

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WINERIES OF THE OLD MISSION
PENINSULA ASSOC. (WOMP), a Michigan
nonprofit corporation; BOWERS HARBOR
VINEYARD & WINERY, INC, a Michigan
corporation; BRYS WINERY, LC, a Michigan
corporation; CHATEAU GRAND TRAVERSE,
LTD, a Michigan corporation; CHATEAU
OPERATIONS, LTD, a Michigan corporation;
GRAPE HARBOR, INC, a Michigan corporation;
MONTAGUE DEVELOPMENT, LLC, a
Michigan limited liability company; OV THE
FARM, LLC, a Michigan limited liability
company; TABONE VINEYARDS, LLC, a
Michigan limited liability company; TWO LADS,
LLC, a Michigan limited liability company;
VILLA MARI, LLC, a Michigan limited liability
company; WINERY AT BLACK STAR FARMS,
LLC, a Michigan limited liability company;

Plaintiffs,

v

PENINSULA TOWNSHIP, a Michigan municipal
corporation,

Defendant,

and

PROTECT THE PENINSULA, INC.,

Intervenor-Defendant.

Case No. 1:20-cv-01008

HON. PAUL L. MALONEY
MAG. JUDGE RAY S. KENT

**PROTECT THE PENINSULA'S
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT (ECF 442)**

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**PROTECT THE PENINSULA'S RESPONSE IN OPPOSITION TO
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**PTP RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT (ECF 442)**

I. INTRODUCTION

The Wineries are not entitled to summary judgment on every defense that Intervener Protect the Peninsula, Inc. (PTP) asserted in its First Amended Answer. (ECF 441, 291) Their motion creates an argument to dismiss affirmative defenses, negative defenses, and even non-defenses (admissibility and evidentiary matters). None of their reasons are compelling, some are inaccurate, all are premature, and many are confusing.

This motion is notable for what it is not – a motion to strike under Fed. R. Civ. P. 12(f). The Wineries are not arguing these 64 defenses are inadequately pleaded. The Wineries seek summary judgment on every defense under Fed. R. Civ. P. 56(a). By definition, defenses become ripe in response to the plaintiff's case in chief, which the Wineries have not yet presented. PTP is obligated to plead affirmative defenses it intends to pursue under Fed. R. Civ. P. 8(c), and it is entitled to plead others. Doing so benefits the Wineries by foreshadowing PTP defenses. To obtain summary judgment, each Winery must demonstrate there is no genuine issue of material fact, but they did not even attempt to meet that standard to support most arguments.

In the interest of judicial efficiency while maintaining that Plaintiffs are not entitled to summary judgment, PTP acknowledges below a few inapplicable defenses.

II. ARGUMENT

A. Standard of Review

Summary judgment is appropriate only if the pleadings, depositions, interrogatory responses, admissions, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Fed R. Civ. P. 56(c). The burden is on

the moving party to conclusively show that no genuine issue of material fact exists. *Bennett v City of Eastpointe*, 410 F.3d 810, 817 (6th Cir. 2005) (citations omitted) The facts, and the inferences drawn from them, must be viewed in a light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (citation omitted) Once the moving party has carried its burden, the nonmoving party must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e).

It is unusual for courts to grant summary judgment to a plaintiff on an issue for which it has the burden of proof at trial. *Lomree, Inc. v. Pan Gas Storage, LLC*, 499 Fed.Appx 417, 420 (6th Cir. 2012). “In ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.” *Id.* (quoting *Anderson*, 477 at 254). “When the party with the ultimate burden of persuasion on an issue moves for summary judgment, that party must support its motion with credible evidence that would entitle it to a directed verdict if not controverted at trial.” *Id.* (*Timmer v. Michigan DOC*, 104 F.3d 883, 843 (6th Cir. 1997)).

For the most part, PTP asserted defenses that may negate a necessary element of the Wineries’ case or requirement for the Wineries to support jurisdiction. *See Ford Motor Co., v. Transp. Indent. Co.*, 795 F.2d 538, 546 (6th Cir. 1986) (distinguishing between defenses that negate an element of the plaintiff’s *prima facie* case (non-affirmative defenses) and those that raise extraneous matters – “confession and avoidance” (affirmative defenses)). PTP had no obligation to plead non-affirmative defenses, but PTP is aware of no prohibition against doing so. *See Fed. R. Civ. P. 8(c)*; *In re Honest Co.*, 343 F.R.D. 147, 150 (C.D. Cal. 2022) (“Negative defenses may be raised in an answer, *see Fed. R. Civ. P. 8(b)*, and mistakenly categorizing a negative defense as an affirmative defense generally is not a basis for striking it.”).

B. PTP properly asserted defenses that the Township did not.

The Wineries assert PTP may not assert 38 defenses raised by PTP but not the Township. (ECF 442, PageID.15628) The Wineries' argument is illogical and stale. It is illogical because Plaintiff assert later in the motion that several of these defenses (M, Q, R, W, X, Y, BB, OO, PP) are not "affirmative defenses" as they do *not* "raise new matter." (PageID.15651) Raising defenses that assert Wineries cannot support a necessary element of their case does not enlarge the scope of proceedings.

The Wineries' argument is also stale because the Court already extensively considered briefing on PTP's role in this case, and it allowed PTP to amend its answer to raise additional affirmative defenses over the Wineries' objections. (ECF 275, 290, 301) It was proper for PTP to raise defenses to the Wineries claims that the Township did not. *See Alvarado v. J.C. Penney Co.*, 997 F.2d 803, 805 (10th Cir. 1993) ("We agree that '[w]hen a party intervenes, it becomes a full participant in the lawsuit and is treated just as if it were an original party.'") (quoting *Schneider v. Dumbarton Developers, Inc.*, 767 F.2d 1007 (D.C.Cir.1985)); Wright, Miller & Kane, FEDERAL PRACTICE & PROCEDURE: CIVIL 3D § 1920 (2021); 59 Am. Jur. 2d Parties 174 ("Having been permitted to become a party in order to better protect his or her interests, an intervenor is allowed to set up his or her own affirmative cause or defense appropriate to the case and the intervention.").

The Wineries' cited cases do not support its argument that PTP may only assert defenses if the Township also asserted them. The issue in *Vinson v. Washington Gas Light Co.* was whether it was error on appeal to deny the intervenor, who had participated throughout the underlying utility rate case proceeding, to invalidate the rate order and start over on the basis of interim legislative acts. 321 U.S. 489, 497 (1944). Given the point at which the issue was raised in the proceeding, the court denied its request. *Id.* at 498. *Illinois Bell Tel. Co. v. FCC* had similar facts. 911 F.2d 776,

785-86 (D.C. Cir. 1990). On appeal of a utility rate order, the court rejected the attempt by a new party to intervene and challenge a completely different part of the rate order where it had failed to petition for review of the order. *Id.* at 786. *Independent Electric Contractors of Houston Inc. v. NLRB* also involved appellate review of an administrative decision. 720 F.3d 543, 550-51 (5th Cir. 2013). The intervener argued there was no appellate jurisdiction because the plaintiff had not preserved an appeal issue before the NLRB. The court decided it did have appellate jurisdiction because the issue was adequately preserved and the Board did not argue to the contrary. The issue in *U.S. v. Metropolitan St. Louis Sewer District* was whether the intervening plaintiff in an environmental enforcement case could raise a defense to prevent entry of a proposed consent decree, where the defendant had not raised it. 952 F.2d 1040, 1043 (8th Cir. 1992).

The Wineries' argument misunderstands intervention generally and PTP's timely intervention in this proceeding. This is not a case where PTP sought late intervention and got stuck with the Township's defense. The parties already fully briefed whether and how PTP should be permitted to build the record and defend against the Wineries' meritless claims. The Court determined particular issues on which PTP is permitted to "pursue discovery, file motions, and generally participate in this case." (ECF 301, PageID.10702-1074; ECF 319, PageID.11890)

Even if PTP did raise new affirmative defenses expanding the scope of this case, it does not follow that the Wineries would be entitled to summary judgment on them. The Wineries make no attempt to meet the summary judgment standard on these defenses, and these are not proper defenses for summary judgment, so their motion must be denied.

C. PTP may raise defenses related to damages (C, G, T).

The Wineries argue that PTP is not subject to money damages so they are entitled to summary judgment on three defenses related to damages (failure to mitigate damages, no damages

are permitted, and failure to identify damages for First Amendment claims). (ECF 442, PageID.15634) There is no sound basis for the Court to grant them summary judgment on any defenses related to damages or otherwise.

PTP is entitled to plead damages defenses. PTP asserted these defenses in its original proposed answer and retained them in its amended answer. (ECF 41-1, PageID.2061-62; ECF 291, PageID.10328-29) Subsequent rulings by the Sixth Circuit and this Court do not render PTP's damages defenses improper, nor would that be sufficient basis to grant summary judgment on damages-related defenses.

The Wineries' argument stems first from a section of the Sixth Circuit intervention order considering whether the Township adequately represents PTP's interests in this proceeding. (ECF 442, PageID.15634) In addressing the adequacy of the Township's representation of PTP's interests for intervention under Rule 24(a), the Sixth Circuit noted key differences in the respective interests, supporting its conclusion of inadequate representation:

In sum, overlapping interests do not equal convergent ones for the purposes of assessing representation under Rule 24(a). The Township faces the possibility of damages. Protect the Peninsula's members do not. Protect the Peninsula's members own homes near the Wineries. The Township does not. It is not difficult to see how the two entities' interests could diverge. There is certainly a "*potential*" for inadequate representation here.

WOMP v. Peninsula Twp., 41 F.4th 767, 777 (*WOMP I*) (6th Cir. 2022) (citations omitted, emphasis in original). There is nothing in the Sixth Circuit decision limiting defenses PTP may pursue, including defenses against its obscene damages demand. (ECF 326, PageID.11930-31) While PTP respectfully maintains this analysis is no basis to limit the scope of PTP's access to documents or limit its opportunity to defend certain claims, the Court ruled to the contrary. (ECF 301, PageID.10703-704; ECF 345, PageID.12558)

Nor does anything in the Court's subsequent Orders prevent PTP from pleading defenses related to damages. Contrary to the Wineries' characterization, the Court's orders related to PTP's role vis-à-vis damages are narrow. In ECF 301, the Court stated:

At this stage in the litigation, the Court finds that permitting PTP to access the Wineries' financial documentation is inappropriate, given that PTP will not be responsible for the payment of damages in the event that the Wineries prevail. *See WOMP Appeal I*, 41 F4th at 777 ("The Township faces the possibility of damages. Protect the Peninsula's members do not."). If PTP wishes to access these documents during discovery, PTP may file an appropriate motion.

(ECF 301, PageID.10703-704) As invited, PTP filed a motion for access to documents, which the Court denied. (ECF 326, 345) This Court found the requested expert report and accompanying documents and trial exhibits, all of which contain financial information that appear likely to define the core of the Wineries' damages claim, irrelevant to PTP at that time. (ECF 345, PageID.12558-59) The Court did not declare that PTP may not raise any defenses that may involve – directly or indirectly – the Wineries' damages or financial information throughout the remainder of this case. Nor did the Court declare PTP is forbidden from defending these claims.

Depending on the case the Wineries put forth, PTP may present contrary evidence, and that contrary evidence may relate to these defenses and others. Foreclosing PTP from pursuing these defenses, as the Wineries attempt with this motion, would create unnecessary confusion. For example, Defense C asserts Wineries failed to mitigate damages. By motion or at trial, PTP may show each Plaintiff had the distinct, statutorily authorized opportunity to formally and informally appeal every single zoning decision it now complains effected a deprivation of constitutional rights and caused it harm. PTZO 5.7.1, 5.7.2, 8.7.3(10)(u)(2)(c)(iv), MCL 125.3603, MCL 125.3605, MCL 125.3607. In discovery, each Plaintiff provided evidence and testified about how long they complained about zoning limitations and how ineffective their efforts to change them have been.

(*See, e.g.*, **Ex 1**, dep. pp. 158-63; **Ex 2**, dep. pp. 87-89; **Ex 3**, dep. pp. 127-28). None pursued appeal or sought formal interpretations, each Plaintiff sat on their claims. If they were harmed at all (which PTP disputes), the injury occurred years ago. Damages defenses relate to damages, claim accrual, standing, and others.

Defense **G** asserts Wineries seek damages that are not awardable under controlling law. To sustain regulatory taking claims, each Winery must demonstrate the magnitude of economic harm caused by the Township zoning provisions. *Penn. Cent. Transp. Co. v. New York*, 438 U.S. 104 (1978); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540 (2005). The Wineries supported their takings claim by asserting zoning impairs “rights afforded by” their winemaker license. (**Ex 4**, p. 4, 18, 28, 36, 46, 56, 68, 75, 88, 95, 103) PTP may defend these claims by showing these are non-compensable damages. Defense **T** asserts the Wineries identified no damage claims for First Amendment violations. PTP may properly demonstrate the Wineries were not damaged (*i.e.*, injured, harmed, impaired) in any cognizable way by the zoning provisions they now say are unconstitutional.

PTP defenses related to damages were appropriately pleaded, this is not an appropriate matter for summary judgment, and the Wineries have not demonstrated that are entitled to summary judgment on these defenses.

D. PTP properly asserted the statute of limitations defense (B).

The Wineries rely on *Kuhnle Brothers, Inc. v. Geauga* to assert PTP may not maintain Defense **B**, which is that Winery claims are barred “in whole or in part” by the statute of limitations. 103 F.3d 516, 522 (6th Cir. 1997) (ECF 442, PageID.15634-35). Their argument is misplaced.

First, the Wineries’ motion improperly fails to acknowledge the substantial variation in factual and legal issues here. There are 11 Wineries asserting at least 7 substantive claims apiece

(First Amendment speech, religion, association; regulatory takings; preemption; dormant Commerce Clause; due process) (ECF 29, PageID.1116-28) A statute of limitations analysis is necessarily *plaintiff* and *claim* specific because it depends on the nature of the injury and when the plaintiff knows or has reason to know of its injury. *Bannister v. Knox County Board of Educ.*, 49 F.4th 1000, 1008-1009 (6th Cir. 2022) (citations omitted); *Kuhnle*, 103 F.3d at 520-21. In *Kuhnle*, the Sixth Circuit found the plaintiff’s takings and substantive due process claims barred, while its “deprivation of liberty” claim accrued later and was not barred by the statute of limitations. *Id.*

Second, the Wineries make too much of the Court’s decision denying PTP’s motion for reconsideration related to the Commerce Clause. (ECF 319, PageID.11888-89) The Court there considered whether PTP demonstrated “palpable defect” in not setting aside summary judgment on those claims and found PTP did not. The Court also cited *Kuhnle* and *Flynt v. Shimazu*, 940 F.3d 457, 462-63 (9th Cir. 2019) to support the assertion that, “for claims brought via § 1983 for alleged ‘ongoing’ constitutional violations from an unconstitutional statute, a new claim arises and a new statute of limitations period commences with each new injury.” (ECF 319, PageID.11888) Contrary to their characterization, the Court did not resolve when any Winery’s Commerce Clause claim accrued. Nor did the Court consider the applicability of continuing violations to extend claim accrual for First Amendment, regulatory takings, or other claims, nor when claims accrued for each Plaintiff. *See Bird v. State*, 935 F.3d 738, 745 (9th Cir. 2019) (while *Kuhnle* used broader language, its holding means claim accrued when statute is applied; rejecting position that facial statutory challenge claim did not accrue at time of injury and instead “continues ad infinitum until the statute is repealed,” which would nullify all statutes of limitations with respect to statutory challenges) (citations omitted)

Third, statute of limitations is a proper affirmative defense to Winery claims, as PTP demonstrates in its forthcoming summary judgment motion. As the Court authorized, PTP explored this issue in discovery and is now prepared to demonstrate its entitlement to summary judgment. The Wineries are not entitled to summary judgment on this affirmative defense.

E. PTP may pursue equitable time-based defenses (IL, ZZ, AAA, BBB, CCC, DDD).

The Wineries are not entitled to summary judgment on PTP's laches and other equitable time-based defenses. (ECF 442, PageID.15635-36) Their motion asserts that laches is not a defense to enjoin an unlawful ordinance, and PTP cannot be liable for damages, therefore the Wineries are entitled to summary judgment in their favor on six defenses. Their two-sentence analysis is insufficient to support the relief they seek.

The Wineries' theory contradicts prior orders in this proceeding. The Sixth Circuit in *WOMP II* recognized that PTP interests "certainly bear on any prejudiced suffered by the Wineries' delay." *WOMP v. Peninsula Twp. (WOMP II)*. 2022 U.S.App. LEXIS 23575, *9 (Aug. 23, 2022) This Court subsequently determined that laches is one defense PTP may pursue. (ECF 301, PageID.10703) The Wineries' reliance on the Order rejecting the Township's motion to alter or amend judgment is misplaced for several reasons. It preceded the Sixth Circuit decisions on PTP intervention and vacating the injunction, *WOMP I* and *II*. This Court subsequently permitted PTP to fully pursue this defense after it rejected the Township's motion. And it necessarily did not consider the evidence PTP compiled in discovery. Laches remains a ripe defense for PTP to pursue through summary judgment or trial.

The Wineries also provide a misleading partial quote from *Nartron Corp. v. STMicroelectronics, Inc.*, 204 F.3d 397, 412 (6th Cir. 2002). Here it is in context:

Finally, we are not persuaded by Nartron's argument that even if its 11-year delay in bringing suits constitutes laches, it is nonetheless entitled to prospective injunctive relief. Laches only bars damages that occurred before the filing date of the lawsuit. It does not prevent plaintiff from obtaining injunctive relief or post-filing damages. To defeat a suit for injunctive relief, **a defendant must also prove elements of estoppel** which requires more than a showing of mere silence on the part of a plaintiff; defendant must show that it had been misled by plaintiff through actual misrepresentations, affirmative acts of misconduct, intentional misleading silence, or conduct amounting to virtual abandonment of the trademark.

Id. at 412-13 (cleaned up, emphases added). On its face, *Nartron* does not stand for the principle, as the Wineries assert, that laches is not a defense to the Wineries' request to enjoin zoning. (ECF 442, PageID.15635) *Nartron* explicitly states that delay *may* bar injunctive relief when the defendant also proves elements of estoppel. *See Lichenstein v. Hargett*, 489 F. Supp. 3d 742, 752-53 (M.D. Tenn. 2020) ("Laches generally is potentially applicable to requested equitable relief (including but not limited to injunctions) sought in civil actions.") (citing *Obiukwu v. U.S.*, 14 F. App'x 368, 369 (6th Cir. 2001)); *Eason v. Whitmer*, 485 F.Supp.3d 876, 881 (E.D. Mich. 2020) (laches barred injunctive relief). When the Sixth Circuit vacated the prior injunction and expressly identified PTP's interests in pursuing laches (*WOMP II*), it obviously knew (as the Wineries know) that PTP intervened expressly to defend against the Wineries' request for injunction. *WOMP I*, 41 F.4th 767, 777. If *Nartron* said what the Wineries say it says, the Sixth Circuit decision in *WOMP II* makes no sense.

Moreover, this case is about zoning. Courts have repeatedly recognized that zoning-related challenges may be time-barred and dally may foreclose injunction. *See Thatcher Enterprises v. Cache Cnty Corp*, 902 F.2d 1472, 1476 (10th Cir., 1990) (applying laches where plaintiff waited 17 years after adoption of the ordinance and 9 years from the time they received a conditional use permit allowing limited commercial uses in the agricultural zoning district to make challenges to the zoning ordinance); *Richmond Twp. v. Erbes*, 195 Mich. App. 210, 225; 489 N.W.2d 504, 512

(1992) overruled in part on other grounds (defendant estopped “on the basis of public policy” from challenging zoning ordinance 13 years after its enactment); *Edel v. Filer Twp, Manistee Cnty*, 49 Mich. App. 210, 216; 211 N.W.2d 547, 550 (1973) (time bar applied because zoning ordinance had been in existence for 18 years before it was challenged; “When a zoning ordinance has been the subject of public acquiescence and reliance for this length of time, the reasonableness of a belated challenge is certainly open to question.”) (collecting cases); *Northville Area Non-Profit Housing Corp. v City of Walled Lake*, 43 Mich. App. 424, 435; 204 N.W.2d 274, 280 (1972) (time bar applied because zoning ordinance provision had been in effect for 4 years before it was challenged). Laches is also fully applicable to bar constitutional challenges. *See Bylinski v. Allen Park*, 8 F.Supp.2d 965, 973 (E.D. Mich. 1998) (citations omitted), overruled on other grounds.

The Wineries were very familiar with zoning, and Township administration of it, years before they brought this case. Their delay induced PTP members and the Township to rely on zoning to their prejudice. PTP may defend the Wineries’ claims on the basis of delay and other time-based defenses. The Wineries have not shown they are entitled to summary judgment on defenses **II, ZZ, AAA, BBB, CCC, and DDD**.

F. PTP may pursue standing defenses (VV, WW, XX).

The Wineries seek summary judgment on three PTP defenses that allege various ways various Wineries lack standing to pursue their claims. (ECF 442, PageID.15636-37) The Wineries offer two misguided arguments to support summary judgment on standing.

First, they claim they are entitled to summary judgment on standing because “standing is not an affirmative defense under federal law,” citing *Johnson v. Saginaw*, 2018 WL 6168036 (E.D. Mich. Aug. 30, 2018). That decision was not on a motion for summary judgment under Rule 56(a),

it was a motion to strike an affirmative defense under Rule 12(f). And here is the Magistrate’s analysis:

As to the first affirmative defense that Plaintiffs lack standing, “[b]ecause a **plaintiff must plead and ultimately prove standing**, lack of standing is not an affirmative defense under federal law.” [citations omitted] I therefore suggest that this affirmative defense cannot meet either the fair notice or the *Twombly/Iqbal* standard and should be stricken.

Id. at *8 (emphases added). The Wineries miss the nuance here. The Magistrate struck standing from the defendant’s pleading because the burden of proving standing is not on the *defendant*, it is on the *plaintiff*. The remaining cases cited by the Wineries stand for the unhelpful (to them) proposition that they – and not PTP – must plead and ultimately prove standing. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) (“As the party invoking federal jurisdiction, the plaintiffs bear the burden of demonstrating that they have standing.”). “And standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages).” *Id.* (citations omitted). At this point in this proceeding, each Plaintiff must prove standing for each claim and form of relief they seek. They provide no basis for the Court to grant summary judgment to them on standing.

Second, the Wineries claim the Court has already determined that each has standing to bring their claims. (ECF 442, PageID.156376) They are wrong. The Wineries rely on two prior Orders to support their position. The first was the June 2022 summary judgment order (ECF 162), which was subsequently vacated in part. (ECF 301) In the footnotes cited, the Court concluded each Plaintiff of a particular type had standing to challenge all sections – *e.g.*, every Winery-Chateau may challenge every part of 8.7.3(10). (ECF 162, PageID.6019, n.26) Discovery demonstrates otherwise. For example, Chateau Grand Traverse never sought an SUP amendment

to authorize Guest Activity Uses, and Bonobo sought but was denied an SUP amendment to authorize Guest Activity Uses. (ECF 308-8; **Exs 6, 9**) PTP is entitled to defend against their claims by showing they lack standing to challenge provisions that do not apply to them. Bonobo and Black Star are located on land restricted by perpetual conservation easements that permanently restrict the use of the land to those “agricultural and open space uses *as specifically delineated*” therein. (**Ex 10**, p. 2; **Ex 11**, p. 2; **Ex 12**, p. 2) (emphasis added)) Irrespective of zoning or the outcome of this case, these two Wineries may not expand their operations to include non-delineated activities, like full kitchens, more retail offerings, and social events for hire. They lack standing to pursue all of their claims.

The Wineries’ reliance on ECF 319 to mean this Court determined Tabone, Chateau Grand Traverse, and Bonobo have standing to pursue their claims is likewise misplaced. There, the Court determined PTP had not shown there was palpable defect in the Court’s prior decision regarding PTP interests in the Commerce Clause claims. (ECF 319, PageID.11887-88) It found these three Wineries “have standing to pursue their [Commerce Clause] claims” citing ECF-29-4, PageID.1305 and ECF 311, PageID.11663. Upon further inquiry, it turns out the evidentiary record was incomplete, as PTP will demonstrate forthwith.

Finally, standing is jurisdictional, and a lack of subject matter jurisdiction may be raised at any time by any party or the court. *See Franzel v. Kerr Mfg. Co.*, 959 F.2d 628, 630 (6th Cir. 1992); Fed. R. Civ. P. 12(b)(1); Fed. R. Civ. P. 12(h)(3). PTP may raise defenses to Wineries’ lack of standing when appropriate. The Wineries have not demonstrated they are entitled to summary judgment on standing.

G. PTP may raise ripeness and other jurisdictional defenses (D, YY).

The Wineries are not entitled to summary judgment on defenses **D** and **YY**, which assert Winery claims are barred by failing to exhaust administrative remedies and/or that they are unripe. (ECF 442-15638-42)

It is undisputed that no Winery ever sought administrative review of any of the zoning decisions they now challenge as unconstitutional. What remains unclear are each Winery's legal theories and what evidentiary support they may try to muster. In discovery, the Wineries asserted novel constitutional theories. For example, the Farm Processing Facility Wineries assert the Winery-Chateau provisions violate their freedom of speech and association and constitute a taking of their MLCC small winemaker license. (**Ex 4**, p. 45-47, 66-68) The Wineries also identified no facts describing when, how, or in what way their First Amendment rights were harmed or injured. (**Ex 4**) Take Bonobo, for example:

INTERROGATORY NO. 1:

Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Bonobo objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bonobo's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Bonobo to advertise Peninsula Township agriculture.
- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Bonobo's ability to host certain types of events without approval from Peninsula Township.

- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Bonobo's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operates as an unconstitutional restriction on Bonobo's ability to freely associate.

Bonobo has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Bonobo, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Bonobo's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Bonobo results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

(Ex 4, p. 71-72) Every other Winery responded identically. This response identifies literally no facts, only legal conclusions. Each Plaintiff so far has refused to identify who was injured, when, and how. This case is also notably complicated. There are 11 Wineries operating under 4 winery land uses (Winery Chateau, Farm Processing Facility, Remote Tasting Room, Food Processing Plant), many with individualized Special Use Permits, most that were amended multiple times over the past decades. Because the Wineries have not presented their case in chief, it is premature to litigate potential PTP defenses.

The Wineries have not shown they are entitled to summary judgment on ripeness. Ripeness is an Article III justiciability doctrine that requires the plaintiff's "injury in fact be certainly impending." *NRA of Am. v. Magaw*, 132 F.3d 272, 280 (6th Cir. 1997) (citations omitted). Ripeness becomes an issue when a case is anchored in future events that might not occur. *Id.* at 284. While

the Wineries assert their claims are rooted in the passage and enforcement of the challenged zoning provisions, it is clear the Township never attempted to apply most of the challenged sections to most of the Wineries. The Wineries have not demonstrated that each has been injured by the PTZO. Some Wineries' claims may be unripe, or they may lack standing, or both. Federal jurisdiction cannot be waived, it may be raised at any time. *U.S. v. Adesina*, 129 F.3d 849, 850 (6th Cir. 1997). The Wineries put the cart before the horse when they ask for summary judgment on ripeness before they fully articulate their injuries and claims.

PTP will similarly assess exhaustion and other jurisdictional defenses, as appropriate once the Wineries fully present their case. If some or all Wineries advance claims to which exhaustion of administrative remedies is a prerequisite to federal jurisdiction, or if other jurisdictional defenses arise, then PTP may raise them defensively. The Wineries have not shown they are entitled to summary judgment on these defenses.

H. PTP does not intend to pursue an immunity defense (QQ).

PTP does not intend to pursue Defense QQ. (ECF 442-1, PageID.15667)

I. PTP does not assert SUPs are contracts (JJ, KK).

While PTP does not intend to pursue Defense KK (Plaintiffs' claims are barred by basic principles of contract law), the Wineries are not entitled to summary judgment on Defense JJ (asserts Plaintiffs' claims are barred by their own voluntary acknowledgment and agreement to the terms of special use permits issued by Peninsula Township). (ECF 442, PageID.15643) When and how each Winery was injured by the zoning provisions they now challenge as unconstitutional deprivations of fundamental freedoms is relevant to whether they have standing, when their claims accrued, and other matters. The Wineries' claim they were injured the day the challenged

provisions were adopted. (Ex 4, p.1, 8, 21, 34-35, 45-46, 49-50, 59, 71, 81, 91, 98-99) Their subsequent voluntarily agreement to the terms and conditions of their SUPs, which directly applied those supposedly-injurious ordinances to them, undermines that these provisions in fact ever actually injured them.

To the extent Winery actions and inactions following receipt of SUPs are the basis of PTP's defenses against their claims or undermine their standing or other requirements, PTP may assert them. The Wineries are not entitled to summary judgment on Defense **JJ**.

J. The Wineries are not entitled to summary judgment on waiver (NN).

The Wineries ask the Court to grant them a summary judgment that they have not waived their ability to challenge zoning in their SUPs. The Wineries do not explain how the fact that PTP “is not a party to the SUPs” limits PTP from asserting that Wineries waived the opportunity to challenge zoning conditions in their SUPs. Moreover, it is well-settled that zoning functions to ensure, among other desirable outcomes, compatibility among adjoining land uses, including with neighboring parcels and within the zoning district. The MZEA requires the PTZO to identify the land uses and activities eligible for a SUP and encourages uniformity within zoning districts by placing limits on discretionary decisions. *Whitman v. Galien Twp.*, 288 Mich. App. 672, 682; 808 N.W.2d 9 (2010); MCL 125.3502. The PTZO defines uses authorized by special use permit to mean those requiring individualized parcel- and use-specific consideration of the consistency with the district and neighboring parcels. PTZO 6.1.5(3) (special use permits “require special consideration in relation to the welfare of adjacent properties and to the community as a whole.”) Ensuring consistency across each district avoids manifestly undesirable spot zoning. *Id.* (citing *Penning v. Owens*, 340 Mich 355, 367; 65 NW2d 831 (1954)). The intent of the Special Use Permit process is to avoid such harms:

Because of particular functional and other inherent characteristics, certain land and structure uses have a high potential of being injurious to surrounding properties by depreciating the quality and value of such property. Many of these uses may also be injurious to the Township as a whole unless they are controlled by minimum standards of construction and operation. It is the intent of this Section to provide a framework of regulatory standards which can be utilized by the Township Board as a basis for approving or disapproving certain special uses which may be permitted by the issuance of a special use permit within the particular zone districts cited.

PTZO 8.7.1. As such, PTP members are unquestionably among the beneficiaries of Township zoning, including SUPs.

In addition, and contrary to the Wineries' assertion, PTP and its members may enforce SUP violations, if harmed, if they are a nuisance *per se* or in fact. *Saugatuck Dunes Coastal All. v. Saugatuck Twp.*, 509 Mich. 561, 595; 983 N.W.2d 798 (2022) (meaning of party aggrieved by zoning decision). And PTP may raise complaints to the Township Board about any violations of Guest Activity Uses and obtain relief (cessation of unlawful conduct) in case of violation. PTZO 8.7.3(10)(u)(8)(d).

The Wineries' motion for summary judgment on a waiver defense fails because it *assumes* the zoning conditions in their SUPs impair First Amendment rights, but that is the disputed matter. The Wineries failed in discovery to identify any facts in support of their First Amendment claims, only legal conclusions. PTP sought but could not identify any message or expressive conduct that Wineries desire to convey through the various commercial activities and events they are not permitted under A-1 zoning to host, only a desire to reach more potential customers. The Wineries are not entitled to summary judgment on potential waiver defenses on the thin basis they *allege* constitutional claims. The issue here is Wineries' potential waiver of constitutional *claims*, not constitutional *rights*. Moreover, constitutional rights, just like other rights, can be waived. *AFT Mich v Michigan*, 497 Mich 197, 225; 866 NW2d 782 (2015). *See, e.g., Sewell v. Jefferson County*

Fiscal Court, 863 F.2d 461, 464 (6th Cir. 1988) (right to jury trial can be waived); *Chesterfield Exchange, LLC v. Sportman's Warehouse Inc.*, 528 F.Supp. 2d 710, 714 (E.D. Mich. 2007) (right to jury trial can be waived).

Moreover, there is record evidence at least some Wineries waived non-constitutional claims in the context of the Township's administration of the zoning ordinance. *Randy Disselkoen Properties, LLC v. Charter Twp. of Cascade* is instructive. 2008 U.S. Dist. LEXIS 1504 at *35 (W.D. Mich. Jan. 9, 2008). That case recognized that a litigant may be found to have waived claims when the government is not obligated to grant the requested decision. In that case, the litigant gave up their right to seek a lease extension in exchange for approval of a variance. Bonobo acknowledged in a "Settlement Agreement" that it did not have the right to host Guest Activity Uses and agreed it would not apply for commercial Guest Activity Uses until certain conditions were met, and the Township has not since granted such approval. (**Ex 9**, p. 2) Depending on how Bonobo articulates its injuries and claims, PTP may pursue a defense that Bonobo has waived claims.

The Wineries continue to point the Court to inoperative SUPs to support their misplaced theories. (ECF 443, PageID.15644) For Bonobo, after the Township approved SUP 118 in May 2013, Bonobo requested an amendment and the Township approved First Amended SUP 118 in November 2014. (ECF 32-6; **Ex 13**) Chateau Grand Traverse operates under SUP 66 (ECF 308-8), not SUP 24. (ECF 32-8) Chateau Chantal operates under SUP 95, but it has been supplemented twice since it was issued with SUP 114 (**Ex 14**) and the first amendment to SUP 1114 (**Ex 15**). Bowers Harbor operates under SUP 132 (ECF 32-7, PageID.1773-1781) but might have lingering event authorization under First Amended SUP 32. (ECF 308-11) For Brys, the reference includes the staff report for the first amendment to SUP 115, not the approved permit, which reflects the

Board decision. (ECF 32-5; **Ex 16**) It is unclear if the reliance on inoperative SUPs is intentional or mistaken, but there is no sound basis, at this point in the litigation, to perpetuate foundational inaccuracies.

Once the Wineries make their case, PTP may raise waiver defenses, and the Wineries may assert that it is improper or fails as a matter of law for the reasons they cite or others. The Wineries have not shown they are entitled to summary judgment on waiver.

K. PTP member property interests are protected by the zoning ordinance (BBB, DDD).

The Wineries seek summary judgment on Defenses **BBB** and **DDD**, which outline some of the ways PTP and its members have been prejudiced by Wineries' delays in asserting their claims. (ECF 442, PageID.15645) The Wineries' theory is PTP members cannot have an interest in enforcing an unlawful ordinance. This theory assumes the zoning ordinances are unconstitutional, while zoning is entitled to exactly the opposite presumption – zoning ordinances are presumed constitutional, and the plaintiff challenging its lawfulness has the burden of showing otherwise. *Hammon v. Bloomfield Hills Bldg. Inspector*, 331 Mich. 551, 555; 50 N.W.2d 155 (1951). There is no basis to grant the Wineries summary judgment on these defenses before they have sustained their heavy burden of invalidating the ordinance.

L. PTP may pursue defenses related to the intent of challenged zoning (III, JJJ).

The Wineries request summary judgment on defenses **III** and **JJJ**, which state:

- III. Plaintiffs' intended engagement in commercial activity in the A-1 Agricultural district without the limitations established by the challenged zoning provisions would be injurious to the public and the surrounding land uses, and therefore would constitute public nuisances in fact and per se.
- IV. Plaintiffs' intended engagement in commercial activity near the homes and farms of PTP members without the limitations established by the challenged

zoning provisions would be injurious to PTP and its members, and therefore would constitute private nuisances.

(ECF 291, PageID.10335-36)

The Wineries suggest these are improper affirmative defenses as nuisance is historically a cause of action, not a defense, and PTP's concerns about future potential nuisance are unripe. (ECF 442, PageID.15646) The Wineries misunderstand zoning, which reciprocally regulates and protects all landowners in the district and Township. Land use regulation, particularly zoning, grew out of the nuisance concept that no landowner may use their property in a manner that would injure their neighbor. 12 POWELL ON REAL PROPERTY § 79B.01(2) (2022). With growth and increasing population densities, and the limits of nuisance law, the legal system recognized government “could best control the physical, economic, and social impact that one form of land use has on adjacent property and on the community as a whole.” *Id.* In its landmark zoning case, the Supreme Court recited the maxim *sic utere tuo ut alienum non laedas* as a fundamental principle of zoning founded in nuisance law – “use your own property in such a way that you do not injure your neighbor’s.” *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926); BOUVIER LAW DICTIONARY (2012). Land use regulates “not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. A nuisance may be merely a right thing in the wrong place, -- like a pig in the parlor instead of the barnyard.” *Euclid*, 272 U.S. at 388 (internal citation omitted).

The provisions the Wineries seek to invalidate do not regulate wineries in the abstract. Michigan law requires zoning be developed relative to the neighbors, the district, and the master plan. *See* MCL 125.3201(1) (zoning may “ensure that use of the land is situated in appropriate locations and relationship”); MCL 125.3201(2) (“the [zoning] regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.”); MCL 125.3203(1)

(“A zoning ordinance shall be based on a plan . . .”). The PTZO limits commercial activities at wineries to protect surrounding land uses, prevent nuisances, ensure compatible and uniform land uses in the district, and maintain consistency with the master plan. PTZO 8.7.1. Uses authorized only by *special use permit*, as distinguished from uses *by right*, “could present potential injurious effects upon the primary uses and structures with the Zone District, [and] therefore require special consideration in relation to the welfare of adjacent properties and to the community as a whole.” PTZO 6.1.5(3).

