and canopy will remain. A concern for the drive-thru sign is will customers at the gas station know where the drive-thru entrance is if a truck is parked on the truck pad? Another sign directing customers should be taken into consideration.

**Items to be Addressed:** Consider a second drive-thru sign for customers at the gas station pumps when drive-thru is visibly blocked by a semi-truck on the truck pad.

### FLOOR PLAN AND ELEVATIONS

We do not expect any changes to the building elevations will take place besides the installation of a drive-thru window on the west side, not visible from D-19.

**Items to be Addressed:** None.

### DRIVE-IN PERFORMANCE STANDARDS

1. The outdoor space used for parking and vehicle stacking shall be hard surfaced and adequately drained pursuant to Section 14.04.D. ***The proposed drive-thru will be made with concrete and will be graded.***
2. All areas used for the storage of trash and rubbish shall be screened by a vertical screen consisting of structural or plant materials no less than five (5) feet in height, with a view-obstructing door. ***Storage for trash is screened to the southwest of the parcel.***
3. Drive-in restaurant management shall provide adequate trash and litter policing for the parking lot and the shoulders of adjacent roadways. These areas shall be completely cleared of accumulated debris as often as necessary. ***Mugg & Bopp's has trash and litter policy and have trash cans around to ensure a clean property.***
4. No drive shall be closer to any other drive than seventy-five (75) feet and the maximum number of driveways permitted is two (2). ***Drive-thru is more the seventy-five (75) feet and the property has two driveways.***
5. Vehicular circulation patterns into and out of such businesses shall be located and designed to minimize disruption of and conflicts with through traffic movement on abutting streets. ***No vehicular circulation plan has been submitted. On a busy morning the drive thru might reach capacity and overflow into the gas pump station area. The drive thru also intersects a thru lane for Mugg and Bopp's customers that could cause potential accidents or near misses if the drivers are not paying attention. If the proposed drive thru is approved, there are proposed rubberized curbs that will allow a better delineation of traffic movement the drivers in both directions to control thru traffic. We could also consider the placement of flexible "bendable" bollards to better direct traffic. There should be a stop sign for both the drive thru and the thru lane.***
6. Devices for the transmission or broadcasting of voices or music shall be so directed or muffled as to prevent said sound or music from being audible beyond the boundaries of the site. ***Site plan does not indicate the noise level of the PA. The proposed volume should be at a minimum level so the adjacent properties cannot hear the different orders of customers.***

***Items to be Addressed:*** 1. Include vehicular circulation in site plan. 2. Include markings for traffic flow to avoid drive-thru conflicts. 3. Include a stop signs for drive-thru lane and for the perpendicular through lane to avoid accidents and near misses. 4. Find out the volume of the menu board PA system so adjacent properties cannot hear the different order of customers.

### CONDITIONAL USE STANDARDS

1. Be harmonious with and in accordance with the general principles and objectives of the Master Plan of the Township. ***The parcel is planned for and currently being used for commercial uses. The proposed use is harmonious with the current Master Plan.***

2. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed. ***The existing and proposed commercial uses are appropriate in appearance and fit the area.***
3. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will substantially improve property in the immediate vicinity and in the community as a whole. ***We do not anticipate any hazardous or disturbing issues upon approval of all outside agencies and the Township.***
4. Be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools. ***Adequate services are available to the site.***
5. Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors. ***We do not anticipate any additional potential uses on site as it has been used for a commercial store for several years.***
6. Meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for the land use or activity under consideration; and will be in compliance with these standards. ***Upon addressing the issues contained in this review and as required by the Planning Commission the proposed project will meet Township requirements.***
7. Ensure that landscaping shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and by topographic modifications, which result in maximum harmony with adjacent areas. ***Existing landscaping will be preserved.***
8. Ensure that special attention shall be given to proper site surface drainage so that removal of storm waters will not adversely affect neighboring properties. ***The Township engineer should review for compliance with all infrastructure needs.***
9. Ensure that all exterior lighting shall be so arranged that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets. Flashing or intermittent lights shall not be permitted. ***New lighting should be clarified.***
10. Meet the site plan review requirements of Article XVIII. If the applicant chooses to submit a preliminary site plan, the special use permit may also be considered preliminary. ***Upon addressing issues as noted in this review the project shall meet Ordinance requirements.***
11. Conform to all applicable state and federal requirements for that use. ***Prior to Township approval the project should meet all outside agency approvals.***

**SUMMARY OF ITEMS TO BE ADDRESSED BY APPLICANT**

The following items shall be addressed by the applicant to the satisfaction of the Planning Commission prior to special use approval:

