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Attorneys for Plaintiff

**IN THE FOURTH JUDICIAL DISTRICT COURT
WASATCH COUNTY, STATE OF UTAH**

**MUSTANG DEVELOPMENT, LLC, a
Utah limited liability company,**

Plaintiff,

v.

**TOWN OF HIDEOUT, a Utah
municipality,**

Defendant.

COMPLAINT

Tier 3

Civil No.

Judge

Plaintiff Mustang Development, LLC, hereby submits the following Complaint against the Town of Hideout, a Utah municipality, as follows:

PARTIES, JURISDICTION, AND VENUE

1. Mustang Development, LLC (“Mustang”) is a Utah limited liability company, with its principal place of business in Summit County, Utah.

2. The Town of Hideout (“Town”) is a Utah municipality. The Town is located in Wasatch County, Utah.

3. Jurisdiction is proper in this Court pursuant to UTAH CODE § 78A-5-102.

4. Venue is proper in this Court pursuant to UTAH CODE §§ 78B-3-304 and 78B-3-307.

5. Under the Utah Rules of Civil Procedure, Plaintiff files this Complaint as a Tier 3 Complaint because the economic impact of the actions giving rise to action exceeds \$300,000.

FACTUAL BACKGROUND

6. Mustang is a real estate development company with extensive experience developing residential and commercial property. For more than twenty years, Mustang has been centrally involved in the development of property on the east side of the Jordanelle Reservoir, in what is now incorporated as the Town.

7. The Town was incorporated as a municipality of the State of Utah in 2008.

8. In March 2010, Mustang and the Town entered into a formal development agreement, titled “Master Development Agreement for the Hideout Canyon Master Planned Community,” and referred to herein as the MDA. The MDA replaced and superseded previous development agreements between Mustang and the Town.

9. The MDA was recorded in the official records of Wasatch County as Entry 360737 on July 9, 2010, and it remains in effect.

10. The MDA has consistently been recognized as a valid contract through the parties’ conduct over the years since its execution, and was ratified and reaffirmed by both parties in writing as recently as September 2020. Specifically, in a reimbursement agreement (defined below) between Mustang and the Town relating to repayment for infrastructure Mustang installed, the parties “agree[d] and affirm[ed] that the MDA is a valid and enforceable agreement to the

extent it is not contrary to any applicable statutory or constitutional provisions.” Attached hereto as **Exhibit A** is a true and correct copy of the MDA.

Mustang and the Town Execute the Reimbursement Agreement

11. Consistent with the MDA, Mustang has constructed, or has caused to be constructed, certain elements of public infrastructure and improvements within the Town. These elements of public infrastructure and improvements include portions of: (1) a culinary water system; (2) a roadway system; (3) a storm drain system; and (4) a sewer system.

12. It was contemplated and agreed that Mustang would be reimbursed for its construction of this public infrastructure. Specifically, pursuant to sections 12.2 and 12.3 of the MDA, Mustang is entitled to reimbursement for the costs associated with its construction of public infrastructure and improvements. Reimbursement is intended to compensate Mustang on a pro rata basis for the use of the constructed public infrastructure by other developers and owners in the Town.

13. In particular, under the MDA, the Town had and has an obligation to ensure that reimbursement was provided, through a variety of available mechanisms, including impact fees. However, for a period of several years, the Town had failed to provide any such reimbursement.

14. To resolve the issue, to avoid litigation and to ensure that the reimbursement obligation was finally addressed, Mustang and the Town entered into a reimbursement agreement (“Reimbursement Agreement”) on or about September 9, 2020. The Reimbursement Agreement is attached hereto as **Exhibit B**.

15. The Reimbursement Agreement provides that reimbursements would be made to Mustang through the collection of impact fees from property owners at the time that building

permits are issued. To facilitate the calculation of those payments, a licensed engineer, Brent Ventura, was engaged by the Town and he prepared an impact fee analysis (“Impact Fee Study”). The Impact Fee Study identified the extent to which the public infrastructure and improvements are reimbursable in various subdivision, pursuant to state law.

16. The amount to be reimbursed to Mustang under the Reimbursement Agreement and Impact Fee Study is \$8,901,928.00.

17. The amount set forth in the Reimbursement Agreement was an accommodation to avoid litigation. Under the MDA, the Town had failed to make payment for public infrastructure for several years, and the costs and damages for such breach could have been much greater than the agreed amount.

18. The Reimbursement Agreement also required the Town to present an ordinance to the Town Council enacting an impact fee (“Impact Fee Enactment”) that reflects the terms and conditions set for in the Impact Fee Study. Subsequently, the Town passed the Impact Fee Enactment, which requires collection of impact fees in accordance with the Impact Fee Study.