The ordinance is thus reciprocal: it limits uses on all parcels for the protection of each relative to the other, as well as to protect the intent of the district. The ordinance does not prevent *only* winery parcels in A-1 from operating restaurants – *no* parcel in the district may have a restaurant; this protects all neighbors against incompatible uses. The ordinance protects the winery by prohibiting a commercial hog farm from establishing next to its tasting room. PTZO 6.7.2(6) (prohibiting commercial feeder lots in A-1).

To succeed in their claims, the Wineries will have to demonstrate the zoning is unlawful. In defense, PTP may show the challenged zoning reasonably protects PTP members and others against nuisance and other harms. The PTZO is intended to avoid precisely the type of incompatible activities – *i.e.*, nuisance conditions – that the Wineries desire to achieve through this litigation. The Wineries are not entitled to summary judgment on defenses **III** and **JJJ**.

M. PTP does not intend to pursue the corrective opportunities defense (HH).

N. PTP does not intend to pursue an unjust enrichment defense (KK).

O. PTP may pursue defenses to the Wineries’ “admissions” evidence (I, J, K, L).

PTP raised defenses **I, J, K, and L** in response to the Wineries’ claims that opinions of the former Township attorney are legally operative. (ECF 29, PageID.1087, 1113-16) In discovery, the Wineries continue to rely on pre-litigation correspondence between counsel to support their constitutional claims. (*See, e.g., Ex 4*, p. 2, 12, 22) The Wineries have expanded their theory to include allegations that Township staff in effect modified the plain terms and intent of the PTZO through deposition. (**Ex 4**, pp. 24, 84)

PTP concurs that the admissibility of pre-litigation correspondence is an evidentiary question, so it would be improper to grant either party summary judgment on any question of admissibility (Defenses **I, L**).

While PTP disputes that questions of authority (Defenses **J, K**) are evidentiary objections at all, it would be improper to grant summary judgment on them. (ECF 442, PageID.15649) The Wineries say they “intend to use admissions made by the Township’s agents, including its attorneys’ concession on the invalidity of the Ordinances, against the Township.” This raises numerous questions. What will they use, how, when, what “Ordinances” will the Wineries cite, did the Township adopt the supposed admissions, was the speaker authorized, and more.

Summary judgment is not appropriate for these defenses. The Wineries have not yet presented their case relying on these “admissions,” so there is presently no basis to assess their viability. The Wineries have not shown entitlement to summary judgment.

P. PTP concurs that the preliminary injunction defenses are stale (O, OO, PP).**Q. PTP does not intend to pursue preemption and immunity defenses (E, QQ).**

R. The Wineries are not entitled to summary judgment on non-affirmative defenses.

The Wineries seek summary judgment on 22 defenses that they characterize as “not affirmative defenses.” (ECF 442, PageID.15651) PTP concurs these are not “affirmative defenses” because they do not raise matters extraneous to the plaintiff’s *prima facie* case but instead take issue with the adequacy of the Wineries’ claims and proofs. *Ford*, 795 F.2d at 546. These defenses attack the adequacy of the Wineries’ case and issues the Wineries must prove to succeed, not defenses PTP must affirmatively prove to avoid liability. *See In re Rawson Food Serv. Inc.*, 846 F.2d 1343, 1349 (11th Cir. 1988) (rejecting argument debtor was required to raise lack of possession as an affirmative defense as “inconsistent with our holding that the seller bears the burden of proof of possession.”).

Nevertheless, the Wineries are not entitled to summary judgment on them under Rule 56(a) because they have not shown there are no genuine issues of material fact on any of them.

The Wineries’ argument that they are entitled to summary judgment on negative defenses for the reason they are not “affirmative” defenses is misplaced. There is no obligation for a defendant to plead negative defenses at all, and there is no penalty for pleading a negative defense under the “affirmative” defense heading. *In re Honest Co.*, 343 F.R.D. at 150.

The Sixth Circuit explained the distinction and significance of affirmative and non-affirmative (negative) defenses in *Ford, supra*. 795 F.2d at 546-47. The procedural context in *Ford* was whether certain defenses the defendant did not plead should be considered “affirmative defenses” or not. If affirmative, then they were waived; if not affirmative, then not waived:

An affirmative defense raises matters extraneous to the plaintiff’s *prima facie* case; as such, they are derived from the common law plea of “confession and avoidance.” 5 C. Wright & A. Miller, *Federal Practice & Procedure* § 1270, at 289 (1969). On the other hand, some defenses negate an element of the plaintiff’s *prima facie* case; these defenses are excluded from the definition of affirmative defense in Fed. R. Civ. P. 8(c).

Id. at 546. The distinction is critical when a defendant raises a last-minute defense. The Sixth Circuit determined the defense asserting other carriers may be responsible for off-sets was waived because it was an unpled affirmative defense. Two others asserting the plaintiff failed to establish critical elements of their case were not waived, so the Sixth Circuit remanded those issues for district court consideration. The posture was the same in the additional cases the Wineries cite. (ECF 442, PageID.15651) The Wineries motion asserting they are entitled to summary judgment on these issues is procedurally inapposite.

The Wineries cite no rule that forbids a defendant from asserting defenses as “affirmative defenses,” even if they attack the merits of the plaintiff’s case instead of raising avoidance or extraneous defenses, and there is none. The principle behind Fed. R. Civ. P. 8(c) is to prevent unfair surprises to plaintiffs; “if permitting the defendant to interpose the defense will force the plaintiff to perform additional discovery or develop new legal theories, these considerations will militate heavily in favor of terming the defense affirmative.” *Ford*, 795 F.2d at 546. Pleading non-affirmative defenses is all benefit and no prejudice to a plaintiff – it notifies them of the defense theories without obligating any response.

Thus, the Wineries’ motion for summary judgment on 22 non-affirmative defenses because they are non-affirmative defenses must be denied. While the Wineries might have requested the Court strike them under Rule 12(f), it is doubtful these defenses, which address deficits in core elements of the Winery’s claims, would meet the standard. Fed. R. Civ. P. 12(f) (“The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”). Nor is there any obvious benefit for Wineries to do so at this point in the case.

S. PTP may raise res judicata and estoppel theories (GGG, HHH).

The Wineries seek preemptive summary judgment on two defenses pleaded by PTP addressing res judicata and collateral or judicial estoppel. (ECF 442, PageID.15654)

- **GGG.** All or some of Plaintiffs' claims are barred by collateral estoppel and/or res judicata, due to prior litigation, prior adjudications, and prior resolutions involving one or more of Plaintiffs. This includes, without limit, 1998 litigation by Chateau Operations Ltd and Bob Begin against Peninsula Township in Michigan 13th Circuit Court; 2007 litigation by Old Mission Peninsula Winery Growers against Peninsula Township and Winery at Black Star Farms in Michigan 13th Circuit Court; and violations alleged by Peninsula Township against Oosterhouse Vineyards in 2016 and 2017. There may be others.
- **HHH.** All or some of Plaintiffs' claims are barred by estoppel or judicial estoppel, due to their taking positions in prior litigation and proceedings inconsistent with their positions in this litigation. This may include, without limit, 2007 proceedings and litigation by Plaintiffs involving a variance and activities by Winery at Black Star Farms.

The Wineries argue three prior judicial proceedings – and particular judgments associated with each – are not relevant to this proceeding:

- “The Chateau Chantal consent judgment is not relevant here for several reasons.” (PageID.15655)
- Litigation over a variance granted to Black Star Farm “has no relevance here.” (PageID.15657)
- “The [Bonobo] consent judgments did not strip Bonobo of the right to challenge the constitutionality of the Ordinance itself, so they are irrelevant here.” (*Id.*)

Putting aside the intricacies of the three matters, relevance – or lack thereof – is not a basis for summary judgment. Relevance bears on the scope of discovery or the admissibility of evidence. But the Wineries may not obtain summary judgment on non-affirmative defenses on the basis certain matters are not relevant. Moreover, relevance is relative. It depends on what it is being offered to prove or negate. The Wineries have been squirrely about their legal theories and mum about their injuries, and PTP expects they will continue to spring new theories until this case is done. It is premature for the Wineries to insist these matters are conclusively irrelevant to anything

in this proceeding before the Wineries have settled on a theory and asserted a case and before PTP has offered them to negate some aspect of whatever case the Wineries put forth. Whether prior litigation, particular filings in them, or outcomes from them, granting summary judgment to the Wineries on these defenses as articulated in PTP's answer creates the potential for further disputes. These defenses are inappropriate for summary judgment.

Summary judgment on these defenses is inappropriate also because PTP asserted defenses that are broader than collateral estoppel and res judicata as applied to the three proceedings that the Wineries discuss. In addition to those two doctrines, PTP identified estoppel and judicial estoppel. In addition to the three proceedings, PTP stated, "There may be others."

The Wineries' argument fails for the further reason these defenses may ripen in this case. For example, Chateau Chantal asserts that Peninsula Township has enforced (among others) 8.7.3(10)(m), which has "prevented Chateau Chantal from freely associating with people or groups of its choosing as allowed by the First and Fourteenth Amendments" (Ex 4, p. 28) According to Chateau Chantal, it was injured "every day" since the passage of 8.7.3(10)(m). (Ex 4, p.21-22¹) The 1998 consent judgment expressly resolved the meaning of 8.7.3(10)(m) and precisely which groups of people Chateau Chantal may accommodate in its accessory spaces (meeting rooms, facilities for food and beverage services). (442-2, PageID.15672) It determined Chateau Chantal may use those facilities only for "guests that are registered to stay overnight in the guest rooms provided on the winery-chateau premises."

PTP is entitled to defend Chateau Chantal's claim that 8.7.3(10)(m) unconstitutionally prevents it from freely associating with groups of its choosing with the consent judgment. The consent judgment shows Chateau Chantal's claim accrued decades ago. PTP may assert that

¹ There is a typographical error in the second bullet, it should say 8.7.3(10)(m).

judicial estoppel prevents Chateau Chantal in this proceeding from asserting a position inconsistent with the consent judgment, where it agreed to the definition of “registered guests.” *See Paschke v. Retool Indus.*, 445 Mich. 502, 509; 519 N.W.2d 441 (1994) (“Sometimes described as the doctrine against the assertion of inconsistent positions, judicial estoppel is widely viewed as a tool to be used by the courts in impeding those litigants who would otherwise play ‘fast and loose’ with the legal system.”) (internal quotations omitted). In addition, claim preclusion prevents Chateau Chantal from now raising issues it *should* have litigated in the 1998 litigation. *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (“The central purpose of claim preclusion is to prevent the relitigating of issues that were or could have been raised in [a prior] action.”). Chateau Chantal claims it was already injured by 8.7.3(10)(m) long before 1998; it should have raised its claims then instead of waiting 22 more years, and PTP may defend accordingly.

Bonobo’s situation is complicated. Bonobo started with SUP 118 in 2013 (ECF 32-6), then needed to amend it (**Ex 5**), which the Township approved in 2014. (**Ex 13**) Amended SUP 118 stated:

The Board finds that the applicant is not currently applying for guest activity uses but shall be subject to the aforementioned requirements. *The applicant shall be required to request approval by the Board for those uses as an additional support use as part of a future application.*

(**Ex 13**, p. 12) (emphasis added). Bonobo applied for that approval in 2015, but the Township denied it. (**Ex 6**; ECF 308-14). The Board was clear Bonobo would have to “reapply for guest activity uses.” (**Ex 7**) A year later in March 2016, after Bonobo was allegedly hosting Guest Activity Uses without authorization, the Township issued citations. (**Ex 8**) The Wineries say the citations related to “whether pumpkins grown by Bonobo satisfied its crop coverage requirements and whether a luncheon it hosted violated the PTZO,” but the citations only reference unauthorized Guest Activity Uses. (ECF 442, PageID.15667; **Ex 8**) Another year later, in March 2017,

compliance issues finally resolved when Bonobo executed a Settlement Agreement with the Township that provided Bonobo “shall not apply for any Guest Activity Uses, as stated in Section 8.7.3(10)(u), for the Subject Property, until such a time as this Agreement is completed.” (Ex 9) While the terms were subsequently completed, there is no evidence Bonobo was subsequently authorized to host Guest Activity Uses.

Fast forward to this proceeding. Now Bonobo takes the position the Township *has* authorized it to host Guest Activity Uses under SUP 118. It asserts those Guest Activity Use provisions harm its First Amendment rights and work a taking of its winemaker license. PTP is entitled to invoke Bonobo’s compliance history, including the citations, surrounding events, and resolutions of them, to defend against the Wineries’ required proofs that Bonobo has standing, has been injured by the Guest Activity Use provisions, was actually injured as it now claims, and otherwise. PTP is also entitled to assert that *res judicata* and estoppel prevent Bonobo from now asserting claims it should have brought well before 2020 and from taking contradictory positions.

PTP makes two points in response to the Wineries’ argument that Bonobo could not possibly have waived its constitutional “rights” by failing to assert them in prior enforcement proceedings. First, the issue is whether Bonobo waived constitutional *claims*, not constitutional *rights*. That zoning impairs its constitutional rights is a heavily disputed issue, supported by allegations but not facts. And if Bonobo believed zoning was injuring its First Amendment rights every day since the ordinance was enacted, as Bonobo now claims, then Bonobo knew it was injured in 2016, when the Township cited Bonobo for violations of the very ordinance sections Bonobo now asserts are unconstitutional. But Bonobo did not. Either Bonobo’s First Amendment freedoms were not in fact injured, contrary to what it now asserts, or they were harmed but it waived that defense. Second, constitutional rights and claims can be waived, and the Wineries’

reliance on *U.S. v. Royster*, 204 F. Supp. 760 (1961) is misplaced. That case considered whether the criminal defendant had waived the right to demand a search warrant. The Wineries cite no case suggesting claims dressed up as constitutional violations are immune from *res judicata* and claim preclusion doctrines, and there is no sound principle to categorically exempt them. *See Milbrath v. Linsenbigler*, 2008 U.S. Dist. LEXIS 80078 *16 (W.D. Mich. Oct. 8, 2008) (rejecting argument that claim preclusion did not prevent complaint alleging constitutional violations; “claim-preclusion analysis under the transactional test examines the similarity of the facts underlying the two actions, not the claims that were raised”).

The Wineries are not entitled to summary judgment on PTP’s defenses related to estoppel, preclusion doctrines, prior compliance proceedings, or others related to prior proceeding.

T. PTP may pursue defenses related to the appropriate remedy (H, N, BBB)

The Wineries take issue with three PTP defenses that they characterize as suggesting the Court lacks authority to declare challenged zoning provisions unlawful. (ECF 442, PageID.15658) PTP objects to the Wineries’ description of these defenses as none addresses the Court’s authority to provide adequate relief in the event the Wineries succeed in surmounting jurisdictional prerequisites and proving challenged provisions are unlawful.

The Wineries’ argument that they are “not looking to ‘amend’ or ‘modify’ the Ordinances” is undermined by their own testimony. Throughout depositions, Winery representatives testified about their efforts to amend or modify zoning, in particular seeking to loosen restrictions on commercial events and restaurants in A-1. For example, Two Lads testified about its continuous efforts starting in 2008 as part of “winery rewrite subcommittees” to develop a “unified winery ordinance” to allow more uses and facilities, but these efforts failed as planners departed and new planners came in (Gordie, Gordon, Brad, Michelle, Brian, and Randy over a decade or so). (Ex 1,

dep. pp. 158-59) “It was like we restarted from zero four times since I’ve been here,” leading him to conclude, “my God, this is never going to change, this is unbelievable, we need help.” (*Id.*, dep. p. 159-60) That’s why Two Lads sued the Township – “it seemed to me that legal help/outside help might be the only way to actually effect lasting change, you know, in a way that would get the township to listen.” (*Id.*, dep. p. 160)

Brys similarly testified about its efforts also starting in 2008 to participate in Township efforts to identify wineries “needs [and] wants,” such as parts of the ordinance that “were either vague or not friendly to agricultural businesses such as wineries. Not friendly to the ability host visitors and provide an agritourism experience.” (Ex 2, dep. pp. 87-88, 97) He anticipates the outcome of this litigation is the opportunity for expanded commercial activities:

We would like to host events for people to come to our winery and our property and be able to – whether it’s a corporate group, a family function, a wedding, and be able to enjoy the agricultural space while also supporting our business through sale of wine by the glass or bottles of wine. And we would also like to host musical performances where people could enjoy our product and also enjoy the beauty of agricultural and the 155 acre site that we sit on.

(*Id.*, dep pp. 100-101) The others were consistent. It is notable how hard and for how long so many Wineries worked to negotiate zoning changes for the things they now call First Amendment impairments.² They were uniform and unified in their focus on rewriting zoning. Legal posturing aside, the Wineries are obviously hoping the outcome of this case is the things they have tried to get for years – more commercial events, restaurants, and other commercial enterprises that capitalize on the protected scenic vistas.

² It is also noteworthy that, over the same extended period, not one exercised the numerous safeguards built into zoning to prevent unlawful and unfair administration – requests for interpretation, appeals to the Board or the Board of Zoning Appeals, judicial review of SUP decisions, or timely litigation.

The Wineries misunderstand the scope of relief they would be entitled to if successful in demonstrating the challenged zoning and Township administration of it is unlawful. Unlawful provisions may be invalidated only to the extent they remain in the PTZO. The entirety of 8.7.3(10)(u), which has been the target of most Wineries' challenges, was repealed by the Township,³ so there are no operative provisions to invalidate. *See Davis v. Colerain Twp.*, 51 F.4th 164, 174 (6th Cir. 2022). The Wineries do not challenge the amendment. Even if the challenged provisions were still live, invalidating them would not result in more commercial enterprises, which remain generally non-lawful in A-1. *Pittsfield v. Malcolm*, 375 Mich. 135, 142-43; 134 N.W.2d 166 (1965) ("Under the ordinance which specifically sets forth permissible uses under each zoning classification, therefore, absence of the specifically stated use must be regarded as excluding that use."). To the extent the Wineries seek an order permitting unlimited commercial events and restaurants at wineries located in A-1, the Court would have to re-write zoning, which is neither reasonable nor proper. *Ann Arbor v. Northwest Park Const. Corp.*, 280 F.2d 212, 224 (6th Cir. 1960).

The Wineries are not entitled to summary judgment on PTP's Defenses **H**, **N**, and **BBB** because these are not affirmative defenses, they are not-yet-ripe defenses, and they have not demonstrated there is no issue of material fact regarding the nature of appropriate injunctive relief in the event their claims are ultimately successful.

³ Amendment 201, adopted Dec. 13, 2022, available at https://www.peninsulatownship.com/uploads/1/0/4/3/10438394/ordinance_amendment_201_-_farm_processing.pdf

U. PTP may pursue abstention in defense (LL).

The Wineries seek summary judgment on PTP's Defense LL, which asserts the Wineries' claims may be barred by the abstention doctrine. (ECF 442, PageID.15659) The basis of the Wineries motion is the Court already addressed PTP's supplemental jurisdiction arguments in their favor. (ECF 301) The Wineries appear to request the Court to preemptively decide there is *no* applicable abstention doctrine applicable in this case and grant them judgment accordingly. The Wineries' motion is premature because PTP has not renewed its request for the Court to decline jurisdiction. Once the Wineries present their claims and evidence and PTP and the Township assert defenses, it may become evident that abstention is appropriate, that the Court should decline to exercise supplemental jurisdiction over the Wineries' state law claims, that the Court lacks jurisdiction due to the lack of case or controversy, or otherwise. At that time, PTP may request appropriate relief. The Wineries have not demonstrated they are entitled to summary judgment on abstention.

V. PTP concurs that pleading additional affirmative defenses requires leave to amend.

III. CONCLUSION

PTP respectfully requests the Court deny the Wineries' motion for summary judgment.

Respectfully submitted,

Date: October 6, 2023

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CERTIFICATE OF SERVICE

I, Tracy Jane Andrews, hereby certify that on the 6th day of October 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: /s/ Tracy Jane Andrews

Tracy Jane Andrews (P67467)
Holly L. Hillyer (P85318)

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.2(b)(i)

This Brief complies with the word count limit of L. Ci. R. 7.2(b)(i). This brief was written using Microsoft Word version 2016 and has a word count of 10,410 words.

Respectfully submitted,

Date: October 6, 2023

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EXHIBIT 1**PTP Response to WOMP MSJ****October 6, 2023****Page 1 of 3**

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF CHRISTOPHER BALDYGA

<p>1 DEPOSITION OF CHRISTOPHER BALDYGA</p> <p>2 Taken by the Intervener-Defendant on the 11th day of July,</p> <p>3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at</p> <p>4 8:00 a.m.</p> <p>5</p> <p>6 APPEARANCES:</p> <p>7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719)</p> <p>8 And</p> <p>9 MR. CHRISTOPHER J. GARTMAN (P83286)</p> <p>10 Miller Canfield Paddock & Stone, PLC</p> <p>11 99 Monroe Avenue, NW, Suite 1200</p> <p>12 Grand Rapids, Michigan 49503</p> <p>13 (616) 776-6333</p> <p>14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191)</p> <p>15 McGraw Morris, PC</p> <p>16 300 Ottawa Avenue, NW, Suite 800</p> <p>17 Grand Rapids, Michigan 49503</p> <p>18 (616) 288-2700</p> <p>19 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>20 Law Office of Tracy Jane Andrews, PLLC</p> <p>21 619 Webster Street</p> <p>22 Traverse City, Michigan 49686</p> <p>23 (231) 714-9402</p> <p>24 And</p> <p>25 MS. HOLLY LYNN HILLIER (P85318)</p> <p>Olson Bzdok & Howard, PC</p> <p>420 East Front Street</p> <p>Traverse City, Michigan 49686</p> <p>(231) 946-0044</p> <p>Also Present: Rebecca Chown</p> <p>RECORDED BY: Stacey M. Seals, CER 7908</p> <p>Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p style="text-align: center;">Page 2</p>	<p>1 Traverse City, Michigan</p> <p>2 Tuesday, July 11, 2023 - 8:07 a.m.</p> <p>3 MS. ANDREWS: Good morning, Mr. Baldyga.</p> <p>4 MR. BALDYGA: Morning.</p> <p>5 MS. ANDREWS: Am I saying your name correctly?</p> <p>6 MR. BALDYGA: Perfect. It's also a good Polish</p> <p>7 name, so --</p> <p>8 MS. ANDREWS: My name is TJ Andrews, I represent</p> <p>9 the Intervener Protect the Peninsula. You have been deposed</p> <p>10 before; correct?</p> <p>11 MR. BALDYGA: Once, yes.</p> <p>12 MS. ANDREWS: Was that in this proceeding?</p> <p>13 MR. BALDYGA: Yes.</p> <p>14 MS. ANDREWS: So as you know, our deposition is</p> <p>15 be being transcribed today. I would ask you please give</p> <p>16 verbal responses so that the court reporter can capture your</p> <p>17 response and thus avoid nonverbal communication.</p> <p>18 MR. BALDYGA: I understand.</p> <p>19 MS. ANDREWS: If you do understand a -- if you do</p> <p>20 not understand a question, please ask for clarification.</p> <p>21 MR. BALDYGA: Okay.</p> <p>22 MS. ANDREWS: Please let me finish a question so</p> <p>23 we don't speak over each other, because that's challenging</p> <p>24 for the transcript. If you don't understand -- sorry. If</p> <p>25 your attorney objects I will expect you to answer anyway,</p> <p style="text-align: center;">Page 4</p>
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Examination by Ms. Andrews 5</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 22 marked13</p> <p>9 (Memorandum of Lease Agreement)</p> <p>10 Deposition Exhibit 23 marked42</p> <p>11 (Permits)</p> <p>12 Deposition Exhibit 24 marked57</p> <p>13 (1/11/2008 Letter)</p> <p>14 Deposition Exhibit 25 marked60</p> <p>15 (6/19/2014 Letter)</p> <p>16 Deposition Exhibit 26 marked60</p> <p>17 (6/19/2014 Original Letter)</p> <p>18 Deposition Exhibit 27 marked82</p> <p>19 (List of Upcoming Events)</p> <p>20 Deposition Exhibit 28 marked89</p> <p>21 (Email About Events)</p> <p>22 Deposition Exhibit 29 marked109</p> <p>23 (Event Document)</p> <p>24 Deposition Exhibit 30 marked109</p> <p>25 (Email Correspondence)</p> <p>Deposition Exhibit 31 marked117</p> <p>(Invoice)</p> <p>Deposition Exhibit 32 marked138</p> <p>(Answers to Interrogatories)</p> <p style="text-align: center;">Page 3</p>	<p>1 unless he instructs you not to answer in order to claim a</p> <p>2 privilege. Estimates are okay, but please don't guess at</p> <p>3 answers if you have no basis for that. And if you need a</p> <p>4 break at any point, please let me know.</p> <p>5 MR. BALDYGA: Okay. Thank you.</p> <p>6 MS. ANDREWS: As long as we don't have a question</p> <p>7 pending we can take a break at any point.</p> <p>8 REPORTER: Do you solemnly swear or affirm the</p> <p>9 testimony you're about to give will be the whole truth?</p> <p>10 MR. BALDYGA: I do.</p> <p>11 CHRISTOPHER BALDYGA</p> <p>12 having been called by the Intervener-Defendant and sworn:</p> <p>13 EXAMINATION</p> <p>14 BY MS. ANDREWS:</p> <p>15 Q Mr. Baldyga, what is your role at Two Lads?</p> <p>16 A I'm the co-owner and operator in charge of day to day.</p> <p>17 Q Do you understand that you're testifying today as the</p> <p>18 corporate representative of Two Lads, LLC?</p> <p>19 A I do.</p> <p>20 Q And we're here today because Two Lads, LLC, has filed a</p> <p>21 lawsuit against Peninsula Township?</p> <p>22 A That's correct.</p> <p>23 Q Were you provided a copy of your Notice of your Deposition</p> <p>24 before coming here today?</p> <p>25 (Witness reviews document)</p> <p style="text-align: center;">Page 5</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL V. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF CHRISTOPHER BALDYGA

<p>1 MR. INFANTE: I assume you don't mind if I point?</p> <p>2 Just trying to be helpful.</p> <p>3 Q "Two Lads has attempted numerous times to negotiate changes</p> <p>4 to these ordinances with Peninsula Township and fix these</p> <p>5 unconstitutional provisions." Do you see that?</p> <p>6 A I do.</p> <p>7 Q All right. So tell me about the first time you remember Two</p> <p>8 Lads attempting to negotiate changes to the ordinances.</p> <p>9 A The first time I can recall would have been helping Jim</p> <p>10 Krupka write the Winery Bill of Rights documents that was</p> <p>11 given to the township I want to say back in May of '08. So</p> <p>12 I think he was writing that over the winter and asking for</p> <p>13 input from winery and stakeholders on the Peninsula and what</p> <p>14 things we all thought could be part of a kind of unified</p> <p>15 document or unified winery ordinance. So -- and beyond -- I</p> <p>16 don't know how deep you want to go, but I'd say it's -- I've</p> <p>17 been personally involved just at every chance I can get on</p> <p>18 winery rewrite subcommittees and attended meetings and have</p> <p>19 spoken with every planner throughout the years and offered a</p> <p>20 lot of input with Leonard and Reardon and Brian and Randy</p> <p>21 and -- it has been a driving -- a driving force for me to</p> <p>22 try to make sure that we can get change.</p> <p>23 Q Leonard and Randy -- I'm sorry, can you --</p> <p>24 A Michelle and Brian. Brian was I think the briefest of the</p> <p>25 planners that we had. He was here for I want to say it was</p> <p style="text-align: center;">Page 158</p>	<p>1 eventually I thought, my God, this is never going to change,</p> <p>2 this is unbelievable, we need help. Sorry, I ranted.</p> <p>3 Q What kind of help?</p> <p>4 A Well, help from -- I mean, so that's -- that's why we</p> <p>5 actually went for -- that was one of the things for me I</p> <p>6 should say. I shouldn't say "we," I don't speak for anybody</p> <p>7 other than me. That's why I decided to join the lawsuit, is</p> <p>8 it seemed to me that legal help/outside help might be the</p> <p>9 only way to actually effect lasting change, you know, in a</p> <p>10 way that would get the township to listen. It's like your</p> <p>11 conversations and -- I believe very much in Jim Krupka's</p> <p>12 advice of -- he was the CEO here for years but he was a big</p> <p>13 member of the church before that too and he used to speak</p> <p>14 and give the Latin mass and all that stuff. He was nicer to</p> <p>15 everybody, smiles all the way around, he didn't get mad --</p> <p>16 you know, because we also had O'Keefe who would thump the</p> <p>17 table and just yell and get kicked out of meetings because</p> <p>18 he would cite sections of the CFR and it was like I saw that</p> <p>19 there were two ways to approach this. There's Ed's fiery</p> <p>20 way, which doesn't change anything and galvanized people</p> <p>21 against him. And then there was Jim, and Jim was always</p> <p>22 honey, always a smile, always nice. So that's what I wanted</p> <p>23 to do is not get up there and yell and scream. I wanted to</p> <p>24 work with all these people and try to make change, but every</p> <p>25 time it restarted it was a bit frustrating, but --</p> <p style="text-align: center;">Page 160</p>
<p>1 like 14 months or something. But the problem that we've</p> <p>2 seen -- and this is probably one of the most frustrating</p> <p>3 things -- I'm pretty calm as a person, but every time we</p> <p>4 would get pretty developed and down a road with those</p> <p>5 rewrite subcommittees and then with those planners they</p> <p>6 would develop a -- you know, tiers one through four from a</p> <p>7 ten acre winery that could exist and be just a beautiful</p> <p>8 little facility; no guests, no public, but a person could do</p> <p>9 on their farm that which they wanted to do and they had a</p> <p>10 right to do. And then two, three, four that all escalated</p> <p>11 with size, you know, of acreage for the parcel and setbacks</p> <p>12 and all that jazz. You know, they would leave for whatever</p> <p>13 reason and that conversation got reset to zero. It was like</p> <p>14 every new planner that came in wanted to start the</p> <p>15 conversation fresh and they'd say, "Sit down. What is</p> <p>16 it" -- "I know you were talking with the previous, tell me</p> <p>17 what" -- and it was like we restarted from zero four times</p> <p>18 since I've been here. And we were talking with Gordie, I</p> <p>19 guess you could put him on that list too, the fifth planner.</p> <p>20 And it was like to have to reset from zero and to have them</p> <p>21 think they all had to rebuild the wheel and go ahead and get</p> <p>22 a new subcommittee together and start these new things and</p> <p>23 different opinions counsel as that changed it was just</p> <p>24 amazingly frustrating over those years. And like I said,</p> <p>25 I'm pretty chill but that was the kind of thing where</p> <p style="text-align: center;">Page 159</p>	<p>1 Q The sections that you were seeking to change through the</p> <p>2 committee rewrites, when was the first committee to your --</p> <p>3 you said 2008, that was the Winery Bill of Rights. When was</p> <p>4 the first committee, to your recollection?</p> <p>5 A Boy, it seems like almost -- I can only remember three</p> <p>6 subcommittees that were actually made. I can remember one</p> <p>7 with Dan, one with Michelle and one with Randy. I don't</p> <p>8 know that they actually conveyed a subcommittee with Gordon</p> <p>9 back in the day in '08. I know that we sat in meetings in</p> <p>10 one of those small -- the rooms that -- the first one to the</p> <p>11 left when you go into the township hall and that we --</p> <p>12 people were spilling out the doorway. I sat in the hallway</p> <p>13 and they were, "I'm so sorry." I said, "No, as long as I</p> <p>14 can hear the conversation," because you weren't allowed to</p> <p>15 interject or offer input, you just had to listen to them</p> <p>16 talk about what they may or may not change.</p> <p>17 Q Who is "them"?</p> <p>18 A I mean, again, there were so many people in there a lot of</p> <p>19 them couldn't fit.</p> <p>20 Q So let's back up. Which planner are you talking about?</p> <p>21 A That was Gordon I believe at that time.</p> <p>22 MR. INFANTE: Gordon --</p> <p>23 A Gordon Hayward.</p> <p>24 Q Gordon Hayward.</p> <p>25 A Not playing Uecker.</p> <p style="text-align: center;">Page 161</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF CHRISTOPHER BALDYGA

<p>1 MR. INFANTE: It's confusing.</p> <p>2 Q And are you talking about approximately in response to the</p> <p>3 2008 Bill of Rights, is that the time line you were talking</p> <p>4 about?</p> <p>5 A Yes; that would have been probably spring of '08, yes.</p> <p>6 Q And what were the changes that you were interested in</p> <p>7 pursuing or seeking or obtaining at that point?</p> <p>8 A Basically everything that we -- I mean, at that point we'd</p> <p>9 already invested in the building so it was a little</p> <p>10 challenging to say now that we've put all the money into</p> <p>11 this building I want to change the building, because you</p> <p>12 were now, you know, too keep in the building. I should say</p> <p>13 we could add on the future -- right? -- but -- so that part</p> <p>14 was a little out the window. But it was everything from the</p> <p>15 restrictions on retail, the things that we, you know,</p> <p>16 couldn't offer for sale versus the other wineries around us</p> <p>17 that had expanded offerings. To the fact that we could only</p> <p>18 sell Old Mission Peninsula wine. I mean, it was basically</p> <p>19 everything in the Complaint.</p> <p>20 Q Was it events, social events?</p> <p>21 A Yeah, social events, functions, the weddings, the things</p> <p>22 that we've discussed. Yeah, I think -- I mean, it's</p> <p>23 basically the whole farm processing facility and how do</p> <p>24 we -- even then we were talking about a single winery</p> <p>25 ordinance but realized it was probably impractical and if</p> <p style="text-align: center;">Page 162</p>	<p>1 or re-adoption of the master plan he was I'm sure going, oh,</p> <p>2 my gosh, we can't -- this ag section, if we try to tackle</p> <p>3 this now in the middle of this thing it's never going to get</p> <p>4 anywhere so I think that was put on pause because it was a</p> <p>5 whole different animal and it was a little more contentious</p> <p>6 as far as it had gone through in '04 and then '99 and '01.</p> <p>7 So I think it was something that was daunting to them too.</p> <p>8 MS. ANDREWS: What's my time?</p> <p>9 REPORTER: 3:55.</p> <p>10 MS. ANDREWS: Okay. If you will give me about 30</p> <p>11 seconds to spin through my notes and talk with my</p> <p>12 co-counsel. You are welcome to stick around and try to read</p> <p>13 our lips, but --</p> <p>14 (Off the record)</p> <p>15 MS. ANDREWS: Thank you. I don't have any further</p> <p>16 questions. Thank you very much for your time today and your</p> <p>17 candor, Mr. Baldyga, and nice to meet you.</p> <p>18 (Deposition concluded at 12:58 p.m.)</p> <p>19</p> <p>20 -0-0-0-</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 164</p>
<p>1 there could be a way to structure it to still meet the</p> <p>2 demands of a growing wine industry out in Old Mission.</p> <p>3 Q In the subsequent committees or efforts --</p> <p>4 A Yes.</p> <p>5 Q -- under Dan, Michelle or Randy, would you say that the same</p> <p>6 provisions were being discussed, the retail, the social</p> <p>7 events, the Old Mission Peninsula wine?</p> <p>8 A Yeah. I mean, with every one we talked about -- now, it</p> <p>9 wasn't -- it was everything from how do we mix the winery</p> <p>10 chateau provisions with, you know, farm processing and</p> <p>11 remote tasting room and how do we scale them appropriate so</p> <p>12 that we can make new ordinances that would encompass what</p> <p>13 wineries can currently do and what they might want to do in</p> <p>14 the future as again they grow. So I think they were</p> <p>15 mindful -- you know, each planner I thought had -- some were</p> <p>16 doing, you know, good work, some were -- I don't know --</p> <p>17 more proactive in looking at growth and others were just</p> <p>18 trying to address the current needs of that group of people.</p> <p>19 So, you know, everybody had a different take on it, a</p> <p>20 different opinion. Like I said, Dan had the four tier</p> <p>21 approach. Michelle Reardon had the same thing, I think it</p> <p>22 was, you know, three different winery types; small, medium,</p> <p>23 large. Randy had the same of how do we amend the current</p> <p>24 language, because I think that was very close to a time</p> <p>25 of -- I'm remembering it was close to a massive like rewrite</p> <p style="text-align: center;">Page 163</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I, Stacey M. Seals, a Certified Electronic Recorder and</p> <p>5 Notary Public within and for the State of Michigan, do</p> <p>6 hereby certify:</p> <p>7 That this transcript, consisting of 164 pages, is a</p> <p>8 complete, true, and correct record of the testimony of</p> <p>9 Christopher Baldyga, given in this case on July 11th, 2023,</p> <p>10 and that the deponent was duly sworn to tell the truth.</p> <p>11</p> <p>12 I further certify that I am not related to any of the</p> <p>13 parties to this action by blood or marriage; and that I am</p> <p>14 not interested in the outcome of this matter, financial or</p> <p>15 otherwise.</p> <p>16 IN WITNESS THEREOF, I have hereunto set my hand this</p> <p>17 24th day of July, 2023.</p> <p>18</p> <p>19 </p> <p>20 Stacey M. Seals, Notary Public, State of Michigan</p> <p>21 County of Charlevoix</p> <p>22 My commission expires: 10/31/2024</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 165</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF PATRICK BRY'S