1. Fire Department Review.
2. Mix evergreen trees to prevent total loss in case of blight or disease.
3. Clarify required number of parking lot trees required.
4. Discuss waving greenbelt planting requirements.
5. Clarify parking for delivery vehicle.
6. Discuss conflicts with stub street and drive-thru entry.
7. Provide lighting plan, if applicable.
8. Down-shield all proposed drive-thru lighting.
9. Include vehicular circulation in site plan. Discuss pavement marking and possible flexible bollards for to improve circulation.
10. Include a stop signs for drive-thru lane and for the perpendicular through lane to avoid accidents and near misses.
11. Clarify volume of the menu board PA system so adjacent properties cannot hear the different order of customers.
12. Township engineer review and approval.
13. Outside agency review and approval.





**DRAFT**

**MARION TOWNSHIP PLANNING COMMISSION**

**JUNE 23, 2020 REGULAR MEETING FOR:**

**SUP #01-20 MARION D19 LLC SECTION 17.12 DRIVE-IN ESTABLISHMENT**

**MEMBERS PRESENT:**

LARRY GRUNN – *CHAIRPERSON*  
BOB HANVEY  
CHERYL RANGE – *SECRETARY*  
BRUCE POWELSON – *VICE CHAIR*  
JAMES ANDERSON

**OTHERS PRESENT:**

DAVE HAMANN – ZONING ADMINISTRATOR  
JOHN ENOS – PLANNER WITH CARLISLE WORTMAN

**PUBLIC HEARING:**

***SUP #01-20 MARION D19 LLC SECTION 17.12 DRIVE-IN ESTABLISHMENT***

John Enos assisted Cohoctah with a business similar to this Mugg and Bopp's gas station. John explained that drive-thrus are typically a Special Use because they sometimes can cause nuisance and/or safety concerns. The purpose of this Public Hearing and a site plan is to get the Community and Board's input on things like lighting, landscaping, signage, traffic and any major issues that could arise. John Enos does feel that there should be further discussion on this prior to approval. Due to the shape of the property, the layout of the drive-thru is a little different than normal. John believes with a little work and some minor adjustments; we can make this work.

Larry Grunn asked Dave Hamann if there is a conflict with our engineers and Mugg and Bopp's.

Dave Hamann explained that there is some confusion with the window location, along with some other issues listed in their review.

Todd LeKander is one of the owners of Mugg and Bopp's. Todd explained that customers keep asking when the drive-thru is going to be in place. He believes that the consumer wants to see a drive-thru at this location and is confident that their customers will be able to adapt quickly and follow the flow of traffic throughout the parking lot. Todd has spoken to Phil Westmoreland (with Spicer's) about their review, regarding this SUP and site plan. Todd cleared up some of the confusion with Spicer's and asked Phil if he was willing to write a new review letter based on their conversation. Phil said that no one on the Board has requested another review letter from him. Todd sent over some examples and photos of other drive-thrus that cross through traffic. Todd believes that if Phil was in attendance tonight, he would say that he understands why the drive-thru is located where it is. It is not the best layout but it makes sense to position it where it is. Todd is willing to re-mark the parking lot and make some changes to the lighting.

Larry Grunn asked if there have been any recent traffic issues at the other Mugg and Bopp's location, due to COVID-19. Todd said that there have not been any recent traffic issues at that location and everything seems to be flowing pretty well.

Jim Anderson said that Todd should consider putting in a curb on the west side of the building to help curb the traffic on that side.

Todd explained that he is putting in a durable barrier that will be attached to the concrete. This will still allow an escape route for customers, so they are not blocked in the drive-thru line.

Jim Anderson asked if there would be any stop signs throughout the parking lot.

Todd said that there would be a stop sign on the southwest corner of the building and it would be large enough to be seen from both sides of the road. There will also be a stop sign right after the order window.

John Enos explained that he believes we can make this work, once we make some changes that will make Phil Westmoreland more comfortable. The Planning Commission can request a revised plan or we can approve this one with contingencies.

Bob Hanvey asked if Todd planned on planting more trees on the property.

Todd said that they already relocated certain trees, so they would act as a buffer from D19.

John Enos said that we could approve this, with conditions regarding the 13 items. There is no reason that we can't approve this with the agreement that these things will get resolved prior to being sent to the Board of Trustees.

Bob Dymond from McGowan's Mini Storage believes that what Todd and TJ are doing is a wonderful addition to that property. However, he would like to discuss the current drain issues involving his property. There was currently a drain that runs across LeKander's property, which is supposed to help prevent flooding onto his property. The Drain Commission is working on solving this issue which should cause less flooding. Bob Dymond would like an easement where the current drain is located, which would run across LeKander's property. Todd and Bob cannot seem to agree on the location of the new drain.

