UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

GOTION, INC.,	Case No. 1:24-cv-00275
Plaintiff,	HON. JANE M. BECKERING
v. GREEN CHARTER TOWNSHIP, a Michigan charter township,	HON. PHILLIP J. GREEN
Defendant.	

JOINT STATUS REPORT

Plaintiff Gotion, Inc. ("Gotion") and Green Charter Township ("Township") through their respective counsel file this joint status report in response to an order from Magistrate Judge Green dated September 23, 2024 (ECF No. 85) to discuss any remaining discovery issues following a meet and confer on the Township's Motion to Compel Discovery (ECF No. 60).

The parties met and conferred on the subject matter of the above motion twice on September 27, 2024 (in-person and via video conference) for roughly 1.5-2 hours and briefly on September 30, 2024 (telephone) for about 10 minutes and were able to successfully narrow most discovery issues. The narrowed discovery issues identified in the Township's Motion to Compel Discovery (ECF No. 60) and corresponding brief in support (ECF No. 61) are summarized below.

1. <u>Supplemental Searches:</u> For the Township's Requests for Production of Documents (ECF No. 61-2, PageID.623-31) generally, Gotion is performing further searches of applicable individual e-mails and other communications (e.g., text messages) in response to the Township's concerns related to prior search methods (e.g., only two

Gotion employees searching e-mails, texts, and SharePoint Files; (ECF No. 66, PageID.699)).

- Requests for Production Resolution and Narrowing: The parties were further able
 to resolve matters with respect to various requests for production and requests to
 continue depositions in ECF No. 61 as identified below.
 - a. <u>RFP #1</u> Gotion will supplement production after an additional search, if necessary.¹
 - <u>RFP #2</u> Gotion will supplement production after an additional search, if necessary.
 - c. <u>RFP #3</u> Gotion will review links previously sent to the Township for "Chats with Chuck" that the Township was not able to access. Gotion will review with its public relations firm (Truscott Rossman) to determine if any recordings of past "Chats with Chuck" are available to produce to the Township.
 - d. <u>RFP #6</u> The parties agreed to narrow this request to allow Gotion to provide to the Township all permits related to the clearing, grading, and filling of the Gotion project ("Project") property as well as communications associated with such permits.
 - e. <u>RFP #7</u> The parties agreed to narrow this request to allow Gotion to provide to the Township the most recent construction phasing and permitting schedule of the Project.

¹ For Requests for Production that indicate Gotion will supplement production after an additional search, the parties acknowledge that if an adequate additional search results in no unprivileged and responsive documents, that Gotion has no obligation to provide additional documents other than an updated privilege log, if necessary.

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- f. RFP #8 The parties agreed to narrow this request to limit the definition of "communications" to include only those communications with the entities identified in subparagraphs a-e that pertain to Project timelines, deadlines, milestones, and any notice or allegations of Gotion's failure to comply with the agreements, with the understanding that Gotion will provide the Township such responsive, unprivileged documents.
- g. <u>RFP #9</u> Gotion will supplement production after an additional search, if necessary. Gotion has indicated that it believes no organizational chart requested by the Township exists.
- h. <u>RFP #10</u> Gotion will supplement production after an additional search, if necessary.
- <u>RFP #11</u> Gotion will supplement production after an additional search, if necessary.
- <u>RFP #12</u> Gotion will supplement production after an additional search, if necessary.
- k. <u>RFP #13</u> Gotion will supplement production after an additional search, if necessary.
- RFP #14 Gotion will supplement production after an additional search, if necessary.
- m. <u>RFP #15</u> Like RFP #8, the parties agreed to narrow this request to limit the definition of "communications" to include only "those communications with the entities identified in the request that relate to Project timelines, deadlines, milestones, and any notice or allegations of Gotion's failure to comply with the