<p>1 DEPOSITION OF PATRICK BRY'S 2 Taken by the Intervener-Defendant on the 14th day of July, 3 2023, at 15900 Rue de Vin, Traverse City, Michigan, at 8:00 4 a.m. 5 6 APPEARANCES: 7 For the Plaintiffs: MR. JOSEPH MIKHAIL INFANTE (P68719) 8 And 9 MR. STEPHEN MICHAEL RAGATZKI (P81952) 10 Miller Canfield Paddock & Stone, PLC 11 99 Monroe Avenue, NW, Suite 1200 12 Grand Rapids, Michigan 49503 13 (616) 776-6333 14 For the Defendant: MR. BOGOMIR RAJSIC III (P79191) 15 McGraw Morris, PC 16 300 Ottawa Avenue, NW, Suite 800 17 Grand Rapids, Michigan 49503 18 (616) 288-2700 19 For the Intervener-Defendant: MS. TRACY JANE ANDREWS (P67467) 20 Law Office of Tracy Jane Andrews, PLLC 21 619 Webster Street 22 Traverse City, Michigan 49686 23 (231) 714-9402 24 And 25 MS. HOLLY LYNN HILLIER (P85318) Olson Bzdok & Howard, PC 420 East Front Street Traverse City, Michigan 49686 (231) 946-0044 Also Present: Colin Miller Dave Sanger</p> <p>RECORDED BY: Stacey M. Seals, CER 7908 Certified Electronic Recorder Network Reporting Corporation Firm Registration Number 8151 1-800-632-2720</p> <p style="text-align: center;">Page 2</p>	<p>1 Traverse City, Michigan 2 Friday, July 14, 2023 - 11:25 a.m. 3 REPORTER: Do you solemnly swear or affirm the 4 testimony you're about to give will be the whole truth? 5 MR. BRY'S: Yes. 6 PATRICK BRY'S 7 having been called by the Intervener Defendant and sworn: 8 EXAMINATION 9 BY MS. ANDREWS: 10 Q Good morning, could you please state your name for the 11 record. 12 A It's Patrick James Brys. 13 Q Mr. Brys, I have a long history over the last five days of 14 desecrating people's names, so I apologize in advance if I 15 do the same to you. My name is TJ Andrews, I am here on 16 behalf of Protect the Peninsula. 17 A Uh-huh (affirmative). 18 Q Have you been deposed before? 19 A No. 20 Q Never? 21 A Never. 22 Q Have you observed any of the depositions over the course of 23 this week? 24 A No. 25 Q All right. Well, then this will not be a repeat for you.</p> <p style="text-align: center;">Page 4</p>
<p>1 TABLE OF CONTENTS 2 PAGE 3 4 Examination by Ms. Andrews 4 5 6 EXHIBIT INDEX 7 PAGE 8 Deposition Exhibit 63 marked40 9 (Special Use Permit 115) 10 Deposition Exhibit 64 marked45 11 (Special Use Permit 115 First Amendment) 12 Deposition Exhibit 65 marked47 13 (Special Use Permit 115 Second Amendment) 14 Deposition Exhibit 66 marked50 15 (Special Use Permit 115 Third Amendment) 16 Deposition Exhibit 67 marked53 17 (Special Use Permit 115 Fourth Amendment) 18 Deposition Exhibit 68 marked61 19 (Request to First Production of Documents) 20 Deposition Exhibit 69 marked77 21 (Email dated March 20, 2019) 22 Deposition Exhibit 70 marked85 23 (Answers to Interrogatories) 24 Deposition Exhibit 71 marked88 25 (Meeting Minutes July 7, 2008) Deposition Exhibit 72 marked95 (Email dated May 8, 2012) Deposition Exhibit 73 marked99 (Email dated August 31, 2011)</p> <p style="text-align: center;">Page 3</p>	<p>1 This deposition is obviously being transcribed. 2 A Uh-huh (affirmative). 3 Q As a result we will need all communication to be verbal. 4 A Uh-huh (affirmative). 5 Q So your responses to me should be verbal so that the court 6 reporter can capture them in the record. Is that clear to 7 you? 8 A Sure. 9 Q Okay. If you do not understand a question, please ask for 10 clarification. If you answer I will assume you understand 11 the question. Is that okay? 12 A Yes. 13 Q All right. 14 MR. INFANTE: And constantly saying "uh-huh," 15 she's going to write every one of those down. 16 Q If your attorney interrupts you, please -- I'm joking. 17 MS. ANDREWS: I appreciate the helpful coaching, 18 and I'll be the judge of when it's helpful. 19 Q Please do let me finish questions, let's try not to 20 interrupt each other or speak over each other because that's 21 confusing to read and I'm sure to transcribe as well. If 22 you don't -- let's see. If your attorney objects to any of 23 my questions, I will expect you to answer anyway unless he 24 instructs you not to answer due to a claim of privilege. I 25 generally -- sometimes ask for open-ended questions that</p> <p style="text-align: center;">Page 5</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF PATRICK BRY'S

<p>1 MR. INFANTE: We've been down this road a few 2 times, I know where to point you. 3 A Got it. 4 Q The sentence says, "Brys has attempted numerous times to 5 negotiate changes to these ordinances with Peninsula 6 Township and fix these unconstitutional provisions." Do you 7 see that sentence? 8 A Yes. 9 Q And is it your understanding having skimmed through this 10 response and I'm sure read it before that these provisions 11 refers to the listed provisions in the four bullet points 12 above? 13 A Yes. 14 Q And generally, let's just clarify for the record that third 15 bullet point, section 8.7.3, there's a "10" missing right 16 before the "M." 17 MS. ANDREWS: One of them was correct. 18 MR. INFANTE: Really? 19 MS. ANDREWS: Yes, one of them was correct, so 20 somewhere along the way -- 21 MR. INFANTE: There has been a typo in every 22 single -- 23 THE WITNESS: Oh, got it. 24 MR. INFANTE: Apparently except for one of them. 25 THE WITNESS: Okay.</p> <p style="text-align: center;">Page 86</p>	<p>1 convening these meetings. 2 A From my understanding the township and the wineries came 3 together to try to work through the issues that were found 4 in the variance ordinances that the wineries operate under, 5 and that it was in some situations just sort of a roundtable 6 sort of meeting to discuss needs, wants and things like 7 that. And then there were efforts to try to work through a 8 proposed -- you know, proposed changes and things, but 9 nothing was ever achieved. 10 Q And you typed -- describe what you mean by needs and wants. 11 A Well, areas that were identified in the ordinance that were 12 either vague or not friendly to agricultural businesses such 13 as wineries. Not friendly to the ability to host visitors 14 and provide an agritourism experience, issues related to the 15 sale of -- I mean, we're talking -- we have our own 16 ordinance, the chateau, but I know there was many issues 17 with some of the other ordinances that people were having to 18 comply with. So it was an effort to clean up all of it. 19 Q So let's start with the 2008 meetings. 20 (Deposition Exhibit 71 marked) 21 Q This is 71. The document labeled PTP 71, Defendant's 22 Response to 1st RFP 000339 appears to be the minutes from a 23 July 7th, 2008 meeting. Do you see that? 24 A Correct. 25 Q And it appears that Eileen Brys and Walter Brys were part of</p> <p style="text-align: center;">Page 88</p>
<p>1 MS. ANDREWS: I looked around and nobody caught it 2 and I chuckled to myself when the one didn't have it. 3 MR. INFANTE: But the problem is we've got to 4 correct it just to make sure -- we don't have to, but we've 5 been trying to. 6 Q In general, the listed provisions in the four bullet points 7 are sections out of the winery chateau zoning ordinance? 8 A Correct. 9 Q So Brys has attempted to negotiate changes to these 10 ordinances and fix these unconstitutional provisions. I'd 11 like to understand a little more about Brys's efforts, 12 historic efforts, to change the zoning ordinance that it 13 challenges in this case. 14 A So know that my parents, Walt and Eileen Brys, had attended 15 meetings going back as far as -- that I'm aware of I know 16 for a fact in 2008, and then separately there were meetings 17 I believe throughout those years, I believe maybe even '11 18 and possibly '16, but I'd have to reference some more email 19 communications about that. And then I do know that in 2019 20 there were efforts to again sit down with the township on 21 many, many different meetings, and going into 2020, so -- 22 Q You've been involved in some of meetings too; correct? 23 A The meetings -- I was in several of the meetings that were 24 in 2019. 25 Q Okay. And in general these meetings -- describe who is</p> <p style="text-align: center;">Page 87</p>	<p>1 a committee. Do you see that? 2 A Correct. 3 Q Do you understand -- what is your understanding of the 4 impetus for the 2008 committee? 5 A As I discussed, that these meetings were to try to clarify 6 and improve the zoning language, and also there were issues 7 related to the way the zoning language was written that 8 prevented our winery or any winery from being able to host 9 or provide certain services to our guests that we wanted to 10 correct. 11 Q In 2008 Brys was a farm processing facility? 12 A Correct. 13 Q Do you have any understanding whether the -- item 8 under 14 section C says history of amendment 128. Do you know what 15 amendment 128 did? 16 A I do not. 17 Q In 2008 -- is Brys a member of Wineries of Old Mission 18 Peninsula? 19 A Yes. 20 Q Was Wineries of Old Mission Peninsula organized to -- what 21 was the purpose of Wineries of Old Mission Peninsula? 22 A I was not a part of that organization when it was founded, 23 but I do know that it was founded -- at least some of the 24 roles that it continues to do is to be a -- offer 25 information about visiting our wine region to people who</p> <p style="text-align: center;">Page 89</p>

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DEPOSITION OF PATRICK BRYN

<p>1 takes guests out into the vineyard, it takes them down to 2 the family farmhouse and they learn about the architecture 3 and the history of the farmhouse. It takes them into our 4 secret garden where they can view the different agricultural 5 things that we grow there. It takes them into the vineyard 6 where they can learn about the different grapes. And then 7 it brings them back to the winery and they kind of finish on 8 the upper deck looking out at the acreage.</p> <p>9 Q Do they get to see the processing area?</p> <p>10 A Yes; yes.</p> <p>11 Q And are those pay events, pay tours?</p> <p>12 A Paid tours.</p> <p>13 Q How about walking tours?</p> <p>14 A We don't offer any walking tours.</p> <p>15 Q Wine wagon tours, are those popular?</p> <p>16 A We host them on Saturdays, we do three runs a day so there's 17 seven guest that can come on the wine wagon and we do three 18 different tour times.</p> <p>19 Q And those tours are -- somebody from the winery obviously is 20 doing the driving and narrating?</p> <p>21 A Exactly.</p> <p>22 Q Can the guests consume along the way.</p> <p>23 A We serve tastings at different points during the tour.</p> <p>24 Q So we were talking about events over the years. You 25 mentioned that your parents were involved in committee</p> <p style="text-align: center;">Page 94</p>	<p>1 or at least a report, of how the -- interactions between the 2 wineries and the township regarding how the township 3 addresses --</p> <p>4 A Without reviewing it in full detail it would be hard for me 5 to 100 percent answer your question.</p> <p>6 Q Who is Jim Krupka?</p> <p>7 A I believe he's related to Chateau Chantal Winery.</p> <p>8 Q Do you know if Chateau Chantal was seeking an application 9 for a seasonal tasting outdoors in an approved area?</p> <p>10 A I have no idea.</p> <p>11 MR. INFANTE: Objection; foundation.</p> <p>12 Q I'm looking at the last full sentence on the page that's 13 13695. I'm just trying to orient as to what was happening 14 at the time.</p> <p>15 MR. INFANTE: I'm sorry, where are you looking?</p> <p>16 MS. ANDREWS: I'm sorry, the second to last page 17 where the substance of the correspondence begins, "The 18 detail of our application that brought this to the front was 19 our request for seasonal tasting outdoors in an approved 20 area." Do you have any recollection of a request from 21 Chateau Chantal for seasonal tasting outdoors?</p> <p>22 MR. INFANTE: Object; foundation.</p> <p>23 A I don't.</p> <p>24 Q There appears to be correspondence sort of coming forward in 25 the packet, 13692 to -693, discussion directly between -- or</p> <p style="text-align: center;">Page 96</p>
<p>1 meetings back in -- I think you said 2011. I was impressed 2 with your recollection, maybe we're reading from the same 3 notes, but we'll look at PTP 72.</p> <p>4 (Deposition Exhibit 72 marked)</p> <p>5 Q PTP 72 is a collection of documents, WOMP013687 through 6 WOMP13696. Starting backwards and moving forwards it 7 appears to be a series of emails starting in 2010 through 8 2012 related -- involving -- I see the signature page on the 9 very last page says "Eileen Bryn," but I don't see her name 10 on the recipient list. Yeah, perhaps it's under the 11 attorney-client privilege section.</p> <p>12 MR. INFANTE: Yeah, it's probably there, sometimes 13 the way they print they just get dropped down.</p> <p>14 Q Generally speaking does this appear to be an email that your 15 mother on behalf of Bryn received somewhere along the way 16 from Mr. Krupka and/or one of the --</p> <p>17 A Yes, it does.</p> <p>18 Q And generally this is -- oh, it's right there, 19 bryswine@pentel.net.</p> <p>20 A Yes.</p> <p>21 Q Sorry, I missed that. The email seems to be describing a 22 correspondence relating to a township approach to permitting 23 and other things. Does this look familiar to you?</p> <p>24 A Vaguely.</p> <p>25 Q Would you agree that the email appears to be a discussion,</p> <p style="text-align: center;">Page 95</p>	<p>1 from Mr. Krupka to you, your mother and your father --</p> <p>2 A Uh-huh (affirmative).</p> <p>3 Q -- regarding a proposal by Dan Leonard. Who is Dan Leonard?</p> <p>4 A He was the township planner for awhile, but there's been a 5 lot.</p> <p>6 Q Do you know what the discussion around 2011 with Mr. Leonard 7 was about, what was the subject matter?</p> <p>8 A I believe that this was again communication with the 9 wineries and the township trying to work on updating the 10 zoning language and clarifying.</p> <p>11 Q Updating in what way, to your understanding?</p> <p>12 A Just any of the issues that were found in the current 13 ordinances that had been addressed before, such as the 14 inability to host weddings or other things that potentially 15 the wineries had issue with.</p> <p>16 Q Was Bryn seeking to host weddings, was that in its business 17 planning?</p> <p>18 A It was not, nor ever has been a part of our business 19 planning because it's not permitted.</p> <p>20 Q And was that something that Bryn was seeking to change so 21 that it was permitted?</p> <p>22 A Yes.</p> <p>23 Q And participating in the meetings with Mr. Leonard in the 24 prior meetings, was that part of Bryn's attempt to change 25 the zoning ordinance to seek permission to host weddings?</p> <p style="text-align: center;">Page 97</p>

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DEPOSITION OF PATRICK BRYN

<p>1 A Yes.</p> <p>2 Q What are other things that Bryn is seeking to change in the</p> <p>3 zoning ordinance in particular besides the ability to host</p> <p>4 weddings?</p> <p>5 MR. INFANTE: Objection; vague, form.</p> <p>6 A I think, you know, we -- whether it's a wedding or an event</p> <p>7 of any sort I think having the ability to host corporate</p> <p>8 vents, not just events related to agricultural groups or</p> <p>9 nonprofit groups. We're also looking to offer more food</p> <p>10 experiences for people and offering the ability for people</p> <p>11 to do ceremonies or other things not related to necessarily</p> <p>12 having a wedding reception. Yeah. Among others.</p> <p>13 Q Among others. And in particular what others?</p> <p>14 A I don't -- I'm not -- I'm kind of drawing a blank at this</p> <p>15 moment, but, yeah.</p> <p>16 Q What became of the -- well, next email in the packet is</p> <p>17 Chris Balydga, WOMP013690 to -91, seems to be related to the</p> <p>18 same interaction with Dan, the planner. What is your</p> <p>19 understanding of what happened to the interaction -- the</p> <p>20 committee or the discussions with Dan related to the zoning</p> <p>21 ordinance changes?</p> <p>22 A I think that the general takeaway from any of these</p> <p>23 conversations has been that there seems to be a lot of</p> <p>24 issues that never seem to get resolved and we would</p> <p>25 potentially try to make some progress but then it never</p> <p style="text-align: center;">Page 98</p>	<p>1 Q That's your mother's. When do you think she wrote that?</p> <p>2 MR. INFANTE: Objection; foundation.</p> <p>3 Q To the best of your knowledge.</p> <p>4 A I have no idea.</p> <p>5 Q What does it mean?</p> <p>6 MR. INFANTE: Objection; foundation.</p> <p>7 A I think what it means is that -- I have no idea what she</p> <p>8 means by it other than going back to -- I'm interpretation</p> <p>9 is that she's saying that going back to 2011 we've been</p> <p>10 still -- for now they were still working on it after 2008,</p> <p>11 which would have been three years after they started working</p> <p>12 on it.</p> <p>13 Q By which she means -- your interpretation is changes to the</p> <p>14 zoning ordinance?</p> <p>15 A Correct.</p> <p>16 Q So if Bryn were successful in amending the zoning ordinance</p> <p>17 through this litigation, tell me -- describe me what sort of</p> <p>18 things Bryn is seeking to do.</p> <p>19 A We would like to host events for people to come to the</p> <p>20 winery and our property and be able to -- whether it's a</p> <p>21 corporate group, a family function, a wedding, and be able</p> <p>22 to enjoy the agricultural space while also supporting our</p> <p>23 business through the sale of wine by the glass or bottles of</p> <p>24 wine. And we would also like to host musical performances</p> <p>25 where people could enjoy our products and also enjoy the</p> <p style="text-align: center;">Page 100</p>
<p>1 amounted to anything so we continued for many, many years to</p> <p>2 continue to try and meet with the township to see if we</p> <p>3 could resolve some of these differences, but it did not work</p> <p>4 out.</p> <p>5 Q And by these -- I think you said these conversations, or</p> <p>6 maybe you said these committees, I don't mean to</p> <p>7 mischaracterize. The 2008, 2011, you were referring to the</p> <p>8 township board never approved the changes requested?</p> <p>9 A Nothing was ever approved.</p> <p>10 Q Wine by the glass was approved; right?</p> <p>11 A I don't know when that was approved, but, yes, it was.</p> <p>12 Q But the changes regarding weddings, food, corporate events,</p> <p>13 those sorts of changes have not been made yet?</p> <p>14 A No.</p> <p>15 (Deposition Exhibit 73 marked)</p> <p>16 Q PTP 73 I will shortcut and tell you it appears to be another</p> <p>17 copy of the same email we just looked at a moment ago,</p> <p>18 "Folks, since I have not heard." So if you look at</p> <p>19 WOMP13692 in the last exhibit, 72, and you compare it to</p> <p>20 WOMP Exhibit 73, which is -- I mean, PTP Exhibit 73, which</p> <p>21 is WOMP000672, same -- at least part of the same email from</p> <p>22 Jim Krupka.</p> <p>23 A Uh-huh (affirmative).</p> <p>24 Q Whose handwriting is that at the top?</p> <p>25 A That's my mother's.</p> <p style="text-align: center;">Page 99</p>	<p>1 beauty of the agriculture and 155 acre site that we sit on.</p> <p>2 Q So first item there, you'd like to host events for people to</p> <p>3 come to the winery and support the business with wine by the</p> <p>4 glass and bottle. It's my understanding that any group may</p> <p>5 come to Bryn Estates and have wine by the glass; is that</p> <p>6 true?</p> <p>7 A Yes.</p> <p>8 Q And buy bottles of wine; correct?</p> <p>9 A Yes.</p> <p>10 Q So are you referring here to private events?</p> <p>11 A Private events.</p> <p>12 Q And at this point is it your understanding that Bryn can</p> <p>13 make reservations for private groups to come to the winery</p> <p>14 and do private tastings for free?</p> <p>15 MR. INFANTE: Objection; calls for a legal</p> <p>16 conclusion.</p> <p>17 A At this point we can have people come to the winery and do</p> <p>18 tastings, we don't offer them for free.</p> <p>19 Q I mean, any group can come and have private tastings?</p> <p>20 A Can have tastings, can have glasses of wine, whether it's a</p> <p>21 group of two people or a group of however many.</p> <p>22 Q And how many could make a reservation and come and have</p> <p>23 tastings?</p> <p>24 A We don't typically take reservations for more than ten or 12</p> <p>25 people.</p> <p style="text-align: center;">Page 101</p>

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WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF ALEXANDER LAGINA

<p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: MR. JOSEPH M. INFANTE (P68719)</p> <p>3 MR. STEPHEN MICHAEL RAGATZKI (P81952)</p> <p>4 Miller, Canfield, Paddock</p> <p>5 99 Monroe Avenue, NW, Suite 1200</p> <p>6 Grand Rapids, Michigan 49503</p> <p>7 (616) 776-6333</p> <p>8 For the Defendant: MR. BOGOMIR RAJSIC, III (P79191)</p> <p>9 McGraw Morris, P.C.</p> <p>10 2075 West Big Beaver Road, Suite 750</p> <p>11 Troy, Michigan 48084</p> <p>12 (248) 502-4000</p> <p>13 For the Intervenor-Defendant: MS. TRACY JANE ANDREWS (P67467)</p> <p>14 Law Office of Tracy Jane Andrews, PLLC</p> <p>15 420 East Front Street</p> <p>16 Traverse City, Michigan 49686</p> <p>17 (231) 946-0044</p> <p>18 Co-Counsel For the Intervenor-Defendant: MS. HOLLY L. HILLYER (P85318)</p> <p>19 Olson, Bzdok & Howard, P.C.</p> <p>20 420 East Front Street</p> <p>21 Traverse City, Michigan 49686</p> <p>22 (231) 946-0044</p> <p>23 Also Present: Martin Lagina</p> <p>24 RECORDED BY: Heidi Peckens, CER 9634</p> <p>25 Certified Electronic Recorder</p> <p>Network Reporting Corporation</p> <p>Firm Registration Number 8151</p> <p>1-800-632-2720</p> <p>TRANSCRIBED BY: Karen Robinson, CER 5579</p> <p>Letters & Bytes, Firm #8379</p> <p>15585 Pomona</p> <p>Redford, Michigan 48239</p> <p>(313) 910-9857</p>	<p>1 Traverse City, Michigan</p> <p>2 Thursday, July 13, 2023 - at 8:15 a.m.</p> <p>3 REPORTER: Mr. Lagina, my name is Heidi. I'm the</p> <p>4 court reporter. I'm the person --</p> <p>5 MR. LAGINA: Hi, Heidi.</p> <p>6 REPORTER: -- who is going to be recording your</p> <p>7 testimony this morning. So the only thing I get to do with</p> <p>8 you is to place you under oath, so I'm going to go ahead and</p> <p>9 ask you to, please, raise your right hand. Thank you. Do</p> <p>10 you solemnly swear or affirm that the testimony you are</p> <p>11 about to give will be the whole truth?</p> <p>12 MR. LAGINA: Yes.</p> <p>13 REPORTER: Thank you.</p> <p>14 MS. ANDREWS: Good morning. My name is T.J.</p> <p>15 Andrews. I hear -- I'm here representing Intervenor Protect</p> <p>16 the Peninsula. Could you state your name for the record?</p> <p>17 THE WITNESS: My name is Alexander Lagina.</p> <p>18 REPRESENTATIVE FOR VILLA MARI AND ALEXANDER LAGINA</p> <p>19 having been called by the Intervenor-Defendant and sworn:</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MS. ANDREWS:</p> <p>22 Q Good morning, Mr. Lagina. You've been deposed before; is</p> <p>23 that right?</p> <p>24 A One time, yes.</p> <p>25 Q And was that in this case?</p>
Page 2	Page 4
<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3</p> <p>4 Direct Examination by Ms. Andrews 4</p> <p>5</p> <p>6 EXHIBIT INDEX</p> <p>7 PAGE</p> <p>8 Deposition Exhibit 44 marked 13</p> <p>9 (SUP #126)</p> <p>10 Deposition Exhibit 45 marked 63</p> <p>11 (Preliminary Farm Processing Permit)</p> <p>12 Deposition Exhibit 46 marked 105</p> <p>13 (Plaintiff's Response to RFP's)</p> <p>14 Deposition Exhibit 47 marked 123</p> <p>15 (Plaintiff's Answers to Interrogatories)</p> <p>16 Deposition Exhibit 48 marked 145</p> <p>17 (Plaintiff's Answers to RTA's)</p> <p>18 Deposition Exhibit 49 marked 158</p> <p>19 (Veiga E-mail 1/18/18)</p> <p>20 Deposition Exhibit 50 marked 171</p> <p>21 (Veiga E-mail 4/29/20)</p> <p>22 Deposition Exhibit 51 marked 179</p> <p>23 (Aquino E-mail 9/28/20)</p> <p>24 Deposition Exhibit 52 marked 185</p> <p>25 (Grzesiak E-mail 3/7/19)</p> <p>Deposition Exhibit 53 marked 187</p> <p>(Invoice 6/1/21)</p> <p>Deposition Exhibit 54 marked 190</p> <p>(Invoice 8/1/21)</p> <p>Deposition Exhibit 55 marked 190</p> <p>(Event Announcement)</p> <p>Deposition Exhibit 56 marked 192</p> <p>(Invoice 6/1/21)</p>	<p>1 A Yes.</p> <p>2 Q All right.</p> <p>3 MS. ANDREWS: So this deposition -- so just to</p> <p>4 cover the ground rules so that we have a clear record, the</p> <p>5 deposition is being transcribed. Obviously, that requires</p> <p>6 that we give verbal responses so that the court reporter can</p> <p>7 capture your response and avoid non-verbal communication so</p> <p>8 that we can capture that in -- in the record. Is that --</p> <p>9 does that make sense to you?</p> <p>10 THE WITNESS: Yes.</p> <p>11 MS. ANDREWS: If you don't understand a question,</p> <p>12 please ask for clarification. Please let me finish my</p> <p>13 questions. It's very difficult to not speak over each</p> <p>14 other; it's a natural tendency. We both -- I will</p> <p>15 definitely do it and I'll be surprised if -- if you don't as</p> <p>16 well. But -- but just to keep a clear record let's do our</p> <p>17 best to avoid that.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MS. ANDREWS: If your attorney objects, I will</p> <p>20 expect you to answer the question anyway unless he instructs</p> <p>21 you not to answer the question.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MS. ANDREWS: If you don't understand a question</p> <p>24 and you need me to rephrase it, please ask me to do so.</p> <p>25 THE WITNESS: Okay.</p>
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EXHIBIT 3

PTP Response to WOMP MSJ

October 6, 2023

Page 2 of 2

WINERIES OF THE OLD MISSION PENINSULA ASSOCIATION, ET AL v. PENINSULA TOWNSHIP, ET AL

DEPOSITION OF ALEXANDER LAGINA

<p>1 you're going?</p> <p>2 THE WITNESS: Yes. Let's see. Let's see.</p> <p>3 "Mari has attempted numerous times to</p> <p>4 negotiate changes to these ordinances with</p> <p>5 Peninsula Township and fix these unconstitutional</p> <p>6 provisions."</p> <p>7 BY MS. ANDREWS:</p> <p>8 Q Thank you. And just to summarize, the -- "these ordinances"</p> <p>9 is referring to the ordinances listed in the four bullet</p> <p>10 points above?</p> <p>11 A Yes. But without limiting to that, I mean, we've made</p> <p>12 efforts to negotiate changes in addition to those, but, yes.</p> <p>13 Q Fair -- fair clarification. Thank you. So let's talk about</p> <p>14 -- what I'd like to do is understand what kinds of changes</p> <p>15 -- and let's be clear (phonetic) -- so the provisions in the</p> <p>16 bullet points relate primarily to guest activity uses. Is</p> <p>17 that your understanding under -- under U, 10 U?</p> <p>18 A I don't know about "primarily," but there's a substantial</p> <p>19 portion of them relate to guest activity use.</p> <p>20 Q Okay. So I don't want to understand (phonetic) -- I, at</p> <p>21 this point, don't need to know if you've been trying to get</p> <p>22 shorter setbacks or bigger square foot areas for --</p> <p>23 A Okay.</p> <p>24 Q -- I want to focus on the activity side of things that --</p> <p>25 A It's difficult to separate it from the whole, but, okay.</p> <p style="text-align: center;">Page 126</p>	<p>1 the community, and we will figure out a way to do it so that</p> <p>2 we minimize our impact to the community. I said, if you --</p> <p>3 if you really want -- if you really want to preserve</p> <p>4 agriculture and keep land in farming, why don't you tie</p> <p>5 expansion of those limits to the amount of land that you</p> <p>6 have in agriculture. Why don't you do it -- why don't you</p> <p>7 -- why don't you incentivize us to put more land into ag</p> <p>8 (sic) in exchange for doing a little bit more on our</p> <p>9 property. And again, subject to only the impacts to the</p> <p>10 neighbors and the surrounding community such that we can</p> <p>11 figure out a way to do it without being a problem. And</p> <p>12 that, you know, it would go okay in the meeting and then</p> <p>13 we'd leave the meeting and they'd send around their draft</p> <p>14 document and it would be more restrictive. And we'd go to</p> <p>15 another meeting and we'd say that again, I would say that</p> <p>16 again, and -- and then they'd circulate the -- the new draft</p> <p>17 and then things -- things would've been deleted from that</p> <p>18 and it would be more restrictive still. And really it -- it</p> <p>19 became apparent to me anyway that it -- it felt like the</p> <p>20 only reason we were in that room was so that a rubber stamp</p> <p>21 could be put on the new ordinance saying that we were part</p> <p>22 of the drafting of it even though our feedback wasn't being</p> <p>23 incorporated.</p> <p>24 Q Who else -- who else was at those meetings besides yourself?</p> <p>25 A I know for certain Chris Baldyga was there at least one.</p> <p style="text-align: center;">Page 128</p>
<p>1 Q Okay. Tell me -- well, then, let's -- let's just talk about</p> <p>2 the scope. Types of things -- when did -- types of things</p> <p>3 Villa Mari has tried to work with the township to change?</p> <p>4 A Well, this is -- this is one of the questions that's maybe</p> <p>5 better asked to my dad because he's had a lot of</p> <p>6 interactions with them. I will answer the best that I can.</p> <p>7 And the question was types of things we've tried to change?</p> <p>8 Q Yes. The categories of things in the zoning ordinance.</p> <p>9 A We sat in -- and I'm going to estimate dates here, you know,</p> <p>10 2017, '18, something like that, maybe even '19 -- we sat in</p> <p>11 with meetings about the ordinance rewrite that the Peninsula</p> <p>12 Township was talking about doing. And they invited us</p> <p>13 winery owners, I was part of this -- these meetings, went to</p> <p>14 several, discussing potential changes to the ordinance that</p> <p>15 Randy, who was the planner at the time, was evaluating,</p> <p>16 trying to incorporate in the ordinance. So, I mean, I -- I</p> <p>17 went up there and I said, you know, guys, this -- regulating</p> <p>18 the why of us doing these events; in other words, saying</p> <p>19 that we can do events but only for certain reasons is not</p> <p>20 good. Like, that's -- I don't know that I used the word</p> <p>21 "unconstitutional" at the time, but it -- it didn't make</p> <p>22 sense to me why they were regulating specifically what we</p> <p>23 can and can't do instead of just the impact of such an</p> <p>24 event. So I went up there and I said why don't you just</p> <p>25 tell us an acceptable noise level, all the other impacts to</p> <p style="text-align: center;">Page 127</p>	<p>1 I think Eddie O'Keefe was there at one. I think we had</p> <p>2 really good attendance from all the wineries on the Old</p> <p>3 Mission Peninsula.</p> <p>4 Q And tell me who -- you said Randy. Is that Randy Mielenic</p> <p>5 (phonetic)?</p> <p>6 A Miel --</p> <p>7 Q Mielnik.</p> <p>8 A I don't know how to pronounce his last name. But, yeah,</p> <p>9 Miel --</p> <p>10 MR. INFANTE: I don't know if it's Mielnik or</p> <p>11 Mielnik (phonetic). I have no idea.</p> <p>12 THE WITNESS: Yeah.</p> <p>13 BY MS. ANDREWS:</p> <p>14 Q You have a -- you -- I think you -- you gave me a three-year</p> <p>15 range: 2017, 2018, maybe 2019.</p> <p>16 A That's just a guess. I'm not sure --</p> <p>17 Q Has --</p> <p>18 A -- exactly.</p> <p>19 Q Was it pretty shortly after Villa Mari got a -- got its SUP?</p> <p>20 How long had you been operating under these rules --</p> <p>21 A Well --</p> <p>22 Q -- to your recollection?</p> <p>23 A -- I mean, we got our SUP thinking that, you know, it's the</p> <p>24 most -- it represents what the township told us they</p> <p>25 encouraged. And -- and when we applied, they said we did a</p> <p style="text-align: center;">Page 129</p>

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU GRAND TRAVERSE, LTD'S ANSWERS TO PTP'S FIRST
INTERROGATORIES**

Plaintiff, Chateau Grand Traverse LTD, ("Chateau Grand Traverse") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Chateau Grand Traverse objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Chateau Grand Traverse's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Chateau Grand Traverse to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Chateau Grand Traverse's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Chateau Grand Traverse's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operate as an unconstitutional restriction on Chateau Grand Traverse's ability to freely associate.

Chateau Grand Traverse has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Chateau Grand Traverse, through its counsel, put Peninsula Township on notice that provisions of the PTZO were facially unconstitutional. Chateau Grand Traverse's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of the PTZO. Therefore, the continued application of these violations to Chateau Grand Traverse results in an ongoing as-applied violation of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante
Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Grand Traverse LTD to PTP's First Set of Interrogatories to Chateau Grand Traverse LTD are true and correct.

By: _____

EDWARD O'KEEFE III

Its: _____

PRUDOMT

Executed on June 30, 2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU GRAND TRAVERSE, LTD'S ANSWERS TO PTP'S SECOND
INTERROGATORIES**

Plaintiff, Chateau Grand Traverse LTD, ("Grand Traverse") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states
as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula
Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the
Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a
regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Chateau Grand Traverse objects to this request as overly broad and unduly
burdensome. Subject to and without waiving those objections, Chateau Grand Traverse holds a
wine maker license and brandy manufacturer license issued by the Michigan Liquor Control
Commission. Michigan law recognizes these liquor licenses as a property interests. The wine
maker license gives Chateau Grand Traverse a perpetual right to serve alcohol from 7:00 a.m. until
2:00 a.m., daily. The wine maker gives Chateau Grand Traverse a perpetual right to operate a

restaurant. The wine maker license gives Chateau Grand Traverse a perpetual right to cater. And the wine maker license gives Chateau Grand Traverse a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Chateau Grand Traverse from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Chateau Grand Traverse from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Chateau Grand Traverse from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, although there is no express provision in the Peninsula Township Zoning Ordinance barring Winery Chateaus like Chateau Grand Traverse from operating a restaurant in all circumstances, Peninsula Township has adopted an unwritten, outright ban on restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Chateau Grand Traverse.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Grand Traverse LTD to PTP's ~~Third~~ ^{SECOND ENF} Set of Interrogatories to Chateau Grand Traverse LTD are true and correct.

By:  _____

Its:  _____

Executed on 7.11.2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU GRAND TRAVERSE, LTD'S ANSWERS TO PTP'S THIRD
INTERROGATORIES**

Plaintiff, Chateau Grand Traverse LTD, ("Chateau Grand Traverse") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #3: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how, and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

ANSWER: Chateau Grand Traverse objects that this interrogatory is overly broad and unduly burdensome. Chateau Grand Traverse further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Chateau Grand Traverse states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Chateau Grand Traverse's First and Fourteenth

Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Chateau Grand Traverse. This enforcement has prevented Chateau Grand Traverse from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) which unconstitutionally compel Chateau Grand Traverse to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Chateau Grand Traverse, operate as an unconstitutional prior restraint on Chateau Grand Traverse's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Chateau Grand Traverse, operate as unconstitutional restrictions on Chateau Grand Traverse's right to engage in commercial speech.

Lastly, Chateau Grand Traverse is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Chateau Grand Traverse from seeking approval for events, activities and other gatherings from Peninsula Township as seeking approval for such things would be futile.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Grand Traverse LTD to PTP's Third Set of Interrogatories to Chateau Grand Traverse LTD are true and correct.

By: _____

Eddie O'Keefe

Its: President

Executed on July 28, 2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BOWERS HARBOR VINEYARD & WINERY, INC.'S ANSWERS TO
PTP'S FIRST INTERROGATORIES**

Plaintiff, Bowers Harbor Vineyard & Winery, Inc., ("Bowers Harbor") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Bowers Harbor objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bowers Harbor's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Bowers Harbor to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Bowers Harbor's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Bowers Harbor's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operates as an unconstitutional restriction on Bowers Harbor's ability to freely associate.

Bowers Harbor has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Bowers Harbor, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Bowers Harbor's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Bowers Harbor results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Bowers Harbor Vineyard & Winery, Inc. to PTP's First Set of Interrogatories to Bowers Harbor Vineyard & Winery, Inc. are true and correct.

By: Spencer B. Steyer

Its: President

Executed on 7/3/23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BOWERS HARBOR VINEYARD & WINERY, INC.'S ANSWERS TO
PTP'S SECOND INTERROGATORIES**

Plaintiff, Bowers Harbor Vineyard & Winery, Inc., ("Bowers Harbor") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of association under the First and Fourth Amendments, including specifically which PTZO provisions violate your right, and when, how, and by whom your right to freedom of association was violated.