Todd LeKander believes that Bob Dymond has the ability to resolve this issue on his own property without affecting the Mugg and Bopp's property. He does not want to run a drain across his property that would cross over gas lines, fuel lines, utility lines, electrical lines and sanitary lines.

Bob Dymond stated that he is only asking for a 40-foot easement, so the contractors had enough room to get in there if needed. If the contractor determined that he only needed 25 feet, then Bob would be ok with that instead.

John Enos explained that this is not the right platform for this type of discussion.

Larry Grunn said that these issues need to get resolved now.

Dave Hamann explained that the current Special Use Permit states that Todd had the choice to provide an easement within five years.

Jim Abraham is going to be the future owner of McGowan's Mini Storage. His concern is that, currently the water level gets very high in the winter time. The Drain Commission project is not completed yet and we don't know what kind of impact that project is going to have on things, until it is 100% complete. Jim is hoping to compromise with installing a drain cap temporarily, just in case the Drain Commission project fails.

Larry Grunn asked Jim Abraham if he was planning to add asphalt to his parking lot.

Jim Abraham said that he does plan to in the future and also plans to add pavement as well.

Larry Grunn asked Jim if he had spoken to any of the Drain Commission excavators about this issue.

Jim Abraham said he has spoken with them; however, it would still be nice to have the easement alongside of the existing drain just in case something happens.

## **NEW BUSINESS:**

### ***SUP #01-20 and SPR #01-20 MARION D19 LLC DRIVE-IN ESTABLISHMENT SECTION 17.12***

John Enos recommends that the Planning Commission should approve the Special Use Permit and send it to the Board but hold off on the Site Plan Review until we have some of these issues resolved with Phil, Todd and the Planning Commission.

Jim Anderson made a motion to recommend approval for the Special Use Permit and send it to the Board of Trustees for review. Cheryl Range seconded. **MOTION CARRIED**

Jim Anderson made a motion to table approval of the Site Plan Review until some of these issues get resolved. Larry Grunn seconded. **MOTION CARRIED**

## ARTICLE XVI: SPECIAL USE PERMITS

### Section 16.01 Purpose and Intent

Special Use Permits are approved, denied or approved with conditions by the Board of Trustees after review and recommendation by the Marion Township Planning Commission for uses that require special consideration due to their potential impact on the community.

While promoting the intent and purpose of the Zoning Ordinance, Special Use Permits provide a set of procedures and standards for specific uses of land or structures and specified in Article XVII of this ordinance that will allow practical latitude for the investor or developer and ensure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land uses.

In order to provide control and reasonable flexibility, this Article permits detailed review of certain specified types of land use activities, which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole.

Land use and structure use possessing these characteristics may be authorized within certain zoning districts by the issuance of a special use permit.

By such a procedure, the Planning Commission shall have the opportunity to recommend to the Board of Trustees conditions of each application, which are deemed necessary for the protection of the public welfare. Such conditions shall be based on standards in this Zoning Ordinance.

### Section 16.02 Procedures

An application for a special use permit for any special land use or structure identified as such in a particular zoning district and permitted under this Article shall be submitted and processed under the following procedures.

- A. **Submission of Application:** Any application shall be submitted to the Zoning Administrator on a special form for that purpose. Each application shall be accompanied by the payment of a fee as established by the Township Board to cover costs of processing the application.
- B. **Data Required:** Every application shall be accompanied by special form supplied by the Zoning Administrator filled out in full by the applicant, including the information necessary for a site plan approval as required by Article 18 and any other information that may be necessary to demonstrate compliance with the standards set forth in Article 17 for a specific special land use.
- C. **Check for Completeness and Accuracy:**
  1. Within five (5) working days of the receipt of the submission of an application, the Zoning Administrator shall determine whether it is in proper form, contains all required information, and appears to show compliance with all applicable provisions of Section 16.02.
  2. Upon certification by the Zoning Administrator that the necessary site plan information and application form are complete, one (1) complete copy of the site plan and related information shall be forwarded to the Planning Commission and the Zoning Administrator. The Zoning Administrator may also submit one (1) copy of the site plan to each of the following agencies considered to be impacted or affected by the special use permit application.
    - a. County Road Commission

- b. County Health Department
- c. County Drain Commissioner
- d. Fire Department providing service to that part of the Township
- e. Other agencies as relevant

### Section 16.03 Planning Commission Public Hearing

The Planning Commission shall review the site plan and application at its next scheduled meeting following receipt from the Zoning Administrator. After adequate study and review, incorporating information provided by reviewing agencies listed in Section 16.02.C 2, the Planning Commission shall publish a notice of public hearing for a special land use application. The notice shall be published in a newspaper of general circulation in the Township and shall be sent by mail or personal delivery to the owners of property for which approval is being considered, to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question, and to the occupants of all structures within three hundred (300) feet regardless of whether the property or occupant is located within the Township. The notice shall be given not less than fifteen (15) days before the application will be considered for approval.

