

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

NORTHVILLE DOWNS, LLC, a  
Michigan limited liability company,

Plaintiff,

Case No. 24-

vs.

PLYMOUTH CHARTER TOWNSHIP,  
a Michigan municipal corporation.

Hon.

Defendant.

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**COMPLAINT AND JURY DEMAND**

Plaintiff Northville Downs, LLC (“NVD”), by and through its undersigned attorneys, The Mike Cox Law Firm, PLLC, states as follows for its Complaint against Defendant Plymouth Charter Township (“Township”):

**PARTIES, JURISDICTION, AND VENUE**

1. NVD is a Michigan limited liability company that transacts business in Wayne County, Michigan and has its principal place of business in Northville Township, Michigan.

2. The Township is a municipal corporation organized under the constitution and statutory laws of the State of Michigan and located in Wayne County, Michigan, whose Board of Trustees, Planning Commission, Supervisor, and other officials committed the acts at issue here under color of law.

3. The Township is not immune from the claims in this suit under any constitutional or statutory provision.

4. This Court has federal-question jurisdiction under 28 U.S.C. § 1331 over Count I and II, as well as Counts V through VII, of this Complaint because those counts arise under Articles and Amendments to the United States Constitution, including the 5th and 14th Amendments, and are brought pursuant to 42 U.S.C. § 1983.

5. The Court has supplemental jurisdiction over the remaining Counts in this Complaint under 28 U.S.C. § 1367 because those Counts are so related to the federal claims in the Complaint that they form part of the same case or controversy under Article III of the United States Constitution.

6. The amount-in-controversy in this matter exceeds \$75,000.

7. The Court has personal jurisdiction over the Township because it is a municipal corporation located in and created under the laws of the State of Michigan.

8. Venue is appropriate in this Court under 28 U.S.C § 1367(b)(1) because the Defendant Township resides in this District, and a substantial part of the events giving rise to the claims here occurred within this District.

## GENERAL ALLEGATIONS

9. NVD is the last operating horse-racing track in the State of Michigan, and, until this year, it had operated from a location in downtown Northville, Michigan since 1944.

10. For the past eight decades, the Carlo family has owned and operated NVD as a family-run business. John and Mike Carlo are the family members who currently operate the harness racing operation at NVD. John and Mike Carlo also have membership interests in NVD as that term is understood under Michigan law.

11. In the late fall of 2020, NVD began exploring potential relocation sites in several municipalities across Southeast Michigan as the City of Northville property which NVD leased was being sold.

12. NVD's desire to relocate attracted the attention of several municipalities, as those municipalities knew that any new NVD development will result in a state-of-the art entertainment venue, new jobs, tax revenues, and various other substantial benefits to the municipality where NVD relocated.

**Township officials, including Supervisor Kurt Heise, induce NVD to purchase land in the Township.**

13. Because he knew about NVD's desire to relocate, Township Supervisor Kurt Heise contacted John Carlo, the Director of Operations for NVD, to encourage Carlo and NVD to consider potential sites in the Township, including the former Detroit House of Corrections ("DeHoCo"), which is now run by an authority called

the Michigan International Technology Center (“MITC”), which is governed jointly by the Township and the adjoining Northville Township, with each township governing the respective portion of the MITC located within its geographical territory (the “MITC Site”).

14. After NVD responded to Heise’s invitation to consider relocating to the Township, Heise contacted Redico Building Management (“Redico”), which held a purchase option on a portion of the MITC Site.

15. In January 2021, John and Mike Carlo of NVD met for drinks and dinner with Heise and Township Economic Director Gary Heitman to discuss NVD’s potential purchase of property within the Redico footprint at the MITC Site.

16. Supervisor Heise is the chairman of the MITC, and Mr. Heitman is a board member of the MITC.

17. In addition to being the Township’s Economic Director, Mr. Heitman is a former Township Trustee and an avid horse racing enthusiast and horse owner, which made the Township’s overtures that much more enticing to NVD.

18. During that dinner meeting, Heise and Heitman aggressively tried to persuade NVD’s owners that they should relocate their horse-racing facility to the Township, as opposed to two other communities in Southeast Michigan that NVD was actively assessing at the time, specifically neighboring Northville Township and Van Buren Township.

19. Heise explicitly told John and Mike Carlo that both the Planning Commission and Board of Trustees would “absolutely” vote as Heise directed them regarding any necessary approval to relocate the NVD track operation to the Township, and more specifically, on the Redico parcel within the MITC Site.

20. Heise bragged that, through his political influence and control, he would be able to secure a unanimous vote from the Township Planning Commission and a likely 6-1 vote from the Board of Trustees, noting that the one vote he would not be able to secure would be Trustee Chuck Curmi, whom Heise described as his “nemesis.”

21. Both Heise and Heitman, who, again, were respectively the Supervisor and Economic Development Director of the Township, told the Carlo brothers the entire regulatory approval process for site-plan location and construction plans for NVD's new site would take only 60 to 90 days because (a) the NVD plan made sense for the Township and MITC corridor and (b) Heise had had control of the regulatory process.

22. These statements by Heise and Heitman to induce NVD were attractive to NVD’s owners because expedited regulatory approval meant a smoother, more seamless relocation from racing in the City of Northville to racing in the Township, with little or no business disruption or interruption.

23. Further, the Carlos relied on Heise's statements because they knew that Heise had beat an incumbent and brought his own team to the Township Board of Trustees when he was elected, and so the Township Board was made up of trustees who needed Heise's support and were Heise's political allies.

24. Because Supervisor Heise was previously a member of the Michigan Legislature and Heitman was a longtime race-horse owner and enthusiast, both knew that the Township would be entitled to "breaks" or "breakage" under Section 17(4) of Michigan's Horse Racing Law of 1995, MCL § 431.317(4), which is essentially a rounding up of a bettor's winnings that a horse-racing facility pays to its host municipality for police, fire, traffic, and other similar protections.

25. Breakage fees provide horse-track host communities with a net revenue benefit.

26. Further, under Section 28 of the Michigan Horse Racing Law of 1995, a municipality that hosts a horse-racing track may "not assess or collect an excise or license tax or fee from a person licensed under this act based upon an activity performed under this act" other than the breakage fees it is entitled to. MCL § 431.328.

27. Thus, the Michigan Legislature has already made a policy decision that expressly places a cap on the benefits horse-track host municipalities are entitled to involuntarily collect.

28. Despite that Legislative policy determination, Heise asked what benefits NVD would bring to the Township.

29. John Carlo explained that, among other things: (a) the Legislature's breakage fees provided approximately \$200,000 per year to the City of Northville (the then-host city for NVD) ("City") which greatly exceeded any costs to the City of hosting NVD and so provided net revenue; (b) increased economic development in the Township, to include more jobs and tax revenue; (c) a preserved large-scale greenspace in the Township, as opposed to the other warehouses and other non-greenspace developments that were planned for the MITC; and (d) NVD would permit the Township to host civic events on NVD's grounds at no cost, as it had in the City of Northville, and these events ranged from the annual City Fourth of July Parade to car shows, flower shows, and a locally renowned farmer's market, which helped burnish the reputation of the City's downtown. Carlo explained that NVD would do the same for Township.

