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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; THOMAS EDDINGTON, an individual; and INTEGRATED PLANNING AND DESIGN, LLC, a Utah limited liability company, PHILIP RUBIN** **Defendants.**	**SECOND AMENDED COMPLAINT** **Tier 3** **Civil No. 210500045** **Honorable Jennifer A. Mabey**

Plaintiff Mustang Development, LLC, hereby submits the following First Amended Complaint against the Town of Hideout, a Utah municipality, Thomas Eddington, and Integrated Planning and Design, LLC, 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. Town of Hideout (the "Town") is a Utah municipality. The Town is located in Wasatch County, Utah.

3. Thomas Eddington is an individual residing in Summit County, Utah.

4. Integrated Planning and Design, LLC ("Integrated") is a Utah limited liability company with its principal place of business in Summit County, Utah. On information and belief, Integrated Planning and Design is an outside contractor, contracted to provide city planning advice and services to the Town.

5. On information and belief, Philip Rubin is an individual residing in Wasatch County, Utah. Jurisdiction is proper in this Court pursuant to UTAH CODE § 78A-5-102 and UTAH CODE § 10-9a-509.5(2)(e).

6. Venue is proper in this Court pursuant to UTAH CODE §§ 78B-3-301, 78B-3-302, and 78B-3-307.

7. 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 the complaint exceeds $300,000.

BACKGROUND OF THE MASTER DEVELOPMENT AGREEMENT

8. Mustang is a real estate development company with extensive experience developing residential and commercial property. For over 18 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 of Hideout.

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

10. In March 2010, Mustang and the Town of Hideout 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.

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

12. The MDA has been reaffirmed consistently through the parties' conduct over the years since, and was specifically ratified and reaffirmed by both parties in writing as recently as September 2020. Specifically, in a Reimbursement Agreement 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."

13. Among many other items, the MDA provides that Mustang, the "Master Developer," will be permitted to develop 1,975 "Residential Dwelling Units" within the area that is subject to the Master Development Agreement.

14. A "Residential Dwelling Unit" under the MDA means "for purposes of calculating Density, a unit constructed on the Property which is intended to be occupied for residential living" and is subject to "calculation of equivalencies … as specified in Town's Vested Laws."[1]

15. The term "Residential Dwelling Unit" is not used specifically in the Town's vested laws (the Town Code in place at the time of the MDA), which instead use the term Equivalent Residential Unit (ERU). In the years since, the parties have used the term ERU to refer to the units of density under the MDA.

16. The area subject to the MDA includes approximately 1026 acres within the boundaries of the Town of Hideout, along with an additional 280 acres adjacent to the Town but outside its boundaries. This 280-acre portion is also outside of Wasatch County, in Summit County, and is referred to in the MDA as the "Outside Property."

17. The MDA provides expressly that Mustang may make use of the 1,975 total Residential Dwelling Units in ***any*** subdivision, as long as the density within that subdivision is allowable under the zoning for that area:

> **Use of Density.** Master Developer may use any of the Maximum Residential Units in the development of any Subdivision so long as the density requested in the proposed Development Application is no greater than the maximum density allowed by the Zone and the RSPA Zoning Map for the proposed Subdivision.

[1] The "calculation of equivalencies" provided in an Appendix to the Town's Vested Laws provides that any residential unit less than 5,000 square feet constitutes only one "equivalent residential unit" (ERU), while condominiums less than 1,500 square feet may be considered 0.75 units each, and smaller apartments or hotel rooms less density still. The equivalencies provided in the Town's Vested Laws provide that homes greater than 5,000 square feet may be subject to "an incremental increase based on impacts to the District," though that "increment" is not specified. The Appendix to the Town's Vested Laws that provides residential unit equivalencies was copied nearly verbatim from a similar appendix in Section 16.37.11 of the Wasatch County Code. That ordinance included a footnote which provided (and still does) that homes greater than 5,000 square feet are subject to an incremental increase of 0.1 ERUs per 500 square feet. Regardless, unless the Town includes a size restriction in its approval of a plat application, Mustang's usage of its density is complete at the plat stage. If an individual property owner ultimately constructs a larger home, that is outside the developer's control.

18. The MDA further provides that the 280-acre Outside Property may be used in allocating the 1,975 Maximum Residential Units, in either of two ways.

19. First, "if the Outside Property is annexed into the Town," Mustang "may use any portions of the Maximum Residential Units on the Outside Property[.]" In other words, if the property were ever annexed, it would be treated as part of the overall MDA subject to the Town's authority and any portion of the maximum density could be allocated to its development subject to applicable zoning. This annexation was not required, but was an option available to Mustang.

20. The Outside Property has not been annexed into the Town of Hideout.

21. Second, the MDA provides that "[i]f the Outside Property is developed by Master Developer other than under the jurisdiction of the Town then such units shall be deducted from the Maximum Residential Units being developed within the Town."