If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one occupant of a structure, except that if a structure contains more than one dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.

**The notice shall:**

- A. Describe the nature of the special land use request.
- B. Indicate the property, which is the subject of the special land use request. The notice shall include a listing of all existing street addresses within the property, if such addresses exist. If there are no street addresses, other means of identification may be used.
- C. State when and where the special land use request will be considered.
- D. Indicate when and where written comments will be received concerning the request.

At the public hearing, the applicant or a representative shall present the project to the public and the Planning Commission. The Planning Commission shall give members of the public the opportunity to comment on the application and shall consider the comments in their evaluation of the application.

### Section 16.04 Planning Commission Action

After review of the application for special land use and the public hearing, the Planning Commission shall recommend approval, denial, or approval with conditions to the Board of Trustees. The Planning Commission recommendation shall be incorporated in a statement of conclusions relative to the special land use under consideration, and shall specify the basis for the recommendation and any conditions. The Board of Trustees shall consider the application at their next regular meeting or if requested by the applicant, the Board of Trustees may schedule a special meeting.

### Section 16.05 Basis for Determination

Both the Planning Commission and the Board of Trustees shall employ and be guided by standards which shall be consistent with and promote the intent and purpose of this Zoning Ordinance, and ensure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The land use or activity shall be consistent with the public health, safety, and welfare of Marion Township and shall comply with the following standards:

- A. **General Standards:** Each application shall be reviewed for the purpose of determining that each proposed use meets the following standards and, in addition, shall find adequate evidence that each use on its proposed location will:
1. Be harmonious with and in accordance with the general principles and objectives of the Comprehensive Plan of the Township.
  2. Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such a use will not change the essential character of the area in which it is proposed.
  3. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will substantially improve property in the immediate vicinity and in the community as a whole.
  4. Be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools.
  5. Not involve uses, activities, processes, materials and equipment or conditions of operation that will be detrimental to any person, property or general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
  6. Meet the intent and purpose of the zoning regulations; be related to the standards established in the Ordinance for the land use or activity under consideration; and will be in compliance with these standards.
  7. Ensure that landscaping shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and by topographic modifications, which result in maximum harmony with adjacent areas.
  8. Ensure that special attention shall be given to proper site surface drainage so that removal of storm waters will not adversely affect neighboring properties.
  9. Ensure that all exterior lighting shall be so arranged that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets. Flashing or intermittent lights shall not be permitted.
  10. Meet the site plan review requirements of Article XVIII. If the applicant chooses to submit a preliminary site plan, the special use permit may also be considered preliminary.
  11. Conform to all applicable state and federal requirements for that use.

## Section 16.06 Relationship to Specific Standards

The foregoing general standards are basic to all uses authorized by special use permit. The specific and detailed requirements set forth in Article XVII relate to particular special land uses and are requirements,

which must be met by those uses in addition to the foregoing general standards, and requirements.

#### Section 16.07 Permits

- A. **Validity of Permit:** A special use permit issued under Section 16.05 shall be valid for a period of one (1) year from the date of the issuance of said permit. If construction has not commenced and proceeded meaningfully toward completion by the end of this one (1) year period, the Zoning Administrator shall notify the applicant in writing of the expiration or revocation of said permit, provided, however, that the Board of Trustees may waive or extend the period of time in which the permit is to expire if it is satisfied that the owner or developer is maintaining a good faith intention to proceed with construction.

Once the special land use is established and the conditions of the permit fulfilled, the special use permit shall be valid until such time that there is a change of conditions or use related to the permit.

- B. **Permit Revocation:** The Township Board shall have the authority to revoke any special use permit following a hearing, after it has been proved that the holder of the permit has failed to comply with any of the applicable conditions specified in the permit. After a revocation notice has been given, the use for which permit was granted must cease within sixty (60) days.

Failure to terminate the use for which the permit was revoked within sixty (60) days is declared to be a nuisance per se and a violation of the Zoning Ordinance. (See Sections 4.04 and 4.05.)

#### Section 16.08 Reapplication

No application for a special use permit which has been denied wholly or in part by the Township Board shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on the grounds of newly-discovered evidence or proof of changed conditions. A reapplication shall require a new fee and the process will have to begin all over again.

