

**Zoning Board of Appeals  
February 27, 2019 Regular Meeting**

**STAFF REPORT**

**Subject: ZBA19-002; 1619 South University**

**Summary:**

Darren Kummerer, representing Administrative Holdings III, LLC is requesting a variance from Chapter 55 Unified Development Code (UDC) Table 5:17-2 Two- Family Residential Zoning District Dimensions. The petitioners are seeking to convert an existing nine-bedroom single family home into a two-unit duplex consisting of a three bedroom unit and a six bedroom unit. The property is zoned R2B Two-family that requires a minimum lot width of 60 feet. The subject property is 50 feet in width, resulting in the request for a ten foot variance.

**Background:**

The subject property is located between South University and Geddes Avenue west of Oxford Road. The home was built in 1908 and is approximately 2,887 square feet in size. In 1988 (88-Z-110) the property owners appealed the Building Officials decision to allow ten occupants in a six bedroom unit. The Board overturned the Building Officials decision which was a favorable outcome for the appellants.

**Description:**

The petitioner is seeking to convert the existing single-family unit to two units while decreasing the number of occupants from ten to nine.

**Standards for Approval- Variance**

The Zoning Board of Appeals has all the power granted by State law and by Section 5.29.12, Application of the Variance Power from the UDC. The following criteria shall apply:

- (a). ***That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.***

The applicant states that the variance request is small (ten feet) while reducing the occupancy and making interior improvements.

- (b). ***That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.***

The rental housing market continues to trend towards smaller units with less bedrooms, the property owners are trying to meet their client's needs.

- (c). ***That allowing the variance will result in substantial justice being done,***

***considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.***

No exterior changes to the property will occur, the applicant states that only positive changes will take place with the granting of the variance.

- (d). That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.***

The home was built in 1908, and the lot width requirement of 60 feet was implemented in 1965. The applicant states that the home was designed to accommodate two units as both floors contain kitchens, bathrooms and bedrooms.

- (e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.***

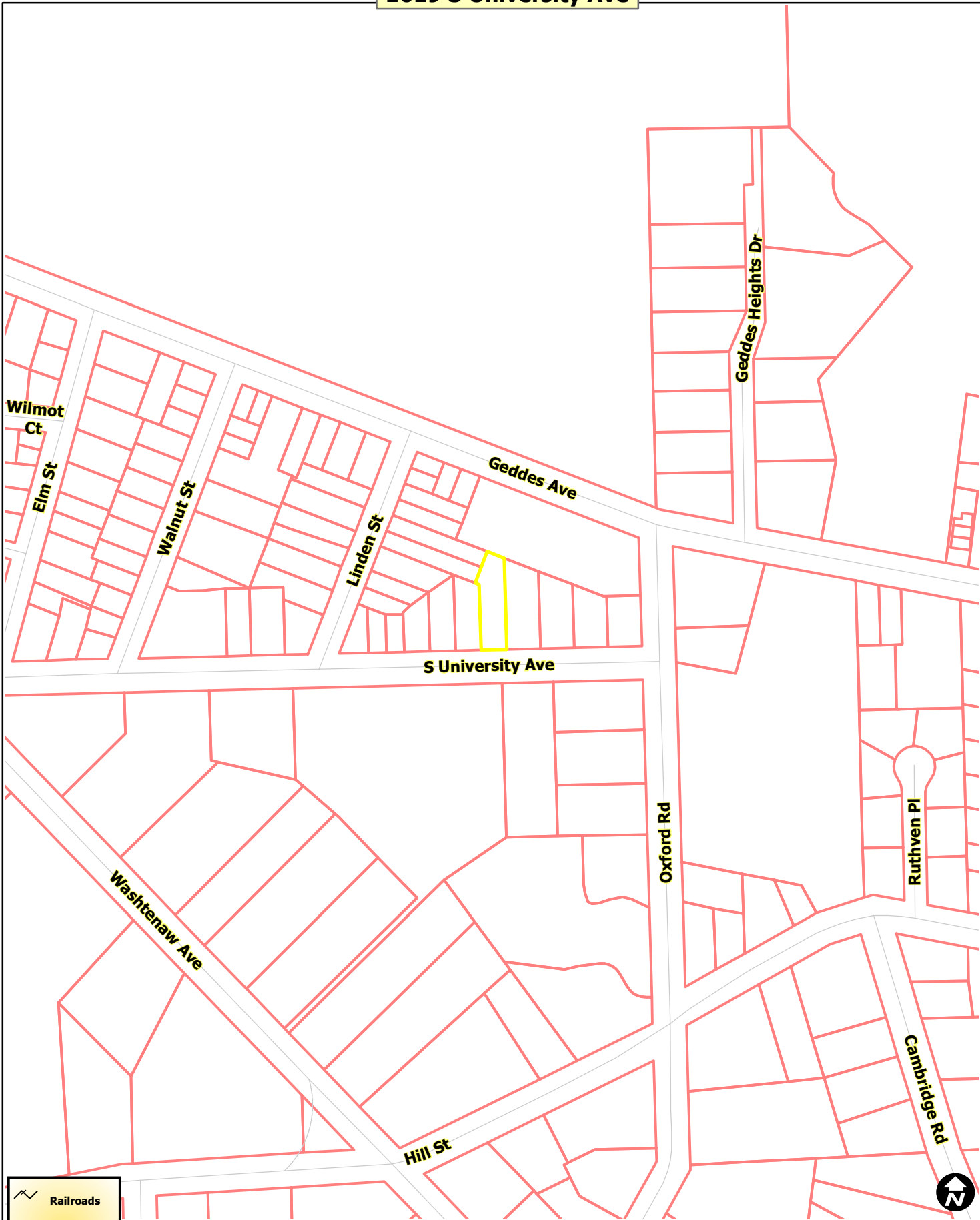
The variance request is the minimum, only ten feet or a 17% decrease. The variance will not have an impact on adjacent properties.


Respectfully submitted,


A handwritten signature in blue ink, appearing to read "Jon Barrett". The signature is stylized with large loops and a cursive-like flow.


**Jon Barrett  
Zoning Coordinator**

1619 S University Ave



 Railroads

 Huron River




 Tax Parcels



Map date: 2/5/2019  
Any aerial imagery is circa 2018 unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)

# 1619 S University Ave




-  Railroads
-  Huron River
-  Tax Parcels



Map date: 2/5/2019  
Any aerial imagery is circa 2018  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)

1619 S University Ave



-  Railroads
-  Huron River
-  Tax Parcels



Map date: 2/5/2019  
Any aerial imagery is circa 2018  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)



# ZONING BOARD OF APPEALS APPLICATION

City of Ann Arbor Planning Services

City Hall: 301 E Huron Street Ann Arbor, MI 48107-8647

Phone: 734-794-6265 Fax: 734-794-8460 Email: [planning@a2gov.org](mailto:planning@a2gov.org)

## PROPERTY INFORMATION

ADDRESS OF PROPERTY <b>1619 South Univeristy</b>		ZIP CODE <b>48013</b>
ZONING CLASSIFICATION <b>R2B</b>	NAME OF PROPERTY OWNER* <i>If different than applicant, a letter of authorization from the property owner must be provided</i> <b>Administrative Holdings III, LLC</b>	
PARCEL NUMBER <b>09-09-28-413-016</b>	OWNER EMAIL ADDRESS <b>clovasz@lemonauto.com</b>	

## APPLICANT INFORMATION

NAME <b>Darren Kummerer</b>			
ADDRESS <b>210 S. Fifth Avenue</b>	CITY <b>Ann Arbor</b>	STATE <b>MI</b>	ZIP CODE <b>48104</b>
EMAIL <b>dkummerer@oxfordcompanies.com</b>		PHONE <b>734-548-6956</b>	
APPLICANT'S RELATIONSHIP TO PROPERTY <b>Property Manager</b>			

## REQUEST INFORMATION

<input checked="" type="checkbox"/> VARIANCE REQUEST Complete Section 1 of this application	<input type="checkbox"/> REQUEST TO ALTER A NONCONFORMING STRUCTURE Complete Section 2 of this application
--	---

## REQUIRED MATERIALS

One hard copy application complete with all required attachments must be submitted. Digital copies of supportive materials included in the submitted hard copy will only be accepted in PDF format by email or accompanying the hard copy application on a USB flash drive.

**Required Attachments:**

- Boundary Survey of the property including all existing and proposed structures, dimensions of property, and area of property.
- Building floor plans showing interior rooms, including dimensions.
- Photographs of the property and any existing buildings involved in the request.

OFFICE USE ONLY	
Fee Paid: <b>\$500</b>	ZBA: <b>19-002</b>
DATE STAMP <b>CITY OF ANN ARBOR RECEIVED</b>  <b>JAN 29 2019</b>	
PLANNING & DEVELOPMENT SERVICES	

## ACKNOWLEDGEMENT

All information and materials submitted with this application are true and correct.

Permission is granted to City of Ann Arbor Planning Services and members of the Zoning Board of Appeals to access the subject property for the purpose of reviewing the variance request.

Property Owner Signature: *Darren Kummerer* Date: 1/29/2019

# Section 1 City of Ann Arbor Planning Services – Zoning Board of Appeals Application

## VARIANCE REQUEST

ARTICLE(S) AND SECTION(S) FROM WHICH A VARIANCE IS REQUESTED: (Example: Article 3, Section 5.26)

### 5:17-2 Two Family Residential Zoning District

REQUIRED DIMENSION: (Example: 40' front setback)

Feet: **60** Inches:

PROPOSED DIMENSION: (Example: 32 foot 8 inch front setback )

Feet: **50** Inches:

DESCRIPTION OF PROPOSED WORK AND REASON FOR VARIANCE:

Convert 9 bedroom house to two units: 1-3bedroom/1bathroom unit and 1-6bedroom/2bathroom unit.

Requesting a variance to allow two units on a lot that meets the total area requirement but does not meet the width requirement

**The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:29. A variance may be granted by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when all of the following statements are found to be true. Please provide a complete response to each of the statements below.**

The alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.

Looking to convert a 1 unit (9-bedroom) house into 2 ( 3 bedroom and 6 bedroom) units. Asking for a variance in the lot size

because the lot is 50ft wide and the required demension is 60ft. This would also decrease the density from 10 people to 9 people.

The alleged hardships are practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

This request is not for financial gain. This request is to maximize our clients needs. The student housing market has been and continues to trend to smaller units (less bedrooms).

Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

No exterior changes will be made to the property. Only positives will come from this change. .

The conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.

This house was built in 1908 and was clearly designed to be two units. Both levels have kitchens, bathrooms, and bedrooms.

the lot width requirement came into effect in 1965

A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure. Asking for only a 10ft variance or a 17% decrease in the lot width requirement.