- agreements," with the understanding that Gotion will provide the Township such responsive, unprivileged documents.
- n. <u>RFP #16</u> Gotion will supplement production after an additional search, if necessary; however, Gotion has indicated that all responsive documents in this category have already been produced.
- o. <u>RFP #17</u> Gotion will supplement production after an additional search, if necessary; however, Gotion has indicated that all responsive documents in this category have already been produced.
- p. RFP #18 Gotion will supplement production, including with a document previously withheld due to confidential and/or proprietary information.
- q. Continued Deposition of James Chapman Gotion takes no position on the continued deposition of James Chapman and leaves the decision to the Court's discretion. The parties have submitted a joint stipulation and proposed order to this Court agreeing to a stay of proceedings while the Township's appeal related to this Court's entry of a preliminary injunction against the Township is pending before the Sixth Circuit (*see* ECF No. 91). If that stipulation is granted and if Mr. Chapman's continued deposition is allowed, the parties are stipulating to this deposition occurring following the Sixth Circuit order or mandate, or the lifting of the stay.
- r. <u>Continued Deposition of Charles Thelen</u> The parties agree that the Township will forego the continued deposition of Charles Thelen assuming Gotion produces the non-disclosure agreement that served as his basis to refuse to answer certain questions during his deposition.

s. <u>Deposition of Chen Li</u> – Consistent with the Court's order in ECF No. 85, the parties agree to allow the Township to conduct the deposition of Mr. Li per the Court's order. As part of the aforementioned joint stipulation and proposed order to this Court agreeing to a stay as requested by the Township in ECF No. 54, the parties are stipulating to this deposition occurring (if authorized by the Court) within 30 days of the Sixth Circuit order or mandate, or the lifting of the stay.

I. TOWNSHIP'S POSITION²

Counsel for the Township appreciates Gotion's willingness to attempt to resolve many of the discovery issues identified in its Motion to Compel and corresponding brief in support (ECF Nos. 60-61). However, there are still some areas where the parties do not agree, and the Township desires some consideration by the Court for assistance. For simplicity, these remaining topics of disagreement are listed below.

1. **Preserved Objections.** Gotion desires to preserve boilerplate objections in its Responses to the Township's Requests for Production (ECF No. 61-4, PageID.638-647). Township's counsel recalls express guidance from the Court with respect to boilerplate objections (e.g., when Gotion is still producing, but notes it is objecting to the request for relevance or indicating it will only provide non-privileged or not confidential documents). The Township respectfully requests any preserved boilerplate objections to Requests for Production where Gotion is still producing to be considered waived consistent with the analysis in *Nelson* (ECF No. 61-8, PageID.676-677).

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² Gotion does not join in the following section of this Joint Status Report.

- 2. RFP #4. The Township offered to limit the scope of RFP #4 to: "Please produce all plans, schematics, drawings, depictions, renderings, or any other similar document regarding the development of the project, whether in draft or final form and whether submitted to a public body or not." This was intended to remove ambiguity as to reference of "any other document regarding the development of the Project," which could be interpreted to mean anything related to the Project. The Township relies on its abbreviated analysis as to relevance and proportionality in its brief in support of its Motion to Compel (ECF No. 61, PageID.614, 616). The Township is further prepared to address orally why Gotion should be required to produce such documents, but briefly wants to state that any Project alternative designs (which could be successfully implemented despite the Township's alleged breaches of a development agreement) would be relevant as to Gotion's requested relief of a permanent injunction (irreparable harm and adequacy of legal remedies).
- 3. **RFP #5.** The Township offered to limit the scope of RFP #5 to something similar as "Please produce all ecological, environmental, feasibility, or economic studies, reports, analyses, and evaluations regarding the Project or the Project Site" to narrow the request from potentially being broad enough to require every study or report to be provided to the Township. The Township relies on its abbreviated analysis as to relevance and proportionality in its brief in support of its Motion to Compel (ECF No. 61, PageID.614, 616). The Township is further prepared to address orally why Gotion should be required to produce such documents, but briefly wants to state that if certain ecological or environmental studies indicate Gotion needs additional permissions to construct (or can't construct) the Project as proposed that would be relevant as to

Gotion's requested relief of a permanent injunction (irreparable harm and adequacy of legal remedies) and whether the Township materially breached the development agreement at-issue in this case by its actions.

