IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. _____

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Petitioner

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents

and

180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD., a Nevada limited liability company,

Real Parties in Interest

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

APPENDIX VOLUME IV
TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF CERTIORARI
(action needed by February 23, 2022)

LAS VEGAS CITY ATTORNEY'S OFFICE Bryan K. Scott (#4381) Philip R. Byrnes (#166) Rebecca Wolfson (#14132) 495 S. Main Street, 6th Floor Las Vegas, NV 89101 Phone: 702.229.6629 Fax: 702.386.1749 bscott@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov rwolfson@lasvegasnevada.gov	McDONALD CARANO LLP George F. Ogilvie III (#3552) Amanda C. Yen (#9726) Christopher Molina (#14092) 2300 W. Sahara Ave, Suite 1200 Las Vegas, NV 89102 Phone: 702.873.4100 Fax: 702.873.9966 gogilvie@mcdonaldcarano.com ayen@mcdonaldcarano.com cmolina@mcdonaldcarano.com

LEONARD LAW, PC Debbie Leonard (#8260) 955 S. Virginia St., Suite #220 Reno, NV 89502 775-964-4656 debbie@leonardlawpc.com	SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102

Attorneys for Petitioner

CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2017-07-18	Landowners' Petition for Judicial Review	I	PA0001	PA0008
2017-09-07	Landowners' First Amended Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation	I	PA0009	PA0027
2017-09-20	Affidavit of Service of Summons and First Amended Petition for Judicial Review on City of Las Vegas	I	PA0028	PA0028
2018-02-05	City of Las Vegas' Answer to First Amended Petition for Judicial Review	I	PA0029	PA0032
2018-02-23	Landowners' First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0033	PA0049
2018-02-28	Landowners' Errata to First Amended Complaint Pursuant to Court Order Entered February 2, 2018 for Severed Alternative Verified Claims in Inverse Condemnation	I	PA0050	PA0066
2018-02-28	Landowners' Second Amended Petition for Judicial Review to Sever Alternative Verified Claims in Inverse Condemnation per Court Order Entered on February 1, 2018	I	PA0067	PA0081

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2018-03-19	City's Answer to Second Amended Petition for Judicial Review	I	PA0086	PA0089
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155
2018-12-11	Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims (Exhibits omitted)	I	PA0156	PA0174
2018-12-13	Landowners' Motion for a New Trial Pursuant to NRCP 59(e)	I	PA0175	PA0202
2018-12-20	Notice of Appeal	I	PA0203	PA0206
2019-02-06	Notice of Entry of Order *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212

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2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2019-05-15	Landowners' Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0229	PA0266
2019-06-18	City's Answer to Plaintiff 180 Land Company's Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation	II	PA0267	PA0278
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283
2020-08-31	Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0284	PA0287
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295

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2020-12-16	2nd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0296	PA0299
2021-02-10	3rd Amended Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0300	PA0303
2021-03-26	Appendix of Exhibits in Support of Plaintiff Landowner's Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief - Exhibit 150 (004669-004670)	II	PA0304	PA0309
2021-08-25	[1]City's Accumulated App'x Exhibit G - Ordinance No. 3472 and related documents (Second Amendment) (CLV65-000114-000137)	II	PA0310	PA0334
2021-08-25	City's Accumulated App'x Exhibit H - City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application (CLV65-000138-000194)	II	PA0335	PA0392

[1] Due to the voluminous nature of the documents filed in this case and to avoid duplicative filing of exhibits, the City filed a cumulative appendix of exhibits, which the City cited in multiple motions and other substantive filings ("City's Accumulated App'x").

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2021-08-25	City's Accumulated App'x Exhibit I - Excerpts of 1992 City of Las Vegas General Plan (CLV65-000216-218, 248)	II	PA0393	PA0397
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2021-08-25	City's Accumulated App'x Exhibit N - Ordinance No. 5787 and Excerpts of 2005 Land Use Element (CLV65-000278-000291)	III	PA0427	PA0441
2021-08-25	City's Accumulated App'x Exhibit P - Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element (CLV65-000302-000317)	III	PA0442	PA0458

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2021-08-25	City's Accumulated App'x Exhibit Y- EHB Companies promotional materials (CLV65-0034763-0034797)	III	PA0475	PA0510
2021-08-25	City's Accumulated App'x Exhibit Z - General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications (CLV65-000446-000466)	III	PA0511	PA0532
2021-08-25	City's Accumulated App'x Exhibit EE-Order Granting Plaintiffs' Petition for Judicial Review (CLV65-000598-000611)	IV	PA0533	PA0547
2021-08-25	City's Accumulated App'x Exhibit HH - General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications (CLV65-000644-0671)	IV	PA0548	PA0576

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2021-08-25	City's Accumulated App'x Exhibit II - June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480 (CLV65-000672-000679)	IV	PA0577	PA0585
2021-08-25	City's Accumulated App'x Exhibit AAA - Membership Interest Purchase and Sale Agreement (LO 00036807-36823)	IV	PA0586	PA0603
2021-08-25	City's Accumulated App'x Exhibit BBB - Transcript of May 16, 2018 City Council meeting (CLV65-045459-045532)	IV	PA0604	PA0621
2021-08-25	City's Accumulated App'x Exhibit DDD - Nevada Supreme Court March 5, 2020 Order of Reversal, *Seventy Acres, LLC v. Binion*, Nevada Supreme Court Case No. 75481 (1010-1016)	IV	PA0622	PA0629
2021-08-25	City's Accumulated App'x Exhibit GGG - September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435- Unit Housing Development Project in Badlands (1021-1026)	IV	PA0630	PA0636

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2021-08-25	City's Accumulated App'x Exhibit III - 9th Circuit Order in *180 Land Co. LLC; et al v. City of Las Vegas, et al.*, 18-cv-0547 (Oct. 19, 2020) (1123-1127)	IV	PA0666	PA0671
2021-08-25	City's Accumulated App'x Exhibit NNN - March 26, 2020 Letter from City of Las Vegas to Landowners' Counsel (CLV65-000967-000968)	IV	PA0672	PA0674
2021-08-25	City's Accumulated App'x Exhibit OOO - March 26, 2020 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres (CLV65-000971-000973)	IV	PA0675	PA0678
2021-08-25	City's Accumulated App'x Exhibit PPP - April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres –l (CLV65-000969-000970)	IV	PA0679	PA0681

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2021-08-25	City's Accumulated App'x Exhibit UUU - Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) (1295-1306)	IV	PA0682	PA0694
2021-08-25	City's Accumulated App'x Exhibit CCCC - Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No. A-18-780184-C (Dec. 30, 2020) (1478-1515)	IV	PA0695	PA0733
2021-08-25	City's Accumulated App'x Exhibit DDDD - Peter Lowenstein Declaration and Ex. 9 thereto (1516-1522, 1554-1569)	IV	PA0734	PA0741Q
2021-08-25	City's Accumulated App'x Exhibit HHHH - State of Nevada State Board of Equalization Notice of Decision, *In the Matter of Fore Star Ltd., et al.* (Nov. 30, 2017) Decision (004220-004224) (Exhibits omitted)	IV	PA0742	PA0747

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2021-09-22	City's Accumulated App'x Exhibit SSSS - Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne (3776-3789)	V	PA0760	PA0774
2021-10-13	City's Accumulated App'x Exhibit YYYY- City Council Meeting of October 6, 2021 Verbatim Transcript – Agenda Item 63 (inadvertently omitted from the 10-13-2021 appendix. Errata filed 2/8/2022) (3898-3901)	V	PA0775	PA0779
2021-10-13	City's Accumulated App'x Exhibit ZZZZ - Transcripts of September 13 & 17, 2021 Hearing in the 133-Acre Case (Case No. A-18-775804-J) (Excerpts) (3902, 4029-4030, 4053-4054, 4060, 4112)	V	PA0780	PA0787

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2021-10-19	City's Accumulated App'x Exhibit BBBBB - 2005 land use applications filed by the Peccole family (CLV110456, 126670, 137869, 126669, 126708)	V	PA0851	PA0857
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-10-28	Decision of the Court	V	PA0911	PA0918

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2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-11-18	Findings of Fact and Conclusions of Law on Just Compensation	V	PA0931	PA0950
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2021-11-24	Landowners' Verified Memorandum of Costs (Exhibits omitted)	VI	PA0968	PA0972
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2021-12-06	Landowners' Motion for Reimbursement of Property Taxes (Exhibits omitted)	VI	PA0996	PA1001
2021-12-09	Landowners' Motion for Attorney Fees	VI	PA1002	PA1030

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2021-12-09	Landowners' Motion to Determine Prejudgment Interest	VI	PA1031	PA1042
2021-12-21	City's Motion to Amend Judgment (Rules 59(e) and 60(b)) and Stay of Execution	VI	PA1043	PA1049
2021-12-22	City's Motion for Immediate Stay of Judgment	VI	PA1050	PA1126
2022-01-26	Court Minutes	VI	PA1127	PA1127
2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139

ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

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2022-01-26	Court Minutes	VI	PA1127	PA1127
2021-10-28	Decision of the Court	V	PA0911	PA0918
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2022-02-10	Notice of Entry of Findings of Fact and Conclusions of Law and Order Denying the City's Motion for Immediate Stay of Judgment; and Granting Plaintiff Landowners' Countermotion to Order the city to Pay the Just Compensation	VI	PA1128	PA1139
2021-11-05	Notice of Entry of Findings of Fact and Conclusions of Law Denying City of Las Vegas' Emergency Motion to Continue Trial on Order Shortening Time	V	PA0919	PA0930
2021-10-25	Notice of Entry of Findings of Fact and Conclusions of Law Granting Plaintiffs Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and Denying the City of Las Vegas' Countermotion on the Second Claim for Relief	V	PA0858	PA0910
2021-11-24	Notice of Entry of Findings of Fact and Conclusions of Law on Just Compensation	VI	PA0973	PA0995
2018-11-26	Notice of Entry of Findings of Fact and Conclusions of Law on Petition for Judicial Review	I	PA0128	PA0155

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2019-05-08	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff's Motion for a New Trial, Motion to Alter or Amend and/or Reconsider the Findings of Fact and Conclusions of Law, and Motion to Stay Pending Nevada Supreme Court Directives	II	PA0213	PA0228
2020-10-12	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest"	II	PA0288	PA0295
2021-11-18	Notice of Entry of Order Granting Plaintiffs' Motions in Limine No. 1, 2 and 3 Precluding the City from Presenting to the Jury: 1. Any Evidence or Reference to the Purchase Price of the Land; 2. Any Evidence or Reference to Source of Funds; 3. Argument that the Land was Dedicated as Open Space/City's PRMP and PROS Argument	V	PA0951	PA0967
2019-02-06	Notice of Entry of Order *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018	I	PA0207	PA0212
2018-06-26	Portions of Record on Review (ROR25813-25850)	I	PA0090	PA0127

DATE	DOCUMENT	VOLUME	PAGE RANGE	
2020-07-20	Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call	II	PA0279	PA0283

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 10th day of February, 2022.

BY: /s/ Debbie Leonard

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court on today's date by using the Nevada Supreme Court's E-Filing system (E-Flex). Upon the Clerk's docketing of this case and e-filing of the foregoing document, participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail at the following addresses. I also certify that a courtesy copy of the foregoing document was sent by email on today's date to the email addresses listed below.

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District Court Department XVI
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Respondent

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Dated: February 10, 2022

/s/ Tricia Trevino
An employee of Leonard Law, PC

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DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLOR AND SALLY BIGLER,

Plaintiffs,

v.

THE CITY OF LAS VEGAS; and SEVENTY ACRES, LLC, a Nevada Limited Liability Company,

Defendants.

Case No.: A-17-752344-J

Dept. No.: XXIV

ORDER GRANTING PLAINTIFFS' PETITION FOR JUDICIAL REVIEW

☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

On January 11, 2018, Plaintiffs'[1] Petition for Judicial Review came before the Court for a hearing. Todd L. Bice, Esq. and Dustun H. Holmes, Esq. of the law firm PISANELLI BICE PLLC appeared on behalf of Plaintiffs, Christopher Kaempfer, Esq., James Smyth, Esq., Stephanie Allen, Esq appeared on behalf of Defendant Seventy Acres, LLC ("Seventy Acres"), and Philip T. Byrnes, Esq., with the LAS VEGAS CITY ATTORNEY'S OFFICE appeared on behalf of the Defendant City of Las Vegas ("City").The Court, having reviewed Plaintiffs' Memorandum in Support of the Petition for Judicial Review, the City's Answering Brief, Seventy Acres' Opposition Brief, Plaintiffs' Reply Brief, the Record for Review, and considered the matter and being fully advised, and good cause appearing makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW[2]

A. FINDINGS OF FACT

1. Plaintiffs challenge the City's actions and the final decision entered on February 16, 2017 regarding the approval of Seventy Acres' applications GPA-62387 for a General Plan Amendment from parks/recreation/open space (PR-OS) to medium density (M), ZON-62392 for rezoning from residential planned development – 7 units per acre (R-PD7) to medium density residential (R-3), and SDR-62393 site development plan related to GPA-62387 and ZON-62392 (collectively the "Applications") on 17.49 acres at the southwest corner of Alta Drive and

[1] Jack B. Binion, Duncan R. and Irene Lee, individuals and trustees of the Lee Family Trust, Frank A. Schreck, Turner Investments, LTD, Rover P. and Carolyn G. Wagner, individuals and trustees of the Wagner Family Trust, Betty Englestad as trustee of the Betty Englestad Trust, Pyramid Lake Holdings, LLC, Jason and Shereen Awad as trustees of the Awad Asset Protection Trust, Thomas Love as trustee of the Zena Trust, Steve and Karen Thomas as trustees of the Steve and Karen Thomas Trust, Susan Sullivan as trustee of the Kenneth J. Sullivan Family Trust, and Dr. Gregory Bigler and Sally Bigler

[2] Any findings of fact which are more properly considered conclusions of law shall be treated as such, and any conclusions of law which are more properly considered findings of fact shall be treated as such.

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Rampart Boulevard, more particularly described as Assessor's Parcel Number 138-32-301-005 (the "Property").[3]

2. The Property at issue in the Applications is a portion of land which was previously known as Badlands Golf Course and is part of the Peccole Ranch Master Plan.

3. In 1986, the William Peccole Family presented their initial Master Planned Development under the name Venetian Foothills to the City ("Peccole Ranch"). ROR002620-2639.

4. The original Master Plan contemplated two 18-hole golf courses, which would become known as Canyon Gate in Phase I of Peccole Ranch and Badlands in Phase II of Peccole Ranch. Both golf courses were designed to be in a major flood zone and were designated as flood drainage and open space. ROR002634. The City mandated these designations so as to address the natural flood problem and the open space necessary for master plan development. ROR002595—2604.

5. The William Peccole Family developed the area from W. Sahara north to W. Charleston Blvd. within the boundaries of Hualapai Way on the west and Durango Dr. on the east ("Phase I"). In 1989, the Peccole family submitted what was known as the Peccole Ranch Master Plan, which was principally focused on what was then commonly known as Phase I.

6. In 1990 the William Peccole Family presented their Phase II Master Plan under the name Peccole Ranch Master Plan Phase II (the "Phase II Master Plan") and it encompassed the land located from W Charleston Blvd. north to Alta Dr. west to Hualapai Way and east to Durango Dr. ("Phase II"). Queensridge was included as part of this plan and covered W.

[3] The Applications as originally submitted were for a General Plan Amendment from parks/recreation/open space (PR-OS) to high density residential (H), for rezoning from residential planned development – 7 units per acre (R-PD7) to high density residential (R-4). At the February 15, 2017 City Council meeting, Seventy Acres indicated that it was amending its Applications from 720 units on the Property to 435 units. The corresponding effect was an amendment to its General Plan Amendment from PR-OS to medium density (M) and rezoning from R-PD7 to medium density residential (R-3).

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Charleston Blvd. north to Alta Dr., west to Hualapai Way and east to Rampart Blvd. ROR002641-2670.

7. Phase II of the Peccole Ranch Master Plan was approved by the City Council of the City of Las Vegas on April 4, 1990 in Case No. Z-17-90. ROR007612, ROR007702-7704. The Phase II Master Plan specifically defined the Badlands 18 hole Golf Course as flood drainage/golf course in addition to satisfying the required open space necessitated by the City for Master Planned Development. ROR002658-2660.

8. The Phase II golf course open space designation was for 211.6 acres and specifically was presented as zero net density and zero net units. (ROR002666). The William Peccole Family knew that residential development would not be feasible in the flood zone, but as a golf course could be used to enhance the value of the surrounding residential lots. As the Master Plan for Phase II submitted to the City outlines:

> A focal point of Peccole Ranch Phase Two is the 199.8 acre golf course and open space drainage way system which traverses the site along the natural wash system. All residential parcels within Phase Two, except one, have exposure to the golf course and open space areas . . . The close proximity to Angel Park along with the extensive golf course and open space network were determining factors in the decision not to integrate a public park in the proposed Plan."

ROR002658-2660.

9. The Phase II Master Plan amplifies that it is a planned development, incorporating a multitude of permitted land uses as well as special emphasis the open space and:

> Incorporates office, neighborhood commercial, a nursing home, and a mixed-use village center around a strong residential base in a cohesive manner. A destination resort-casino, commercial/office and commercial center have been proposed in the most northern portion of the project area. Special attention has been given to the compatibility of neighboring uses for smooth transitioning, circulation patterns, convenience and aesthetics. An extensive 253 acre golf course and linear open space system winding throughout the community provides a positive focal point while creating a mechanism to handle drainage flows.

ROR00264-2669.

10. As the Plan for Phase II outlined, there would be up to 2,807 single-family residential units on 401 acres, 1,440 multi-family units on 60 acres and open space/golf

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course/drainage on approximately 211 acres. ROR002666-2667. For the single-family units which would border the proposed golf course/open space, the zoning sought was for R-PD7, which equates to a maximum of seven (7) single-family units per acre on average. ROR002666-2667. Such a zoning approval for a planned development like Peccole Ranch Phase II and its proposed golf course/open space/drainage is common as confirmed by the City's own code at the time because R-PD zoning category was specifically designed to encourage and facilitate the extensive use of open space within a planned development, such as that being proposed by the Peccole Family. ROR02716-2717.

11. Both the Planning Commission and the City Council approved this 1990 Amendment for the Phase II Plan (the "Plan"). ROR007612, ROR007702-7704.

12. The City confirmed the Phase II Plan in subsequent amendments and re-adoption of its own General Plan, both in 1992 and again in 1999. ROR002735-2736.

13. On the maps of the City's General Plan, the land for the golf course/open space/drainage is expressly designated as PR-OS, meaning Parks/Recreation/Open Space. ROR002735-2736. There are no residential units permitted in an area designated as PR-OS.

14. The City's 2020 Master Plan specifically lists Peccole Ranch as a Master Development Plan in the Southwest Sector.

15. In early 2015, the land was acquired by a developer and as a representative of the developer, Yohan Lowie, would testify at the November 16, 2016 City Council meeting that before purchasing the property he had conversations with the City Council members from which he inferred that he would be able to secure approvals to redevelop the golf course/open space of this master planned community with housing units. ROR001327-1328; ROR007364-7365. The purchaser elected to take on the risk of acquiring the property and did not provide for typical contingencies, such as a condition of land use approvals prior to closing.

16. Instead, it was after acquiring the land that one of the developer's entities, Seventy Acres, filed the Applications with the City in November 2015.

17. When the Applications were initially submitted they were set to be heard in front of the City's Planning Commission on January 12, 2016. ROR017362-17377. The Staff Report

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prepared in advance of this meeting states that the City's Planning Department had no recommendation at the time because the City's code required an application for a major modification of the Peccole Ranch Master Plan prior to the approval of the Applications. ROR017365. Specifically, the Staff Report states:

> The site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the Major Modification process as outline in Title 19.10.040. As this request has not been submitted, staff recommends that the [Applications] be held in abeyance has no recommendation on these items at the time.
> (*Id.*)

18. Indeed, a critical issue noted by the City pertaining to the Applications was that "[t]he proposed development requires a Major Modification of the Peccole Ranch Master Plan, specifically the Phase Two area as established by Z-0017-90. As such, staff is recommending that these items be held in abeyance." (*Id.*)

19. Following staff's recommendation, the Applications were held over to the March 8, 2016 Planning Commission meeting.

20. Again, the Staff Report prepared in advance of the meeting states, "[t]he site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the Major Modification process as outline in Title 19.10.040." ROR017445-17538. As no Major Modification had been submitted the City's staff had no recommendation on the Applications at the time. *Id.*

21. As a result, the Applications were held over to the April 12, 2016 Planning Commission meeting.

22. Consistent with the City's requirements, the developer subsequently filed an application MOD-63600 for a Major Modification of the Peccole Ranch Master Plan to amend the number of allowable units, to change the land use designation of parcel, and to provide standards for redevelopment.

23. As the Staff Report prepared in advance of an April 12, 2016 Planning Commission meeting states, "[p]ursuant to 19.10.040, a request has been submitted for a modification to the Peccole Ranch Master Plan to authorize removal of the golf course, change

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the designated land uses on those parcels to single family and multi-family residential and allow for additional residential units." ROR017550-17566.

24. The Staff Report goes on to state that "[i]t is the determination of the Department of Planning that any proposed development not in conformance with the approved Peccole Ranch Master Plan would be required to pursue a Major Modification of the Plan prior to or concurrently with any new entitlements. *Id.* Such an application (MOD-63600) was filed with the City of Las Vegas on 02/25/16 along with a Development Agreement (DIR-63602) for redevelopment of the golf course parcels." *Id.*

25. As the Staff Report indicates, "[a]n additional set of applications were submitted concurrently with the Major Modification that apply to the whole of the 250.92-acre golf course property." These applications were submitted by entities – 180 Land Co LLC and Fore Stars, Ltd-controlled and related to the developer submitting the Applications at issue here. *Id.*

26. As with the previous Staff Reports, the Staff emphasized that "[t]he proposed development requires a Major Modification of the Peccole Ranch Master Plan, specifically the Phase Two area as established by Z-0017-90." *Id.* However, the City's Staff was now recommending the Applications be held in abeyance as additional time was needed for "review of the Major Modification and related development agreement." *Id.*

27. Over the next several months the Applications were held in abeyance at the request of Seventy Acres and/or the City. Specifically, the Staff Reports prepared in advance of every meeting continuously noted that approval of the Applications was dependent upon an approval of a Major Modification of the Peccole Ranch Master Plan.

