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CLIENT/MATTER NUMBER  
121248-0108

August 27, 2020

Mayor Aaron Stephens  
East Lansing City Council Members  
410 Abbot Road, Room 100  
East Lansing, MI 48823

**Re: Requested Removal of Age-based Housing Restrictions for  
Newman Lofts**

Dear Council Members,

Please be advised that HB BM East Lansing LLC (“HB BM”) has retained Foley & Lardner LLP with regard to the ongoing dispute with the City Council of East Lansing (“East Lansing” or the “City Council”) regarding the Active Adult restriction applied to HB BM’s Newman Lofts development (“Newman Lofts”).

HB BM participated in the East Lansing Center City District Master Development Agreement (“MDA”) – the largest single investment in East Lansing’s storied history – with every intent to honor the Active Adult restriction for Newman Lofts. Consistent with this intent, HB BM has undertaken and continues to take extensive advertising, outreach, and other efforts to market the Newman Lofts to members of the Active Adult (i.e., 55+) community. Prior to the unprecedented outbreak of the Coronavirus pandemic, Harbor Bay found success in leasing roughly twenty percent of its 91 Active Adult-restricted units.

Since the outbreak, East Lansing – in particular the downtown area surrounding Newman Lofts – has gained national attention and notoriety as the site of rampant community spread of COVID-19. For example, after City Council passed Ordinance 1486 permitting Open-Air Dining Areas in East Lansing, Harper’s Restaurant became the source of over 170 cases of Coronavirus between June 12 and June 22. *See COVID-19 Cases Linked to Harper’s Restaurant and Brewpub Hit 170*, WILX NEWS 10, July 6, 2020, <https://www.wilx.com/2020/07/06/covid-19-cases-linked-to-harpers-restaurant-and-brewpub-hit-170-cases/>. This tragedy – and the crisis in East Lansing of which it is emblematic – made national news. *See, e.g., Kimiko de Freytas-Tamura, Dionne Searcey and Jack Healy, All Eyes on Bars as Virus Surges and Americans Go Drinking*, THE NEW YORK TIMES, July 3, 2020, <https://www.nytimes.com/2020/07/02/us/coronavirus-bars.html>. ***The entrance to Harper’s Restaurant is directly across from Newman Lofts.***

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The catastrophe at Harper's Restaurant is indicative of City Council's negligence in controlling the Coronavirus outbreak through its careless execution of "Open-Air Dining Areas." See *East Lansing City Council Approves New Measures to Support Economic Recovery Efforts for Restaurants*, EAST LANSING, MI, June 10, 2020, <https://www.cityofeastlansing.com/CivicAlerts.aspx?AID=1179>. City Council did not adequately communicate this action to the businesses along Albert Avenue. Neither HB BM, nor its commercial tenants, received written or verbal notice as to the time, nature, and details of the Open-Air Dining Area along Albert Avenue. There were no signs or communications advising or requiring patrons in the Open-Air Dining Area to social distance, wear masks, or engage in other conduct known to reduce the spread of Coronavirus. Significant crowds formed within the Open-Air Dining Area, particularly at night, with no oversight, policing, or regulation by the City of East Lansing. Witnesses, photographs, and video footage depict patrons forming long lines at establishments without social distancing, patrons playing "beer pong" on tables, and passersby drinking out of partially consumed alcoholic beverages – all within City Council's Open-Air Dining Area.

City Council's poor execution of the "Open-Air Dining Area" left businesses along Albert Avenue, including but by no means limited to Newman Lofts, in a vulnerable state. City Council made Downtown East Lansing a public health risk. The aftermath of City Council's negligence cannot be understated. Businesses along Albert Avenue, including many of HB BM's commercial tenants, shuttered. Consumer activity in Downtown East Lansing is paralyzed. For example, HB BM's commercial tenants suffered a ninety percent (90%) drop in revenue. As a result, HB BM has offered rent deferral and abatement to its commercial tenants in order to help them survive and continue to serve the East Lansing community – at substantial cost to HB BM.