ANSWER: Bowers Harbor objects that this request is overly broad and unduly burdensome. Bowers Harbor further objects that it has never alleged that its rights under the Fourth Amendment have been violated. Subject to and without waiving those objections, Bowers Harbor states as follows.

Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g). Peninsula

Township has enforced these sections against Bowers Harbor and prevented Bowers Harbor from freely associating with persons or groups of its choosing as allowed by the First Amendment.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Bowers Harbor Vineyard & Winery, Inc. to PTP's Second Set of Interrogatories to Bowers Harbor Vineyard & Winery, Inc. are true and correct.

By: William Maier
William Maier

Its: Chief Financial Officer

Executed on 7/12/2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BOWERS HARBOR VINEYARD & WINERY, INC.'S ANSWERS TO
PTP'S THIRD INTERROGATORIES**

Plaintiff, Bowers Harbor Vineyard & Winery, Inc., ("Bowers Harbor") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO), as applied to you, violates your freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions were applied to you, and when, how, and by whom they were applied to you, in a way that violated your right to freedom of speech.

ANSWER: Bowers Harbor objects that this interrogatory is overly broad and unduly burdensome. Bowers Harbor further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Bowers Harbor states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bowers Harbor's First and Fourteenth

Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Bowers Harbor. This enforcement has prevented Bowers Harbor from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) which unconstitutionally compel Bowers Harbor to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Bowers Harbor, operate as an unconstitutional prior restraint on Bowers Harbor's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Bowers Harbor, operate as unconstitutional restrictions on Bowers Harbor's right to engage in commercial speech.

Lastly, Bowers Harbor is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Bowers Harbor from seeking approval for events, activities and other gatherings from Peninsula Township as seeking approval for such things would be futile.

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Bowers Harbor objects to this request as overly broad and unduly burdensome.

Subject to and without waiving those objections, Bowers Harbor holds a small wine maker license

and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker license gives Bowers Harbor a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker license gives Bowers Harbor a perpetual right to operate a restaurant in its tasting room. The small wine maker license gives Bowers Harbor a perpetual right to cater. And the small wine maker license gives Bowers Harbor a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Bowers Harbor from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Bowers Harbor from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Bowers Harbor from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Bowers Harbor.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Bowers Harbor Vineyard & Winery, Inc. to PTP's Third Set of Interrogatories to Bowers Harbor Vineyard & Winery, Inc. are true and correct.

By: 

Its: Chief Financial Officer

Executed on July 28, 2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU OPERATIONS, LTD'S ANSWERS TO PTP'S FIRST
INTERROGATORIES**

Plaintiff, Chateau Operations LTD, ("Chateau Chantal") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states
as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Chateau Chantal objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Chateau Chantal's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Chateau Chantal to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Chateau Chantal's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Chateau Chantal's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operates as an unconstitutional restriction on Chateau Chantal's ability to freely associate.

Chateau Chantal has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Chateau Chantal, through its counsel, put Peninsula Township on notice that provisions of the PTZO were facially unconstitutional. Chateau Chantal's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of the PTZO. Therefore, the continued application of these violations to the Chateau Chantal results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Operations, LTD to PTP's First Set of Interrogatories to Chateau Operations, LTD are true and correct.

By: Mauri-Chantal Daley

Its: President + CEO

Executed on 6/29/23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU OPERATIONS, LTD'S ANSWERS TO PTP'S SECOND
INTERROGATORIES**

Plaintiff, Chateau Operations LTD, ("Chateau Chantal") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states
as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of religion under the First and Fourteenth Amendments, including specifically which PTZO provisions violated your right, and when, how, and by whom your right to freedom of religion was violated.

ANSWER: Chateau Chantal objects that this request is overly broad and unduly burdensome. Subject to and without waiving that objection, Peninsula Township's former Director of Zoning, Christina Deeren, has admitted that Wineries like Chateau Chantal are allowed to host weddings. That admission has rendered Chateau Chantal's claim for freedom of religion moot.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Operations, LTD
to PTP's ~~Third~~^{Second} Set of Interrogatories to Chateau Operations, LTD are true and correct.

By: Mami - Chantal Dabry

Its: President + CEO

Executed on 7/12/23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF CHATEAU OPERATIONS, LTD'S ANSWERS TO PTP'S THIRD
INTERROGATORIES**

Plaintiff, Chateau Operations LTD, ("Chateau Chantal") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states
as follows:

INTERROGATORY #3: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how, and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

ANSWER: Chateau Chantal objects that this interrogatory is overly broad and unduly burdensome. Chateau Chantal further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Chateau Chantal states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Chateau Chantal's First and Fourteenth

Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Chateau Chantal. This enforcement has prevented Chateau Chantal from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) which unconstitutionally compel Chateau Chantal to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Chateau Chantal, operate as an unconstitutional prior restraint on Chateau Chantal's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Chateau Chantal, operate as unconstitutional restrictions on Chateau Chantal's right to engage in commercial speech.

Lastly, Chateau Chantal is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Chateau Chantal from seeking approval for events, activities and other gatherings from Peninsula Township as seeking approval for such things would be futile.

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Chateau Chantal objects to this request as overly broad and unduly burdensome.

Subject to and without waiving those objections, Chateau Chantal holds a small wine maker license

and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker license gives Chateau Chantal a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker gives Chateau Chantal a perpetual right to operate a restaurant in its tasting room. The small wine maker license gives Chateau Chantal a perpetual right to cater. And the small wine maker license gives Chateau Chantal a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Chateau Chantal from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Chateau Chantal from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Chateau Chantal from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Chateau Chantal.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Chateau Operations, LTD to PTP's Third Set of Interrogatories to Chateau Operations, LTD are true and correct.

By: Mari-chantal Dalse

Its: President + CEO

Executed on 7/27/23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF GRAPE HARBOR, INC.'S ANSWERS TO PTP'S FIRST SET OF
INTERROGATORIES**

Plaintiff, Grape Harbor Inc., ("Peninsula Cellars") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Peninsula Cellars objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Peninsula Cellars' First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(12)(i) and 8.7.3(12)(k) operate as unconstitutional restrictions on Peninsula Cellars' right to engage in commercial speech.

Peninsula Cellars has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Peninsula Cellars, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Peninsula Cellars' counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to Peninsula Cellars results in an ongoing as-applied violation of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

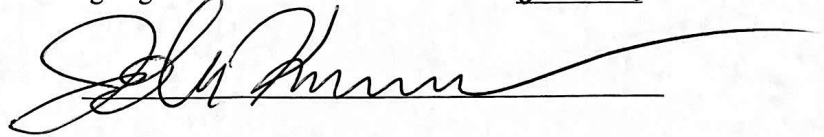
Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

Verification

Pursuant to 28 U.S.C. § 1746, on behalf of Grape Harbor, Inc., I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on 6-27-23



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF GRAPE HARBOR, INC.'S ANSWERS TO PTP'S SECOND SET OF
INTERROGATORIES**

Plaintiff, Grape Harbor Inc., ("Peninsula Cellars") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

RESPONSE: Peninsula Cellars objects that this interrogatory is overly broad and unduly burdensome. Peninsula further objects to this interrogatory as duplicative of Interrogatory #1. Subject to and without waiving those objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured

Peninsula Cellars' First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation.

With specific regard to the Remote Winery Tasting Room, Sections 8.7.3(12)(g), 8.7.3(12)(i) and 8.7.3(12)(k) operate as unconstitutional restrictions on Peninsula Cellars' right to engage in commercial speech.

Despite being permitted and regulated as a Remote Winery Tasting Room under Section 8.7.3(12) of the PTZO, Peninsula Township has improperly applied, and continues to improperly apply, restrictions applicable to Winery Chateaus against Peninsula Cellars, many of which also violate Peninsula Cellars' rights to freedom of association and freedom of speech under the First and Fourteenth Amendments. Peninsula Township has enforced PTZO Sections 8.7.3(10)(u)(2)(a)-(c) against Peninsula Cellars which operate as an unconstitutional prior restraint on Peninsula Cellars' ability to host certain events without approval from Peninsula Township. Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h), also enforced by Peninsula Township against Peninsula Cellars, operate as unconstitutional restrictions on Peninsula Cellars' right to engage in commercial speech.

Peninsula Township also enforced Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Peninsula Cellars. Each of these sections have prevented, and continue to prevent, Peninsula Cellars from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Lastly, Peninsula Cellars is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These

enforcement activities have prevented Peninsula Cellars from seeking approval for events, activities and other gatherings from Peninsula Township seeking approval for such things would be futile.

INTERROGATORY #3: Described in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how and by whom the regulatory taking occurred.

ANSWER: Peninsula Cellars objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Peninsula Cellars holds a small wine maker license and off-premises tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker and off-premises tasting room licenses gives Peninsula Cellars a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker and off-premises tasting room licenses gives Peninsula Cellars a perpetual right to operate a restaurant in its tasting room. The small wine maker and off-premises tasting room licenses gives Peninsula Cellars a perpetual right to cater. And the small wine maker and off-premises tasting room licenses gives Peninsula Cellars a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the small wine maker and off-premises tasting room licenses by preventing Peninsula Cellars from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Peninsula Cellars from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Peninsula Cellars from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and

continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Peninsula Cellars.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Grape Harbor, Inc. to PTP's Second Set of Interrogatories to Grape Harbor, Inc. are true and correct.

By: _____

Its: President

Executed on 7-28-23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF TWO LADS, LLC'S ANSWERS TO PTP'S FIRST SET OF
INTERROGATORIES**

Plaintiff, Two Lads, LLC, ("Two Lads") by and through its attorneys, Miller, Canfield,

Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Two Lads objects to this interrogatory as it is overbroad and unduly burdensome.

Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Two Lads' First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Section 6.7.2(19)(a) operates as an unconstitutional restriction on Two Lads' ability to freely associate.

- Section 6.7.2(19)(b)(1)(v) unconstitutionally restricts Two Lads' ability to engage in commercial speech.

Two Lads has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Two Lads, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Two Lads' counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Two Lads results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Two Lads, LLC to PTP's First Set of Interrogatories to Two Lads, LLC are true and correct.

By: C. Baldyga
Chris Baldyga

Its: Co - Owner and Operator

Executed on 7/3/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF TWO LADS, LLC'S ANSWERS TO PTP'S SECOND SET OF
INTERROGATORIES**

Plaintiff, Two Lads, LLC, ("Two Lads") by and through its attorneys, Miller, Canfield,

Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of association under the First and Fourth Amendments, including specifically which PTZO provisions violate your right, and when, how, and by whom your right to freedom of association was violated.

ANSWER: Two Lads objects that this request is overly broad and unduly burdensome. Two Lads further objects that it has never alleged that its rights under the Fourth Amendment have been violated. Subject to and without waiving those objections, Two Lads states as follows.

Sections 6.7.2(19)(a) prevents Two Lads from freely associating as allowed by the First Amendment. Peninsula Township has enforced this section against Two Lads and prevented Two Lads from freely associating with persons or groups of its choosing as allowed by the First Amendment.

Because Two Lads is not allowed to host activities such as weddings, receptions and other social functions for hire Two Lads has never sought permission but desires to host, for example, weddings, wedding receptions and social functions such as fundraisers supporting agriculture business scholarships for students attending Michigan State University.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Two Lads, LLC to PTP's

Third Set of Interrogatories to Two Lads, LLC are true and correct.

By: _____

Chris Baldyga

Its: _____

Co-Owner & Operator

Executed on _____

7/11/2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF TWO LADS, LLC'S ANSWERS TO PTP'S THIRD SET OF
INTERROGATORIES**

Plaintiff, Two Lads, LLC, ("Two Lads") by and through its attorneys, Miller, Canfield,

Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO), as applied to you, violates your freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions were applied to you, and when, how, and by whom they were applied to you, in a way that violated your right to freedom of speech.

RESPONSE: Two Lads objects that this request is overly broad and unduly burdensome. Two Lads further objects to this interrogatory as duplicative of Interrogatory #1. Subject to and without waiving those objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Two Lads' First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation.

With specific regard to the Farm Processing Facility sections of the PTZO, Peninsula Township has enforced Section 6.7.2(19)(b)(1)(v) against Two Lads which unconstitutionally

restricts Two Lads' ability to engage in commercial speech. PTZO Section 6.7.2(19)(b)(1)(iii) as enforced by Peninsula Township against Two Lads unconstitutionally restricts Two Lads' rights to freely express its relationships with non-Peninsula winemakers and fruit growers.

Despite being permitted and regulated as a Farm Processing Facility under Section 6.7.2(19) of the PTZO, Peninsula Township has improperly applied, and continues to improperly apply, restrictions applicable to Winery Chateaus against Two Lads, many of which also violate Two Lads' rights to freedom of speech under the First and Fourteenth Amendments. Peninsula Township has enforced PTZO Sections 8.7.3(10)(u)(2)(a)-(c) against Two Lads which operate as an unconstitutional prior restraint on Two Lads' ability to host certain events without approval from Peninsula Township. Sections 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(d) and 8.7.3(10)(u)(5)(g), also enforced by Peninsula Township against Two Lads, operate as unconstitutional restrictions on Two Lad's right to engage in commercial speech.

Lastly, Two Lads is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Two Lads from seeking approval for events, activities and other gatherings from Peninsula Township because seeking approval for such things would be futile.

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Two Lads objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Two Lads holds a small wine maker license and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these

liquor licenses as a property interests. The small wine maker and tasting room licenses gives Two Lads a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker and tasting room licenses gives Two Lads a perpetual right to operate a restaurant in its tasting room. The small wine maker and off-premises tasting room licenses gives Two Lads a perpetual right to cater. And the small wine maker and tasting room licenses gives Two Lads a perpetual right to play amplified music.

Because Peninsula Township has improperly applied the Winery Chateau sections of the PTZO against Two Lads, the PTZO operates as a regulatory taking of the property rights afforded by the small wine maker and tasting room licenses by preventing Two Lads from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Two Lads from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Two Lads from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Two Lads.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Two Lads, LLC to PTP's Third Set of Interrogatories to Two Lads, LLC are true and correct.

By: C. Baldyga
Chris Baldyga

Its: Owner

Executed on 7/28/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BRY'S WINERY, LC.'S ANSWERS TO PTP'S FIRST
INTERROGATORIES**

Plaintiff, Bry's Winery, LC, ("Bry's") by and through its attorneys, Miller, Canfield,

Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Bry's objects to this interrogatory as it is overbroad and unduly burdensome.

Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bry's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Bry's to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Brys' ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Brys' right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operate as an unconstitutional restriction on Brys' ability to freely associate.

Brys has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Brys, through its counsel, put Peninsula Township on notice that provisions of the PTZO were facially unconstitutional. Brys' counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of the PTZO. Therefore, the continued application of these violations to Brys results in an ongoing as-applied violation of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Brys Winery, LC to PTP's First Set of Interrogatories to Brys Winery, LC are true and correct.

By: Paul R. [Signature]

Its: President / CEO

Executed on 7/3/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BRY'S WINERY, LC.'S ANSWERS TO PTP'S SECOND
INTERROGATORIES**

Plaintiff, Bry's Winery, LC, ("Bry's") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of association under the First and Fourth Amendments, including specifically which PTZO provisions violate your right, and when, how, and by whom your right to freedom of association was violated.

ANSWER: Bry's objects that this request is overly broad and unduly burdensome. Bry's further objects that it has never alleged that its rights under the Fourth Amendment have been violated.

Subject to and without waiving those objections, Bry's states as follows.

Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g). Peninsula Township has enforced these sections against Bry's and prevented Bry's from freely associating with persons or groups of its choosing as allowed by the First Amendment.

In June of 2022, Brys requested permission from Peninsula Township to host a private, 90-minute gathering to raise funds for Governor Gretchen Whitmer which would involve approximately 100-125 guests and a temporary tent. In July of 2022, Christina Deeren informed Brys that Brys was not allowed to conduct the requested gathering. Peninsula Township's prohibition of the requested gathering violated Brys' right to freedom of association by preventing Brys from associating with the Democratic Party, Governor Gretchen Whitmer and other individuals desiring to support Governor Gretchen Whitmer's campaign for re-election.

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO), as applied to you, violates your freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions were applied to you, and when, how, and by whom they were applied to you, in a way that violated your right to freedom of speech.

ANSWER: Brys objects to this request as overly broad and unduly burdensome. Subject to and without waiving these objections, Brys answers as follows.

Sections 8.7.3(10)(u)(2)(a)-(d) are unlawful prior restraints on Brys' speech.

Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) unlawfully restrict Brys' commercial speech.

Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unlawfully compel Brys to speak in violation of the First Amendment.

Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are unlawful content-based restrictions on Brys' speech.

Peninsula Township has also applied an outright ban on weddings against Winery Chateaus like Brys. That ban violates Brys' rights to commercial speech.

These sections—and the unwritten ban on weddings—have unconstitutionally violated Brys’ freedom of speech since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Brys.

In June of 2022, Brys requested permission from Peninsula Township to host a private, 90-minute gathering to raise funds for Governor Gretchen Whitmer which would involve approximately 100-125 guests and a temporary tent. In July of 2022, Christina Deeren informed Brys that Brys was not allowed to conduct the requested gathering. Peninsula Township’s prohibition of the requested gathering violated Brys’ right to freedom of speech by suppressing Brys’ desired message of supporting Governor Gretchen Whitmer and her campaign for re-election.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Brys Winery, LC to PTP's Second Set of Interrogatories to Brys Winery, LC are true and correct.

By: Putty

Its: President/CEO

Executed on 7/12/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF BRY'S WINERY, LC.'S ANSWERS TO PTP'S THIRD
INTERROGATORIES**

Plaintiff, Bry's Winery, LC, ("Bry's") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Bry's objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Bry's holds a small wine maker license and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker license gives Bry's a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker gives Bry's a perpetual right to operate a restaurant in its tasting room. The small wine maker license gives Bry's a perpetual right to cater. And the small wine maker license gives Bry's a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Brys from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Brys from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Brys from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Brys.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Brys Winery, LC to PTP's Third Set of Interrogatories to Brys Winery, LC are true and correct.

By: Green Brys

Its: MEMBER

Executed on 7/27/23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT BLACK STAR FARMS, LLC'S ANSWERS TO PTP'S FIRST
INTERROGATORIES**

Plaintiff, Winery at Black Star Farms, LLC, ("Black Star") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states
as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Black Star objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Black Star's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Section 6.7.2(19)(a) operates as an unconstitutional restriction on Black Star's ability to freely associate.

- Section 6.7.2(19)(b)(1)(v) unconstitutionally restricts Black Star's ability to engage in commercial speech.

Black Star has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Black Star, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Black Star's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Black Star results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Winery at Black Star Farms, LLC to PTP's First Set of Interrogatories to Winery at Black Star Farms, LLC are true and correct.

By:

Lee Lutes

Its:

Managing Member

Executed on

7/3/2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT BLACK STAR FARMS, LLC'S ANSWERS TO PTP'S
SECOND INTERROGATORIES**

Plaintiff, Winery at Black Star Farms, LLC, ("Black Star") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states
as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO), as applied to you, violates your freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions were applied to you, and when, how, and by whom they were applied to you, in a way that violated your right to freedom of speech.

ANSWER: Black Star objects to this request as overly broad and unduly burdensome. Subject to and without waiving these objections, Black Star answers as follows.

Sections 6.7.2(19)(a), 6.7.2(19)(b)(1)(v), and 6.7.2(19)(b)(6) unlawfully regulate Black Star's commercial speech.

Section 6.7.2(19)(b)(6) acts as an unlawful prior restraint on Black Star's speech.

These sections have unconstitutionally violated Black Star's freedom of speech since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Black Star.

INTERROGATORY #3: Describe in detail how you could host live music, wedding receptions, corporate and other events, operate a restaurant, bar, or catering kitchen, or offer facility rentals, without violating the restrictions in the Purchase of Development Rights (PDR) easement that encumbers the land on which your winery and vineyards sit.

ANSWER: Black Star objects that this request is overly broad and unduly burdensome. Black Star further objects that this request calls for a legal conclusion. Subject to and without waiving those objections, Black Star states as follows. Live music, wedding receptions, corporate and other events, operating a restaurant, bar, or catering kitchen, and offering facility rentals do not violate the terms of the PDR easement at issue. These activities are necessary to further the purpose of the PDR easement, which is "to assure that the Property will be retained forever in its predominantly agricultural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property." Peninsula Township has recognized that wineries are farming and agricultural uses. Governor Gretchen Whitmer, the Michigan Liquor Control Commission, and the Michigan Department of Agriculture and Rural Development all recognize that these activities are accessory uses to farming operations and constitute value-added agritourism.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Winery at Black Star Farms, LLC to PTP's Second Set of Interrogatories to Winery at Black Star Farms, LLC are true and correct.

By:

Lee Lutes

Its:

Managing Member

Executed on

July 12, 2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT BLACK STAR FARMS, LLC'S ANSWERS TO PTP'S THIRD
INTERROGATORIES**

Plaintiff, Winery at Black Star Farms, LLC, ("Black Star") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of association under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your right, and when, how, and by whom your right to freedom of association was violated.

RESPONSE: Black Star objects that this request is overly broad and unduly burdensome. Black Star further objects to this interrogatory as duplicative of Interrogatory #1. Subject to and without waiving those objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Black Star's First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation.

With specific regard to the Farm Processing Facility sections of the PTZO, Peninsula Township has enforced Section 6.7.2(19)(a) against Black Star which operates as an

unconstitutional restriction on Black Star's ability to freely associate. Peninsula Township has also enforced Section 6.7.2(19)(b)(1)(v) against Black Star which unconstitutionally restricts Black Star's ability to engage in commercial speech. PTZO Section 6.7.2(19)(b)(1)(iii) as enforced by Peninsula Township against Black Star unconstitutionally restricts Black Star's rights to freely associate with non-Peninsula Township winemakers of its choosing and to engage in commercial speech.

Despite being permitted and regulated as a Farm Processing Facility under Section 6.7.2(19) of the PTZO, Peninsula Township has improperly applied, and continues to improperly apply, restrictions applicable to Winery Chateaus against Black Star, many of which also violate Black Star's rights to freedom of association and freedom of speech under the First and Fourteenth Amendments. Peninsula Township has enforced PTZO Sections 8.7.3(10)(u)(2)(a)-(c) against Black Star which operate as an unconstitutional prior restraint on Black Star's ability to host certain events without approval from Peninsula Township. Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h), also enforced by Peninsula Township against Black Star, operate as unconstitutional restrictions on Black Star's right to engage in commercial speech.

Peninsula Township also enforced Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Black Star. Each of these sections have prevented, and continue to prevent, Black Star from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Lastly, Black Star is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities

have prevented Black Star from seeking approval for events, activities and other gatherings from Peninsula Township because seeking approval for such things would be futile.

INTERROGATORY #5: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Black Star objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Black Star holds a small wine maker license and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as property interests. The small wine maker and tasting room licenses gives Black Star a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker and tasting room licenses gives Black Star a perpetual right to operate a restaurant. The small wine maker and off-premises tasting room licenses gives Black Star a perpetual right to cater. And the small wine maker and tasting room licenses gives Black Star a perpetual right to play amplified music.

Because Peninsula Township has improperly applied the Winery Chateau sections of the PTZO against Black Star, the PTZO operates as a regulatory taking of the property rights afforded by the small wine maker and tasting room licenses by preventing Black Star from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Black Star from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Black Star from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Black Star.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Winery at Black Star Farms, LLC to PTP's Third Set of Interrogatories to Winery at Black Star Farms, LLC are true and correct.


By:


Lee Lutes

Its:


Managing Member

Executed on


7/28/2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY OV THE FARM, LLC'S ANSWERS TO PTP'S FIRST
INTERROGATORIES**

Plaintiff, Winery OV The Farm, LLC, ("Bonobo") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Bonobo objects to this interrogatory as it is overbroad and unduly burdensome.

Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bonobo's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Bonobo to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Bonobo's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Bonobo's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operates as an unconstitutional restriction on Bonobo's ability to freely associate.

Bonobo has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Bonobo, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Bonobo's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Bonobo results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for OV the Farm, LLC to PTP's First Set of Interrogatories to OV the Farm, LLC are true and correct.

By: Todd Osterhouse
Todd Osterhouse

Its: Dwight B. Osterhouse
OV The Farm LLC

Executed on 7-3-2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT OV THE FARM, LLC'S ANSWERS TO PTP'S SECOND
INTERROGATORIES**

Plaintiff, Winery at OV The Farm, LLC, ("Bonobo") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO), as applied to you, violates your freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions were applied to you, and when, how, and by whom they were applied to you, in a way that violated your right to freedom of speech.

ANSWER: Bonobo objects to this request as overly broad and unduly burdensome. Subject to and without waiving these objections, Bonobo answers as follows.

Sections 8.7.3(10)(u)(2)(a)-(d) are unlawful prior restraints on Bonobo's speech.

Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) unlawfully restrict Bonobo's commercial speech.

Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unlawfully compel Bonobo to speak in violation of the First Amendment.

Sections 8.7.3(10)(u)(2)(b) and 8.7.3(10)(u)(2)(c) are unlawful content-based restrictions on Bonobo's speech.

Peninsula Township has also applied an outright ban on weddings against Winery Chateaus like Bonobo. That ban violates Bonobo's rights to commercial speech.

These sections—and the unwritten ban on weddings—have unconstitutionally violated Bonobo's freedom of speech since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Bonobo.

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Bonobo objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Bonobo holds a small wine maker license and small distiller license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker license gives Bonobo a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker license gives Bonobo a perpetual right to operate a restaurant. The small wine maker license gives Bonobo a perpetual right to cater. And the small wine maker license gives Bonobo a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the small wine maker license by preventing Bonobo from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Bonobo from playing amplified music, *see* 8.7.3(10)(u)(5)(g), and

preventing Bonobo from preventing Bonobo from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, although there is no express provision in the Peninsula Township Zoning Ordinance barring Winery Chateaus like Bonobo from operating a restaurant in all circumstances, Peninsula Township has adopted an unwritten, outright ban on restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Bonobo.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

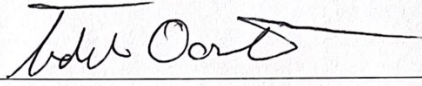
By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for OV the Farm, LLC to PTP's Second Set of Interrogatories to OV the Farm, LLC are true and correct.

By: 
Todd Oosterhouse

Its: Member

Executed on 7-12-23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY OV THE FARM, LLC'S ANSWERS TO PTP'S THIRD
INTERROGATORIES**

Plaintiff, Winery OV The Farm, LLC, ("Bonobo") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #5: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of association under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your right, and when, how, and by whom your right to freedom of association was violated.

ANSWER: Bonobo objects that this interrogatory is overly broad and unduly burdensome. Bonobo further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Bonobo states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Bonobo's First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a),

8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Bonobo. This enforcement has prevented Bonobo from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) against Bonobo which unconstitutionally compel Bonobo to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Bonobo, operate as an unconstitutional prior restraint on Bonobo's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Bonobo, operate as unconstitutional restrictions on Bonobo's right to engage in commercial speech.

Lastly, Bonobo is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Bonobo from seeking approval for events, activities and other gatherings from Peninsula Township seeking approval for such things would be futile.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

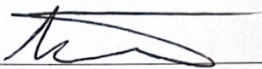
Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for OV the Farm, LLC to PTP's Third Set of Interrogatories to OV the Farm, LLC are true and correct.

By: 
Todd Oosterhouse

Its: President

Executed on 7-28-23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF VILLA MARI, LLC'S ANSWERS TO PTP'S FIRST SET OF
INTERROGATORIES**

Plaintiff, Villa Mari, LLC, ("Mari") by and through its attorneys, Miller, Canfield,

Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Mari objects to this interrogatory as it is overbroad and unduly burdensome.

Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Mari's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Mari to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Mari's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Mari's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operates as an unconstitutional restriction on Mari's ability to freely associate.

Mari has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Mari, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Mari's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Mari results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: 7/3/2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Villa Mari, LLC to PTP's First Set of Interrogatories to Villa Mari, LLC are true and correct.

By: 

Alex Lagina

Its: VP OF OPERATIONS

Executed on 7/3/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF VILLA MARI, LLC'S ANSWERS TO PTP'S SECOND SET OF
INTERROGATORIES**

Plaintiff, Villa Mari, LLC, ("Mari") by and through its attorneys, Miller, Canfield, Paddock
and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) violates your right to freedom of religion under the First and Fourteenth Amendments, including specifically which PTZO provisions violated your right, and when, how, and by whom your right to freedom of religion was violated.

ANSWER: Mari objects that this request is overly broad and unduly burdensome. Subject to and without waiving that objection, Peninsula Township's former Director of Zoning, Christina Deeren, has admitted that Wineries like Mari are allowed to host weddings. That admission has rendered Mari's claim for freedom of religion moot.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 12, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Villa Mari, LLC to PTP's
Second Set of Interrogatories to Villa Mari, LLC are true and correct.

By: _____

Alex Lagina

Its: _____

VP of OPERATIONS

Executed on _____

7/12/23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF VILLA MARI, LLC'S ANSWERS TO PTP'S THIRD SET OF
INTERROGATORIES**

Plaintiff, Villa Mari, LLC, ("Mari") by and through its attorneys, Miller, Canfield, Paddock
and Stone, PLC in answering PTP's Third Set of Interrogatories states as follows:

INTERROGATORY #3: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how, and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

ANSWER: Mari objects that this interrogatory is overly broad and unduly burdensome. Mari further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Mari states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Mari's First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a),

8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Mari. This enforcement has prevented Mari from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) which unconstitutionally compel Mari to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Mari, operate as an unconstitutional prior restraint on Mari's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Mari, operate as unconstitutional restrictions on Mari's right to engage in commercial speech.

Lastly, Mari is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Mari from seeking approval for events, activities and other gatherings from Peninsula Township as seeking approval for such things would be futile.

INTERROGATORY #4: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Mari objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Mari holds small wine maker and tasting room licenses issued by the Michigan Liquor Control Commission. Michigan law recognizes these licenses as property interests. The small wine maker license gives Mari a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker gives Mari a perpetual right to operate a

restaurant in its tasting room. The small wine maker license gives Mari a perpetual right to cater.

And the small wine maker license gives Mari a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Mari from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Mari from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Mari from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Mari.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Villa Mari, LLC to PTP's Third Set of Interrogatories to Villa Mari, LLC are true and correct.

By: 

Alex Lagina

Its: VP of OPERATIONS

Executed on 7/28/23.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT MONTAGUE DEVELOPMENT, LLC'S ANSWERS TO
PTP'S FIRST SET OF INTERROGATORIES**

Plaintiff, Montague Development, LLC, ("Hawthorne") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states
as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Hawthorne objects to this interrogatory as it is overbroad and unduly burdensome.

Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Hawthorne's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) unconstitutionally compel Hawthorne to advertise Peninsula Township agriculture.

- Sections 8.7.3(10)(u)(2)(a)-(c) operate as an unconstitutional prior restraint on Hawthorne's ability to host certain types of events without approval from Peninsula Township.
- Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) operate as unconstitutional restrictions on Hawthorne's right to engage in commercial speech.
- Sections 8.7.3(10)(u)(1)(d) and 8.7.3(10)(u)(2)(b)-(d) operate as an unconstitutional restriction on Hawthorne's ability to freely associate.

Hawthorne has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Hawthorne, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Hawthorne's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to Hawthorne's results in an ongoing as-applied violation of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

Verification

Pursuant to 28 U.S.C. § 1746, on behalf of Montague Development, LLC, I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on 07/02/23.

_____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF WINERY AT MONTAGUE DEVELOPMENT, LLC'S ANSWERS TO
PTP'S SECOND SET OF INTERROGATORIES**

Plaintiff, Montague Development, LLC, ("Hawthorne") by and through its attorneys,
Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states
as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how, and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

ANSWER: Hawthorne objects that this interrogatory is overly broad and unduly burdensome. Hawthorne further objects to this interrogatory because it is duplicative of Interrogatory #1. Subject to and without waiving those objections, Hawthorne states as follows.

The Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Hawthorne's First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation. Peninsula

Township has enforced PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Hawthorne. This enforcement has prevented Hawthorne from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Peninsula Township has also enforced PTZO Sections 8.7.3(10)(u)(1)(b) and 8.7.3(10)(u)(5)(a) which unconstitutionally compel Hawthorne to advertise Peninsula Township agriculture. PTZO Sections 8.7.3(10)(u)(2)(a)-(c), as enforced by Peninsula Township against Hawthorne, operate as an unconstitutional prior restraint on Hawthorne's ability to host certain types of events without approval from Peninsula Township. Peninsula Township's enforcement of PTZO Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h) against Hawthorne, operate as unconstitutional restrictions on Hawthorne's right to engage in commercial speech.

Lastly, Hawthorne is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Hawthorne from seeking approval for events, activities and other gatherings from Peninsula Township seeking approval for such things would be futile.

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Hawthorne objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Hawthorne holds a small wine maker license and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these

liquor licenses as a property interests. The small wine maker license gives Hawthorne a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker gives Hawthorne a perpetual right to operate a restaurant in its tasting room. The small wine maker license gives Hawthorne a perpetual right to cater. And the small wine maker license gives Hawthorne a perpetual right to play amplified music.

The PTZO operates as a regulatory taking of the property rights afforded by the wine maker license by preventing Hawthorne from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Hawthorne from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Hawthorne from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Hawthorne.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)
Stephen M. Ragatzki (P81952)
Christopher J. Gartman (P83286)
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers for Montague Development, LLC to PTP's Second Set of Interrogatories to Montague Development, LLC are true and correct.

By: 

Its: Chief Operating Officer

Executed on July 28th, 2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

Defendant,

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF TABONE VINEYARDS, LLC'S ANSWERS TO PTP'S FIRST SET OF
INTERROGATORIES**

Plaintiff, Tabone Vineyards, LLC, ("Tabone") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's First Set of Interrogatories states as follows:

INTERROGATORY #1: Describe in detail the first instance when the Peninsula Township Zoning Ordinance allegedly harmed or injured your First Amendment rights, including without limit the nature of the harm or injury, the First Amendment rights that were harmed or injured, the date of the harm or injury, and the specific Peninsula Township action and/or Peninsula Township Zoning Ordinance provision that caused the harm or injury.

ANSWER: Tabone objects to this interrogatory as it is overbroad and unduly burdensome. Subject to and without waiving these objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Tabone's First Amendment rights since its passage and every day that it is enforced constitutes a new violation. Specifically,

- Section 6.7.2(19)(a) operates as an unconstitutional restriction on Tabone's ability to freely associate.

- Section 6.7.2(19)(b)(1)(v) unconstitutionally restricts Tabone's ability to engage in commercial speech.

Tabone has attempted numerous times to negotiate changes to these ordinances with Peninsula Township and fix these unconstitutional provisions. Most recently, Tabone, through its counsel, put Peninsula Township on notice that provisions of its zoning ordinance were facially unconstitutional. Tabone's counsel sent a letter dated July 9, 2019 to Peninsula Township's counsel. *See* ECF No. 29-15. Peninsula Township's counsel responded on August 23, 2019, writing that "Overall, the Township's ordinances need to be fine-tuned to ensure that they do not run afoul of any of the constitutional protections afford [sic] by the First Amendment and the United States Constitution." ECF No. 29-16, PageID.1399. Despite Peninsula Township's acknowledgement of First Amendment violations, Peninsula Township refused to amend the violating provisions of its ordinance. Therefore, the continued application of these violations to the Tabone results in ongoing as-applied violations of the First Amendment in addition to their facial unconstitutionality.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 3, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Tabone Vineyard, LLC to PTP's First Set of Interrogatories to Tabone Vineyard, LLC are true and correct.

By: M. A. Tabone
Mario A. Tabone

Its: Owner - Member

Executed on 7/2/2023.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, *et al.*,

Plaintiffs,

Case No: 1:20-cv-01008

v.

PENINSULA TOWNSHIP, Michigan Municipal
Corporation,
Defendant,

Honorable Paul L. Maloney
Magistrate Judge Ray S. Kent

and

PROTECT THE PENINSULA,

Intervenor-Defendant.

**PLAINTIFF TABONE VINEYARDS, LLC'S ANSWERS TO PTP'S SECOND SET OF
INTERROGATORIES**

Plaintiff, Tabone Vineyards, LLC, ("Tabone") by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC in answering PTP's Second Set of Interrogatories states as follows:

INTERROGATORY #2: Describe in detail all facts supporting your claims that the Peninsula Township Zoning Ordinance (PTZO) violates your rights to freedom of association and freedom of speech under the First and Fourteenth Amendments, including specifically which PTZO provisions violate your rights; when, how, and by whom any of those provisions were applied to you; and when, how, and by whom your rights to freedom of association and freedom of speech were violated.

RESPONSE: Tabone objects that this request is overly broad and unduly burdensome. Tabone further objects to this interrogatory as duplicative of Interrogatory #1. Subject to and without waiving those objections, the Peninsula Township Zoning Ordinance ("PTZO"), as challenged in this lawsuit, is facially unconstitutional. Therefore, it has injured Tabone's First and Fourteenth Amendment rights since its enactment and every day that it exists constitutes a new violation.

With specific regard to the Farm Processing Facility sections of the PTZO, Peninsula Township has enforced Section 6.7.2(19)(a) against Tabone which operates as an unconstitutional restriction on Tabone's ability to freely associate. Peninsula Township has also enforced Section 6.7.2(19)(b)(1)(v) against Tabone which unconstitutionally restricts Tabone's ability to engage in commercial speech. PTZO Section 6.7.2(19)(b)(1)(iii) as enforced by Peninsula Township against Tabone unconstitutionally restricts Tabone's rights to freely associate with non-Peninsula Township winemakers of its choosing and to engage in commercial speech.