22. This second provision protects the Town from the developer using all of its approved density within the Town limits and then developing additional units just outside the Town, consistent with the Parties' agreement "that the Outside Property has been included in the calculation of the Maximum Residential Units."

23. The Outside Property has not been developed nor are there any plans to do so at this juncture

24. The Outside Property is located in Summit County and is subject to Summit County's "AG-80" zoning.

25. Under Summit County's zoning, the Outside Property cannot be developed with less than 80 acres per residential unit. Accordingly, if the Outside Property were developed in Summit County Mustang would only be able to develop the property for 3 residential units.

26. The MDA allows Mustang to sell portions of the property subject to the MDA to sub-developers, along with a "specified portion of the Maximum Residential Units."

27. In the event that a sub-developer's development ultimately does not use all of the specified portion of the density, "the unused portion of the transferred Maximum Residential Units shall automatically revert back to Master Developer[.]"

UTILIZATION OF DENSITY UNDER THE MDA

28. In the years since the MDA was entered into, Mustang and sub-developers have recorded subdivision plats and developed a number of subdivisions in the Town of Hideout using some of the 1975 Maximum Residential Units allotted in the MDA.

29. The MDA provides that Mustang's remaining density is to be updated after final approval of each subdivision plat. Mustang provides a report of its remaining density after recordation of each final plat.

30. In practice, Mustang and the Town have communicated about remaining density much more regularly than that, having provided reports in connection with preliminary plat applications among other times.

31. Based on Mustang's records and publicly-recorded subdivision plats, the total number of units used to date, according to final recorded plats, is 1,023. Those units are as follows:

Subdivision	**Platted Lots**	**Adjustments/Notes**	**Units of Density Used**
Rustler (all phases)	88		88
Forevermore	13	Lots 8 & 9 were combined	12
Glistening Ridge	68	Some lots not buildable because of power lines	65
Reflection Ridge	15	Lot 6 eliminated for Reflection Lane; Lot 8 for power lines	13
Reflection Lane	9		9

Overlook Village	47		47
Silver Sky	26		26
Soaring Hawk	154	154 in original 4 phases; lot combinations of 80-81, 83-84; 77-78; Lots 111, 115, 123-125, 127 removed in amendments.	145
Golden Eagle	316	Lot 31 removed in amendment	315
Shoreline	153	Only includes finally platted lots, which include two phases[2]	153
Settlement	150	Approved for "up to 150 Residential Condominium Units" on plat	150
Total Units Used			1023
Units Remaining of 1,975			952

32. Additionally, not all of the property subject to the MDA has been subdivided in the above-referenced plats. Even setting aside the planned additional phases of the Shoreline development, Mustang's assignees still own at least 280 acres of undeveloped property within the Town that is subject to the MDA. Mustang itself owns at least 60 acres of property within the Town that is currently used as a golf course but could be developed.

33. In short, 11 years after the MDA was entered into, Mustang still has substantial remaining density and plenty of property on which the remaining units can be used.

THE TOWN AND INTEGRATED FALSELY REPRESENT THAT DENSITY IS UNAVAILABLE

34. Recently, the Town, the Town's contracted planning firm, and representatives of each of them have begun an overt misinformation campaign intended to damage Mustang and its business operations.

[2] In addition to the 153 lots that have been platted so far for the "Shoreline" development, approximately 547 additional units are planned for subsequent phases. Those 700 Shoreline units are being developed by a sub-developer, General Construction & Development (GCD). Based on documents GCD submitted to the Town, some portion of those lots are planned to be smaller units that will be considered to use less than 1.0 residential unit of density. GCD has stated it plans to use 600 ERUs for the Shoreline development in total.

35. On at least two occasions, Thomas Eddington Jr., AICP, ASLA, personally and his firm Integrated Planning and Design, has issued "Staff Review" reports that have publicly and falsely stated that there is no remaining density under the MDA.

36. Initially, in a report dated April 12, 2021 that was posted to the Town of Hideout's website with meeting materials for a Planning Commission meeting regarding additional phases of the Shoreline development, Mr. Eddington made a number of materially false statements:

a. Mr. Eddington notes that the MDA "included 280 acres of area owned by the developer but outside the Town of Hideout Limits" (i.e., the "Outside Property"). In blatant disregard of the MDA's terms, which do not allocate density equally throughout the MDA but provide a total density number that may be used in any subdivision, he states: "The inclusion of this land allows for an additional 420 dwelling units (280 acres * 1.5 ERUs = 420 residential units) in the Master HOA. This land is not within the Town of Hideout's jurisdiction and must be removed from the total density calculations[.]" Mr. Eddington makes this statement despite the fact that the Outside Property is currently zoned for a maximum of 3 units.

