

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NORTHVILLE DOWNS, LLC, a  
Michigan limited liability company,

Plaintiff,

Case No. 2:24-cv-10492  
Hon. Brandy R. McMillion

v.

PLYMOUTH CHARTER TOWNSHIP,  
a Michigan municipal corporation,

Defendant.

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**DEFENDANT’S ANSWER TO COMPLAINT**  
**WITH AFFIRMATIVE DEFENSES**

NOW COMES Defendant, PLYMOUTH CHARTER TOWNSHIP, by and through its attorneys, ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C., and for its Answer to the Complaint (“Complaint”) states as follows:

1. Answering paragraph 1, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

2. Answering paragraph 2, Defendant admits only that the Township is a municipal organization organized under the constitution and statutory laws of the State of Michigan and located in Wayne County, Michigan. Defenant denies as untrue any implication of liability from the balance of the allegations in paragraph

2.

3. Answering paragraph 3, Defendant denies the allegations as untrue.

4. Answering paragraph 4, Defendant admits, subject to and without waiving its affirmative defenses regarding subject matter jurisdiction.

5. Answering paragraph 5, Defendant admits, subject to and without waiving its affirmative defenses regarding subject matter jurisdiction.

6. Answering paragraph 6, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

7. Answering paragraph 7, Defendant does not contest the Court's personal jurisdiction over the Township.

8. Answering paragraph 8, Defendant does not contest venue.

9. Answering paragraph 9, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

10. Answering paragraph 10, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

11. Answering paragraph 11, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon

which to form a belief, and leaves Plaintiff to its proofs.

12. Answering paragraph 12, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

13. Answering paragraph 13, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

14. Answering paragraph 14, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

15. Answering paragraph 15, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

16. Answering paragraph 16, Defendant admits.

17. Answering paragraph 17, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

18. Answering paragraph 18, Defendant denies the allegations as untrue as characterized in paragraph 18.

19. Answering paragraph 19, Defendant neither admits nor denies the

allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

20. Answering paragraph 20, Defendant denies the allegations as untrue as characterized in paragraph 20.

21. Answering paragraph 21, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

22. Answering paragraph 22, Defendant denies the characterization of the Township's interaction with Plaintiff's representatives as "inducement" as untrue. Defendant neither admits nor denies the balance of the allegations in paragraph 22, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

23. Answering paragraph 23, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

24. Answering paragraph 24, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

25. Answering paragraph 25, Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all relevant law, and

leaves Plaintiff to its proofs.

26. Answering paragraph 26, Defendant states that no answer is required, as the paragraph states a legal conclusion, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all relevant law, and leaves Plaintiff to its proofs.

27. Answering paragraph 27, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

28. Answering paragraph 28, Defendant denies the allegations as untrue as characterized in paragraph 28.

29. Answering paragraph 29, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

30. Answering paragraph 30, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

31. Answering paragraph 31, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

32. Answering paragraph 32, Defendant admits that the PUD process is

governed by the Michigan Zoning Enabling Act and Township Zoning Ordinance. Defendant neither admits nor denies the balance of the allegations contained in paragraph 32, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

33. Answering paragraph 33, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

34. Answering paragraph 34, Defendant denies the allegations as untrue. For further answer, Defendant affirmatively states that the Planned Unit Development provisions of the Township Zoning Ordinance expressly contemplate a PUD contract and the inclusion of conditions on the PUD to advance public health, safety, and the general welfare of the Township.

35. Answering paragraph 35, Defendant denies the characterization of “inducements and representations” as untrue. Defendant neither admits nor denies the balanced of the allegations in paragraph 35, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

36. Answering paragraph 36, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

37. Answering paragraph 37, Defendant neither admits nor denies the

allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

38. Answering paragraph 38, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

39. Answering paragraph 39, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

40. Answering paragraph 40, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

41. Answering paragraph 41, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

42. Answering paragraph 42, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

43. Answering paragraph 43, Defendant denies the allegations contained therein as characterized in paragraph 43.

44. Answering paragraph 44, Defendant neither admits nor denies the

allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

45. Answering paragraph 45, Defendant denies the characterization of “inducements and representations” as untrue. Defendant neither admits nor denies the balance of the allegations in paragraph 45, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