28. For example, the May 10, 2016 Staff Report provides "[t]he proposed development requires a Major Modification (MOD-6300) of the Peccole Ranch Master Plan, specifically the Phase Two area as established by Z-0017-90." ROR018033-18150. The Staff findings likewise provide the Applications "would result in the modification of the Peccole Ranch Master Plan. Without the approval of a Major Modification to said plan, no finding can be reached at this time." *Id.*

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29. In the July 12, 2016 Staff Report, staff states "[t]he Peccole Ranch Master Plan must be modified to change the land use designations from Golf Course/Drainage to Multi-Family Residential and Single Family Residential prior to approval of the proposed" Applications. ROR018732-18749. ROR0198882-

30. Less than two months later, in an August 9, 2016 Staff Report, the City's Staff reiterated that "[t]he proposed development requires a Major Modification (MOD-6300) of the Peccole Ranch Master Plan, specifically the Phase Two area as established by Z-0017-90." ROR0198882-19895.

31. Ultimately, the Applications came before a special Planning Commission meeting on October 18, 2016. ROR000725-870. The Applications were heard along with other applications from the developer, including application for a Major Modification of the Peccole Ranch Master Plan. (MOD-63600).

32. The City's Planning Commission denied all other applications, including MOD-63600, except for the Applications at issue in this case by a five-to-two margin. ROR00865-870. In other words, the Planning Commission approved certain applications notwithstanding that it had expressly denied the Major Modification (MOD-63600) that the City's Staff recognized as a required prerequisite to any applications moving forward.

33. The Applications, along with all other applications from the developer, were then scheduled to be heard in front of the City Council on November 16, 2016.

34. Prior to the City Council Meeting the developer requested that the City permit it to withdraw without prejudice all other applications, including the Major Modification (MOD-63600), leaving the Applications at issue relating to the 720 multifamily residential buildings on 17.49 acres located on Alta/Rampart southwest corner. ROR001081-1135.

35. But again, the City's Staff Report prepared in advance of the City Council meeting confirmed that one of the conditions for approving these Applications was that there be a Major Modification of the Peccole Ranch Master Plan. ROR002421-2441. As the City's staff explains, the Applications "are dependent on action taken on the Major Modification and the related Development Agreement between the application and the City for the development of the golf

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course property." ROR002425. This point is reiterated in the report that "[t]he proposed development requires a Major Modification (MOD-63600) of the Peccole Ranch Master Plan." (*Id.*).

36. Yet, as the City's Staff Report confirms, the developer had submitted no request for a Major Modification to the 1990 Peccole Ranch Master Development Plan Phase II to authorize modification for the 17.49 acres of golf course/drainage/open space land use to change the designated land uses, and increase in net units, density, and maximum units per acre. Rather, the application for a Major Modification was submitted on February 25, 2016, relating to the entirety of the Badlands Golf Course, along with an application for a development agreement, and the developer had now withdrawn any request for a major modification.

37. The City Council voted to hold the matter in abeyance. ROR001342.

38. Subsequently, the Applications came back before the City Council on February 15, 2017.

39. The Staff Report again provided that "[p]ursuant to Title 19.10.040, a request has been submitted for a Modification to the 1990 Peccole Ranch Master Plan to authorize removal of the golf course, change the designated land uses on those parcels to single-family and multi-family residential and allow for additional residential units." The City's Staff maintained that Applications "are dependent on action taken on the Major Modification," and that the "the proposed development requires a Major Modification (MOD-63600) of the Peccole Ranch Master Plan." ROR011240.

40. There is no question that the City's own Staff had long recognized that these Applications were dependent upon a Major Modification of the Peccole Ranch Master Plan.

41. At the February 15, 2017 City Council meeting, Seventy Acres announced that it was amending its Applications by reducing the units from 720 to 435 units on 17.49 acres located on Alta/Rampart southwest corner. ROR017237-17358. The corresponding effect was an amendment to its application for a general plan amendment PR-OS to medium density, application for rezoning from R-PD7 to medium density residential, and application for SDR-62393 site development plan subject to certain conditions. *Id.*

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42. Despite no Major Modification as the City had long recognized as required, the City Council by a four-to-three vote proceeded anyway and approved the Applications.

43. On or about February 16, 2017, a Notice of Final Action was issued.

44. On March 10, 2017, Plaintiffs timely filed this Petition seeking judicial review of the City's decision.

B. CONCLUSIONS OF LAW

1. The City's decision to approve the Applications is reviewed by the district court for abuse of discretion. *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004). "A decision that lacks support in the form of substantial evidence is arbitrary or capricious, and thus an abuse of discretion that warrants reversal." *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994). Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* Yet, on issue of law, the district court conducts an independent review with no deference to the agency's determination. *Maxwell v. State Indus. Ins. Sys.*, 109 Nev. 327, 329, 849 P.2d 267, 269 (1993).

2. Although the City's interpretation of its land use laws is cloaked with a presumption of validity absent manifest abuse of discretion, questions of law, including Municipal Codes, are ultimately for the Court's determination. *See Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994); *City of N. Las Vegas v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 1197, 1208, 147 P.3d 1109, 1116 (2006).

3. Here, while the City says that this Court should defer to its interpretation, the Court must note that what the City is now claiming as its interpretation of its own Code appears to have been developed purely as a litigation strategy. Before the homeowners filed this suit, the City and its Planning Director had consistently interpreted the Code as requiring a major modification as a precondition for any application to change the terms of the Peccole Ranch Master Plan. Indeed, it was not until oral argument on this Petition for Judicial Review that the City Attorneys' office suggested that the terms of LVMC 19.10.040(G) only applied to property that is technically zoned for "Planned Development" as opposed to property that is zoned R-PD which is "Residential-Planned Development." This position is completely at odds with the City's

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own longstanding interpretation of its own Code and that its own Director of Development had long determined that a major modification was required and that the terms of LVMC 19.10.040(G) applied here. Respectfully, interpretations that are developed by legal counsel, as part of a litigation strategy, are not entitled to any form of deference by the judiciary. *See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155, 132 S. Ct. 2156, 2166, 183 L. Ed. 2d 153 (2012)(no deference is provided when the agency's interpretation is nothing more than a "convenient litigating position."). What is most revealing is the City's interpretation of its own Code before it felt compelled to adopt a different interpretation as a defense strategy to this litigation.

4. The Court finds the City's pre-litigation interpretation and enforcement of its own Code – that a major modification to the Peccole Ranch Master Plan is required to proceed with these Applications – to be highly revealing and consistent with the Code's actual terms.

5. LVMC 19.10.040(G) is entitled "Modification of Master Development Plan and Development Standards." It provides, in relevant part, that:

> The development of property within the Planned Development District may proceed only in strict accordance with the approved Master Development Plan and Development Standards. Any request by or on behalf of the property owner, or any proposal by the City, to modify the approved Master Development Plan or Development Standards shall be filed with the Department. In accordance with Paragraphs (1) and (2) of this Subsection, the Director shall determine if the proposed modification is "minor" or "major," and the request or proposal shall be processed accordingly.

See LVMC 19.10.040(G).

6. Accordingly, under the Code, "[a]ny request by or on behalf of the property owner, or any proposal by the City, to modify the approved Master Development Plan or Development Standards shall be filed with the Department." LVMC 19.10.040(G). It is the City's Planning Department who "shall determine if the proposed modification is minor or major, and the request or proposal shall be processed accordingly." *Id.*

7. There is no dispute that the Peccole Ranch Master Plan is a Master Development Plan recognized by the City and listed in the City's 2020 Master Plan accordingly.

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8. Likewise, there is no dispute that throughout the application process, the City's Planning Department continually emphasized that approval of the Applications was dependent upon approval of a major modification of the Peccole Ranch Master Plan. For example, the record contains the following representations from the City:

- "The site is part of the 1,569-acre Peccole Ranch Master Plan. Pursuant to Title 19.10.040, a request has been submitted for a Modification to the 1990 Peccole Ranch Master Plan to authorize removal of the golf course, change the designated land uses on those parcels to single family and multi-family residential and allow for additional residential units."
- "The site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the Major Modification process as outline in Title 19.10.040..."
- "The current General Plan Amendment, Rezoning and Site Development Plan Review requests are dependent upon on action taken on the Major Modification..."
- "The proposed Development requires a Major Modification (MOD-63600) of the Peccole Ranch Master Plan...."
- "The Department of Planning has determined that any proposed development not in conformance with the approved (1990) Peccole Ranch Master Plan would be required to pursue a Major Modification..."
- "The Peccole Ranch Master Plan must be modified to change the land use designations from Golf Course/Drainage to Multi-Family prior to approval of the proposed General Plan Amendment..."
- "In order to redevelop the Property as anything other than a golf course or open space, the applicant has proposed a Major Modification of the 1990 Peccole Master Plan."
- "In order to address all previous entitlements on this property, to clarify intended future development relative to existing development, and because of the acreage of

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

the proposed for development, staff has required a modification to the conceptual plan adopted in 1989 and revised in 1990."

ROR000001-27; ROR002425-2428; ROR006480-6490; ROR017362-17377.

9. The City's failure to require or approve of a major modification, without getting into the question of substantial evidence, is legally fatal to the City's approval of the Applications because under the City's Code, as confirmed by the City's Planning Department, the City was required to first approve of a major modification of the Peccole Ranch Master Plan, which was never done. That, by itself, shows the City abused its discretion in approving the Applications.

10. Instead of following the law and the recommendations from the City's Planning Department, over the course of many months there was a gradual retreat from talking about a major modification and all of a sudden that discussion and the need for following Staff's recommendation just went out the window.

11. The City is not permitted to change the rules and follow something other than the law in place. The Staff made it clear that a major modification was mandatory. The record indicates that the City Council chose to just ignore and move past this requirement and did what the developer wanted, without justification for it, other than the developer's will that it be done.

12. In light of the foregoing, the Court finds that the City abused its discretion in approving the Applications. The Court interprets the City's Code, just as the City itself had long interpreted it, as requiring a major modification of the Peccole Ranch Master Plan. Since the City failed to approve of a major modification prior to the approval of these Applications the City abused its discretion and acted in contravention of the law.

Based upon the Findings and Facts and Conclusions of Law above:

IT IS HEREBY ORDERED that Plaintiffs' Petition for Judicial Review is **GRANTED**.

. . .

. . .

. . .

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

IT IS FURTHER ORDERED that the approval of the applications GPA-62387, ZON-62392, and SDR-62393 are hereby vacated, set aside, and shall be void, and judgment shall be entered against Defendant City of Las Vegas and Seventy Acres, LLC in favor of Plaintiffs accordingly.

DATED: March 1, 2018

THE HONORABLE JIM CROCKETT
EIGHTH JUDICIAL DISTRICT COURT

Submitted by:

PISANELLI BICE PLLC

By: _____
Todd L. Bice, Esq., Bar No. 4534
Dustun H. Holmes, Esq., Bar No. 12776
400 South 7th Street, Suite 300
Las Vegas, Nevada 89109

Attorneys for Plaintiffs

Approved as to Form and Content by:

KAEMPFER CROWELL

By: NOT SIGNED
Christopher L. Kaempfer, Esq., Bar No. 1625
Stephanie Allen, Esq., Bar No. 8486
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Attorneys for Seventy Acres, LLC

Approved as to Form and Content by:

By: NOT SIGNED
Philip R. Byrnes, Esq., Bar No. 166
495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101

Attorneys for City of Las Vegas

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101
702.214.2100

EXHIBIT “HH”

DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: GPA

Project Address (Location) Alta Drive and Hualapai Way

Project Name Parcel 1 @ the 180 **Proposed Use** R-PD7

Assessor's Parcel #(s) 138-31-702-002 **Ward #** 2

General Plan: existing PROS proposed L **Zoning:** existing R-PD7 proposed

Commercial Square Footage **Floor Area Ratio**

Gross Acres 166.99 **Lots/Units** 1 **Density** 1.79

Additional Information

PROPERTY OWNER 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road #120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

APPLICANT 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road #120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

REPRESENTATIVE GCW, Inc. **Contact** Cindie Gee

Address 1555 South Rainbow Blvd **Phone:** (702) 804-2107 **Fax:** (702) 804-2299

City Las Vegas **State** NV **Zip** 89146

E-mail Address cgee@gcwengineering.com

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature* _____

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Yohan Lowie

Subscribed and sworn before me

This 28th day of December, 2016.

LeeAnn Stewart-Schencke

Notary Public in and for said County and State

Revised 03/28/16

LEEANN STEWART-SCHENCKE
Notary Public, State of Nevada
Appointment No. 07-4284-1
My Appt. Expires Jul 26, 2019

FOR DEPARTMENT USE ONLY

Case #	GPA-68385
Meeting Date:	
Total Fee:	
Date Received:*	
Received By:	

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.

PRJ-67184
12/29/16

180 Land Co LLC
1215 S. Fort Apache Rd., Suite #120
Las Vegas, NV 89117

180 Land Co. LLC
Nevada limited liability company

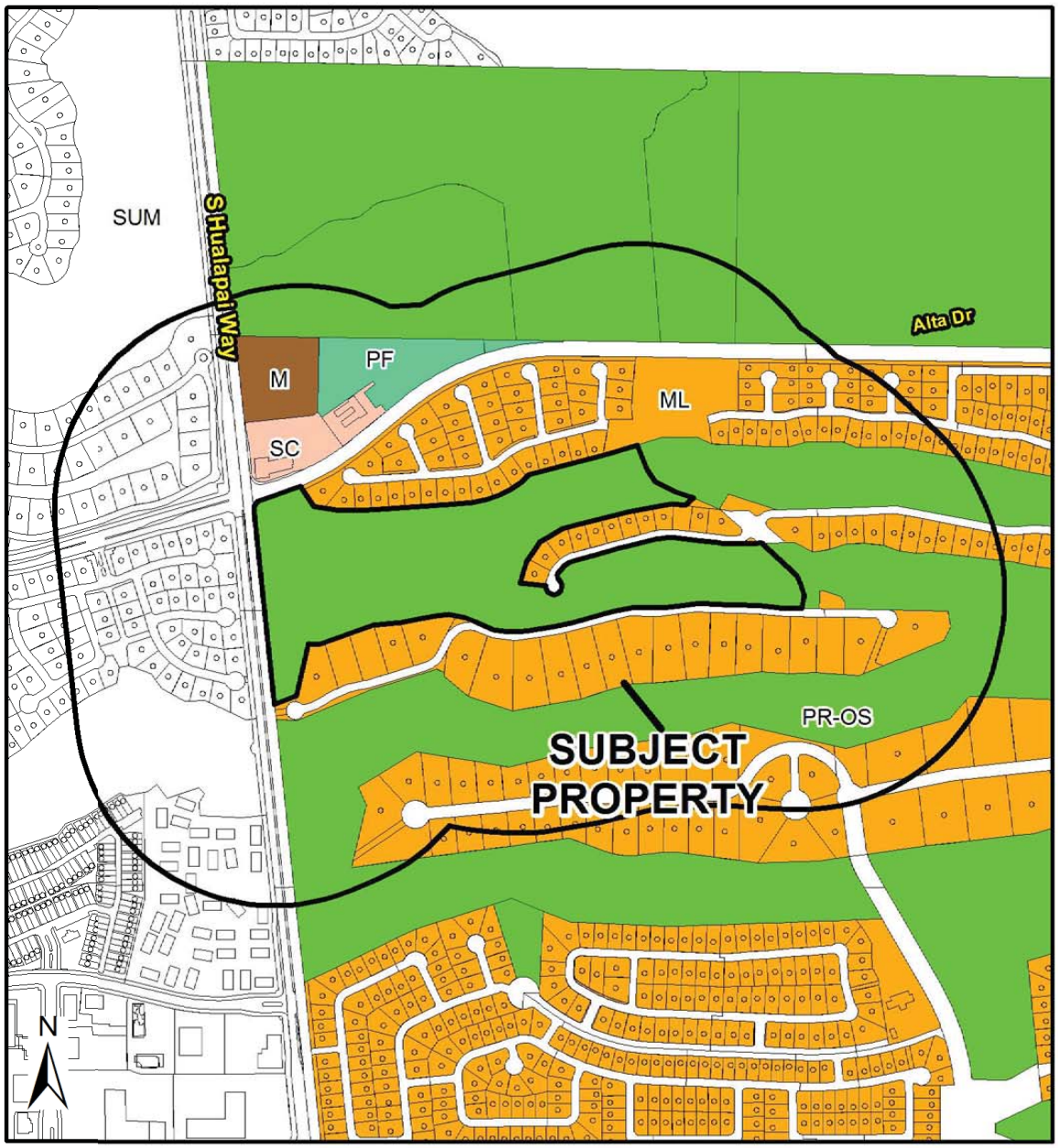
By: EHB Companies LLC
a Nevada limited liability company
Its: Manager

By: _____
Name: Yohan Lowie
Its: Manager
Date: 12/28/16

PRJ-67184
12/28/16

GPA-68385

GPA-68385



FROM PR-OS TO L

General Plan Amendment

- RNP - Rural Neighborhood Preservation
- RE - Rural Estates
- DR - Desert Rural
- R - Rural
- L - Low
- ML - Medium - Low
- MLA - Medium - Low Attached
- M - Medium
- H - High
- O - Office
- SC - Service Commercial
- GC - General Commercial
- GTC - Tourist Commercial
- LVMD - Las Vegas Medical District
- LI/R - Light Industrial / Research
- PCD - Planned Community Development
- PR-OS - Park/Recreation/ Open Space
- PF - Public Facility
- PF-CC Public Facility Clark County
- TC - Town Center
- RC - Resource Conservation
- C - Downtown - Commercial
- MXU - Downtown - Mixed Use
- TND - Tradional Neighborhood Development

- 1000' Buffer
- Subject Property
- City Limits
- Not City

GIS maps are normally produced only to meet the needs of the City. Due to continuous development activity this map is for reference only.
Geographic Information System
Planning & Development Dept.
702-229-6301

Date: Tuesday, January 24, 2017

DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: SDR

Project Address (Location) Alta Drive and Hualapai Way

Project Name Parcel 1 @ the 180 **Proposed Use** R-PD7

Assessor's Parcel #(s) 138-31-702-002 **Ward #** 2

General Plan: existing _____ proposed _____ **Zoning:** existing R-PD7 proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres 34.07 Acres **Lots/Units** 61 + 12 CL **Density** 1.79

Additional Information _____

PROPERTY OWNER 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road # 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

APPLICANT 180 Land Co.LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road # 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

REPRESENTATIVE GCW, Inc. **Contact** Cindie Gee

Address 1555 South Rainbow Blvd **Phone:** (702) 804-2107 **Fax:** (702) 804-2299

City Las Vegas **State** NV **Zip** 89146

E-mail Address cgee@gcwengineering.com

I certify that I am the applicant and that the information submitted with this application is true and accurate to the best of my knowledge and belief. I understand that the City is not responsible for inaccuracies in information presented, and that inaccuracies, false information or incomplete application may cause the application to be rejected. I further certify that I am the owner or purchaser (or option holder) of the property involved in this application, or the lessee or agent fully authorized by the owner to make this submission, as indicated by the owner's signature below.

Property Owner Signature* see attached

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name Yohan Lowie

Subscribed and sworn before me

This 21st day of December, 2016.

Jennifer Knighton

Notary Public in and for said County and State

JENNIFER KNIGHTON
Notary Public, State of Nevada
Appointment No. 14-15063-1
My Appt. Expires Sep 11, 2018

Revised 03/28/16

FOR DEPARTMENT USE ONLY

Case #	SDR-68481
Meeting Date:	
Total Fee:	
Date Received:*	
Received By:	

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.

PRJ-67184
01/04/17

180 Land Co LLC
1215 S. Fort Apache Rd., Suite # 120
Las Vegas, NV 89117

180 Land Co LLC
Nevada limited liability company

By: EHB Companies LLC
a Nevada limited liability company
Its: Manager

By: _____
Name: Lohan Lowie
Its: Manager
Date: 12/21/16

PRJ-67184
01/04/17

SDR-68481

DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: Tentative Map

Project Address (Location) Alta Drive and Hualapai Way

Project Name Parcel 1 @ the 180 **Proposed Use** R-PD7

Assessor's Parcel #(s) 138-31-702-002 **Ward #** 2

General Plan: existing _____ proposed _____ **Zoning:** existing R-PD7 proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres 34.07 Acres **Lots/Units** 61 + 12 CL **Density** 1.79

Additional Information _____

PROPERTY OWNER 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road # 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

APPLICANT 180 Land Co.LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road # 120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

REPRESENTATIVE GCW, Inc. **Contact** Cindie Gee

Address 1555 South Rainbow Blvd **Phone:** (702) 804-2107 **Fax:** (702) 804-2299

City Las Vegas **State** NV **Zip** 89146

E-mail Address cgee@gcwengineering.com

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Print Name Yohan Lowie

Subscribed and sworn before me

This 21st day of December, 2016.

Jennifer Knighton

Notary Public in and for said County and State

JENNIFER KNIGHTON
Notary Public, State of Nevada
Appointment No. 14-15063-1
My Appt. Expires Sep 11, 2018

Revised 03/28/16

FOR DEPARTMENT USE ONLY

Case #	TMP-68482
Meeting Date:	
Total Fee:	
Date Received:*	
Received By:	

application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.