b. Mr. Eddington recklessly and falsely states that the density allocated to Mustang under the MDA was "inaccurately calculated" at 1,975, and should have been calculated at 1.5 ERU per acre for only 1,959 units (or 1,539 units after his erroneous removal of 420 units based on the Outside Property). He makes this statement despite the fact that the MDA requires no calculation, it states directly that the number of Maximum Residential Units is 1,975.

c. Errantly referring to the "Master HOA," which is not a party to the MDA, Mr. Eddington stated that "the Master HOA is currently out of compliance with the MDA" because "the maximum residential units permitted for the entire Master HOA build out is 1,539" and "the Master HOA has a total count of 1,565 units."

d. Creating from thin air a requirement that the Town has not imposed as a condition to any development application, Mr. Eddington states that certain "amenities – retail, dining and entertainment – must be constructed prior to the construction of additional residential units." In making this declaration, Mr. Eddington refers to one of the definitions in the Town Code of the term "Resort Village," which is used in describing required characteristics to be included in certain zoning classifications, but cites no authority requiring Mustang to be operating any of these uses by a date certain.

e. Referring to a schedule of ERU equivalency that is not applicable to Mustang because it is not part of the Vested Laws, Mr. Eddington states that the available density must be further reduced for any homes that have been constructed over 5,000 square feet, and that such residences are allocated at least 1.5 units of density. This is false both because that schedule does not apply to Mustang or its sub developers, and because after the approval of subdivisions the developer does not control the size of homes built on each lot. Mustang's consumption of density is determined in planning and plats, not based on actual construction.

37. On April 20, counsel for Mustang sent correspondence to the Town Attorney for the Town of Hideout, Polly McLean, informing her of the errors in Mr. Eddington's report and

demanding that the Town take corrective action, including a retraction of his false and legally incorrect conclusions.

38. In response, the Town refused to retract or correct all of the false statements in Mr. Eddington's April 12 report.

39. To the contrary, Mr. Eddington and Integrated issued an additional report in anticipation of an April 28 Planning Commission special meeting. This report was dated April 24, 2021, but on information and belief it was not published until approximately April 27, 2021.

40. The April 24 Report was generally identical to the April 12 version, including, *inter alia*: the false statement that the MDA's maximum density was "inaccurately calculated" (or required calculation at all); the false statement that the density under the MDA must be reduced by 420 units because the Outside Property has not been annexed into the Town (with the full knowledge that Summit County would likely never allow such annexation, particularly given recent litigation between Summit County and the Town of Hideout regarding annexation issues); the false statement that the "Master HOA is out of compliance with the MDA" due to the number of units developed; and the false statement that Mustang must construct certain commercial amenities before any additional residential units can be constructed.

41. The April 24 Report acknowledged the earlier report's mistaken reference to a current residential equivalency chart that is not applicable under the MDA, and noted that any condominium or other smaller residential units may be considered to use less than 1.0 ERU.

42. However, the April 24 Report substituted for that error a new false statement that "there is no allowance for houses over 5,000 SF without an assessment by the Planning Commission and Town Council." This is a complete fabrication.

43. Mr. Eddington's report implies a condition that does not exist under the Vested Laws, which simply provided that an ERU equivalency for units over 5,000 square feet would include an incremental adjustment based on the impact to "the District," which Mr. Eddington incorrectly interprets to mean a zoning district. In truth, that code provision was taken directly from the Wasatch County Code at the time and was a reference to the special services district.

44. In addition to these false written reports, Mustang is aware that representatives of the Town have embraced Mr. Eddington's conclusions and has strategically communicated to a number of individuals the false statement that Mustang lacks any additional density for further development in the Town.

45. These statements have been made to individuals who live or own property in the Town, as well as prospective purchasers. They have been made with the deliberate intent to interfere with Mustang's business, intentionally reduce the value of Mustang's property, deprive Mustang of over 400 units, to damage the reputation of Mustang and its ownership of property in the community and to undermine a significant land sale transaction from Mustang to the members Community Preservation Association ("CPA"), which acts as the master HOA for most of the sub-HOA's and owners of land in Hideout.

46. Specifically, on March 15, 2021, Mustang offered to sell approximately 60 acres of land, now being used as the "Outlaw Golf Club" ("Property") to CPA. *See*, "Offer for Sale of Property" (the "Offer") attached as **Exhibit A**.

47. The Offer noted that although the Property was being used as a golf course, it is zoned as residential single family. The Offer also stated that Mustang had secured an appraisal for the Property for $13,500,000, but that it was willing to sell the Property to CPA at a significant

discount, in the amount of $9,500,000. Mustang explained that it wanted to give CPA at a discount and on favorable terms (further outlined in the Offer) due to Mustang's continued commitment to the community and to give CPA the ability to preserve the Property as open space or to continue to operate the golf course. *See*, Id.