30. Heise then asked what kinds of benefits would NVD give the Township if the Michigan Legislature ever changed the Horse Racing Law of 1995 to expand parimutuel horse racing at NVD to permit what is often called "racino" or "historical horse racing" which in other states has grown the revenue that tracks earn.

31. The Carlos stated they were open to do more if their business revenue increased through future legislative changes, but then restated the substantial

community benefits—breakage revenue, property taxes, and hosting civic events at no charge—that they had provided for years to the City of Northville.

32. As noted above, Heise explained that he and Mr. Heitman would guide the NVD project through the Township’s PUD process, which is governed and strictly regulated by Township Ordinance and the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*, (“MZEA”).

33. Mr. Heise also described what he called a community benefits agreement (“CBA”), which would not be tied to the PUD approval process but would be a voluntary agreement between the Township and NVD to describe the community benefits of having NVD in Plymouth Township.

34. Neither the Township Ordinance nor the MZEA describe or authorize any such land-use concept as a community benefit agreement.

35. Based on Heise’s and Heitman’s inducements and representations, NVD engaged outside professionals, including real-estate, construction, and environmental consultants, to assess the Redico/MITC parcel in the Township that Heise and Heitman had pushed.

36. In the Spring of 2022, based on the advice of its outside professionals, NVD determined that the Redico portion of the MITC Site was not a viable relocation site and informed Heise and Heitman of that decision.



37. Over the next several months, NVD spent approximately \$100,000 on outside consultants to explore other potential relocation sites in the Metro Detroit area to make up for the lost time it invested in the Redico/MITC site.

38. Then in September 2022, Heise and Heitman contacted John Carlo of NVD again to inform him that another property in the MITC corridor within Plymouth Township boundaries—a 128-acre parcel at the Southwest corner of 5 Mile and Ridge Road—had become available.

39. Even without extensive third-party analysis, this site was clearly desirable for a number of reasons: the developable portion of the parcel is receded from 5 Mile and Ridge Road, which meant there would be a buffer between any development and the roads; there was significant greenspace available due to the size of the parcel; and the site is directly adjacent to Johnson Creek, which is currently the subject of a restoration and conservancy initiative that NVD could assist with as a member of the community.

40. Put differently, as a historically pastoral activity, NVD wanted to conduct its racing business as part of a greater greenspace effort and in a more pastoral setting, if possible.

41. The 5 Mile and Ridge Road site had become available because a prior development, which would have involved the construction of 8 warehouses and 2,000 parking spaces on the property, had fallen through.

42. This prior development—which had a significantly larger footprint, reduced greenspace, and placed a greater burden on the Township’s utilities and services than the proposed NVD development—failed because the potential buyer of the site decided to pull out of a deal with the site’s developer *after* the Heise administration and the Township had approved construction plans, and infrastructure development at the site was well underway.

43. Because of the failure of that development, the Township was desperate to find a replacement quickly.

44. Upon assessment of the site following the Township’s overtures, NVD’s real-estate, construction, and environmental experts quickly found the property to be a viable relocation site.

45. Based on the inducements from Heise and Heitman that the PUD and other regulatory approvals, including approval votes by the Planning Commission and Township Board of Trustees, would occur within 90 days, as well as its outside consultants’ assessment that this property that Heise and Heitman wanted developed was a viable location for a race track, NVD decided to purchase the property.

46. NVD completed its purchase of the property for \$10,000,000 in December 2022 and began preparation for PUD approval under the Township’s Zoning Ordinance.

47. The Legal Description of the property is as follows:<sup>1</sup>

*Part of the North 1/2 of Section 19, Township 1 South, Range 8 East, Plymouth Township, Wayne County, Michigan, described as:*

*COMMENCING at the Northeast corner of said Section 19; thence along the East line of said Section 19, South 00 degrees 05 minutes 01 seconds West 527.36 feet; thence South 88 degrees 31 minutes 32 seconds West, 60.02 feet to the West Right-of-Way line of Ridge Road (120' wide), and the POINT-OF-BEGINNING; thence along said line South 00 degrees, 05 minutes 01 seconds West, 2124.86 feet to the East-West 1/4 Line of said Section; thence along said line South 88 degrees 36 minutes 35 seconds West, 2896.59 feet passing through the center post of said Section; thence along said centerline of Johnson Creek the following two (2) course: North 25 degrees 39 minutes 34 seconds East, 1692.40 feet, and North 38 degrees, 58 minutes, 31 seconds East, 1420.36 feet to the South Right-of-Way line of 5 Mile Road (120' wide); thence along said line North 88 degrees 31 minutes 32 seconds East, 307.99 feet to the Southwesterly Right-of-Way line of Chesapeake and Ohio Railroad (99' wide); thence along said line South 65 degrees 21 minutes 35 seconds East, 1061.37 feet to the POINT-OF-BEGINNING.*

*Containing 125.16 acres of land, more or less.*

48. NVD completed its purchase with a \$5,100,000 cash down payment and financing on the remaining \$4,800,000 of the purchase amount, at an interest rate of 8%.

49. This \$5,100,000 down payment was a significant amount for NVD and, with the accompanying mortgage, it essentially tied NVD to the Township and the vicissitudes of its regulatory process.

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<sup>1</sup> **Exhibit 1:** PUD Contract Draft of 06.14.2023, at 9.

**NVD’s PUD receives unanimous support from the Township Planning Commission and near-unanimous support from the Board of Trustees.**

50. The Township’s Zoning Ordinance establishes the PUD option for certain developments to, among other reasons, “permit flexibility in the regulation of land development, encourage innovation in land use and variety in design, layout and type of structures constructed, [and] achieve economy and efficiency in the use of land . . . .”<sup>2</sup>

51. The first step in the PUD approval process under the Township Zoning Ordinance is a PUD Option Application, which is a determination that a proposed development is *eligible* for approval as a PUD because, among other things, it “is in conformity with the spirit and intent of the PUD Option” and there is a “recognizable and material benefit to the ultimate users of the project and to the community, where such benefit would otherwise be unfeasible or unlikely to be achieved without application of the PUD Option regulations.”

52. NVD submitted its PUD Option Application on January 16, 2023.

53. On February 15, 2023, the Township Planning Commission held a vote on NVD’s PUD Option Application.<sup>3</sup>

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<sup>2</sup> **Exhibit 2:** Plymouth Township Zoning Ordinance, Art. XXIII, Sec. 1.

<sup>3</sup> **Exhibit 3:** 02.15.2023 Township Planning Commission Meeting Minutes; **Exhibit 4:** Link to 02.15.2023 Township Planning Commission Meeting Recording.

54. During that meeting, the Township Planner echoed Heise’s comments during the January 2021 dinner meeting that the PUD and CBA were separate processes, stating that “the Community Benefits Agreement is a separate agreement that would be considered by the Board of Trustees . . . .”

55. It became clear during the February 15 Township Planning Commission meeting that the Township viewed the NVD development as having a public aspect, rather than being just a private development—this is significant given the Constitution’s mandate in Amendment V that a government entity must validly use its eminent-domain powers whenever it wishes to take private property.