PRJ-67184
01/04/17

180 Land Co LLC
1215 S. Fort Apache Rd., Suite # 120
Las Vegas, NV 89117

180 Land Co LLC
Nevada limited liability company

By: EHB Companies LLC
a Nevada limited liability company
Its: Manager

By: _____
Name: Yohan Lowie
Its: Manager
Date: 12-21-16

PRJ-67184
01/04/17

TMP-68482

DEPARTMENT OF PLANNING

APPLICATION / PETITION FORM

Application/Petition For: Revised Waiver - allowing for 44' private street sections with sidewalk (1 side)

Project Address (Location) Alta Drive and Hualapai Way

Project Name Parcel 1 @ the 180 **Proposed Use** R-PD7

Assessor's Parcel #(s) 138-31-702-002 **Ward #** 2

General Plan: existing _____ proposed _____ **Zoning:** existing R-PD7 proposed _____

Commercial Square Footage _____ **Floor Area Ratio** _____

Gross Acres 34.07 **Lots/Units** 61+12 (CL) **Density** 1.79

Additional Information This street section is generally similar to the as-built street section condition of the adjacent San Michelle neighborhood of Queensridge (not part of the property).

PROPERTY OWNER 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road #120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

APPLICANT 180 Land Co. LLC **Contact** Yohan Lowie

Address 1215 South Fort Apache Road #120 **Phone:** (702) 940-6930 **Fax:** (702) 940-6931

City Las Vegas **State** NV **Zip** 89117

E-mail Address yohan@ehbcompanies.com

REPRESENTATIVE GCW, Inc. **Contact** Cindie Gee

Address 1555 South Rainbow Blvd. **Phone:** (702) 804-2107 **Fax:** (702) 804-2299

City Las Vegas **State** NV **Zip** 89146

E-mail Address cgee@gcwengineering.com

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Property Owner Signature* see attached

*An authorized agent may sign in lieu of the property owner for Final Maps, Tentative Maps, and Parcel Maps.

Print Name _____

Subscribed and sworn before me

This 24th day of January, 20 17.

Jennifer Knighton

Notary Public in and for said County and State

JENNIFER KNIGHTON
Notary Public, State of Nevada
Appointment No. 14-15063-1
My Appt. Expires Sep 11, 2018

FOR DEPARTMENT USE ONLY

Case #	WVR-68480
Meeting Date:	
Total Fee:	
Date Received:*	
Received By:	

*The application will not be deemed complete until the submitted materials have been reviewed by the Department of Planning for consistency with applicable sections of the Zoning Ordinance.

PRJ-67134
01/25/17

Revised 03/28/16

180 Land Co LLC
1215 S. Fort Apache Rd., Suite # 120
Las Vegas, NV 89117

180 Land Co LLC
Nevada limited liability company

By: EHB Companies LLC
a Nevada limited liability company
Its: Manager

By: _____
Name: Yohan Lowie
Its: Manager
Date: January 4, 2017

PRJ-67184
01/04/17

WVR-68480

December 27, 2016

Mr. Tom Perrigo
City of Las Vegas Department of Planning
333 North Rancho Drive
Las Vegas, Nevada 89106

Justification Letter for General Plan Amendment of Parcel No. 138-31-702-002

Dear Mr. Perrigo,

Though we understand that this change to the General Plan should be the responsibility of the City of Las Vegas, per your request, we are submitting an application to amend the General Plan designation on Parcel No. 138-31-702-002, as the current designation of Parks Recreation and Open Space (PR-OS) does not reflect the underlying residential zoning of RPD-7 (Residential Planned Development District – 7.49 Units per Acre) or the intended residential development use of the Property. We have also attached a letter from Clyde Spitze, a representative of the owner of the Property at the time, requesting to maintain the approved RPD-7 zoning while at the same time developing a golf course on the Property. In response, former City of Las Vegas Planning Supervisor Robert S. Genzer, recognized that the approved 18-hole golf course was in fact zoned RPD-7 and would allow the further expansion of nine holes of the golf course on the Property into zoned RPD-7 property.

Therefore, we are requesting that the General Plan designation be changed to the more appropriate L (Low Density Residential) designation, which would be consistent both with the density being proposed by the accompanying Tentative Map and Site Development Review and with the existing RPD-7 zoning.

Thank you for your consideration.

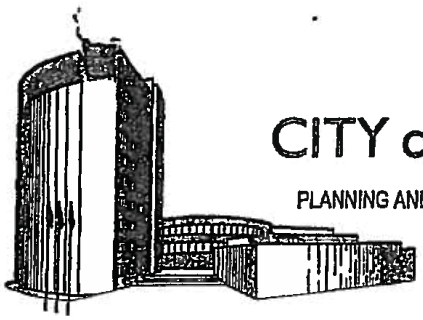
Sincerely yours,

Yohan Lowie,
as Manager of EHB Companies LLC,
the Manager of 180 Land Company LLC

GPA-68385

PRJ-67184
12/28/16

p 702-940-6930 f 702-940-6931 1215 S. Fort Apache Drive, Suite 120 Las Vegas, NV 89117 ehbcompanies.com



CITY of LAS VEGAS

PLANNING AND DEVELOPMENT DEPARTMENT

October 8, 1996

Mr Clyde O Spitze, Vice President
Pentacore
6763 West Charleston Boulevard
Las Vegas, Nevada 89102

Re BADLANDS GOLF COURSE, PHASE 2

Dear Mr Spitze

City records indicate that an 18 hole golf course with associated facilities was approved as part of the Peccole Ranch Master Plan in 1990 The property was subsequently zoned R-PD7 (Residential Planned Development - 7 Units Per Acre) Any expansion of the golf course within the R-PD7 area would be allowed subject to the approval of a plot plan by the Planning Commission

If any additional information is needed regarding this property please do not hesitate to contact me

Very truly yours,

Robert S Genzer, Planning Supervisor
Current Planning Division

RSG erh

GPA-68385

PRJ-67184

400 E STEWART AVENUE • LAS VEGAS, NEVADA 89101-2986
(702) 229-6011 (VOICE) • (702) 386-9108 (TDD)

CLV 7009
3810 015 895

PENTACORE

Civil Engineering
Construction Management
Land Surveying
Planning
ADA Consulting

0171 0030

September 4, 1996

Mr Robert Genzer
City of Las Vegas
Planning Division
400 E Stewart Avenue
Las Vegas, NV 89101

RE Badlands Golf Course, Phase 2

Dear Bob

As you know the Badlands Golf Course in Peccole Ranch is proposing to develop an additional 9 hole course between the existing golf course and Alta Drive The existing Master Plan zoning of this area is RPD-7, and the golf course would be developed within this zoned parcel I would like a letter from the City stating that a golf course would be compatible within this zoning I need the letter for the bank

Thank you for your consideration in this matter

Sincerely,

Clyde O Spitze
Vice President

RECEIVED
SEP 4 4 58 PM '96
PLANNING AND DEVELOPMENT

cc: bw

7-146-94
Z-17-90

GPA-68385

6763 West Charleston Boulevard • Las Vegas, Nevada 89102 • (702) 258-0115 • Fax (702) 258-4956

PRJ-67184
12/28/16

December 12, 2016

Mr. Tom Perrigo
City of Las Vegas Department of Planning
333 North Rancho Drive
Las Vegas, Nevada 89106

Justification Letter for Tentative Map and Site Development Plan Review on 61 Lot Subdivision

Dear Mr. Perrigo,

We are requesting a Tentative Map and Site Development Plan Review for a 61 lot single-family residential subdivision ("Subdivision") on a 34.07 acre portion of Parcel No. 138-31-702-002 which is zoned RPD-7 (Residential Planned Development District – 7.49 Units per Acre). The Subdivision will be located just south of Alta Drive and east of Hualapai Way. Access to the subdivision will be provided by private road off of Hualapai Way.

The Subdivision will be compatible with, and complementary to, existing adjacent and nearby residential land uses and will be appropriately suited for the type of low-intensity residential land use being proposed. The overall density of the Subdivision is 1.79 du/ac with lots ranging from .23 acres to 1.09 acres, an average of .57 acres or 24,953 square feet. Lots will be developed as custom home sites and the Subdivision will meet the City of Las Vegas open space requirements of .98 acres. Development Standards do not include architectural design, but do include building setbacks (primary and accessory), lot widths, building heights, and wall heights and type.
Thank you for your consideration.

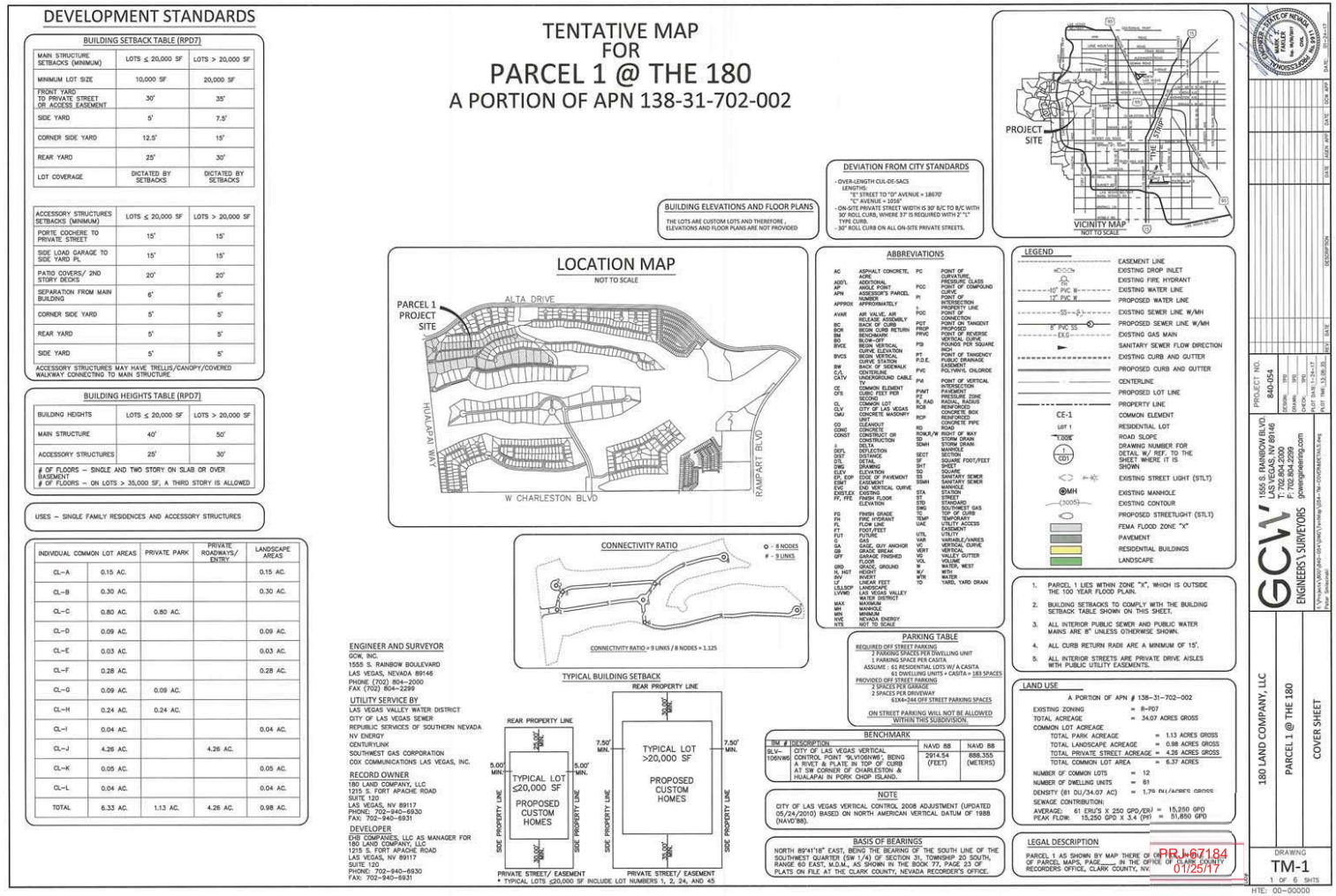
Sincerely yours,

Yohan Lowie,
as Manager of EHB Companies LLC,
the Manager of 180 Land Company LLC

PRJ-67184
01/04/17

SDR-68481 and TMP-68482

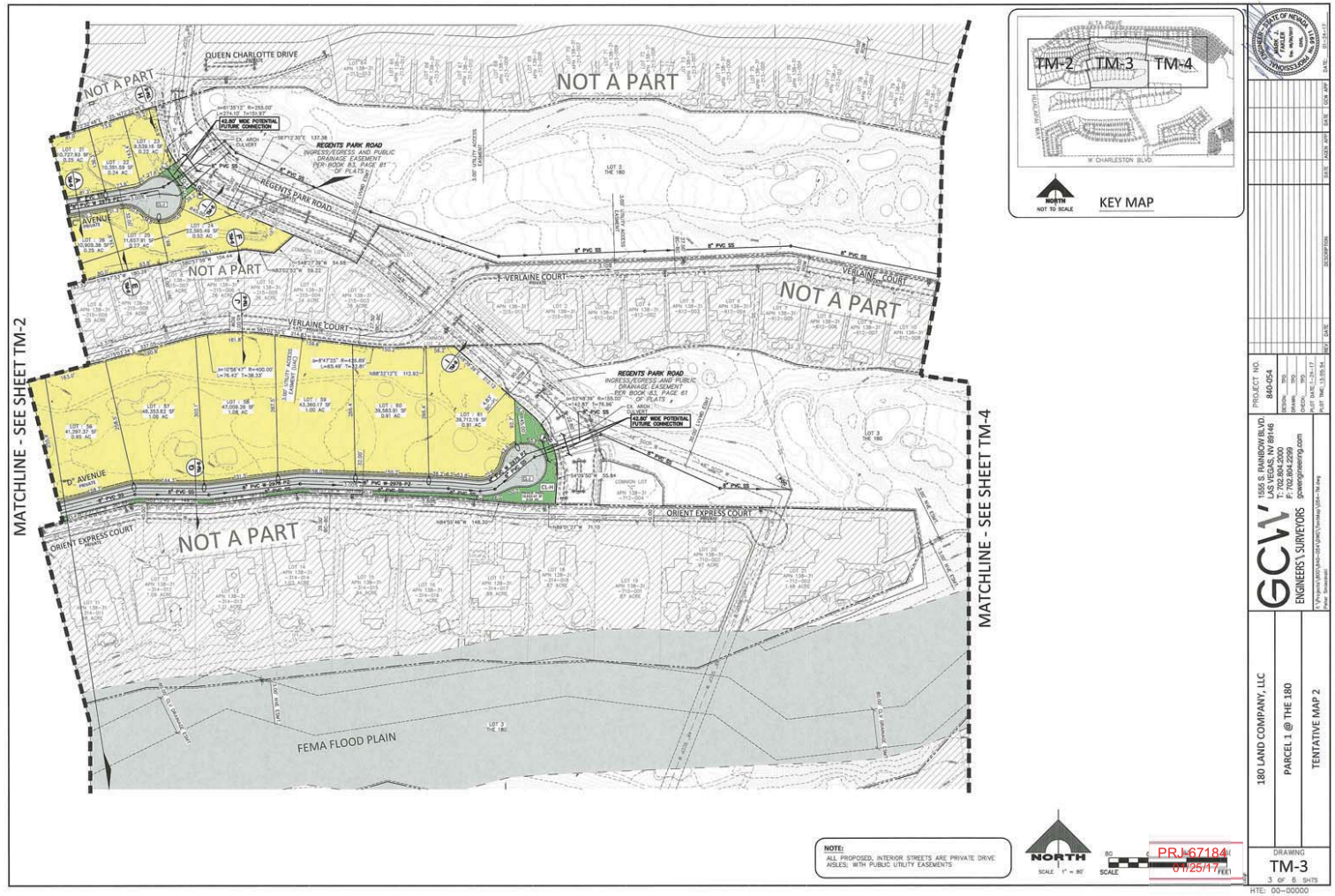
p 702-940-6930 f 702-940-6931 1215 S. Fort Apache Drive, Suite 120 Las Vegas, NV 89117 ehbcompanies.com



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000657
0657
PA0562

GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000659
0659
PA0564

GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

Tentative Map / SDR
Development Standards

04-Jan-17

Description	*Lots ≤ 20,000 sf*	*Lots > 20,000 sf*
Main Structure Setbacks (Minimum)		
Minimum Lot Size	10,000 sf	20,000 sf
Front Yard to Private Street or Access Easement	30'	35'
Side Yard	5'	7.5'
Corner Side Yard	12.5'	15'
Rear Yard	25'	30'
Lot Coverage	Dictated by Setbacks	Dictated by Setbacks
Accessory Structures Setbacks (Minimum)		
Porte Cochere to Private Street	15'	15'
Side Load Garage to Side Yard PL	15'	15'
Patio Covers / 2nd Story Decks	20'	20'
Separation from Main Building	6'	6'
Corner Side Yard	5'	5'
Rear Yard	5'	5'
Side Yard	5'	5'
Accessory Structures May Have Trellis/Canopy Connecting to Main Structure		
Building Heights		
Main Structure	40'	50'
Accessory Structures	25'	30'
# of Floors - Single and Two Story on Slab or Over Basement		
# of Floors - On Lots > 35,000sf a 3rd story is allowed		
Uses	Single Family Residences and Accessory Structures	Single Family Residences and Accessory Structures

PRJ-67184
01/04/17

GPA-68385, WVR-68480, SDR-68481 and TMP-68482

Tentative Map / SDR
Development Standards

16-Dec-16

Description	*Lots < 20,000 sf*	*Lots > 20,000 sf*
Main Structure Setbacks (Minimum)		
Minimum Lot Size	10,000 sf	20,000 sf
Front Yard to Private Street or Access Easement	30'	35'
Side Yard	5'	10'
Corner Side Yard	12.5'	15'
Rear Yard	25'	30'
Lot Coverage	Dictated by Setbacks	Dictated by Setbacks
Size	Min. 3,000 sf	Min. 4,000 sf
Accessory Structures Setbacks (Minimum)		
Porte Cochere to Private Street	15'	15'
Side Load Garage to Side Yard PL	15'	15'
Patio Covers / 2nd Story Decks	20'	20'
Separation from Main Building	6'	6'
Corner Side Yard	5'	5'
Rear Yard	5'	5'
Side Yard	5'	5'
Accessory Structures May Have Trellis/Canopy Connecting to Main Structure		
Patio Covers / 2nd Story Heights		
Main Structure	40'	50'
Accessory Structures	25'	30'
# of Floors - Single and Two Story on Slab or Over Basement		

PRJ-67184
01/04/17

SDR-68481 and TMP-68482

CLV65-000662
0662
PA0567

6. The standards for this development shall include the following:

Standard	Lots less than or equal to 20,000 sf*	Lots greater than 20,000 sf
Minimum Lot Size	10,000 sf	20,000 sf
Building Setbacks: • Front yard to private street or access easement • Side yard • Corner side yard • Rear yard	 30 feet 5 feet 12.5 feet 25 feet	 35 feet 7.5 feet 15 feet 30 feet

Standard	Lots less than or equal to 20,000 sf*	Lots greater than 20,000 sf
Accessory structure setbacks: • Porte cochere to private street • Side loaded garage to side yard property line • Patio covers and/or 2nd story decks • Separation from principal dwelling • Side yard • Corner side yard • Rear yard	 15 feet 15 feet 20 feet 6 feet 5 feet 5 feet 5 feet	 15 feet 15 feet 20 feet 6 feet 5 feet 5 feet 5 feet
Building Heights: • Principal dwelling • Accessory structures • Floors	 46 feet 25 feet 2 stories on slab or over basement	 46 feet 30 feet 3 stories on lots greater than 35,000 sf; otherwise 2 stories
Permitted uses	Single family residence and accessory structures**	Single family residence and accessory structures**

*Includes Lots 1, 2 and 24.

**Accessory structures may have a trellis or canopy attached to the principal dwelling.

DEVELOPMENT STANDARDS

BUILDING SETBACK TABLE (RPD7)

MAIN STRUCTURE SETBACKS (MINIMUM)	LOTS ≤ 20,000 SF	LOTS > 20,000 SF
MINIMUM LOT SIZE	10,000 SF	20,000 SF
FRONT YARD TO PRIVATE STREET OR ACCESS EASEMENT	30'	35'
SIDE YARD	5'	7.5'
CORNER SIDE YARD	12.5'	15'
REAR YARD	25'	30'
LOT COVERAGE	DICTATED BY SETBACKS	DICTATED BY SETBACKS

ACCESSORY STRUCTURES SETBACKS (MINIMUM)	LOTS ≤ 20,000 SF	LOTS > 20,000 SF
PORTE COCHERE TO PRIVATE STREET	15'	15'
SIDE LOAD GARAGE TO SIDE YARD PL	15'	15'
PATIO COVERS/ 2ND STORY DECKS	20'	20'
SEPARATION FROM MAIN BUILDING	6'	6'
CORNER SIDE YARD	5'	5'
REAR YARD	5'	5'
SIDE YARD	5'	5'

ACCESSORY STRUCTURES MAY HAVE TRELLIS/CANOPY/COVERED WALKWAY CONNECTING TO MAIN STRUCTURE

BUILDING HEIGHTS TABLE (RPD7)

BUILDING HEIGHTS	LOTS ≤ 20,000 SF	LOTS > 20,000 SF
MAIN STRUCTURE	40'	50'
ACCESSORY STRUCTURES	25'	30'

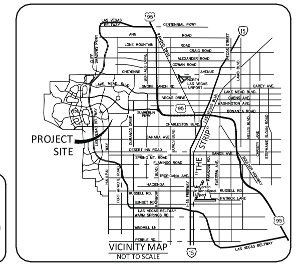
OF FLOORS – SINGLE AND TWO STORY ON SLAB OR OVER BASEMENT
OF FLOORS – ON LOTS > 35,000 SF, A THIRD STORY IS ALLOWED

USES – SINGLE FAMILY RESIDENCES AND ACCESSORY STRUCTURES

INDIVIDUAL COMMON LOT AREAS		PRIVATE PARK	PRIVATE ROADWAYS/ ENTRY	LANDSCAPE AREAS
CL–A	0.15 AC.			0.15 AC.
CL–B	0.30 AC.			0.30 AC.
CL–C	0.80 AC.	0.80 AC.		
CL–D	0.09 AC.			0.09 AC.
CL–E	0.03 AC.			0.03 AC.
CL–F	0.28 AC.			0.28 AC.
CL–G	0.09 AC.	0.09 AC.		
CL–H	0.24 AC.	0.24 AC.		
CL–I	0.04 AC.			0.04 AC.
CL–J	4.26 AC.		4.26 AC.	
CL–K	0.05 AC.			0.05 AC.
CL–L	0.04 AC.			0.04 AC.
TOTAL	6.33 AC.	1.13 AC.	4.26 AC.	0.98 AC.