48. After the Offer was transmitted to the members of CPA, the attorney for the Town of Hideout contacted counsel for CPA and asked if Mustang would be interested in selling the Property to the Town for a discounted price.

49. Mustang had no interest in selling the Property to the Town of Hideout and it was never a party, in any form or fashion to the Offer from Mustang to CPA.

50. As a result of the Offer, a number of members of CPA reached out to Eddington, McCosh and Rubin to inquire about the Offer, including whether Mustang had remaining units it could use to develop the Property.

51. Eddington, McCosh and Rubin, individually and not acting in their capacity began secret discussions with these homeowners about whether the sale of the Property from Mustang to CPA was in the home owners' best interests.

52. These discussions took place after the Offer was transmitted on March 15, 2021, in early to mid-April, well before Eddington started to attack Mustang and its right to develop additional residential units – which would include the ability to develop the golf course Property as single family lots. Obviously, if the Property could not be developed because Mustang supposedly did not have additional residential units to develop, then its value would be much less than the $13,500,000 appraisal.

53. On April 21, 2021, Mr. Rubin, showing his personal animosity toward Mustang and the golf course Property, sent an email to Mr. Eddington, with a form letter to members of CPA regarding reasons why they should vote "No" on purchasing the Golf Course Property. A copy of this form letter is attached as **Exhibit B**.

54. On April 21, 2021, after Eddington's April 12 Report, but before his April 24, Report, a CPA member named Brian Amerige posted a message to a private message board for "Hideout Community Preservation Homeowners" titled "IMPORTANT: More Context on the Outlaw Golf Course Sale." A copy of this message is attached as **Exhibit C**.[3]

55. In the message, Mr. Amerige stated: I had a call with the Hideout Town Planner today and learned several critically important facts, including "Golf Course Land Unlikely to Every Become Residential Units."

56. Later that night, at 8:10 p.m. on April 21, 2021, Mr. Rubin sent Eddington an email, with the subject line "Fw: "IMPORTANT: More Context on the Outlaw Golf Course Sale.

57. Mr. Rubin was acting in his personal capacity, and not as a Town official. The email was sent from Mr. Rubin's personal Yahoo email account "rubinpi@yahoo.com" (not his Town of Hideout Account) to Mr. Eddington's work account "thomas@inplandesign.com."

58. The message from Mr. Rubin to Mr. Eddington, obviously referencing Mr. Amerige's message of that same day, stated:

Thomas

STOP IMMEDIATELY

This is not what can happen

[3] It appears that this is a private group hosted on Facebook, and, from the face of Exhibit B, the group is a "private group" with 173 members.

You CAN NOT be associated with this information

Please contact this guy and tell him the source was a homeowner, NOT you.

A copy of Mr. Rubin's email (heavily redacted) is attached as **Exhibit D**.[4]

59. In other words, Mr. Rubin acknowledged that he was part of a plan to disseminate false information regarding the sale of the golf course Property, in a deliberate manner and in his personal capacity, but chastised Mr. Eddington for connecting his name to the scheme and directed Mr. Eddington to lie to Mr. Amerige regarding the "source" of the information that was being disseminated to kill the sale of the Property.

60. Mr. Eddington and Mr. Rubin continued the coordinated attack on the sale of the golf course Property, acting individually and not on behalf of the Town in an official capacity continued to communicate to citizens inaccurate statements about Mustang's remaining density and development rights in an effort to undermine the voting on a proposed land-sale transaction between Mustang and the homeowner's association that governs much of the property under the MDA.

61. Mr. Eddington's false statements were coordinated with, and likely directed by Mr. Rubin, were repeated and re-published throughout the community with the specific objective of undermining and preventing the proposed land-sale transaction. His statements were intended to diminish the perceived value of the land to be sold, which is currently used for a golf course, by stating that Mustang lacked remaining density for development of the property if it were no longer used as a golf course.

[4] Exhibit D was produced by Mr. Eddington. Mustang sent a document subpoena to Mr. Rubin, asking for all documents and communications regarding the golf course Property sale. He failed to produce Exhibit D. Subsequently, counsel for Mustang sent an email to counsel for Mr. Rubin asking him to confirm that all documents had been produced. Mr. Rubin ***still*** has not produced Exhibit D or any documents like it.

62. Mr. Eddington's statements were false and he and Mr. Rubin knew that the statements were false when they were published.

63. The false statements in Mr. Eddington and Integrated's reports, were adopted and embraced on behalf of the Town, both verbally and in writing.

64. Mr. Eddington's false statements also resulted in the Planning Commission's recommendation to deny the subdivision applications submitted by sub-developer GCD for phases of the Shoreline development.