To make matters worse, Michigan State University ("MSU") will not hold in-person classes, sporting events, or other community activities for the Fall 2020 semester. These events are the main impetus for many, especially those in the Active Adult demographic, to move to Downtown East Lansing. And just last week, MSU's President told students to stay home for the Fall semester and encouraged students and employees to stay away from East Lansing, as "[w]e're seeing on our campus . . . that a few mistakes by some are having large impacts on many." Samuel L. Stanley, Jr., *Fall Semester Plans Change*, August 18, 2020, [https://president.msu.edu/communications/messages-statements/2020\\_community\\_letters/2020-08-18-plans-change.html](https://president.msu.edu/communications/messages-statements/2020_community_letters/2020-08-18-plans-change.html). If MSU believes East Lansing is unsafe for young adults (a comparatively low-risk group), how can the City demand compliance with a rental restriction that endangers highly vulnerable populations? In light of East Lansing's infamy as a Coronavirus hotspot, the City's predominant institution warning people to stay away to avoid risks to vulnerable populations, and City Council's unreasonable insistence on the Active Adult restriction shackling Newman Lofts, HB BM faces the untenable choice between economic survival and the health of its prospective tenants.

The Coronavirus pandemic has thus frustrated the purpose of the Active Adult restriction placed on Newman Lofts and rendered it commercial impracticable. Members of the Active Adult community are not relocating, let alone to East Lansing. To the extent people are moving during the pandemic, it is often to reduce their risk of contracting Coronavirus. Twenty-eight percent (28%) of



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U.S. adults who moved due to Coronavirus did so to reduce their risk of exposure – the single most prevalent reason for relocating during the pandemic. The remaining seventy-two percent (72%) moved due to the closure of a college campus, to be closer to family, or for financial reasons. See D’Vera Cohn, *About a Fifth of U.S. Adults Moved Due to COVID-19 or Know Someone Who Did*, PEW RESEARCH CENTER, July 6, 2020, <https://www.pewresearch.org/fact-tank/2020/07/06/about-a-fifth-of-u-s-adults-moved-due-to-covid-19-or-know-someone-who-did/>. Given the scale of the pandemic in East Lansing and the national attention it has received, East Lansing is one of the last places to which Active Adults would move.

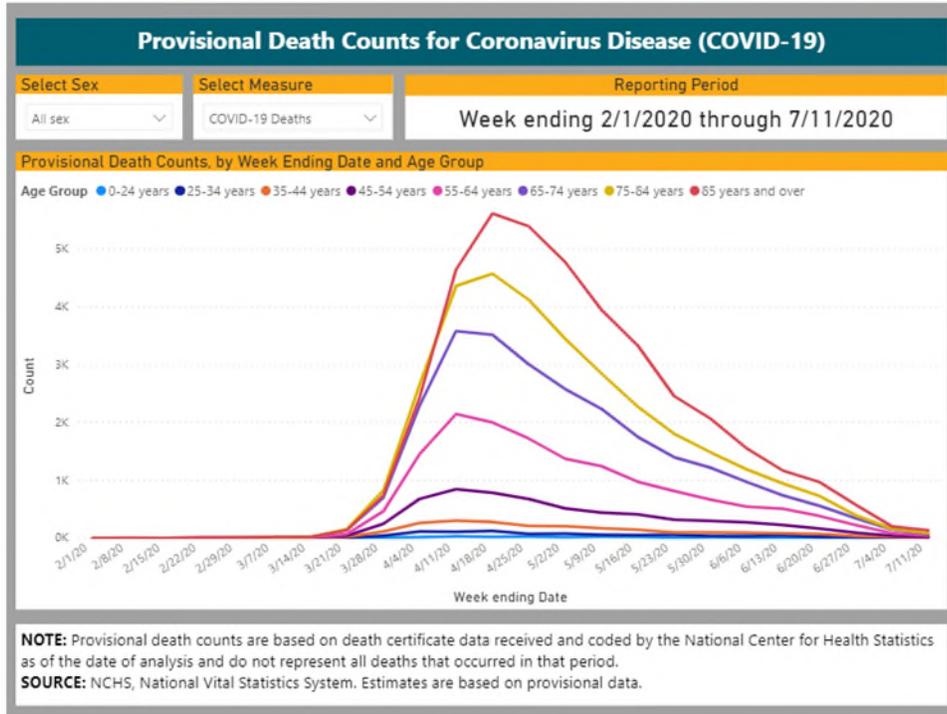
There are no indications that this grim outlook will change. Since the pandemic struck Michigan in March 2020, resulting in the on-campus closure of MSU, HB BM has only been able to lease four (4) units despite its earnest efforts. Currently, a majority of Newman Lofts remains empty, with an occupancy rate of 27.5% or sixty-six (66) vacant units. The sole cause of this devastation to Newman Lofts is the Coronavirus pandemic and the unique threat it poses to the Active Adult community.