#### Section 16.09 Changes in the Site Plan

The site plan, as approved, shall become part of the record of approval, and subsequent actions relative to the activity authorized shall be consistent with the approved final site plan, unless a change conforming to the Zoning Ordinance receives the mutual agreement of the landowner and the Planning Commission.

#### Section 16.10 Appeals

An appeal on a special use permit decision may be taken to the Circuit Court.

#### Section 16.11 Fees

An application fee shall be established by resolution of the Board of Trustees. Before final approval, any costs incurred by the Township shall be paid for by the applicant.

**Section 17.12 Drive-in Establishments**

- A. **Locational Requirements:** Drive-in establishments are permitted by special use permit in the Highway Service District.
- B. **Site Requirements:**
  - 1. The site shall have at least one (1) lot line on a major thoroughfare.
- C. **Buffering Requirements:** Shall meet the requirements of Section 6.13.
- D. **Performance Standards:**
  - 1. The outdoor space used for parking and vehicle stacking shall be hard surfaced and adequately drained pursuant to Section 14.04.D.
  - 2. All areas used for the storage of trash and rubbish shall be screened by a vertical screen consisting of structural or plant materials no less than five (5) feet in height, with a view-obstructing door.
  - 3. Drive-in restaurant management shall provide adequate trash and litter policing for the parking lot and the shoulders of adjacent roadways. These areas shall be completely cleared of accumulated debris as often as necessary.
  - 4. No drive shall be closer to any other drive than seventy-five (75) feet and the maximum number of driveways permitted is two (2).
  - 5. Vehicular circulation patterns into and out of such businesses shall be located and designed to minimize disruption of and conflicts with through traffic movement on abutting streets.
  - 6. Devices for the transmission or broadcasting of voices or music shall be so directed or muffled as to prevent said sound or music from being audible beyond the boundaries of the site.

MEMO

To: Marion Township Board  
From: Bob Hanvey  
Subject: Lisa Maher easement agreement  
Date: July 9, 2020

Attached is the agreement for the easement on the Lisa Maher property. It was prepared by her attorney and modified as I requested.

She has already signed it so if the Board agrees with the document, the issue will be settled.



## AGREEMENT

This agreement relates to 987 Peavy Road, Howell, MI 48843

Having a legal description of:

SEC. 2 T2N, R4E, BEG. AT SW COR. OF W 50 A OF N PART OF NE 1/4 OF SEC., N 653.7 FT. ALONG HWY., S 87\* E 857 FT. TO E LINE OF 50 A THENCE S 614 FT. TO SE COR. OF 50 A THENCE W TO BEG. EXC I-96 R/W 12.3A

Tax ID: 4710-02-200-001

This agreement also relates to 977 Peavy Road, Howell, MI 48843

Having a legal description of:

T2N R4E ALL THAT PART OF THE W 50AC OF THE N 1/2 OF THE NE FRL 1/4 OF SEC LYING S OF I-96 ROW EXC THE S 12.3AC THERE- OF, 4AC

Tax: 4710-02-200-013

Lisa Maher, Property owner, 987 Peavy Road, Howell, MI 48843 and Marion Township, a Civil Township, located at 2877 West Coon Lake Road, Howell, MI 48843 agree as follows. In consideration of the mutual promises contained herein, the Parties agree as follows:

That Lisa Maher originally had two (2) water REU: and one (1) municipal sewer REU for the property commonly known as 987 Peavy Road, Howell, MI 48843. Also, the property formerly owned by, Larry Maher now owned by Lisa Maher, at 977 Peavy Road, Howell, MI, 48843 had one municipal water REU.

The parties agree that one (1) of the water REU is presently in use at 987 Peavy Road, Howell MI 48443.

The parties further agree that the above referenced water and sewer REU shall be amended as follows:

The property located at 987 Peavy Road, Howell, Michigan, 48843 shall have one (1) water REU which has already been connected for that property. The property located 977 Peavy Road, Howell, MI, 48843 shall be entitled to one (1) water REU which is yet to be connected. The parties believe that the water REU should already be available at the road at 977 Peavy Road, Howell, MI, 48843 for the REU. However, in the event that the water REU is not available at the road for 977 Peavy Road, Howell, MI, 48843, Marion Township shall conduct whatever construction, engineering and any other requirements to make the REU for water available at 977 Peavy Road, Howell, MI 48843, at no cost to the property owner with in 30 days of the signing of this agreement. The Parties explicitly agree that one sewer REU is removed from 987

Peavy Road, Howell, MI 48843. Any discount on future Sewer REU's are removed from 977 Peavy. The Property owner is required to obtain a permit from Marion Township and pay for a water meter prior to connecting and pay usage fees after connection. Property owner is required to pay to connect the water line for the curb stop to the home. The original easement required Liber 2729 Page 0486 recorded on or about February 23, 2000 remains in place and in full force and effect.