SITE PLAN FOR SITE DEVELOPMENT REVIEW PARCEL 1 @ THE 180

A PORTION OF APN 138-31-702-002



DEVIATION FROM CITY STANDARDS

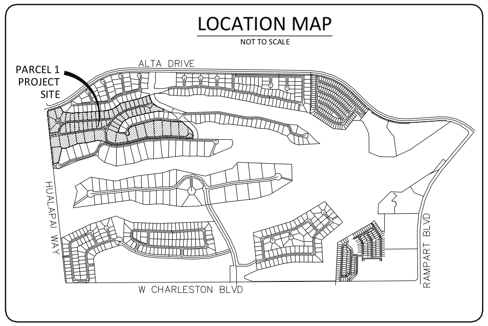
- OVER-LENGTH CUL-DE-SACS
  LENGTHS:
  "E" STREET TO "D" AVENUE = 18670'
  "C" AVENUE = 1016"
- ON-SITE PRIVATE STREET WIDTH IS 30' B/C TO B/C WITH 30' ROLL CURB, WHERE 37' IS REQUIRED WITH 2' "L" TYPE CURB.
- 30" ROLL CURB ON ALL ON-SITE PRIVATE STREETS.

BUILDING ELEVATIONS AND FLOOR PLANS

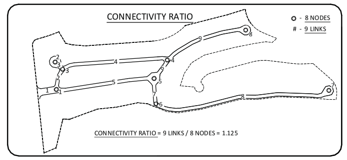
THE LOTS ARE CUSTOM LOTS AND THEREFORE, ELEVATIONS AND FLOOR PLANS ARE NOT PROVIDED

LOCATION MAP

NOT TO SCALE



CONNECTIVITY RATIO



ABBREVIATIONS

AC	ASPHALT CONCRETE, ACRE	PC	POINT OF CURVATURE, PRESSURE CLASS
ADD'L	ADDITIONAL	PCC	POINT OF COMPOUND CURVE
AP	ANGLE POINT	PI	POINT OF INTERSECTION
APN	ASSESSOR'S PARCEL NUMBER	ℓ	PROPERTY LINE
APPROX	APPROXIMATELY	POC	POINT OF CONNECTION
AVAR	AIR VALVE, AIR RELEASE ASSEMBLY	POT	POINT ON TANGENT
BC	BACK OF CURB	PROP	PROPOSED
BCR	BEGIN CURB RETURN	PRVC	POINT OF REVERSE VERTICAL CURVE
BM	BENCHMARK	PSI	POUNDS PER SQUARE INCH
BO	BLOW–OFF	PT	POINT OF TANGENCY
BVCE	BEGIN VERTICAL CURVE ELEVATION	P.D.E.	PUBLIC DRAINAGE EASEMENT
BVCS	BEGIN VERTICAL CURVE STATION	PVC	POLYVINYL CHLORIDE
BW	BACK OF SIDEWALK	PVI	POINT OF VERTICAL INTERSECTION
C/L	CENTERLINE	PVMT	PAVEMENT
CATV	UNDERGROUND CABLE TV	PZ	PRESSURE ZONE
CE	COMMON ELEMENT	R, RAD	RADIAL, RADIUS
CFS	CUBIC FEET PER SECOND	RCB	REINFORCED CONCRETE BOX
CL	COMMON LOT	RCP	REINFORCED CONCRETE PIPE
CLV	CITY OF LAS VEGAS	RD	ROAD
CMU	CONCRETE MASONRY UNIT	ROW,R/W	RIGHT OF WAY
CO	CLEANOUT	SD	STORM DRAIN
CONC	CONCRETE	SDMH	STORM DRAIN MANHOLE
CONST	CONSTRUCT OR CONSTRUCTION	SECT	SECTION
Δ	DELTA	SF	SQUARE FOOT/FEET
DEFL	DEFLECTION	SHT	SHEET
DIST	DISTANCE	SQ	SQUARE
DTL	DETAIL	SS	SANITARY SEWER
DWG	DRAWING	SSMH	SANITARY SEWER MANHOLE
ELEV	ELEVATION	STA	STATION
EP, EOP	EDGE OF PAVEMENT	ST	STREET
ESMT	EASEMENT	STD	STANDARD
EVC	END VERTICAL CURVE	SWG	SOUTHWEST GAS
EXIST,EX	EXISTING	TC	TOP OF CURB
FF, FFE	FINISH FLOOR ELEVATION	TEMP	TEMPORARY
FG	FINISH GRADE	UAE	UTILITY ACCESS EASEMENT
FH	FIRE HYDRANT	UTIL	UTILITY
FL	FLOW LINE	VAR	VARIABLE/VARIES
FT	FOOT/FEET	VC	VERTICAL CURVE
FUT	FUTURE	VERT	VERTICAL
G	GAS	VG	VALLEY GUTTER
GA	GAGE, GUY ANCHOR	VOL	VOLUME
GB	GRADE BREAK	W	WATER, WEST
GFF	GARAGE FINISHED FLOOR	W/	WITH
GRD	GRADE, GROUND	WTR	WATER
H, HGT	HEIGHT	YD	YARD, YARD DRAIN
INV	INVERT		
LF	LINEAR FEET		
LS,LSCP	LANDSCAPE		
LVVWD	LAS VEGAS VALLEY WATER DISTRICT		
MAX	MAXIMUM		
MH	MANHOLE		
MIN	MINIMUM		
NVE	NEVADA ENERGY		
NTS	NOT TO SCALE		

LEGEND

- EASEMENT LINE
- EXISTING DROP INLET
- EXISTING FIRE HYDRANT
- EXISTING WATER LINE (10" PVC W)
- PROPOSED WATER LINE (12" PVC W)
- EXISTING SEWER LINE W/MH
- PROPOSED SEWER LINE W/MH (8" PVC SS)
- EXISTING GAS MAIN
- SANITARY SEWER FLOW DIRECTION
- EXISTING CURB AND GUTTER
- PROPOSED CURB AND GUTTER
- CENTERLINE
- PROPOSED LOT LINE
- PROPERTY LINE
- CE-1 COMMON ELEMENT
- LOT 1 RESIDENTIAL LOT
- 1.00% ROAD SLOPE
- DRAWING NUMBER FOR DETAIL W/ REF. TO THE SHEET WHERE IT IS SHOWN
- EXISTING STREET LIGHT (STLT)
- EXISTING MANHOLE
- (3005) EXISTING CONTOUR
- PROPOSED STREETLIGHT (STLT)
- FEMA FLOOD ZONE "X"
- PAVEMENT
- RESIDENTIAL BUILDINGS
- LANDSCAPE

1. PARCEL 1 LIES WITHIN ZONE "X", WHICH IS OUTSIDE THE 100 YEAR FLOOD PLAIN.
2. BUILDING SETBACKS TO COMPLY WITH THE BUILDING SETBACK TABLE SHOWN ON THIS SHEET.
3. ALL INTERIOR PUBLIC SEWER AND PUBLIC WATER MAINS ARE 8" UNLESS OTHERWISE SHOWN.
4. ALL CURB RETURN RADII ARE A MINIMUM OF 15'.
5. ALL INTERIOR STREETS ARE PRIVATE DRIVE AISLES WITH PUBLIC UTILITY EASEMENTS.

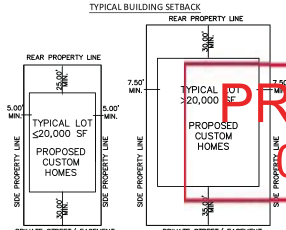
ENGINEER AND SURVEYOR
GCW, INC.
1555 S. RAINBOW BOULEVARD
LAS VEGAS, NEVADA 89146
PHONE (702) 804–2000
FAX (702) 804–2299

UTILITY SERVICE BY
LAS VEGAS VALLEY WATER DISTRICT
CITY OF LAS VEGAS SEWER
REPUBLIC SERVICES OF SOUTHERN NEVADA
NV ENERGY
CENTURYLINK
SOUTHWEST GAS CORPORATION
COX COMMUNICATIONS LAS VEGAS, INC.

RECORD OWNER
180 LAND COMPANY, LLC
1215 S. FORT APACHE ROAD
SUITE 120
LAS VEGAS, NV 89117
PHONE: 702–940–6930
FAX: 702–940–6931

DEVELOPER
EHB COMPANIES, LLC AS MANAGER FOR
180 LAND COMPANY, LLC
1215 S. FORT APACHE ROAD
LAS VEGAS, NV 89117
SUITE 120
PHONE: 702–940–6930
FAX: 702–940–6931

TYPICAL BUILDING SETBACK



* TYPICAL LOTS ≤20,000 SF INCLUDE LOT NUMBERS 1, 2, 24, AND 45

PARKING TABLE

REQUIRED OFF STREET PARKING
2 PARKING SPACES PER DWELLING UNIT
1 PARKING SPACE PER CASITA
ASSUME : 61 RESIDENTIAL LOTS W/ A CASITA
61 DWELLING UNITS + CASITA = 183 SPACES
PROVIDED OFF STREET PARKING
2 SPACES PER GARAGE
2 SPACES PER DRIVEWAY
61X4=244 OFF STREET PARKING SPACES

ON STREET PARKING WILL NOT BE ALLOWED WITHIN THIS SUBDIVISION.

BENCHMARK

BM #	DESCRIPTION	NAVD 88	NAVD 88
9LV–106NW	CITY OF LAS VEGAS VERTICAL CONTROL POINT "LV106NW", BEING A RIVET & PLATE IN TOP OF CURB AT SW CORNER OF CHARLESTON & HUALAPAI IN PORK CHOP ISLAND.	2914.54 (FEET)	888.355 (METERS)

NOTE

CITY OF LAS VEGAS VERTICAL CONTROL 2008 ADJUSTMENT (UPDATED 05/24/2010) BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD'88).

PRJ-67184
01/25/17

BASIS OF BEARINGS

NORTH 89°41'18" EAST, BEING THE BEARING OF THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 31, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., AS SHOWN IN THE BOOK 77, PAGE 23 OF PLATS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE.

LAND USE

A PORTION OF APN # 138–31–702–002

EXISTING ZONING	=	R–PD7
TOTAL ACREAGE	=	34.07 ACRES GROSS
COMMON LOT ACREAGE		
TOTAL PARK ACREAGE	=	1.13 ACRES GROSS
TOTAL LANDSCAPE ACREAGE	=	0.98 ACRES GROSS
TOTAL PRIVATE STREET ACREAGE	=	4.26 ACRES GROSS
TOTAL COMMON LOT AREA	=	6.37 ACRES
NUMBER OF COMMON LOTS	=	12
NUMBER OF DWELLING UNITS	=	61
DENSITY (61 DU/34.07 AC)	=	1.79 DU/ACRES GROSS

SEWAGE CONTRIBUTION:
AVERAGE: 61 ERU'S X 250 GPD/ERU = 15,250 GPD
PEAK FLOW: 15,250 GPD X 3.4 (PF) = 51,850 GPD

LEGAL DESCRIPTION

PARCEL 1 AS SHOWN BY MAP THERE OF ON FILE. IN FILE ____ OF PARCEL MAPS, PAGE___, IN THE OFFICE OF CLARK COUNTY RECORDERS OFFICE, CLARK COUNTY, NV.

GCW ENGINEERS SURVEYORS
1555 S. RAINBOW BLVD.
LAS VEGAS, NV 89146
T: 702.804.2000
F: 702.804.2299
gcwengineering.com

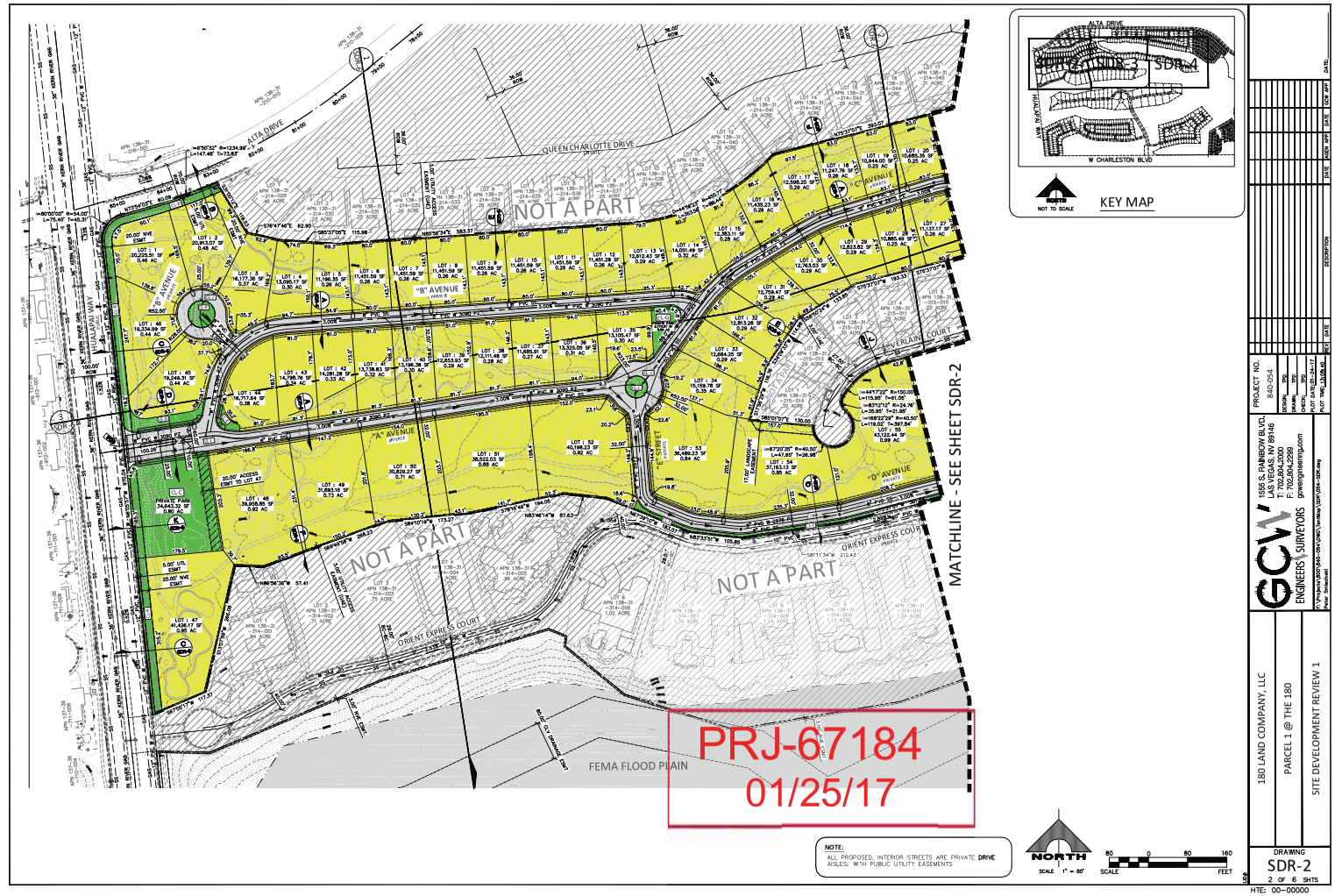
PROJECT NO. 840-054
DESIGN TPD
DRAWN TPD
CHECK TPD
PLOT DATE 01-24-17
PLOT TIME 13:08:26

180 LAND COMPANY, LLC
PARCEL 1 @ THE 180
COVER SHEET

DRAWING SDR-1
1 OF 6 SHTS
HTE: 00–00000

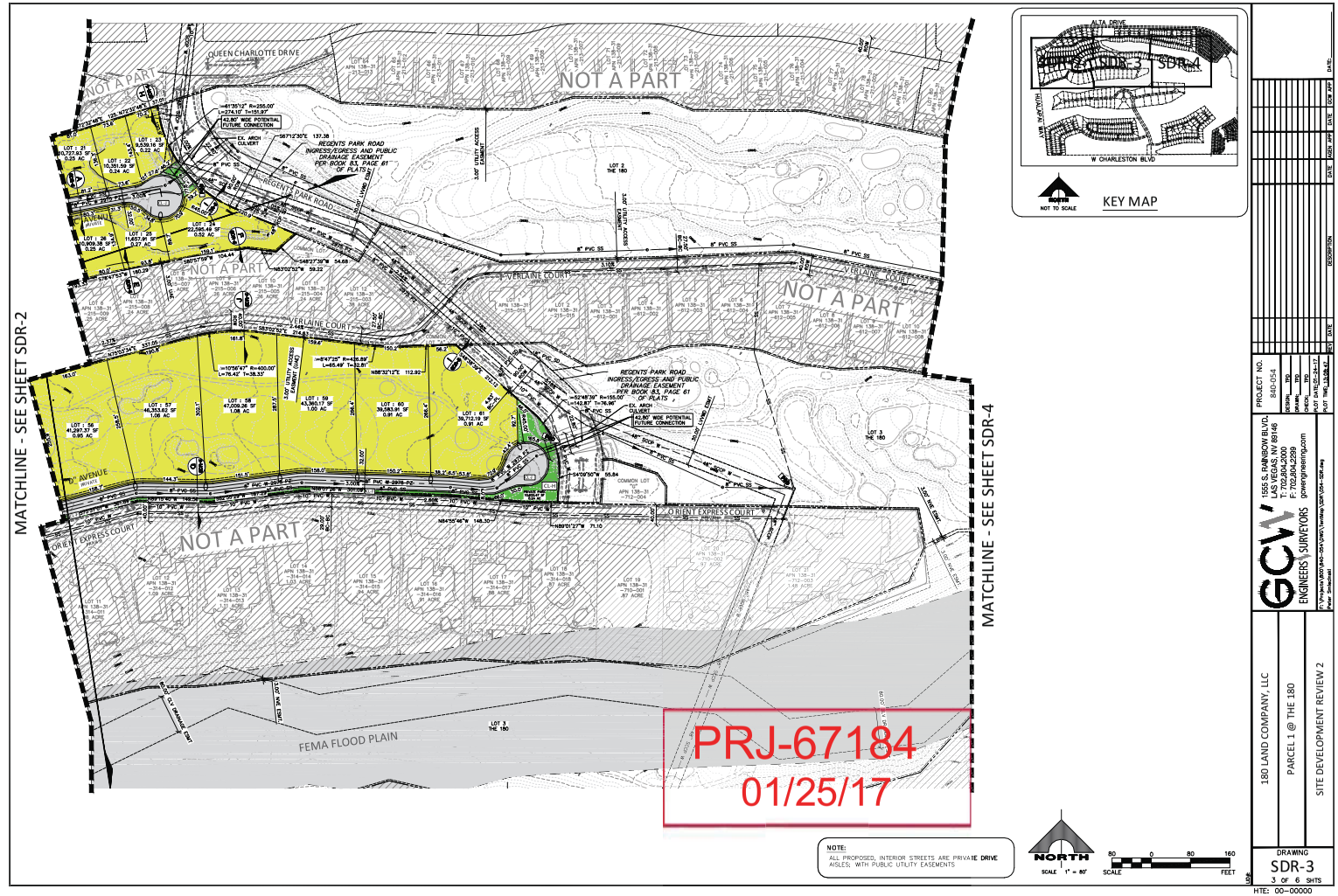
REV	DATE	DESCRIPTION	DATE	AGEN APP	DATE	GCW APP	DATE

GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000665
0665
PA0570



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

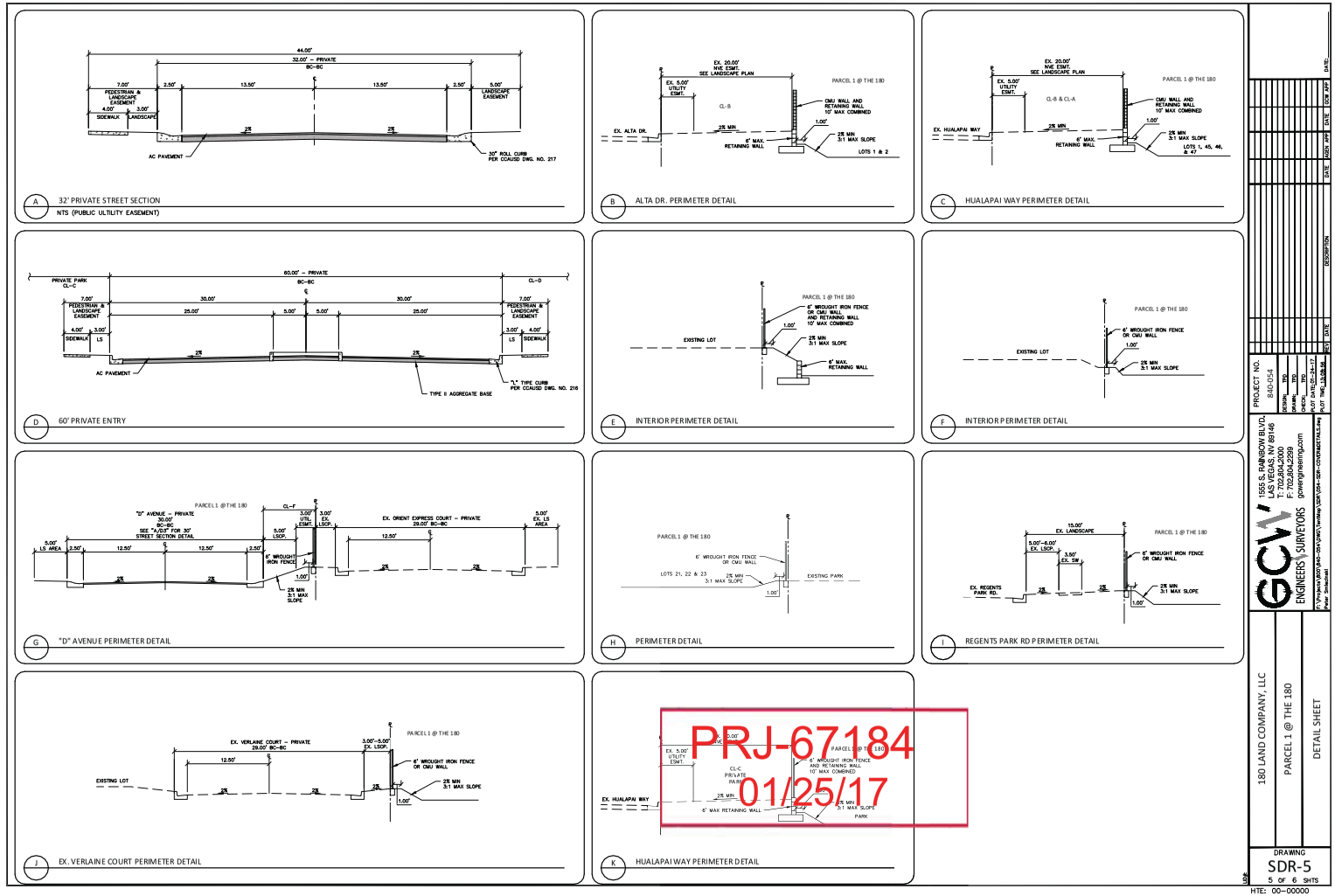
CLV65-000666
0666
PA0571

GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000667

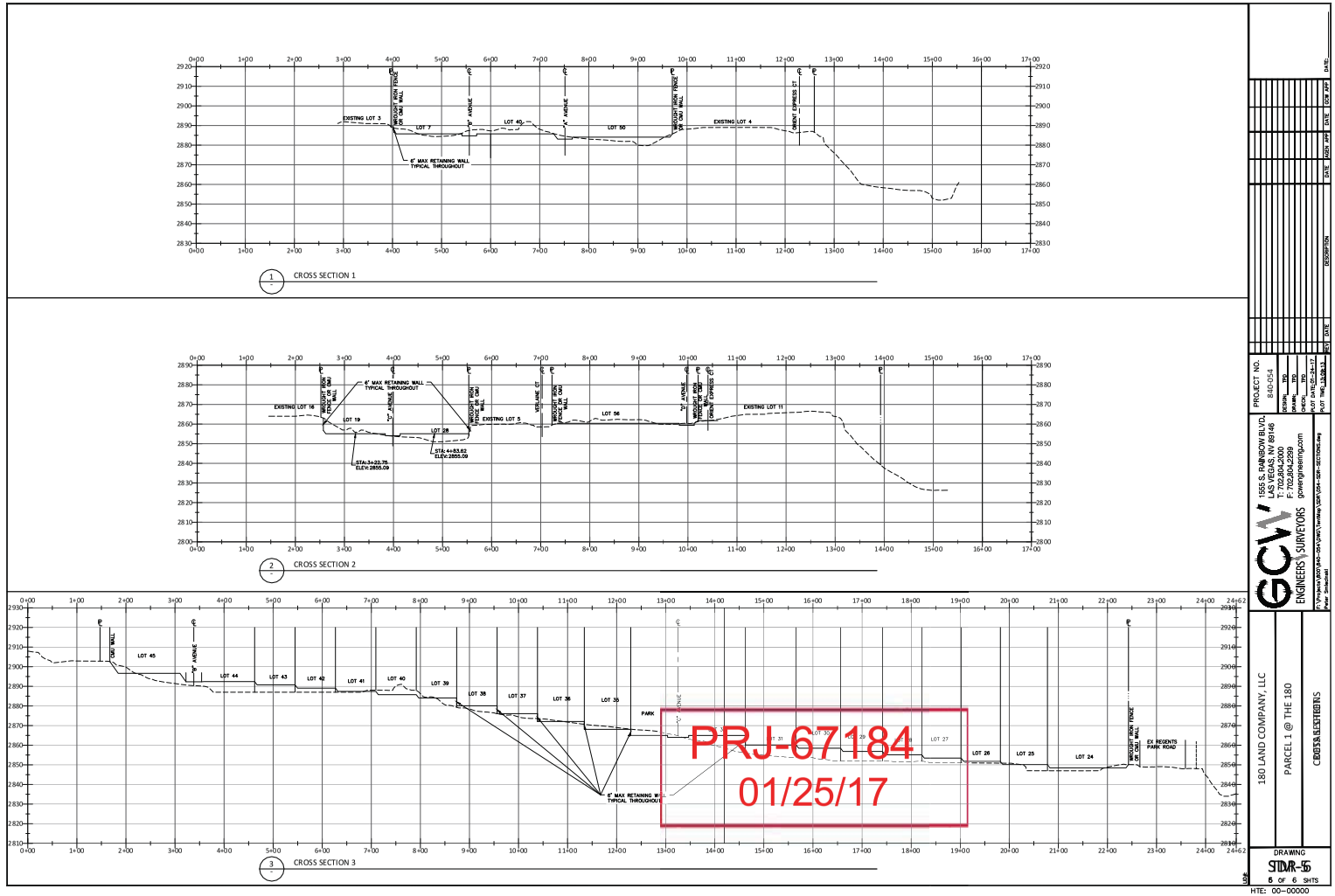
0667

PA0572



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000668
0668
PA0573



GPA-68385, WVR-68480, SDR-68481 and TMP-68482 - REVISED

CLV65-000669
0669
PA0574

January 24, 2017

Mr. Tom Perrigo
City of Las Vegas Department of Planning
333 North Rancho Drive
Las Vegas, Nevada 89106

Revised Justification Letter for Waiver on 34.07 acre portion of Parcel No. 138-31-702-002

Dear Mr. Perrigo,

We are requesting a waiver allowing for 32' private streets (pursuant to the Fire Department's requirement) in addition to:

- on one side a 7' easement on the adjacent lots that will contain a 3' landscape separation back of curb and a 4' sidewalk; and,
- on the other side a 5' landscape easement on the adjacent lots

The above provides for a total street section of 44'.

The above street section is generally similar to the private street section in the adjacent San Michelle subdivision located in the adjacent Queensridge (not a part of this property).

The above comparative private street sections, in addition to the City standard section, are reflected on the attached. The City's standard section contains sidewalk on each side of the street which is not warranted in this application's streets due to the small number of lots in this subdivision.

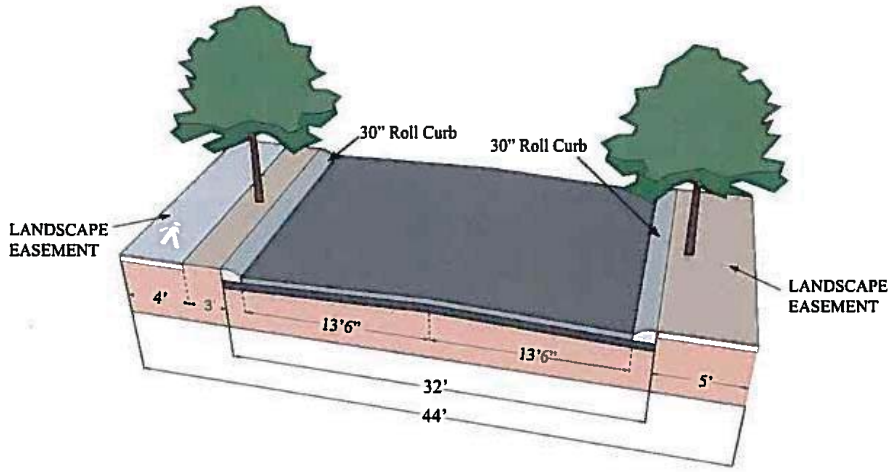
Thank you for your consideration.
Sincerely yours,

Yohan Lowie,
as Manager of EHB Companies LLC,
the Manager of 180 Land Company LLC

p 702-940-6930 f 702-940-6931 1215 S. Fort Apache Drive, Suite 120 Las Vegas, NV 89117 ehbcompanies.com

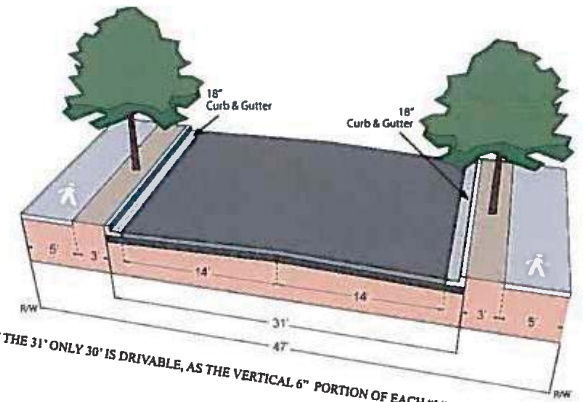
WVR-68480 - REVISED

PRJ-67184
01/25/17



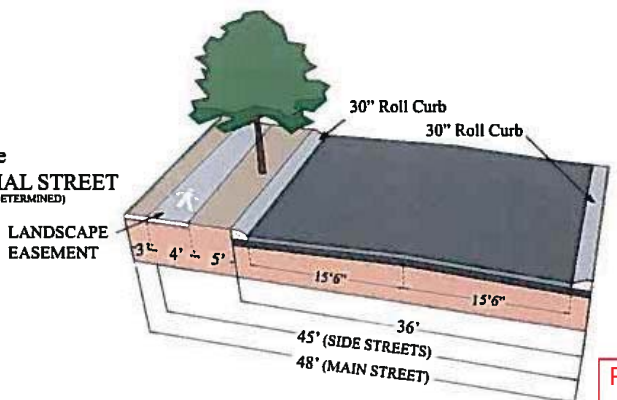
PARCEL 1 @ 180 RESIDENTIAL STREET

STANDARD 47' RESIDENTIAL STREET (19.04.210)



(NOTE: OF THE 31' ONLY 30' IS DRIVABLE, AS THE VERTICAL 6" PORTION OF EACH "L" CURB IS NOT A DRIVABLE SURFACE.)

San Michelle RESIDENTIAL STREET
(AS BEST COULD BE DETERMINED)



PRJ-67184
01/25/17

WVR-68480 - REVISED

EXHIBIT “II”

City of Las Vegas Agenda Item No.: **131.**

AGENDA SUMMARY PAGE - PLANNING
CITY COUNCIL MEETING OF: JUNE 21, 2017

DEPARTMENT: PLANNING
DIRECTOR: TOM PERRIGO ☐ **Consent** ☒ **Discussion**

SUBJECT:
NOT TO BE HEARD BEFORE 3:00 P.M. - GPA-68385 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way (APN 138-31-702-002), Ward 2 (Beers) [PRJ-67184]. Staff has NO RECOMMENDATION. The Planning Commission failed to obtain a supermajority vote which is tantamount to DENIAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**47**	**Planning Commission Mtg.**	**14**
City Council Meeting	**74**	**City Council Meeting**	**10**

RECOMMENDATION:
Staff has NO RECOMMENDATION. The Planning Commission failed to obtain a supermajority vote which is tantamount to DENIAL.

BACKUP DOCUMENTATION:
1. Location and Aerial Maps
2. Staff Report - GPA-68385, WVR-68480, SDR-68481 and TMP-68482 [PRJ-67184]
3. Supporting Documentation - GPA-68385, WVR-68480, SDR-68481 and TMP-68482 [PRJ-67184]
4. Photo(s) - GPA-68385, WVR-68480, SDR-68481 and TMP-68482 [PRJ-67184]
5. Justification Letter
6. Protest Postcards
7. Backup Submitted from the February 14, 2017 Planning Commission Meeting
8. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Transmittal Sheet and CD for Queensridge Parcel 1 at 180 for SDR-68481, WVR-68480, GPA-68385 and TMP-68482 [PRJ-67184] by Doug Rankin
9. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Binder for Everything You Wanted To Know About R-PD7 But Were Afraid To Ask and Presentation Binder for Queensridge Parcel 1 at The 180 and CD for SDR-68481, WVR-68480, GPA-68385 and TMP-68482 [PRJ-67184] by Michael Buckley - NOTE: Subsequent to the meeting, it was determined that the backup named Presentation Binder for Queensridge Parcel 1 at The 180 and CD for SDR-68481, WVR-68480, GPA-68385 and TMP-6882 [PRJ-67184] should be reflected as Presentation Binder Prepared by George Garcia Regarding the Zoning History of Peccole Ranch

10. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Declaration of Clyde O. Spitze for SDR-68481, WVR-68480, GPA-68385 and TMP-68482 [PRJ-67184] by Clyde Spitze
11. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Planning & Zoning 101 Information Packet by George Garcia
12. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Photographs of Golf Course for SDR-68481, WVR-68480, GPA-68385 and TMP-68482 [PRJ-67184] by Eva Thomas
13. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Brief of Cases and Maps by Pat Spilotro
14. Backup Submitted from the February 14, 2017 Planning Commission Meeting - Documents Submitted for the Record by Attorney Jimmy Jimmerson
15. Backup Submitted from the February 14, 2017 Planning Commission Meeting - City Attorney Opinion by Todd Moody for SDR-68481, WVR-68480, GPA-68385 and TMP-68482 [PRJ-67184]
16. Backup Submitted from the March 15, 2017 City Council Meeting
17. Backup Submitted from the May 17, 2017 City Council Meeting
18. Submitted at Meeting - Documents Submitted for the Record by Ngai Pidell, Doug Rankin, George Garcia, Michael Buckley, Bob Peccole and Jimmy Jimmerson for GPA-68385, WVR-68480, SDR-68481 and TMP-68482 [PRJ-67184]
19. Combined Verbatim Transcript for Items 82 and 130-134

Motion made by BOB COFFIN to Deny

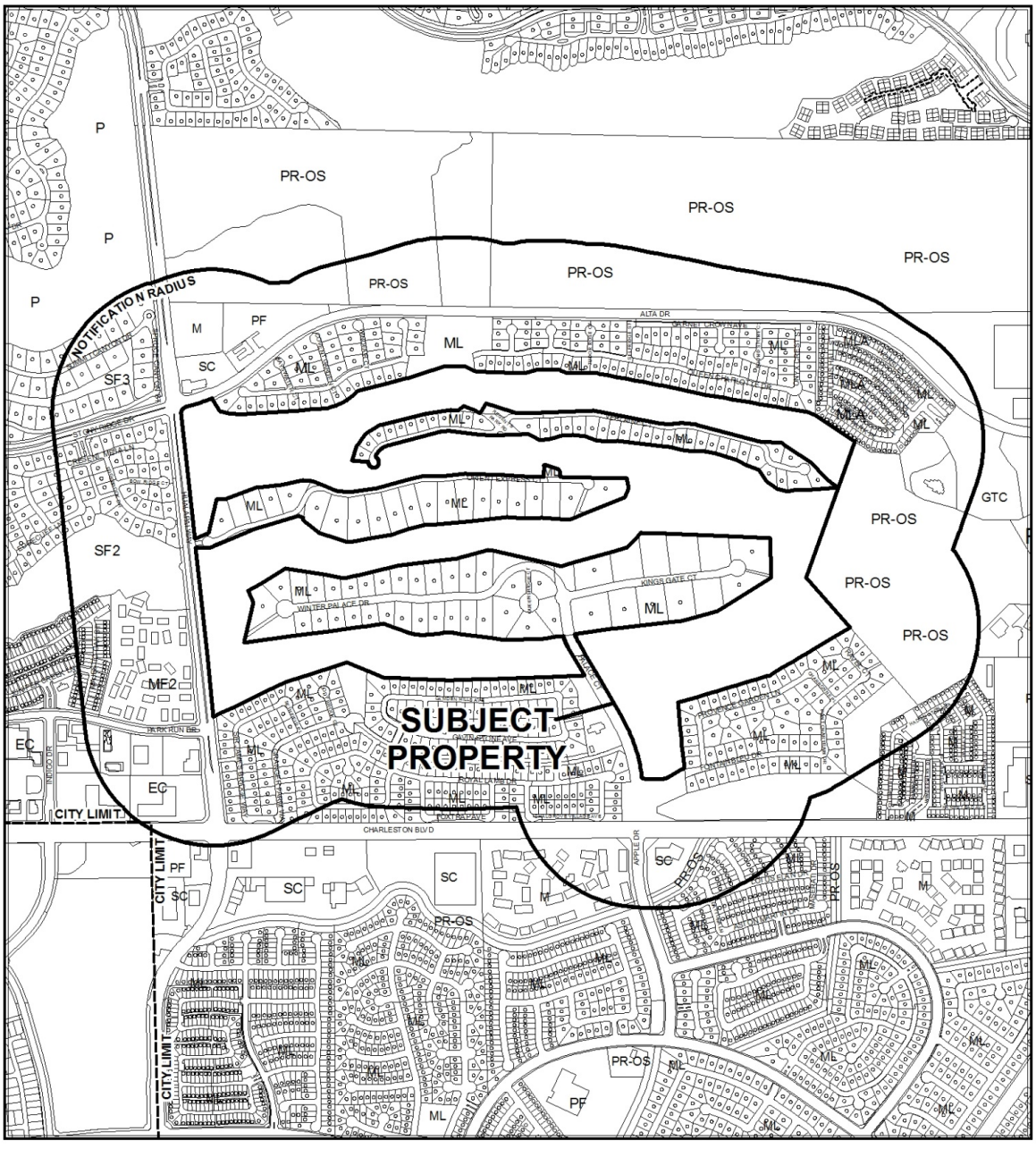
Passed For: 5; Against: 2; Abstain: 0; Did Not Vote: 0; Excused: 0
BOB COFFIN, RICKI Y. BARLOW, LOIS TARKANIAN, CAROLYN G. GOODMAN, STAVROS S. ANTHONY; (Against-STEVEN D. ROSS, BOB BEERS); (Abstain-None); (Did Not Vote-None); (Excused-None)

NOTE: An initial motion by BEERS for Approval passed with TARKANIAN, GOODMAN and ANTHONY voting No; subsequent to the vote, COFFIN announced that he voted incorrectly. Per CITY ATTORNEY JERBIC'S advice, the Council voted again on the motion for Approval which failed with COFFIN, TARKANIAN, GOODMAN and ANTHONY voting No. A subsequent motion by COFFIN for Denial passed with ROSS and BEERS voting No.

Minutes:
A Combined Verbatim Transcript of Items 82 and 130-134 is made part of the Final Minutes.

Appearance List:
CAROLYN GOODMAN, Mayor
BRAD JERBIC, City Attorney
BOB COFFIN, Councilman
TODD BICE, Legal Counsel for the Queensridge Homeowners
STEPHANIE ALLEN, Legal Counsel for the Applicant

FRANK SCHRECK, Queensridge resident
CHRIS KAEMPFER, Legal Counsel for the Applicant
TOM PERRIGO, Planning Director
GEORGE C. SCOTT WALLACE
LILIAN MANDEL, Fairway Pointe resident
DAN OMERZA, Queensridge resident
TRESSA STEVENS HADDOCK, Queensridge resident
NGAI PINDELL, William S. Boyd School of Law
DOUG RANKIN, 1055 Whitney Ranch Drive
LOIS TARKANIAN, Councilwoman
GEORGE GARCIA, 1055 Whitney Ranch Drive
MICHAEL BUCKLEY, on behalf of Frank and Jill Fertitta Family Trust
STAVROS ANTHONY, Councilman
SHAUNA HUGHES, on behalf of the Queensridge homeowners
HERMAN AHLERS, Queensridge resident
BOB PECCOLE, on behalf of Appellants in the Nevada Supreme Court
DALE ROESSNER, Queensridge resident
ANNE SMITH, Queensridge resident
KARA KELLEY, Queensridge resident
PAUL LARSEN, Queensridge resident
LARRY SADOFF, Queensridge resident
LUCILLE MONGELLI, Queensridge resident
RICK KOSS, St. Michelle resident
HOWARD PEARLMAN
SALLY JOHNSON-BIGLER, Queensridge resident
DAVID MASON, Queensridge resident
TERRY MURPHY, on behalf of the Frank and Jill Fertitta Trust
ELAINE WENGER-ROESSNER
TALI LOWIE, Queensridge resident
JAMES JIMMERSON, Legal Counsel for the Applicant
YOHAN LOWIE, Applicant/Owner
RICKI BARLOW, Councilman
BOB BEERS, Councilman



0 875 1,750 Feet

CASE: **GPA-68385 (PRJ-67184)**

RADIUS: 1000 FEET

GENERAL PLAN OF SUBJECT PROPERTY: PR-OS (PARKS/RECREATION/OPEN SPACE)

PROPOSED GENERAL PLAN OF SUBJECT PROPERTY: L (LOW DENSITY RESIDENTIAL)

N

City of Las Vegas Agenda Item No.: **133.**

AGENDA SUMMARY PAGE - PLANNING
CITY COUNCIL MEETING OF: JUNE 21, 2017

DEPARTMENT: PLANNING
DIRECTOR: TOM PERRIGO ☐ **Consent** ☒ **Discussion**

SUBJECT:
NOT TO BE HEARD BEFORE 3:00 P.M. - SDR-68481 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO GPA-68385 AND WVR-68480 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**39**	**Planning Commission Mtg.**	**0**
City Council Meeting	**28**	**City Council Meeting**	**0**

RECOMMENDATION:
The Planning Commission (4-2 vote) and Staff recommend APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Consolidated Backup
2. Supporting Documentation
3. Justification Letter - SDR-68481 and TMP-68482 [PRJ-67184]

Motion made by BOB COFFIN to Deny

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0
BOB COFFIN, LOIS TARKANIAN, CAROLYN G. GOODMAN, STAVROS S. ANTHONY; (Against-RICKI Y. BARLOW, STEVEN D. ROSS, BOB BEERS); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:
See Item 131 for a Combined Verbatim Transcript of Items 82 and 130-134 and Items 131 and 132 for other related backup.