56. The Township Planner described the NVD development as a “unique multi-use entertainment venue for the benefit of the Township.”<sup>4</sup>

57. This comment is also notable because the Township Planner was effectively saying, according to the terms of the Township Zoning Ordinance’s PUD provision, that the NVD development, as proposed, inherently provided a benefit to the Township even outside of any CBA.

58. Heise made a personal appearance at the February 15 Township Planning Commission meeting and strongly voiced his support for the NVD development.

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<sup>4</sup> **Exhibit 4:** Link to 02.15.2023 Township Planning Commission Meeting Recording.

59. According to what Heise told the Commission that night, this appearance was only the second time in Heise’s 7-year tenure as Township Supervisor that he had attended a Planning Commission Meeting.

60. Heise also described the “public components” of NVD’s proposed development as “part of the recreational amenities of both the Township and City [of Plymouth] . . . public or quasi-public or public-private entities that exist in the Township that do provide recreational opportunities for us.”<sup>5</sup>

61. Aside from the Fifth Amendment implications of Mr. Heise’s remarks, these comments are also extraordinary because nowhere in either the Township’s Ordinance or the MZEA are there any standards set forth for a “community benefits agreement” nor any authority for a planning commission to make decisions based on a “community benefit agreement.”<sup>6</sup>

62. Following Heise’s comments, as Heise had promised during the January 2021 inducement dinner meeting, the Township Planning Commission voted unanimously to approve NVD’s PUD Option Application.

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<sup>5</sup> *Id.*

<sup>6</sup> *See* Sections 502 to 505 of the MZEA, MCL 125.3502 to MCL 125.3505; *see also* Township Zoning Ordinance, at [https://www.plymouthtp.org/government/departments/community\\_development/zoning\\_ordinance\\_n0\\_99.php](https://www.plymouthtp.org/government/departments/community_development/zoning_ordinance_n0_99.php).

63. This unanimous approval by the Commissioners is not surprising because under Section 31.022 of Plymouth Township's Code of Ordinances, Mr. Heise appointed all 7 members of the Planning Commission.

64. Further, the unanimous approval was exactly what Heise had predicted during his initial dinner meeting with the Carlos.

65. On February 22, 2023, Mike and John Carlo had lunch with Heise and Heitman, and Heise and Heitman continued their hard-sell to NVD, with Heise boasting to NVD that the result of the Planning Commission meeting was exactly as he had predicted and ensuring NVD that he would be able to similarly control the remainder of the process.

66. The next step in the approval process was for the Township Board of Trustees to review the NVD PUD Option Application.

67. On February 28, 2023, the Township Board of Trustees held a Regular Meeting to vote on the NVD PUD Option Application.

68. Following comments by members of the Board of Trustees and a period of public comments, the Board of Trustees voted 6-1 to approve a PUD Option for the NVD Relocation Project.<sup>7</sup>

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<sup>7</sup> **Exhibit 5:** 02.28.2023 Township Board of Trustees Meeting Minutes; **Exhibit 6:** Link to 02.28.2023 Township Board of Trustees Meeting Recording.

69. The Board Members' comment period included a series of extended comments by Treasurer Bob Doroshewitz, who stated, among other things, that he did not see any issues with having a horse-racing track as part of the Township community.

70. The lone dissenting vote at the February 28 meeting was Trustee Chuck Curmi, just as Heise predicted.

71. So, like the Township Planning Commission's approval, the Board of Trustees' approval occurred just as Heise had promised at the January 2021 dinner meeting, down to the number of votes Heise had promised he controlled.

72. Thus, by February 28, 2023, both the Township Planning Commission and Board of Trustees had determined, in accordance with the terms of Article XXIII of the Township's Zoning Ordinance, that NVD's proposed relocation to the Township would conform with the standards for the Township's PUD Option and would therefore, inherently pursuant to the terms of the Zoning Ordinance, provide a recognizable and material benefit to the Township community.

73. After the vote to approve NVD's PUD at the February 28, 2023 Board meeting, the Board of Trustees, on motion by Heise, also voted to authorize Heise and Township Attorney Kevin Bennett to create a Community Benefits Agreement to be "formally approved by both parties at a later meeting of the Township Board."



74. Under Art. XXIII, Sec. 7 of the Township’s Zoning Ordinance, NVD had one year after the Board of Trustees’ approval of its PUD Option Application to secure approval of a PUD Development Plan, which was the next step in the PUD approval process after the February 28, 2023 votes.

75. Under the Township Zoning Ordinance, the PUD Development Plan stage requires the creation and approval of a mutually agreed PUD Contract, the purpose of which is to set “forth the conditions upon which approval of the PUD is based.”

76. Nowhere does the Township Zoning Ordinance provide for a PUD approval being conditioned on a CBA.

77. The first draft of the NVD PUD Contract was completed in April 2023.

78. At a Special Meeting of the Township Planning Commission on May 3, 2023, the Planning Commission reviewed an initial version of NVD’s PUD Development Plan and voted to postpone a vote to approve or deny it to allow NVD to make some minor changes to that plan.<sup>8</sup>

79. The CBA was not discussed at the May 3 Special Meeting.

80. On June 1, 2023—after NVD amended its Development Plan in accordance with the Planning Commission’s requests at the May 3 meeting—the

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<sup>8</sup> **Exhibit 7:** 05.03.2023 Planning Commission Special Meeting Minutes.

Planning Commission held a Special Meeting on June 1, 2023 to address the amended NVD PUD Development Plan.<sup>9</sup>

81. After a series of comments by both Planning Commission members and members of the public, the Planning Commission voted unanimously to approve the revised version of NVD PUD Development Plan.

82. This unanimous approval, however, came with a condition that violated the MZEA, Michigan Constitution, and the United States Constitution, specifically: “a revised PUD contract that includes a provision for a community benefits agreement to be submitted to the Township Attorney and must be determined by the Board and Attorney to be acceptable.”

83. Two weeks later, on June 14, 2023, Heise sent edits to the then-current draft of the proposed NVD PUD Contract, which included the following language at Paragraph 20: “This PUD Agreement *is contingent upon* the Owner and the Township entering into *a binding Community Benefits Agreement*; if the parties do not enter into a binding Community Benefits Agreement, this PUD Agreement shall be null and void.”<sup>10</sup>

84. In addition to a CBA condition not being authorized or permitted by the Township’s Zoning Ordinance or the MZEA, the Township has *never* previously

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<sup>9</sup> **Exhibit 8:** 06.01.2023 Planning Commission Special Meeting Minutes; **Exhibit 9:** Link to 06.01.2023 Planning Commission Special Meeting Recording.

<sup>10</sup> **Exhibit 1:** PUD Contract Draft of 06.14.2023.

required *any* developer to execute a CBA, much less make a CBA a necessary condition for development.