It is further agreed between the Parties that Marion Township, a Civil Township, shall pay to Lisa Maher the sum of \$25,000.00 to be paid within 14 days of the signing of this agreement.

It is further agreed between the Parties that neither 987 Peavy Road, Howell, MI, 48843 nor 977 Peavy Road, Howell, MI, 48843 are required to connect to the sanitary sewer.

It is further agreed that upon the execution and completion of all the terms and conditions of this agreement, the obligations between the Parties with respect to water and/or sewer REU with respect to 987 Peavy Road, Howell, MI 48843, and 977 Peavy Road, Howell, MI, 48843 shall be satisfied until further agreement of the Parties.

This document may be recorded by the Livingston County Register of Deeds by either party.

\_\_\_\_\_  
Robert Hanvey  
Supervisor Marion Township

\_\_\_\_\_  
Dated

STATE OF MICHIGAN        )  
                                          ) ss.  
COUNTY OF LIVINGSTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me appeared Robert Hanvey, who first duly sworn, and stated that same is true to the best of his own knowledge and belief.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan.

My commission expires on  
\_\_\_\_\_.

Acting in \_\_\_\_\_ County, MI

\_\_\_\_\_  
Tammy Beal  
Marion Township Clerk

\_\_\_\_\_  
Dated

STATE OF MICHIGAN        )  
                                          ) ss.  
COUNTY OF LIVINGSTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2020, before me appeared Tammy Beal, who first duly sworn, and stated that same is true to the best of her own knowledge and belief.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan.

My commission expires on  
\_\_\_\_\_.

Acting in \_\_\_\_\_ County, MI



\_\_\_\_\_  
Lisa Maher  
Property Owner

6/23/2020  
Dated

STATE OF MICHIGAN        )  
                                          ) ss.  
COUNTY OF LIVINGSTON    )

On this 23<sup>rd</sup> day of June 2020, before me appeared Lisa Maher, who first duly sworn, and stated that same is true to the best of her own knowledge and belief.

Juli A. Morgan  
Juli A. Morgan        Notary Public  
Livingston        County, Michigan.

My commission expires on

10/24/2021.

Acting in Livinston County, MI

MEMO

To: Marion Township Board  
From: Bob Hanvey  
Subject: Crown Castle (AT&T) Cell Tower Lease Extension  
Date: July 9, 2020

At a previous meeting the Board agreed, in general terms, to the extension requested by Crown Castle, subject to review by the Township Attorney.

Mike had some issues which are discussed below.

Another issue was the selection of single payment or time payments. The Board was in favor of time payments so I made a table (attached) to compare the two options. The leftmost column is the payment year, the next column is the annual payment with the five-year rental increments, the next column is the total amount paid from the start of the agreement through the year at the left.

The "Payments Saved and Compounded" column and "Buy-out Compounded" columns compare the amount of money that would be accumulated if the payments were saved in an interest-bearing account, without withdrawals, at 2% annual interest. Somewhere around the year 2031, the two options are about equal. From that point on the time-payment option results in more income to the Township. So if we think the tower will stay in place beyond the year 2031, the time-payments option is better. This comparison does not account for inflation, changes in technology, or other factors.

In either case, the original agreement (paragraph 6) allows Crown Castle to terminate the agreement at their option. The Township does not have that option.

In the "Tentative Modification" of the lease, paragraph "A," Crown Castle proposes a replacement for paragraph 22 of the original lease. One way to interpret that is they are suggesting that they act as an agent for the Township in securing new tenants and pay us 30% of the lease amount. Our Attorney has an issue with Crown Castle having sole discretion as to whether or not to accept a sub-tenant. Mike is not sure that we are allowed to deny access. We can check that out and make the change if necessary.

Mike was also concerned about Crown Castle having control of the rental amount. I think that since we get a fixed percentage that should not be a problem.

Paragraph "B" allows us to get annual reports from Crown Castle about rents.

Paragraph "C" requests that Crown Castle be allowed to increase the lease area by up to 1,000 square feet. The attached photo shows the area currently used by them in yellow and Verizon in blue. The additional ground space would not change the rental they pay to us. I don't know how we would use the remaining space so I'm suggesting that we include all the non-Verizon area in the lease at this time and not be concerned about amendments if new sub-tenants are found.

