

Case No. \_\_\_\_\_

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*In the*  
**Supreme Court**  
*of the*  
**State of Nevada**

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Electronically Filed  
Jul 15 2020 10:47 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DEKKER/PERICH/SABATINI LTD.,  
NEVADA BY DESIGN, LLC d/b/a NEVADA BY DESIGN,  
MELROY ENGINEERING, INC. d/b/a MSA ENGINEERING  
CONSULTANTS, JW ZUNINO & ASSOCIATES, LLC, and  
NINYO & MOORE, GEOTECHNICAL CONSULTANTS,

*Petitioners,*

vs.

THE EIGHTH JUDICIAL DISTRICT COURT,  
STATE OF NEVADA, CLARK COUNTY, and  
THE HONORABLE TREVOR ATKIN,

*Respondents,*

CITY OF NORTH LAS VEGAS,

*Real Party in Interest.*

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FROM DECISIONS OF  
THE EIGHTH JUDICIAL DISTRICT COURT,  
CLARK COUNTY, NEVADA  
CASE NO. A-19-798346-C  
HONORABLE TREVOR ATKIN  
DEPARTMENT 8 · PHONE: (702) 671-4338

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**JOINT PETITIONERS'**  
**MOTION TO EXCEED THE PAGE AND TYPE-VOLUME FOR**  
**JOINT PETITION FOR WRIT OF MANDAMUS OR,**  
**ALTERNATIVELY, PROHIBITION**

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Pursuant to this Court issuing ADKT 0553 filed on May 7, 2020, which went into effect on June 7, 2020, Nevada Rules of Appellate Procedure (NRAP) Rule 21 has been amended as to extraordinary writs requiring said petitions not to exceed 15 pages unless it contains no more than 7,000 words (or 650 lines of text in monospaced typeface). Despite this change, the Court retained leave to allow for the filing of a longer petition based on consideration of a motion to exceed the page or type-volume limit submitted in compliance with NRAP 32(a)(7)(D).

The Joint Petitioners hereby respectfully move for leave to file the attached Joint Petition for Writ of Mandamus or, in the Alternative, Writ of Prohibition that exceeds the 7,000 word (or 650 lines of text) requirement set forth in Amended NRAP 21/ADKT 0553. Specifically, Joint Petitioners request leave to file a 53 page, **12,235** word Petition. The word count is listed on the Certificate of Compliance in the attached Petition, which is also attached to this Motion. NRAP 32(a)(7)(D)(iii); Amended NRAP 21(d). Service of this Motion is also made to all interested parties and the District Court as shown in the certificate of service also attached to this Motion.

While the Court generally looks with disfavor on motions to exceed the applicable page limit or type-volume limitation and permission is not routinely given, for the reasons stated herein and in the attached declaration, Petitioners represent that good cause and diligence exist for granting this Motion.

Specifically, the Petition submitted before this Court involves: (1) two separate and complex legal issues; (2) an extensive procedural history (evidenced by the Appendix concurrently submitted); (3) involves multiple Petitioners; (4) the amendment of NRAP 21 occurred while the Petitioners were preparing their Petition under the prior rules; (5) extensive efforts were made to reduce the briefing to comply with the new requirements; and (6) judicial efficiency and economy warrant the granting of this Motion. NRAP 32(a)(7)(D)(i).

This Court has permitted briefs in excess of the page or type-volume limitations. In *Evans v. State*, 117 Nev. 609, 642, 28 P.3d 498 (2001), this Court allowed the appellant to file a 120-page opening brief, where there were numerous appellate issues, including issues dealing with statutory applications and constitutional law. Based on the complexity of the issues herein, the Petition of 12,235 words, as computed NRAP 32(a)(7)(C), is reasonable.

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For these reasons and for the items in the attached declaration, the  
Petitioners respectfully state that this Court should accept the Petition, which is  
filed concurrently with this Motion.

Respectfully Submitted.