City of Las Vegas Agenda Item No.: **134.**

AGENDA SUMMARY PAGE - PLANNING
CITY COUNCIL MEETING OF: JUNE 21, 2017

DEPARTMENT: PLANNING
DIRECTOR: TOM PERRIGO ☐ **Consent** ☒ **Discussion**

SUBJECT:
NOT TO BE HEARD BEFORE 3:00 P.M. - TMP-68482 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO GPA-68385, WVR-68480 AND SDR-68481 - PARCEL 1 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Tentative Map FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**37**	**Planning Commission Mtg.**	**0**
City Council Meeting	**28**	**City Council Meeting**	**0**

RECOMMENDATION:
The Planning Commission (4-2 vote) and Staff recommend APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Consolidated Backup
2. Supporting Documentation
3. Protest Postcards
4. Backup Submitted from the February 14, 2017 Planning Commission Meeting

Motion made by BOB COFFIN to Deny

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0
BOB COFFIN, LOIS TARKANIAN, CAROLYN G. GOODMAN, STAVROS S. ANTHONY; (Against-RICKI Y. BARLOW, STEVEN D. ROSS, BOB BEERS); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:
See Item 131 for a Combined Verbatim Transcript of Items 82 and 130-134 and Items 131-133 for other related backup.

City of Las Vegas Agenda Item No.: **132.**

AGENDA SUMMARY PAGE - PLANNING
CITY COUNCIL MEETING OF: JUNE 21, 2017

DEPARTMENT: PLANNING
DIRECTOR: TOM PERRIGO ☐ **Consent** ☒ **Discussion**

SUBJECT:
NOT TO BE HEARD BEFORE 3:00 P.M. - WVR-68480 - ABEYANCE ITEM - WAIVER RELATED TO GPA-68385 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Waiver TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

PROTESTS RECEIVED BEFORE:		**APPROVALS RECEIVED BEFORE:**	
Planning Commission Mtg.	**39**	**Planning Commission Mtg.**	**0**
City Council Meeting	**28**	**City Council Meeting**	**0**

RECOMMENDATION:
The Planning Commission (4-2 vote) and Staff recommend APPROVAL, subject to conditions:

BACKUP DOCUMENTATION:
1. Consolidated Backup
2. Location and Aerial Maps - WVR-68480, SDR-68481 and TMP-68482 [PRJ-67184]
3. Supporting Documentation
4. Justification Letter
5. Protest Postcards - WVR-68480 and SDR-68481
6. Backup Submitted from the February 14, 2017 Planning Commission Meeting

Motion made by BOB COFFIN to Deny

Passed For: 4; Against: 3; Abstain: 0; Did Not Vote: 0; Excused: 0
BOB COFFIN, LOIS TARKANIAN, CAROLYN G. GOODMAN, STAVROS S. ANTHONY; (Against-RICKI Y. BARLOW, STEVEN D. ROSS, BOB BEERS); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:
See Item 131 for a Combined Verbatim Transcript of Items 82 and 130-134 and other related backup.

BRAD JERBIC
The 61 in this application is in a very limited corner. It's much denser than what would be, in fact it's as dense as what would be on the entire course virtually if we had a development agreement. So it is inconsistent, absolutely inconsistent with that Development Agreement that's still not finished. If that Development Agreement does get finished and it gets up before for the Council, one of the things that they will have to do, and they're telling you now they will agree to, is give up the 61 if they win today. Is that right?

COUNCILMAN BARLOW
And so, to my understanding, they're on an acre now, and from what I understand further, is that the Development Agreement could be potentially two-acre parcels instead of one?

BRAD JERBIC
It is a sub potentially. It is absolutely the –

COUNCILMAN BARLOW
So, in essence, the neighbors will be in a better position?

BRAD JERBIC
Well, we believe, in my negotiations with the neighbors that have participated in negotiations, they have told me they requested two-acre parcels, and that was a concession that we won during that negotiation. So the entire golf course, the 183 acres, except for one small piece on the southeast side, which are minimum half-acre parcels and about 15 homes there, the remaining 50 homes of the 65 would be spread out over the rest of the golf course on two-acre minimum parcels.

EXHIBIT “AAA”

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "Agreement") to be effective December 1st, 2014 is made at Las Vegas, Nevada by and between **THE WILLIAM PETER PECCOLE AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP dated December 30, 1992**, a Nevada limited partnership ("Seller") and **RAMALTA LLC**, a Nevada limited liability company ("Purchaser") (the foregoing parties are collectively the "Parties" and each one a "Party"). For purposes of this Agreement, "Effective Date" shall be December 1, 2014.

RECITALS

WHEREAS, Seller is the sole member of Fore Stars, Ltd., a Nevada limited liability company ("Fore Stars");

WHEREAS, the Manager of Fore Stars and the General Partner of the Seller is Peccole-Nevada Corporation, a Nevada corporation ("PNC").

WHEREAS, Fore Stars is the owner of that certain real property and improvements, which includes a golf course, driving range, and other facilities located in the City of Las Vegas, Nevada, more particularly described on the attached Exhibit "A", which is incorporated herein by reference (collectively the "Real Property").

WHEREAS, Seller desires to sell all its ownership interest in Fore Stars (the "Securities") and Purchaser desires to purchase the Securities upon and subject to the terms and conditions of this Agreement;

WHEREAS, the Parties have reached an understanding with respect to the transfer by Seller and the acquisition by Purchaser of the Securities; and

NOW, THEREFORE, in consideration of the foregoing and due consideration paid by Purchaser to Seller, the Parties hereby agree:

SECTION 1
Definitions.

For purposes of this Agreement, the following definitions shall apply.

1.01 "Assets" shall mean the following assets of Seller: (1) all of the Seller's fixtures, fittings and equipment associated or used in connection with the Real Property, the equipment is set forth in Exhibit "B"; (2) all of Seller's right, title and interest in and to the use of the name "Badlands Golf Course" used in connection with the Real Property, and any derivatives or combinations thereof; (3) Seller's vendor lists and business records relating to the operation of the golf course and the Real Property; (4) all of the stock of goods owned by Seller used in the operation of the golf course and the Real Property, including without limitation any pro shop, clubhouse, office, and kitchen goods; (5) Seller's existing contracts with its suppliers and vendors, including that certain Water Rights Lease Agreement dated June 14, 2007 between the Seller and Allen G. Nel; (6) all leases and agreements to which Seller is a party with respect to machinery, equipment, vehicles, and other tangible personal property used in the operation of the golf course and the Real Property and all claims and rights arising under or pursuant to the Equipment Leases; (7) all other licenses and permits issued to the Seller (or held by Par 4 as part of the operation of the golf course and would be considered personal to such operation) related to the used in the operation of the golf course, including the liquor license issued by the City of Las Vegas, Nevada identified as License Number L16-00065 (the "Liquor License") and the Real Property; and (8) all rights under the Clubhouse

Lease. Assets shall not include any and all personal property, goods or rights owned by Par 4 as it relates to the Golf Course Lease.

1.02 "Golf Course Lease" shall mean that certain Golf Course Ground Lease dated as of June 1, 2010, as amended, between Fore Stars and Par 4 Golf Management, Inc., a Nevada corporation (the "Par 4").

SECTION 2
PURCHASE PRICE; DEPOSIT; FEASIBILITY PERIOD; DILIGENCE DOCUMENTS; PRORATIONS; CLOSING DATE

2.01 Purchase Price. The total Purchase price for the Securities in Fore Stars shall be SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 CENTS ($7,500,000) (the "Purchase Price"). Purchaser shall pay the Purchase Price as follows:

(a) Initial Deposit. THREE HUNDRED THOUSAND DOLLARS AND N0/100 CENTS ($300,000.00) as an earnest money deposit (the "Deposit"), by wire transfer to the following account designated by and controlled by PNC for the benefit of the Seller.

(b) Feasibility Period. Purchaser shall have thirty (30) days from the Effective Date of this Agreement to cause Seller to receive written notice of its disapproval of the feasibility of this transaction (the "Feasibility Period"). If Seller has not received such notice of disapproval before the expiration of the Feasibility Period, Purchaser shall be deemed to have approved the feasibility of this transaction. If Purchaser causes Seller to receive written notice of disapproval within the Feasibility Period, this Agreement shall be deemed terminated and shall be of no further force or effect. If no notice is received by the Seller to terminate this Agreement, then the Deposit shall be deemed non-refundable and released to Seller. If the Purchaser elects to proceed and not cancel this Agreement during the Feasibility Period, at the Closing, the Deposit shall be credited towards the Purchase Price with the balance to be paid by wire transfer to Seller using the same account information provided for in Section 2.01(a). Notwithstanding the provisions of this subsection (b), until the Feasibility Period, Purchaser shall have the right to terminate this Agreement and receive a full refund of the Deposit in the event that: (i) Purchaser discovers the existence of any written commitment, covenant, or restriction to any party executed in any capacity by Larry Miller, J. Bruce Bayne, or Fredrick P. Waid in their capacity as an officer and/or director of PNC, which commitment, covenant, or restriction would limit the ability of Purchaser to change the present use of the Real Property; or (ii) Purchaser discovers the presence of any materials, wastes or substances that are regulated under or classified as toxic or hazardous, under any Environmental Law, including without limitation, petroleum, oil, gasoline or other petroleum products, by products or waste .

Seller hereby grants Purchaser, from the date hereof until expiration of the Feasibility Period, upon twenty-four (24) hours' notice to Seller and reasonable consent of Par 4, the right, license, permission and consent for Purchaser and Purchaser's agents or independent contractors to enter upon the Real Property for the purposes of performing tests, studies and analyses thereon. Seller or Par 4 may elect to have a representative of Seller present during Purchaser's site inspections. The parties shall coordinate Purchaser's on site investigations so as to minimize disruption of the golf course operations on the Real Property and impact upon Par 4 and their employees. Purchaser shall indemnify and hold Seller and Par 4 harmless from and against any property damages or bodily injury that may be incurred by Seller or Par 4 as a result of such actions by Purchaser, its employees, agents and independent contractors. Purchaser shall obtain, and shall require that its contractors obtain, liability insurance, naming Seller and Par 4 each as an additional insured, in an amount not less than $1,000,000 (combined single limit) with respect to all such activities conducted at Purchaser's direction on the Real Property. The rights of Seller and Par 4 and Purchaser's obligations set forth in this subsection shall expressly survive any termination of this Agreement. Purchaser agrees not to permit or suffer and, to the extent so permitted or suffered, to cause

to be removed and released, any mechanic's, materialman's, or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with the planning, design, inspection, construction, alteration, repair or surveying of the Real Property, or preparation of plans with respect thereto as aforesaid by, through or under Purchaser during the Feasibility Period and through the Closing Date.

(c) Delivery of Documents. On or before ten (10) business days after the Effective Date, or as otherwise provided below, Seller shall deliver to Purchaser copies of all of the following items, provided Seller has such items in its actual possession (collectively referred to herein as "Documents"):

a. Copies of all development agreements, subdivision improvement agreements, CC&R's, water supply agreements, effluent use agreements, irrigation agreements, or other agreements entered into with the any third parties, the City of Las Vegas, Nevada or any special district, quasi-municipality or municipality having jurisdiction over the Real Property, if any;

b. Copies of all operations, maintenance, management, service and other contracts and agreements relating to operation of the golf course (which agreements may be assumed in full by the Purchaser in Purchaser's sole discretion) and copies of any and all subleases and license agreements relating to the Real Property, if any;

c. Last six (6) months of statements issued to the Seller for water, storm and sanitation sewer, gas, electric, and other utilities connected to or serving the Real Property (if any), including availability and standby charges;

d. Real property tax bills and notices of assessed valuation, including any special assessments, pertaining to the Real Property (if any) for the most recent three (3) tax years, including documents relating to any pending or past tax protests or appeals made by Seller, if any;

e. Any governmental and utility permits, licenses, permits and approvals relating to the Real Property, Assets or Liquor License issued to the Seller, if any;

f. List of personal property owned by Seller together with any security interest or encumbrances thereon that are being conveyed to the Purchaser as the Closing;

g. A copy of any plans and specifications (including "as-builts") of improvements and any other architectural, engineering, irrigation and landscaping drawings, plans and specifications in the Seller's possession;

h. A summary of all pending and threatened claims that were reduced to writing and delivered to the Seller existing at the time of the Effective Date of this Agreement that may result in future liability to Purchaser in excess of $5,000 and all written notices of violation or enforcement action from governmental agencies served upon Seller that require curative action related to the Real Property, or Assets or involving the golf course operation. After the summary is provided to Purchaser, to the extent that any new claims are delivered in writing to the Seller prior to Closing, Seller shall advise Purchaser in writing;

i. 5.9 The Golf Course Lease.

Purchaser shall retain in strict confidence all Proprietary Information received by Seller, and shall not reveal it to anyone except as may be necessary for the accomplishment of the purposes of such examination and the consummation of the transactions provided for hereby. In the event the sale provided for hereby is not consummated for any reason, for a period of five (5) years, Purchaser shall not,

directly or indirectly: (i) utilize for its own benefit any Proprietary Information (as hereinafter defined) or (ii) disclose to any person any Proprietary Information, except as such disclosure may be required in connection with this Agreement or by law. For purposes of this Agreement, "Proprietary Information" shall mean all confidential business information concerning the pricing, costs, profits and plans for the future development of the Real Property, the Assets or the operation of the golf course, and the identity, requirements, preferences, practices and methods of doing business of specific customers or otherwise relating to the business and affairs of the parties, other than information which (A) was lawfully in the possession of Purchaser prior to the date of disclosure of such Proprietary Information; (B) is obtained by Purchaser after such date from a source other than Seller who is not under an obligation of confidentiality to the Seller; or (C) is in the public domain when received or thereafter enters the public domain through no action of Purchaser. In the event the transactions contemplated hereby are not consummated for any reason, upon receipt of written request from Seller, Purchaser shall return to Seller all Documents and Records received from the Seller (the Documents and Records collectively referred to herein as "Due Diligence Items".)

Seller, however, makes no warranty or representation as to the accuracy, correctness or completeness of the information contained in the Due Diligence Items except as expressly set forth in this Agreement. The Due Diligence Items are being provided to Purchaser for Purchaser's informational purposes only with the understanding and agreement that Purchaser will obtain its own soils, environmental and other studies and reports in order to satisfy itself with the condition of the Real Property.

2.02 Prorations.

(a) Credits and Prorations. In addition to the Purchase Price, the following shall be apportioned with respect to the Real Property as of 12:01 a.m., on the day of Closing (the "Cut-Off Time"), as if Purchaser were vested with title to the Real Property during the entire day upon which Closing occurs with the understanding that all or a portion of the charges may be due and owing to Par 4 in accordance with the terms and conditions of the Golf Course Lease, if the date of termination of the Golf Course Lease occurs after the Closing Date, by agreement of Purchaser and Seller: (i) taxes (including personal property taxes on all personal property and Inventory) and assessments levied against the Real Property; (ii) gas, electricity and other utility charges for the golf course operations, if any; (iii) charges and fees paid or payable for licenses and permits transferred by Seller to Purchaser; (iv) water and sewer charges; and (v) any other operating expenses or other items pertaining to the Real Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located including, without limitation, any prepaid expenses. At Closing, Purchaser shall credit to the account of Seller all deposits posted with utility companies serving the Real Property. Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments for the current year have not been paid before Closing, Seller shall be charged at the Closing an amount equal to that portion of such taxes and assessments for the period prior to the Cut Off-Time. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves following Closing. All necessary adjustments shall be made within fifteen (15) business days after the tax bill for the current year is received. As to gas, electricity and other utility charges, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing (but subject to later readjustment as set forth below).

(b) Apportionment Credit. In the event the apportionments to be made at the Closing result in a credit balance (i) to Purchaser, such sum shall be paid at the Closing by giving Purchaser a credit against the Purchase Price in the amount of such credit balance, or (ii) to Seller, Purchaser shall pay

the amount thereof to the Title Company, to be delivered to Seller together with the net proceeds of the Purchase Price by wire transfer of immediately available funds to the account or accounts to be designated by Seller for the payment of the balance.

2.03 Closing. The purchase and sale of the Securities contemplated by this Agreement shall be consummated by a closing (the "Closing") at the offices of Sklar Williams PLLC, 410 South Rampart Boulevard, Suite 350, Las Vegas, Nevada 89145 at 10 a.m. on March 2, 2015 or such earlier date as is mutually acceptable to Seller and Purchaser (the "Closing Date"). The procedure to be followed by the parties in connection with the Closing shall be as follows:

(a) Closing Deliveries by Seller:

(i) Good Standing Certificate and a copy of the filed Articles of Organization for Fore Stars;

(ii) executed resignations by PNC as the duly appointed Manager for Fore Stars;

(iii) amendment to annual list to be filed with the Nevada Secretary of State for Fore Stars to replace PNC as the Manager with a designee of the Purchaser;

(iv) executed documents (if any) and if not previously delivered showing the sale of the Securities in Fore Stars to the Purchaser that may be required to maintain the Liquor License issued by the City of Las Vegas, Nevada;

(v) a License Agreement issued by an affiliate of the Seller for Purchaser to have the right to use the mark "Queensridge" in accordance with the terms and conditions set forth therein (the "Trademark License Agreement"); and

(vi) such other documents as are reasonable or necessary to consummate the transactions contemplated by this Agreement.

(b) Closing Deliveries by Purchaser:

(i) the balance of the Purchase Price;

(ii) an executed Trademark License Agreement; and

(iii) all other documents required to be executed by Purchaser pursuant to the terms of this Agreement.

SECTION 3
REPRESENTATIONS AND WARRANTIES; COVENANTS

3.01 Mutual Representations. As of the date hereof, each Party (with Seller through PNC, its duly appointed Manager for the PNC as the sole member of Fore Stars) hereby represents and warrants to the other Party as follows:

(a) Fore Stars is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

(b) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

(c) This Agreement has been duly executed and delivered by such Party. This Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of such Party, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditor's rights generally, and except as subject to general principles of equity.

(d) The execution, delivery or performance of this Agreement by such Party will not breach or conflict with or result in a material breach of, or constitute a material default under, (i) any statute, law, ordinance, rule or regulation of any governmental authority, or any judgment, order, injunction, decree or ruling of any court or governmental authority to which such Party is subject or by which such Party is bound, or (ii) any agreement to which such Party is a party.

(e) All consents, approvals, authorizations, agreements, estoppel certificates and beneficiary statements of any third party required or reasonably requested by another Party in connection with the consummation of the transactions contemplated hereby have been delivered to the requesting Party.

(f) No representations or warranties by such Party, nor any statement or certificate furnished, or to be furnished, to any other Party pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits, or will omit, to state a material fact known to such Party, necessary to make the statements contained herein or therein not misleading.

3.02 Seller's Representations. As of the Effective Date, Seller (through PNC, its duly appointed Manager for the PNC) covenants, represents and warrants to Purchaser as follows:

(a) Seller is the lawful record and beneficial owner of 100% of the Shares. Seller owns the Shares free and clear of all liabilities, obligations, security interests, liens and other encumbrances ("Liens and Encumbrances"). As the Shares are uncertificated, at the Closing Buyer will receive good, valid and marketable title to the Shares, free and clear of all Liens and Encumbrances resulting in the Buyer becoming the sole shareholder of the Company. .

(b) There is (i) no outstanding consent, order, judgment, injunction, award or decree of any court, government or regulatory body or arbitration tribunal against or involving Fore Stars, (ii) no action, suit, dispute or governmental, administrative, arbitration or regulatory proceeding pending or, to Seller's actual knowledge, threatened against or involving Fore Stars or Seller in Seller's capacity as the sole owner of Fore Stars, and (iii) to Seller's actual knowledge, no investigation pending or threatened against or relating to either Fore Stars or any of its respective officers or directors as such or Seller in Seller's capacity as the sole owner of Fore Stars.

(c) Fore Stars has good and marketable title to all of its properties (except as noted on Exhibit "A"), assets and other rights, free and clear of all Liens and Encumbrances.

(d) Seller has furnished Purchaser with a compiled financial statement for Fore Stars for the periods ending December 31, 2013 and November 30, 2014. Except as noted therein and except for normal year-end adjustments, all such financial statements are complete and correct and present fairly the financial position of Fore Stars at such dates and the results of its operations and its cash flows.

(e) Since November 30, 2014, there has been no material adverse change in the financial condition, assets, liabilities (contingent or otherwise), result of operations, business or business prospects of Fore Stars.

(f) Since November 30, 2014, the Seller has caused Fore Stars to conduct its business only in the ordinary course.

(g) Fore Stars is not a party to, nor are any of its respective Assets bound by, any written or oral agreement, purchase order, commitment, understanding, lease, evidence of indebtedness, security agreement or other contract. Further, Fore Stars is not subject to any liabilities that have already accrued or potential liability that either Purchaser or Seller is aware of that have not yet accrued.

(h) To the best of Seller's Knowledge, Seller has not received any notice from any governmental unit that (i) the Real Property is not in compliance with any Environmental Law (ii) there are any administrative, regulatory or judicial proceedings pending or threatened with respect to the Real Property pursuant to, or alleging any violation of, or liability under, any Environmental Law. "Environmental Laws" means any environmental, health or safety law, rule, regulation, ordinance, order or decree, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, any "Superfund" or "Super Lien" law or any other federal, state, county or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any petroleum, natural or synthetic gas products and/or hazardous, toxic or dangerous waste pollutant or contaminant, substance or material as may now or any time hereinafter be in effect.

(i) To the best of Seller's Knowledge, the execution and delivery of this Agreement will not (i) violate or conflict with the Seller's articles of organization or the limited liability company operating agreement of Seller, (ii) violate or conflict with any judgment, decree or order of any court applicable to or affecting Seller, (iii) breach the provisions of, or constitute a default under, any contract, agreement, instrument or obligation to which Seller is a party or the Real Property is the subject matter or is bound, or (iv) violate or conflict with any law, ordinance or governmental regulation or permit applicable to Seller.

(j) To the best of Seller's Knowledge, Seller has not commenced, nor has Seller been served with process or notice of any attachment, execution proceeding, assignment for the benefit of creditors, insolvency, bankruptcy, reorganization or other similar proceedings against Seller (the *"Creditor's Proceeding"*), nor is any Creditor's Proceeding contemplated by Seller. No Creditor's Proceeding is pending, or to Seller's knowledge, threatened against Seller.

(k) Fore Stars does not have any employees.