**The Township makes extravagant, unlawful, and unconstitutional demands for \$5,000,000 in cash, drone shows, soccer fields, pickleball courts, and other items worth millions more to obtain regulatory approval for NVD.**

85. As demonstrated in more detail in the following paragraphs, the substance of the conditions that the Township was placing on NVD's PUD approval by linking it to the CBA amounted to extortion for NVD's right to use the land that the Township had induced it to purchase, including:

- a. A demand for \$5,000,000 in cash;
- b. A 4th of July Drone Show paid for NVD;
- c. At least four other community events every year on NVD's property;
- d. Pickleball courts;
- e. Youth-soccer fields; and
- f. A 1.2-mile on-site nature walking trail.

86. While the value of the \$5,000,000 cash payment is self-explanatory, the cost to NVD or, conversely, the value to the Township of the other items also would have totaled in the millions of dollars for items including:

- a. The Fourth of July Drone Show on which Township officials wanted NVD to spend at least \$100,000 per year;

- b. The youth soccer fields that would have had a value to the Township in excess of \$250,000 per year;
- c. The pickleball courts that would have had a value to the Township in excess of \$100,000 per year; and
- d. The nature walking trail that would have cost NVD \$400,000 for initial construction, then at least \$50,000 per year for maintenance costs.

87. The Carlos were taken aback not only by the enormity of Heise's demands, but also by the fact that Heise's demands contradicted the Michigan Legislature's policy determination under the Michigan Horse Racing Law of 1995 that race-track hosting municipalities are entitled *only* to breakage fees.

88. Yet at the same time, the significant down payment and accompanying mortgage on the Plymouth Township site required NVD to try and appease or otherwise try to negotiate with the Township to get regulatory approval. NVD did not have another \$5 million easily available to put as a down payment elsewhere.

89. Further, as the Carlos had explained to Heise, NVD had to leave its City location by the beginning of 2024, and so wanted to get regulatory approval and begin construction as soon as possible in early to mid-2023 to avoid any closure, or minimize any closure of the track, which would hurt NVD's operating income.

90. Less than a week after the initial Planning Commission and Board of Trustee votes, Heise made his initial multi-million-dollar demand in an email dated March 3, 2023, but, to soften his demand, stated the CBA and PUD approvals were not, at least at that point in the negotiations linked together:

**From:** "Heise, Kurt" <kheise@plymouthtp.org>  
**Date:** March 3, 2023 at 11:50:00 AM EST  
**To:** Mike Carlo <mcarlo14@comcast.net>, john c <mousetrap1@yahoo.com>, Jim Militello <jim@militello.com>  
**Cc:** "Heitman, Gary" <gheitman@plymouthtp.org>, Kevin Bennett <kbennett@hpcswb.com>, "Brams, Sue" <sbrams@plymouthtp.org>, Planning Dept <planning@plymouthtp.org>, "Cebulski, Dennis" <cebulski@umich.edu>  
**Subject:** Initial Suggestions for Community Benefit Agreement

Good Morning:

Based on my previous discussions with the Carlo Brothers I would like to kick off the discussion on a Community Benefit Agreement (CBA) with Northville Downs (NVD) using the following suggestions and concepts. This is in addition to the requirements set forth in the PUD.

I also want to make it clear that the PUD and CBA are not 'tie-barred,' meaning both documents go forward at their own pace. Your team will need to continue to finalize the PUD separately.

**Northville Downs (NVD) to Township:**

1. Guaranteed minimum of \$500,000 in breakage fees to the Township starting in year one
2. "Vet and Pet Friendly" 4<sup>th</sup> of July Drone Show to be hired and paid by NVD starting in 2024
3. Up to six 'Community Arts & Cultural Events' each year to be mutually determined
4. 10-year, renewable agreement with Township
5. New CBA if expanded equine gaming is authorized by State & Township

91. These email-based discussions then led to the circulation of a draft CBA on or around April 11, 2023, in which the Township demanded that NVD perform the following actions, none of which relates to the operation of horse-racing facility nor permitted land-use regulation:<sup>11</sup>

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<sup>11</sup> **Exhibit 10:** 06.20.2023 Unaccepted Draft of NVD CBA.

- a. **Establish a Trust Fund and Pay Fees to Township:** The April 11 version of the CBA would have required NVD’s owners to establish a trust fund *in their own family name* and pay the Township \$400,000 per year for 10 years—a total of \$4,000,000.
- b. **Permit Four “Community Events” Per Year:** The April 11 version of the CBA would have required NVD to allow the Township to host four unspecified community events per year at the track on mutually agreed dates.
- c. **Host Youth Soccer:** The April 11 version of the CBA would have required NVD to allow the Township “to use the infield grass of its race track for youth soccer to be managed and maintained by a third-party soccer club.”

92. In addition to these conditions in the CBA, the PUD Contract that was circulating at the time of the April 11 CBA would have required NVD to construct a 1.2-mile paved walking path at the NVD property, to include a pond, a sitting area around the pond, and “two 8 foot wide boardwalks of approximately 100 feet in length” and this condition remained throughout all subsequent drafts.<sup>12</sup>

93. This walking path was almost five times the cost of a much smaller and less extravagant walkway that Mr. Heise and the Township had required from the

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<sup>12</sup> **Exhibit 1:** PUD Draft of 06.14.2023.

prior developer who had planned to build 8 warehouses large enough to require parking spaces for 2,000 employees and guests on the same site.

94. By June 20, 2023, Heise dropped any pretense that the CBA would be voluntary, and instead explicitly tied approval of NVD's PUD to NVD agreeing to pay Township millions of dollars to obtain regulatory approval:

Good Morning:

Here is a summary of where we stand as of this morning on the Planned Unit Development Agreement for Northville Downs

**All items remain the same in the draft PUD except the following:**

- Township will remove references to sidewalk on Ridge Road
- Township will remove references to onsite Pickleball Courts

**Township still needs the following:**

- Color renderings of proposed Horse Barn
- Any new color renderings of the main pavilion building
- **Acceptance of Community Benefit Agreement**

My plan is to put both agreements on the July 11 Agenda. As you have seen in the past few days, citizen opposition to Northville Downs is growing daily, now with a dedicated website, lawn signs and flyers. I think there are still 4 votes to advance the project but increased public pressure may force a couple of them to get wobbly. Trustee Curmi is actively opposing the project and I am sure is working with the opposition.

**Kurt L. Heise, JD, LL.M, Supervisor**  
**Charter Township of Plymouth, MI**  
9955 N. Haggerty Road  
Plymouth, MI 48170-4673  
(734) 354-3201 Office  
(313) 303-8534 Cell

[www.plymouthtp.org](http://www.plymouthtp.org)

95. One week after that, on June 27, 2023, Heise proposed an amendment to the trust-fund provision of the CBA, which would have resulted in NVD, rather than its owners' trust fund, making direct payments to the Township of \$500,000 per year for 10 years—thus going back to Heise's initial demand of \$5,000,000 in cash:

Good Morning Everyone:

As much as I hate negotiating against myself, I would like to propose the following concept with respect to the financial component of the CBA; this would replace the current CBA proposals Section II A, B, and C.