DATED: July 14, 2020.  
**WEIL & DRAGE, APC**

/s/ John T. Wendland  
John T. Wendland, Esq.  
(Nevada Bar 7207)  
ANTHONY D. PLATT, ESQ.  
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861 Coronado Center Drive, Suite 231  
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*Attorneys for Petitioners,*  
*DEKKER/PERICH/SABATINI LTD. and*  
*NEVADA BY DESIGN, LLC d/b/a*  
*NEVADA BY DESIGN*

DATED: July 14, 2020.  
**FORAN GLENNON PALANDECH  
PONZI & RUDLOFF PC**

/s/ Lee H. Gorlin  
Dylan P. Todd, Esq.  
(Nevada Bar 10456)  
Lee H. Gorlin, Esq.  
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*JW ZUNINO & ASSOCIATES, LLC*

DATED: July 14, 2020.  
**WEIL & DRAGE, APC**

/s/ Jeremy R. Kilber  
Jeremy R. Kilber, Esq.  
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*Attorney for Petitioner,*  
*MSA ENGINEERING CONSULTANTS*

DATED: July 14, 2020.  
**WILSON ELSEER MOSKOWITZ  
EDELMAN & DICKER, LLP**

/s/ Jorge A. Ramirez  
Jorge A. Ramirez, Esq.  
(Nevada Bar 6787)  
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*Attorneys for Petitioner,*  
*NINYO & MOORE GEOTECHNICAL  
CONSULTANTS*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that on this 14<sup>th</sup> day of July, 2020, the foregoing **JOINT PETITIONERS' MOTION TO EXCEED THE PAGE AND TYPE-VOLUME FOR JOINT PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION** was e-submitted to the Clerk of the Supreme Court of the State of Nevada and services were executed to the addresses shown below in the manner indicated:

### **VIA E-MAIL, FEDEX AND THE COURT'S ELECTRONIC FILING SYSTEM:**

Aleem A. Dhalla, Esq.  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
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[adhalla@swlaw.com](mailto:adhalla@swlaw.com)  
*Attorney for Real Party in Interest CITY OF NORTH LAS VEGAS*

### **VIA E-MAIL ONLY:**

The Honorable Judge Trevor Atkin  
Eighth Judicial District Court, Department No. 8  
Phoenix Building  
Courtroom 11<sup>th</sup> Floor 110  
330 S. 3<sup>rd</sup> Street  
Las Vegas, NV 89101  
[dept08lc@clarkcountycourts.us](mailto:dept08lc@clarkcountycourts.us)  
*Trial Court Judge*

*/s/ Joanna Medina*

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Joanna Medina, an Employee of  
WEIL & DRAGE, APC

Case No. \_\_\_\_\_

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*In the*  
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CLARK COUNTY, NEVADA  
CASE NO. A-19-798346-C  
HONORABLE TREVOR ATKIN  
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**DECLARATION OF COUNSEL**  
**IN SUPPORT OF JOINT PETITIONERS'**  
**MOTION TO EXCEED THE PAGE AND TYPE-VOLUME FOR**  
**JOINT PETITION FOR WRIT OF MANDAMUS OR,**  
**ALTERNATIVELY, PROHIBITION**

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In support of the Joint Petitioners' Motion to Exceed the Page, Type-Volume limitations in the Joint Petition for Writ of Mandamus or, alternatively, Prohibition, the undersigned Declarant hereby declares that the following is true and correct, subject to the penalties of perjury pursuant to the laws of the State of Nevada:

1. Declarant is counsel for Petitioners Dekker/Perich/Sabatini, Ltd. ("DPS") and Nevada By Design, LLC d/b/a Nevada By Design ("NBD"). DPS and NBD are two of five design professional petitioners that for the sake of judicial efficiency and economy, agreed to submit a single Petition before this Court.
2. This Petition involves two separate and highly complex legal issues relevant to construction related cases: Statute of Repose – NRS 11.202 (pre and post AB 421) and Certificate of Merit-NRS 11.258. *See*, attached Petition. For the reasons stated in Paragraph 1 herein, the Petitioners decided to combine these separate legal issues and arguments into a single Petition to present all legal issues, arguments and positions before this Court as opposed to filing separate Petitions on separate positions and arguments.
3. The Petition stems from a series of adjudicated motions with a substantial briefing history. *See e.g.*, Petitioners' Appendix (Volumes 1-21) accompanying the Petition. The initial Complaint was filed July 11, 2019 against the Petitioners (and other parties). Given the obvious violation of NRS 11.202's six year statute

of repose, the Petitioners immediately moved and secured dismissal of the Complaint on September 30, 2019. Thereafter, the City of North Las Vegas (the “City”) filed a motion to alter the dismissal decision which after extensive briefing and objection, was granted by the District Court based on AB 421 going into effect on October 1, 2019.