(l) To the best of Seller's Knowledge, Seller has not received any notice of violation from any federal, state or municipal entity that has not been cured or otherwise resolved to the satisfaction of such governmental entity.

As used herein the phrase "to Seller's Knowledge" or "to the best of Seller's Knowledge" shall mean the current, actual (as opposed to constructive) knowledge of William Bayne, the duly appointed Vice President of PNC without having made any investigation of facts or legal issues and without any duty to do so and without imputing to either person the knowledge of any employee, agent, representative or affiliate of Seller. All of Seller's representations and warranties shall survive Closing for a period six (6) months.

SECTION 4
TAX MATTERS

Each Party to this Agreement shall be fully responsible for any and all taxes (income or otherwise) that may result from this Agreement and the payment of the Purchase Price.

SECTION 5
ARBITRATION

Any dispute, controversy or claim arising under, out of, in connection with, or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision of this Agreement, will be settled by final and binding arbitration conducted in accordance with, and before a three-member

arbitration panel (the "Arbitrator") whereby each Party selects on panel member to represent their interests and the two panel members jointly select a neutral arbitrator. The arbitration will be conducted according to the rules of the American Arbitration Association. Unless otherwise mutually agreed upon by the parties, the arbitration hearings shall be held in the City of Las Vegas, Nevada. The Parties hereby agree that the Arbitrators have full power and authority to hear and determine the controversy and make an award in writing in the form of a reasoned judicial opinion. The Parties hereby stipulate in advance that the award is binding and final. The Parties hereto also agree that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof. The prevailing party in any arbitration or other action pursuant to this Section 5 shall be entitled to recover its reasonable legal fees and out-of-pocket expenses.

SECTION 6
BROKERAGE FEES

Each Party represents that it has not entered into any agreement for the payment of any fees, compensation or expenses to any natural or legal person in connection with the transactions provided for herein, and shall hold and save the other Parties harmless from any such fees, compensation or expenses, including attorneys fees and costs, which may be suffered by reason of any such agreement or purported agreement.

SECTION 7
PURCHASER'S INDEMNIFICATION

Notwithstanding anything to the contrary contained herein, if Seller, PNC or any direct or indirect owner thereof is made a party to any litigation in which the Seller, PNC or any direct or indirect owner thereof is a party for any matters relating to Purchaser's development of the Real Property, then Purchaser as well as Executive Home Builders, Inc., a Nevada corporation shall indemnify, defend and hold Seller, PNC or any direct or indirect owner thereof harmless from all costs and expenses incurred by such party related to such litigation. This indemnity obligation shall survive the Closing for a period of six (6) years from the final and non-appealable date triggered from each time Purchaser obtains any required permits and approvals for the development, changes, modifications or improvements to all or portions of the Real Property and/or golf course. Upon expiration of such period, the provisions of this Section 7 shall expire and be of no further force and effect.

SECTION 8
NOTICES

8.01 Procedure. Any and all notices and demands by any Party to any other Party, required or desired to be given hereunder, shall be in writing and shall be validly given or made only if (a) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (b) made by Federal Express or other similar courier service keeping records of deliveries and attempted deliveries. Service by mail or courier shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner.

8.02 Notice Addresses. Any notice or demand shall be delivered to a Party as follows:

To Seller:

c/o Peccole-Nevada Corporation
851 South Rampart Boulevard, Suite 105
Las Vegas, Nevada 89145
Attention: William Bayne

To Purchaser: 9755 West Charleston Boulevard
Las Vegas, Nevada 89117
Attention: Yohan Lowie, Manager

8.03 Change of Notice Address. The Parties may change their address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner provided above.

SECTION 9
MISCELLANEOUS

9.01 Choice of Law. This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Nevada, without giving effect to the principles of conflict of laws thereof.

9.02 Attorneys' Fees. In the event any action is commenced by any Party against any other Party in connection herewith, including, without limitation, any bankruptcy proceeding, the prevailing Party shall be entitled to its costs and expenses, including without limitation reasonable attorneys' fees.

9.03 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Except as specifically provided herein, this Agreement is not intended to, and shall not, create any rights in any person or entity whatsoever except Purchaser and Seller.

9.04 Severability. If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, then all terms, provisions, covenants or conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby, provided that the invalidity, voidness or unenforceability of such term, provision, covenant or condition (after giving effect to the next sentence) does not materially impair the ability of the Parties to consummate the transactions contemplated hereby. In lieu of such invalid, void or unenforceable term, provision, covenant or condition there shall be added this Agreement a term, provision, covenant or condition that is valid, not void, and enforceable and is as similar to such invalid, void, or unenforceable term, provision, covenant or condition as may be possible.

9.05 Integration Clause; Modifications; Waivers. This Agreement (along with the documents referred to herein) constitutes the entire agreement among the Parties pertaining to the subject matter contained herein and supersedes all prior agreements, representations and understandings of the Parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

9.06 Captions. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

9.07 Negotiation. This Agreement has been subject to negotiation by the Parties and shall not be construed either for or against any Party, but this Agreement shall be interpreted in accordance with the general intent of its language.

9.08 Construction. Personal pronouns shall be construed as though of the gender and number required by the context, and the singular shall include the plural and the plural the singular as may be required by the context.

9.09 Other Parties. Except as expressly provided otherwise, nothing in this Agreement is intended to confer any rights or remedies under this Agreement on any persons other than the Parties and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any Party to this Agreement.

9.10 Counterparts. This Agreement may be executed in any number of counterparts; each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same Agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart, identical in form thereto, but having attached to it one or more additional signature pages. The Parties contemplate that they may be executing counterparts of this Agreement transmitted by facsimile and agree and intend that a signature transmitted through a facsimile machine shall bind the party so signing with the same effect as though the signature were an original signature.

9.11 Attorney Representation. In the negotiation, preparation and execution of this Agreement, the parties hereto acknowledge that Seller has been represented by the law firm of Sklar Williams PLLC, Las Vegas, Nevada and that Purchaser has been represented by Todd D. Davis, Esq. The parties have read this Agreement in its entirety and fully understand the terms and provisions contained herein. The parties hereto execute this Agreement freely and voluntarily and accept the terms, conditions and provisions of this Agreement and state that the execution by each of them of this Agreement is free from any coercion whatsoever.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement and intend the effective date to be as written above.

SELLER:

WILLIAM PETER PECCOLE AND
WANDA RUTH PECCOLE FAMILY
LIMITED PARTNERSHIP dated
December 30, 1992, a Nevada
limited partnership

By: Peccole-Nevada Corporation, a
Nevada corporation, Manager

William Bayne, Vice President

PURCHASER:

RAMALTA LLC
a Nevada limited liability company

Yohan Lowie, Manager

The undersigned hereby joins in the execution of this Agreement for the provisions set forth in Section 7 hereof.

Executive Home Builders, Inc.
a Nevada corporation

Frank Pankratz, President

EXHIBIT "A"

REAL PROPERTY LEGAL DESCRIPTION

Assessor's Parcel Number: 138-31-713-002

Being a portion of Section 31 and the West Half (W ½) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

Being Lot Five (5) as shown on that certain Amended Plat known as "Peccole West", on file in the Clark County Recorders Office, Clark County, Nevada in Book 83 of Plats, Page 57.

Also that certain parcel of land described as follows:

Being a portion of Lot Four (4) of Peccole West recorded in Book 77 of Plats, Page 23, lying within the West Half (W ½) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

Beginning at the most westerly corner of said Lot Four (4); thence South 50°26'37' East a distance of 26.46 feet; thence North 29°03'33" West a distance of 28.42 feet; thence South 39°33'23" West a distance of 10.36 feet to the point of beginning.

Excepting therefrom that certain parcel of land described as follows:

Being a part of Lot Five (5) of Amended Plat of Peccole West, recorded in Book 83, Page 57 of Plats, lying within Section 31 and the West Half (W ½) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

Beginning at the northeasterly corner of said Lot Five (5) that is common to the northeasterly corner of Lot Four (4) of Peccole West, recorded in Book 77, Page 23 of Plats; thence South 55°19'16" West a distance of 845.91 feet; thence South 65°09'52" West a distance of 354.20 feet; thence North 88°08'01" West a distance of 211.78 feet; thence North 68°42'48" West a distance of 233.33 feet; thence North 10°17'23" East a distance of 227.70 feet; thence North 19°42'37" West a distance of 220.00 feet; thence North 50°26'37" West a distance of 75.24 feet, the aforementioned lines were along said Lot Four (4); thence South 29°03'32" East a distance of 87.69 feet; thence South 43°23'20" West a distance of 126.26 feet; thence Southwesterly 12.52 feet along a curve concave Northwest having a central angle of 26°04'44" with a radius of 27.50 feet; thence South 69°28'04" West a distance of 166.21 feet; thence Southwesterly 8.73 feet along a curve concave Northwest having a central angle of 18°11'42" with a radius of 27.50 feet to a point of a reverse curve; thence Southeasterly 87.18 feet along a curve concave Southeast having a central angle of 95°08'30" with a radius of 52.50 feet; thence South 7°28'45" East a distance of 75.10 feet; thence Southeasterly 31.24 feet along a curve concave Northeast having a central angle of 34°05'44" with a radius of 52.50 feet; thence South 41°34'29" East a distance of 28.68 feet; thence South 59°09'33" East a distance of 67.35 feet; thence South 74°29'49" East a distance of 38.97 feet; thence South 74°45'44" East a distance of 208.90 feet; thence South 68°22'14" East a distance of 242.90 feet; thence South 89°22'39" East a distance of 275.72 feet; thence North 65°04'09" East a distance of 232.57 feet; thence North 55°14'40" East a distance of 914.33 feet to a point of a non-tangent curve having a radial bearing of North 12°09'46" East;

thence Northwesterly 79.44 feet along a curve concave Southwest having a central angle of 5°59'20" with a radius of 760.00 feet to the point of beginning.

Also that certain parcel of land described as follows:

Being a portion of the Amended Plat of Peccole West, recorded in Book 83 of Plats, Page 57, lying within the West Half (W ½) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

Beginning at the most northerly corner of said Amended Plat of Peccole West; thence South 42°13'47" West (radial) a distance of 5.00 feet; thence Southerly 38.10 feet along a curve concave Southwest having a central angle of 87°19'35" with a radius of 25.00 feet; thence South 39°33'23" West a distance of 229.20 feet; thence South 50°26'37" East a distance of 80.00 feet; thence North 39°33'23" East a distance of 231.07 feet; thence Northeasterly 37.38 feet along a curve concave Southeast having a central angle of 85°40'27" with a radius of 25.00 feet; thence North 35°13'51" East (radial) a distance of 5.00 feet to a point of a non-tangent curve; thence Northwesterly 126.43 feet along a curve concave Northeast, having a central angle of 6°59'56" with a radius of 1035.00 feet to the point of beginning.

Also shown as Parcel 2 of that certain Record of Survey on file in File 151, Page 9 recorded September 15, 2005 in Book 20050915 as Instrument No. 02577 and as amended by those certain Certificates of Amended recorded June 9, 2006 in Book 20060609 as Instrument No. 000876 and July 17, 2006 in Book 20060717 as Instrument No. 00697, of Official Records.

Excepting therefrom that portion of Lot 5 of Amended Peccole West as shown by map thereof on file in Book 83, Page 57 of Plats, in the Clark county Recorder's Office, Clark County, Nevada, lying within the Southwest Quarter (SW ¼) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, and described as follows:

Beginning at the Northeast corner of Parcel 1B as shown by map thereof on file in File 139 of Surveys, Page 17, in the Clark County Recorder's Office, Clark County, Nevada, same being a point on the westerly right-of-way line of Rampart Boulevard; thence departing said westerly right-of-way line South 65°08'21" West, 197.13 feet; thence North 46°08'45" East, 17.75 feet; thence North 57°06'40" East, 66.86 feet to the beginning of a curve concave southeasterly having a radius of 1815.00 feet, a radial bearing to said beginning bears North 53°21'06" West; thence Northeasterly along said curve, through a central angle of 03°03'21", an arc length of 96.80 feet; thence North 39°51'15" East, 199.00 feet; thence South 50°08'45" East, 65.00 feet to the westerly right-of-way line of said Rampart Boulevard; thence along said westerly right-of-way line, South 39°51'15" West, 199.00 feet to the point of beginning.

Excepting therefrom that portion as conveyed to the City of Las Vegas in that certain Grant Deed recorded December 20, 2005 in Book 20051220 as Instrument No. 01910, of Official Records.

Assessor's Parcel Number: 138-31-610-002

A portion of Lot Twenty-one (21) of Peccole West Lot 10, as shown by map thereof on file in Book 83 of Plats, Page 61, in the Office of the County Recorder of Clark County, Nevada, and further being identified as Assessors Parcel No. 138-31-610-002.

Assessor's Parcel Number: 138-31-212-002

A portion of Lot Twenty-one (21) of Peccole West Lot 10, as shown by map thereof on file in Book 83 of Plats, Page 61, in the Office of the County Recorder of Clark County, Nevada, and further being identified as Assessors Parcel No. 138-31-212-002.

Assessor's Parcel Number: 138-31-712-004

Lot G (Common Area) of Peccole West - Parcel 20, as shown by map thereof on file in Book 87 of Plats, Page 54, in the Office of the County Recorder of Clark County, Nevada.

THE FOLLOWING TO BE INCLUDED AS PART OF THE REAL PROPERTY, BUT NOT AS OF THE CLOSING DATE, IN ACCORDANCE WITH THAT CERTAIN LOT LINE ADJUSTMENT AGREEMENT DATED NOVEMBER 14, 2014 BETWEEN FORE STARS AND QUEENSRIDGE TOWERS LLC, A NEVADA LIMITED LIABILITY COMPANY

That portion of Assessor's Parcel Number: 138-32-210-005 described as [:

BEING A PORTION OF THE WEST HALF (Wl/2) OF SECTION 32,TOWNSHIP 20 SOUTH, RANGE 60 EAST M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF FINAL MAP OF "ONE QUEENSRIDGE PLACE, PHASE 1", RECORDED IN BOOI< 137, PAGE 88 OF PLATS, CLARK COUNTY, OFFICIAL RECORDS; THENCE SOUTH 65°04'09" WEST A DISTANCEOF 37.06 FEET; THENCE NORTH 89°22'39" WEST A DISTANCE OF 275.72 FEET; THENCE NORTH 68°22'14" WESTA DISTANCE OF 218.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°23'29" WEST A DISTANCE OF 268.84 FEET; THENCE NORTH 05°34'48" WEST A DISTANCE OF 95.02 FEET; THENCE NORTH 24°04'10" WEST ADISTANCE OF 95.59 FEET; THENCE SOUTH 43°23;20" WEST A DISTANCE OF 126.26 FEET; THENCE SOUTHWESTERLY 12.52 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 26°04'44" WITH A RADIUS OF 27.50 FEET; THENCE SOUTH 69° 28'04" WEST A DISTANCE OF 166.21 FEET; THENCE SOUTHWESTERLY 8.73 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 18°11'42" WITH A RADIUS OF 27.50 FEET TO A POINT OF A REVERSE CURVE; THENCE SOUTHEASTERLY 87.18 FEET ALONG A CURVE CONCAVE SOUTHEAST HAVING A CENTRAL ANGLE OF 95°08'30" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 07°·28'45" EAST A DISTANCE OF 75.10 FEET; THENCE SOUTHEASTERLY 31.34 FEET ALONG A CURVE CONCAVE NORTHEAST HAVING A CENTRALANGLE OF 34°05'44" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 41°34'29" EAST A DISTANCE OF 28.68 FEET; THENCE SOUTH 59·09'33" EAST A DISTANCE OF 67.35 FEET; THENCE SOUTH 74°29'49" EAST A DISTANCE OF38.97 FEET; THENCE SOUTH 74°45'44" EAST A DISTANCE OF 208.90 FEET; THENCE SOUTH 68°22'14" EAST A DISTANCE OF 24.41 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

EQUIPMENT LIST

Manufacturers Name:	Model	Quantity	Own/leased	Serial Number	Description	Notes
Dakota	440	1	Owned	44001306	Large Material Handler	
Toro		1	Owned	260000114	Rake-o-vac	Sweeper
Classen	sc18	1	Owned	3051	Sod Cutter	Includes Trailer
Buffalo		1	Owned	12832	Turbine Blower	Wireless Remote
Buffalo		1	Owned	113777	Turbine Blower	
Kubota	m4030	1	Owned	24308	Large Tractor	
Kubota	L2900	1	Owned	2900d58699	Small Tractor	
John Deere	310d	1	Owned	818488	Backhoe/loader	
TyCrop	qp500	1	Owned	630	Beltdrop top dresser	
AD Williams		1	Owned		300gal tow behind sray	
Jacobson		1	Owned		PTO drive blower	
Lely	1250	1	Owned		3pt. Hitch spreader	
Lely	w1250	1	Owned		Tow behind spreader	
Ryan Aerifier			Owned		Tow Behind	
Turfco	triwave60	1	Owned	k00861	PTO drive slitseeder	
Turfco	mtrmatic	1	Owned		walking top dresser	
GreensGroomer	drgbroom	1	Owned		towable drag broom	
Landpride	boxblade	1	Owned		tractor box blade	
Broyhill		1	Owned		in workman or trailer	100 GAL spot spray
Pratt Rake		1	Owned		3pt. Hitch dethatcher	
Jacobson	t535d	1	Owned	66150	turfcat rotary mower	extra desk
First Products	af80	1	Owned		aera vator	
Smithco	X-press	1	Owned	t725	greens roller	
Toro	3300d	1	Owned	50332	workman	poor condition
Toro	3300d	1	Owned	60471	workman	poor condition
Ditch Witch		1	Owned	1330	trencher	
Clubcar		1	Owned	544656	Mechanics Cart	
EZ GO	St350	1	Owned	2255615	utility vehicle	Good condition
EZ GO	St350	1	Owned	2255617	utility vehicle	Good condition
EZ GO	St350	1	Owned	1325630	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62000	utility vehicle	avg. condition
EZ GO	St350	1	Owned	1168216	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62015	utility vehicle	avg. condition
EZ GO	St350	1	Owned	13225631	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62020	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62017	utility vehicle	avg. condition
Toro	5040	1	Owned	270000704	Sand Pro	boxblade,pushblade
Kubota	M4900	1	Owned	55172	4wd Tractor	

Kitchen (back of house)
American Range (char-broiler) 4 burner type
Electric Salamander
Pitco Frialator (G11BC004851) 2 basket type
American Range 4 burner/griddle combo
Built in 6 drawer line refrigerator
Mobile refrigeration unit (5277474)
Amana Commercial Microwave
Star Toaster (TQ135100800528)
Mobile 5 burner hot line
True Freezer (4562096)
Randell Refrigerator (500000004829)
Moffat Convection Over (713199)
Alto-Shaam (4321-135-686) – Slow Roaster
Alto-Shaam (5049-78-290) – Slow Roaster
Manitowoc Ice Machine
Built in walk in refrigerator (1513-P1)
Globe Meat Slicer (353824)
Randell Freezer (500000004819)
8 storage racks
Liquor Storage Cabinet (locked)
Cooler Storage Outside (Beverage Cart)
4 Large Storage Coolers (Glass Front)
Serial #'s: 4957419; 1-3705092; 1-2505390; 6533204

Food and Beverage (Front of House)
Bar Coolers:
Beverage Air Glass Cooler (9206937)
True Beer Cooler (12111352)
True Small Keg Cooler (1-3705092)
Beverage Air Large Keg Cooler (4411615)
Large Bar Cooler (22-96843)
Bain Marie Front Load Cooler (22-46842)
IMI Cornelius Soda Dispenser Pepsi (63R0526KD057)
Furniture:
Wood Square Table (4' by 4') – 10
Wood Round Table (48") – 7
Wood Square Table High Top (36") – 2
Wood Chairs High Top – 4
Wood Chairs Standard – 78
Televisions:
3 Panasonic 50" (Pro-Shop included)
1 Vizio 50"

Furniture Throughout Building (Front of House and Offices)
Cloth Chair Large
Dark Blue Leather Loveseat
Dark Blue Leather Sofa
2 Brown Leather Chair w/ Ottoman
Brown Leather Loveseat
Brown Leather Sofa
4 Wooden End Table
7 Wooden Chair (Assorted)
Red Leather Couch
2 Large Wood/Cloth Chair
Wood Coffee Table
Wood/Glass Coffee Table
4 Wood Desk (48")
3 L-Shape Wood Desk
2 Large File Cabinet
2 Tall Document Size File Cabinet

EXHIBIT “BBB”

CITY COUNCIL MEETING OF

MAY 16, 2018

VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

ITEM 71 - For Possible Action - Any items from the afternoon session that the Council, staff and /or the applicant wish to be stricken, tabled, withdrawn or held in abeyance to a future meeting may be brought forward and acted upon at this time
Agenda Item 71, for possible action, any items Council, Staff and/or applicant wish to be stricken, tabled, withdrawn, held in abeyance to a future meeting may be brought forward and acted upon at this time.

ITEM 74 - GPA-72220 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: ML (MEDIUM LOW DENSITY RESIDENTIAL) on 132.92 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-601-008; and 138-31-702-003 and 004), Ward 2 (Seroka) [PRJ-72218]. The Planning Commission vote resulted in a tie, which is tantamount to a recommendation of DENIAL. Staff recommends APPROVAL.

ITEM 75 - WVR-72004 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 76 - SDR-72005 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-72004 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND

CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 75-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road (APNs 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 77 - TMP-72006 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-72004 AND SDR-72005 - PARCEL 2 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 75-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 22.19 acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-601-008), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 78 - WVR-72007 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 79 - SDR-72008 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-72007 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND

CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 106-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APNs 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 80 - TMP-72009 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-72007 AND SDR-72008 - PARCEL 3 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 106-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 76.93 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 81 - WVR-72010 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE 47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on a portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APN 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 82 - SDR-72011 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO WVR-72010 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 53-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APNs 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

ITEM 83 - TMP-72012 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-72010 AND SDR-72011 - PARCEL 4 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a Tentative Map FOR A 53-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 33.80 acres on the east side of Palace Court, approximately 330 feet north of Charleston Boulevard (APN 138-31-702-004), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.