46. Answering paragraph 46, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

47. Answering paragraph 47, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

48. Answering paragraph 48, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

49. Answering paragraph 49, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

50. Answering paragraph 50, Defendant admits.

51. Answering paragraph 51, Defendant admits that Plaintiff has



accurately excerpted and summarized a portion of the Zoning Ordinance Sec. 23.1 pertaining to PUD Option eligibility, but neither admits nor denies that Plaintiff has completely or accurately stated and applied all law relevant to this case, and leaves Plaintiff to its proofs.

52. Answering paragraph 52, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

53. Answering paragraph 53, Defendant admits.

54. Answering paragraph 54, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

55. Answering paragraph 55, Defendant neither admits nor denies the allegations contained therein as characterized in paragraph 55, as Defendant lacks knowledge or information sufficient upon which to form a belief as to what Plaintiff believed “became clear” or when it “became clear” to Plaintiff, and leaves Plaintiff to its proofs. For further answer, Defendant denies the allegation that the Township considered the project to be a public use for the reason that it is untrue.

56. Answering paragraph 56, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

57. Answering paragraph 57, Defendant denies the allegations as untrue as characterized in paragraph 57.

58. Answering paragraph 58, Defendant admits only that Supervisor Heise attended the February 15, 2023 Township Planning Commission meeting and spoke during public comment.

59. Answering paragraph 59, Defendant admits only that Supervisor Heise stated that it was the second time in his 7 years as Supervisor that he appeared before the Planning Commission on an active issue.

60. Answering paragraph 60, Defendant denies Plaintiffs' characterization of Supervisor Heise's remarks insofar as they attempt to portray them as describing some sort of public taking. For further answer, Defendant affirmatively states that Supervisor Heise's comments that some of the benefits being contemplated were brought to the Township by Plaintiff before the Township even asked for anything.

61. Answering paragraph 61, Defendant denies as untrue that Supervisor Heise's remarks as "Fifth Amendment implications." Defendant further states that the Zoning Ordinance's provision for Planned Unit Developments includes the requirement of developing a PUD contract that includes a conditions of the PUD and contemplates including provisions to further the public health, safety, and general welfare of the Township.

62. Answering paragraph 62, Defendant admits only that, at its February

15, 2023 meeting, the Township Planning Commission voted unanimously to recommend approval of the PUD Option to the Township Board. Defendant denies as untrue that the Planning Commission's vote constituted "approval" of the PUD Option, and denies as untrue Plaintiff's characterization of the Township Supervisor as "inducing" Plaintiff.

63. Answering paragraph 63, Defendant states that no answer is required, as the paragraph does not contain any allegation of fact against this Defendant, but instead contains an opinion. For further answer, Defendant admits that Plymouth Township Code of Ordinances Sec. 31.022 provides that the Township Supervisor, with the approval of a majority of the Township Board, appoints Planning Commission members. For further answer, Defendant affirmatively states that such an arrangement is unremarkable and routine for Planning Commissions in any community, and in fact is required by the Michigan Planning Enabling Act, MCL § 125.3815(1).

64. Answering paragraph 64, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

65. Answering paragraph 65, Defendant denies the allegations as untrue as characterized in paragraph 65.

66. Answering paragraph 66, Defendant admits.

67. Answering paragraph 67, Defendant admits.

68. Answering paragraph 68, Defendant admits.

69. Answering paragraph 69, Defendant admits only that Board members, including Treasurer Doroschewitz, made comments during the meeting.

70. Answering paragraph 70, Defendant admits only that the dissenting vote at the February 28, 2023 Board meeting was Trustee Curmi.

71. Answering paragraph 71, Defendant denies the characterization of the Supervisor controlling votes as untrue. Defendant neither admits nor denies the balance of the allegations in paragraph 71, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

72. Answering paragraph 72, Defendant admits only that, by February 28, 2023, the Township Planning Commission and Board of Trustees had authorized the PUD Option for Plaintiff. Defendant neither admits nor denies the balance of the allegations in paragraph 72, as they state a legal conclusion, and Defendant neither admits nor denies that has accurately described the implications of the vote, and leaves Plaintiff to its proofs, as the PUD Option is merely the first step in the PUD approval process.