**Section II (A) Revenue Sharing**

**For the first 10 years of this agreement, Northville Downs LLC shall guarantee to the Township a revenue sharing check in the amount of \$500,000 per year; payments to begin one year after the opening of the facility to the public. This number shall include all breakage fees under State Law. The Township agrees to place all revenue sharing funds in a dedicated Plymouth Township Recreation Fund for the benefit of the community.**

This proposal recognizes that Breakage Fees will likely not be substantial in the first 2-3 years at NVD's new facility. However, the risk to the Township is that if breakage fees do exceed \$500,000 in any given year, we are capped and won't get any overage.

Meanwhile, public opposition to the track continues to grow, with PETA, Trustee Curmi, and Republican activist Duane Zantop planting anti-racetrack signs all over town. **The opposition is feeling really good after killing the Meijer's project last week.**

**Kurt L. Heise, JD, LL.M, Supervisor**  
**Charter Township of Plymouth, MI**  
9955 N. Haggerty Road  
Plymouth, MI 48170-4673  
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[www.plymouthtp.org](http://www.plymouthtp.org)

96. The June 27 email reflects another repeated theme of Heise's communications to NVD: that the monetary extractions the Township was seeking were not tied to any effects of a horse-racing track or proper land-use regulation, but rather to add political luster to Mr. Heise and the Township Board by bringing in significant new revenues for Mr. Heise and the Board to spend without any new taxes on residents; brand-new soccer fields for a Township that does not have any recreation department; and general political spoils from illegal land-use demands unrelated to NVD's use of its land.



97. At the same time that Heise was making his extortionate demands in private negotiations with the Carlos, various Township officials became publicly vocal that they were primarily interested in how much money NVD was willing to pay the Township to develop the land that the Township had induced it to purchase for \$10,000,000.

98. For example, in one newspaper article from August 2023, Township Trustee John Stewart, who had voted in favor of the NVD PUD in February 2023, demanded that NVD should put “\$100,000 on the table for fireworks every year.”<sup>13</sup>

99. Thus, Township officials were both publicly and privately making clear to NVD that its ability to develop the land that the Township had induced it to purchase would turn on NVD’s willingness to “play ball” and purchase Township officials’ political support.

100. The Township thus presented NVD with an unconstitutional Hobson’s choice: either pay millions of dollars that the Township cannot legally extract and that NVD cannot afford or risk losing regulatory approval of its property and potentially shutting its business down forever.

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<sup>13</sup> **Exhibit 11:** *‘Culture, morals, values.’ Board members pivot on Northville Downs proposal*, Hometown Life, August 30, 2023.

101. Also around this time, NVD was having discussions with various other Township officials, such as the Township Planner and Engineer, as the Planning Commission had requested in its June 1 approval of the NVD Plan.

102. These discussions centered primarily around aesthetic (not regulatory) concerns with respect to NVD's proposed development, and NVD spent hundreds of thousands of dollars on designers, architects, and other professionals to work cooperatively with the Township and assuage its concerns on these issues.

103. It was clear, however, that these concerns were not central to the Township's assessment of the NVD PUD Development Plan—the Township was focused on its list of monetary and non-monetary demands that were unrelated to proper land-use regulation, such as \$5,000,000 in cash payments, the drone show, new pickleball courts, soccer fields, nature trail, and access to NVD's ground for community events.

104. Negotiations between the parties continued from that point, but the negotiations were largely stuck in the mud due to the Township's unconstitutional demands.

105. On December 18, 2023, Heise sent another email making clear that the NVD PUD Development Plan would not be approved unless NVD accepted the CBA and that negotiations were effectively over unless NVD did so.

**The Township denies NVD’s PUD application without giving NVD any opportunity to participate in the final decision-making process.**

106. Given the Supervisor’s intractable position, counsel for NVD sent a letter to the Township on January 10, 2024 requesting a vote on its PUD application or, in the alternative, an extension to secure approval of its PUD application.

107. NVD’s counsel also wrote that NVD would accept the most recent version of the PUD contract “as is,” that is NVD agreed completely with all of the Township’s PUD proposed terms, with the exception of Paragraph 20 of the PUD that stated “(t)his PUD Agreement is contingent up the Owner [NVD] and the Township entering into a binding Community Benefits Agreement; if the parties do not enter into a binding Community Benefits Agreement, this PUD Agreement shall be null and void.”<sup>14</sup>

108. After additional letter exchanges between the parties, including a second request by NVD for an extension on its PUD application, Heise formally requested that the Board vote to rescind the authority it had previously granted Heise for combined negotiations on the PUD and CBA, as well as accusing NVD of bad faith for refusing to sacrifice its constitutional rights:

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<sup>14</sup> **Exhibit 12:** January 10, 2024 Letter to Township with the attached PUD beginning at page 4 of the Letter.

**ITEM: Northville Downs, LLC Planned Unit Development and Community Benefits Agreement**

**PRESENTER:** Supervisor Heise

**BACKGROUND:** It is my professional opinion that negotiations between Plymouth Township and Northville Downs, LLC. are at an impasse and that Northville Downs, individually and through their attorney, are engaging in bad faith negotiations. Therefore, I am requesting that the Board rescind Motion #2023-02-28-14 authorizing negotiations of a Planned Unit Development for Northville Downs, LLC., which also mandates a Community Benefits Agreement.

Further, that the Plymouth Township Planning Commission be directed to deny any requests for a time extension, and that the Township Attorney respond to Northville Downs' attorney with the basis for our Motion rescission and the legal and factual information supporting the Township's decision.

109. The Township published a meeting agenda for its January 23, 2024 Board of Trustees Regular Meeting that included a line item added by specifically Heise calling for combined vote on the PUD and CBA:

**REQUEST FOR BOARD ACTION**

1. Northville Downs, LLC Planned Unit Development and Community Benefits Agreement, *Township Supervisor Kurt Heise*

110. Thus, on January 23, 2024 at a Regular Meeting, the Board of Trustees voted unanimously “to rescind Resolution #2023-02-28-14 authorizing negotiations of a Planned Unit Development for Northville Downs, LLC., **which also mandates a Community Benefits Agreement**, and that the Township Attorney respond to Northville Downs' attorney with the legal and factual information supporting the Township's decision.”<sup>15</sup>

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<sup>15</sup> **Exhibit 13:** 01.23.2024 Board of Trustees Approved Minutes.

111. The Board of Trustees unanimously voted for that resolution at the January 23 meeting without permitting NVD (or the public) to address the Board of Trustees, even though the Board's vote had stripped NVD of land-use rights and NVD had attended the meeting with its real-estate, construction, and environmental consultants to address any concerns the Board might have.

112. Then on January 29, 2024, the Township Planning Commission held a Special Meeting that included "Discussion and Consideration of Rescinding PC #2478 for Northville Downs Failure to comply" with four supposed conditions on the Township's approval of NVD's PUD application, one of which was NVD's refusal of the CBA, as well as vote on NVD's request for an extension on its PUD.<sup>16</sup>

113. As with the January 23 Board of Trustees meeting, NVD was not afforded an opportunity to speak.

114. Eight days later, on February 6, 2024, the Board of Trustees held a Regular Meeting, at which the Board voted to deny NVD's PUD application a final time, which was the end of the Township's administrative process for reviewing PUD applications.<sup>17</sup>

115. Commenting after the vote to reject NVD's PUD (where NVD accepted every condition required by the Township except the CBA), Heise told the Detroit

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<sup>16</sup> **Exhibit 14:** 01.29.2024 Proposed Minutes of Planning Commission Special Meeting.