Despite being permitted and regulated as a Farm Processing Facility by Section 6.7.2(19) of the PTZO, Peninsula Township has improperly applied, and continues to improperly apply, restrictions applicable to Winery Chateaus against Tabone, many of which also violate Tabone's rights to freedom of association and freedom of speech under the First and Fourteenth Amendments. Peninsula Township has enforced PTZO Sections 8.7.3(10)(u)(2)(a)-(c) against Tabone which operate as an unconstitutional prior restraint on Tabone's ability to host certain events without approval from Peninsula Township. Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(b), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), 8.7.3(10)(u)(5)(g), and 8.7.3(10)(u)(5)(h), also enforced by Peninsula Township against Tabone, operate as unconstitutional restrictions on Tabone's right to engage in commercial speech.

Peninsula Township also enforced Sections 8.7.3(10)(m), 8.7.3(10)(u)(1)(d), 8.7.3(10)(u)(2)(a), 8.7.3(10)(u)(2)(b), 8.7.3(10)(u)(2)(c), 8.7.3(10)(u)(2)(d), 8.7.3(10)(u)(5)(c), and 8.7.3(10)(u)(5)(g) against Tabone. Each of these sections have prevented, and continue to prevent, Tabone from freely associating with persons or groups of its choosing as allowed by the First and Fourteenth Amendments.

Lastly, Tabone is aware of Peninsula Township enforcing the facially unconstitutional sections of the PTZO against other wineries in Peninsula Township. These enforcement activities have prevented Tabone from seeking approval for events, activities and other gatherings from Peninsula Township because seeking approval for such things would be futile.

INTERROGATORY #3: Describe in detail all facts supporting your claim that the Peninsula Township Zoning Ordinance (PTZO) constitutes a regulatory taking of your property under the Fifth and Fourteenth Amendments, including specifically which PTZO provisions caused a regulatory taking, and when, how, and by whom the regulatory taking occurred.

ANSWER: Tabone objects to this request as overly broad and unduly burdensome. Subject to and without waiving those objections, Tabone holds a small wine maker license and tasting room license issued by the Michigan Liquor Control Commission. Michigan law recognizes these liquor licenses as a property interests. The small wine maker and tasting room licenses gives Tabone a perpetual right to serve alcohol from 7:00 a.m. until 2:00 a.m., daily. The small wine maker and tasting room licenses gives Tabone a perpetual right to operate a restaurant in its tasting room. The small wine maker and off-premises tasting room licenses gives Tabone a perpetual right to cater. And the small wine maker and tasting room licenses gives Tabone a perpetual right to play amplified music.

Because Peninsula Township has improperly applied the Winery Chateau sections of the PTZO against Tabone, the PTZO operates as a regulatory taking of the property rights afforded by the small wine maker and tasting room licenses by preventing Tabone from serving alcohol until 2:00 a.m., *see* Section 8.7.3(10)(u)(5)(b), preventing Tabone from playing amplified music without restrictions, *see* 8.7.3(10)(u)(5)(g), and preventing Tabone from catering, *see* 8.7.3(10)(u)(5)(i). Additionally, Peninsula Township has banned restaurant operations at Wineries. These regulatory

takings have existed since the PTZO was enacted and continue each and every day that Peninsula Township enforces its unconstitutional and preempted ordinances against Tabone.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: /s/ Joseph M. Infante

Joseph M. Infante (P68719)

Stephen M. Ragatzki (P81952)

Christopher J. Gartman (P83286)

99 Monroe Avenue NW, Suite 1200

Grand Rapids, MI 49503

(616) 776-6333

Dated: July 28, 2023

VERIFICATION

I declare under penalty of perjury that the foregoing answers Tabone Vineyard, LLC to PTP's Second Set of Interrogatories to Tabone Vineyard, LLC are true and correct.

By: 
Mario A. Tabone

Its: Owner-Member

Executed on July 28, 2023

Peninsula Township

Application for Amendment of an existing
Special Use Permit



OOSTERHOUSE

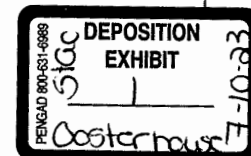
Vineyard and Winery

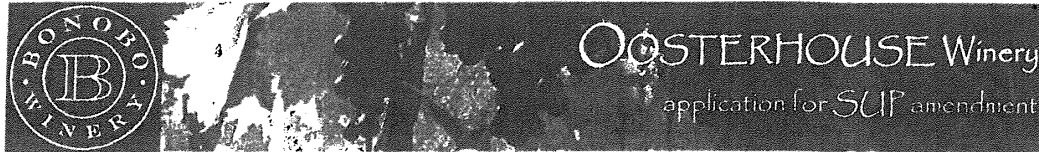
Winery-Chateau

is a

Special Use

in the Agricultural District





10-6-2014

Attention: Michelle Reardon, Director of Planning and Zoning
& Peninsula Township Planning Commissioners

Things at Bonobo Winery have come a long way since receiving Peninsula Township Land Use permit approval in June of 2013. We've endured the great polar vortex of 2013-14 bookended by torrential fall, spring and again fall rainstorms. Needless to say, it hasn't been ideal construction or wine growing weather. But construction is booming now, and in the frenzy to keep things moving along, it was brought to our attention that the Township was not aware of some minor architectural modifications that occurred as final architectural construction drawings were completed and permitted through the Grand Traverse County Construction Codes office. Therefore, we are respectfully requesting an amendment to the existing Special Use Permit to accommodate the minor building and site modifications that occurred.

As stated above, the changes presented here for your consideration are minor dimensional changes to the building and parking lot area. The overall intent of the original Oosterhouse Winery-Chateau submittal remains unchanged. The 50-acre winery-chateau site includes the combined wine processing and tasting room in one structure along Center Road, and an on-site managers residence located in an existing farmhouse at the northwest corner of the site along Nelson Road. This winery-chateau proposal does not include single family home sites or guest rooms.

A summary of modifications:

- A 765sf outdoor covered crush pad area was added to the northeast end of the building. The crush pad located on the upper elevation will provide sheltered outdoor work area and allow for grapes crushed to juice to gravity flow to the fermentation tanks in the wine processing area on the basement level. This is a desirable feature in the industry.
- The main floor of the building increased in size by 1,000sf to accommodate a second stairwell and additional restrooms at the north end of the building.
- The basement level increased in size by 780sf to accommodate the second stairwell at the north end of the building.
- Construction code required a second set of exterior stairs at the north end of the patio.
- The road to the production level was proposed as gravel, but is now an asphalt surface to better control and direct stormwater runoff.
- Three of the 5 proposed light pole locations were modified.
- Three parking spaces were eliminated. The site still exceeds the minimum parking requirement by more than double.

Thank you for your time and consideration.



10-6-2014

Project Summary

Project Parcel:

Tax ID 28-11-004-002-02 (*primary winery parcel*) 9.75 acres
 Tax ID 28-11-004-010-03 (*adjacent farmed parcel*) 35.98 acres
 Tax ID 28-11-004-010-04 (*adjacent farmed parcel*) 5.11 acres
 50.84 acres total

Zoning:

A-1, Agriculture

Master Plan:

Restricted Agriculture,
 protected through a Purchase of Development Rights Easement

Proposed Land Use:

Château Winery, a special use

Set Backs:

Front =35ft
 Side =50ft
 Rear =50ft
 Residential =200ft

Parking:

		<i>required</i>	<i>provided</i>	<i>amendment</i>
<i>1 per 150sqft of retail</i>	2,000sqft	14 spaces	28 spaces	25 spaces
<i>gravel and grass overflow parking</i>		none	11 spaces	11 spaces
<i>1 per employee</i>	5 employees	5 spaces	6 spaces	6 spaces
<i>3 bus spaces</i>	3 buses	3 buses	3 buses	3 buses
<i>1 per guest room</i>	0 rooms	<u>0 spaces</u>	<u>0 spaces</u>	<u>0 spaces</u>
		22 spaces	48 spaces	45 spaces

Structure:

Proposed Winery
 6,500sqft main level
 9,900sqft lower, walk-out basement level

<i>amendment</i>
6,896sqft main level
9,902sqft lower level

Manager's Residence

an existing farm house at the west end of the site

**PENINSULA TOWNSHIP BOARD
SPECIAL MEETING
April 16, 2015**

Meeting called to order at 7:00 p.m.

PRESENT: Rosi; Witkop; Weatherholt; Correia, Hoffman; Avery and Byron (arrived at 8:14)

ALSO PRESENT: Peter Wendling, Township Attorney, Michelle Reardon, Director of Planning and Zoning and Mary Avery, Recording Secretary

ABSENT: None

CHANGES/ADDITIONS TO AGENDA

Correia would like to move Item #2 to below PDR monitoring as Byron would like to be present.

MOTION: Avery/Weatherholt to approve agenda as amended.

MOTION PASSED

BRIEF CITIZEN COMMENTS (FOR ITEMS NOT ON THE AGENDA)

None

CONFLICT OF INTEREST

None

CONSENT AGENDA

1. Reports and Announcements (as provided in packet)
 - A. Officers – Clerk, Supervisor, Treasurer
 - B. Departmental – Planning Commission, Zoning Board of Appeals, Attorney, Engineer, Library, Fire Board, Park Commission and Township Deputy.
2. Correspondence (as provided in packet)
3. Edit lists of invoices & additions to the edit list of invoices (recommend approval)
4. Meeting Minutes
 - March 9, 2015 – Special meeting
 - March 10, 2015 5:00 pm – Special meeting
 - March 10, 2015 – Regular meeting
 - March 23, 2015 – 2nd Regular meeting (recommend approval)
5. March 2015 Payroll

Hoffman presented additions to the invoice list of \$22,084.68; items from our Attorney concerning our telephone retainer; Planning Commission and ZBA minutes; and a couple pieces of correspondence from the Drain Commissioner's office.

MOTION PASSED

Hoffman advised we put this on the agenda because we had to bring that it was tabled from the last meeting. However it has not been reviewed with Gil so I think we should retable it until the next meeting.

MOTION: Weatherholt/Hoffman to table the PDR monitoring contract to the May 12th meeting

MOTION PASSED

5. Bonobo Winery Guest Activity Uses (tabled from March 10, 2015 meeting)

MOTION: Weatherholt/Witkop to untable the Bonobo Winery Guest Activity Use Application

MOTION PASSED

Reardon presented information. Since the last meeting there has been another violation issued. Tonight there is communication from Mr. Tod Oosterhouse concerning the current status of this issue.

Josh Rhem 10657 Center Road representing the applicant, Bonobo Winery.

Hoffman asks if there has been an update on the resident manager house. Reardon advised that the house will be ready for occupancy in 10 days which would be April 24th. **Hoffman** asks Rhem who will be occupying that house? Rhem replies that one of the workers will be living there. **Hoffman** is he the onsite manager? Rhem he will be, yes. **Hoffman** so by the 24th the mold will be taken care of and then you will have an occupancy permit by then? Rhem the mold will be taken care of but I do not know when someone will be moving in. **Hoffman** on the site plan when they applied for this permit it was to be done then, not now.

Reardon the lighting will be changed out this weekend to amber color bulbs. We will contact Oosterhouse on Monday the 20th to schedule an inspection.

Reardon concerning the storm water, the Township Engineer has been onsite and has provided a letter stating that work should begin by the end of April and conclude by May 13th. **Hoffman** so the pond will then drain? Rhem yes.

Hoffman in November they said the plantings will be done by the end of May. Asks Rhem if they are going to plant that field. Rhem as a vineyard manager I myself, for the plant's sake, feels it isn't appropriate yet. **Hoffman** this was approved to be planted in May of 2015. Your current plantings right now are 50%, not 75% as required. You are well aware that I drive through that area quite frequently and

that area is nowhere near ready to be planted this year. It should have been ready a long time ago if it was going to be planted this year.

Hoffman asks Reardon if the lighting has been changed. Reardon this weekend, by April 20 the lighting is to be changed. Hoffman tells Rhem sorry he is taking the brunt of this, but it is not even ready and you are 25% less than you should have planted already. **Hoffman** quotes **Witkop** from a previous meeting that the applicant is bending the rules and has a blatant disregard for Township laws. Suggests that if all of this is not done by the May 12th meeting, the SUP for Bonobo needs to be pulled. Nothing here has been done. The house, the plantings, the land is not ready. I feel very strongly about this. We have other wineries, with representatives here tonight, and this is the only winery that is not following the rules and doing what is right. The other wineries are doing what they are supposed to be doing. Asked the attorney today if we can pull the SUP and he advised that we can. I do have pictures of the field that is to be planted if anyone would like to see them.

Witkop feels there is a blatant disregard for what this Board says and I don't understand it. We have been pretty firm, quite clear and blunt but for some reason there seems to be this feeling that we say something and we get just enough of an answer that get us past that conversation. The fact is this Board and staff is wasting their time on this and all of this is for the benefit of Bonobo Winery. The applicants have known all along these items needed to be addressed a long time ago, this is not news. At this point for us to continue to table something month after month when it is clear that until something drastic happens they are not going to comply. **Correia** Oosterhouse set these dates in many cases, we did not. **Hoffman** I think we need to go as far pulling their SUP. If we don't, the next person that comes in is going to say you did it for them why can't I? You did not stop them. The other wineries that are represented here tonight have always done what they were supposed to do. We did not have to write them all of the letters. They built what they were supposed to build. **Wendling** there are other options, I will spell those out for you before the next meeting. Reardon clarified that there is one SUP, as part of the SUP for a winery/chateau, the Township Board may grant approval for additional guest activities. In the application that is in front of you right now, they are saying they are ready for these guest activities. It is not a second SUP. It is simply saying to them now you have our blessing to do these additional guest activities.

Reardon based on inspection there are 5.6 acres that are presented as planted but they are weeds. They are at 52%, 23% short of the 75% required. **Byron** we have already given them a break several months ago when we let them open when they already did not have the appropriate acreage.

Weatherholt a couple of these items run past our next meeting date. Should we wait until the second meeting in May to see if they are taken care of? **Hoffman** will not support that. We have already given them since November. Rhem is now telling us that the house that should have been done when they applied is not going to be done with the mold for another ten days and does not know when anyone is going to move in.

MOTION: Witkop/Byron to deny the application for guest activity uses for Special Use Permit #118.

ROLL CALL VOTE: Rosi – yes; Witkop – yes; Weatherholt – yes; Correia – yes; Hoffman – yes; Byron – yes; Avery – yes.

PASSED UNAN

Correia asks **Wendling** concerning the dates, if they brought this before us on May 12 and those items that were to be done before the 12th we could review. Then go to the second meeting to review the items that are after the 12th. We could split them up. **Wendling** you are going to know through your staff for what constitutes material progress. Reardon will keep the board advised of enforcement. **Wendling** will give a list of options to the Township Board and we will go from there.

CITIZEN COMMENTS

Celia Villac 15554 Center Road proud that I brought \$44,000 to the Lighthouse. I do not feel that I can renew my contract. I cannot fulfil the duties that the contract implies. You are going to have to find yet another Lighthouse Manager because I do not feel like I can do the job when the in-house does not work toward the success of this wonderful program. I wish you well and I will be with you until the end of April.

Anne Griffiths 14548 Bluff Road I am not quite clear on what was just done. **Correia** nothing changes from the SUP, we just denied the list that was provided tonight. Griffiths last year we sold over 4,000 magnets. We are still not able to sell postcards, or images of the Lighthouse. I don't understand what the problem is with an operation that, according to what your own profit and loss, with quite a bit of padding in your favour, profited \$46,000. Last year 30,000 people visited the Lighthouse, 16,000 people climbed the tower. When people come to the Lighthouse they visit as families. They may want to buy images of the Lighthouse or something to keep their kids quiet. I question your understanding of the pleasure that people get when they come to the Lighthouse and your understanding of the need for people to take souvenirs home. When they come to the Lighthouse we send them to the other business. I will be resigning from the Parks Commission. I will not work with a negative group of administrators.

Monnie Peters 1445 Neah-ta-wanta Road wants to thank the Board for doing the right thing with Bonobo. Keep with it. I agree with **Hoffman** that if you let this one go the next one is right behind them doing the same thing.

BOARD COMMENTS

Byron apologizes for being late and is very sorry to not be here for the Lighthouse discussion. You have a facility in this Township that very few people have and the fact that you are not supporting the people that are working so hard for the Lighthouse is a huge disappointment in this Board.

Weatherholt is there a way before boards and our staff go through all this work and then get denied, is there not a way to tell the Park Board that this may not go thru before they go thru months of preparation? **Rosi** I was absent from the Planning Commission meeting but they did recommend this amendment go thru.

2. The proposed site plan is in compliance with the required information contained within Section 8.5 Food Processing Plants in A-1 Districts.
3. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
4. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of Grand Traverse County Soil Erosion & Sedimentation Department, State of Michigan Department of Environmental Quality and any other agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.

ROLL CALL VOTE: Witkop – yes; Weatherholt – yes; Correia – yes; Hoffman – yes; Byron – yes; Avery – yes and Rosi – yes.

MOTION PASSED

2. Bonobo Winery – Review and Update

Correia advises this is an enforcement update. Reardon reviews the four items that need to be reviewed: outdoor lighting, resident manager housing, the storm water issues and 75% plantings. Reardon notes that the 75% plantings are not yet out of compliance. The first three issues are enforcement. The exterior lighting has been deemed in compliance including amber shields. On May 7th there was an appointment with Todd Oosterhouse to meet at the winery to inspect storm water and the onsite manager's residence. Brian Boals is here tonight to speak concerning the storm water. The onsite resident manager residence could not be inspected as there was a pit bull blocking the entrance. I cannot answer for sure if someone is living there. The inside is in rough shape. There is drywall missing. There was evidence of someone living there. There was a grill hooked up outside. There was not a stove inside. They did provide a job description and the name of the person living there. I cannot tell you definitively that there is someone living there. As far as the planting, that needs to be determined. We did receive an updated planting plan. Staff has indicated to the applicant that the plan is not acceptable. There has not been any increased planting since our last update.

Brian Boals, Township Engineer, Gourdie Fraser & Associates updated the Board on the storm water issues. There has been some progress with the basin. They have installed an outlet overflow system per the plans we looked at before. I would like to see some field measurements to verify that the pipe slopes are accurate for the plan. There is still some ongoing slope restoration. They were able to get the steeper slopes along the sides of the basin covered with mulch blanket so those are in good shape. They need to get some topsoil in the bottom as it is still bare. The remaining issue is regarding the drainage course beyond where the outlet goes. The plans indicated there is an existing drainage course that heads off the site to the south. After the winter we were not seeing a natural drainage course. If there were an overflow of the basin, we are not really sure if it would depart that area or if it would be an issue in the back yard of the residence. Suggested extending that outlet from the basin to the west and let it out the back side. Looked at the basin yesterday after ½ to ¾ inch of rain and there was a lot of flow going in to the basin. Stopping back there on the way

here tonight the basin did infiltrate better than it had in the past. **Correia** how long would this process take to fix what needs to be fixed approximately? **Boals** I would like to see something back by the 25th.

Correia asks Todd Oosterhouse to respond to the onsite manager issues posed by Reardon. Oosterhouse advised there is someone living there. I did give a description of that person's job responsibilities. We did not need to pull any permits as there was not anything done mechanically and we did not change the footprint.

Hoffman I would like to see Reardon going back there to do another inspection. She needs to review that property. Reardon asks if the window approaching from the south is being removed. Oosterhouse replied no, that window will stay. Reardon verifies that they will not building permits. There will be a return visit for an inspection within the next couple of weeks.

Correia let's review the plantings. Oosterhouse advised that they did cultivate some of the soil so they did plant some starter cover cropping. In speaking with Reardon when she did her site visit she did say sometimes there is an allowable 25% of property to be considered cold air drainage. **Correia** asks Reardon if we agree on the amount of acreage. Reardon can verify that a cover crop has been planted. We will need to bring someone in to verify. At no time has staff stated that there can be up to 25% of that required 75% that will be cold air drainage.

Hoffman asks Oosterhouse who suggested that they not plant. Oosterhouse replied that Josh Rhem and Duke Elsner from Michigan State. **Hoffman** and why do they suggest you do not plant? Oosterhouse the soils have not grown back together and there are still burn marks from where they burned the trees. The soils need to regenerate. **Hoffman** in November your SUP was approved based on the fact that you said you would plant almost 13 acres of grapes. Oosterhouse if we have to get to 75% that is what we have to do. **Hoffman** the land was prepped just 2 or 3 weeks ago.

Correia asks Wendling if some of these items are not met what is the next step? Wendling it would be an enforcement issue of Section 4.2 of the Ordinance. The Ordinance does not have in it the power to revoke or cancel a special use permit. However the same could be accomplished by a court action with a formal hearing because the district court has equitable powers over civil municipal infractions or ordinance violations including zoning or you could file a conjunctive complaint. The relief in either scenario would include basically a suspension of operations at anything on the property until they come into compliance. The only down side of a district court action is that you have one more level of appeal that is potential there because any ruling by the district court is appealable. There is always some discretion administratively in enforcing an ordinance because the goal is to obtain compliance. The Board can say that the end of May is it and authorize staff to take enforcement action through our office.

Correia the onsite manager has a deadline of 5/22; the storm water is 5/25; the 75% planting of the crops at 5/31. If all of the conditions are met, what is the next step for us? To then look to the request that they have? **Wendling** advised they would have to reapply as this Board has already denied that request. **Bonobo** would have to go back through the process through staff. We have three dates of the items that need to be completed. If that is done and they are compliant on that date then the applicant can reapply for guest activity uses. **Correia** if those are not completed to our satisfaction then we would take enforcement action at that time. **Hoffman** we want to make sure the onsite manager is there by 5/22; that the retention pond is done to the recommendation of our engineer; and that everything that was promised on the 11/20 planting is planted by May 31, 2015. Mr. Oosterhouse should understand that on June 1st if this is not all in compliance the staff is going to file for enforcement through the court which could include suspending activities.

Byron can we verify what cover crop means? **Hoffman** we approved in November 12 acres to be planted in grapes. By the end of May they should be in the ground. **Oosterhouse** I can plant something else if we want to, correct? **Reardon** the SUP says per the planting plan approved November 20, 2014.

Wendling it needs to be fruit crops at 75% as stated in the ordinance. It is not a cover crop.

Oosterhouse it has to be a fruit producing crop that needs to be used for the production of wine, correct? **Wendling** answered yes. **Correia** yes, but a pumpkin patch would not qualify. It has to be in the wine family.

Weatherholt we do not specify that it has to be grapes. **Reardon** answered no. But it does have to be used to make wine. **Hoffman** this is what was approved in the special use permit. **Wendling** if it is following a set of plans but does not change materially the requirements of the ordinance it is not going to make a difference.

Witkop does it have to be crops that can be used in the production of his wine? **Reardon** not until he wants to have guest activity uses. So you don't want to go out and put in plum trees unless you want to make plum wine.

3. Villa Mari LLC – Small Winemakers License, Winery Tasting Room

MOTION: **Byron/Weatherholt** to approve the small winemaker's license

ROLL CALL VOTE: **Witkop - yes; Weatherholt - yes; Correia - yes; Hoffman - yes; Byron - yes; Avery - yes; Rosi – yes.**

MOTION PASSED

4. Drainage Districts Braemar/Logan Hills – Discuss and Potential Action Taken

Correia this discussion is based on the process of appointing a Board of Determination and the eligibility of members on this Board. We are not here judging whether these areas need some drainage work or not. **Wendling** explained the procedure for the appeal process. The appeal is as follows:

- A. The Board failed to provide sufficient factual background information which would have allowed it to make a decision to impose a drainage district and the construction of the drain based upon the record contrary to the requirements in public act 40 of 56 as amended
- B. The notice requirements pertaining to the creation of the drainage district were inadequate and not timely provided to the petitioner including but not limited to the final order of necessity which was not provided per the requirement of MCL 280.72. None of the orders for either of those districts were provided to the Township. The drain commissioner through Spicer Group failed to provide a metes and bounds description of the proposed drainage district in addition to a general lack of information as to its cost and why the district and the construction of the drain is necessary as required under the act. Upon information the makeup of the Board may not have complied with the requirements of the act inclusive of 280.721. There may be discrepancies related to the petition reportedly filed to create the Board on both of those drainage areas. Upon information and belief there may be an issue involving the drain commissioner in particular in Peninsula Township because there may

EXHIBIT 8

PTP Response to WOMP MSJ

October 6, 2023

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☒ C.I. ☐ MIS. ☐ JUV. State of Michigan Uniform Law Citation Ticket No. **1008** ☐ Victim Involved

The People of ☐ the State of Michigan ☒ Township ☐ City ☐ Village ☐ County

OF: **Peninsula**

THE UNDERSIGNED SAYS THAT ON: Month **02** Day **11** Year **2016** At approximately **6:00** A.M. Date Month Day Year

State ☐ Oper./Chauff. ☐ Driver License Number ☐ CDL SSN (last 4 digits)

Race Sex Height Weight Hair Eyes Occupation/Employer

Name (First, Middle, Last) **Coskierhouse Vineyards, LLC**

Street **7700 Peninsula Dr.**

City **Traverse City** State **MI** Zip Code **49686**

Vehicle Plate No. Year State Vehicle Description (Year, Make, Color) Veh. Type

THE PERSON NAMED ABOVE, in violation of **Ordinance 28-11-004-002-05** ☐ Local Ordinance ☐ State Law ☐ Administrative Rule

UPON **12011 Center Rd, Traverse City, MI 49686**

AT OR NEAR **28-11-004-002-05**

WITHIN ☐ CITY ☐ VILLAGE ☒ TOWNSHIP OF **Peninsula**

COUNTY OF **Grand Traverse**

DID THE FOLLOWING

☐ Nuisance Ordinance ☐ Building Code ☐ Speeding ☐ Zone (formerly MPH in a MPH Zone)

☐ Licenses Ordinance ☐ Plumbing Code ☐ Zone (formerly MPH in a MPH Zone)

☒ Zoning Ordinance ☐ Electrical Code ☐ Disobey Traffic Signal

☐ Sign, Lighting & Display Ordinance ☐ Mechanical Code ☐ Disobey Stop Sign

☐ Animal & Fowl Ordinance ☐ Defective Equipment ☐ No Operator's License in Possession

☐ Other

Violation of Winery-Chateau provisions. Conducted guest activity w/o Township Board approval which is required under Sec 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.

☒ C.I. ☐ MIS. ☐ JUV. State of Michigan Uniform Law Citation Ticket No. **1009** ☐ Victim Involved

The People of ☐ the State of Michigan ☒ Township ☐ City ☐ Village ☐ County

OF: **Peninsula**

THE UNDERSIGNED SAYS THAT ON: Month **02** Day **12** Year **16** At approximately **6:00** A.M. Date Month Day Year

State ☐ Oper./Chauff. ☐ Driver License Number ☐ CDL SSN (last 4 digits)

Race Sex Height Weight Hair Eyes Occupation/Employer

Name (First, Middle, Last) **Coskierhouse Vineyards LLC**

Street **7700 Peninsula Dr**

City **Traverse City** State **MI** Zip Code **49686**

Vehicle Plate No. Year State Vehicle Description (Year, Make, Color) Veh. Type

THE PERSON NAMED ABOVE, in violation of **Ordinance 28-11-004-002-05** ☐ Local Ordinance ☐ State Law ☐ Administrative Rule

UPON **12011 Center Rd, Traverse City, MI 49686**

AT OR NEAR **28-11-004-002-05**

WITHIN ☐ CITY ☐ VILLAGE ☒ TOWNSHIP OF **Peninsula**

COUNTY OF **Grand Traverse**

DID THE FOLLOWING

☐ Nuisance Ordinance ☐ Building Code ☐ Speeding ☐ Zone (formerly MPH in a MPH Zone)

☐ Licenses Ordinance ☐ Plumbing Code ☐ Zone (formerly MPH in a MPH Zone)

☒ Zoning Ordinance ☐ Electrical Code ☐ Disobey Traffic Signal

☐ Sign, Lighting & Display Ordinance ☐ Mechanical Code ☐ Disobey Stop Sign

☐ Animal & Fowl Ordinance ☐ Defective Equipment ☐ No Operator's License in Possession

☐ Other

Violation of Winery-Chateau provisions. Conducted guest activity w/o Township Board approval which is required under Sec 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.

CHECK IF APPROPRIATE ☐ Damage to Property ☐ Local Court Bond \$

☒ C.I. ☐ MIS. ☐ JUV. State of Michigan Uniform Law Citation Ticket No. **1010** ☐ Victim Involved

The People of ☐ the State of Michigan ☒ Township ☐ City ☐ Village ☐ County

OF: **Peninsula**

THE UNDERSIGNED SAYS THAT ON: Month **01** Day **15** Year **16** At approximately **6:30** A.M. Date Month Day Year

State ☐ Oper./Chauff. ☐ Driver License Number ☐ CDL SSN (last 4 digits)

Race Sex Height Weight Hair Eyes Occupation/Employer

Name (First, Middle, Last) **Coskierhouse Vineyards, LLC**

Street **7700 Peninsula Dr**

City **Traverse City** State **MI** Zip Code **49686**

Vehicle Plate No. Year State Vehicle Description (Year, Make, Color) Veh. Type

THE PERSON NAMED ABOVE, in violation of **Ordinance 28-11-004-002-05** ☐ Local Ordinance ☐ State Law ☐ Administrative Rule

UPON **12011 Center Rd, Traverse City, MI 49686**

AT OR NEAR **28-11-004-002-05**

WITHIN ☐ CITY ☐ VILLAGE ☒ TOWNSHIP OF **Peninsula**

COUNTY OF **Grand Traverse**

DID THE FOLLOWING

☐ Nuisance Ordinance ☐ Building Code ☐ Speeding ☐ Zone (formerly MPH in a MPH Zone)

☐ Licenses Ordinance ☐ Plumbing Code ☐ Zone (formerly MPH in a MPH Zone)

☒ Zoning Ordinance ☐ Electrical Code ☐ Disobey Traffic Signal

☐ Sign, Lighting & Display Ordinance ☐ Mechanical Code ☐ Disobey Stop Sign

☐ Animal & Fowl Ordinance ☐ Defective Equipment ☐ No Operator's License in Possession

☐ Other

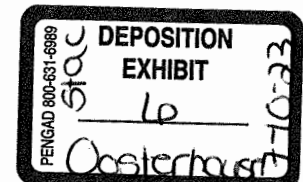
Violation of Winery-Chateau provisions. Conducted guest activity w/o Township Board approval which is required under Sec 8.7.3(10)(u) of the Peninsula Township Zoning Ordinance.

CHECK IF APPROPRIATE ☐ Damage to Property ☐ Local Court Bond \$

SETTLEMENT AGREEMENT

Peninsula Township (hereinafter the "Township") and Oosterhouse Vineyards, LLC, (hereinafter the "Chateau") reach this agreement to resolve an allegation that the Chateau violated Peninsula Township Zoning Ordinance (PTZO) Section 8.7.3(10)(h) by failing to plant fruit trees or grape vines on a sufficient portion of its acreage. The Chateau disputed those allegations for several reasons, including that planting pumpkins, field crops, and other appropriate actions satisfies the zoning ordinance. Further, the Township seeks to require planting of additional fruit trees and/or grape vines to be planted on certain acreage at the Chateau. The Chateau and the Township (also collectively the "Parties") have reached this agreement to resolve their pending dispute, and for the Chateau to plant additional grape vines or fruit trees, as set forth in this Agreement.

1. The Chateau owns real property located within the Township which is described in Exhibit A (hereinafter the "Subject Property"), on which it operates a Winery—Chateau. The Chateau is licensed by the Michigan Liquor Control Commission (MLCC) as a winery. The Township has granted the Chateau a special use permit under its zoning ordinance.
2. The Parties agree the Chateau will plant additional fruit trees or grape vines on 5.95 acres pursuant to a Farm Plan, which is attached hereto as Exhibit B and incorporated by reference in this Agreement.
3. The Parties recognize that the Chateau expects to work with experts, such as the Michigan State Extension, to administer and carry out the Farm Plan. The Chateau will provide regular updates to the Township (which will generally occur on a monthly basis, starting on May 1, 2017) concerning actions taken by the Chateau under the Farm Plan, any proposed amendments to the Farm Plan, and any deviations from the Farm Plan. In addition to these regular updates, the Chateau will provide the Township with the following reports from the Northwest Michigan Horticultural Research Center, or its successor:
 - i. In Spring 2017, the status of soil testing and an update regarding crops to be planted following the meeting between



- MSU Extension and the Bonobo Farm Management representatives.
- ii. In Spring 2017, a statement regarding recommended cover crops and the status of planting.
 - iii. In Summer 2017, a statement regarding recommended soil preparation and status of tilling, spoil preparation, and status of cover crops.
 - iv. In Summer 2017, a statement regarding recommended cover crops and status of planting.
 - v. In Spring 2018, a statement regarding fruit trees and vines planted, any further recommendations of MSU Extension, and the status of any soil preparation or cover crops within the 5.95 acres.
4. In consideration of these Agreements, the Township shall execute a dismissal of the pending administrative complaint, which shall be held by the Township's counsel, a copy shall be attached hereto as Exhibit C, which shall be filed with the Township upon successful completion of the Farm Plan, and also the Chateau shall not apply for any Guest Activity Uses, as stated in Section 8.7.3(10)(u), for the Subject Property, until such a time as this Agreement is completed. In the meantime, the Parties hereby agree the Township will stay any further enforcement proceeding of the zoning ordinance regarding the subject matter of the Farm Plan, or PTZO Section 8.7.3(10)(h). If the Chateau does not begin to implement the Farm Plan by May 1, 2017, or if it fails to provide regular updates required hereby, the Township may lift the stay by providing written notice to Chateau at least 15 days before doing so.
5. This Agreement shall not be deemed, nor interpreted, to prevent the Township from enforcing its zoning ordinance against the Chateau arising from an alleged violation or misconduct other than required by PTZO Section 8.7.3(10)(h) or beyond the scope of preparation of the land and planting of

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PTP Response to WOMP MSJ

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vines or trees as set forth within the Farm Plan.

6. If the Chateau fails to satisfy the Farm Plan by Spring of 2018, the Township may, in its sole discretion, lift the stay and take action it deems appropriate to enforce the alleged violation, and this Agreement shall not restrict the ability of the Township to seek appropriate administrative, legal, or equitable remedies.

Entered into on this day of 23 day of March, 2017, by the undersigned parties.

PENINSULA TOWNSHIP

OOSTERHOUSE VINEYARDS, LLC


By: Robert Manigold
Its: Supervisor


By: Todd Oosterhouse
Its: General Manager

EXHIBIT 10

PTP Response to WOMP MSJ

October 6, 2023

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DEC-21 98 15:35 FROM: RUNNING WISE FORD PH 616-946-0857

TO: 6162234652

PAGE: 01/15

212614

LIBER 1 176 PAGE 494

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made and entered into this 22nd day of September, 1997, by and between **UNDERWOOD ORCHARDS LIMITED PARTNERSHIP**, a Michigan limited partnership, of 360 McKinley Road East, Traverse City, Michigan, 49686, (collectively, the "Grantor") in favor of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, of Grand Traverse County, Michigan, having an address of 13235 Center Road, Traverse City, Michigan, 49686-8560 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Peninsula Township, Grand Traverse County, Michigan, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

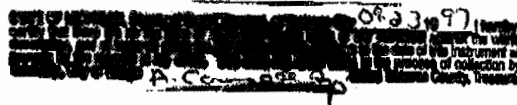
WHEREAS, the Property possesses agricultural, scenic, and open-space values (collectively, "conservation values") of great importance to Grantor, Peninsula Township, the people of Grand Traverse County and the people of the State of Michigan; and

WHEREAS, the Property is located within Peninsula Township, a community with an agricultural-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland; and

WHEREAS, maintaining the scenic and rural beauty of the area along with preserving the agricultural industry of Peninsula Township is an important planning goal of Peninsula Township and area residents; and

WHEREAS, the Township Board has made specific findings of fact regarding the importance of protecting the conservation values of certain lands within Peninsula Township and the citizens of Peninsula Township, through their Township Board, have established Peninsula Township Purchase of Development Rights Ordinance No. 23 (the "Ordinance") to acquire, through voluntary participation of Grantor, an interest in the Property for the protection of conservation values; and

WHEREAS, the Grantor recognizes that the Property has been identified as Farmland and/or Open Space Land as defined in the Ordinance; and



DEC-21 98 15:35 FROM:RUNNING WISE FORD PH 616-946-0857

TO:6162234652

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WHEREAS, the Grantor is willing to grant and convey to the Grantee the Development Rights in the Property as such rights are defined in the Ordinance (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth; and

WHEREAS, the Grantee is willing to purchase the Development Rights in the Property and accept this instrument of conveyance; and

WHEREAS, the conservation of the Property by this Easement guarantees that the land will forever be available for agricultural production and open space uses; and

WHEREAS, the specific conservation values of the Property are documented ("Baseline Documentation", dated September 19, 1997, on file at the office of the Grantee and incorporated herein by this reference) in an inventory of relevant features of the Property, consisting of reports, maps, photographs, and other documentation (list attached hereto as Exhibit "B") that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns including, without limitation, those existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

NOW, THEREFORE, WITNESSETH that the Grantor, for and in consideration of **FOUR HUNDRED THIRTY FIVE THOUSAND DOLLARS (\$435,000.00)** lawful money of the United States of America, paid to the Grantor by the Grantee, the receipt whereof is hereby acknowledged, and the Grantor being therewith fully satisfied, does by these presents grant, bargain, sell, transfer and convey unto the Grantee forever all Development Rights in respect to the Property, hereby perpetually binding the Property to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants, terms and conditions contained herein, and do also grant such interests, rights and easements, make such covenants and subject the land to such servitude as is necessary to bind the Property in perpetuity to such restrictions.