## Darren Kummerer

---

**From:** Chris Lovasz <clovasz@lemonauto.com>  
**Sent:** Wednesday, January 16, 2019 12:57 PM  
**To:** Darren Kummerer  
**Subject:** Ann Arbor Zoning Board 1619 South University

To: Ann Arbor Zoning Board  
From: Christopher Lovasz, Officer of BLT Ventures

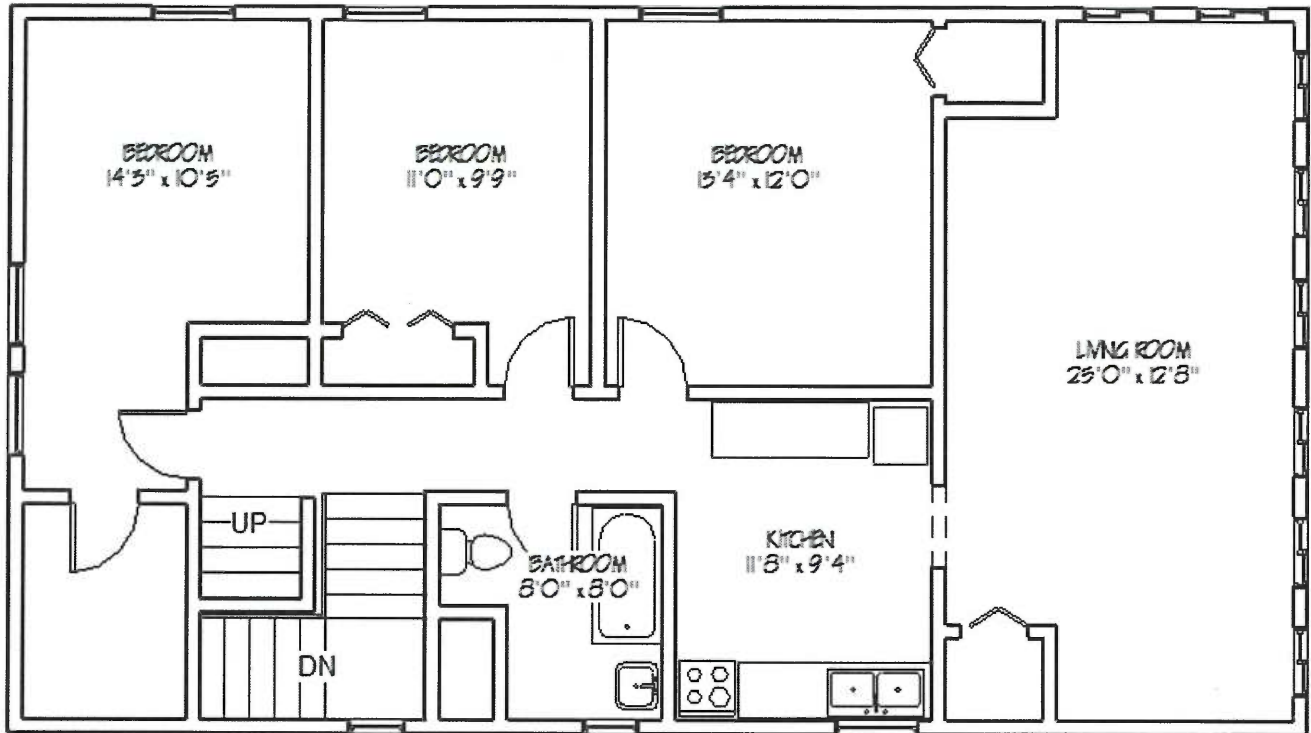
Re: Authority To Appear on Behalf of BLT Ventures

To whom it may concern,

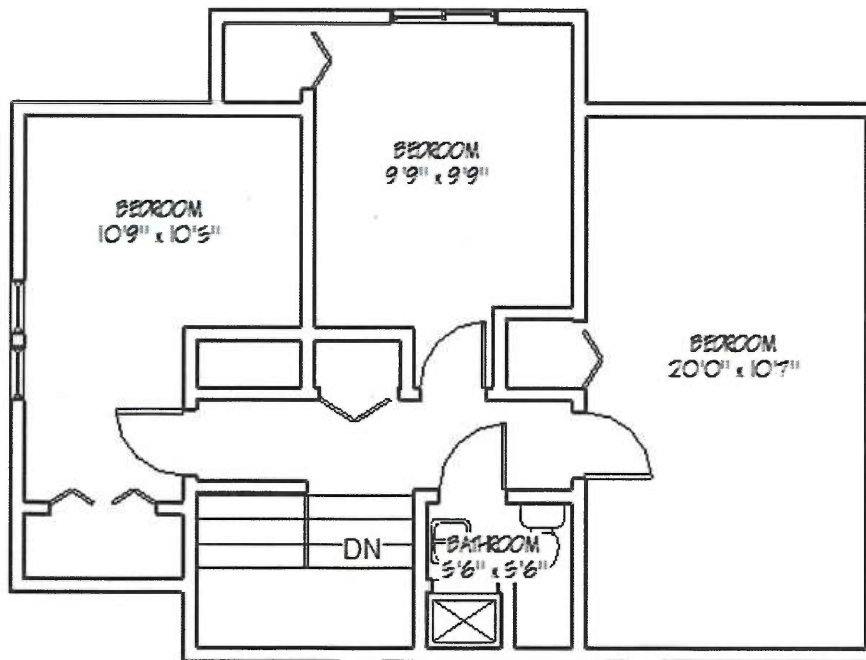
I hereby grant Darren Kummerer of Oxford Properties the authority to appear, inform, and advocate on behalf of BLT Ventures regarding property located at 1619 South University, Ann Arbor, MI. Thank you, Chris Lovasz