65. Mr. Eddington's false statements, by and through his coordination with Mr. Rubin caused damage to Mustang.

66. Because the Town attorney and staff (apparently being directed by Mr. Rubin) refused to disclaim and retract Mr. Eddington's false statements, and in fact initially doubled down on those false statements, Mustang was left with no option other than filing a lawsuit to confirm and vindicate its development rights under the MDA.

67. The sale of the golf course Property also failed as a result of the actions of Defendants.

68. On August 4, 2021, in response to the lawsuit, the Town's attorney finally issued a written response to Mustang's April 20, 2021 letter. The August 4 letter stated, in relevant part:

> As you know, Hideout Town's Planner provided an evaluation of the MDA in advance of the Planning Commission's recent evaluation of the pending Shoreline Phase III Plat application. The analysis ended up not being necessary to the decision on that application. The Town did not formally adopt Mr. Eddington's analysis as its own; it did not have any occasion to, as resolution of the application did not require a determination of the issues his analysis addressed. Having reviewed the issue in more detail, the Town appreciates the work that went into Mr. Eddington's analysis but does not adopt that analysis. The Town has lived by the MDA and will continue to do so.

> Hideout recognizes that the MDA authorizes a maximum equivalent residential unit figure of 1,975 for the development. Mustang has the right to utilize that density. It may do so on the Property as defined in 1.2.36 without having annexed the Outside Property, as defined in 1.2.27, provided that when the ERUs "based on" or "attributable" to the Outside Property acreage are being used on the Property, corresponding deed restrictions are placed on the Outside Property to ensure that the density is accounted for. In addition, as specifically provided in 3.2, in the event that the Outside Property is developed without having been annexed into the Town, "any such units shall be deducted from the [1,975]." Any analysis to the contrary does not reflect the Town's interpretation of the MDA or its intended application of the MDA moving forward.

69. Although the Town affirmed Mustang's right to develop 1975 units, including both in the Town boundaries and on the outside properties, the August 4 letter attempted to impose a new condition that requires "deed restrictions" to be placed on the Outside Property, when property in the Town is developed.

70. There is no requirement in the MDA to record deed restrictions on the Outside Property as units are developed in the Town. As such, this new requirement is at odds with and contradicted by the plain language of the MDA.

71. In addition, the August 4 letter did not specifically disclaim or disavow other false statements made by Mr. Eddington, including his statement that certain "amenities – retail, dining and entertainment – must be constructed prior to the construction of additional residential units."

FIRST CAUSE OF ACTION
(Declaratory Judgment - Town of Hideout)

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

73. An actual justiciable controversy has developed between Mustang and the Town of Hideout regarding the interpretation of the MDA, including the requirement of recording deed restrictions on the Outside Property, when development occurs within the Town and regarding Mr.

Eddington's statement that certain amenities must be constructed before construction of additional residential units.

74. The Town's positions regarding these issues as summarized in the report of Mr. Eddington and his firm and published by the Town through official channels, as well as the August 4 letter from the Town are incorrect and indefensible under the plain terms of the MDA.

75. Mustang has suffered, and will continue to suffer damages as a result of the Town's position.

76. This controversy is suited for resolution under the Declaratory Judgment Act by issuing a declaration of Mustang's continuing rights and remaining density under the MDA.

SECOND CAUSE OF ACTION
(Injurious Falsehood/Slander of Title - Thomas Eddington, Integrated Planning & Design and Philip Rubin)

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

78. Defendants' statements regarding Mustang's rights under the MDA are false and derogatory statements intended to cast doubt on Mustang's property rights within the Town.

79. Mr. Eddington and his firm published these statements on Integrated letterhead, and on information and belief Mr. Eddington, individually or through Integrated, is an outside contracted consultant and is not a Town employee or official.

80. On information and belief, Mr. Eddington also communicated these statements verbally to members of the Town administration, who then, in their personal capacities and not as part of any official proceeding, conveyed those false statements to members of the community.

81. On information and belief, Mr. Eddington and Mr. Rubin also communicated this false information, in their individual capacity and not as part of any official proceeding, to individual members of the community.

82. Mr. Eddington and Mr. Rubin's statements were false and Mr. they knew those statements were false when they were published.

83. Mustang has suffered, and will continue to suffer, economic damages as a result of these statements in the form of reduced property values and lost revenue in the amount of no less than $100,000,000.

THIRD CAUSE OF ACTION
(Tortious Interference with Economic Relations - Thomas Eddington and Integrated Planning & Design)

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

85. Based on the conduct described herein, Mr. Eddington and Mr. Rubin individually and through Integrated conveyed false information regarding Mustang's development rights.