The Town’s Obligations Under the Reimbursement Agreement

19. Once the Town approved the Impact Fee Enactment, it was required to ensure the collection of impact fees and to then provide reimbursement to Mustang in accordance with the terms outlined in Section 6 of the Reimbursement Agreement.

20. Section 6.2 requires the Town to charge and collect an impact fee in connection with the issuance of each new building permit for development activity within the Town in the amounts identified in the Impact Fee Study and the Impact Fee Enactment.

21. Once the impact fees are collected, Section 6.3 requires the Town to deposit the fees into a separate account created uniquely for the purpose of holding the impact fees (“Impact Fees Account”). The Town must then, no less than once per calendar quarter, remit to Mustang the portion of the impact fees in the Impact Fees Account to which Mustang is entitled as provided for in the Impact Fee Study.

22. In connection with each disbursement of impact fees pursuant to this Section 6.3, the Town must, at Mustang’s request, provide a statement to Mustang accounting for the number of buildings permits the Town issues for development activity, the amount of fees collected in connection with the issuance of those building permits and the amount of the payment to Mustang.

The Town’s Breach of the Reimbursement Agreement

23. The Town has failed to collect the required payments and to reimburse Mustang consistent with the terms outlined in Section 6 of the Reimbursement Agreement.

24. Upon information and belief, the Town has failed to collect an impact fee for each new building permit for development activity within the Town in the amounts identified in the Impact Fee Study and the Impact Fee Enactment.

25. Further, Mustang is informed and believes, and thereon alleges, that the Town has failed to establish and maintain the Impact Fees Account, but rather, has comingle what impact fees it has collected into other accounts owned by the Town.

26. The Town has also failed to create and provide to Mustang regular financial statements, showing the amounts collected and amounts paid to Mustang.

27. To verify the amount of fees that should have been collected based upon the permits issued after the Reimbursement Agreement was executed, Mustang issued a GRAMA request to the Town, requesting copies of permit applications, amounts collected, bank account statements, cancelled checks and other financial information. The GRAMA request was sent in October of 2022 and in response, the Town produced only some of the building permits, but none of the requested financial information. Mustang had then issued follow up demands for production of additional financial information and the Town has refused to comply

28. However, based upon the building permits provided by the Town, the Town has failed to collect and reimburse Mustang for the Impact Fees that should have been collected, in the amount of no less than \$300,000.

29. On February 13, 2023, counsel for Mustang sent The Town's counsel written notice detailing the Town's breaches of the Reimbursement Agreement, including the failure to establish the Impact Fees Account, to provide an accounting and, most importantly, to remit additional amounts due. To date, the requested information and payments have not been received.

FIRST CAUSE OF ACTION
(Breach of Contract Against the Town)

30. Mustang reincorporates the preceding paragraphs as if set forth fully herein.

31. The Reimbursement Agreement constitutes a binding contract under Utah law.

32. Section 6 of the Reimbursement Agreement required the Town to (i) collect impact fees in connection with the issuance of *each* new building permit for development activity within the Town in the amounts identified in the Impact Fee Study and the Impact Fee Enactment; (ii) deposit those fees into the Impact Fees Account; (iii) remit to Mustang the portion of the impact fees in the Impact Fees Account to which Mustang is entitled; and (iv) provide

statements to Mustang showing the number of buildings permits the Town has issued for development activity and the amount of fees collected in connection with the issuance of those permits.

33. The Town breached the Reimbursement Agreement by failing to perform its obligations in Section 6, i.e., not collecting impacts fee for each new building permit issued for development activity; not depositing what impact fees were collected into a separate Impact Fees Account; not remitting to Mustang the entirety of the impact fees to which Mustang is entitled; and not providing Mustang with an accounting of the amount of impact fees the Town has collected.

34. Mustang has fully complied with the Reimbursement Agreement.

35. Mustang has suffered, and will continue to suffer, damages as a result of the Town's breaches in the form of lost revenue in the amount of no less than \$300,000.

36. Mustang is entitled to an award of interest and for attorneys' fees for this action based on the terms of the Reimbursement Agreement and the Utah Code.

WHEREFORE, Mustang respectfully prays for the following relief:

1. Judgment against the Town for damages in an amount to be proven at trial, but in no less than \$300,000;

2. Specific performance of the Town's obligation to provide statements to Mustang showing the number of buildings permits the Town has issued for development activity and the amount of fees collected in connection with the issuance of those permits;

3. Pre- and post-judgment interest on all sums due at the rate provided by law;

4. Attorneys' fees and costs as awardable by contract and/or statute; and

5. For such other relief as this Court deems appropriate.

DATED this 16th day of March, 2023.

/s/ Scott A. DuBois

Scott A. DuBois

Attorney for Plaintiffs

Plaintiff's Address:

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Park City, UT 84098