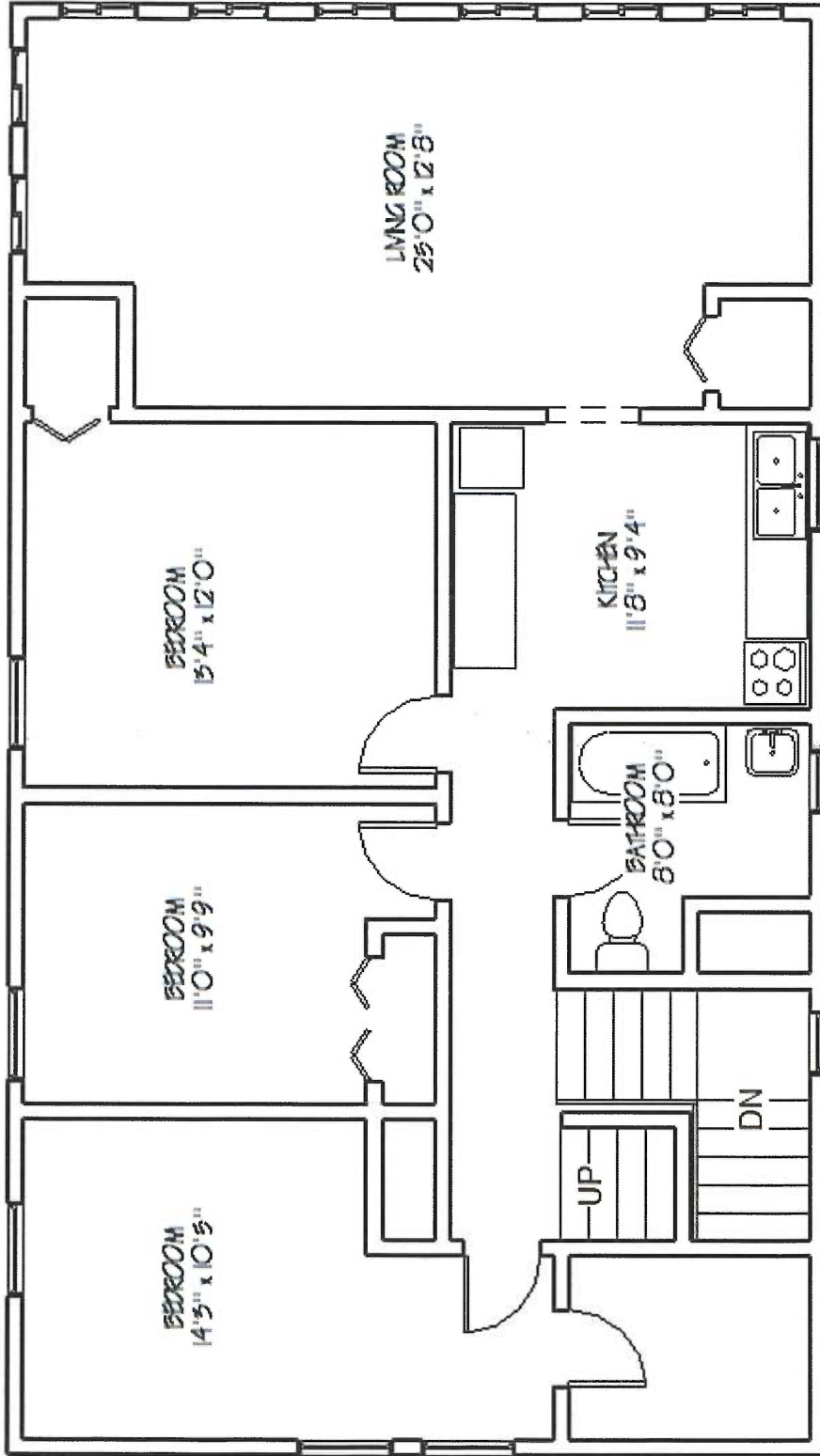
1619 S. UNIVERSITY  
UNIT 2



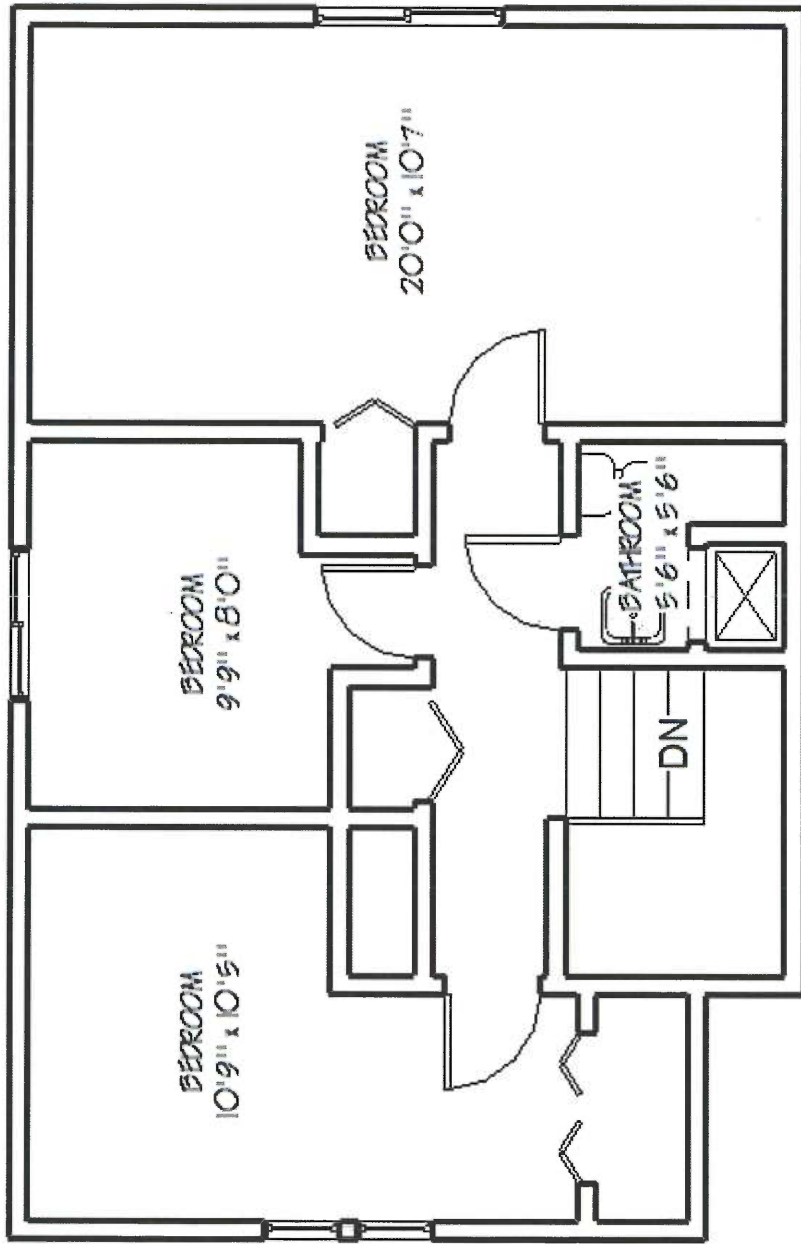
2ND FLOOR



3RD FLOOR / ATTIC

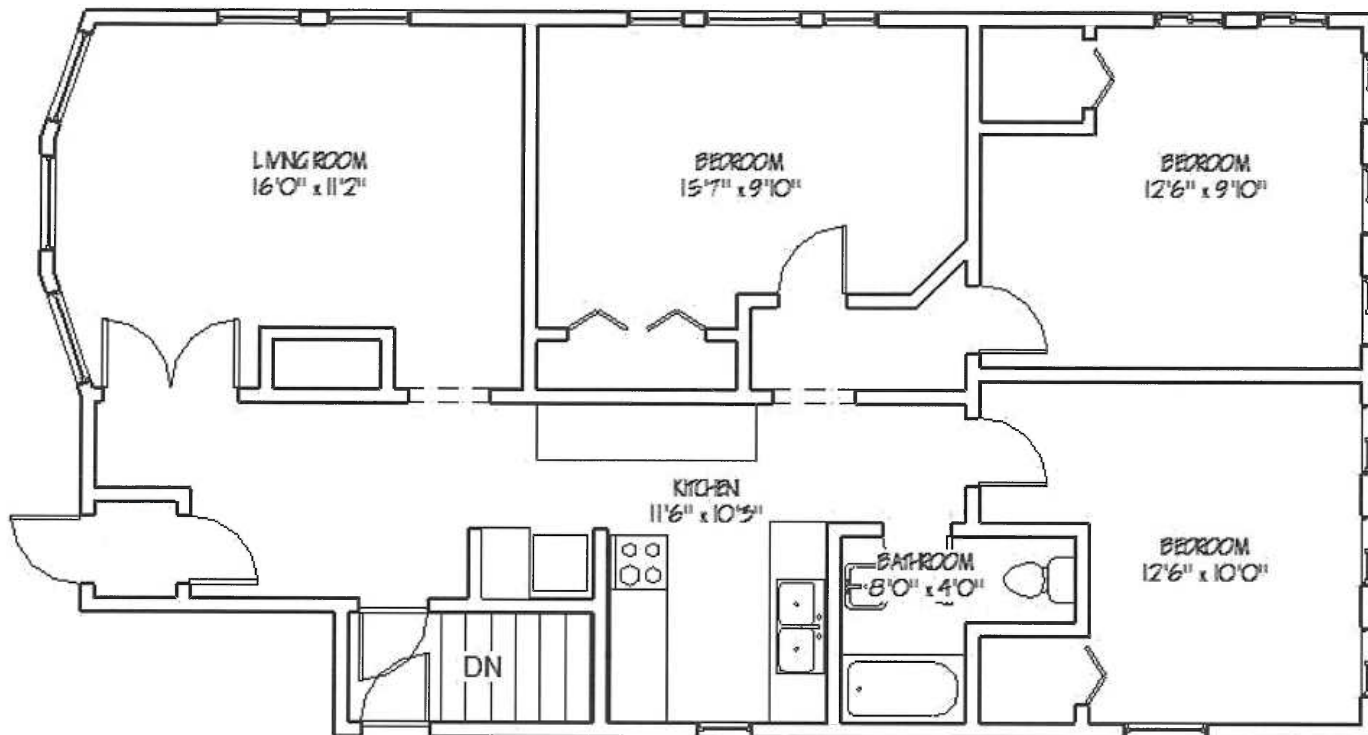


169 S. UNIVERSITY  
2ND FLOOR  
UNIT 2

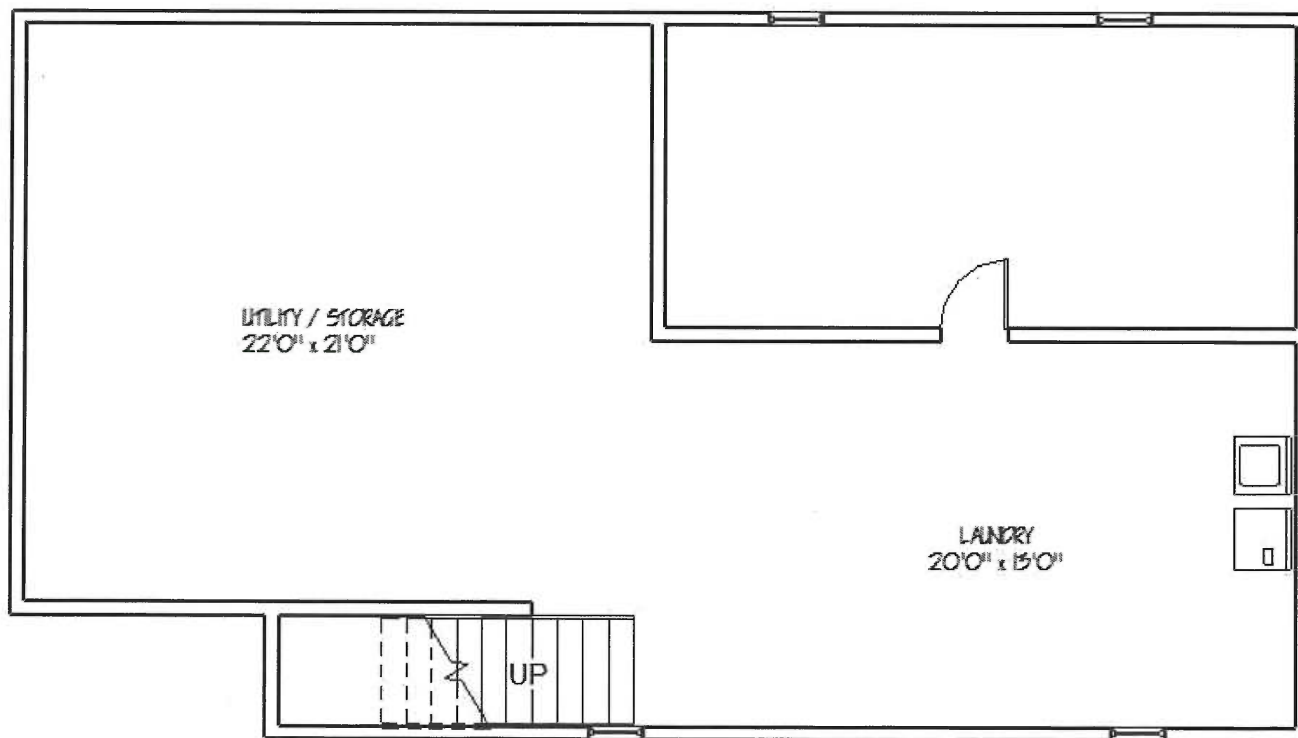


1619 S. UNIVERSITY  
3RD FLOOR  
UNIT 2

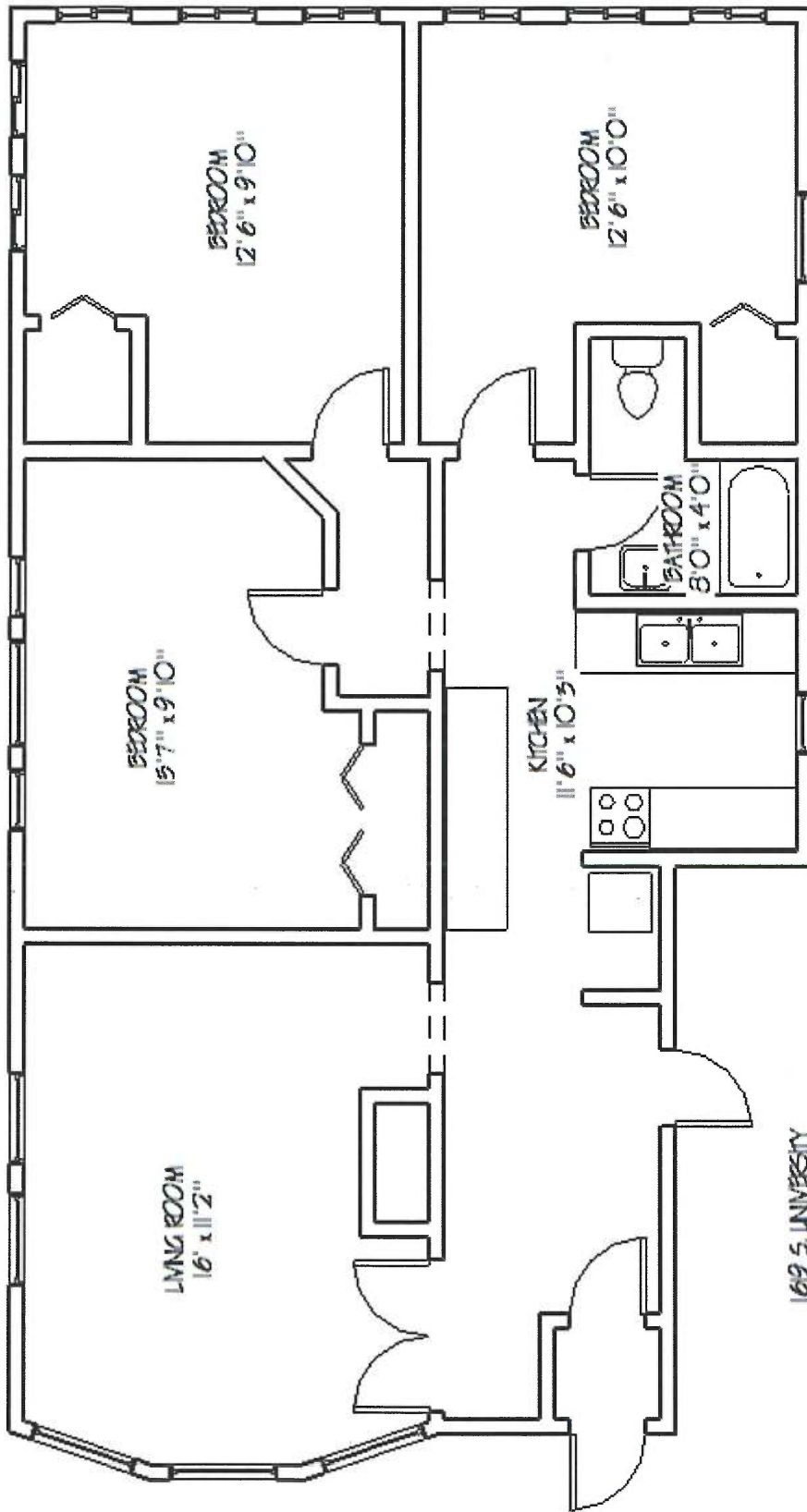
1619 S. UNIVERSITY  
UNIT 1



MAIN FLOOR



BASEMENT



LIVING ROOM  
16' x 11'2"

BEDROOM  
15'7" x 9'10"

BEDROOM  
12'6" x 9'10"

KITCHEN  
11'6" x 10'5"