86. Specifically, in addition to Eddington's written submissions to the Town, Eddington and Mr. Rubin, acting in their personal capacity and not in connection with any official proceeding, conveyed false information regarding Mustang's rights to develop land that is currently being used as a golf course (the "Property"). Specifically, Eddington and Mr. Rubin falsely told town residents that Mustang, in fact, had no available rights to develop any additional residential units within the Town.

87. At the time this false information was communicated, Mustang had a pending offer to sell the Property to CPA, with the offer price of $9.5 Million, which was a significant discount

based upon the value of the land given current zoning of the property for residential single family development.

88. The false statements made by Mr. Eddington and Mr. Rubin created a cloud of doubt on the value of the property at a critical time and was weaponized to undermine and prevent the sale of the property to the HOA, and the sale ultimately did not occur.

89. In a "smoking gun" email, Mr. Rubin told Mr. Eddington that his name (as Town Planner) should not be associated with the false statements and Mr. Rubin directed Mr. Eddington to lie to Mr. Amerige regarding the source of the statements.

90. Mr. Rubin's improper means of interference include his abuse of his position and authority, as Mayor of the Town of Hideout, to advance his personal and individual agenda and desire to undermine the sale of the golf course Property. Mr. Rubin improperly used the power of government – by personally communicating and directing Mr. Eddington in the communicating false information – to advance his own personal purposes and preferences.

91. Mr. Eddington, and Mr. Rubin knew or should have known that the false statements regarding development rights and inherent value of the Property would interfere with Plaintiff's economic relations, namely preventing the sale of the Property to the HOA.

92. In interfering with Plaintiff's economic relations with the HOA, Eddington, and Mr. Rubin employed improper means, including but not limited to, upon information and belief, conveying false information to residents of the Town and members of the HOA with the intent to injure Plaintiff.

93. Eddington and Mr. Rubin's actions and interference, which were undertaken personally and not in any official capacity, are not protected by any privilege.

94. Plaintiff has been injured and will continue to be injured because of Eddington, and Mr. Rubin's interference and is entitled to recover damages in an amount to be proven at trial.

95. Unless enjoined by the court, Eddington and Mr. Rubin will continue to intentionally interfere with Plaintiff's existing or potential economic relations, and Plaintiff will suffer significant and irreparable harm.

96. To the extent that Plaintiff's legal remedies cannot adequately address the injury Plaintiff has suffered and will continue to suffer as a result of Eddington and Mr. Rubin's interference, injunctive relief is needed to prevent further injury to Plaintiff.

WHEREFORE, Plaintiffs respectfully pray for the following relief:

1. For a declaratory judgment against the Town of Hideout declaring that the conclusions set forth in Mr. Eddington's published statements are inconsistent with the express terms of the MDA, including: that the 1,975 units of density allotted under the Master Development Agreement have not been fully consumed; that the Outside Property does not reduce Mustang's density under the MDA by any more than the 3 units for which it is zoned; that the Town's arbitrary *post hoc* demands that Mustang complete certain commercial development prior to any further residential construction may be disregarded; that the Town's requirement that deed restrictions be placed on the outside property when property is developed in the Town is not allowed under the MDA.

2. With respect to the Second and Third Claims for Relief, for judgment against Eddington, Integrated Planning & Design and Mr. Rubin for damages in an amount to be proven at trial, but in no event less than $100,000,000;

3. For an award of Plaintiff's attorney fees; and

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

DATED this13th day of January, 2023.

/s/ Scott A. DuBois
Scott A. DuBois
Jared C. Fields
James E. Magleby
Adam Alba
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2023, I caused a true and correct copy of the foregoing document to be served upon the following via the Court's electronic filing system:

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/s/ Kelsey Austin

EXHIBIT A

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March 15, 2021

Community Preservation Association
c/o Melyssa D. Davidson
davidson@rosingdavidson.com

Re: Outlaw Golf Club – Offer for Sale of Property

Dear Melyssa:

I am writing on behalf of Mustang Development, LLC ("Mustang"), in its capacity as owner of the approximately 60 acres of land now being used as the Outlaw Golf Club (the "Property"). As you may know, the Property is zoned as RSF – Single Family. Mustang recently obtained an appraisal for the property and the current market value of the Property is $13,500,000. However, because of Mustang's continued commitment to the community and in order to give the Community Preservation Association ("CPA") the option to continue the golf course operation and preserve open space, it is willing to give the CPA the first opportunity to purchase the Property at a significant discount under the terms and conditions set forth below. I have discussed this matter, generally, with representatives of CPA and I understand that there is interest in this concept.