## Cell Tower Lease / Buy-out options

Interest Rate = 2.00%

Year	Annual Payment	Cummulative Payments	Payments	
			Saved and Compounded	Buy-out Compounded
2021	\$ 27,376	\$ 27,376	\$ 27,376	\$ 380,000
2022	\$ 27,376	\$ 54,752	\$ 55,847	\$ 387,600
2023	\$ 27,376	\$ 82,128	\$ 84,888	\$ 395,352
2024	\$ 31,482	\$ 113,610	\$ 118,697	\$ 403,259
2025	\$ 31,482	\$ 145,092	\$ 153,182	\$ 411,324
2026	\$ 31,482	\$ 176,574	\$ 188,358	\$ 419,551
2027	\$ 31,482	\$ 208,056	\$ 224,237	\$ 427,942
2028	\$ 31,482	\$ 239,538	\$ 260,833	\$ 436,501
2029	\$ 36,204	\$ 275,742	\$ 302,978	\$ 445,231
2030	\$ 36,204	\$ 311,946	\$ 345,965	\$ 454,135
2031	\$ 36,204	\$ 348,150	\$ 389,813	\$ 463,218
2032	\$ 36,204	\$ 384,354	\$ 434,537	\$ 472,482
2033	\$ 36,204	\$ 420,558	\$ 480,156	\$ 481,932
2034	\$ 47,880	\$ 468,438	\$ 538,597	\$ 491,571
2035	\$ 47,880	\$ 516,318	\$ 598,206	\$ 501,402
2036	\$ 47,880	\$ 564,198	\$ 659,008	\$ 511,430
2037	\$ 47,880	\$ 612,078	\$ 721,026	\$ 521,659
2038	\$ 47,880	\$ 659,958	\$ 784,284	\$ 532,092
2039	\$ 55,062	\$ 715,020	\$ 856,133	\$ 542,734
2040	\$ 55,062	\$ 770,082	\$ 929,418	\$ 553,588
2041	\$ 55,062	\$ 825,144	\$ 1,004,170	\$ 564,660
2042	\$ 55,062	\$ 880,206	\$ 1,080,417	\$ 575,953
2043	\$ 55,062	\$ 935,268	\$ 1,158,188	\$ 587,472
2044	\$ 63,321	\$ 998,589	\$ 1,245,939	\$ 599,222
2045	\$ 63,321	\$ 1,061,910	\$ 1,335,446	\$ 611,206
2046	\$ 63,321	\$ 1,125,231	\$ 1,426,742	\$ 623,430
2047	\$ 63,321	\$ 1,188,552	\$ 1,519,864	\$ 635,899
2048	\$ 63,321	\$ 1,251,873	\$ 1,614,849	\$ 648,617
2049	\$ 72,819	\$ 1,324,692	\$ 1,721,421	\$ 661,589
2050	\$ 72,819	\$ 1,397,511	\$ 1,830,125	\$ 674,821
2051	\$ 72,819	\$ 1,470,330	\$ 1,941,003	\$ 688,317
2052	\$ 72,819	\$ 1,543,149	\$ 2,054,098	\$ 702,084
2053	\$ 72,819	\$ 1,615,968	\$ 2,169,456	\$ 716,125
2054	\$ 83,742	\$ 1,699,710	\$ 2,298,262	\$ 730,448
2055	\$ 83,742	\$ 1,783,452	\$ 2,429,644	\$ 745,057
2056	\$ 83,742	\$ 1,867,194	\$ 2,563,654	\$ 759,958
2057	\$ 83,742	\$ 1,950,936	\$ 2,700,344	\$ 775,157
2058	\$ 83,742	\$ 2,034,678	\$ 2,839,767	\$ 790,660
2059	\$ 96,303	\$ 2,130,981	\$ 2,994,792	\$ 806,474
2060	\$ 96,303	\$ 2,227,284	\$ 3,152,917	\$ 822,603
2061	\$ 96,303	\$ 2,323,587	\$ 3,314,204	\$ 839,055
2062	\$ 96,303	\$ 2,419,890	\$ 3,478,717	\$ 855,836
2063	\$ 96,303	\$ 2,516,193	\$ 3,646,520	\$ 872,953

# ORIGINAL LEASE

## 3. TERM.

(a) The initial lease term will be five (5) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth (5<sup>th</sup>) annual anniversary of the Commencement Date occurs.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If Tenant remains in possession of the Premises after the termination or expiration of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

## 4. RENT.

(a) Commencing on the date that Tenant commences construction (the "Commencement Date"), Tenant will pay the Landlord a monthly rental payment of Fifteen Hundred and No/100 Dollars (\$1,500.00) ("Rent"), at the address set forth above on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. Rent will be prorated for any partial month. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Commencement Date.

(b) In year one (1) of each Extension Term, the monthly Rent will increase by fifteen percent (15%) over the Rent paid during the previous Term.