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TO:6162234652

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LIBER 1 1 7 6 PAGE 4 9 6

PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its predominantly agricultural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property.

I. **Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space Uses Defined.** Except as otherwise expressly permitted under the terms of this Deed of Conservation Easement, use of the land is permanently restricted to solely agricultural and open space uses.

- A. "Agricultural use" means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man, including fruits, nuts, vegetables, mushrooms, green house plants, Christmas trees, timber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock, including breeding, boarding and grazing, and the following related uses and activities:
1. Retail and wholesale sales of the above agricultural products grown on the farm;
 2. Roadside stands selling products as allowed by Township Zoning;
 3. Composting of agricultural plants, animals manure and residential lawn materials;
 4. The lying fallow or nonuse of the Property;
 5. The use of a Licensed Agricultural Labor Camp or Agricultural Labor Camp including the right to build farm labor housing structures to house migrant farm laborers while they are principally employed on the Grantor's farm operation. (Buildings shall be located outside of the Building Restriction Areas and/or restricted viewshed areas, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B");
 6. Tenant house, as a part of farm property for full time farm employees associated with the principal use of the Property; provided, however, that such Tenant house shall be counted as a reserved dwelling unit, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B";
 7. Agricultural buildings and structures, including new buildings such as greenhouses and other structures and improvements, to be used solely for agricultural purposes. (Buildings shall be located outside of the areas in which no agricultural buildings are allowed and/or restricted viewshed areas, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and on Exhibit "C");

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TO:6162234652

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8. Storage of agricultural machinery, equipment and agricultural materials, including but not limited to chemicals and fertilizers. (Limitation on their location, if any, shall be shown in the Baseline Documentation, the contents of which are listed on Exhibit "B");
9. Processing of agricultural products is allowed provided a majority of the agricultural products processed are grown by the Grantor's farm operation; and
10. Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.

B. "Open Space Uses" as used herein means:

1. Agricultural uses as defined above;
2. Non-agricultural uses that conserve natural, scenic, or designated historic resources;
3. Wind breaks and other vegetation except as restricted in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C".

C. Open space and agricultural uses do not include the following:

1. The construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument;
2. The construction or expansion of buildings and structures for non-agricultural uses, except to the extent such use is specifically reserved in this instrument;
3. The dumping or storage of non-agricultural solids or liquid wastes, including but not limited to trash, rubbish, or noxious materials;
4. The construction or use of golf courses, parking lots not associated with agricultural uses, athletic fields, campgrounds, travel trailer parks, institutional structures, livestock auction yards, veterinary hospitals and clinics, commercial sawmills (not including the temporary use of a sawmill for sawing timber grown on the Property), incinerators and sanitary land fills, sewage treatment and disposal installations (not including tile fields associated with residential dwellings), commercial airports and airfields, non-agricultural warehousing or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, boarded or produced on the Property.

II. **Further Restrictions on Use of the Property:** Potential uses of the Property are limited in that the Grantor, their heirs, successors and assigns shall only be entitled to use, lease, maintain, or improve the Property for agricultural and open space uses, and they

DEC-21 98 15:37 FROM:RUNNING WISE FORD PH 616-946-0857

TO:6162234652

PAGE:05/15

LIBER 1 1 7 6 PAGE 4 9 8

shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Property:

- A. No mining, drilling or extracting of oil, gas, gravel, or minerals on or under the Property shall be permitted that causes disruption of the surface of the Property to any extent that adversely affects the agricultural production or the preservation of scenic views, and no part of the land shall be used for storage or processing of gas, oil, or minerals taken from the Property, other than storage for agricultural uses or the private use of the occupants of the Property.
 - (i) Sand and gravel extraction for use on the farm is permitted, however, no commercial sales of sand and/or gravel shall be permitted without approval of the Township Board. Any such approval for commercial sales shall be consistent with the intent of Ordinance No. 23 and Section A above.
- B. No surface activities, including excavation for underground utilities, pipelines, or other underground installations, shall be permitted that cause permanent disruption of the surface of the Property. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including replacement of a minimum of four (4") inches of topsoil and seeding within a reasonable period of time after such disruption.
- C. No signs shall be erected on the Property except for the following purposes:
 - 1. To state the name of the Property and the name and address of the occupant;
 - 2. Historic designation;
 - 3. No Trespassing signs;
 - 4. To advertise any use or activity consistent with the agricultural or open space uses as herein defined, or to advertise the Property for sale or rent;
 - 5. Signs required by local, state, or federal statute.
- D. The Property shall not be used to contribute toward the satisfaction of any open space requirement contained in any statute, ordinance, regulation, or law involving the use of other real property.

III. **Reserved Rights:** Grantor reserves to Grantor, and to Grantor's successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited and are not inconsistent with the purpose of this Easement. Without limiting

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the generality of the foregoing, the following rights are expressly reserved and shall be deemed not inconsistent with the purposes of this Easement:

- A. **Right to Convey:** The right to sell, give or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement.
- B. **Right to Divide:** Any new parcels resulting from a division of the Property shall be subject to the terms of this Easement.
- C. **Reservation of Dwelling Unit(s):**
 - 1. The Grantor reserves the right to no more than three (3) residential dwelling units as follows:
 - (a) A dwelling unit on MiniFarm 9 (MF-9) and a dwelling unit on MiniFarm 10 (MF-10), both of which must be located where specifically designated on Exhibit "C" attached hereto.
 - (b) A dwelling unit on MiniFarm 13 (MF-13), the location of which is not limited to a specifically designated site.
 - 2. No more than three dwelling units will be permitted regardless of whether the Property is subdivided by the Grantor or by any successor in interest of the Grantor.
 - 3. If the Property is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Property; however, failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Property.
- D. **Reservation of Agricultural Buildings.** Grantor reserves the right to place agricultural buildings on those areas specifically designated on Exhibit C.

IV. **Additional Covenants and Agreements**

- A. **Covenant Against Encumbrances.** The Grantor covenants that it has not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- B. **Access.** No right of access by the general public to any portion of the Property is conveyed by this instrument.

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- C. **Taxes.** If the Grantor becomes delinquent in payment of taxes such that a lien against the Property is created, the Grantee, at its option, shall have the right to discharge said lien, or take other action as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument.
- D. **Remedies.** If the Grantor, Grantor's successors, assigns or employees violate or allow the violation of any of the terms, conditions, restrictions and covenants set forth herein, then the Grantee will be entitled to all remedies available at law or in equity, including, but not limited to injunctive relief, rescission of contract, or damages, including actual attorneys' fees and court costs reasonably incurred by the Grantee in prosecuting such action(s). No waiver or waivers by the Grantee, or by its successors or assigns, of any breach of a term, condition, restrictions, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction or covenant contained herein.
- E. **No Alteration or Amendment.** The terms, conditions, restrictions and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantee, or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of Peninsula Township Ordinance No. 23, as heretofore or hereafter amended.
- F. **Restrictions Binding on Successors.** The Grantor and Grantee agree that the terms, conditions, restrictions and covenants contained herein shall be binding upon the Grantor, its assigns and all other successors in interest to the Property and possessors of the Property, and shall be permanent terms, conditions, restrictions, covenants, servitude, and easements running with and perpetually binding the Property.
- G. **Transfer of Rights by Grantee.** The Grantee agrees that the Development Rights to the Property shall not be sold, given, divested, transferred or otherwise reconveyed in whole or in part in any manner except as provided in Peninsula Township Ordinance No. 23, as heretofore or hereafter amended. The Grantor, Grantor's successors or assigns shall be given the right of first refusal to purchase the Development rights in the Property provided such disposition and reconveyance be lawfully approved.
- H. **Condemnation.** If the Property is subject to any condemnation action, and if a mutually acceptable agreement as to the compensation to be provided to the Grantee is not reached between Grantee and Grantor within a reasonable period of time, the Grantor will request that the

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Grantee be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the Development Rights hereby conveyed.

- I. **No Affirmative Obligations; Indemnification.** Grantor, its successors or assigns, retains ownership with full rights to control and manage Property and shall bear all costs and liabilities of any kind related to property ownership, operation, and maintenance, including maintaining adequate comprehensive general liability insurance. Grantee, in purchasing the Development Rights and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision or control of the Property or of any activities occurring on the Property. Grantor shall indemnify Grantee and hold Grantee harmless from all damages, costs (including but not limited to, actual attorneys' fees and other costs of defense incurred by Grantee), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the Property. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee under this Easement as the Grantee will have no management responsibilities and will exercise no direct control over any potential hazards on the Property.
- J. **Grantee's Right to Enter onto the Property.** After giving reasonable notice to the possessors of the Property, the Grantee, or its authorized representative, shall have the right to enter from time to time onto the Property for the purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed. This is to occur no more than once per year unless the Grantee has good reason to believe a violation has taken place.
- K. **Termination of Party's Rights and Obligations.** A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the instrument or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- L. **All Uses Must Comply with Applicable Laws.** None of these covenants, terms and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards and ordinances.
- M. **Severability.** If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this

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instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in Peninsula Township Ordinance No. 23.

N. Contingent Right in the United States of America. In the event that the Township of Peninsula fails to enforce any of the terms of this easement (or other interests in land), as determined in the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of the easement through any and all authorities available under Federal or State law. In the event that the Township of Peninsula attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests in this easement (or other interests in land) without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this easement (or other interests in land) shall become vested in the UNITED STATES OF AMERICA.

O. Pronouns. If more than one joins in the execution hereof as Grantor, or either be of the feminine sex, or a corporation, the pronouns and relative words used herein shall be read as if written in plural, feminine or neuter, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.


Signed in the presence of:

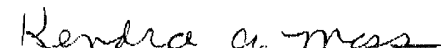
GRANTOR:

UNDERWOOD ORCHARDS
LIMITED PARTNERSHIP, a Michigan
limited partnership

By: Orchard Services Corporation,
Its: Managing General Partner


RICHARD W. FORD

By: 
ROBERT L. UNDERWOOD
Its: Vice President


KENDRA A. MOSS

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GRANTEE:

PENINSULA TOWNSHIP

Richard W. Ford
RICHARD W. FORD

By: Robert K. Manigold
ROBERT K. MANIGOLD, Supervisor

Kendra A. Moss
KENDRA A. MOSS

By: Lorrie Devol
LORRIE DEVOL, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 22nd day of September, 1997, by **ROBERT L. UNDERWOOD**, Vice President of Orchard Services Corporation, Managing General Partner of **UNDERWOOD ORCHARDS LIMITED PARTNERSHIP**, a Michigan limited partnership, on behalf of the partnership.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 22nd day of September, 1997, by **ROBERT K. MANIGOLD** and **LORRIE DEVOL**, Supervisor and Clerk of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, on behalf of the Township.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

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Drafted in the law offices of:

**RUNNING, WISE, WILSON, FORD
& PHILLIPS, P.L.C.**

By: **RICHARD W. FORD**

326 E. State Street

P.O. Box 686

Traverse City, MI 49685-0686

STATE OF MICHIGAN
GRAND TRAVERSE COUNTY
RECORDED

23 SEP 97 11:00 A.M.

KARON ANDERSON
REGISTER OF DEEDS

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TO:6162234652

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EXHIBIT 'A'

Premises situated in the Township of Peninsula, County of Grand Traverse and State of Michigan, more fully described as:

Part of the North half of the Southwest quarter, Section 30, Township 28 North, Range 10 West, more fully described as: Beginning at the West 1/4 corner of said Section 30; thence South 88°53'50" East, 158.76 feet, along the East and West quarter line of said Section 30 to a point in the centerline of McKinley Road; thence South 88°39'10" East, 865.57 feet, along said centerline; thence South 00°05'24" East, 943.51 feet; thence North 67°29'12" West, 1111.19 feet; thence North 00°06'08" East, 541.45 feet, along the West line of said Section 30 to the Point of Beginning. Subject to the rights of way of M-37/Center Road and McKinley Road over a portion thereof.

Part of the West half, Section 30, Township 28 North, Range 10 West, more fully described as: Commencing at the South quarter corner of said Section 30; thence North along the North and South quarter line, 3,224.81 feet to the Point of Beginning; thence North 87°39'13" West, 641 feet; thence South 02°35'27" West, 779.80 feet, to the centerline of McKinley Road; thence Westerly along the centerline of McKinley Road to a point in the centerline of M-37/Center Road; thence Northeasterly along the centerline of M-37/Center Road to the North 1/8th line of said Section 30; thence Easterly along the North 1/8th line of Section 30 to the 1/8th corner of said Section 30; thence South 00°18'53" West to the Point of Beginning. Subject to the rights of way of McKinley Road and M-37/Center Road.

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EXHIBIT 'B'

**INVENTORY OF INFORMATION PRESENT IN THE
UNDERWOOD ORCHARDS LIMITED PARTNERSHIP
BASELINE DOCUMENTATION**

A DESCRIPTION OF BACKGROUND INFORMATION INCLUDING:

- A SUMMARY REPORT
- ACQUISITION OF THE EASEMENT
- LOCATION OF THE EASEMENT PROPERTY
- A COUNTY TAX MAP SHOWING TRACT BOUNDARIES

A DESCRIPTION OF THE PROPERTY'S PHYSICAL ENVIRONMENT INCLUDING:

- A TOPOGRAPHIC MAP
- TOPOGRAPHIC DESCRIPTION
- PHYSIOGRAPHIC FEATURES AND DESCRIPTIONS

A DESCRIPTION OF THE PROPERTY'S ECOLOGICAL FEATURES INCLUDING:

- A MAP OF SOIL TYPES
- VEGETATION DESCRIPTION
- WILDLIFE AND HABITAT DESCRIPTION
- MAN-MADE STRUCTURES AND IMPROVEMENTS DESCRIPTIONS
- LAND USES AFFECTING THE EASEMENT PROPERTY
- PHOTOGRAPHS AND PHOTOSTATION OF EASEMENT PROPERTY

A LEGAL SUMMARY SETTING FORTH THE EASEMENT'S RESTRICTIONS INCLUDING:

- THE RETAINED RIGHTS OF THE PROPERTY
- THE RESTRICTIONS ON USE OF THE PROPERTY
- A COPY OF THE RECORD EASEMENT

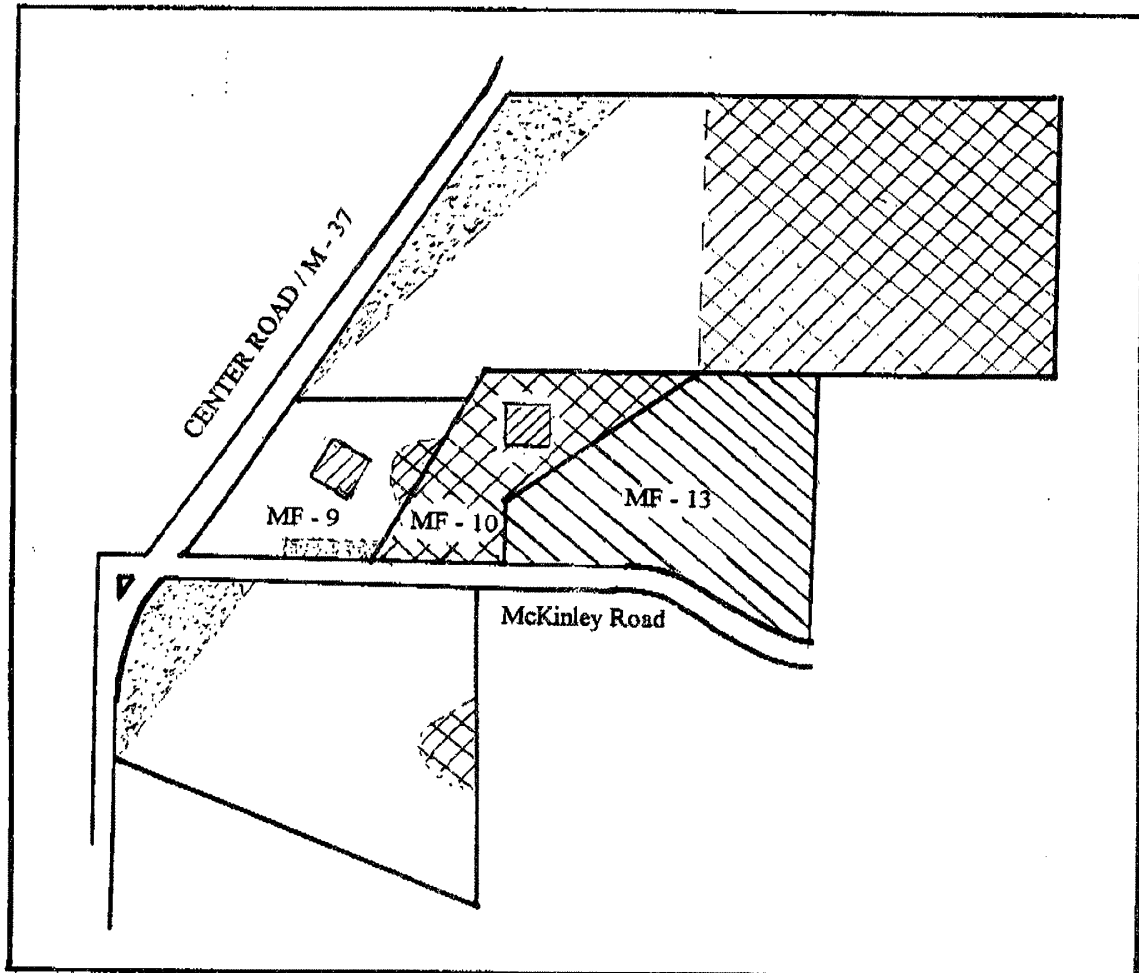
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PERMITTED STRUCTURES AND RESTRICTIONS MAP








- | | | | |
|---|--|--|---|
|  | 1. Restricted Vegetation Area
No Buildings allowed |  | 4. No Buildings Allowed |
|  | 2. Reserved Residential
Dwelling Unit |  | 5. Only Agricultural
Buildings Allowed |
|  | 3. Agricultural Buildings
and One Residence Allowed | | |

EXHIBIT "C"

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Exhibit C-1

Definitions of 1-5 of Exhibit C

1. **Restricted Vegetation Area.** No windbreaks or evergreen trees or other vegetation, other than farm crops, that would obstruct the view from Center Road toward East Grand Traverse Bay are permitted in these areas. In addition, the restricted vegetation area that is adjacent to and north of McKinley Road (beginning at the east line of Parcel MF-9 and extending 300 feet west) is subject to the further restriction that no vegetation shall exceed an elevation of 770 feet above sea level. No structures of any kind are allowed in this area.
2. **Reserved Residential Dwelling Unit.** This is a 210' x 210' square area that is the designated site for the placement of a reserved residential dwelling unit. The precise location of this area is contained in the Baseline Documentation Report on file at the Township Hall.
3. **Agricultural Buildings and One Residence Allowed.** Agricultural buildings and one residential dwelling unit are allowed in this area. There is no limitation on the location of buildings within this area other than as contained in the Peninsula Township Zoning Ordinance.
4. **No Buildings Allowed.** No buildings of any kind are allowed in this area.
5. **Only Agricultural Buildings Allowed.** Only agricultural buildings are allowed in this area provided that they do not have metal roofs.

EXHIBIT 11

PTP Response to WOMP MSJ

October 6, 2023

Page 1 of 15

004-010-01 - One (1) Res Site LIB 1182 PAGE 240

005-000-50 - 220(0) Res Sites

004-010-03 - Two (2) Res Sites

004-010-04 - Zero (0) Res Sites

STATE OF
MICHIGANREAL ESTATE
TRANSFER TAX371.25-CO
2531.25-ST
100013318STATE OF MICHIGAN
GRAND TRAVERSE COUNTY
RECORDED

22 OCT 97 10:33 A.M.

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") entered into this 22nd day of October, 1997, by and between **HAROLD EDMONDSON** and **ELSIE EDMONDSON**, husband and wife, of 12396 Peninsula Drive, Traverse City, Michigan, 49686, (the "Grantors") in favor of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, of Grand Traverse County, Michigan, having an address of 13235 Center Road, Traverse City, Michigan, 49686-8560 ("Grantee").

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property located in Peninsula Township, Grand Traverse County, Michigan, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property possesses agricultural, scenic, and open-space values (collectively, "conservation values") of great importance to Grantors, Peninsula Township, the people of Grand Traverse County and the people of the State of Michigan; and

WHEREAS, the Property is located within Peninsula Township, a community with an agricultural-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland; and

WHEREAS, maintaining the scenic and rural beauty of the area along with preserving the agricultural industry of Peninsula Township is an important planning goal of Peninsula Township and area residents; and

WHEREAS, the Township Board has made specific findings of fact regarding the importance of protecting the conservation values of certain lands within Peninsula Township and the citizens of Peninsula Township, through their Township Board, have established Peninsula Township Purchase of Development Rights Ordinance No. 23 (the "Ordinance") to acquire, through voluntary participation of Grantor, an interest in the Property for the protection of conservation values; and

WHEREAS, the Grantors recognize that the Property has been identified as Farmland and/or Open Space Land as defined in the Ordinance; and

STATE OF MICHIGAN, County of Grand Traverse, of the County of Grand Traverse, Michigan, do hereby certify that the foregoing is a true and correct copy of the original of the above described instrument as the same appears in my office. This document is a true and correct copy of the original of the above described instrument as the same appears in my office. This document is a true and correct copy of the original of the above described instrument as the same appears in my office.

B. F. Fournelle

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WHEREAS, the Grantors are willing to grant and convey to the Grantee the Development Rights in the Property as such rights are defined in the Ordinance (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth; and

WHEREAS, the Grantee is willing to purchase the Development Rights in the Property and accept this instrument of conveyance; and

WHEREAS, the conservation of the Property by this Easement guarantees that the land will forever be available for agricultural production and open space uses; and

WHEREAS, the specific conservation values of the Property are documented ("Baseline Documentation", dated October 22, 1997, on file at the office of the Grantee and incorporated herein by this reference) in an inventory of relevant features of the Property, consisting of reports, maps, photographs, and other documentation (list attached hereto as Exhibit "B") that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors intend that the conservation values of the Property be preserved and maintained by the continuation of land use patterns including, without limitation, those existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

NOW, THEREFORE, WITNESSETH that the Grantors, for and in consideration of **THREE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$337,500.00)** lawful money of the United States of America, paid to the Grantors by the Grantee, the receipt whereof is hereby acknowledged, and the Grantors being therewith fully satisfied, do by these presents grant, bargain, sell, transfer and convey unto the Grantee forever all Development Rights in respect to the Property, hereby perpetually binding the Property to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants, terms and conditions contained herein, and do also grant such interests, rights and easements, make such covenants and subject the land to such servitude as is necessary to bind the Property in perpetuity to such restrictions.

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PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its predominantly agricultural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property.

I. Uses Restricted to Agricultural and Open Space Uses: Agricultural and Open Space Uses Defined. Use of the land is permanently restricted to solely agricultural and open space uses.

- A. "Agricultural use" means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man, including fruits, nuts, vegetables, mushrooms, green house plants, Christmas trees, timber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock, including breeding, boarding and grazing, and the following related uses and activities:
1. Retail and wholesale sales of the above agricultural products grown on the farm;
 2. Roadside stands selling products as allowed by Township Zoning;
 3. Composting of agricultural plants, animals manure and residential lawn materials;
 4. The lying fallow or nonuse of the Property;
 5. The use of a Licensed Agricultural Labor Camp or Agricultural Labor Camp including the right to build farm labor housing structures to house migrant farm laborers while they are principally employed on the Grantor's farm operation. (Buildings shall be located outside of the restricted viewshed, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C");
 6. Tenant house, as a part of farm property for full time farm employees associated with the principal use of the Property; provided, however, that such Tenant house shall be counted as a reserved dwelling unit as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown as Exhibit "C";
 7. Agricultural buildings and structures, including new buildings such as greenhouses and other structures and improvements, to be used solely for agricultural purposes. (Buildings shall be located outside of the restricted viewshed, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown as Exhibit "C");

LIBER 1 8 2 PAGE 2 4 3

8. Storage of agricultural machinery, equipment and agricultural materials, including but not limited to chemicals and fertilizers. (Limitation on their location, if any, shall be shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C");
9. Processing of agricultural products is allowed provided a majority of the agricultural products processed are grown by the Grantor's farm operation; and
10. Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.

B. "Open Space Uses" as used herein means:

1. Agricultural uses as defined above;
2. Non-agricultural uses that conserve natural, scenic, or designated historic resources;
3. Wind breaks and other vegetation unless restricted as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown as Exhibit "C".

C. Open space and agricultural uses do not include the following:

1. The construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument;
2. The construction or expansion of buildings and structures for non-agricultural uses, except to the extent such use is specifically reserved in this instrument;
3. The dumping or storage of non-agricultural solids or liquid wastes, including but not limited to trash, rubbish, or noxious materials;
4. The construction or use of golf courses, parking lots not associated with agricultural uses, athletic fields, campgrounds, travel trailer parks, institutional structures, livestock auction yards, veterinary hospitals and clinics, commercial sawmills (not including the temporary use of a sawmill for sawing timber grown on the Property), incinerators and sanitary land fills, sewage treatment and disposal installations (not including tile fields associated with residential dwellings), commercial airports and airfields, non-agricultural warehousing or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, boarded or produced on the Property.

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II. Further Restrictions on Use of the Property: Potential uses of the Property are limited in that the Grantor, their heirs, successors and assigns shall only be entitled to use, lease, maintain, or improve the Property for agricultural and open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Property:

- A. No mining, drilling or extracting of oil, gas, gravel, or minerals on or under the Property shall be permitted that causes disruption of the surface of the Property to any extent that adversely affects the agricultural production or the preservation of scenic views, and no part of the land shall be used for storage or processing of gas, oil, or minerals taken from the Property, other than storage for agricultural uses or the private use of the occupants of the Property.
 - (i) Sand and gravel extraction for use on the farm is permitted, however, no commercial sales of sand and/or gravel shall be permitted without approval of the Township Board. Any such approval for commercial sales shall be consistent with the intent of Ordinance No. 23 and Section A above.
- B. No surface activities, including excavation for underground utilities, pipelines, or other underground installations, shall be permitted that cause permanent disruption of the surface of the Property. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including replacement of a minimum of four (4") inches of topsoil and seeding within a reasonable period of time after such disruption.
- C. No signs shall be erected on the Property except for the following purposes:
 - 1. To state the name of the Property and the name and address of the occupant;
 - 2. Historic designation;
 - 3. No Trespassing signs;
 - 4. To advertise any use or activity consistent with the agricultural or open space uses as herein defined, or to advertise the Property for sale or rent;
 - 5. Signs required by local, state, or federal statute.
- D. The Property shall not be used to contribute toward the satisfaction of any open space requirement contained in any statute, ordinance, regulation, or law involving the use of other real property.

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III. Reserved Rights: Grantors reserve to themselves, and to Grantors' personal representatives, heirs, successors and assigns, all rights accruing from Grantors' ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved and shall be deemed not inconsistent with the purposes of this Easement:

- A. **Right to Convey:** The right to sell, give or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement.
- B. **Right to Divide:** Any new parcels resulting from a division of the Property shall be subject to the terms of this Easement.
- C. **Reservation of Dwelling Unit(s):**
 - 1. The Grantors retain the right to no more than three (3) residential dwelling units, one of which shall include the existing residence. One of the reserved dwelling units must be constructed on the Permitted Building Site 3 to the east of the Existing Residence depicted on Exhibit "C". The other reserved dwelling unit must be constructed on either Alternate Building Site 2a or 2b, to the west of the Existing Residence, as depicted on Exhibit "C". In the event the Grantors wish to demolish the Existing Residence or permanently convert the use of the Existing Residence to migrant housing (for the farm laborers while they are principally employed on the Grantors' farm operation) and not as a rental unit, the replacement residence may be constructed on Alternate Building Site 1 as depicted on Exhibit "C".
 - 2. No more than three dwelling units in total will be permitted regardless of whether the Property is subdivided by the Grantors or by any successor in interest of the Grantors.
 - 3. If the Property is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Property; however, failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Property.
 - 4. Grantors shall have the right to renovate or replace existing permitted residences or agricultural buildings and structures. Improvements shall be substantially in their current or permitted

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locations as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C".

IV. **Additional Covenants and Agreements**

- A. **Covenant Against Encumbrances.** The Grantors covenant that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- B. **Access.** No right of access by the general public to any portion of the Property is conveyed by this instrument.
- C. **Taxes.** If the Grantors become delinquent in payment of taxes such that a lien against the Property is created, the Grantee, at its option, shall have the right to discharge said lien, or take other action as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument.
- D. **Remedies.** If the Grantors, Grantors' heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions and covenants set forth herein, then the Grantee will be entitled to all remedies available at law or in equity, including, but not limited to injunctive relief, rescission of contract, or damages, including actual attorneys' fees and court costs reasonably incurred by the Grantee in prosecuting such action(s). No waiver or waivers by the Grantee, or by its successors or assigns, of any breach of a term, condition, restrictions, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction or covenant contained herein.
- E. **No Alteration or Amendment.** The terms, conditions, restrictions and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantee, or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of Peninsula Township Ordinance No. 23, as heretofore or hereafter amended.
- F. **Restrictions Binding on Successors.** The Grantors and Grantee agree that the terms, conditions, restrictions and covenants contained herein shall be binding upon the Grantors, their agents, personal representatives, heirs, assigns, and all other successors in interest to the Property and possessors of the Property, and shall be permanent terms, conditions, restrictions,

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covenants, servitude, and easements running with and perpetually binding the Property.

- G. **Transfer of Rights by Grantee.** The Grantee agrees that the Development Rights to the Property shall not be sold, given, divested, transferred or otherwise reconveyed in whole or in part in any manner except as provided in Peninsula Township Ordinance No. 23, as heretofore or hereafter amended. The Grantors, Grantors' personal representatives, heirs, successors or assigns shall be given the right of first refusal to purchase the Development rights in the Property provided such disposition and reconveyance be lawfully approved.
- H. **Condemnation.** If the Property is subject to any condemnation action, and if a mutually acceptable agreement as to the compensation to be provided to the Grantee is not reached between Grantee and Grantors within a reasonable period of time, the Grantors will request that the Grantee be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the Development Rights hereby conveyed.
- I. **No Affirmative Obligations; Indemnification.** Grantors, their successors, heirs or assigns, retain ownership with full rights to control and manage Property and shall bear all costs and liabilities of any kind related to property ownership, operation, and maintenance, including maintaining adequate comprehensive general liability insurance. Grantee, in purchasing the Development Rights and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision or control of the Property or of any activities occurring on the Property. Grantors shall indemnify Grantee and hold Grantee harmless from all damages, costs (including but not limited to, actual attorneys' fees and other costs of defense incurred by Grantee), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the Property. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee under this Easement as the Grantee will have no management responsibilities and will exercise no direct control over any potential hazards on the Property.
- J. **Grantee's Right to Enter onto the Property.** After giving reasonable notice to the possessors of the Property, the Grantee, or its authorized representative, shall have the right to enter from time to time onto the Property for the purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed. This is to occur no


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more than once per year unless the Grantee has good reason to believe a violation has taken place.

- K. **Termination of Party's Rights and Obligations.** A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the instrument or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- L. **All Uses Must Comply with Applicable Laws.** None of these covenants, terms and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards and ordinances.
- M. **Severability.** If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in Peninsula Township Ordinance No. 23.
- N. **Pronouns.** If more than one joins in the execution hereof as the Grantors, or either be of the feminine sex, or a corporation, the pronouns and relative words used herein shall be read as if written in plural, feminine or neuter, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.


Signed in the presence of:


T.J. PHILLIPS


KENDRA A. MOSS

GRANTORS:


HAROLD EDMONDSON


ELSIE EDMONDSON

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GRANTEE:

PENINSULA TOWNSHIP

By: *Robert K. Manigold*
ROBERT K. MANIGOLD, Supervisor

By: *Lorrie Devol*
LORRIE DEVOL, Clerk

T.J. Phillips
T.J. PHILLIPS

Kendra A. Moss
KENDRA A. MOSS

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 22nd day of October, 1997, by **HAROLD EDMONDSON** and **ELSIE EDMONDSON**, husband and wife.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

STATE OF MICHIGAN)
) ss.
COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 22nd day of October, 1997, by **ROBERT K. MANIGOLD** and **LORRIE DEVOL**, Supervisor and Clerk of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, on behalf of the Township.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

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Drafted in the law offices of:

**RUNNING, WISE, WILSON, FORD
& PHILLIPS, P.L.C.**

By: **RICHARD W. FORD**
326 E. State Street
P.O. Box 686
Traverse City, MI 49685-0686

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EXHIBIT 'A'

Premises situated in the Township of Peninsula, County of Grand Traverse and State of Michigan, more fully described as:

005-000-50

The East half of the Northeast quarter of the Northeast quarter of Section 5, Town 28 North, Range 10 West; the Northwest quarter of the Northwest quarter of Section 4, Town 28 North, Range 10 West, and beginning at the Northwest corner of the Northeast quarter of the Northwest quarter, Section 4, Town 28 North, Range 10 West (said corner is established by a large blue rock with a cross marked on top); thence Easterly on the North line of said Section 4, 2598 feet to the centerline of highway known as "The Center Road"; thence South $31^{\circ}15'$ West on said centerline, 438.7 feet; thence Westerly 2370.4 feet to an iron pipe stake on the West line of said Northeast quarter of Northwest quarter of Section 4; thence North on said line, 365.4 feet to the point of beginning, excepting as legally established.