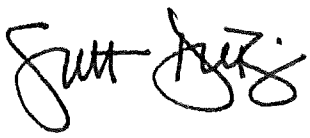
1. Mustang Development is willing to sell the Property to CPA for a sum of $9,500,000. This price represents a discount of approximately 27% from the fair market value of the property.
2. Title to the Property will be transferred to CPA, but the parties will enter into a promissory note and deed of trust, which will provide details regarding payment of the purchase price.
3. There will be no requirement to pay any money up front and Mustang will provide seller financing.
4. The minimum payments for principal and interest that will be due on the note will be $300,000 in 2021, $350,000 in 2022, $400,000 for each year thereafter.
5. The interest rate will be prime plus 2.5%, with a floor of 5.5% and ceiling of 9.5%.
6. The balance due can be paid off with 1% prepayment of balance being paid.
7. Payments will be made from 1% of the 1.25% reinvestment fee, not from dues or assessment paid by CPA members. In the event that the reinvestment fee is not sufficient to pay the note payment and operational costs of the golf course, the unpaid amount will be added to the note balance.

8. There will be a management contract to maintain and operate the golf course. The management fee will start at $300,000/year with 3.5% annual increases. The management contract will remain in effect until CPA has paid the purchase price in full.
9. CPA will not be allowed to change the use of Property until full purchase price is paid.

This offer will remain open for 30 days. After the expiration of that time period, Mustang will market the Property for sale to third party purchasers. I urge CPA to promptly coordinate and hold a vote on this purchase and if approved by the members, the parties can draft the purchase and loan documents.

Very truly yours,

JONES, WALDO, HOLBROOK & MCDONOUGH, P.C.



Scott A. DuBois

EXHIBIT B

Subject: Fw: form letter to CPA voting NO
Date: Wednesday, April 21, 2021 at 2:43:32 PM Mountain Daylight Time
From: Philip Rubin
To: Thomas Eddington Jr.

The letter below may be useful as a template for a message to the HOA

To whom it may concern at the Community Preservation Association:

We are the owners of _____ in Hideout.

We are writing this e-mail in response to the April 5, 2021 solicitation for a vote on the CPA's purchase of the Outlaw golf course we received from Teri Hoenstine at Sea to Ski.

We are voting "NO," and we are urging all of our fellow homeowners to vote "NO." We want to explain why.

First, collecting e-mailed ballots without an owner meeting is not an appropriate way for the CPA to make such a monumental decision. This format is transparently designed to prevent Owners from asking questions from the CPA board or from discussing it among themselves.

Second, the solicitation states that the CPA's governing documents and the Utah Revised Non-Profits Corporations Act allow the CPA to conduct owner votes through written ballots, this rule is subject to several unmet conditions. Section 16-6a-709 of the Act (incorrectly cited in the solicitation as "16-6q-709") requires the CPA to "deliver a written ballot to every member entitled to vote on the matter" which "sets forth each proposed action". We did not receive a written ballot. The solicitation referred to a purported attached proposal, but no proposal was attached. Section 709 also requires that "all solicitations for votes by written ballot" include "written information sufficient for each person casting the ballot to reach an informed decision on the matter. This condition is not met either. The CPA should not certify the owner vote unless the conditions of Section 709 are met.

If the contemplated transaction was in fact an arms-length transaction between two independent parties (more on that below), the information that a potential buyer would expect to receive from the seller of a golf course would include, at a minimum: (i) a title report; (ii) physical condition disclosures; (iii) financial statements; (iv) operating history; (v) a summary of insurance claims made; (vi) a summary of any current or threatened litigation; (vii) copies of any contracts which would be assumed by a buyer after closing; (viii) any surveys or other reports affecting the property. None of this information is provided. The CPA should not enter into this transaction without performing the due diligence that an arms-length buyer would perform.

To the extent that the referenced (but unattached) "proposal" was meant to refer to the March 15, 2021 letter from Scott DuBois to Melyssa Davidson, this "proposal" also falls far short of what a potential buyer of a 60-acre golf course would expect to receive. It refers to an appraisal, but does not include it. We would like to be provided with a copy of this appraisal. We are highly skeptical that the referenced value conclusion - $13,500,000 – was a bona fide appraisal of the golf course operating as a golf course. Certainly no real estate investor would ever

consider buying a golf course without knowing how much revenue it earns or how much it cost to earn that revenue. The CPA should not agree to assign a value to the golf course without knowing this information.

The DuBois proposal includes vague references to financing terms but they don't make any sense. It is traditional for summaries of financing to include maturity dates and amortization periods. Without this information, it is impossible for the Owners to evaluate whether the terms of the financing are competitive with the terms that would be available on the open market. The proposal makes clear that the only source of funds from which the CPA is to service the debt is the reinvestment fee. The minimum payment amount listed for 2021 would require at least $30,000,000 per year in real estate transactions to generate. This does not even include the operational costs of the golf course. The CPA should not assume that this source of funds will remain adequate to service this debt.