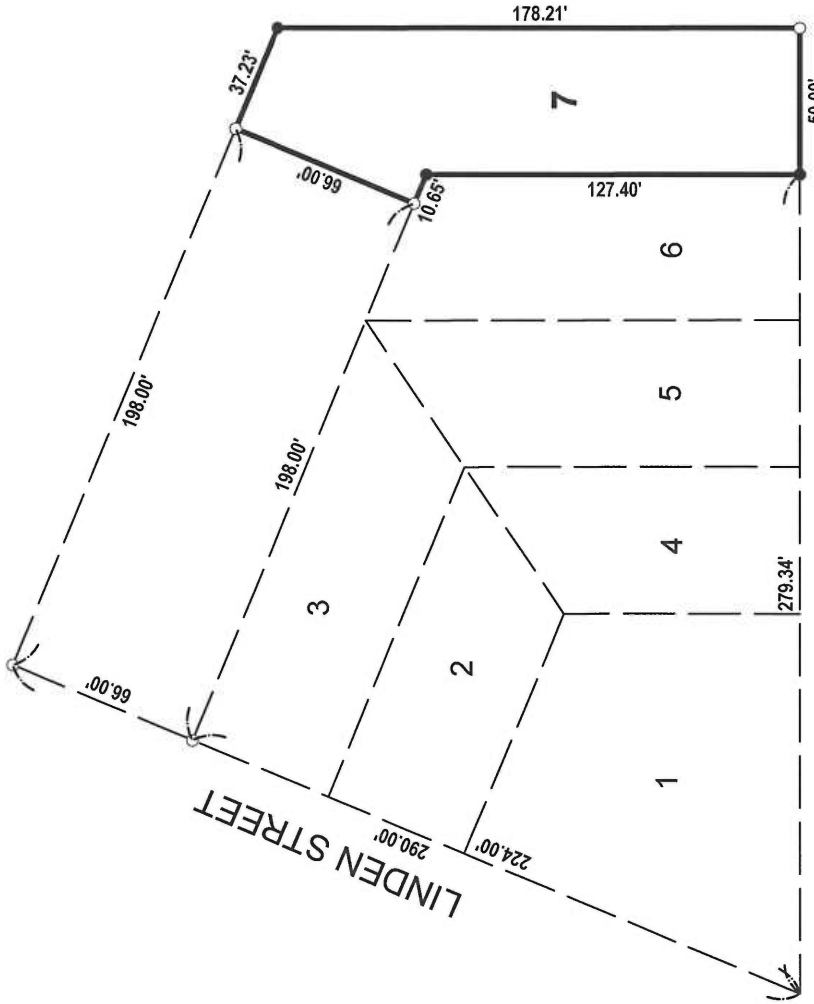
BATHROOM  
8'0" x 4'0"

BEDROOM  
12'6" x 10'0"

169 S. UNIVERSITY  
MANFLOOR  
UNIT 1

## DESCRIPTION

Located in the State of Michigan, County of Washtenaw, City of Ann Arbor, Lot 7, Wagner's Subdivision, of a part of A. Ten Brooks Addition, according to the recorded plat thereof as recorded in Liber 2 of Plats, Page 16 (copied from Warranty Deed/sw)



## LEGEND

- Iron - Set
- Iron - Found



By: *Brandon G. Parrent*

Brandon G. Parrent, Licensed Professional Surveyor No. 63096

SCALE: 1" = 50' 0' 25' 50'

NORTH

Oxford Companies  
 Darren Kummer  
 210 S. Fifth Ave.  
 Ann Arbor, MI 48104  
 1619 South University  
 Ann Arbor, MI

PRJ #: 19500005

DATE: 1-22-19

REV. BY: JR

REV. DATE:

1 OF 1

N



217 Grandville Ave., Suite 302  
 Grand Rapids, MI 49503  
 Ann Arbor, Chicago, Columbus,  
 Holland, Indianapolis, St. Louis

This survey was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.



0 North. Center longitude: 83.7266 \xB0 West. Visible Features: 38 features visible on Parcel Property.

1619 s university

Sign in





UNAPPROVED  
NO ENTRY  
NO PARKING  
734-246-3877

GREEN SIGN

1619





22



**OXFORD PROPERTY MANAGEMENT**

**RESIDENTIAL PROPERTY LEASING AND MANAGEMENT AGREEMENT**

Property Leasing and Management Agreement (this "Agreement") is made as of January 7, 2019 by and between **BLT Ventures, Inc., on behalf of and as manager and/or managing member of 1619 S. University LLC, 1709 S. University L.L.C., 404 N. Thayer LLC and 927 E. Ann LLC**, herein individually and collectively referred to as "OWNER" and **Oxford Property Management, LLC**, herein referred to as "MANAGER".

**FACT PAGE**


<b>A. The Property:</b> Residential/Campus Properties: 1619 S. University, 1709 S. University, 404 N. Thayer, 927 E. Ann, Ann Arbor, Michigan	<b>F. Compensation:</b> For each Property, each month Manager receives the greater of:
<b>B. Term: Initial Term</b> Commencement Date: January 1, 2019 Expiration Date: (Not earlier than the first January following the One (1) year anniversary of the Commencement Date.)	1. Six and one-half Percent (6.50%) 2. A minimum of <u>\$200.00 per month</u>
<b>C. Approved Expenditures - Repairs -</b> prior written approval required for sums in excess of \$2,000.00 for repairs	<b>G. Leasing Commission:</b> Manager shall receive as compensation the following (cross out those that do not apply): Residential <input type="checkbox"/> ___ - 1 full month's rent for new lease due at lease signing ___ - One-half (1/2) of one month's rent for renewal lease due at lease signing Campus <input checked="" type="checkbox"/> <b>1.00% of the annual gross lease value on new leases.</b> <input checked="" type="checkbox"/> <b>0.50% of the annual gross lease value on renewal leases.</b>
<b>D. Approved Expenditures - Advertising</b> Prior written approval required for sums in excess of \$500.00 per year for advertising.	<b>H. Address for Notices:</b> <u>Owner:</u> Attention: Steven Toth 30928 Ford Road Garden City, MI 48135 Phone: (734) 261-4700 <u>Manager:</u> Oxford Property Management, LLC 210 S. Fifth Avenue Ann Arbor, MI 48104 Attention: Katie Vohwinkle Phone: (734) 548-6927, ext. 241
<b>E. Bank Accounts</b> 1. Operating account shall be named: <u>BLT Ventures</u> 2. Security deposit account shall be named: <u>BLT Ventures Reserves</u>	

*Rest of page intentionally left blank  
Signatures on next page*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

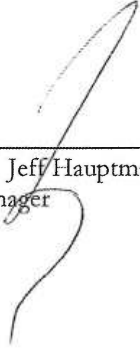
**OWNER:**

**BLT VENTURES, INC., on behalf of and as manager  
and/or managing member of 1619 S. University LLC,  
1709 S. University L.L.C., 404 N. Thayer LLC,  
and 927 E. Ann LLC**

By:  \_\_\_\_\_  
Name: Chris Lovasz  
Title: president

**MANAGER:**

**Oxford Property Management, LLC**

By:  \_\_\_\_\_  
Its: Manager

Owner or the authorized representative of Owner has the exclusive right to collect the rents from and to manage, the real property and improvements described in Section A of the Fact Page of this Agreement and desires to engage Manager to manage and operate the same, and Manager has agreed to manage the same.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants herein contained, the parties agree as follows:

#### **ARTICLE I: PROPERTY**

The real property and improvements identified in Section A of the Fact Page of this Agreement, (the "Property") are the only properties to be governed by the terms of this Agreement. The Property may consist of residential properties (which shall include both residential properties and those properties designated by Manager as "Campus" properties)(together "Residential"), in which case the provisions contained in Article V shall apply (but not the provisions contained in Article VI); conversely, the Property may consist of commercial properties (being defined as non-residential properties)("Commercial"), in which case the provisions contained in Article VI shall apply (but not the provisions contained in Article V); and in the event the Property consists of both Residential and Commercial properties, then the provisions contained in Article V shall apply only to the Residential properties and the provisions contained in Article VI shall apply only to the Commercial properties.

#### **ARTICLE II: COMMENCEMENT DATE**

The term of this Agreement shall commence on the Commencement Date set forth in Section B of the Fact Page, and shall continue until the date listed in Section B of the Fact Page of this Agreement, and shall automatically renew from year to year thereafter unless sooner terminated as hereinafter provided.

#### **ARTICLE III: FINANCIAL REPORTING AND RECORDKEEPING**

**3.1 Books of Account:** Manager, in the conduct of its responsibilities to Owner, shall maintain adequate and separate books and records for the Property, (separate from Manager's corporate books and records) the entries to which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded. Manager shall ensure such control over accounting and financial transactions as is reasonably required to protect Owner's assets from theft, error or fraudulent activity on the part of Manager's associates or employees. Owner shall provide Manager with copies of all documents and records described in Exhibit A attached hereto and hereby made a part hereof.

**3.2. Financial Reports:** Manager shall provide to Owner monthly reports detailing the operations of the Property during the preceding month. Manager shall provide to Owner annual reports of the income and expenses of the operations of the Property, showing the sources and application of all funds, prepared in accordance with generally accepted accounting principles on a cash basis or pursuant to any other reasonable requirements of any lender of Owner. All reports of Manager shall be certified by Manager to be true and correct in all material respects. Manager, at its own expense, shall provide all bookkeeping and clerical services incident to the efficient operation and management of the Property. At the request of Owner and at Owner's expense, Manager shall cause its reports to be audited by a certified public accountant approved by Owner.

**3.3. Distribution of Net Operating Income and Negative Account Balances:** Owner and Manager shall agree from time to time upon a schedule and procedure for distributing to Owner excess current income over current or accrued expenses and charges. In the event disbursements from the Operating Account shall cause a deficit in the operating account, Owner hereby agrees to pay such deficit promptly upon demand of Manager, which notice shall be by first class mail, fax or e-mail. In the event Owner shall not pay such deficit within thirty (30) days from said written notice, then Owner agrees to pay interest at the rate of 1.5% per month on the amount referred to in said notice, and Manager shall have the right to terminate this agreement with seven days written notice to Owner, served by first class mail and/or place a lien on the property in the amount of any sums owed to Manager, or its Affiliates, by Owner. Under no circumstances shall Manager, or its affiliates, be required to place utilities in its own name nor advance funds for the operation of the Property. Election by Manager, or its Affiliates, to place utilities in its name or advance funds on behalf of Owner shall not bar Agent from electing not to continue to do so.

**3.4. Operating Account:** All funds including but not limited to all rent, additional rent, concession fees and other receipts from the Property shall be collected by Manager and will be deposited in an account separate from all other accounts and funds, with a bank or other financial institution insured by the Federal Deposit Insurance Corporation ("FDIC") or Federal Savings and Loan Insurance Corporation ("FSLIC"). This account will be carried in the Property name and designated as shown in Section E.1 of the Fact Page of this Agreement ("Operating Account"). Owner shall provide all required supporting documents necessary to open the Accounts. Manager shall not be liable or responsible in the event of the bankruptcy or fiscal failure or insolvency of any such depository. Manager will collect all deposits and disburse all deposit refunds as required by state law and in accordance with the terms of each tenant's lease. Security Deposits will be deposited by Manager and held in a non-interest bearing account, separate from all other accounts and funds, with a bank whose deposits are insured by the FDIC or FSLIC. This account will be carried in the Property name and designated as shown in Section E.2 of the Fact Page of this Agreement ("Security Deposit Account"). With respect to Residential properties, if any, if directed by Owner, Manager shall, at Owner's sole cost and expense, procure a security deposit bond in a form required by applicable state law as security for the maintenance and payment of all required security deposits]. Owner hereby authorizes Manager to withdraw funds from the Operating Account and the Security Deposit Account maintained by Manager for the Property, and to disburse such funds in payment of costs and expenses incurred in connection with the management, operation, maintenance and repair of the Property in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, Owner may, at Owner's sole cost and expense, provide to Manager a security deposit bond in form and substance as required by Michigan law as security for the maintenance and payment of all required security deposits with respect to the Property.