<sup>17</sup> **Exhibit 15:** 02.06.2024 Board of Trustees Regular Meeting Agenda.

News in an article dated January 25, 2024 that “The issue boils down to the community benefits agreement.”<sup>18</sup>

116. Similarly, Heise told Crain’s Business Detroit on January 24: “We wanted more money, more community benefits from this facility because we knew it was going to be a disruptor and we knew it was going to be controversial.”<sup>19</sup>

117. Nowhere did Heise mention any conditions not being met by NVD, except for the unlawful and unconstitutional CBA.

118. Because of the Township’s illegal and unconstitutional demands, NVD has been forced to shut down, laying off dozens of employees and causing it to lose millions of dollars in lost revenues.

119. NVD’s efforts to find a suitable replacement have been significantly hampered by the fact that it paid \$5,100,000 in cash for a down payment on land in the Township that Township officials had induced it to purchase, and that significant cash outlay has made alternative solutions, even temporary ones, difficult or impossible to find.

120. Thus, Heise and the Township have left NVD without a physical track to operate from as a result of their efforts to (a) induce NVD to substantially reduce

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<sup>18</sup> **Exhibit 16:** Detroit News, *Plymouth Township pulls back reins on Northville Downs racetrack negotiations*, dated Jan. 25, 2024.

<sup>19</sup> **Exhibit 17:** Crain’s Business Detroit, *Plymouth Township ‘severs’ talks with Northville Downs for new location*, Jan. 24, 2024.

its liquidity in spending \$10,000,000 on a relocation site in the Township; (b) make extortionate and unconstitutional demands for land-development approvals; (c) slow-walk those approvals when NVD would not play ball; and (d) ultimately deny NVD's PUD application because NVD exercised its constitutional rights not to be extorted in exchange for land-development opportunities.

121. NVD's lack of a physical track means it not only cannot collect money from betting on live races, but it is also losing out on millions of dollars in revenue from online parimutuel betting because the Michigan Gaming Control Board only permits online parimutuel betting from a physical track where patrons can also bet in person.

122. These millions of dollars in losses are in addition to (at a minimum) the \$10,000,000 the Township induced NVD to spend on property in the Township at 5 Mile and Ridge and the nearly \$1,000,000 that NVD spent, again at the Township's inducement, on the outside professionals it engaged to secure the Township's approvals through the PUD process.

**COUNT I**  
**(TAKING - UNCONSTITUTIONAL CONDITION)**

123. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

124. The United States Supreme Court has held that municipalities and governmental agencies unconstitutionally take property when they place conditions

on land-use permit approvals unless the conditions bear a reasonable nexus and rough proportionality to the land-use project at issue. Conditions that do not bear these characteristics are called “unconstitutional conditions.”<sup>20</sup>

125. Such unconstitutional conditions include demands for easements, licenses, and other land-use rights by a governmental entity in exchange for permit approvals, where the governmental entity would otherwise need to exercise its eminent-domain authority to obtain the easement, license, or other land-use right.<sup>21</sup>

126. Demands for money such as the Township’s demand of \$5 million also constitute unconstitutional conditions because a critical purpose of the Supreme Court’s unconstitutional-conditions doctrine is to protect landowners from “extortionate demands for money by land-use authorities.”<sup>22</sup>

127. The Township placed unconstitutional conditions on the NVD PUD application by, among other things, making the following (non-exclusive list of) conditional demands in the CBA and PUD Contract:

- a. \$5,000,000 in guaranteed payments directly to the Township over a period of 10 years;

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<sup>20</sup> *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

<sup>21</sup> *Id.* at 604-605.

<sup>22</sup> *Id.* at 619.



- b. A license or permit to use portions of the NVD property for civic events and youth soccer that would have had a value to the Township of at least \$250,000 per year;
- c. A Fourth of July Drone Show that Township officials wanted NVD to spend at least \$100,000 per year on;
- d. At least four other community events that NVD would have been required to host;
- e. New Pickleball courts that would have had a value to the Township in excess of \$100,000 per year; and
- f. A 1.2-mile walking track with a pond and various other amenities that would have cost NVD in excess of \$400,000.

128. The Township cannot explain how any of these demands relate in any way to regulating the horse-racing facility that NVD seeks to build given that neither its own Zoning Ordinance nor the MZEA contemplates conditioning PUD approvals on terms like those of the CBA.

129. Indeed, the Township's only attempt at an explanation was that NVD would have to meet the Township's extortionate demands to purchase the necessary political support for its PUD application.

130. Further, the Michigan Horse Racing Law of 1995 already establishes that those demands do not bear a reasonable nexus to NVD's use of its land, as the

Michigan Legislature has made a policy judgment that municipalities hosting horse-racing tracks are entitled only to breakage fees with respect to their hosting of a horse-race track, and the Township has expressly demanded much more than that.

131. Further, Township representatives, including Heise, made clear that the Township saw the NVD development as a “public or quasi-public or public-private” development—a hallmark of a taking that requires a governmental entity to exercise its eminent-domain rights and compensate the property owner.

132. NVD’s development is not *actually* a public use, but is a private development, making the Township’s attempted taking impermissible even beyond any failure to pay just compensation.

133. The Township’s approval conditions on the NVD development are precisely the types of extortionate monetary and non-monetary demands that the Supreme Court’s unconstitutional-conditions doctrine is meant to protect against.

134. The Township’s denial of the NVD PUD application is a taking of private property in a manner that violates Amendments V and XIV of the United States Constitution and art. 10, § 2 of the Michigan Constitution of 1963.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages pursuant to 42 U.S.C. § 1983 in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in

purchasing property based on the Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;

- b) Just compensation for the Township's taking of NVD's property;
- c) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 65, declaring that the Township's denial of the NVD PUD Development Plan was invalid because it was based on unconstitutional conditions;
- d) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- e) Costs and attorney fees available under applicable law, including but not limited to 42 U.S.C. §§ 1983, 1988; and
- f) Any other relief the Court deems just and proper.

**COUNT II**  
**(TAKING WITHOUT COMPENSATION)**

135. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

136. The Township's misapplication of Zoning Ordinance and ultimate denial of NVD's PUD for reasons that are nowhere stated in the Zoning Ordinance,

including its unconstitutional demands for \$5,000,000 in cash payments, drone shows, and other similar extortionate conditions, has deprived NVD of its right to exercise dominion and control over its property, and is therefore the effective equivalent of a physical invasion by the Township.

137. Further, the Township's unconstitutional demands for \$5,000,000 in cash, drone shows, and other similar extortionate conditions were inherently arbitrary and capricious and do not constitute a valid exercise of its police powers.

138. The Township's actions have had a severe economic impact on NVD, as described throughout this Complaint, in that they have forced the closure of NVD, which has resulted in the layoffs of dozens of employees, the loss of millions of dollars in revenues, and the jeopardy of its horse-racing license, in addition to the taking of all or most of the economic benefit of NVD's property.