The Coronavirus pandemic was completely unforeseeable – an event the non-occurrence of which was a basic assumption of the MDA and its Active Adult restriction. It was not within the control of HB BM, the City Council, or any third party. The pandemic did not merely disrupt existing market conditions or HB BM’s financial situation – it completely undermined the ability for an Active Adult-restricted development to safely operate. HB BM’s ability to maintain Newman Lofts as an Active Adult community has been rendered impracticable due to the extreme and unreasonable difficulty, expense, injury, and loss it would cause to HB BM. It is a difference not of degree, but kind.

Moreover, and more importantly, even *if* HB BM could somehow lease to the 55+ demographic and operate Newman Lofts as an Active Adult community, this would pose heightened risks to this community. Taken together, persons aged 55 years or older face the highest incidence of death from COVID-19:

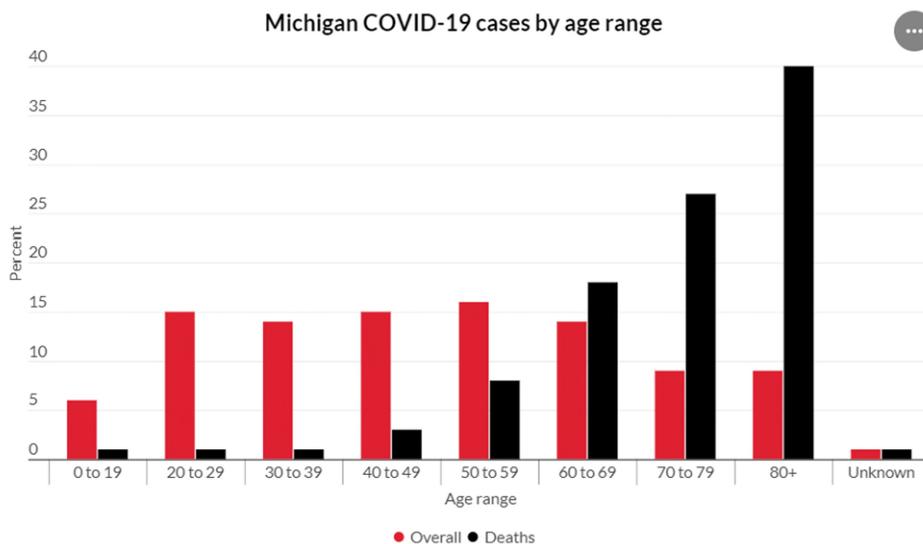
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COVID-19 Provisional Death Counts, Centers for Disease Control and Prevention, [https://www.cdc.gov/nchs/nvss/vsrr/covid\\_weekly/index.htm#AgeAndSex](https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#AgeAndSex) (last visited July 16, 2020).