73. Answering paragraph 73, Defendant admits.

74. Answering paragraph 74, Defendant admits.

75. Answering paragraph 75, Defendant admits.

76. Answering paragraph 76, Defendant states that the PUD provisions of the Zoning Ordinance contemplate conditions of the PUD to be included in the PUD Contract, including those in furtherance of the public health, safety, and general welfare of the Township. (See, e.g. ZO Sec. 23.8.)

77. Answering paragraph 77, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

78. Answering paragraph 78, Defendant admits only that, at its May 3, 2023 meeting, the Planning Commission reviewed the initial draft of the PUD Development Plan and unanimously voted to postpone a vote on the plan to allow for changes to be made.

79. Answering paragraph 79, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

80. Answering paragraph 80, Defendant admits that the Planning Commission considered Plaintiff's PUD Development Plan at a special meeting held on June 1, 2023, and that the Planning Commission determined that certain outstanding items from earlier planners' and engineers' reports had been addressed, but reserved a landscape plan for administrative review, the PUD contract for Board and Attorney review and revision.

81. Answering paragraph 81, Defendant admits only that the Planning Commission voted at its June 1, 2023 meeting to recommend approval of the PUD Development Plan to the Township Board, with conditions. Defendant denies as untrue Plaintiff's characterization of the Planning Commission's vote as an "approval" of the PUD Plan, as it is the Township Board that has final authority to "approve" a PUD Plan.

82. Answering paragraph 82, Defendant denies the allegation as untrue.

83. Answering paragraph 83, Defendant admits only that Plaintiff has accurately quoted an excerpt of the document attached as Exhibit 1, but neither admits nor denies the accuracy or authenticity thereof, and leaves Plaintiff to its proofs.

84. Answering paragraph 84, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

85. Answering paragraph 85, Defendant denies the allegations as untrue.

86. Answering paragraph 86, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

87. Answering paragraph 87, Defendant neither admits nor denies the allegations pertaining to the Carlos reaction, having insufficient knowledge or

information upon which to form a belief, and leaves Plaintiff to its proofs. Defendant denies the balance of the allegations in paragraph 87 as untrue.

88. Answering paragraph 88, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

89. Answering paragraph 89, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

90. Answering paragraph 90, Defendant denies Plaintiff's characterization of the Township Supervisor's correspondence as untrue.

91. Answering paragraph 91, Defendant admits only that a draft Community Benefits Agreement was circulated that included the identified provisions as part of the negotiable document. Defendant denies Plaintiff's characterization of the proposed provisions as "demands." For further answer Defendant affirmatively states that Plaintiff did not object to the negotiation of a CBA during the initial draft exchange process.

92. Answering paragraph 92, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

93. Answering paragraph 93, Defendant neither admits nor denies the

allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

94. Answering paragraph 94, Defendant denies Plaintiff's characterization of the facts and circumstances of this case and the Township Supervisor's communications as untrue, and deny the implication that Plaintiff was unaware that the issue of negotiating benefits was coordinated with the pursuit of the PUD Contract and final PUD approval.

95. Answering paragraph 95, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

96. Answering paragraph 96, Defendant denies the allegations as untrue.

97. Answering paragraph 97, Defendant denies the allegations as untrue.

98. Answering paragraph 98, Defendant states that the paragraph accurately quotes a select excerpt of the document attached as Exhibit 11, with respect to which Defendant neither admits nor denies the accuracy, authenticity, completeness, or interpretation thereof, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

99. Answering paragraph 99, Defendant denies the allegations as untrue.

100. Answering paragraph 100, Defendant denies the allegations as untrue.

101. Answering paragraph 101, Defendant neither admits nor denies the



allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

102. Answering paragraph 102, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

103. Answering paragraph 103, Defendant neither admits nor denies the allegation that it was “clear” what concerns were “central,” having insufficient knowledge or information as to what was “clear” to Plaintiff. Defendant denies the balance of the allegations in paragraph 103 as untrue.