- 4. Purchase Agreements. The Township has requested purchase agreements between Gotion and individual landowners for the Project to be produced as part of RFP #18 (ECF No. 61-2, PageID.631) as the agreements are evidence of Gotion's expenditures on the Project. It understands that the purchase agreements will be produced by Gotion.
- 5. OA System. The Township would respectfully request the Court address Gotion's OA System on October 7, 2024 with the parties. Gotion, as part of a supplemental production of documents on September 20, 2024, added an item on its privilege log (No. 36) indicating that it has withheld "OA workflow" related to the development agreement and other project agreements with comments shared between in-house counsel and Gotion on the various agreements. However, it is unclear if Gotion's OA System is solely related to in-house counsel providing comments on documents and Gotion's corporate representative has indicated that it "tracks all sorts of business transactions" (ECF No. 66, PageID.730-732). To ensure a complete production, the Township would request that this system be searched for documents responsive to requests that are not subject to privilege and an in-camera review of the responsive documents is performed by the Court if Gotion maintains all documents on the OA System are privileged.
- 6. **Continuation of Chapman Deposition:** Gotion has indicated no position on continuing James Chapman's deposition as requested by the Township. The Township plans to address why it would like to continue Mr. Chapman's deposition before the

Court and notes the text of Federal Rule of Civil Procedure 30(d)(1), which states "[t]he court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination."

II. GOTION'S POSITION³

- 1. **Preserved Objections.** Gotion believes it has a right to preserve its objections, as the Township has done in its responses, particularly given that the Township has agreed to limit the scope of its requests in response to several of Gotion's objections.
- 2. RFP #4. Gotion appreciates the Township's willingness to narrow the scope of this request. However, Gotion maintains that the scope of this narrowed request as it relates to "all" project plans, schematics, drawings, depictions, renderings, or any other similar document regarding the development of the project is overly broad and unduly burdensome given the scope of this case and is also irrelevant to the claims or defenses. (See ECF No. 77, Gotion's Resp. to Mot. to Compel.) Specifically, while alternative water designs could be relevant to the relief Gotion is seeking, alternative project plans have no bearing on Gotion's requested relief, which relates only to requiring the Township to abide by the Development Agreement and reinstating its approval of the previously approved water plans.
- 3. **RFP #5.** Gotion appreciates the Township's willingness to narrow the scope of this request. However, Gotion maintains that the scope of this narrowed request as it relates

³ The Township does not join in the following section of this Joint Status Report. Moreover, the Township respectfully reserves its right to review any produced privilege log by Gotion with respect to its production and to challenge any improper assertions of privilege or request in-camera reviews of produced documents for privilege.

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to "all" ecological, environmental, feasibility, or economic studies, reports, analyses, and evaluations regarding the project is overly broad and unduly burdensome given the scope of this case and is also irrelevant to the claims or defenses. (*See* ECF No. 77, Gotion's Resp. to Mot. to Compel.) Specifically, what additional permissions Gotion may or may not need has no bearing on whether the Township materially breached the agreement, and, as Judge Beckering already ruled, whether Gotion can or does "construct[] the Project is irrelevant to its breach-of-contract claim and concomitantly irrelevant to the alleged injury for which Gotion seeks preliminary injunctive relief." (*See* ECF No. 22, Op. & Or., PageID.353.)

4. **OA System.** The printout of the OA system that was included on Gotion's privilege log is privileged because it consists of comments shared between in-house counsel and Gotion on the various agreements in the system. Gotion has already produced all documents in the OA system responsive to requests that are not subject to privilege.

APPROVED AS TO FORM; NOTICE OF ENTRY WAIVED BY:

<u>/s/ Ashley G. Chrysler (with permission)</u>

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