004-010-01
004-010-02

004-010-03
004-010-04

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EXHIBIT 'B'

INVENTORY OF INFORMATION PRESENT IN THE
HAROLD AND ELSIE EDMONDSON
BASELINE DOCUMENTATION

A DESCRIPTION OF BACKGROUND INFORMATION INCLUDING:

- A SUMMARY REPORT
- ACQUISITION OF THE EASEMENT
- LOCATION OF THE EASEMENT PROPERTY
- A COUNTY TAX MAP SHOWING TRACT BOUNDARIES

A DESCRIPTION OF THE PROPERTY'S PHYSICAL ENVIRONMENT INCLUDING:

- A TOPOGRAPHIC MAP
- TOPOGRAPHIC DESCRIPTION
- PHYSIOGRAPHIC FEATURES AND DESCRIPTIONS

A DESCRIPTION OF THE PROPERTY'S ECOLOGICAL FEATURES INCLUDING:

- A MAP OF SOIL TYPES
- VEGETATION DESCRIPTION
- WILDLIFE AND HABITAT DESCRIPTION
- MAN-MADE STRUCTURES AND IMPROVEMENTS DESCRIPTIONS
- LAND USES AFFECTING THE EASEMENT PROPERTY
- PHOTOGRAPHS AND PHOTOSTATION OF EASEMENT PROPERTY

A LEGAL SUMMARY SETTING FORTH THE EASEMENT'S RESTRICTIONS INCLUDING:

- THE RETAINED RIGHTS OF THE PROPERTY
- THE RESTRICTIONS ON USE OF THE PROPERTY
- A COPY OF THE RECORD EASEMENT

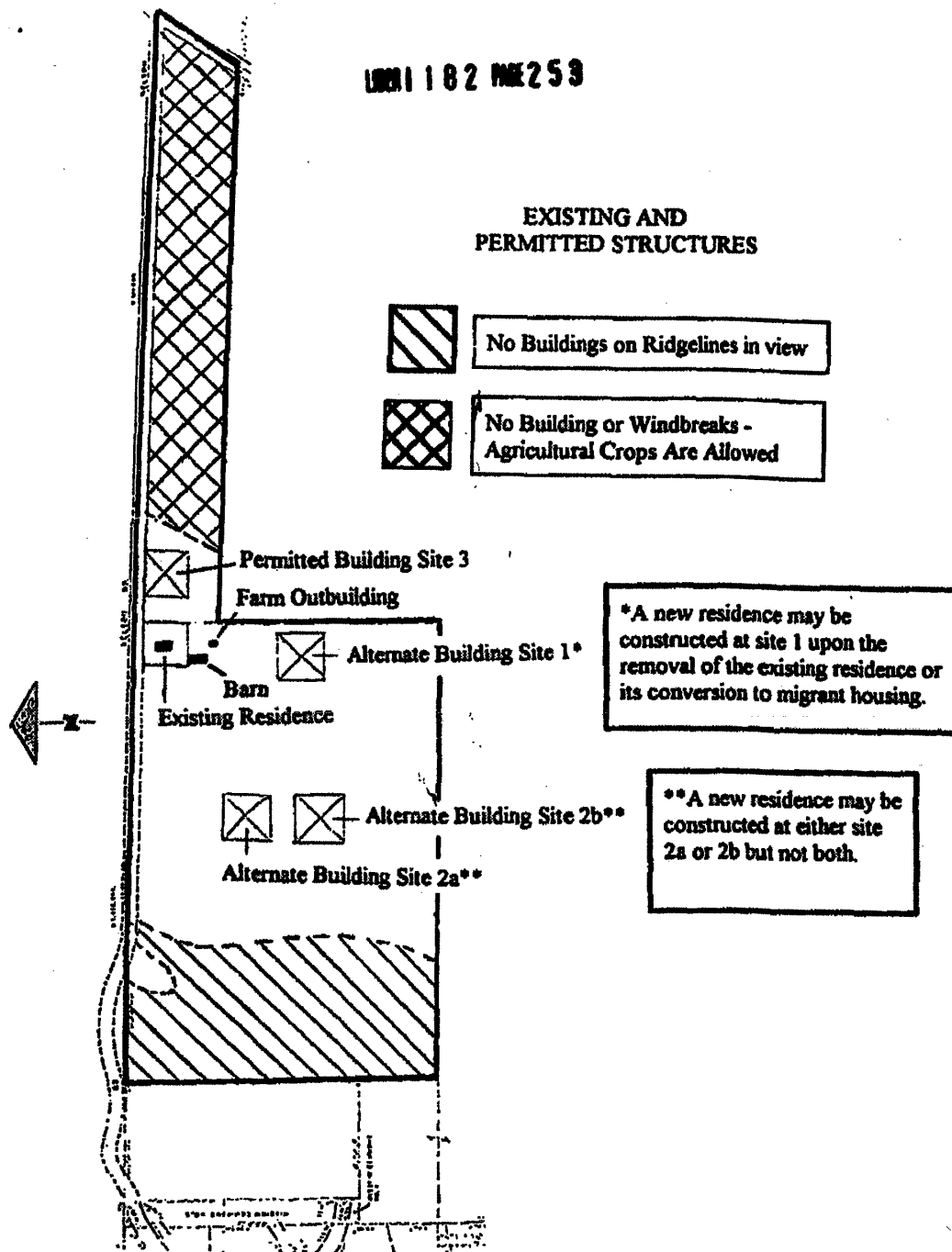


EXHIBIT 0

EXHIBIT 12

PTP Response to WOMP MSJ

October 6, 2023

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218610

STATE OF MICHIGAN
GRAND TRAVERSE COUNTY
RECORDED

6 JAN 98 3:47 P.M.

KARON ANDERSON
REGISTER OF DEEDS**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT ("Easement") is made and entered into this 5th day of January, 1998, by and between **SEABERG FARMS, INC.**, a Michigan corporation, of 11869 Center Road, Traverse City, Michigan, 49686, (collectively, the "Grantor") in favor of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, of Grand Traverse County, Michigan, having an address of 13235 Center Road, Traverse City, Michigan, 49686-8560 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Peninsula Township, Grand Traverse County, Michigan, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property possesses agricultural, scenic, and open-space values (collectively, "conservation values") of great importance to Grantor, Peninsula Township, the people of Grand Traverse County and the people of the State of Michigan; and

WHEREAS, the Property is located within Peninsula Township, a community with an agricultural-based economy in an area presently experiencing rapid development, including the subdivision of prime farmland; and

WHEREAS, maintaining the scenic and rural beauty of the area along with preserving the agricultural industry of Peninsula Township is an important planning goal of Peninsula Township and area residents; and

WHEREAS, the Township Board has made specific findings of fact regarding the importance of protecting the conservation values of certain lands within Peninsula Township and the citizens of Peninsula Township, through their Township Board, have established Peninsula Township Purchase of Development Rights Ordinance No. 23 (the "Ordinance") to acquire, through voluntary participation of Grantor, an interest in the Property for the protection of conservation values; and

WHEREAS, the Grantor recognizes that the Property has been identified as Farmland and/or Open Space Land as defined in the Ordinance; and

STATE OF MICHIGAN, County of Grand Traverse, at Traverse City, 1-6-98, hereby certify that there are no liens or taxes due by the State or any other authority on the within description, and all taxes on each are paid by the State or any other authority in the records of collection by the County of Grand Traverse, Michigan, City or Village.

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WHEREAS, the Grantor is willing to grant and convey to the Grantee the Development Rights in the Property as such rights are defined in the Ordinance (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth; and

WHEREAS, the Grantee is willing to purchase the Development Rights in the Property and accept this instrument of conveyance; and

WHEREAS, the conservation of the Property by this Easement guarantees that the land will forever be available for agricultural production and open space uses; and

WHEREAS, the specific conservation values of the Property are documented ("Baseline Documentation", dated January 5, 1998, on file at the office of the Grantee and incorporated herein by this reference) in an inventory of relevant features of the Property, consisting of reports, maps, photographs, and other documentation (list attached hereto as Exhibit "B") that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns including, without limitation, those existing at the time of this grant, that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity.

NOW, THEREFORE, WITNESSETH that the Grantor, for and in consideration of **TWO HUNDRED TWENTY FOUR THOUSAND DOLLARS (\$224,000.00)** lawful money of the United States of America, paid to the Grantor by the Grantee, the receipt whereof is hereby acknowledged, and the Grantor being therewith fully satisfied, does by these presents grant, bargain, sell, transfer and convey unto the Grantee forever all Development Rights in respect to the Property, hereby perpetually binding the Property to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants, terms and conditions contained herein, and do also grant such interests, rights and easements, make such covenants and subject the land to such servitude as is necessary to bind the Property in perpetuity to such restrictions.

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PURPOSES

It is the purpose of this Easement to assure that the Property will be retained forever in its predominantly agricultural, scenic, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property.

I. **Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space Uses Defined.** Use of the land is permanently restricted to solely agricultural and open space uses.

- A. "Agricultural use" means substantially undeveloped land devoted to the production of horticultural, silvicultural and agricultural crops and animals useful to man, including fruits, nuts, vegetables, mushrooms, green house plants, Christmas trees, timber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock, including breeding, boarding and grazing, and the following related uses and activities:
1. Retail and wholesale sales of the above agricultural products grown on the farm;
 2. Roadside stands selling products as allowed by Township Zoning;
 3. Composting of agricultural plants, animals manure and residential lawn materials;
 4. The lying fallow or nonuse of the Property;
 5. The use of a Licensed Agricultural Labor Camp or Agricultural Labor Camp including the right to build farm labor housing structures to house migrant farm laborers while they are principally employed on the Grantor's farm operation. (Buildings shall be located outside of the Building Restriction Areas and/or restricted viewshed areas, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C");
 6. Tenant house, as a part of farm property for full time farm employees associated with the principal use of the Property; provided, however, that such Tenant house shall be counted as a reserved dwelling unit, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C";
 7. Agricultural buildings and structures, including new buildings such as greenhouses and other structures and improvements, to be used solely for agricultural purposes. (Buildings shall be located outside of the Building Restriction Areas and/or restricted viewshed areas, if any, as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C");

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8. Storage of agricultural machinery, equipment and agricultural materials, including but not limited to chemicals and fertilizers. (Limitation on their location, if any, shall be shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C");
9. Processing of agricultural products is allowed provided a majority of the agricultural products processed are grown by the Grantor's farm operation; and
10. Other Agricultural Practices that may in the future be determined by the Township Board to be a common agricultural practice in the region after the use is recommended by the Planning Commission and at least one other state or nationally recognized agricultural organization.

B. "Open Space Uses" as used herein means:

1. Agricultural uses as defined above;
2. Non-agricultural uses that conserve natural, scenic, or designated historic resources;
3. Wind breaks and other vegetation unless restricted as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B".

C. Open space and agricultural uses do not include the following:

1. The construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument;
2. The construction or expansion of buildings and structures for non-agricultural uses, except to the extent such use is specifically reserved in this instrument;
3. The dumping or storage of non-agricultural solids or liquid wastes, including but not limited to trash, rubbish, or noxious materials;
4. The construction or use of golf courses, parking lots not associated with agricultural uses, athletic fields, campgrounds, travel trailer parks, institutional structures, livestock auction yards, veterinary hospitals and clinics, commercial sawmills (not including the temporary use of a sawmill for sawing timber grown on the Property), incinerators and sanitary land fills, sewage treatment and disposal installations (not including tile fields associated with residential dwellings), commercial airports and airfields, non-agricultural warehousing or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, boarded or produced on the Property.

II. **Further Restrictions on Use of the Property:** Potential uses of the Property are limited in that the Grantor, their heirs, successors and assigns shall only be entitled to use,

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lease, maintain, or improve the Property for agricultural and open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Property:

- A. No mining, drilling or extracting of oil, gas, gravel, or minerals on or under the Property shall be permitted that causes disruption of the surface of the Property to any extent that adversely affects the agricultural production or the preservation of scenic views, and no part of the land shall be used for storage or processing of gas, oil, or minerals taken from the Property, other than storage for agricultural uses or the private use of the occupants of the Property.
 - (i) Sand and gravel extraction for use on the farm is permitted, however, no commercial sales of sand and/or gravel shall be permitted without approval of the Township Board. Any such approval for commercial sales shall be consistent with the intent of Ordinance No. 23 and Section A above.
- B. No surface activities, including excavation for underground utilities, pipelines, or other underground installations, shall be permitted that cause permanent disruption of the surface of the Property. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including replacement of a minimum of four (4") inches of topsoil and seeding within a reasonable period of time after such disruption.
- C. No signs shall be erected on the Property except for the following purposes:
 - 1. To state the name of the Property and the name and address of the occupant;
 - 2. Historic designation;
 - 3. No Trespassing signs;
 - 4. To advertise any use or activity consistent with the agricultural or open space uses as herein defined, or to advertise the Property for sale or rent;
 - 5. Signs required by local, state, or federal statute.
- D. The Property shall not be used to contribute toward the satisfaction of any open space requirement contained in any statute, ordinance, regulation, or law involving the use of other real property.

III. **Reserved Rights:** Grantor reserves to Grantor, and to Grantor's successors and assigns, all rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited and are not inconsistent with the purpose of this Easement. Without limiting

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the generality of the foregoing, the following rights are expressly reserved and shall be deemed not inconsistent with the purposes of this Easement:

- A. **Right to Convey:** The right to sell, give or otherwise convey the Property, provided such conveyance is subject to the terms of this Easement.
- B. **Right to Divide:** Any new parcels resulting from a division of the Property shall be subject to the terms of this Easement.
- C. **Reservation of Dwelling Unit(s):**
 - 1. The Grantor reserves the right to no more than one (1) residential dwelling unit within the "Permitted Residential Building Area" as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C".
 - 2. No more than one dwelling unit will be permitted regardless of whether the Property is subdivided by the Grantor or by any successor in interest of the Grantor.
 - 3. If the Property is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Property; however, failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Property.
 - 4. Grantor shall have the right to renovate or replace existing permitted residence or agricultural buildings and structures, if any. Improvement shall be substantially in their current or permitted locations as shown in the Baseline Documentation, the contents of which are listed on Exhibit "B", and as shown on Exhibit "C".

IV. **Additional Covenants and Agreements**

- A. **Covenant Against Encumbrances.** The Grantor covenants that it has not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.
- B. **Access.** No right of access by the general public to any portion of the Property is conveyed by this instrument.
- C. **Taxes.** If the Grantor becomes delinquent in payment of taxes such that a lien against the Property is created, the Grantee, at its option, shall have

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the right to discharge said lien, or take other action as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this instrument.

- D. **Remedies.** If the Grantor, Grantor's successors, assigns or employees violate or allow the violation of any of the terms, conditions, restrictions and covenants set forth herein, then the Grantee will be entitled to all remedies available at law or in equity, including, but not limited to injunctive relief, rescission of contract, or damages, including actual attorneys' fees and court costs reasonably incurred by the Grantee in prosecuting such action(s). No waiver or waivers by the Grantee, or by its successors or assigns, of any breach of a term, condition, restrictions, or covenant contained herein shall be deemed a waiver of any subsequent breach of such term, condition, restriction or covenant or of any other term, condition, restriction or covenant contained herein.
- E. **No Alteration or Amendment.** The terms, conditions, restrictions and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantee, or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of Peninsula Township Ordinance No. 23, as heretofore or hereafter amended.
- F. **Restrictions Binding on Successors.** The Grantor and Grantee agree that the terms, conditions, restrictions and covenants contained herein shall be binding upon the Grantor, its assigns and all other successors in interest to the Property and possessors of the Property, and shall be permanent terms, conditions, restrictions, covenants, servitude, and easements running with and perpetually binding the Property.
- G. **Transfer of Rights by Grantee.** The Grantee agrees that the Development Rights to the Property shall not be sold, given, divested, transferred or otherwise reconveyed in whole or in part in any manner except as provided in Peninsula Township Ordinance No. 23, as heretofore or hereafter amended. The Grantor, Grantor's successors or assigns shall be given the right of first refusal to purchase the Development rights in the Property provided such disposition and reconveyance be lawfully approved.
- H. **Condemnation.** If the Property is subject to any condemnation action, and if a mutually acceptable agreement as to the compensation to be provided to the Grantee is not reached between Grantee and Grantor within a reasonable period of time, the Grantor will request that the Grantee be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the Development Rights hereby conveyed.

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- I. **No Affirmative Obligations: Indemnification.** Grantor, its successors or assigns, retains ownership with full rights to control and manage Property and shall bear all costs and liabilities of any kind related to property ownership, operation, and maintenance, including maintaining adequate comprehensive general liability insurance. Grantee, in purchasing the Development Rights and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision or control of the Property or of any activities occurring on the Property. Grantor shall indemnify Grantee and hold Grantee harmless from all damages, costs (including but not limited to, actual attorneys' fees and other costs of defense incurred by Grantee), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the Property. This paragraph is intended to ensure that none of the liabilities attendant on land ownership are inadvertently transferred to Grantee under this Easement as the Grantee will have no management responsibilities and will exercise no direct control over any potential hazards on the Property.
- J. **Grantee's Right to Enter onto the Property.** After giving reasonable notice to the possessors of the Property, the Grantee, or its authorized representative, shall have the right to enter from time to time onto the Property for the purposes of inspection and enforcement of the terms, conditions, restrictions and covenants hereby imposed. This is to occur no more than once per year unless the Grantee has good reason to believe a violation has taken place.
- K. **Termination of Party's Rights and Obligations.** A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the instrument or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- L. **All Uses Must Comply with Applicable Laws.** None of these covenants, terms and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards and ordinances.
- M. **Severability.** If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail.

EXHIBIT 12

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STATE OF MICHIGAN)

) ss.

COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 5th day of January, 1998, by **GEORGE KELLY**, President of **SEABERG FARMS, INC.**, a Michigan corporation, on behalf of the corporation.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

STATE OF MICHIGAN)

) ss.

COUNTY OF GRAND TRAVERSE)

The foregoing instrument was acknowledged before me this 5th day of January, 1998, by **ROBERT K. MANIGOLD** and **LORRIE DEVOL**, Supervisor and Clerk of **PENINSULA TOWNSHIP**, a quasi-municipal corporation, on behalf of the Township.

Kendra A. Moss
KENDRA A. MOSS, Notary Public
Leelanau County, acting in
Grand Traverse County, Michigan
My commission expires: June 7, 1998

Drafted in the law offices of:

**RUNNING, WISE, WILSON, FORD
& PHILLIPS, P.L.C.**

By: **RICHARD W. FORD**
326 E. State Street
P.O. Box 686
Traverse City, MI 49685-0686

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If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in Peninsula Township Ordinance No. 23.

N. **Pronouns.** If more than one joins in the execution hereof as Grantor, or either be of the feminine sex, or a corporation, the pronouns and relative words used herein shall be read as if written in plural, feminine or neuter, respectively.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed in the presence of:

GRANTOR:

SEABERG FARMS, INC., a Michigan corporation

Patrick J. Wilson
PATRICK J. WILSON

By: George Kelly
GEORGE KELLY, President

Kendra A. Moss
KENDRA A. MOSS

GRANTEE:

PENINSULA TOWNSHIP

Patrick J. Wilson
PATRICK J. WILSON

By: Robert K. Manigold
ROBERT K. MANIGOLD, Supervisor

Kendra A. Moss
KENDRA A. MOSS

By: Lorrie Devol
LORRIE DEVOL, Clerk

DEC-13 04 16:58 FROM:RUNNING, WISE & FORD 231-946-0857

TO: 231 223 7117

PAGE: 12/14

LIBER 1196 PAGE 095

EXHIBIT 'A'

Premises situated in the Township of Peninsula, County of Grand Traverse and State of Michigan, more fully described as:

The Southwest 1/4 of the Northwest 1/4, Section 4, Town 28 North, Range 10 West, EXCEPT a parcel commencing at the West 1/4 corner; thence East 806.04 feet to the Point of Beginning; thence East 532.07 feet; thence North along North 1/8 line 1062.93 feet; thence South 75°32' West 372.24 feet; thence South 33°17'41" West 305.11 feet; thence South 717.14 feet to the Point of Beginning.

The Northeast 1/4 of the Northwest 1/4 of Section 4, Town 28 North, Range 10 West, EXCEPT the North 365.4 feet. ALSO the Northwest 1/4 of the Northeast 1/4 of Section 4, Town 28 North, Range 10 West, EXCEPT the North 365.4 feet; ALSO EXCEPT commencing at the Northwest corner; thence East to highway centerline, South 31°15' West, 438.76 feet, West 39.4 feet, South 31°34' West 342.5 feet to Point of Beginning; thence South 31°34' West 120 feet, North 58°26' West 145 feet, North 31°34' East 120 feet, South 56°26' East 145 feet to Point of Beginning; EXCEPT commencing at intersection of Center Road centerline and South line of Northwest 1/4 of Northeast 1/4; thence East 300 feet, North 150 feet, West to highway centerline; thence South to Point of Beginning, EXCEPT commencing South 365.4 feet of Northeast corner, South 0°24'30" East 260 feet, South 29°24' West 728.84 feet, North 60°50'30" West 265.8 feet, South 89°28'10" West 181.03 feet, North 30°18'40" East 879.86 feet, North 88°41' East 325.27 feet to Point of Beginning.

ALSO EXCEPT part of the Northwest quarter of the Northeast quarter, Section 4, Town 28 North, Range 10 West, more fully described as: Commencing at the North quarter corner of said Section 4; thence South 87°45'30" East, 1266.25 feet along the North line of said Section 4; thence south 33°29'30" West, 438.76 feet along the centerline of M-37; thence North 87°45'30" West, 39.4 feet; thence South 33°48'30" West 322.5 feet along the westerly right of way line of said M-37 to the Point of Beginning; thence continuing South 33°48'30" West 20.0 feet along said westerly right of way line; thence North 56°11'30" West, 145.0 feet; thence North 33°48'30" East, 20.0 feet; thence South 56°11'30" East, 145.0 feet to the Point of Beginning.

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LIBERT 196 PAGE 096

EXHIBIT 'B'

INVENTORY OF INFORMATION PRESENT IN THE
SEABERG FARMS, INC.
BASELINE DOCUMENTATION

A DESCRIPTION OF BACKGROUND INFORMATION INCLUDING:

- A SUMMARY REPORT
- ACQUISITION OF THE EASEMENT
- LOCATION OF THE EASEMENT PROPERTY
- A COUNTY TAX MAP SHOWING TRACT BOUNDARIES

A DESCRIPTION OF THE PROPERTY'S PHYSICAL ENVIRONMENT INCLUDING:

- A TOPOGRAPHIC MAP
- TOPOGRAPHIC DESCRIPTION
- PHYSIOGRAPHIC FEATURES AND DESCRIPTIONS

A DESCRIPTION OF THE PROPERTY'S ECOLOGICAL FEATURES INCLUDING:

- A MAP OF SOIL TYPES
- VEGETATION DESCRIPTION
- WILDLIFE AND HABITAT DESCRIPTION
- MAN-MADE STRUCTURES AND IMPROVEMENTS DESCRIPTIONS
- LAND USES AFFECTING THE EASEMENT PROPERTY
- PHOTOGRAPHS AND PHOTOGRAPHY OF EASEMENT PROPERTY

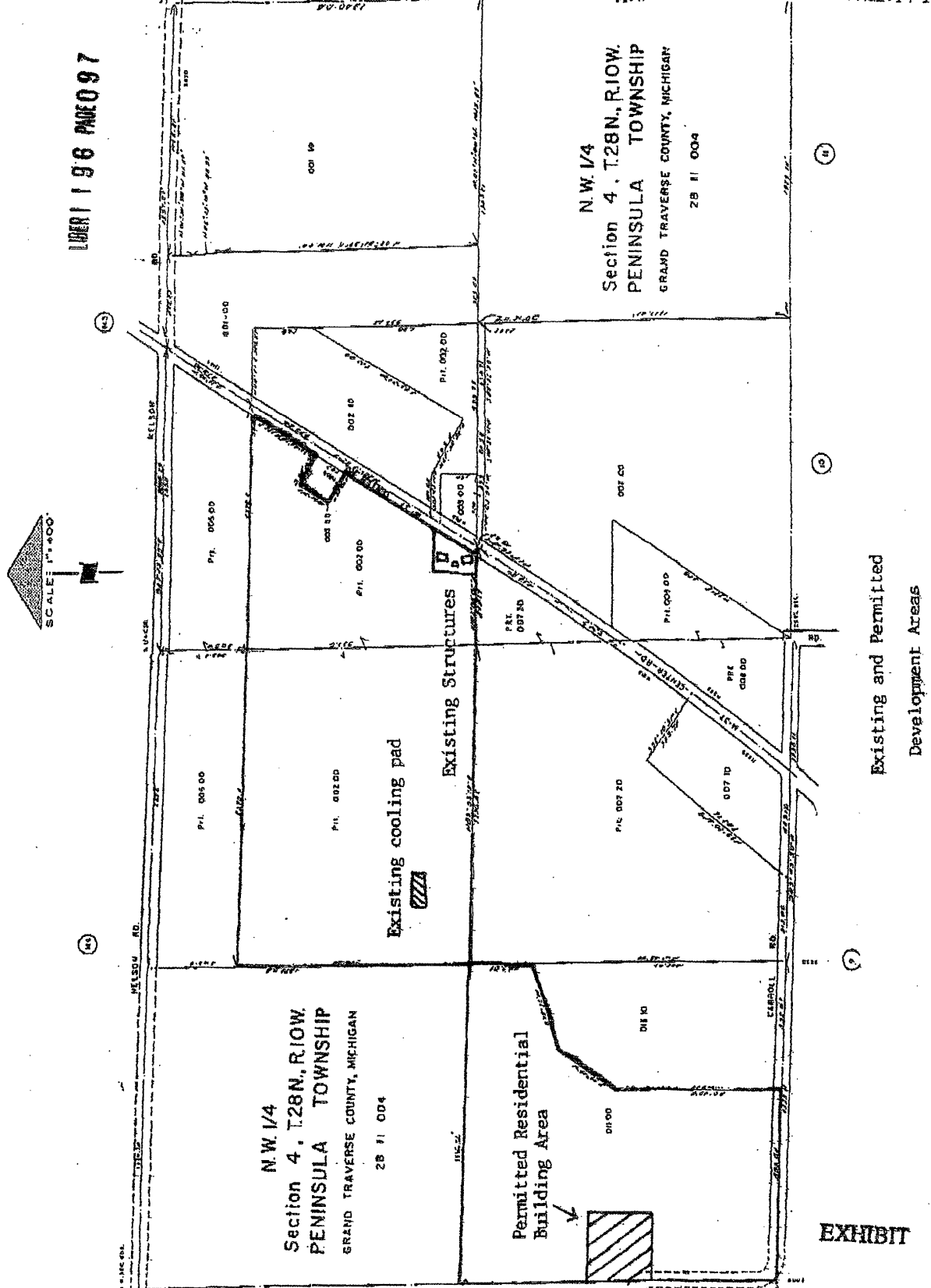
A LEGAL SUMMARY SETTING FORTH THE EASEMENT'S RESTRICTIONS INCLUDING:

- THE RETAINED RIGHTS OF THE PROPERTY
- THE RESTRICTIONS ON USE OF THE PROPERTY
- A COPY OF THE RECORD EASEMENT

DEC-13 04 16:59 FROM:RUNNING,WISE & FORD 231-946-0857

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Peninsula Township Planning & Zoning Department
 SUP #118 1st Amendment – Bonobo (Winery-Chateau)
 November 20, 2014

This SUP #118 1st Amendment is issued and entered into on November 20, 2014, by and between the Township of Peninsula and Oosterhouse Vineyards LLC, 7700 Peninsula Dr, Traverse City, Michigan, hereinafter referred to as the petitioners. This Special Use Permit is issued pursuant to the authority granted to the Peninsula Township Board of Commissioners by Article 8, of the 1972 Peninsula Township Zoning Ordinance, as amended, and P.A. 110 of 2006, the Michigan Zoning Enabling Act, as amended.

WHEREAS, an application for an amendment to Special Use Permit #118 (SUP #118 1st Amendment) has been filed by the petitioner to permit a site plan amendment upon an existing parcel located in Section 15, Peninsula Township (11-004-002-05, 11-004-010-03 & 11-004-010-04).

WHEREAS, after due notice as required by law, the Peninsula Township Planning Commission reviewed the application and recommended for approval to the Township Board on October 20, 2014,

WHEREAS, after due notice as required by law, the Peninsula Township Board held a public hearing and reviewed the application on November 20, 2014,

THEREFORE, BE IT RESOLVED, after consideration of the request, the following statement of conclusions specifying the basis for decision and conditions imposed and the Special Land Use document outlining standards of development and conditions were adopted by the Peninsula Township Board on November 20, 2014 permitting said operation:

1. Permitted Activity

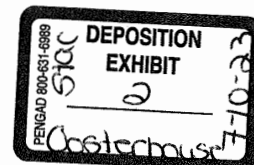
The petitioner is hereby permitted to amend a previously approved special use permit (#118 – Approved May 14, 2013) to reflect the changes in the footprint of the as built structure and impervious surfaces on site (11-004-002-05), as legally described, in Section 4, Peninsula Township in accordance with Article 6 and Article 8; specifically Section 8.7.3 (10) of the Peninsula Township Zoning Ordinance, as amended, and requirements put forth as part of the Special Land Use, including the final site plan and accompanying documents, as retained in the file of the Peninsula Township Planning & Zoning Department, located at the Peninsula Township Hall, 13235 Center Rd., Traverse City, Michigan.

2. General Findings of Fact

2.1 Property Description-

- a. The Board finds that the subject parcels are located in Section 4 of the Township and has approximately 787 feet of road frontage on Center Road.
- b. The Board finds the total acreage utilized for the Winery-Chateau site is measured at roughly 50.84 acres.

2.2 Action Request-



- a. The Board finds that the applicant is seeking site plan and special use amendment approval to continue to allow the construction of a Winery-Chateau structure. (Exhibit 3)
- b. The Board finds that the amendment to a final site plan and special use permit is subject to the requirements of Sections 8.1.3 Basis of Determination and 8.7.3 (10) Winery-Chateau of the Peninsula Township Zoning Ordinance. (Exhibit 2)

2.3 Zoning/Use-

- a. The Board finds that the proposed site is zoned A-1, Agricultural District encompassing three (3) parcels which are considered conforming to local zoning. (Exhibit 2)
- b. The Board finds that the Bonobo Winery was approved as a Winery-Chateau under SUP #118 in 2013. (Exhibit 4)
- c. The Board finds that the applicant is working with the local permitting agencies to obtain compliance for the amended site plan. (Exhibits 7, 8, 9, 10, 11, 12 & 13)

2.4 Land Use Pattern- The Board finds the following land uses to be in existence per the date of this report adjacent to the amended development.

- a. **North-** The land adjacent to the north of the subject properties is zoned A-1, Agriculture and is primarily utilized for ongoing agricultural production as well as single-family residential use.
- b. **South-** The properties adjacent to the south are zoned A-1, Agriculture and are primarily utilized for ongoing agricultural production. Additionally there is an adjacent single-family home to the south of the proposed winery which requires a two hundred (200) foot setback. The Winery structure is 201 feet from this residential structure at its closest point.
- c. **East-** Property to the east is zoned A-1 and is primarily single family residential housing uses.
- d. **West-** The property located west of the subject is also zoned A-1 and is host to both farmland and single family housing.
- e. The Board finds that the future land use plan, in regards to the subject property, suggest that the adjacent and surrounding land will continue to be considered as an agricultural preservation region of the Township.
- f. The Board finds that the applicant is subject to all local, state, and federal agencies, including but not limited to the Grand Traverse County Health Department, Soil Erosion, Construction Code and Michigan Liquor Control Commission.

- g. The Board finds that the proposed winery-chateau shall not utilize amplified sound measures in an effort towards minimizing sound generated from any outdoor event.
- h. The Board finds that any proposed lighting implemented onsite shall comply with the existing Ordinance found within section 7.14, added by Amendment 175A, Exterior Lighting Regulations.
- i. The Board finds that the proposed location for the winery-chateau is within an identified viewshed corridor. The Board also finds that according to the subject property's PDR easement, agricultural development of the land with structures in this area is allowed, more specifically, a winery-chateau is considered an acceptable agricultural use upon the land.
- j. The Board finds that parcel #s 28-11-004-010-03 and 28-11-004-010-04 are subject to a PDR conservation easement recorded in Liber 1182, Page 240. (Exhibit 5)
- k. The Board finds that parcel # 28-11-004-002-05 is subject to a PDR conservation easement recorded in Liber 1196, Page 085. (Exhibit 6)

3. Specific Findings of Fact – Section 8.1.3 (Basis for Determinations)

3.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. 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 board finds that the proposed winery-chateau is an agricultural use. This type of land use is specifically supported within the 2011 Master Plan as one of the goals in this district to encourage local growers to produce, process, and market agricultural products. All site design requirements are currently met. (Exhibit 1, 2, 3 & 4)

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

The Board finds that the operation of the vineyard and winery should not impact adjacent neighbors. The applicant has provided a vegetative buffer which provides screening for the neighbors adjacent to the new winery. The winery structure is outside of the required 200 foot buffer from existing residential structures. In addition further vegetative buffering has been placed between Center Road and the parking area in a manner which does not inhibit sight distance for vehicles pulling in and out of the winery off of M-37. (Exhibit 3)

- c. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

The Board finds that the proposed operation should not require additional essential facilities or services as onsite water and waste water treatment will be maintained onsite. (Exhibit 3)

- d. Not create excessive additional requirements at public cost for public facilities and services.

The Board finds that the applicant's request is not anticipated to require future essential facilities or additional public services. (Exhibit 3)

- e. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

The Board finds that the proposed use of the site shall not involve any uses or activities which produce negative impacts upon the existing neighborhood via fumes, glare, noise or odors. (Exhibit 3)

3.2 Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. The Board finds that the applicant has agreed to plant Maple or similar broad leaf species of a dwarf or a lower growing variety along M-37 as an additional buffer.
- b. The applicant shall pay a penalty fee as outlined in the fee structure.
- c. The site shall be in compliance with the Storm Water Control Ordinance as determined by the Township Engineer of Record.
- d. The Board finds that the shall be in compliance with Section 8.7.3 (10) (h) by 2015 as outlined in the Agricultural Land Use Map dated January 14, 2013 and confirmed by the township's planning and zoning staff.
- e. The parking lot lights shall be redesigned to reduce the light pollution impact on adjacent properties and shall include amber color lights as well as other mitigation controls.

3.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning Board and the Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.

The Board finds that the applicant is the owner/operator of the petitioned property and Winery-Chateau operation and may legally apply for said review process. (Exhibit 2, 3, 5 & 6)

- b. That all required information has been provided.

The Board finds that the applicant has provided the required information as portrayed within the special use permit application and upon the provided final site plans with the exception of the required storm water volume calculations. The applicant is currently working with the Planning & Zoning staff and the Township Engineer of Record to submit the final documents for review and approval (Exhibit 3).

The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

The Board finds that the applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance. (Exhibit 2 & 3)

The Board finds that the applicant is working to comply with the Storm Water Control Ordinance standards. Any final approval shall be contingent upon the applicant being in full compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record. (Exhibit 7)

- d. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

The Board finds that according to a letter dated March 13, 2013, the Michigan Department of Transportation states that the proposed location of access to the site is better suited on M-37 rather than from Nelson Road as site distance is improved off the State highway. (Exhibit 8)

The Board finds that because the access is off of Center Road, the Grand Traverse County Road Commission will not need to provide comment on the winery-chateau application.

The Board finds that at this time the Grand Traverse County Sheriff's Department has not commented on the issue.

The Board finds that Chief Rittenhouse has reviewed a copy of the site plan and application. In a letter dated October 13, 2014 Chief Rittenhouse states the plan is in compliance with Peninsula Township Fire Department regulations (Exhibit 9).

The Board finds that drain fields of this nature are reviewed by the Michigan Department of Environmental Quality. The MDEQ issued a Ground Water Discharge Permit on May 1, 2014 (Exhibit 10).

The Board finds that the Grand Traverse County Soil Erosion & Sedimentation Department issued a permit June 11, 2013 and extended that permit May 30, 2014. Peninsula Township Planning & Zoning staff is working to confirm that the current plans have been reviewed and approved by the Grand Traverse County Soil Erosion and Sedimentation Control office. (Exhibit 11)

The Board finds that a letter dated October 10, 2014 from Gourdie-Fraser requests additional storm water calculation data to ensure the onsite detention structures function adequately. (Exhibit 7)

The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

The Board finds that pursuant to a conversation on October 14, 2014 between the Director of Planning & Zoning, Michelle Reardon, and the Grand Traverse County Construction Code office the applicant has been working with Construction Code throughout the construction phase. A Certificate of Occupancy shall be obtained prior to the commencement of the Winery-Chateau use.

The Board finds that on July 25, 2014 the Grand Traverse County Health Department issued two (2) permits; septic and well in conjunction with this project (Exhibit 12).

The Board finds that the site plan conforms to all applicable zoning district regulations as outlined in the Winery-Chateau SUP #118 1st Amendment Land Use Permit (Exhibit 3 & 13).

- e. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

The Board finds that the applicant is in cooperation with all of the appropriate governmental entities to complete the project. No distinct negative challenges have been brought forth from any of the applicable government agencies. All appropriate permits shall be received by the Township prior to the commencement of the winery-chateau use.

- f. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

The Board finds that the applicant has removed the pre-existing orchard in only the areas necessary to allow for the permitted construction. Previously required trees and vegetative buffers have been installed and the applicant will be placing additional land into active agricultural production. (Exhibit 4)

The Board finds that a special use permit will not be issued until the property is in compliance with Section 8.7.3 (10) (h) as confirmed by the township's planning and zoning staff.

- g. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

The Board finds that there is no indication that any existing drains, floodways or flood plains exist on the site. (Exhibit 3 & 4)

- h. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

The Board finds that given the proposed operation, the special land use should not be detrimental to the existing soils found upon the land. (Exhibit 1, 3 & 4)

- i. That the proposed development will not cause soil erosion or sedimentation problems.

The Board finds that the Grand Traverse County Soil Erosion & Sedimentation Department issued a permit June 11, 2013 and extended that permit May 30, 2014. Peninsula Township Planning & Zoning staff is working to confirm that the current plans have been reviewed and approved by this office. (Exhibit 11)

- j. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

The Board finds that a letter dated October 10, 2014 from Gourdie-Fraser requests additional storm water calculation data to ensure the onsite detention structures function adequately. (Exhibit 7)

The Board finds that any final approval shall be contingent upon compliance with the Storm Water Control Ordinance as confirmed by the Township Engineer of Record.

- k. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

The Board finds that all proposed grading onsite shall be in compliance with the appropriate County Soil and Sedimentation office and the Township's Storm Water Control Ordinance prior to the commencement of the winery-chateau use. (Exhibit 3 & 4)

- l. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

The Board finds that that air drainage is not anticipated to be effected per the increased usage of the site. (Exhibit 3 & 4)

- m. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

The Board finds that the construction is ongoing and is to occur in one phase. (Exhibit 3 & 4)

- n. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

The Board finds that no additional services or facilities are needed or anticipated on or off site to accommodate the proposed additions to the winery. (Exhibit 3 & 4)

- o. That landscaping, fences or walls may be required by the Board in pursuance of the objectives of this Ordinance.

The Board finds that the adequate buffering and screening was indicated on the originally approved site plan which includes significant screening for the adjacent neighbor to the southeast and the planting of Maple or other broad leaf trees of a dwarf or lower growing variety along Center Road. This plan shall continue to be followed. (Exhibit 3 & 4)

- p. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

The Board finds that the site plan was developed to accommodate the anticipated usage of the site and the proposed amendments should not adversely affect the flow of traffic to or from the public roads. (Exhibit 3)

- q. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

The Board finds that infrastructure servicing onsite pedestrian traffic appears to be largely unchanged and should be adequate for the proposed site amendments. (Exhibit 3)

- r. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

The Board finds that all outdoor storage of refuse is proposed in the rear of the winery out of sight from the general public and screened in an appropriate manner. (Exhibit 4)

- s. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

The Board finds that the proposed usage and implementation of the site appears to be consistent with the requirements of the ordinance and is considered the highest and best utilization of the land (Exhibit 2, 3 & 4).

4. SECTION 8.7.3 (10) WINERY – CHATEAU REGULATIONS-

The Board finds that under Section 8.7.3 (10), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. It is the intent of this section to permit construction and use of a winery, guest rooms, and single family residences as a part of a single site subject to the provisions of this ordinance. The developed site must maintain the agricultural environment, be harmonious with the character of the surrounding land and uses, and shall not create undue traffic congestion, noise, or other conflict with the surrounding properties.