104. Answering paragraph 104, Defendant admits only that negotiations continued. Defendant denies the balance of the allegations in paragraph 104 as untrue.

105. Answering paragraph 105, Defendant admits only that, on December 18, 2023, Township Supervisor Heise sent an e-mail to Plaintiff’s attorney regarding the project and Community Benefits Agreement, but denies Plaintiff’s characterization of the e-mail as untrue.

106. Answering paragraph 106, Defendant admits only that Plaintiff’s counsel sent a letter to the Township dated January 10, 2024. Defendant denies the balance of the allegations in paragraph 106 as untrue.

107. Answering paragraph 107, Defendant admits only that Plaintiff has

accurately quoted selected excerpts of the document attached as Exhibit 12 to the Complaint, with respect to which Defendant neither admits nor denies the authenticity, accuracy, completeness, or interpretation thereof.

108. Answering paragraph 108, Defendant admits only that the Township Supervisor requested and recommended rescission of the Motion authorizing negotiations of a Planned Unit Development at the Township Board of Trustees' January 23, 2024 meeting. Defendant denies the allegation that Plaintiff was sacrificing constitutional rights as untrue. Defendant neither admits nor denies the balance of the allegations in paragraph 108, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

109. Answering paragraph 109, Defendant admits only that the excerpted text starting with "Request for Board Action" accurately quotes a portion of the agenda for the January 23, 2024 Township Board of Trustees meeting.

110. Answering paragraph 110, Defendant admits.

111. Answering paragraph 111, Defendant denies as untrue the allegation that Plaintiff had a "land use right" in the Planned Unit Development as of the January 23, 2024 Township Board meeting that would necessitate a public hearing. Defendant neither admits nor denies the balance of the allegations contained in paragraph 111, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

112. Answering paragraph 112, Defendant admits.

113. Answering paragraph 113, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

114. Answering paragraph 114, Defendant admits only that, at its February 6, 2024 meeting, the Board of Trustees approved an agenda item denying Plaintiff's PUD application.

115. Answering paragraph 115, Defendant denies that Plaintiff has accurately quoted the excerpted text of the document attached as Exhibit 16 to the Complaint, as the text cited was not a direct quote of Mr. Heise. Defendant neither admits nor denies the balance of the allegations in paragraph 115, having insufficient knowledge or information upon which to form a belief as to the authenticity, accuracy, or completeness of the document attached as Exhibit 16 to the Complaint.

116. Answering paragraph 116, Defendant admits only that Plaintiff has accurately quoted a selected excerpt of the document attached as Exhibit 17 of the Complaint, with respect to which Defendant neither admits nor denies the authenticity, accuracy, or completeness thereof, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

117. Answering paragraph 117, Defendant neither admits nor denies the

allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

118. Answering paragraph 118, Defendant denies the allegations as untrue.

119. Answering paragraph 119, Defendant denies the characterization of “inducement” as untrue. Defendant neither admits nor denies the balance of the allegations in paragraph 119, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

120. Answering paragraph 120, Defendant denies the allegations as untrue.

121. Answering paragraph 121, Defendant neither admits nor denies the allegations contained therein, having insufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

122. Answering paragraph 122, Defendant denies the allegations as untrue.

### **COUNT I**

123. Answering paragraph 123, Defendant restates and incorporates by reference its answers to paragraphs 1-122 as though fully set forth herein.

124. Answering paragraph 124, Defendant states that no answer is required, as the paragraph contains a legal conclusion, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all applicable law, and leaves Plaintiff to its proofs.

125. Answering paragraph 125, Defendant states that no answer is

required, as the paragraph contains a legal conclusion, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all applicable law, and leaves Plaintiff to its proofs.

126. Answering paragraph 126, Defendant denies Plaintiff's characterization of the Township "demanding" \$5 million as untrue. Defendant states that no answer is required to the balance of the allegations in paragraph 126, as the allegations contain a legal conclusion, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all applicable law, and leaves Plaintiff to its proofs.