**3.5 Audit of Books and Records:** Owner reserves the right for Owner's employees, or others appointed by Owner, to conduct examinations, at any time with not less than two (2) business days prior written notice, of the books and records maintained for Owner by Manager no matter where the books and records are located. Owner also reserves the right to perform such audit test as it deems necessary relating to Manager's activities either at the Property or any office of Manager, provided such audit tests are related to those activities performed by Manager for Owner. Should Owner's employees or qualified appointees discover either material weakness in internal control or material errors in record keeping, then upon notification by Owner, Manager shall promptly correct such discrepancies. Manager shall provide Owner with written notice of the action taken to correct any such audit discrepancies. Any and all such audits conducted either by Owner's employees or appointees will be at the sole expense of Owner and subject to Article 12. In the event that such discrepancies are not corrected within 30 calendar days after notification by Owner, then Owner, in its sole discretion, shall have the right to terminate this Agreement without notice, penalty or additional fees.

#### ARTICLE IV: MANAGER'S RESPONSIBILITIES

**4.1. Management:** Manager shall manage, operate and maintain the Property in accordance with its philosophy of professional property management. Manager or its agents shall perform or cause to be performed all services which are to be performed for the tenants of the Property pursuant to their leases, and shall operate and maintain all facilities through which such services are rendered. Manager shall handle all complaints made by tenants or others in connection with the rental, management, operation, or maintenance of the Property. On execution of this Agreement Owner appoints Manager as the sole and exclusive renting and managing agent of the Property, and as its attorney-in-fact to collect rents and to enforce the leases upon the terms and conditions hereinafter set forth. Manager shall act in a fiduciary capacity with Owner in respect to the protection of and accounting for Owner's assets. In this capacity, Manager shall deal at arms-length with all third parties and Manager shall act in the best interest of Owner at all times.

**4.2. Employees:** Manager shall hire, supervise and discharge all service personnel and other employees reasonably necessary or advisable for the operation and maintenance of the Property. Such employees will be subject to the control of Manager, and not of Owner, as to the manner in which their duties are performed; provided, however, it is understood and agreed that Manager shall be solely responsible for compliance by any such employees with all applicable terms and provisions of this Agreement. All employees, contractors and other persons engaged to perform services or improvements will be directly responsible to Manager and shall be the employees and/or independent contractors of Manager. Owner shall bear all the costs of employing all such employees to the extent their services pertain to operation and management of the Property, including all wages, salaries, social security and state and federal taxes and assessments, unemployment and worker's compensation insurance and employee benefits. Such expenses will be paid out of the Operating Account and will be treated as Property expenses, except as otherwise required by any lender of Owner.

**4.3. Collection of Rents and Other Income:** Manager shall use diligent efforts to collect all rents and other charges (including but not limited to, with respect to Commercial properties, escalation billings resulting from a tenant's participation in increases in expenses, taxes and common area maintenance charges or by reason of increases in the consumer price index or any other formula) from any tenant or from others in connection with the use of the Property. Manager shall collect, or shall arrange for the collection of, income due Owner from miscellaneous services provided to tenants or the public including, but not limited to, parking income, tenant storage and all coin operated machines. All monies collected shall be deposited in the Operating Account. When necessary, Manager may terminate leases, institute suits for delinquent rents or initiate proceedings for recovery of possession, all of which shall

be done in a lawful and reasonably timely manner. All legal expenses incurred in bringing such suits or proceedings shall be paid from the Operating Account.

**4.4. Manager's Costs to be Reimbursed:** Reimbursable costs may be paid for initially by Manager, but said costs shall be reimbursed to Manager out of the Operating Account as provided for and described in Schedule B attached hereto. In the event there are insufficient funds in the Operating Account, Owner shall pay such reimbursements to Manager, in accordance with Section 3.3, above.

**4.5. Taxes, Mortgages and Special Assessments:** If requested by Owner, Manager shall pay all property taxes, special assessments and installments due on mortgage indebtedness from the Operating Account; but only to the extent of available funds after prior payment of all other current operating expenses, including Manager's fees and reimbursable costs and expenses. If the Operating Account is not sufficient (after payment of other current operating expenses and amounts due Manager) to pay any property taxes, special assessments or installments due on mortgage indebtedness, Manager shall promptly notify Owner of such deficiency and it shall be Owner's responsibility to pay such taxes, assessments or installments due on mortgage indebtedness or to provide funds to the Operating Account for payment thereof. Upon Owner's written directive, Manager shall obtain and verify bills for real estate and personal property taxes, improvement assessments and other like charges that are or may become liens against the Property and make payments. All appraisals, tax analysis, and/or appeals authorized by Owner, shall be contracted for in the name of Owner, and paid from the Operating Account.

**4.6. Indemnification and Save Harmless.**

(a) **Indemnification by Manager.** Manager shall indemnify, defend, and hold Owner harmless from any and all claims, demands, causes of action, losses damages, fines, penalties, liabilities, costs and expenses, including attorneys' fees and court costs, sustained or incurred by or asserted against Owner by reason of or arising out of Manager's gross negligence or willful misconduct. This indemnity, as well as all other remedies which Owner may have against Manager, shall survive the termination of this Agreement for a period of one year.

(b) **Indemnification by Owner.** Owner shall indemnify, defend, and hold Manager harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including attorneys' fees and court costs, sustained or incurred by or asserted against Manager by reason of or arising out of Owner's breach of the duties and obligations required by this Agreement to be performed by it, except if the breach is the result of Manager's gross negligence. This indemnity, as well as all other remedies which Manager may have against Owner, shall survive the termination of this Agreement for a period of one year.

**4.7. Waiver of Subrogation, Manager's Right to Procure Liability Coverage:** Each party hereto does hereby expressly waive and absolutely and unconditionally release, relinquish and forfeit to the other party hereto all claims or rights of action that they might have based upon a right or claim of subrogation contained in the respective insurance policies carried by them to the extent any such claim is for damages or a loss covered by any such policy of insurance, or is required by the terms of this Agreement to be covered in any such policy of insurance. In this regard, Owner agrees to, and shall at all times, be fully responsible for maintaining in full force and effect a policy of fire and casualty insurance with extended coverage insuring all of the improvements of the property, and for insuring Owner and Manager against all claims of third parties for public liability or property damage arising out of or relating to the Property, or the ownership, leasing, operation, use, management, occupancy, safety, condition or maintenance thereof. All such policies shall be in amounts which are satisfactory to Owner from time to time as to casualty policy limits and shall also be satisfactory to Manager as to public liability and property damage policy limits, and shall name Manager as an additional primary co-insured hereunder as to said liability coverage. If Owner fails to procure liability insurance in amounts satisfactory to Manager, then Manager may (but shall have no obligation to) procure the same and the cost thereof shall be paid by Owner or from the Operating Account. Any provisions herein which permit Manager to procure insurance on Owner's behalf are permissive only, and the burden and responsibility to at all times have policies in effect in amounts satisfactory and adequate to protect Owner's interests shall at all times be with Owner unless Manager subsequently specifically agrees in writing to assume any such responsibility (and in no event shall Manager be responsible for determining proper or adequate policy limits for any such policy, except to protect Manager's interests).

**4.8. Fidelity Insurance:** Manager shall maintain fidelity insurance (bond) in an amount sufficient to Manager to cover all employees whose duties include access to Owner's funds.

**4.9. Error in Judgment and Gross Negligence:** Manager shall not be liable for any error in judgment or for any honest misunderstanding of fact or of law or for anything which it may do or refrain from doing hereunder, except in cases of willful misconduct or gross negligence. Manager may rely upon the opinions or advice of it's or Owner's attorneys or accountants or other subagent or subcontractors engaged by it or by Owner.

4.10. **Equal Opportunity:** It is agreed and understood that Manager is an equal opportunity and non-discriminatory employer. Owner and Manager agree that there shall be no discrimination against, or segregation of, any person, or group of persons, on account of race, color, creed, religion, sex, sexual preference, age, national origin, handicap, familial status or educational background in the leasing, transfer, use, occupancy or enjoyment of the Property, nor shall Owner or Manager permit any discrimination or segregation with respect to selection, location, number, use or occupancy of the Property.

#### **ARTICLE V: RESIDENTIAL PROPERTIES**

Notwithstanding anything to the contrary contained in this Agreement, the following provisions contained in this Article V shall only apply in the event the property(ies) which comprise the Property are Residential properties, or in the event the Property is comprised of both Residential and Commercial properties, then this Article V shall apply only to those properties which are Residential properties:

5.1. **Rent Schedule:** Manager promptly shall prepare a rent schedule for the Property which shall set forth a proposed basic rent charge for each rental unit in the Property. Said basic rent charge shall include all charges for services customarily furnished to tenants of comparable property on a rent inclusion basis. Additional charges for garage use, storage, late rent payment, bad checks and similar items shall be separately stated in the rent schedule. The rent schedule shall become effective for purposes of renting vacant space and shall remain in effect until thereafter modified by Manager, unless otherwise requested by Owner. The Property shall not be leased for an amount less than the rent schedule without Owner's approval.

5.2. **Leasing:** Manager shall not enter into leases for a term less than three (3) months nor greater than two (2) years (unless required by applicable law) without Owner's prior written consent, and may enter into leases for terms not exceeding said duration whether or not such lease term extends beyond the end of the term of this Agreement, and Owner agrees to accept the Property subject to the unexpired terms of any leases upon termination of this Agreement. All leases shall be in the name of Owner (or if Owner be an individual then in his/her DBA if one exists) by Manager as agent.

5.3. **Advertising:** Manager shall advertise the Property for rent to tenants, display "For Rent" and similar signs, and prepare circular matter and other forms of advertising as may be appropriate. Owner shall approve the marketing budget and Owner's prior written approval shall be required for any individual advertising item costing in excess of the amount listed in Section D of the Fact Page of this Agreement. Separately, as part of Manager's marketing efforts, Owner shall reimburse Manager \$40.00 per unit per year. Advertising expenses are to be paid from the Operating Account. Advertising and promotional materials shall be prepared in full compliance with all applicable Federal, State and Municipal housing laws, ordinances, regulations and orders.

5.4. **Capital Expenditures and Repairs:** Manager may make, or cause to be made, such ordinary repairs and alterations as are reasonably necessary for the efficient operation and maintenance of the Property, except as otherwise directed by Owner. Where the costs of any single such expenditure or any extraordinary repair or alteration would exceed the amount listed in Section C of the Fact Page of this Agreement, the prior written consent of Owner shall be required except in an emergency or where such expense is required to comply with Local, State or Federal Housing codes, to which Managing Agent may incur such expense without the prior approval of Owner. Manager shall be reimbursed on an hourly basis for services beyond those described in this agreement, such as property valuation, hold/sell analysis, multi-year cash flow projections, partnership buy-out calculations, construction management, debt financing, in-house legal consultation and landlord/tenant related legal issues, etc. Manager shall notify Owner before said additional hours are to be charged so that Owner may decide if Manager may proceed. See attached Exhibit B "Cost Schedule" attached hereto for standard staff charges.