The Board finds that the proposed site plan indicates that the special use will take place upon a roughly fifty-one (51) acre site and essentially operate as several other existing wineries have within the agricultural district of the Township. (Exhibits 3 and 4)

- b. The use shall be subject to all requirements of Article VII, Section 8.5, Food Processing Plants in A-1 Districts and the contents of this subsection. Data specified in Section 8.5.2, Required Information, shall be submitted as a basis for judging the suitability of the proposed plan. Each of the principal uses shall be subject to the terms and conditions of this ordinance except as specifically set forth herein.

The Board finds that the applicant's request is in compliance with the requirements under section 8.5 and section 8.5.2. (Exhibit 2, 3 and 4)

- c. The minimum site shall be fifty (50) acres which shall be planned and developed as an integrated whole. All of the principal and accessory uses shall be set forth on the approved site plan.

The Board finds that the applicant's site encompasses a total of fifty-one (51) acres of land under common ownership and operation. (Exhibits 3 and 4)

- d. The principal use permitted upon the site shall be Winery, Guest Rooms, Manager's Residence, and Single Family Residences shall be allowed as support uses on the same property as the Winery. In addition to the principal and support uses, accessory uses for each such use shall be permitted provided, that all such accessory uses shall be no greater in extent than those reasonably necessary to serve the principal use.

The Board finds that it is the applicant's intent to maintain the proposed winery-chateau as the principal use onsite. The existing single family home located to the west of the proposed winery will accommodate the proposed onsite manager's residence. At this time the applicant is not proposing any new residential development or bed and breakfast operations. (Exhibits 3 and 4)

- e. For purpose of computation, the principal and each support use identified in sub-section (d) above shall be assigned and "area equivalent" as set forth herein. The total "area equivalent" assigned to the principal uses shall not exceed the actual area of the site.

Refer to the following assessment below.

- f. "Area equivalents" shall be calculated as follows:

Winery: five (5) acres or the actual area to be occupied by the winery including parking, whichever is greater;

The Board finds the area equivalent for the winery is 5 acres. (Exhibit 3 & 4)

Manager's Residence: five (5) acres;

The Board finds that the existing homestead is considered the manager's residence and measures five (5) acres in size. (Exhibit 3 & 4)

Single Family Residences: five (5);

The Board finds that no additional single family residences have been proposed at this time. (Exhibit 3 & 4)

Guest Rooms: five (5) acres for each 3 rooms, not to exceed a total of twelve (12) guest rooms;

The Board finds that the applicant is not proposing any guest rooms within the winery-chateau. (Exhibits 3 and 4)

- g. The number of single family residences shall not exceed six (6). The manager's residence shall not contain or be used for rental guest rooms. The number of guest rooms shall not exceed twelve (12).

The Board finds that the applicant is not applying to establish any additional residential units. (Exhibit 3 & 4)

- h. Not less than seventy-five percent (75%) of the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees.

The Board finds that per the previously approved site plan (dated approved by the Planning & Zoning Department on May 14, 2013) the applicant has roughly thirty (30) acres in active production. In addition to existing acreage the applicant has delineated where roughly eight (8) additional acres of crops will be planted in the future, thus providing roughly thirty-eight (38) acres of crops to supporting the operation wine production. The total site area is approximately fifty-one (51) acres, thus the total area utilized for agricultural production is roughly seventy-six (76%) percent. (Exhibits 3 and 4)

The Board finds that any final approval and commencement of use shall be contingent upon compliance with Section 8.7.3 (10) (h) as confirmed by the township's planning and zoning staff.

- i. The facility shall have at least two hundred feet (200') of frontage on a state or county road.

The applicant's site has roughly thirty-two hundred (3200') feet of frontage on Nelson Road and close to eight hundred (800') feet on Center Road. (Exhibits 3 and 4)

- j. The winery chateau shall be the principal building on the site and shall have an onsite resident manager.

The Board finds that the proposed winery will remain the principal building onsite and the onsite resident manager does and will remain within the existing homestead located upon the western portion of the property. (Exhibits 3 and 4)

- k. All guest rooms shall have floor areas greater than two hundred fifty (250) square feet. Maximum occupancy shall be limited to five (5) persons per unit. No time sharing shall be permitted.

The Board finds that the applicant is not proposing any guest rooms to support a bed and breakfast function. (Exhibits 3 and 4)

- l. No exterior lighting shall have a source of illumination or light lenses visible outside the property line of the site and shall in no way impair safe movement of traffic on any street or highway.

The Board finds that the all exterior lighting shall comply with the dark night sky portion of the Peninsula Township Zoning Ordinance.

The Board finds that Peninsula Township Planning & Zoning staff shall review and approve all exterior lighting fixtures prior to installation on site.

- m. Accessory uses such as facilities, meeting rooms, and food and beverage services shall be for registered guests only. These uses shall be located on the same site as the principal use to which they are accessory and are included on the approved Site Plan.

Facilities for accessory uses shall not be greater in size or number than those reasonably required for the use of registered guests.

The Board finds that all uses permitted onsite shall take place within the principal structure meetings and special dinners shall be allowed wherein the participants are not registered guests of the chateau-winery and such meetings and special dinners are for agricultural purposes/education only as permitted under the Peninsula Township Zoning Ordinance. (Exhibits 2, 3 and 4)

- n. Well and septic system- Proof of evaluation of the well and septic system by the Health Department and conformance to that agency's requirements shall be supplied by the owner.

The Board finds that on July 25, 2014 the Grand Traverse County Health Department issued two (2) permits; septic and well in conjunction with this project (Exhibit 12).

- o. Fire safety-

- I. All transient lodging facilities shall conform to the Michigan State Construction Code section regulating fire safety.
- II. An onsite water supply shall be available and meet the uniform published standards of the Peninsula Township Fire Department.
- III. A floor plan drawn to an architectural scale of not less the 1/8" = 1 foot shall be on file with the Fire Department.
- IV. Each operator of a transient lodging facility shall keep a guest registry which shall be available for inspection by the Zoning Administrator and police and fire officials at any time.
- V. Master keys for all rooms shall be available at all times.

The Board finds that this standard does not apply to the applicant's winery-chateau. (Exhibit 3 & 4)

- p. Fencing or Planting Buffer- In the event that the Board determines that noise generation may be disturbing to the neighbors or that the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Board may require that fencing or a planting buffer be constructed and maintained.

The Board finds that the proposed landscaping efforts throughout the southeastern portion of the approximately fifty-one (51) acre site as indicated upon the previously approved final site plan provides sufficient screening for the new winery-chateau to the extent where it mitigates the impact to adjacent neighbors. In addition, the applicant will provide further vegetative screening and buffer between the parking area and M-37 up to the extent where it does not impede sight distance for vehicles pulling in and out of the winery-chateau. Finally, the applicant shall plant Maple or similar broad-leaved deciduous trees along M-37 of a dwarf or

low growing variety. The trees planted along M-37 shall not exceed thirty feet (30') in height at maturity.

- q. Rental of Equipment- Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment in conjunction with the operation of the establishment shall be prohibited.

The Board finds that rental of equipment has not been proposed by the applicant.

- r. Activities and Outdoor Gatherings- Activities made available to registered guests shall be on the site used for the facility or on lands under the direct control of the operator either by ownership or lease. Outdoor activities shall be permitted if conducted at such hours, and in such manner, as to not be disruptive to neighboring properties.

The Board finds that this standard is not applicable to the applicant's winery-chateau.

- s. Signs shall be in accordance with Section 7.2.2 (4) which governs signs in the A-1 Agricultural District.

The Board finds that there are no additional signs proposed as part of this amendment. (Exhibit 3)

- t. A two hundred foot (200') setback shall be maintained between guest accommodations and facilities and agricultural crops, unless it is demonstrated that a lesser setback can be maintained which will provide for an equal level of protection from agricultural activities to residents, visitors and guests of the Winery-Chateau. Upon such demonstration, the Board may permit a lesser setback.

The Board finds that the proposed winery-chateau has illustrated that their structure is within forty (40') feet from the agricultural crops onsite. This standard has been discussed in the past and is typical within winery operations; therefore, the Board considers the proposed setback to be adequate to protect visitors and guest of the winery. Additionally, the Board finds that the proposed location of the winery is outside of the required two hundred (200') foot setback from a residence. (Exhibits 3 and 4)

- u. Guest Activities Uses- The Board may approve Guest Activity Uses (Activities by persons who may or may not be registered guests) as an additional Support Use, subject to the following: (Subsection 1-8)

The Board finds that the applicant is not currently applying for guest activity uses but shall be subject to the aforementioned requirements. The applicant shall be required to request approval by the Board for those uses as an additional support use as part of a future application.

4. SITE PLAN EVALUATION

- 1. The Board finds that regarding Layout: As indicated upon the final site plan, the existing structural features of the property are in compliance with all of the necessary setbacks required upon a parcel zoned A-1. (Exhibit 1 & 3)

2. The Board finds that regarding Vehicular Circulation: All access to and from the site has been reviewed by the MDOT and should be adequate for future usage of the site for a winery-chateau. (Exhibit 8)
3. The Board finds that regarding Parking: Parking regulations are established and enforced under section 7.6.3, Parking Space Requirements of the Ordinance. Within the existing requirements the applicant is required to provide one (1) parking space per one hundred-fifty (150) square feet of structure, referring to the tasting room, and one (1) parking space for those working at the facility. Currently, the site requires thirty-three (33) parking spaces for guests and maximum of six (6) for the employees. Three (3) bus parking spots have also been provided and it is staff's opinion that there is adequate parking area upon the existing site development to support the minimum requirements of both the Ordinance and the SUP #118. (Exhibit 14)
4. The Board finds that regarding Pedestrian Circulation: The applicant has provided a concrete pedestrian access area from the existing parking area to both the tasting room and employee parking area. Future circulation onsite should not be hindered per the proposed site development or usage. (Exhibit 4)
5. The Board finds that Street Lighting is not applicable.
6. The Board finds that regarding Landscaping, Open Space & Buffering: The parcels under consideration for the proposed development currently host several areas where mature vegetation exists via existing cherry orchard. The previously approved site plan illustrates a proposed landscape plan which should adequately provide screening for those surrounding residential land uses. (Exhibit 3 and 4)

5. COMPLIANCE WITH GOVERNMENTAL REGULATIONS-

The petitioner shall comply with all State, County, Township and other governmental regulations relative to the establishment for a parcel zoning A-1, Agricultural, with the above permitted use(s) on site, which includes meeting the requirements of the Michigan Department of Transportation (MDOT), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing Special Land Use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

6. CONDITIONS AND SAFEGUARDS-

Compliance with approved site plan as signed by the Peninsula Township Director of Planning & Zoning, verifying compliance with the 1972 Peninsula Township Zoning Ordinance, and the information requested and conditions of approval as recommended by the Planning Commission and the Peninsula Township Board.

The petitioner shall maintain in compliance with the following conditions put forth in the approval of the Special Land Use or be subject to Section 6 below:

Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. The applicant shall pay a penalty fee as outlined in the fee structure.

- b. The site shall be in compliance with the Storm Water Control Ordinance as determined by the Township Engineer of Record.
- c. The Board finds that the shall be in compliance with Section 8.7.3 (10) (h) by 2015 as outlined in the Agricultural Land Use Map dated January 14, 2013 and confirmed by the township's planning and zoning staff.
- d. The parking lot lights shall be redesigned to reduce the light pollution impact on adjacent properties and shall include amber color lights as well as other mitigation controls.

7. COMMENCEMENT AND COMPLETION OF SPECIAL LAND USE-

The commencement and completion of Special Land Uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the Special Land Use and accompanying Site Plan are enforceable and remedies available under Section 3.2 of the Zoning Ordinance.

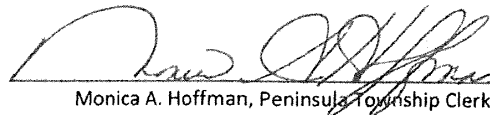
8. EFFECTIVE DATE OF SPECIAL LAND USE-

The Special Land Use shall be effective when the application has been approved by the Peninsula Township Board. The Board approves by a vote of:

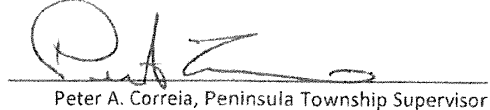
AYES	6
NAYS	0
ABSTAINING	0
ABSENT	1

The undersigned hereby certifies that she is the Clerk for the Township of Peninsula, Grand Traverse County, Michigan and that the foregoing Special Use Permit was approved by the Peninsula Township Board on November 20, 2014.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.



Monica A. Hoffman, Peninsula Township Clerk

Approved by the Peninsula Township Board on November 20, 2014.


Peter A. Correia, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF.

I hereby acknowledge that I have received a true copy of the Special Land Use and I have been informed of said requirements of this Special Land Use Permit and of the requirements of the Peninsula Township Zoning Ordinance pertaining to the operation of the approved Interpretive Center.


Todd Oosterhouse
Oosterhouse Vineyards LLC

PENINSULA TOWNSHIP
CHATEAU CHANTAL ADDITION 2010
SPECIAL USE PERMIT 114 - SUPPLEMENTS SUP No. 95

WHEREAS: Application having been made by Chateau Operations LTD, 15900 Rue de Vin, Traverse City MI 49686 for a Special Use Permit and Site Plan approval for the use of the premises that includes an addition of 9,835 square feet to the existing cellar and 1,784 square feet to the existing tasting room along with a 2,730 square foot area adjacent to the tasting room located outside on the roof of the cellar expansion to be used for seasonal wine tasting; and

WHEREAS: Due notice having been given and public hearings having been held on said Application, and the Township Board having determined that the requested Site Plan and Special Use Permit are appropriate, in the best interest of the township, and meet the specific and special standards set forth in the Zoning Ordinance as required by Public act 184 of 1943, as amended; and

WHEREAS; The Township Board having determined that certain conditions upon the use of the premises are necessary to protect the health, safety and welfare of Township residents, to uphold the spirit and purpose of the Zoning Ordinance, and to insure that the development is harmonious and appropriate;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

The Peninsula Township Board does hereby approve the Site Plan for the use of the above-referenced property subject to the requirements set forth below.

A. GENERAL CONDITIONS

All of the provisions of Special Use Permit No 95 which was approved by the Township Board on December 14, 2004 shall remain except as modified by: a) the building addition for expanded winery processing area; b) the revised drive access; and c) the addition to the tasting room. None of the revisions change the uses from the previously approved Special Use Permit 95.

The following conditions apply to each portion of the described development:

1. Site Plan

The Applicant's Site Plan dated 12/07/2009 signed by the Township Supervisor(as the

Peninsula Township Planning & Zoning Department
13235 Center Road
Traverse City, MI 49686

SPECIAL USE PERMIT
PLANNING COMMISSION RECOMMENDS APPROVAL
SUP #114, Chateau Chantal
October 20, 2014

Motion to Recommend Approval of SUP #114 (1st Amendment)-

Motion by Serocki, seconded by Couture, to recommend approval of the petition SUP #114 (1st Amendment), application for the proposed changes to the Winery-Chateau principal site and final site plan, located in Section 29 of Peninsula Township, and as legally described, based on the following reasoning, subject to accompanying conditions:

Reasoning:

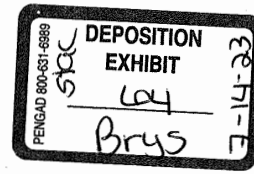
1. The proposed site plan is in compliance with the required information contained within Section 8.1.3 Basis for Determination.
2. The proposed use is in compliance with the requirements of General Standards and Specific Requirements of Section 8.7.3 (10) Winery Chateau.
3. The proposed use appears to be consistent with the goals and objectives of the Master Plan and in compliance with the existing future land use map.
4. Any additional reasoning as put forth by the Board.

Conditions:

1. Compliance with the rules and regulations of Grand Traverse County Soil Erosion & Sedimentation Department, Grand Traverse County Health Department and any other agencies associated with the development of the property for such purpose prior to issuance of this Special Use Permit.
2. If future guest activity uses are to be applied upon the property, then the applicant must submit annual grape production and purchase numbers to the Township's staff for review.
3. Township Board to allow for the reduction of the 200 foot separation between guest accommodations and agricultural corps on the southeast side of the existing B&B and the proposed vineyard as allowed by Section 8.7.3 (10) (t).

Motion passed 5-1 (Maguire dissent related to the solar panels – not harmonious with existing character and no information supplied related to the need for the size and scope of the solar installation.

Peninsula Township Planning
13235 Center Road
Traverse City, MI 49686



**SPECIAL USE PERMIT AMMENDMENT
& FINDINGS OF FACT
SUP #115 1st Amendment, Brys (Winery-Chateau)
April 10th, 2012**

This Special Land Use is issued and entered into on April 10, 2012, by and between the Township of Peninsula and Walter & Eileen Brys, 3309 Blue Water Road, Traverse City, Michigan, hereinafter referred to as the petitioners. This Special Land Use is issued pursuant to the authority granted to the Peninsula Township Board of Commissioners by Article 8, of the 1972 Peninsula Township Zoning Ordinance, as amended, and P.A. 110 of 2006, the Michigan Zoning Enabling Act, as amended.

WHEREAS, an application for a Special Land Use has been filed by Walter & Eileen Brys, to establish a new Winery-Chateau located upon an existing parcel located in Section 27, Peninsula Township (11-127-016-01, 11-127-002-00, 11-127-016-02).

WHEREAS, after due notice as required by law, the Peninsula Township Planning Commission held a public hearing on March 19, 2012 and

WHEREAS, the Peninsula Township Planning Commission reviewed and recommended approval with conditions on March 19, 2012 considering same,

THEREFORE, BE IT RESOLVED, after consideration of the request, the following statement of conclusions specifying the basis for decision and conditions imposed and the Special Land Use document outlining standards of development and conditions were adopted by the Peninsula Township Board on April 10, 2012 permitting said operation:

1. Permitted Activity

The petitioner is hereby permitted to establish a Winery-Chateau located upon existing parcels (11-127-016-01, 11-127-002-00, 11-127-016-02), as legally described, in Section 27, Peninsula Township in accordance with Article 6 and Article 8; specifically Section 8.7.3 (10) of the Peninsula Township Zoning Ordinance, as amended, and requirements put forth as part of the Special Land Use, including the final site plan and accompanying documents, as retained in the file of the Peninsula Township Planning Department, located at the Peninsula Township Hall, 13235 Center Rd., Traverse City, Michigan.

2. General and Specific Finding of Fact - Section 8.1.3 (Basis for Determinations)

2.1 General Standards- The Board shall review each application for the purpose of determining that each proposed use meets the following standards, and in addition, shall find adequate evidence that each use on the proposed location will:

- a. 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 Board finds that the attached final site plan and proposed development is similar to other existing wineries and site designs throughout the region. The proposed structural additions should

blend well within the surrounding neighborhood and maintain the rural character of this portion of the Township.

- b. Not be hazardous or disturbing to existing or future uses in the same general vicinity and will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
The Board finds that historically the operation of the petitioned winery has not produced negative complaints to date regarding their production operation or services to the general public. The proposed addition to the existing outdoor patio area could increase the potential for noise generated by guests visiting the property.

The Board finds that the winery's positive track record, its physical locations for expansion, and screening efforts should maintain adequate protection of the health, safety, and welfare of the surrounding properties.

- a. Be served adequately by essential facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities, or schools.

The Board finds that current operation areas should not require additional essential facilities or services and is working with all local permitting agencies to achieve compliance.

- b. Not create excessive additional requirements at public cost for public facilities and services.

The Board finds that the applicant's request should not require excessive future essential facilities or additional public services. The winery operation is not introducing any new uses on site which would trigger additional infrastructure, public services, or public costs.

- c. Not involve use, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by fumes, glare or odors.

The Board finds that the proposed use of the site should not involve any uses or activities which produce negative impacts upon the existing neighborhood via fume glare, noise or odors.

2.2 Conditions and Safeguards- The Commission may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

- a. Staff would recommend discussing hours of operation for the outside patio deck and any additional conditions or safeguards as developed by the Board.
- b. If future activity uses are to be applied upon the property, then the applicant must submit annual grape production and purchase number to the Township's staff for review including parking accommodations for increased onsite traffic generation.

2.3 Specific Requirements- In reviewing an impact assessment and site plan, the Planning commission and the Board shall consider the following standards:

- a. That the applicant may legally apply for site plan review.

The applicant is the owner/operator of the petitioned property and Winery-Chateau operation and my legally apply for said review process.

- b. That all required information has been provided.

The applicant has provided all the required information as portrayed within the special use permit application and upon the provided final site plans.

- c. That the proposed development conforms to all regulations of the zoning district in which it is located.

The applicant's proposal meets all of the lot coverage, signage, landscaping and size requirements of the ordinance.

- c. That the plan meets the requirements of Peninsula Township for fire and police protection, water supply, sewage disposal or treatment, storm drainage and other public facilities and services.

Grand Traverse County Road Commission- Because site access is off of the Blue Water Rd. right-of-way, and has been legally created as of 2004, it is not anticipated that the Road commission will need to review the project.

Grand Traverse County Sheriff's Department-Per an email received on March 16, 2012, the Sheriff's Department is supportive of the proposal and will work with the applicant to amend their MLCC permit post review by the Township Board.

Peninsula Township Fire Department- In a letter dated March 21, 2012, the Fire Chief indicated that the department had no objections with the proposed project; however, the potential future usage of the deck area would be subject to final review of the County construction Code Office for accessibility.

Grand Traverse County Construction Code Office- An email dated March 13, 2012, from the Construction Code Office indicated that the structure may have to receive a change of use, or add additional uses per their review process. Additional review requested that an occupant load should be determined for the outdoor patio to determine the number of exits necessary for said improvement.

Grand Traverse County Health Department- The existing onsite water and septic systems have previously been approved by the Health Department. After a brief conversation with their staff, it is not anticipated that additional facilities will need to be implemented onsite to accommodate the proposed expansion.

Grand Traverse County Drain Commissioner- In a letter dated March 16, 2012, the Drain Commissioner's office reports that they do not anticipate any development of the site that would cause

soil erosion, sedimentation or storm water runoff to adjacent properties. Additionally, the project is considered commercial construction and will require a soil erosion permit through their office.

- d. That the plan meets the standards of other governmental agencies where applicable, and that the approval of these agencies has been obtained or is assured.

At this time it appears as if the applicant is in cooperation with all of the appropriate governmental entities to complete the project. All final permits must be received by the Township prior to any construction taking place onsite.

- e. That natural resources will be preserved to a maximum feasible extent, and that areas to be left undisturbed during construction shall be so located on the site plan and at the site per se.

As indicated upon the provided site plan, the applicant will comply with local permitting agencies, in this case the Grand Traverse County Soil Erosion Department, to ensure that all soil erosion efforts will be maintained onsite and not affect neighboring properties.

- f. That the proposed development property respects flood ways and flood plains on or in the vicinity of the subject property.

There is no indication that any existing drains, floodways or flood plains exist on the site.

- g. That the soil conditions are suitable for excavation and site preparation, and that organic, wet or other soils which are not suitable for development will either be undisturbed or modified in an acceptable manner.

The proposed use should not be detrimental to the existing soils found upon the land.

-
- h. That the proposed development will not cause soil erosion or sedimentation problems.

Further improvement to the land should obtain any necessary soil erosion permits through the Grand Traverse County Drain commission prior to construction efforts.

- L. That the drainage plan for the proposed development is adequate to handle anticipated storm-water runoff, and will not cause undue runoff onto neighboring property or overloading of water courses in the area.

All drainage from the new construction should be contained upon the subject parcel and must be reviewed and approved by the Grand Traverse County Drain Commissioner.

- j. That grading or filling will not destroy the character of the property or the surrounding area, and will not adversely affect the adjacent or neighboring properties.

Any drainage measures implemented onsite will need approval from the Grand Traverse County Drain Commissioner prior to implementation.

- k. That structures, landscaping, landfills or other land uses will not disrupt air drainage systems necessary for agricultural uses.

Given the location of both the existing structure and the proposed additions, the applicant's engineer has stated that air drainage should not be impacted.

- l. That phases of development are in a logical sequence, so that any one phase will not depend upon a subsequent phase for adequate access, public utility service, drainage or erosion control.

The proposed schedule of construction efforts has been illustrated upon the final site plan. The applicant anticipates construction in May of 2012 with the intention of finalizing the project in time for the fall of 2012's harvest season.

- m. That the plan provides for the proper expansion of existing facilities such as public streets, drainage systems and water sewage facilities.

At this time, no additional services or facilities are needed or anticipated on or off site to accommodate the proposed additions to the winery.

- n. That landscaping, fences or walls may be required by the Township Board in pursuance of the objectives of this Ordinance.

Again, given the existing mature forest lands separating the Winery-Chateau operation from those surrounding neighbors, additional landscaping should not be necessary.

- o. That parking layout will not adversely affect the flow of traffic within the site, or to and from the adjacent streets.

The current site plan was developed to accommodate the anticipated usage of the site and the proposed additions should not adversely affect the flow of traffic to or from the public roads.

- p. That vehicular and pedestrian traffic within the site, and in relation to streets and sidewalks serving the site, shall be safe and convenient.

At this time, staff has not received any complaints from the public concerning the applicant's existing winery operation. Infrastructure servicing onsite pedestrian traffic appears to be functioning well and should be adequate for the proposed site redesign.

- q. That outdoor storage of garbage and refuse is contained, screened from view and located so as not to be a nuisance to the subject property or neighboring properties.

The applicant has illustrated outdoor refuse storage located upon the northern paved drive. This placement should be appropriate for screening purposes as the dense forest to the west and physical location of the winery to the south should block the receptacle from view of both the adjacent neighbors and general public.

- r. That the proposed site is in accord with the spirit and purpose of this ordinance and not inconsistent with, or contrary to, the objectives sought to be accomplished by this Ordinance and the principles of sound planning.

The proposed usage of the site appears to be consistent with the requirements of the ordinance and is supported with the objectives of the 2011 Master Plan.

3. SECTION 8.7.3 (10) (WINERY -CHATEAU) REGULATIONS-

The Board finds that under Section 8.7.3 (10), the presented site plan and special use permit request meets the conditions associated with said provision as explained within the following:

- a. It is the intent of this section to permit construction and use of a winery, guest rooms, and single family residences as a part of a single site subject to the provisions of this ordinance. The developed site must maintain the agricultural environment, be hannonious with the character of the surrounding land and uses, and shall not create undue traffic congestion, noise, or other conflict with the surrounding properties.

The proposed site plan indicates that the special use will take place upon roughly seventy-five (75) acres of land and will operate as it has since the winery's inception in 2005.

- b. The use shall be subject to all requirements of Article VII, Section 8.5, Food Processing Plants in A-1 Districts and the contents of this subsection. Data specified in Section 8.5.2, Required Information, shall be submitted as a basis for judging the suitability of the proposed plan. Each of the principal uses shall be subject to the terms and conditions of this ordinance except as specifically set forth herein.

The applicant's request is in compliance with the requirements under Section 8.5 and Section 8.5.2.

- c. The minimum site shall be fifty (50) acres which shall be planned and developed as an integrated whole. All of the principal and accessory uses shall be set forth on the approved site plan.

The applicant's site encompasses a total of fifty-nine (59) acres of land under operation which serves as the primary area supporting the winery through grape production. The site is comprised of a combination of vineyard, open areas for air drainage, and navigational lanes for agricultural equipment.

- d. The principal use permitted upon the site shall be Winery, Guest Rooms, Manager's Residence, and Single Family Residences shall be allowed as support uses on the same property as the Winery. In addition to the principal and support uses, accessory uses for each such use shall be permitted provided, that all such accessory uses shall be no greater in extent than those reasonably necessary to serve the principal use.

The applicant's first amendment to their SUP is a proposal to construct physical additions to the principal structure, the Winery-Chateau. Said construction is a means to expand the processing facility for additional production capacity and outdoor space for those visiting the winery.

- e. For purpose of computation, the principal and each support use identified in sub-section (d) above shall be assigned and "area equivalent" as set forth herein. The total "area equivalent" assigned to the principal uses shall not exceed the actual area of the site.

Refer to the following assessment below.

- f. "Area equivalents" shall be calculated as follows:

Winery: five (5) acres or the actual area to be occupied by the winery including parking, whichever is greater;

Manager's Residence: five (5) acres;

The existing homestead of the applicant is considered the manager's residence and measures five (5) acres in size.

Single Family Residences; five (5);

No additional single family residences have been proposed at this time.

Guest Rooms: five (5) acres for each 3 rooms, not to exceed a total of twelve (12) guest rooms;

The applicant is permitted to host a maximum of two (2) guest rooms given the proposed location.

- g. The number of single family residences shall not exceed six (6). The manager's residence shall not contain or be used for rental guest rooms. The number of guest rooms shall not exceed twelve (12).

At this time the applicant is not permitted to establish any new residential units.

- h. Not less than seventy-five percent (75%) of the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees.

Per the attached site plan the applicant currently has roughly forty-four (44.89) acres of vineyard in active production. Again, the total site area is approximately fifty-nine (59) acres, thus the total area utilized for agricultural production is roughly seventy-six percent (76%).

- i. The facility shall have at least two hundred feet (200') of frontage on a state or county road.

The applicant's site has roughly twenty-five hundred feet (2,500') of frontage on Blue Water Rd.

- j. The winery chateau shall be the principal building on the site and shall have an onsite resident manager.

The existing winery will remain the principal building onsite. The resident manager does and will remain within the existing homestead located upon the southwest portion of the property.

- k. All guest rooms shall have floor areas greater than two hundred fifty (250) square feet. Maximum occupancy shall be limited to five (5) persons per unit. No time sharing shall be permitted.

The applicant's existing guest house quarters is permitted two (2) guest rooms of which are in compliance with the ordinance concerning size and layout.

1. No exterior lighting shall have a source of illumination or light lenses visible outside the property line of the site and shall in no way impair safe movement of traffic on any street or highway.

Per the current land use permit, and illustrated on the amended final site plan, the applicant is in compliance with the ordinance and is not permitted any additional lighting.

- m. Accessory uses such as facilities, meeting rooms, and food and beverage services shall be for registered guests only. These uses shall be located on the same site as the principal use to which they are accessory and are included on the approved Site Plan. Facilities for accessory uses shall not be greater in size or number than those reasonably required for the use of registered guests.

All uses permitted shall take place onsite within both the principal structure and its surrounding vineyard areas.

- n. Well and septic system- Proof of evaluation of the well and septic system by the Health Department and conformance to that agency's requirements shall be supplied by the owner.

All necessary permits have been pulled and are in compliance with the appropriate regulating bodies for the existing operation.

- o. Fire safety-

- I. All transient lodging facilities shall conform to the Michigan State Construction Code section regulating fire safety.

- II. An onsite water supply shall be available and meet the uniform published standards of the Peninsula Township Fire Department.

-
- III. A floor plan drawn to an architectural scale of not less the 1/8": 1 foot shall be on file with the Fire Department.

- N. Each operator of a transient lodging facility shall keep a guest registry which shall be available for inspection by the Zoning Administrator and police and fire officials at any time.

- V. Master keys for all rooms shall be available at all times.

- p. Fencing or Planting Buffer- In the event that the Township Board determines that noise generation may be disturbing to the neighbors or that the establishment is in an area where trespass onto adjacent properties is likely to occur, then the Township Board may require that fencing or a planting buffer be constructed and maintained.

At this time staff does not anticipate the need for any new plantings or vegetative buffering. The physical usage of the principal structure should not alter form that existing under the current special land use permit which continues to operate in compliance with the Ordinance.

- q. Rental of Equipment- Rental of snowmobiles, ATVs or similar vehicles, boats and other marine equipment in conjunction with the operation of the establishment shall be prohibited.

Rental of equipment is not permitted onsite.

- r. Activities and Outdoor Gatherings- Activities made available to registered guests shall be on the site used for the facility or on lands under the direct control of the operator either by ownership or lease. Outdoor activities shall be permitted if conducted at such hours, and in such manner, as to not be disruptive to neighboring properties.

Activities or outdoor gatherings shall take place after the normal operating hours of the Winery-Chateau operation and are required to conclude said activities or gatherings no later than 9:30 pm per Section 8.7.3 (10) (u) S (b),

- s. Signs shall be in accordance with Section 7.2.2 (4) which governs signs in the A-1 Agricultural District.

All existing signs are in compliance with the guidelines of the ordinance.

- t. A two hundred foot (200') setback shall be maintained between guest accommodations and facilities and agricultural crops, unless it is demonstrated that a lesser setback can be maintained which will provide for an equal level of protection from agricultural activities to residents, visitors and guests of the Winery-Chateau. Upon such demonstration, the Township Board may permit a lesser setback.

Approval of the existing SUP #115 demonstrated that the original winery structure's setback of one hundred and two feet (102') from the adjacent property has maintained sufficient protection of those residents, visitors, and guests of the Winery-Chateau. Again, the Township has not received any complaints regarding the existing winery operation at its current setback and location. The proposed addition to the structure, specifically upon the western side, would reduce this setback for one hundred and two feet (102') to eighty feet (80'). Staff does not anticipate any negative impact to neighboring parcels as this area is to house processing equipment and wine production storage tanks.

- u. Guest Activities Uses- The Township Board may approve Guest Activity Uses (Activities by persons who may or may not be registered guests) as an additional Support Use, subject to the following:

- I. The current Winery-Chateau section of the ordinance required seventy-five percent (75%) of the site to be used for the active production of crops that can be used for wine production such as fruit growing on vines or trees, but does not require that any of the wine produced on the site be made from wine fruit grown on Old Mission Peninsula. To assure that, in addition to the minimum parcel size required for a Winery-Chateau, there is additional fann land in wine fruit production in Peninsula Township if Guest Activity Uses are allowed to takeplace at a Winery-Chateau facility.

At this time the applicant owns and operates their vineyard upon roughly seventy-five (75) acres within the Township. Currently, no additional land is under lease within the Peninsula for purposes of purchasing grapes other than those produced on lands under ownership of applicant.

II. Guest Activity Uses are intended to help in the promotion of Peninsula agriculture by:

- i. Identifying "Peninsula Produced" food or beverage for consumption by the attendees.
- ii. Providing "Peninsula Agriculture" promotional brochures, maps and awards.
- m. Including tours through the winery and/or other Peninsula agriculture locations.

The applicant is prepared to continue promoting Peninsula based agriculture throughout their operations. Furthermore, the applicant will be limited to conduction those uses allowed under section 8.7.3 (10) (u) 2 via wine and food seminars, meetings of non-profit groups and meeting of agriculturally related groups.

If the applicant wishes to utilize guest activity uses, said uses should be conducted at a time after those established normal hours of operation. Section 8.7.3 (10) (u) 5 (b) requires all guest activity uses be concluded no later than 9:30 pm.

4. COMPLIANCE WITH GOVERNMENTAL REGULATIONS-

The petitioner shall comply with all State, County, Township and other governmental regulations relative to the establishment for a parcel zoning A-1, Agricultural, with the above permitted use(s) on site, which includes meeting the requirements of the Michigan Department of Transportation (MOOT), the Grand Traverse County Drain Commissioner (GTCDC), the Grand Traverse County Road Commission (GTCRC), and the Grand Traverse County Health Department (GTCHD). Zoning compliance is based on the governing Special Land Use document, approved site plan, and Articles 6 and 8 of the Peninsula Township Zoning Ordinance.

5. CONDITIONS AND SAFEGUARDS-

Compliance with approved site plan as signed by the Peninsula Township Planner, verifying compliance with the 1972 Peninsula Township Zoning Ordinance, and the information requested and conditions of approval as recommended by the Planning Commission and the Peninsula Township Board.

The petitioner shall maintain in compliance with the following conditions put forth in the approval of the Special Land Use or be subject to Section 6 below:

Conditions and Safeguards- the Board may suggest such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of the Ordinance will be observed. The breach of any condition, safeguard or requirement shall automatically invalidate the permit granted.

1. Compliance with the rules and regulations of Grand Traverse County Road Commission, Grand Traverse County Drain Commission, Grand Traverse County Health Department and any other agencies associated with the development of the property for such purpose.

2. If future guest activity uses are to be applied upon the property, then the applicant must submit annual grape production and purchase numbers to the Township's staff for review.

6. COMMENCEMENT AND COMPLETION OF SPECIAL LAND USE-

The commencement and completion of Special Land Uses are governed by Section 8.1.2(5) of the Peninsula Township Zoning Ordinance. Violations of the Special Land Use and accompanying Site Plan are enforceable and remedies available under Section 4.2 of the Zoning Ordinance.

7. EFFECTIVE DATE OF SPECIAL LAND USE-

The Special Land Use shall be effective when the application has been approved by the Peninsula Township Board. The Board approves by a vote of:

AYES	<u>0</u>
NAYS	<u>0</u>
ABSTAINING	<u>0</u>
ABSENT	<u>1</u>

The undersigned hereby certifies that she is the Clerk for the Township of Peninsula, Grand Traverse County, Michigan and that the foregoing Special Use Permit was approved by the Peninsula Township Board on April 10, 2012.

The undersigned further certifies that a quorum was present at said meeting and that said meeting complied with all applicable laws and regulations.

Monica A Hoffman, Peninsula Township Clerk

Approved by the Peninsula Township Board on April 10, 2012.

Robert K. Manigold, Peninsula Township Supervisor

THIS PERMIT SHALL BE ATTACHED TO THE SITE PLAN AND BECOME A PART THEREOF

I hereby acknowledge that I have received a true copy of the Special Land Use and I have been informed of said requirements of this Special Land Use Permit and of the requirements of the Peninsula Township Zoning Ordinance pertaining to the operation of the approved Winery-Chateau.

Walter Brys

Eileen Brys