Finally, the contemplated transaction is between two entities under the control of the same individual: Robert Martino. The fact that he is both the owner of Mustang Development and the Outlaw golf course and a director of the CPA is not disclosed to the Owners. This failure renders the contemplated transaction either void or voidable under Section 825 of the Act, which prohibits "conflicting interest transactions" unless certain conditions are met. A "conflicting interest transaction" is defined to include a transaction between a nonprofit corporation and a party related to a director or an entity in which the director has a financial interest. This transaction clearly meets that definition. Though Section 825 sets out some safe harbors if the nonprofit makes certain disclosures to the members, or is a "fair" transaction to the nonprofit corporation, it does not appear that the CPA has even attempted to demonstrate eligibility for these safe harbors. The CPA should not agree to the transaction unless the requirements of Section 825 have been met.

Accordingly, please put us down as a "NO" and please confirm receipt of this "ballot."

EXHIBIT C

Hideout Community Preservation Association Homeowners

Private group · 173 members

Brian Amerige posted **Important Context on the Sale**.
Admin · April 21, 2021 ·

IMPORTANT: More Context on the Outlaw Golf Course Sale

I had a call with the Hideout Town Planner today and learned several critically important facts:

- **Golf Course Land Unlikely to Ever Become Residential Units:** Even though the Golf Course is zoned as Residential Single Family, the land use is governed by the Hideout Canyon MDA (Master Development Agreement), which strictly limits the total density allowed to 1,975 residential units within the MDA area (which is basically the entirety of Hideout). They cannot add more density without replacing or amending the MDA, which is not going to happen for many reasons. So the only way to build homes on the golf course would be to reallocate density from elsewhere—which is possible, but very unlikely.
- **Even if they did have the density, subdividing the land is**

About

This group is for members of the Community Preservation Association HOA in Hideout, Utah.

This is intended to be an official group, though it is managed by homeowners directly, NOT by Sea to Ski or CPA's Board (though they are welcome). **See less**

Private
Only members can see who's in the group and what they post.

Visible
Anyone can find this group.

General

nontrivial and would probably not be profitable. Subdividing the 60 acre parcel into usable residential units requires the Town planning commission and council to approve the subdivision, and that would be a challenge for safety and infrastructure planning on its own. But even more importantly, it would have to conform to the MDA's requirements—including that they only allocate residential units within the MDA's "density pods", which is a challenge because *most* of the golf course is outside these pods. They'd also have to ensure the MDA area remain 25% open space. And they'd have to ensure that the Resort Village zoned area (Hideout Canyon) has at least 4 different uses (e.g., golf clubs, townhomes, single family homes, and condominiums). This is a complex one to summarize, but suffice to say: it would probably not be worth the effort given that they'd just be reallocating density from elsewhere—other subdivisions that are already approved and already designed as residential.

- **Mustang controls roughly 60% of the voting interests**. We won't know the real number until Michael's records request is fulfilled (hopefully on Friday). This means that only an extra 7% of votes are needed to approve this transaction. Just a few "yes"'s on this offer is enough to approve it.

Given the above—especially the third point—**I think the purpose of this "offer" and the reminder of the Residential zoning is to scare a handful of homeowners into acquiescing to *terrible* financial terms**—a loan we will never pay off at ludicrous interest rates and without any real control of the property. **But this is an empty threat.** Given the lack of density to build, and the difficulty of subdividing even if they had the density and magically made it profitable to do so, even if the land was sold to a third-party developer (unlikely given the above), it will probably not become additional housing density.

On the contrary, the land being offered for sale to a third-party would probably be a *good* thing. It would probably remain a golf course (or some other kind of open space community amenity) and have a chance at being managed more effectively than it has been to date.

GUIDE 1 • OUTLAW GOLF COURSE SALE
Outlaw Golf Course Sale
See full guide

14 27 Comments Seen by 133

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All comments

Linda Kowalski
Thank you, **Brian Amerige!**
2
Like · Reply · 39w

EXHIBIT D

From: Philip Rubin <rubinpj@yahoo.com>
Date: Wednesday, April 21, 2021 at 8:10 PM
To: "Thomas Eddington Jr." <thomas@inplandesign.com>
Subject: Fw: IMPORTANT: More Context on the Outlaw Golf Course Sale

Thomas
STOP IMMEDIATELY

This is not what can happen

You CAN NOT be associated with this information

Please contact this guy and tell him the source was a homeowner, NOT you
----- Forwarded Message -----
From: Nextdoor Hideout Canyon <reply@rs.email.nextdoor.com>

View on Nextdoor

Brian Amerige, Hideout Canyon

I had a call with the Hideout Town Planner today and learned several critically important facts. Details here (given the sensitive nature of this, this is only being shared with Community Preservation Association homeowners): https://www.facebook.com/groups/hideoutcpa/permalink/169712008354973/

General · Apr 21 to 2 neighborhoods

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