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February 10, 2021

Park Township  
Board of Trustees  
c/o Mr. Howard Fink, Township Manager  
52 S. 152nd Avenue  
Holland, Michigan 49424

**Re: Reserve on Lake Macatawa Marina**

Honorable Chairman and Members of the Board of Trustees:

This Firm represents Covenant Five, LLC (“Covenant”), the Developer of The Reserve on Lake Macatawa condominium project, and I am writing to you today on its behalf.

I have become aware of that some members of the public have sent correspondence to the Township objecting to the pending installation of boat docks at the Reserve on Lake Macatawa. These objections appear to be based on both: (a) a misunderstanding of the Township's role in the marina design and permitting process; and (b) a misunderstanding of conditions of approval set forth in the Reserve on Lake Macatawa PUD approvals. This letter is prepared to eliminate both of those misunderstandings.

**1. Township Regulatory Authority and Developer's Voluntary Compliance.**

First, as the Township was advised by its legal counsel during the PUD application process, it is well-settled law that the Township does not have jurisdiction to regulate the number or the design of boat docks and piers on Lake Macatawa. This is because local governmental regulation of such matters is preempted by federal and state laws, rules and regulations, including the federal Rivers and Harbors Act of 1899, 33 USC § 403, and Part 301 of the state Natural Resources and Environmental Protection Act, 1994 PA 451. Under these statutes, concurrent jurisdiction over the design and installation of boat docks and piers on Lake Macatawa is shared by the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) and the Federal Government acting through the U.S. Army Corps of Engineers (“USACE”).

“A state statute preempts regulation by an inferior government when the local regulation directly conflicts with the statute or when the statute completely occupies the regulatory field.” *USA Cash # 1, Inc. v. City of Saginaw*, 285 Mich App 262, 267 (2009). And, any municipal regulation or ordinance that purports to prohibit what a state statute permits is void. See *Ter Beek v. City of Wyoming*, 297 Mich App 446, 453 (2012)(citing *Walsh v City of River Rouge*, 385 Mich

623 (1971). As a result, any limitations imposed by the Township on the number or the design of boat docks and piers on Lake Macatawa is void and unenforceable.

I point out the relevant law of which the Township was previously advised by its own legal counsel solely to demonstrate that, notwithstanding Covenant's cognizance of the fact that any limitations imposed by the PUD on the number or design of boat slips and dock is unlawful, Covenant has nevertheless voluntarily elected to abide strictly by the wishes of the Township Board during the PUD approval process and the conditions – whether legally binding on Covenant or not – imposed by the Board during that process.

## **2. Specific Design Standards.**

Turning to a discussion of the specific conditions of approval imposed by the Board relative to the design of the boat docks and boat slips, the PUD conditions of approval stipulate that the Developer:

1. "will not seek to obtain approval to construct more than three (3) new boat docks; and
2. "will not [construct] more than (24) boat slips regardless of the number of docks permitted."

I will address these two items in turn:

The first design constraint imposed by the Conditions of Approval was that the Developer: "will not seek to obtain approval to construct more than three (3) new boat docks." In fact, the Developer has submitted a preliminary design that proposes only two (2) new boat docks, rather than the three (3) new boat docks contemplated by the PUD approval. Therefore, the Developer's current proposal incorporates 33% fewer docks than are permitted by the conditions of approval. There is clearly no violation of this point.

The second design constraint imposed by the Conditions of Approval was that the Developer "will not [construct] more than (24) boat slips regardless of the number of docks permitted." The Developer has submitted a preliminary design that proposes twenty-four (24) new boat slips consistent with the PUD approval. Therefore, the Developer's current proposal incorporates the same number of boat slips that are permitted by the conditions of approval. There is also clearly no violation of this point.

Some members of the public have erroneously suggested that because the *boat slips* themselves are all uniform in length at 30', this is a violation of the PUD conditions of approval which impose certain limitations on the *boat sizes* permitted by the PUD conditions of approval.

This is objectively false since the conditions of approval purport to regulate *boat sizes*, not *boat slip sizes*.<sup>1</sup>

Notably, the conditions of approval were at one point drafted to require boat slips of varying sizes, but this was changed after discussions with the Township during the PUD approval process, because it was acknowledged that it would be extremely difficult to construct custom boat slips of certain sizes. Accordingly, the suggestion that boat slips of varying sizes are somehow required by the PUD approvals is revisionist history borne out of an ignorance of facts by certain members of the public.

Some members of the public have also suggested that the "temporary tie-ups" shown on Covenant's preliminary plan, which – to be clear – are simply cleats on the ends of the boat docks for temporary boat moorage for visitors and or for co-owners picking up and dropping off passengers and the like, are somehow a violation of the PUD. This is objectively false.

Covenant never indicated that there would not be cleats at various places on the docks for temporary mooring of boats and such cleats are not prohibited by the PUD conditions of approval. Perhaps more importantly, however, the cleats proposed to be installed are simply not "boat slips." Unlike the 24 *actual* boat slips in the project these temporary tie-ups: (i) are not surrounded by finger piers; (ii) are not serviced by power or water, (iii) are not available for sale or lease, and (iv) are not for permanent moorage. Accordingly, they are not "boat slips" – either in common vernacular or within the meaning of the PUD approvals. There simply is nothing in the PUD where the Township stipulated that such temporary tie-ups are prohibited. As such, it is impossible that any violation *could* exist, because there is no restriction against temporary moorings in the PUD approvals to be violated.

Nevertheless, it is clear that the concept of including these temporary tie-ups as a part of the marina project has caused great angst amongst the public and, although they may be a benefit to the Association, its guests and other residents of the Township, they are not strictly necessary. As a show of good faith, the Developer has removed them from the final plans submitted (or to be submitted) to EGLE.

In conclusion, notwithstanding the fact that many of the stipulations imposed by the Board relative to the design of boat slips and docks are preempted by state and federal law, Covenant has voluntarily complied, in spirit and in letter, with the conditions of approval set forth in the PUD and any indication otherwise by the public is simply erroneous. Covenant has even gone beyond the requirements of the PUD to remove the proposed temporary tie-ups which, again, are not prohibited by the PUD approvals as a further showing of good faith.

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<sup>1</sup> Although as a legal matter the Township cannot regulate, via local zoning, the sizes of boats on Lake Macatawa any more than the Township can regulate, via local zoning, the sizes of trucks on the interstate, the Developer intends to voluntarily comply with these restrictions.

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Covenant looks forward to continuing its longstanding cooperative relationship with the Township to make Park Township the best it can be for all of its present, and future, residents.

Very truly yours,

**VARNUM**

A handwritten signature in blue ink, appearing to read "David T. Caldon", with a long horizontal line extending to the right.

David T. Caldon

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