5.5. **Service Contracts:** Manager may, in the name of Owner, enter into service contracts for the cleaning, maintaining, repairing, and miscellaneous servicing of the Property or for the providing of electricity, gas, fuel, water, telephone, exterminator service or other services or such of them as Manager deems advisable; provided, however, no single contract entered into for these services shall exceed two (2) years without the prior approval or consent of Owner. Service contract expenses are to be paid from the Operating Account.

5.6. **Property Insurance:** Upon Owner's written directive, Manager shall obtain recommendations for comprehensive insurance coverage against damage or injury to the Property or persons which might arise out of the occupancy, management, operation or maintenance of the Property. Under no circumstances shall Manager be responsible for determining the proper amounts of coverage for casualty or liability insurance policies covering the Property or relating to liability arising out of the ownership or operation of the Property. The sole responsibility for determining the proper types and amounts of insurance coverage shall be with Owner. Owner hereby appoints Manager as the attorney-in-fact to procure and obtain such insurance as may be determined by Owner.



5.7 **RF Locks:** Manager is in the process of changing over all properties, and all units within those properties that Manager manages and/or operates to electronic / radio frequency locks ("RF Locks"). Use of RF Locks, provides substantial cost savings, efficiencies, and increased security. The need for physical changing of locks at the end of each lease term is eliminated, reprogramming locks is simplified, and handling lost keys is easily managed. Manager shall notify Owner prior to actual changeover to RF Locks at the Property. At the time of changeover, the existing lock hardware (including existing keys) shall be stored at the Property, or if requested by Owner, delivered to Owner. The RF Locks shall, upon installation, become a fixture of the Property, and shall remain with the Property upon sale of the Property and/or at the termination of this Agreement. Charges for the change-over to RF Locks, as well as replacement costs and key costs shall be as set forth on the attached Exhibit "B". Manager shall retain, as additional compensation and/or reimbursable costs, all fees and charges related to or in connection with any RF Locks and / or electronic or RF keys, except to the extent they represent reimbursement to Owner of amounts Owner has previously paid to Manager.

5.8 **Onboarding Fee.** An initial inspection and assessment of the Property shall be performed by Manager in connection with the commencement of management services for the Property. Manager shall complete an inspection of the units in the building to determine the condition and suitability for residential occupancy. In connection with such inspection, Owner shall pay to Manager a one-time fee \$200.00 per building, plus \$30.00 per each unit.

## VI: COMMERCIAL PROPERTIES

*The property is a campus/residential property, and therefore Article VI does not apply and has been intentionally deleted.*

## VII: TERMINATION

7.1. **Default:** If either party hereto shall default in its performance of any term, covenant or condition of this Agreement for twenty days after notice, or where such default cannot reasonably be cured within said twenty days, if the defaulting party does not promptly after receiving notice of the default commence to cure such default and thereafter proceed with diligence to cure such default; then the other party may terminate this Agreement by thirty days prior written notice to the other, subject to all applicable requirements of any lender of Owner

7.2. **Termination on Sale:** Owner may terminate this Agreement automatically upon the sale of the property or upon termination of Owner's right to collect the rents providing Owner gives Manager at least thirty (30) days advance notice in writing, without penalty to Owner, provided Owner shall be responsible for all fees and charges in connection with the preparation for closing and final accounting with respect to the Property. Such notice shall not affect or impair any right that has accrued to either party prior to the date of such notice. Owner shall keep Manager informed of all sale negotiations and of scheduled closing dates. Upon proper notice provided by Owner, Manager shall provide Owner the following information with respect to the sale of the Property:

- A. A listing of tenant's security deposits up to one (1) day prior to the Closing.
- B. A listing of rents received up to one (1) day prior to the Closing.
- C. Any other information pertinent to and customarily used at the closing one (1) day prior to the Closing.

If Owner executes a listing agreement with a broker (other than Manager) for sale of the Property, Manager shall cooperate with such broker to the end that the respective activities of Manager and broker may be carried on without friction and without interference with tenants and occupants. Manager will permit the broker to exhibit the Property during reasonable business hours provided the broker has secured Manager's permission in advance.

7.3. **Final Accounting:** Upon termination of this Agreement for any reason, Manager shall deliver to Owner the following with respect to the Property:

- A. To be delivered within sixty (60) days after termination, a final accounting, reflecting the balance of income and expenses on the Property as a result of termination.
- B. To be delivered with the final accounting, any balance of funds belonging to Owner or tenant security deposits, or both, held by Manager with respect to the Property.
- C. To be delivered with the final accounting, all records, contracts, leases, unpaid bills and other papers or documents, which pertain to the Property.

D. Owner will be directly responsible for payment of all invoices received after delivery of the final accounting or if operating funds are not sufficient to pay all Property obligations subsequent to termination.

#### **ARTICLE VIII: COMPENSATION**

8.1. **Compensation:** Owner agrees to pay to Manager each month during the term of this Agreement, a management fee equal to the management fee rate listed in the Fact Page Section F.1 multiplied by the gross receipts from the Property received during the preceding month ("Monthly Management Fee"). The Monthly Management Fee shall be due and payable by the tenth (10<sup>th</sup>) day of the month following the month in which this Agreement is executed and on the tenth (10<sup>th</sup>) day of each month thereafter during the term of this Agreement. Notwithstanding the foregoing, in no event shall the Monthly Management Fee be less than the amount listed in Section F.2 of the Fact Page of this Agreement. For purposes of this Section, gross receipts shall be all funds collected for Owner, plus in cases where a tenant is not required to pay rent during occupancy (free rent), ninety (90%) percent of the monthly rental rate to be collected immediately after the free-rent period. Manager is authorized to pay its Monthly Management Fee from the account for the Property, and any deficiencies shall be payable by Owner upon demand. There will be a separate commission or charge payable to Manager for the leasing of rental units by Manager of the amount listed in Section G of the Fact Page of this Agreement ("Leasing Commission"). In case of any dispute between Owner and Manager as to the calculation of the Monthly Management Fee, an independent certified public accountant, chosen by Owner and Manager, shall make a determination thereof in accordance with generally accepted accounting principles consistently applied, which determination shall be binding on Owner and Manager.

#### **ARTICLE IX: COMPLIANCE WITH LEASING LAWS**

9.1. **Security Deposit Law:** If the Property is classified as Residential, Owner and Manager are subject to the provisions of the "Security Deposit Act" of the State of Michigan, and to other state and local ordinances. Therefore, Owner shall advise Manager at the commencement of this Agreement the disposition of security deposits being held by Owner under existing leases, or shall deliver said security deposits to Manager for deposit to the Property's Operating Account, or in lieu thereof, a surety bond as required by law, and shall deliver to Manager all original leases, inventory checklists, copies of required notices and other documentation necessary to comply with or to prove compliance with any landlord-tenant laws. In the event Owner has not or fails to comply with the provisions of the Security Deposit Act, or with the provisions of any other state or local landlord-tenant law, and Manager is unable to comply or to prove compliance as a result thereof, Owner shall indemnify and save Manager harmless from any and all claims, prosecutions, lawsuits and liability resulting therefrom, including all actual attorneys' fees and costs incurred in defense of any claim by a tenant or third party and any judgment or award rendered thereon and all incidental fees, costs or interest thereon.

#### **ARTICLE X: INCIDENTS OF OWNERSHIP, FITNESS OF PREMISES AND COMPLIANCE WITH BUILDING CODES**

10.1. **Incidents of Ownership, Fitness of Premises, and Compliance with Building Codes:** Owner expressly reserves all incidents of ownership of the Property, excepting only those rights that are granted to Manager hereunder. Similarly, Owner shall retain all duties and obligations imposed by law upon the ownership and operation of the Property, excepting only such duties or obligations as have been expressly assumed by Manager herein; as to which Manager agrees to exercise its due diligence to perform on behalf of Owner, subject to the terms and conditions of this Agreement, and the availability of Owner's funds necessary to perform any such duty. Accordingly, Manager does not, by execution hereof, assume any duty or obligation of Owner with respect to any tenant, guest or invitee now or hereafter on the premises, excepting only the agreement of Manager to manage the property on Owner's behalf. Manager expressly assumes no liability whatsoever with respect to the construction or design of the premises, or its fitness for any particular purpose, or its safety or fitness for the use intended, or its security for the benefit of its occupants, or regarding its compliance with any laws, codes or regulations now existing or hereafter enacted, all of which Property ownership obligations are retained exclusively by Owner. If Manager becomes aware of any hazard or substantial risk or danger involving the Property or any part thereof, whether such hazard, risk or danger is to the Property or to any tenant or occupant of said premises, Manager shall notify Owner after learning of such risk, hazard or danger, but this notice provision shall not relieve Owner from any duties imposed by law upon Owner relative to the Property. Provided, however, that Manager agrees that it will, upon learning of any emergency situation, take all reasonable steps necessary to protect the Property or the occupants in the event of any emergency so as to prevent or minimize damage to the Property or injury to its occupants or their property (but Manager shall not be obligated to use or expend its own funds for said purposes), and Manager shall notify Owner of the situation as soon as is practicable.

## ARTICLE XI: JURISDICTIONAL PROVISION & APPLICABLE LAW

**11.1. Jurisdictional Provision & Applicable Law:** Any and all suits for any and every breach of this contract shall be instituted and maintained in any court of competent jurisdiction in the County of Washtenaw, State of Michigan. The parties agree and understand that this contract shall be governed by the laws of the State of Michigan, both as to interpretation and performance.

## ARTICLE XII: MISCELLANEOUS

**12.1. Notices:** All notices, demands, lists, schedules, consents and reports provided for in this Agreement shall be in writing and shall be given to Owner or Manager at the address set forth in respective section of the Fact Page of this Agreement, or at such other address as they individually may specify to the other, in writing. Notices shall be effective upon delivery. A notice given by certified or registered mail, return receipt requested, with postage prepaid, shall be effective upon receipt; provided if such notice by mail is returned as refused or undeliverable by the United States Post Office, then such notice shall be deemed effective as of the date mailed.

**12.2. Cooperation:** Should any claims, suits or other legal proceedings be made or instituted by any person against Owner of the Property which arise out of any of the matters relating to this Agreement, Manager shall give to Owner all pertinent information and reasonable assistance in the defense of or other disposition thereof. If Manager or Manager's employee's are required to partake in such proceedings, then Owner shall compensate Manager by the hourly rates detailed under Exhibit "B", in addition to Manager's monthly fee.

**12.3. Assignment:** Manager may not assign, subcontract or otherwise transfer this Agreement or any rights or duties hereunder, by operation of law or otherwise, without the prior written consent of Owner. Owner's consent shall not be required to an assignment by Manager to any parent or affiliate of Manager or any other entity resulting from a merger with Manager or acquiring all or substantially all of Manager's assets. Owner may assign this Agreement and its rights and duties hereunder to any successor in title to the Property. Upon such assignment and an assumption of this Agreement by the assignee, Owner shall be relieved of all liability of any kind or nature accruing hereunder after the effective date of such assignment and assumption.