4. Following the modification of the September 30, 2019 order, the Petitioners moved for dismissal based on the Complaint failing to comply with NRS 11.258. This issue was briefed but never decided previously. The Petitioners argued that the City relied on a single geotechnical consulting engineer without any expertise on various design professional fields that were placed into issue in the Complaint. The City’s consulting engineer also authored an investigation report (nearly 2 years before the filing of the Complaint) which did not include any conclusions relevant to the work of the Petitioners. The Petitioners argued that the City failed to comply with a number of sections in NRS 11.258 requiring dismissal. The District Court denied the Motion, which created confusion as to the compliance requirements of NRS 11.258.

5. Accordingly, this Petition deals with a number of complex legal and factual issues, including constitutional issues pertaining to the District Court’s misapplication of AB 421, with multiple papers and hearings filed before the District Court. These differing rulings, the legal and factual issues therein, made it



extremely difficult to limit argument in this Petition to the new word, page and volume limits set forth in the amended NRAP 21, pursuant to ADKT 0553.

6. The Petition also involves issues of first impression including the retroactive application of AB 421 as well as substantial changes in the law concerning the District Court's application of AB 421 and NRS 11.258. There is little to no legal precedent for these issues in Nevada, requiring a full discussion on these issues.

7. The Petitioners drafted portions of the Petition under the prior NRAP Rule 21 and learned during final review and submission that the Court had amended NRAP 21 to require page, volume-limits for Writ Petitions to 15 pages or 7,000 words (650 lines), half of what is allowed in an Opening Brief in a direct appeal. NRAP 32(a)(7)(A)(ii).

8. The Petitioners spent weeks to narrow the Petition to comply with the amended page, word-volume requirements. Despite multiple rounds of editing and condensing arguments, the Petition presently exceeds the page, type-volume limitations by approximately **5,235 words**, for a total of **12,235 words**.

9. Given the matters identified herein, the Petitioners respectfully request that the Court grant it leave to exceed the page, volume-type limit for this Writ Petition as there are: (a) multiple legal issues and petitioners; (b) there is an extensive procedural history; (c) the issues are critically important to the construction industry, especially design professionals; (d) the issues are complex, involve many

items of first impression in Nevada and constitutional issues; (e) the Petitioners combined their positions, arguments and issues into a single Petition as opposed to filing separate Petitions on separate issues and positions (which taken together would far exceed the length of this single Petition); (f) the Petition was initially written under the prior rules and during the drafting process NRAP 21 was amended creating page and word-volume restrictions; and (g) the Petitioners spent significant time and effort in a good faith effort to modify the Writ to comply with these amended rules and despite said efforts, were unable to reduce the Petition to the page, word and type-volume limits in the amended NRAP Rule 21.

10. This Declaration is made in good faith and in support of the Motion to Exceed the Page and Type-Volume.

Dated this 14<sup>th</sup> day of July, 2020.

/s/John T. Wendland  
John T. Wendland, Esq.  
(Nev. Bar # 007207)  
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*Attorney for Petitioners,*  
*DEKKER/PERICH/SABATINI LTD. and*  
*NEVADA BY DESIGN, LLC d/b/a*  
*NEVADA BY DESIGN*

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that on this 14<sup>th</sup> day of July, 2020, the foregoing **DECLARATION OF COUNSEL IN SUPPORT OF JOINT PETITIONERS' MOTION TO EXCEED THE PAGE AND TYPE-VOLUME FOR JOINT PETITION FOR WRIT OF MANDAMUS OR, ALTERNATIVELY, PROHIBITION** was e-submitted to the Clerk of the Supreme Court of the State of Nevada and services were executed to the addresses shown below in the manner indicated:

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[adhalla@swlaw.com](mailto:adhalla@swlaw.com)  
*Attorney for Real Party in Interest CITY OF NORTH LAS VEGAS*

**VIA E-MAIL ONLY:**

The Honorable Judge Trevor Atkin  
Eighth Judicial District Court, Department No. 8  
Phoenix Building  
Courtroom 11<sup>th</sup> Floor 110  
330 S. 3<sup>rd</sup> Street  
Las Vegas, NV 89101  
[dept08lc@clarkcountycourts.us](mailto:dept08lc@clarkcountycourts.us)  
*Trial Court Judge*

*/s/ Joanna Medina*

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Joanna Medina, an Employee of  
WEIL & DRAGE, APC