139. Further, NVD had substantial investment-backed expectations, as described throughout this Complaint, that it would be able to develop its property in the Township that were not only reasonable, but actively induced by Township officials.

140. The Township's actions amount to a regulatory taking in direct violation of Amendments V and XIV of the United States Constitution and art. 10, § 2 of the Michigan Constitution of 1963.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages pursuant to 42 U.S.C. § 1983 in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;
- b) Just compensation for the Township's taking of NVD's property;
- c) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 65, declaring that the Township's denial of the NVD PUD Development Plan was invalid because it was an unconstitutional regulatory taking;
- d) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- e) Costs and attorney fees available under applicable law, including but not limited to 42 U.S.C. §§ 1983, 1988; and
- f) Any other relief the Court deems just and proper.

**COUNT III**  
**(VIOLATION OF MICHIGAN ZONING ENABLING ACT)**

141. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

142. Section 503 of the Michigan Zoning Enabling Act (“MZEA”), MCL 125.3503, governs Michigan municipalities’ ability to approve PUDs within their boundaries.

143. Under MCL 125.3503(2), the municipality’s “legislative body may establish planned unit development requirements in a zoning ordinance that permit flexibility in the regulation of land development, encourage innovation in land use and variety in design,” along with a number of other potential purposes.

144. That section further states that “The review and approval of planned unit developments shall be by the zoning commission, an individual charged with administration of the zoning ordinance, or the legislative body, as specified in the zoning ordinance,” subsection (4) goes on to describe additional procedural requirements for municipalities’ consideration of PUDs.

145. Section 504 of the MZEA, MCL 125.3504(1), mandates that with respect to a municipality’s PUD decisions, “the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance.”

146. Further, Section 504(3) of the MZEA, MCL 125.3504(3) makes clear that “a request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance.”

147. Nowhere does the Township’s Zoning Ordinance contemplate a CBA as a condition on PUD approvals.

148. Indeed, by the Township’s own admission, it has never required a CBA for any type of land-use approval.

149. The MZEA also does not contemplate CBAs as one of the procedural or substantive components of PUD approval.

150. Because the Township denied NVD’s approval based on regulations and standards that are not included in its Zoning Ordinance or the MZEA, the Township’s decision is in direct violation of the MZEA.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the Township’s inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD’s race-

meeting license due to its inability to operate at the 5 Mile and Ridge location;

- b) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 65, declaring that the Township's denial of the NVD PUD Development Plan was invalid because it violates the MZEA;
- c) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- d) Costs and attorney fees available under applicable law; and
- e) Any other relief the Court deems just and proper.

**COUNT IV**  
**(PROMISSORY ESTOPPEL)**

151. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

152. From the start, Township Supervisor Heise and Township Economic Director Heitman made promises to NVD for the purpose of inducing NVD to purchase and develop property in the Township.

153. Heise and Heitman promised that Heise had sufficient political control over the Township Planning Commission and Board of Trustees to secure those bodies' votes in favor of the NVD PUD.



154. Heise and Heitman also promised that the entire approval process from site-plan approval through approval of NVD's construction plans would take only 60-90 days.

155. Heise and Heitman reasonably expected their promises to induce NVD to purchase property in the Township, and NVD reasonably relied on those promises given appointment power and the political control Heise had over the Township Planning Commission and Board of Trustees, respectively.

156. Heise's and Heitman's promises did in fact induce NVD to purchase and attempt to develop land for a horse-racing track at the Southwest corner of 5 Mile and Ridge Road in the Township.

157. As a result of the Township's promises, NVD was damaged by spending \$10,000,000 on its site at 5 Mile and Ridge Road, as well as hundreds of thousands of dollars on outside consultants to secure the approvals that Heise and Heitman had promised.

158. To avoid injustice, the Court should enforce the Township's promises that NVD's PUD application would be approved.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the

Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;

- b) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- c) Costs and attorney fees available under applicable law; and
- d) Any other relief the Court deems just and proper.

**COUNT V**  
**(DENIAL OF PROCEDURAL DUE PROCESS)**

159. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

160. Because the Township's entire focus in reviewing and ultimately denying the NVD PUD Development Plan were the unconstitutional conditions contained in the CBA and PUD Contract, NVD was denied a full and fair opportunity to be heard on the Township's denial decision.

161. Specifically, NVD expended enormous time and resources to assuage concerns that the Township had *outside of the unconstitutional conditions*—but its

efforts on those items became artificially irrelevant due to the Township's intransigence on its unconstitutional-condition demands.

162. NVD was also denied adequate notice of the standards the Township ultimately used in reaching its decision on the NVD PUD.

163. Nothing in the Township Zoning Ordinance or MZEA mentions, much less requires, a CBA in connection with PUD approval, and the Township's denial was therefore based entirely on unpublished standards that cannot satisfy the notice requirements of the due-process clause.

164. Based on the Township's unpublished, extortionate decision-making standards of \$5,000,000 in cash payments, drone shows, and other similar items, the Township's denial of NVD's PUD application was predetermined, and NVD was not afforded any reasonable procedure to avoid the predetermined outcome of the Township's denial.

165. Further, because the MZEA and the Township's own Zoning Ordinance do not grant the Township any level of discretion to deny land-use applications based on the refusal to satisfy unconstitutional conditions and also require the Township to approve land-use applications that satisfy the Township's published standards, NVD had a protectable property interest in its PUD application.

166. Because the Township both denied NVD a full and fair opportunity to be heard and declined to provide adequate notice of the basis for its denial of NVD's

PUD application, the Township's acts deprived NVD of its right to due process, as guaranteed under Amendments V and XIV of the United States Constitution, as well as art. 1, § 2, art. 1, §17, and art. 10 § 2 of the Michigan Constitution of 1963.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages pursuant to 42 U.S.C. § 1983 in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;
- b) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 65, declaring that the Township violated NVD's constitutional due-process rights by failing to provide a full and fair opportunity to be heard and adequate notice of the basis for its decision;
- c) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;

- d) Costs and attorney fees available under applicable law, including but not limited to 42 U.S.C. §§ 1983, 1988; and
- e) Any other relief the Court deems just and proper.

**COUNT VI**  
**(DENIAL OF SUBSTANTIVE DUE PROCESS)**

167. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

168. As demonstrated above, the Township's denial of the NVD PUD Development Plan fails to advance a reasonable governmental interest.

169. Rather, the only reason for the Township's denial was Heise's and the Township's Board of Trustee's desire to fill the Township's coffers and bolster his political reputation.

170. Basing a land-use decision solely on the aggrandizement of Township officials' political reputation is inherently arbitrary and capricious and conscience-shocking, particularly during a period of American history in which ideas of fair play and decency include above-board political decision-making based on objective, published laws and standards.

171. Further, because the MZEA and the Township's own Zoning Ordinance do not grant the Township any level of discretion to deny land-use applications based on the refusal to satisfy unconstitutional conditions and also require the Township

to approve land-use applications that satisfy the Township's published standards, NVD had a protectable property interest in its PUD application.