127. Answering paragraph 127, Defendant denies the allegation as untrue.

128. Answering paragraph 128, Defendant denies the allegations as untrue.

129. Answering paragraph 129, Defendant denies the allegations as untrue.

130. Answering paragraph 130, Defendant states that, insofar as the paragraph contains a legal conclusion about the implications of the Michigan horse racing law, the paragraph does not require an answer, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated and applied all relevant law, and leaves Plaintiff to its proofs. Defendant denies the balance of the allegations in paragraph 130 as untrue.

131. Answering paragraph 131, Defendant denies the allegations as untrue.

132. Answering paragraph 132, Defendant admits that the development is a

private development, but denies the balance of the allegations as untrue for the reason that they are improperly premised on a mischaracterization of the nature of the Township's role in negotiations with Plaintiff.

133. Answering paragraph 133, Defendant denies the allegations as untrue.

134. Answering paragraph 134, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

## **COUNT II**

135. Answering paragraph 135, Defendant restates and incorporates by reference its answers to paragraphs 1-134 as though fully set forth herein.

136. Answering paragraph 136, Defendant denies the allegations as untrue.

137. Answering paragraph 137, Defendant denies the allegations as untrue.

138. Answering paragraph 138, Defendant denies the allegations as untrue.

139. Answering paragraph 139, Defendant denies the allegations as untrue.

140. Answering paragraph 140, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the

Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

### **COUNT III**

141. Answering paragraph 141, Defendant restates and incorporates by reference its answers to paragraphs 1-140 as though fully set forth herein.

142. Answering paragraph 142, Defendant admits that Plaintiff has accurately summarized the subject matter of MCL 125.3503.

143. Answering paragraph 143, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL 125.3503(2), but neither admits nor denies that Plaintiff has completely or accurately state and applied all law relevant to this case, and leaves Plaintiff to its proofs.

144. Answering paragraph 144, Defendant admits only that Plaintiff has accurately quoted and summarized an excerpt of MCL 125.3503, but neither admits nor denies that Plaintiff has completely or accurately state and applied all law relevant to this case, and leaves Plaintiff to its proofs.

145. Answering paragraph 145, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL 125.3504(1), but neither admits nor denies that Plaintiff has completely or accurately state and applied all law relevant to this case, and leaves Plaintiff to its proofs.

146. Answering paragraph 146, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL 125.3504(3), but neither admits nor denies that Plaintiff has completely or accurately state and applied all law relevant to this case, and leaves Plaintiff to its proofs.

147. Answering paragraph 147, Defendant denies the allegations and characterization of the facts of this case as untrue.

148. Answering paragraph 148, Defendant neither admits nor denies the allegations contained therein, having in sufficient knowledge or information upon which to form a belief, and leaves Plaintiff to its proofs.

149. Answering paragraph 149, Defendant states that no answers is required, as the paragraph contains a legal conclusion, and Defendant neither admits nor denies that Plaintiff has accurately or completely stated or applied all law relevant to this case, and leaves Plaintiff to its proofs.

150. Answering paragraph 150, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.



**COUNT IV**

151. Answering paragraph 151, Defendant restates and incorporates by reference its answers to paragraphs 1-150 as though fully set forth herein.

152. Answering paragraph 152, Defendant denies the allegations as untrue.

153. Answering paragraph 153, Defendant denies the allegations as untrue.

154. Answering paragraph 154, Defendant denies the allegations as untrue.

155. Answering paragraph 155, Defendant denies the allegations as untrue.

156. Answering paragraph 156, Defendant denies the allegations as untrue.

157. Answering paragraph 157, Defendant denies the allegations as untrue.

158. Answering paragraph 158, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

**COUNT V**

159. Answering paragraph 159, Defendant restates and incorporates by reference its answers to paragraphs 1-158 as though fully set forth herein.