**12.4. Consents and Approvals:** Owner's consents or approvals may be given only by authorized representatives of Owner and all such consents or approvals shall be in writing, or in emergencies shall be confirmed in writing by Manager to Owner after verbal authorization. Provided, that where Owner's consent is required to be given herein, said consent may be given initially verbally and confirmed in writing by Manager to Owner or by Owner to Manager; and if Owner's consent is requested by Manager in writing and the proposed action for which consent is requested is not refused or objected to in writing within ten (10) days, then said action shall be deemed to be approved and consented to by Owner.

**12.5. Pronouns:** The pronouns used in this Agreement referring to either party shall be understood and construed to apply whether such party shall be an individual or individuals doing business under a firm or trade name or a partnership, corporation or other entity.

**12.6. Representations:** Manager represents and warrants that it is fully qualified and licensed, to the extent required by law, to manage real estate and perform all obligations assumed by Manager hereunder. Manager agrees to comply with all such laws now or hereafter in effect. Owner represents and warrants that it is the sole owner of fee simple title to the Property, has full right and authority to collect the rents from the Property, to lease the Property, and to enter into this Agreement.

**12.7. Entire Agreement:** All oral or written statements, representations, promises, understandings and agreements of the parties hereto are superseded by and merged into this Agreement, which alone fully and completely expresses their agreement. This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof. This Agreement is entered into after full investigation. Neither Owner nor Manager has relied upon any statement or representation not embodied in this Agreement. No amendment hereto shall be enforceable against either party unless it is in writing and signed by the party to be charged therewith.

**12.8. Waiver of Breach:** The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof. No delay on the part of either party in the exercise of any right, power, or remedy hereunder shall operate as a waiver thereof. No waiver of such right, power, or remedy shall exist or be effective unless such waiver is made in writing and signed by the party to be bound thereby. All rights and remedies under this Agreement shall be cumulative. The exercise of any right, power, or remedy hereunder or under applicable law shall not be deemed an election or remedies or waiver of any other right.

**12.9. Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be accepted as an original, and this Agreement is effective upon execution of at least one counterpart by each party of this Agreement. This Agreement may be signed by electronic signature, which shall be as valid as an original signature.

**12.10. Signatories:** Any signatory of this Management Agreement warrants that it has the authority to execute this Agreement and bind the respective parties.

**12.11 Severability:** The invalidity or unenforceability of any particular provision of this Management Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**12.12 Amendments:** Except as otherwise provided herein, any and all amendments, additions or deletions to this Agreement shall be null and void unless approved by the parties in writing.

**12.13 Headings.** All headings herein are inserted only for convenience and are not to be considered in the construction or interpretation of any provision of this Agreement.

**12.14 Manager to Execute Contracts and Purchase Orders.** The Manager is the only person authorized to sign contracts or purchase orders on behalf of the Owner pursuant to this Agreement and then only in conformance with this agreement.

**EXHIBIT A**

OWNER INFORMATION

- Real estate closing documents: including but not limited to mortgage, note, and regulatory agreements
- All current loan information
- Any and all tax documentation
- Most recent real estate appraisal
- Any and all general ledgers and monthly financial reports for the past two (2) years which are in Owner's possession or control
- Advertising and marketing information and floor plans for the past 12 months
- Work orders for the past 12 months
- Insurance policy
- Existing leases
- Any and all association rules and regulations
- Vendor contracts
- Any and all books, records, and information related to the property
- Federal identification number, either entity and/or personal social security numbers
- Entity incorporation papers and operating agreements

Owners Initials: CM

**EXHIBIT B**  
**STAFF COST SCHEDULE**

Current costs to Owner are, as of January 1, 2019 (*Prices subject to change*):

Maintenance & Repair	\$68.00/hour. Overtime \$102.00/hour
Maintenance & Repair Truck Charge	\$25.00 per work order
HVAC	\$90.00/hour. Overtime \$135.00/hour
HVAC Truck Charge	\$35.00 per work order
General Labor	\$58.00/hour. Overtime \$87.00/hour
Property Manager	\$125.00/hour
Project Manager	\$95.00/hour billed on all projects over \$5,000
Office/Administration	\$55.00/hour
In-house Legal	\$350.00/hour
Accounting	\$65.00/hour
Lead Engineer	\$70.00/hour

**\*NOTE:** Holiday/after hour services will be performed only in emergency situations and are subject to a rate increase of up to 100%

In addition to the foregoing, the following charges shall apply, when applicable, which charges are in addition to the Management Fees, and shall be paid as reimbursable costs in accordance with Section 4.5 of the Agreement:

**A. For Building Code Inspection:** When a routine or special inspection of the Property is performed by the duly constituted Building Official for the purpose of issuing a new Certificate of Compliance and Occupancy, Manager is authorized to and shall contract for all necessary work to bring the Property into code compliance and upon completion of the work shall secure a new Certificate. Owner shall pay Manager all costs and expenses incurred in connection with securing the new Certificate. In the event Manager, on Owner's behalf, appears before the Housing Board of Appeals, or such other comparable body, Manager shall be compensated at the rates set forth in the schedule above (as they may be adjusted from time to time), on a per hour basis for time spent in preparation and appearing before the Housing Board of Appeals.

**B. Fees in Cases of Litigation:** In cases of litigation instituted by the Tenant or litigation instituted by Manager to secure the rights of Owner, which necessitates the appearance or testimony of one or more employees of Manager on Owner's behalf, shall entitle Manager to be compensated at the rates set forth in the schedule above (as they may be adjusted from time to time), on a per hour basis for each of Manager's employees in preparation for and appearance in court proceedings or incidental to any discovery or collection proceedings. Manager shall cause litigation to be instituted on Owner's behalf only in those situations where Manager, in the reasonable exercise of its discretion, deems litigation to be in Owner's best interest. Manager will exercise its best efforts to be practical and to settle or compromise claims of or against Owner.

**C. For Services Rendered the Tenant:** Owner agrees that Manager may collect for itself the following reasonable fees from the Tenant, for services rendered to the Tenant, providing there is no loss of rental income to Owner, in which case said fees shall first be paid to Owner to cover lost rent. If there be any residual fee, said fee shall then and only then be paid to Manager:

- (a) Cancellation of Lease before lease starting date
- (b) Premature termination of lease by Tenant
- (c) Substitution of new lease for existing lease
- (d) Sublet and Assignment Fees

**D.** Manager shall retain as additional compensation all application fees, late fees and NSF charges assessed Lessee(s).

**E.** Manager shall retain, as additional compensation and/or reimbursable costs, all fees and charges related to or in connection with any electronic key systems and/or locks, except to the extent they represent reimbursement to Owner of amounts Owner has previously paid to Manager.

**F. For RF Locks.** Upon installation of RF Locks at the Property, Owner shall pay Manager: (i) \$229.00 per RF Lock installed, plus installation, plus (iii) \$10.00 per RF Key. Thereafter, RF Locks shall be replaced at the then applicable charge for each RF Lock, plus installation and RF Keys shall be replaced at then then applicable charge per RF Key. The foregoing prices are effective as of January 1, 2017, and are subject to change based on costs, effective upon notice to Owner.

OWNER INITIALS: CMC

9. 88-Z-110, 1619 S. University

John C. Stegeman, owner of this property, is requesting a variance of 6 people to allow 10 unrelated people to live together, and an Administrative Review of the Building Official's determination that present occupancy by 10 unrelated people is an illegal non-conforming use. (Chapter 55, 5:10.4 & 5:98(1) Zone R2B.

Five written communications were received on this matter. They were all in opposition to these requests and were from Larry & Rawena Matthews of 1609 S. University; Dr. Lincoln Faller and Dr. Kathleen Faller of 1613 S. University; Bert G. Hornback from The Center For The Advancement of Peripheral Thought of 1717 S. University; Andrew & Ruth Zweifler, M.D. of 1706 S. University; and Manfred Egerer & Elizabeth A. Hugel, PhD of 1715 S. University.

Mr. Stegeman and his attorney, David Nelson were present to speak to this petition.

Ms. Hurlahe explained that Mr. Stegeman proposes to allow 10 unrelated persons to occupy one dwelling unit at this location. The code restricts the number of unrelated people to 4. He contends that the structure has been occupied by more than 4 people for many years and that the property density is less than other properties nearby.

He is also requesting an Administrative Review of the Building Official's determination that occupancy of this structure by 10 unrelated people is an illegal non-conforming use. The code permits no more than 4 unrelated people to live together in one dwelling unit. The Building Official has determined that the present occupancy of the structure by 10 unrelated people is not permitted since the occupancy was reduced and brought into compliance by order of the City in 1984. The petitioner contends that the City was in error when it ordered the occupancy reduced in 1984 because the non-conforming use was established and, therefore, legal at that time.

Ms. Hurlahe further explained that the oldest records that could be found show a Housing Bureau inspection report which seems to indicate that the structure was being inspected as something other than a single-family dwelling. This conclusion stems from a notation regarding egress. Two means of egress are only necessary for a rooming house or multiple family structure. A building permit application for the required fire escape also indicated the use of the structure as a rooming house. In 1958, a certificate of occupancy shows a single family with 11 roomers. In 1971, a letter was sent to the owner requiring an inspection. At that time, the structure was owner occupied. A housing inspection was done in June 1971 and it was apparently viewed as a single family at that time.

In 1983, the property was again inspected. It was noted at that time that maximum occupancy of a single family home was limited to 4 unrelated persons. Required changes were also noted for use as a rooming house. In June 1984, the owner informed the City that occupancy had been reduced to 4 persons and would remain that way to stay in compliance with the ordinance. Presumably, the property was then reinspected to verify this as a certificate of occupancy was issued. In September 1987, the property was again inspected and was not certified due to over occupancy. Enforcement has been pending since that time.

Staff does not support this variance request. The petitioner's appeal is based in large part on inability to attain a higher financial return. Further, the variance is not required in order to make reasonable use of the property.

Staff would like to point out that there are several inconsistencies in the history of use of this property. It appears that the Housing Bureau may have inspected the property under rooming house or multiple family standards in 1955, however, certified it as a single family with 11 roomers. 11 roomers would have been a violation of the Zoning Ordinance at that time as it provided for a maximum of 5 unrelated people unless the use had been grandfathered to that point. If the Board finds that the single family plus 11 roomers use was not a legal non-conforming use in 1984 when the property was last certified, then the Board should also find that the City was justified in ordering the occupancy reduced and that the petitioner is in violation of the ordinance.

Mr. Cameron referred to the City Attorney's memo dated November 15, 1988 as follows:

"To: Zoning Board of Appeals November 15, 1988

"From: R. Bruce Laidlaw

"Re: Administrative Review Concerning  
1619 South University

"A legal opinion was requested from me regarding the claim that the property at 1619 South University can be used by more than four unrelated persons because it is a non-conforming use which pre-dated the present zoning restriction on the number of occupants.

"I do not have sufficient information to determine when the use by numerous unrelated persons commenced and what zoning restrictions were in effect at that time. In view of the fact that it was once certified for occupancy by 11 roomers, and absent other evidence, it is reasonable to



assume that it was at one time a legal non-conforming use. This leaves the principal question before the Zoning Board of whether the non-conforming use status was abandoned. In 1983, the occupancy level was reduced to four persons. However, it is now asserted that was solely because the City incorrectly advised the owner that there legally could not be more than four people.