172. The Township's denial therefore deprived NVD of its right to substantive due process, guaranteed to it under Amendments V and XIV of the United States Constitution, 42 U.S.C. § 1983, and the Michigan Constitution of 1963, including art. 1, § 2, art 1, § 17, and art 10, § 2.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages pursuant to 42 U.S.C. § 1983 in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;
- b) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P., declaring that the Township violated NVD's constitutional due-process rights by arbitrarily and capriciously denying the NVD PUD Development Plan;

- c) Enjoin the Township to consent to the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- d) Costs and attorney fees available under applicable law, including but not limited to 42 U.S.C. §§ 1983, 1988; and
- e) Any other relief the Court deems just and proper.

**COUNT VII**  
**(INJUNCTIVE RELIEF)**

173. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

174. Pursuant to Federal Rule of Civil Procedure 65, this Court has the authority to issue injunctive relief enjoining the Township's unconstitutional and other wise unlawful actions.

175. A plaintiff is entitled to preliminary injunctive relief when it has shown: (a) a likelihood of success on the merits; (b) that it will suffer irreparable harm in the absence of injunctive relief; (c) that issuance of a preliminary injunction would not cause substantial harm to others; and (d) that no public interests would be disserved by a decision to issue a preliminary injunction.

176. A plaintiff is entitled to permanent injunctive relief when they can demonstrate: (a) that is suffered an irreparable injury; (b) that the remedies available at law are inadequate; (c) that an equitable remedy is warranted on the balance of

the hardships to plaintiff and defendant; and (d) that the public interest would not be disserved by a permanent injunction.

177. NVD has demonstrated a likelihood of succeeding on the merits of its claims, as stated above, that the Township's denial of the Northville PUD Development Plan was unconstitutional and otherwise unlawful.

178. NVD will suffer irreparable harm in the absence of a preliminary and permanent injunction in that it will be prohibited from developing land that it owns in a manner that it desires and which accords with all applicable laws.

179. Mere monetary damages, while warranted, would be inadequate to fully compensate NVD for the interference with its land-use rights.

180. Enjoining the Township from violating NVD's constitutional rights and privileges cannot cause harm, let alone substantial harm, to the Township.

181. The public interest is always served by the enjoinder of unconstitutional acts, such as the Township's actions described above.

WHEREFORE, Plaintiff NVD respectfully requests that this Honorable Court enter an injunction that:

- a) Finds NVD has demonstrated a likelihood of success on the merits, irreparable harm in the absences of injunctive relief, lack of an adequate remedy at law for NVD, lack of any substantial harm to others arising out of the entry of injunctive relief, and that the public interest would



be served by enjoining the Township from acting in an unconstitutional manner;

- b) Enjoins the Township from insisting that NVD must accept unconstitutional conditions to exercise its rights as a landowner;
- c) Enjoins the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township;
- d) Requires the Township to grant the NVD PUD Development Plan;
- e) Requires the Township to permit NVD to proceed with the development of a horse-racing facility on its property at 5 Mile and Ridge Road, including a requirement that the Township must issue any necessary building and other permits and take any other action within the Township's power to facilitate NVD's development;
- f) Grants any other equitable relief requested in the counts above;
- g) Awards NVD its costs and attorney fees pursuant to applicable law, including but not limited to 42 U.S.C. §§ 1983, 1988; and
- h) Grants such other relief that the Court deems just and proper.

**COUNT VIII**  
**(VIOLATION OF THE**  
**MICHIGAN HORSE RACING LAW OF 1995)**

182. NVD incorporates its prior allegations as if they were fully set forth in this paragraph.

183. The Michigan Horse Racing Law of 1995 governs the “breaks” to which a race-meeting licensee (such as NVD) is entitled; as defined in Sec. 2 of the statute, M.C.L. § 431.302, the term “breaks” means the cents over any multiple of 10 otherwise payable to a patron on a wager of \$1.00.”

184. Section 17 of the Michigan Horse Racing Law of 1995, M.C.L. § 431.317, mandates that “All breaks must be retained by the race meeting licensee and paid directly to the city or township in which the racetrack is located as a fee for services provided under Section 21.”

185. Under Sec. 21 of the Michigan Horse Racing Law of 1995, M.C.L. § 431.321, any municipality receiving breaks from a race-meeting licensee must “provide for adequate police, fire, and traffic protection of persons and property at and near each race meet[.]”

186. Critically, Sec. 28 of the Michigan Horse Racing Law of 1995, M.C.L. § 431.328, mandates that “Except as provided in section 21, a political subdivision of this state shall not assess or collect an excise or license tax or fee from a person licensed under this act based upon an activity performed under this act.”

187. By the Township's own admissions, including through those of Township Supervisor Heise, the Township denied the NVD PUD Development Plan specifically because NVD refused to pay the Township any amounts above the breaks obtained through licensed horse races.

188. Setting aside the constitutional infirmities of that denial, the Township's rationale would also directly violate Section 28 of the Michigan Horse Racing Law of 1995 by mandating that NVD pay unlawful fees over and above the breaks.

189. Thus, the Township's decision to deny the NVD PUD application is therefore unlawful because it violates the Michigan Horse Racing Law of 1995.

WHEREFORE, Plaintiff NVD respectfully requests that the Court grant it the following relief:

- a) Damages pursuant in excess of \$10,000,000 resulting from, among other things, the expenses NVD incurred in purchasing property based on the Township's inducements, the expenses NVD incurred in the seeking the PUD approval that the Township unlawfully denied, diminution in property value, loss of income, and the lost value of NVD's race-meeting license due to its inability to operate at the 5 Mile and Ridge location;

- b) Declaratory relief pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 65, declaring that the Township's denial of the NVD PUD Development Plan violates the Michigan Horse Racing Law of 1995;
- c) Enjoin the Township to grant the December 20, 2023 PUD Contract with Section 20 removed, as agreed to by NVD in its January 10, 2024 letter to the Township, and grant NVD's PUD application;
- d) Costs and attorney fees available under applicable law; and
- e) Any other relief the Court deems just and proper.

Respectfully submitted,

**THE MIKE COX LAW FIRM, PLLC**

By: /s/ Michael A. Cox

Michael A. Cox (P43039)

Jason M. Schneider (P79296)

The Mike Cox Law Firm, PLLC

*Attorneys for Defendants*

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Date: February 26, 2024

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

NORTHVILLE DOWNS, LLC, a  
Michigan limited liability company,

Plaintiff,

Case No. 24-

vs.

PLYMOUTH CHARTER TOWNSHIP,  
a Michigan municipal corporation.

Hon.

Defendant.

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**JURY DEMAND**

Plaintiffs Northville Downs, LLC, by and through their attorneys, The Mike  
Cox Law Firm, PLLC hereby demand a trial by jury.

Respectfully submitted,

**THE MIKE COX LAW FIRM, PLLC**

By: /s/ Michael A. Cox

Michael A. Cox (P43039)

Jason M. Schneider (P79296)

The Mike Cox Law Firm, PLLC

*Attorneys for Defendants*

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Date: February 26, 2024