160. Answering paragraph 160, Defendant denies the allegations as untrue.

161. Answering paragraph 161, Defendant denies the allegations as untrue.

162. Answering paragraph 162, Defendant denies the allegations as untrue.

163. Answering paragraph 163, Defendant denies the allegations as untrue.

For further answer. Defendant affirmatively states that the Planned Unit Development provisions of the Township Zoning Ordinance contemplate, for example, a PUD contract that sets forth conditions on which approval is of the PUD is based, which includes provisions for the public health, safety, morals, and general welfare of the Township. (See, e.g. ZO Sec. 23.8.)

164. Answering paragraph 164, Defendant denies the allegations as untrue.

165. Answering paragraph 165, Defendant denies the allegations as untrue.

166. Answering paragraph 166, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

### **COUNT VI**

167. Answering paragraph 167, Defendant restates and incorporates by reference its answers to paragraphs 1-166 as though fully set forth herein.

168. Answering paragraph 168, Defendant denies the allegations as untrue.

169. Answering paragraph 169, Defendant denies the allegations as untrue.

170. Answering paragraph 170, Defendant states that no answer is required, as the paragraph does not contain any allegation of fact relative to this Defendant, but instead includes a political opinion. To the extent that the paragraph implicates a characterization of the facts and occurrences that are at issue in this lawsuit, Defendant denies the characterization as untrue.

171. Answering paragraph 171, Defendant denies the allegations as untrue.

172. Answering paragraph 172, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

### **COUNT VII**

173. Answering paragraph 173, Defendant restates and incorporates by reference its answers to paragraphs 1-172 as though fully set forth herein.

174. Answering paragraph 174, Defendant admits only that Fed. R. Civ. P. 65 authorizes the Court to issue injunctive relief subject to the procedures set forth in the rule, but denies that Plaintiff is entitled to such relief in this case, and denies the balance of the allegations in paragraph 174 as untrue.

175. Answering paragraph 175, Defendant states that no answer is

required, a the paragraph contains a legal conclusion, and Defendant neither admits nor denies that Plaintiff has completely or accurately stated and applied all law relevant to this case, and leaves Plaintiff to its proofs.

176. Answering paragraph 176, Defendant states that no answer is required, a the paragraph contains a legal conclusion, and Defendant neither admits nor denies that Plaintiff has completely or accurately stated and applied all law relevant to this case, and leaves Plaintiff to its proofs.

177. Answering paragraph 177, Defendant denies the allegations as untrue.

178. Answering paragraph 178, Defendant denies the allegations as untrue.

179. Answering paragraph 179, Defendant denies the allegations as untrue.

180. Answering paragraph 180, Defendant denies the allegations as untrue.

181. Answering paragraph 181, Defendant denies the characterization of the facts and circumstances of this case as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

### **COUNT VIII**

182. Answering paragraph 182, Defendant restates and incorporates by

reference its answers to paragraphs 1-181 as though fully set forth herein.

183. Answering paragraph 183, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL § 431.302, but neither admits nor denies that Plaintiff has completely or accurately stated or applied all law relevant to this case, and leaves Plaintiff to its proofs.

184. Answering paragraph 184, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL § 431.317, but neither admits nor denies that Plaintiff has completely or accurately stated or applied all law relevant to this case, and leaves Plaintiff to its proofs.

185. Answering paragraph 185, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL § 431.321, but neither admits nor denies that Plaintiff has completely or accurately stated or applied all law relevant to this case, and leaves Plaintiff to its proofs.

186. Answering paragraph 186, Defendant admits only that Plaintiff has accurately quoted an excerpt of MCL § 431.328, but neither admits nor denies that Plaintiff has completely or accurately stated or applied all law relevant to this case, and leaves Plaintiff to its proofs.

187. Answering paragraph 187, Defendant denies the allegations as untrue.

188. Answering paragraph 188, Defendant denies the allegations as untrue.

189. Answering paragraph 189, Defendant denies the allegations as untrue.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

Respectfully submitted,

ROSATI, SCHULTZ, JOPPICH  
& AMTSBUECHLER PC

/s/ Matthew J. Zalewski  
Matthew J. Zalewski (P72207)  
Attorneys for Defendant  
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Dated: April 29, 2024

### **AFFIRMATIVE DEFENSES**

Defendant, PLYMOUTH CHARTER TOWNSHIP, by and through its counsel, ROSATI SCHULTZ JOPPICH & AMTSBUECHLER, P.C., raises the following affirmative defenses to the Complaint:

1. The Court lacks subject matter jurisdiction over some or all of the claims alleged in the Complaint.

2. Plaintiff's takings and related equal protection and due process claims are not ripe for adjudication due to Plaintiff's failure to obtain a final decision of the Township as to the applicability of its Zoning Ordinance to Plaintiff's property.