"Michigan Appellate Courts have imposed a heavy burden on cities to prove the facts necessary to establish abandonment of a non-conforming use. The decisions require that such abandonment must be voluntary and intentional. Clearly, the discontinuance of the non-conforming use in this case was intentional, but it will be necessary for the Zoning Board to carefully review the testimony and other evidence to determine whether the discontinuance of the use by numerous roomers was voluntary. Normally, a property owner is presumed to know the law, and where there is doubt a property owner has a full opportunity to seek legal assistance in determining whether the assertions by a city official are correct. In this case, it is my opinion that the Zoning Board of Appeals should review the facts to determine whether, under the circumstances, it was reasonable to rely on the representations of City officials in reducing the number of occupants. The facts should also be reviewed to determine whether there is evidence of any other reason for reducing the number of occupants. If the Zoning Board of Appeals concludes that it was reasonable to rely on the representation of City officials and if that was the sole basis for reducing the number of roomers, it may legally conclude that there was no abandonment of the non-conforming use status, and that the property can continue as a non-conforming use."

Ms. Woodland asked what the occupancy was in 1971.

Ms. Hurlahe stated there is a letter in the file dated June 23, 1971 from the City to the then owner/occupant of this dwelling. She said the only other record she could find that it was owner/occupied was a Housing Bureau reference card so stating. The Board needs to consider whether or not there was a conscious and voluntary abandonment of this use of over a 4 person occupancy. The question is, did the City error in 1984 in requiring them to reduce that occupancy. The City Attorney did not address that because he said he did not have adequate information to do so.

Mr. Cameron stated if the City was correct in 1984, then we do not have to worry about abandonment of a non-conforming use. The question is whether or not it was a legal non-conforming use.

Mr. Stegeman stated he is the owner of this property, and in 1933 he was going to Angel School and know for a fact that this property was a rooming house.

Attorney David Nelson stated the Board is right in considering the Administrative Review first. This is a large three-story house, being a single-family dwelling in a R2 zoning district. It has been used for rental to as many people it could be rented to as far back as Mr. Stegeman can remember. It was his opinion that this building constitutes a legal non-conforming use and have come to the conclusion that the problem lies with the Zoning Ordinance and the definition of a family within that ordinance. He read that definition as follows:

**"Family:** One or more persons related by blood, marriage or adoption living as a single housekeeping unit together with not more than three (3) additional persons, or in a multifamily dwelling, not more than five (5) additional persons."

Mr. Nelson stated this is the basis upon which the City contends that you can only have 4 persons in a unit. He said he did not think this definition of a family is supportable constitutionally. A non-conforming use is defined as a use that was legal when an Ordinance was enacted, and would be allowed to be continued even if in violation of a current Ordinance. He referred to a Certificate of Occupancy and Compliance dated October 6, 1958 stating this was a single-family with 11 rooms. At that time, the definition of a family was a little different in that it was defined as five (5) unrelated persons. So, this must have been grandfathered in before that time. He referred to an Affidavit of Grace Crots and read it as follows:

**"AFFIDAVIT OF GRACE CROTS"**

"STATE OF MICHIGAN        )  
                                  )    ss  
"COUNTY OF WASHTENAW    )

"Grace Crots, being first duly sworn, deposes and says that the facts set forth are based upon her personal knowledge and that she can testify competently thereto if sworn as a witness:

- "1. I reside at 3658 Voorhies Road, Ann Arbor, Michigan 48105.
- "2. My Mother-in-Law, Nellie Crots, now deceased, owned the building located at 1619 South University in the City of Ann Arbor from approximately 1955 through

approximately 1973, lived in it, and rented out rooms in it.

- "3. During that time, she rented rooms to as many persons as possible and regularly rented to between ten and twelve persons.

(Signature)

---

GRACE CROTS"

Mr. Nelson stated this use continued into the 1970's, and there is no question that it was not a legal use because it had already been approved back in 1958. He referred to the 1971 letter referred to by Ms. Hurlahe and asked that this be included into the record. He also referred to the City Attorney's Memo indicating that the point of that memo is that if there was a legal non-conforming use at some time, then that use continues unless it has been abandoned. He said it is the City's responsibility to show this is the case. He referred to Dr. Carpenter's Affidavit which states that he owned this property from 1973 to 1984. Mr. Stegeman purchased this property in July of 1984. He read Dr. Carpenter's Affidavit as follows:

AFFIDAVIT OF DR. RICHARD CARPENTER

"STATE OF MICHIGAN        )  
                                       ) ss  
 "COUNTY OF WASHTENAW    )

"Dr. Richard L. Carpenter, being first duly sworn, deposes and says that the facts set forth below are based upon his personal knowledge and that he can testify competently thereto if sworn as a witness:

- "1. I reside at 2100 Spring Arbor Road, Jackson, Michigan 48203.
- "2. From approximately 1973 through 1984, my family or I own the building located at 1619 South University in the City of Ann Arbor, Michigan.
- "3. During almost all of that time the building was occupied by as many persons as we could rent to, and usually by at least seven or more persons.
- "4. In approximately 1983-1984, I reduced the occupancy of the building to four persons because Ann Arbor Building Department Officials told me that occupancy by more than that number was illegal under the City's Zoning Ordinance.

- "5. The only reason I reduced occupancy to four persons was because I believed that the City Officials were accurately representing the requirements of the Zoning Ordinance to me.
- "6. I did not reduce occupancy to four persons voluntarily. I did so only because the City refused to issue me a Certificate of Compliance until I did so.
- "7. I was not aware at that time that the occupancy of the building by more than four persons might have been permitted under the City's Zoning Ordinance as a non-conforming use.

(Signature)

DR. RICHARD L. CARPENTER"

Mr. Nelson continued stating there are two reasons why it is not possible why Dr. Carpenter did not on his own reduce the occupancy. He had no choice. In June of 1984 according to Dr. Carpenter's letters to the City and one dated June 25, 1984, reduced occupancy to four persons. Mr. Stegeman purchased the property one month later. The discontinuance of the occupancy was only for a few months, not for one year which is stated under the Ordinance.

Mr. Cameron asked what Mr. Stegeman thought the status of the property was when he purchase it in 1984.

Mr. Nelson referred to the City Attorney's memo again and stated that Mr. Stegemen always believed the building qualified as a grandfathered rooming house.

Mr. Stegeman agreed stating he thought this was a rooming house when he purchased it.

Mr. Carver stated he would abstain from voting on this issue because he did not think he was qualified to do so. It was his opinion that this is a matter for the Courts to deal with.

Mr. Nelson stated it is the City's burden to show this use was discontinued, and he would answer any questions.

Mr. Schleicher stated that the petitioner is stating that because Dr. Carpenter may have been misinformed that it carries over to Mr. Stegeman.

Audience Participation

Mr. Kent Garbin of 1725 South University was present and stated that most of the audience is opposed to the second issue. He asked if there was a difference with it being owner/occupied and renting rooms or if it was not owner/occupied with renting rooms.

Ms. Potts stated that different things are stated in the City records quoting different number or rooms and different numbers of people living in this house.

Mr. Nelson stated that Dr. Carpenter did not live there for years.

There was further discussion regarding the various occupancies.

Ms. Hurlahe stated that the Certificate of Occupancy and Compliance issued in 1958 listed the building as a single-family with 11 roomers. The housing inspection cited an egress problem, and egress had to be provided for a multi-family dwelling. So, it was being inspected as a multiple-family dwelling. Also, in 1971, the index card in the Housing Bureau showed it as an owner/occupied single-family dwelling. Rooming house was on that card and had been taken off. The 1971 inspection showed citations, but not for over occupancy.

Ms. Woodland stated asked if it was reduced to seven persons for a period of one year, probably in 1984.

Mr. Nelson again stated that the answer lies in what a non-conforming use is. That use was established a long time ago at 11 persons, and abandonment has to be for one year or more. You cannot expand a legal non-conforming use, but it can continue. A non-conforming use was established at a level of 11 persons. Therefore, it cannot be reduced.

Ms. Hurlahe stated it was her opinion that if the occupancy was lowered that they are not entitled to increase it back up to 11 persons. The owner wrote a letter in 1983 stating there were seven persons in the house.

Mr. Nelson stated the evidence submitted includes affidavits, the 1958 C.O., etc.

Ms. Hurlahe stated the inspection was done by the Housing Bureau and a Housing Inspector. They have no justification over enforcing the Zoning Ordinance. They inspected based on the Housing Code, not the Zoning Ordinance.

(Ms. Carman left the meeting at this time.)

Ms. Woodland stated it was her opinion that it has been established that this is a legal non-conforming use and could see no proof of intent on the owner's part of abandonment. She said she felt there is clear evidence that this is a legal non-conforming use, and there is no need for a variance.

Mr. Cameron stated the burden of proof is first on the applicant to say there was a legal non-conforming use. Then, the burden shifts to the City, and the City has to show that the non-conforming use was given up intentionally and voluntarily. He stated he agrees with Ms. Woodland that the City has not shown this to be the case.

Katrina Borer of South University was present and stated she has lived on South University for 17 years. She asked when there is some kind of a motion in order to obtain a C.O. if there is no conforming use, if the neighbors are required to be in agreement with this Board to give compliance.

Mr. Schleicher stated they were not.

Kent Garbin from the audience again asked about owner/occupied and non owner/occupied and if that makes a difference.

Ms. Hurlahe stated that should have no bearing on the question

Nancy A \_\_\_\_\_ of 1605 S. University was present and stated that this street is on the very edge of campus and there are not too many houses in this section. People in the area are trying to keep this street as a family street. She said they do welcome students because they keep people young, but do not like to see students being put in small units so someone can make money off of them.

Ms. Hurlahe noted that it is her determination that the current use is illegal.

J. Cameron moved, supported by L. Woodland that this Board having made an Administrative Review of the Building Official's determination that the present occupancy of ten (10) unrelated people is an illegal non-conforming use in this building, find that determination incorrect and that, in fact, the current use is a legal, permitted non-conforming use based on the finding that the petitioner carried his burden of proof by establishing at some point in time, a grandfathered legal non-conforming use and that the City has not carried its burden of proof in showing that a non-conforming use has been legally abandoned and, therefore, the determination of the Building Official has been overturned.

Zoning Board Minutes

November 16, 1988

Ms. Potts stated she did not feel there was enough evidence in order to vote on this.

Ms. Woodland said she did not agree, that there were not gaps in the past when the burden was on the petitioner. If there were any gaps, the burden was on the City to prove abandonment.

(Mr. Amaru stated that for the record he was voting against this appeal, and left the meeting at this time.)

Upon Roll Call, the Ayes and Nays were as follows:

AYES: CAMERON  
WOODLAND  
WEIDENBACH  
CARVER  
SCHLEICHER

NAYS: POTTS

ABSENT: WHITE  
AMARU  
CARMAN

Whereupon, Mr. Schleicher declared the motion passed, and the determination of the Building Official overturned finding that this is a legal non-conforming use.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

None.

VII. REPORTS & COMMUNICATIONS

The 1989 City of Ann Arbor Zoning Board of Appeals Schedule was included in the packets for Board information.

VIII. AUDIENCE PARTICIPATION - GENERAL

None.

IX. ADJOURNMENT

There being no further business to come before the Board, J. Weidenbach moved, supported by J. Cameron that the meeting be adjourned. Mr. Schleicher adjourned the meeting at 9:30 p.m.

Respectfully submitted,



Lola Lee Lacy, Secretary  
Zoning Board of Appeals



---

JERRY SCHLEICHER, Chairman

Dated: December 20, 1988