## 5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Governmental Approvals.

## 6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by



# TERMINATION CONTINUED

Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant on sixty (60) days prior written notice for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of a termination of this Agreement by Tenant under any one or more of Paragraphs 5(b) Approvals, 6(a) Termination, 6(b) Termination, 8 Interference, 11(d) Environmental, 18 Severability, 19 Condemnation or 20 Casualty of this Agreement.

7. **INSURANCE.** Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. It is understood and agreed that the coverage afforded by Tenant's commercial general liability insurance also applies to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property. Tenant will provide Landlord insurance certificates naming Landlord as additional insured.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with Tenant's Communication Facility. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waive any claims that each may have against the other with respect to consequential, incidental or special damages.

# ORIGINAL LEASE

expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within seventy two (72) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of notice of termination; provided, however there will be no termination of this Agreement if such fire or other casualty was the result of any act, neglect or omission of Tenant, ant successor, assign, agent, employee, contractor, subcontractor or sublessee of Tenant . Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis and excepting therefrom any insurance proceeds to which Landlord would be entitled under this Agreement or any policy of insurance insuring Landlord's interest in the Property or leased Premises.

21. **WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning any property belonging to Tenant that comprises the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law. Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time provided such removal is in accordance with this lease or any amendment thereto.

22. **COLLOCATION.** Tenant shall notify Landlord in writing of all requests for tower collocation. Any party requesting tower collocation shall be required to execute a ground lease with Landlord and a separate tower/structure collocation agreement with Tenant. The ground lease with Landlord shall be executed prior to execution of the tower/structure collocation agreement with Tenant.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the

## FROM TENTATIVE MODIFICATION

A In addition to the rent currently paid by Tenant to Landlord pursuant to the Agreement, as further consideration for the right to exclusively use and lease the Premises, if, after full execution of this First Amendment, Tenant subleases, licenses or grants a similar right of use or occupancy in the Premises to an unaffiliated third party not already a subtenant on the Premises (each a "Future Subtenant"), Tenant agrees to pay to Landlord thirty percent (30%) of the rental, license or similar payments actually received by Tenant from such Future Subtenant (excluding any reimbursement of taxes, construction costs, installation costs, or revenue share reimbursement) (the "Additional Rent") within thirty (30) days after receipt of said payments by Tenant. Tenant shall have no obligation for payment to Landlord of such share of rental, license or similar payments if not actually received by Tenant. Non-payment of such rental, license or other similar payment by a Future Subtenant shall not be an event of default under the Agreement. Tenant shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Premises. There shall be no express or implied obligation for Tenant to sublease, license or otherwise allow occupancy of the Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from subtenants and any successors and/or assignees of such subtenants who commenced use and/or sublease of the Premises prior to execution of the Lease Amendment shall be expressly excluded from the Additional Rent and Landlord shall have no right to receive any portion of such revenue. Tenant will have the right to sublease or license use of all or a portion of the Premises without the consent or approval of Landlord. Tenant shall provide written notice to Landlord within sixty (60) days after such sublease or license is fully executed.

B Once per calendar year, Landlord may submit a written request to Tenant or a business summary report pertaining to Tenant's rent obligations for Future Subtenants (as defined herein) for the prior twelve (12) month period, and Tenant shall provide such written report to Landlord within sixty (60) days after Tenant's receipt of such written request. Landlord shall send such written request to the Notice address set forth in Agreement, as amended by this First Amendment.

C As further consideration for Tenant entering into this First Amendment, during the term of the Agreement, Tenant shall have the irrevocable option ("Option") to lease up to a maximum of one thousand (1,000) square feet of real property adjacent to the existing Premises at a location to be determined at Tenant's sole discretion ("Additional Lease Area") on the same terms and conditions set forth in the Agreement. Tenant may conduct any reasonable due diligence activities on the Additional Lease Area at any time after full execution of this First Amendment. If Tenant elects to exercise the Option, after full execution of the Additional Lease Area Documents (as defined below), Tenant shall pay no additional rent for the Additional Lease Area. Tenant may exercise the Option by providing written notice to Landlord at any time; provided, however, that following Tenant's delivery of notice to Landlord, Tenant may at any time prior to full execution of the Additional Lease Area Documents withdraw its election to exercise the Option if Tenant discovers or obtains any information of any nature regarding the Additional Lease Area which Tenant determines to be unfavorable in its sole discretion. Within thirty (30) days after Tenant's exercise of the Option, Landlord agrees to execute and deliver an amendment to the Agreement, a memorandum of lease and/or amendment, and any other documents necessary to grant and record Tenant's interest in the Additional Lease Area ("Additional Lease Area Documents"). In addition, within thirty (30) days after Tenant's exercise of the Option, Landlord shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Lease Area to Tenant's satisfaction.