3. Plaintiff has failed to exhaust administrative remedies.

4. The Complaint fails to state a claim upon which relief can be granted.

5. Plaintiff lacks standing to seek declaratory relief, or the Complaint otherwise does not state a viable claim for declaratory relief, as declaratory relief is not necessary to guide the future conduct of the parties.

6. Plaintiff's takings claim under the unconstitutional conditions theory fails to state a claim, or as a matter of law, as the specifically-alleged "conditions" were not conditions imposed by the Township, but were subject of bargaining between the parties in relation to the PUD contract.

7. Plaintiff's taking claim under the unconstitutional conditions theory fails to state a claim, or as a matter, of law as the Zoning Ordinance specifically contemplates the parties specifying conditions of a Planned Unit Development, including a PUD Contract and provisions for the public health, safety, and general welfare of the Township.

8. Plaintiff's takings claim fails because Plaintiff has not had any property taken.

9. Plaintiff's takings claims fail because Plaintiff cannot satisfy the balancing test for a taking.

10. Plaintiff's takings claims fail because Plaintiff's property is marketable and useable as zoned, and Plaintiff has not lost all economically viable use of the property.

11. Plaintiff's substantive and procedural due process claims fail to state a claim, or as a matter of law, as Plaintiff cannot establish a protected property right as required to proceed with a due process claim, as there can be no protected property right in a first-time permit, an unissued permit, a discretionary decision, or an act that violates the law, and where substantial construction has not commenced.

12. Plaintiff's procedural due process claim fails to state a claim, or as a matter of law, as Plaintiff was afforded all proper procedures in compliance with the Zoning Ordinance and Michigan Zoning Enabling Act.

13. Plaintiff's substantive due process claim fails to state a claim, or as a matter of law, as the actions alleged are not "arbitrary and capricious" and do not "shock the conscience."

14. The Michigan Zoning Enabling Act claim fails, as the Township followed proper procedures, and the negotiations at issue in this case were specifically contemplated by the Zoning Ordinance.



15. Count VII, “Injunctive Relief” fails to state a claim upon which relief can be granted, as “Injunctive Relief” is not an independent substantive cause of action.

16. Count VIII fails to state a civil cause of action.

17. Plaintiff cannot establish municipal liability for purposes of its federal constitutional claims brought pursuant to 42 U.S.C. § 1983, as it cannot establish the existence of a custom, policy, practice, or procedure on the part of the Defendant that was the moving force behind any alleged deprivation of Plaintiff’s constitutional rights.

18. Plaintiff’s municipal liability claim must fail where the protocols in place are not deliberately indifferent to Plaintiff’s individual rights.

19. Any damages alleged by Plaintiff are the result of its own actions or inactions.

20. Plaintiff has failed to mitigate its damages.

21. Plaintiff’s claims will fail, and Defendant will be entitled to its costs and attorney fees under 42 U.S.C. § 1988.

22. Reservation: Defendant reserves the right to assert additional affirmative defenses that may become known during the pendency of this litigation.

WHEREFORE, Defendant, PLYMOUTH CHARTER TOWNSHIP, respectfully requests that this Honorable Court deny the relief requested in the Complaint, dismiss the Complaint with prejudice, enter judgment for Defendant, award costs and attorney fees so wrongfully incurred, and grant any other relief deemed appropriate.

Respectfully Submitted,

ROSATI, SCHULTZ, JOPPICH &  
AMTSBUECHLER, P.C.

/s/ Matthew J. Zalewski

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email on April 29, 2024.

ROSATI, SCHULTZ, JOPPICH &  
AMTSBUECHLER, P.C.

/s/ Dawn Hallman

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