Within Michigan, persons 50 years of age or older account for 48% of COVID-19 cases, but 94% of COVID-related deaths:



Michigan COVID-19 Cases by Age Range, Michigan COVID-19 Data Dashboard, <https://infogram.com/michigan-covid-19-data-dashboard-1hdw2jr0gpyd6l0> (last visited July 31, 2020).

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Active Adult communities around the country are grappling with the acute dangers the Coronavirus presents to the safety, wellbeing, and lives of their members. *See, e.g.,* Rebecca Woolington and Bethany Barnes, *In the Villages, America's biggest retirement oasis, the dangers of coronavirus stack up*, TAMPA BAY TIMES, April 4, 2020, <https://www.tampabay.com/special-reports/2020/04/04/in-the-villages-americas-biggest-retirement-oasis-the-dangers-of-coronavirus-stack-up/>; Tim Mullaney, *Senior Living Providers Fear Hardest Weeks of COVID-19 Lie Ahead*, SENIOR HOUSING NEWS, May 18, 2020, <https://seniorhousingnews.com/2020/05/18/senior-living-providers-fear-hardest-weeks-of-covid-19-lie-ahead/>. If the City Council insists on applying the Active Adult restriction, and HB BM could somehow find Active Adults willing to live in the Newman Lofts, this would create an immense danger to the very demographic the City Council seeks to accommodate. HB BM is not willing to act as an accessory to the willful endangerment of the Active Adult community.

Despite mounting health and financial challenges due to Coronavirus, HB BM continues its efforts to help the East Lansing community. HB BM has extended financial relief in the form of rent deferral and abatement to its suffering commercial tenants, such as Foster Coffee, Barrio, and Jolly Pumpkin. Most recently, HB BM commissioned an inspirational mural by award-winning muralist Lauren Asta. *See Traveling Muralist Lauren Asta to Begin Center City Mural this Week*, CITY OF EAST LANSING, July 6, 2020, <https://www.cityofeastlansing.com/CivicAlerts.aspx?AID=1202>. HB BM is fighting for the survival of East Lansing's downtown business community, but the financial losses caused by the Active Adult restriction will hamstring its efforts if City Council fails to act.

Moreover, COVID-19 making Newman Lofts unfeasible has broader serious financial implications. Vacant residential units in the downtown have a dramatic negative effect on downtown businesses for a number of reasons. First, there will be less consumer activity. Second, vacant residential units in the downtown area will result in a direct loss of revenue to the City of East Lansing, by means of reduced income and sales tax. Third, if relief is not given to HB BM, it will have no choice but to pursue its legal rights in protesting the real estate taxes assigned to Newman Lofts (Newman Lofts is currently fully assessed as if it were 95% occupied), thus resulting in a significant revenue shortfall to the City of East Lansing.

HB BM has brought its worsening plight and the dangers created by the Active Adult restriction to the City Council's attention on numerous occasions. On April 1, 2020 and April 16, 2020, letters were sent to former Mayor Beier to begin developing a feasible solution. Yet East Lansing continues to insist that HB BM do the infeasible – lease only to the Active Adult community – and thereby place members of a vulnerable demographic in harm's way. As previously discussed, converting Newman Lofts to affordable housing or condominiums will not provide sufficient property tax revenue to support the public infrastructure improvements accompanying the project. If the City Council will not engage in good faith efforts to resolve this impasse by removing the age-based housing restriction by September 30, 2020, HB BM will resort to appropriate legal action.



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The foregoing demand is made without waiving or limiting any right or remedy, and HB BM expressly reserves the right to exercise any and all such rights and remedies. I look forward to your prompt response through you or your counsel to these urgent matters.

Sincerely,

A handwritten signature in black ink that reads "Vanessa L. Miller".

Vanessa L. Miller

cc: Thomas Yeadon (via electronic mail)  
Jessy Gregg, Mayor Pro Tem (via electronic mail)  
George Lahanas (via electronic mail)  
Thomas Fehrenbach (via electronic mail)  
Mark Bell (via electronic mail)  
Steve Willobee (via electronic mail)