Appearance List

CAROLYN G. GOODMAN, Mayor
STEVEN G. SEROKA, Councilman
CEDRIC CREAR, Councilman
MICHELE FIORE, Councilwoman
LUANN D. HOLMES, City Clerk
LOIS TARKANIAN, Councilwoman
BRAD JERBIC, City Attorney
BOB COFFIN, Councilman
SCOTT ADAMS, City Manager

STAVROS S. ANTHONY, Councilman
ROBERT SUMMERFIELD, Director of Planning
TOM PERRIGO, Executive Director, Community Development
STEPHANIE ALLEN, 1980 Festival Plaza, on behalf of the applicant
MARK HUTCHISON, Counsel for the applicant
ELIZABETH GHANEM HAM, in-house Counsel, on behalf of the applicant
MICHAEL BUCKLEY, on behalf of the homeowners
FRANK SCHRECK, 9824 Winter Palace Drive
YOHAN LOWIE, property owner
DOUG RANKIN, on behalf of the homeowners
BOB PECCOLE, Attorney, and homeowner at 9740 Verlaine Lane

(1 hour, 54 minutes) [3:25 – 5:19]

Typed by: Speechpad.com
Proofed by: Jacquie Miller

MAYOR GOODMAN
Okay. I will start reading.

END RELATED DISCUSSION

RESUME RELATED DISCUSSION

COUNCILMAN SEROKA
Mayor, I'd like to make a motion also. I have some items to discuss.

MAYOR GOODMAN
Okay. I think that-

COUNCILMAN SEROKA

I would like to-

MAYOR GOODMAN

-get through these and then you'll make yours. Or do you want one of those to be discussed?

COUNCILMAN SEROKA

No. No, we can do that if you allow me the floor. Thank you.

MAYOR GOODMAN

Okay. So please vote on Agenda Items 68 through 91, 98, 99, 110, and 111 for those abeyances, assuming technology is, there we go. Please vote and please post. Councilman?

COUNCILMAN SEROKA

Mayor, I have a purely procedural motion. I move to strike-

MAYOR GOODMAN

Oh-

COUNCILMAN SEROKA

Item 74.

MAYOR GOODMAN

-wait, we're not done.

COUNCILMAN SEROKA

What?

MAYOR GOODMAN

Hold one sec, sorry. Councilwoman Fiore and Councilman Crear, please vote on those items.

COUNCILMAN CREAR

I apologize (inaudible). Can you restate whatever the motion on the table is?

MAYOR GOODMAN

And Councilwoman Fiore. Councilwoman Fiore?

COUNCILWOMAN FIORE

I did it.

MAYOR GOODMAN

Do it again. Push, push, push.

COUNCILWOMAN FIORE

There's no button. There's no button.

LUANN D. HOLMES

How would you like to vote?

COUNCILWOMAN FIORE

Yea. There's no, there’s no vote

COUNCILWOMAN TARKANIAN

There’s no vote brackets.

MAYOR GOODMAN

Okay. Here we go. Now we're posting it. It carries. Now, Councilman-

COUNCILMAN SEROKA

-Thank you Ma'am.

MAYOR GOODMAN

-Seroka, please.

COUNCILMAN SEROKA

I have purely a procedural motion. Based on procedure, I move to strike Agenda Items 74 through 83 on the grounds that I will go through here. It is an incomplete application. There is a violation of our 12-month cooling off period, and it is a violation of the law as it stands today, and I will go through those items to demonstrate that we have an incomplete application. According to our Code, Code 90.10.040, modification of a master development plan and development standards, such as Peccole Ranch Master Development Plan Phase 2, requires a Major Modification because it is increasing the density of the development from which was - previously approved. It is also requires a Major Modification, cause it's a change in location of density, and according to our Code, it says that a Major Modification shall be processed in accordance with the procedures and standards applicable to zoning.

Further, we have an incomplete application that says due to Nevada Administrative Code 278.260 for review of a Tentative Map, which we have here today, it says, A developer shall submit all of the following items of information for its review of a Tentative Map. If a system for a disposal or sewage is to be used or considered, a report on the soil including the types of soil, a table showing seasonal high water levels and the rate of percolation at depth of any proposed system of absorption for soil is required. A smaller item is that a map of the 100-year floodplain for the applicable area must be included. A larger item, and a very significant item in this case, is that also is required a master plan showing the future development and intended use of all land under the ownership or control of the developer in the vicinity of the proposed subdivision. In other words, all 250-acre plan must be submitted with the Tentative Maps. And that is also in accordance with the staff's preferred process as - discussed in their staff analysis, and this is all right out of the Nevada Code. Further, it says that we have violated our, the 12-month cooling off

period for successive applications of a General Plan Amendment.
So, I wanted to go through the requirements for a General Plan Amendment to show that a General Plan Amendment is required in this case, and that since it, has been submitted, the manner in which it's submitted violates the - Code that we have in place for a 12-month cooling off period, and it was, that period would end in June.
Under our State laws, we have a law that's called NRS 278.230, governing body must put adopted master plan into effect, and it says except as otherwise provided, whenever a governing body or a city or county has adopted a master plan thereof, for the county or any major section thereof, the governing body shall, upon recommendation of the, of, and I'll skip through some of the language, and if practical needs of putting into effect a master plan, it must be in conformance. The governing body must make sure it's in conformance.
Going, and there is some concern about that being whether our State law applies. Well, I'm – gonna describe to you a couple of Supreme Court cases that say that you must amend and require your master plan to be adopted when you change other things.
It's, the first case is the (sic) Nova Horizon case, and it is documented in the City documents here that says the City, the courts have held that the master plan is a standard that commands deference and presumption of applicability. The Nevada Supreme Court has held that master plans in Nevada must be accorded substantial compliance, while Nevada statutes require the zoning authority, must adopt zoning regulations that are in agreement with the master plan.
Further, there is the second case that says essentially the same thing, in that the master plan of a community is a standard that commands deference and presumption and applicability.
So we have established that both at the State that a master plan must be in conformance with the decisions you make on the day. So a General, GPA would be required if we're going to change these items.
Further, in our own Title Code, Title 19, Paragraph 19.00.040, it is the intent of the City Council that all regulatory decisions made pursuant to this Title be consistent with the General Plan. For the purpose of this, of this section, consistency with the General Plans means, and it says what it means, both the land use and the density and also all policies, programs of the General Plan include those that promote compatibility of the uses and orderly development.

So we have a State law and City law that says your General Plan must be in conformance with whatever you're doing. So if you change something, you have to change your General Plan. So it is required that we change our General Plan.

Further, in 19.16.010, it's titled Compliance with the General Plan. It says, Except as otherwise authorized in this Title, which means it would have to state below that a General Plan Amendment is not required. Otherwise, it is required. So it says except as otherwise authorized, approval of all Maps, which we have today, Site Development Plan Reviews, which we have today, Waivers which we have today, and Deviations and Development Agreements shall be consistent with the spirit and intent of the General Plan.

Further, it says Site Development Reviews will be in conformance with the General Plan. In subsequent paragraphs, it says Waivers shall be, granting a Waiver will not be inconsistent with the spirit of the General Plan; and Tentative Maps, it says no application for a Tentative Map is eligible for approval unless it is determined that the proposed, proposal will be in conformance with all applicable zoning regulations, including all applicable provisions of this Title. The zoning classification of the site and all zoning master plan or site plan approvals for the site, including all applicable conditions.

So, in order to make the zoning in conformance, you need a Major Modification, as described earlier. But what I have just demonstrated is that a General Plan Amendment is required, and we have a provision in our Code that says if you have successive applications of a similar category, the same category, and it goes on to describe many things that apply here today, and there is a, that have been previously denied, that is a lesser intensity and you come now with a greater intensity, you have to wait a year. Now, let's explain that. I asked for clarification from the attorneys on that issue, and they said they really didn't know the spirit and intent behind that rule, so we'll just clarify that here, since this is a policy making body and that the staff is a policy implementing body, that, in this case, what it's saying is if you had a General Plan Amendment for say, let's say 10 units and it was denied, you can come back with a General Plan Amendment saying, Yeah, we'll - lower that to one, that's less - intense use. And that makes sense. So you could go to a lower intensity or less demand when you come forward. But let's say you were previously denied for 10. It wouldn't make any sense to then come back for, let's exaggerate a

little bit, for 100. So if you got denied for 10, don't come forward with 100 because that's a successive application, and the waiting period for that is a period of 12 months. The 12-month delay, and that would not expire until June, so we should not have accepted this application based of the General Plan Amendment because it's still within the window. And therefore, without the General Plan Amendment and without the Major Mod, we can't do the Tentative Maps, and the Tentative Maps have to be in conformance with the General Plan as the, our own Code says.

Further, in the court case that Judge Crockett ruled, a very respected, highly regarded, very thorough judge, he said that in, he - followed our own rules. He followed our staff recommendations. And these are facts that the Peccole Ranch Master Plan must be modified to change the land use designations from Golf Course Drainage to Multi-family, prior to approval of the General Plan Amendment. That would be a Major Mod.

In order to develop, and these are written by our own staff, by the way. In order to redevelop the property as anything other than Golf Course or Open Space, the applicant has proposed a Major Modification of the master plan. So the applicant actually knows a Major Mod is required.

The judge further ruled the City's failure to require or - approve a Major Modification without getting is legally fatal to the City's approval. So we knowingly would be operating outside the law. And further, it says the City is not permitted to change the rules or follow something other than the law in place. The staff made it clear the Major Mod was mandatory. Its record shows the City Council chose to ignore that and move past it.

So we have this decision by a judge that says a Major Modification is required, amongst other things, in order to move forward on the Peccole Ranch Master Plan Phase 2, of which the entire 250 acres is considered Parcel 5 of the Peccole Ranch Master Plan Phase 2. So it doesn't matter if you're talking about one part of the golf course or another, it's all designated Drainage Golf Course. So if you're going to change anything on the 250 acres, you need to have a Major Modification first, a required General Plan Amendment, and then you can do your other steps.

So I have demonstrated we have an incomplete application, we're not in conformance with State law, State code, City code, City law, and we have absent the Major Modification that both our own Code requires, and at the current state of things, since we did not appeal the judge's decision

and we did not ask for a stay, what we have said is we are compelled to abide by the Court's ruling. And the Court ruling says that we are required a Major Modification.
Therefore, my motion is to Strike Items 74 through 83. However, I will allow the Applicant the opportunity to withdraw them at this time if they would like to do that. Otherwise, that is my motion.

MAYOR GOODMAN
Okay, I'd like some clarification-

COUNCILWOMAN FIORE
Could I ask-

MAYOR GOODMAN
-If I may, I'm gonna ask for Brad Jerbic, first of all, and then I wanna hear if there was briefing by our City Manager on - these issues. Did you brief the Council? Are they fully knowledgeable that this motion was gonna come? But let's go to Brad Jerbic first, please.

BRAD JERBIC
Procedurally, will you please read 74 through 83 into the record?

MAYOR GOODMAN
Okay, 74, GPA-72220, on a request for a General Plan Amendment from PR-OS (Parks/Recreation/Open Space) to ML (Medium Low Density Residential) on 132.92 acres on the east side Hualapai Way, approximately 830 feet north of Charleston Boulevard.
Number 75, WVR-72004, on a request for a Waiver to allow 40-foot private streets with no sidewalks where 47-foot private streets with 5-foot sidewalks on both sides are required within a proposed gated residential development on a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road, R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned Development) zones.

clients as a Chief Deputy were some of the top agencies in the State of Nevada that I legally advised. How about the Athletic Commission, which is the Boxing Commission? How about the Architectural Board? How about the Racing Commission and many others, including this entire office of the Attorney General down here in Clark County?

I would be appalled to tell any of my agencies when there is a decision of a court judge telling me I must recognize a certain point and I must abide by that. That ruling becomes one that is the law. And if I were to tell my client, oh well, but as a matter of policy, you can ignore it, I would have the same concerns that Councilman Crear has. Am I going to jail? Yes, you are. I don't know if any of these attorneys sitting in the public here have ever been involved in those types of hearings when you're held in contempt.

I've been involved in those, and I know how they work. And it wouldn't take anything if you were to take Mr. Jerbic's advice and say, well, we can ignore that decision because this is the way I think it works. Well, you could all end up in jail. And it, and it does happen. And it just depends on who - pushes that contempt. So you got to keep that in mind. You can't just ignore it because that isn't the way it works.

Now, that judgment stands solid until it's either stayed by the court or it's reversed by the court. But until those two things happen, that judgment is solid. Now I, and that's an argument they've used against me in the Smith case. They've said because you don't have a stay, that judgment is valid. So what do they do? They take Smith's judgment, sues me and my wife for $30 million. That's Mr. Yohan. He's quite the guy.

But in any event, I would just like to say do not ignore the Crockett decision, because you're going to put yourself in trouble. The other part of it is you might have to take Mr. Jerbic's advice, you know, like maybe a grain of salt.

COUNCILMAN SEROKA

Mayor, I'd like to call the question at this time. I believe we have established that the GPA is duplicitous and the GPA should not have been accepted, and that I also believe we've established that the law of the land, as it stands today, is Judge Crockett's decision, which requires a GPA and a Major, or correction, Judge Crockett's decision requires a Major Modification. And my

bottom line here is that I expect everyone to follow the Code and the law. If we're following the Code and the law, we all move forward. If we don't follow the - Code and the law, we have challenges.

So I move to strike the 74 through 83 from today's agenda, cause they should not have been accepted in the first place. I did offer, and a head nod would work just fine, the offer to withdraw without prejudice your applications if you would like to do that, or not.

STEPHANIE ALLEN

Through you, Madam Mayor. No, we would not like to withdraw those. We'd like to have those-

COUNCILMAN SEROKA

Okay. Then my motion stands, Mayor, and I call the question. I call for the vote.

MAYOR GOODMAN

Okay. There's a motion made by Councilman Seroka. And again, I'm gonna ask you, Mr. Jerbic, if in fact Council members feel that they don't have enough information and clarity on this, they have the permission to abstain.

BRAD JERBIC

They do. I, I've never told anyone up here to vote when you don't feel you have enough information.

MAYOR GOODMAN

But again, you have to reiterate they can't-

BRAD JERBIC

I will, I will say this. It's gonna take four votes for the motion to strike to pass. If it doesn't pass and you've abstained and now we're onto the merits of the application-

applications coming in because of his decision, the applicant would have to do it?

BRAD JERBIC

Well, the - legal answer is his decision is limited to that set of facts. By extrapolation, if somebody went there with more lawsuits and said, hey, even though this is a different project, it's the same argument, you need a Major Modification, I have no doubt that Judge Crockett would say the same thing about every one of these applications. You don't know if you're gonna get Judge Crockett, and you don't know what the Supreme Court's gonna do.

So let me just maybe suggest a different approach. There's kind of a cart before the horse thing here. The applicant gets a decision and then you go to court. You don't go to court and then get an application. Then we have zoning by judge. The applicant's entitled to a vote, up or down, and unless you think for procedural reasons he's incomplete in his application and then you make that record and that's what the Councilman has tried to with his motion on the procedural grounds, but if you think the procedural grounds are valid, then vote, you know in favor. If you don't, then move on to the next part of the application, and then let the courts decide.

If - we do it the other around, the courts don't have facts to decide in this case. How does the applicant get to court on these three applications without you making a decision? You have to make the decision, or there's nothing, no record for the court to vote on, whether you go for or against it.

So that's what I'm saying in the procedural motion, I wouldn't overly complicate it and think it's a big legal decision. I think it's your call to look at your ordinance and say do you think this GPA is duplicitous and, therefore, you're subject to the one-year timeout, and he's a month too early. Or two, you think Judge Crockett's decision or your own policy or both require a Major Modification and he doesn't have one, so he's incomplete. I think it's a pretty simple call.

MAYOR GOODMAN

Okay. There's a motion then. Please vote and please post. Councilwoman, Councilwoman your vote?

COUNCILMAN CREAR

Great. How does, what's that procedure that, does that happen now? You – show it again, or-

LUANN D. HOLMES

No, for the minute record we'll change it to show that orally you want us to reflect that you voted in favor to strike it.

COUNCILMAN CREAR

Yes, I voted in favor to strike it.

BRAD JERBIC

For the record, it's a 4-3 vote to strike the item from the agenda, so the item is stricken, and it's on to the next order of business.

MAYOR GOODMAN

Okay.

COUNCILMAN CREAR

No, no, no. Hold on, hold on, hold on, hold on, hold on. Point of clarification. It's not a-

B**RAD JERBIC**

5-2, I'm sorry. It's 5-2.

COUNCILMAN CREAR

It's not a 4-3 vote.

BRAD JERBIC

Yeah, 5-2, I'm sorry. My mistake.

MAYOR GOODMAN

It's 5-2 vote. **(The motion to Strike passed with Mayor Goodman and Councilwoman Fiore voting No).**

COUNCILMAN CREAR

Thank you.

EXHIBIT “DDD”

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE AND IRENE LEE, INDIVIDUALS AND TRUSTEES OF THE LEE FAMILY TRUST; FRANK A. SCHRECK, AN INDIVIDUAL; TURNER INVESTMENTS, LTD., A NEVADA LIMITED LIABILITY COMPANY; ROGER P. WAGNER AND CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

No. 75481

FILED
MAR 05 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition for judicial review of the Las Vegas City Council's decision that approved

20-08895

three land use applications. Eighth Judicial District Court, Clark County; James Crockett, Judge.[1]

Appellant Seventy Acres filed three development applications with the City's Planning Department in order to construct a multi-family residential development on a parcel it recently acquired. Specifically, Seventy Acres filed a general plan amendment, a rezoning application, and a site development plan amendment. Relying on reports compiled by the Planning Commission staff and statements made by the Planning Director, the City's Planning Commission and City Council approved the three applications.

Respondents filed a petition for judicial review of the City Council's approval of Seventy Acres's applications. Respondents' primary argument was that the City failed to follow the express terms of Title 19 of the Las Vegas Municipal Code (LVMC) in granting the applications. Respondents also argued that the City's decision was not supported by substantial evidence. Following a hearing, the district court concluded that the City adopted its interpretation of Title 19 of the LVMC as a litigation strategy and declined to give the City's interpretation of its land use ordinances deference. Citing a report prepared by the Planning Commission staff, the district court found that the City previously interpreted Title 19 of the LVMC as requiring Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan before it could develop

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[1]The Honorables Kristina Pickering, Chief Justice, and Mark Gibbons, James Hardesty, Ron Parraguirre, and Abbi Silver, Justices, voluntary recused themselves from participation in the decision of this matter. The Governor designated The Honorable Lynne Simons, District Judge of the Second Judicial District Court, to sit in place of the Honorable James Hardesty.

the parcel. Therefore, the district court determined that the City's previous interpretation should apply and Seventy Acres was required to obtain a major modification of the Peccole Ranch Master Plan before having the subject applications approved. Accordingly, the district court granted the petition for judicial review and vacated the City Council's approval of Seventy Acres's three applications. Seventy Acres appeals.

Title 19 of the LVMC does not require a major modification for residential planned development districts

This court's role in reviewing an administrative agency's decision is identical to that of the district court and we give no deference to the district court's decision. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). We review an administrative agency's legal conclusions de novo and its "factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence." *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (internal quotations omitted). When construing ordinances, this court "gives meaning to all of the terms and language[,] . . . read[ing] each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 274, 236 P.3d 10, 17-18 (2010) (internal citation and internal quotation omitted). Additionally, this court presumes a city's interpretation of its land use ordinances is valid "absent a manifest abuse of discretion." *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).

Having considered the record and the parties' arguments, we conclude that the City Council properly interpreted the City's land use ordinances in determining that Seventy Acres was not required to obtain a major modification of the Peccole Ranch Master Plan before it could develop the parcel. LVMC 19.10.040(B)(1) expressly limits master development plans to planned development district zoning designations. Therefore, the major modification process described in LVMC 19.10.040(G)(2), which is required to amend a master development plan, only applies to planned development district zoning designations. Here, the parcel does not carry the planned development district zoning designation. Therefore, the major modification process is not applicable to the parcel.

Instead, the parcel carries a zoning designation of residential planned development district. LVMC 19.10.050(B)(1) expressly states that site development plans govern the development of residential planned development districts. Therefore, as the City correctly determined, Seventy Acres must follow the site development plan amendment process outlined under LVMC 19.16.100(H) to develop the parcel. LVMC 19.10.050(D). This process does not require Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan prior to submitting the at-issue applications. Accordingly, we conclude that the City Council's interpretation of the City's land use ordinances did not constitute a manifest abuse of discretion. *Cinnamon Hills Assocs.*, 110 Nev. at 247, 871 P.2d at 326 (1994).

Substantial evidence supports the City's approval of the applications

We next consider whether substantial evidence supports the City's decision to grant Seventy Acres's applications. "Substantial evidence is evidence that a reasonable person would deem adequate to support a decision." *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 899,

59 P.3d 1212, 1219 (2002). In determining whether substantial evidence exists to support an agency's decision, this court is limited to the record as presented to the agency. *Id.* Although conflicting evidence may be present in the record, "we cannot substitute our judgment for that of the City Council as to the weight of the evidence." *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d 756, 761 (2004).

The parties dispute whether substantial evidence supported the City's decision to grant Seventy Acres's three applications.[2] The governing ordinances require the City to make specific findings to approve a general plan amendment, LVMC 19.16.030(I), a rezoning application, LVMC 19.16.090(L), and a site development plan amendment, LVMC 19.16.100(E). In approving the applications, the City primarily relied on a report prepared by the Planning Commission staff that analyzed the merits of each application.[3] The report found that Seventy Acres's applications met the statutory requirements for approval. The City also relied on the testimony

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[2]Respondents point to evidence in the record showing that the public schools that serve the community where the parcel is located are currently over capacity and that many of the residents that live in the surrounding area are opposed to the project. However, "it is not the place of the court to substitute its judgment for that of the [City Council] as to weight of the evidence." *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990) (explaining that "conflicting evidence does not compel interference with [a] . . . decision so long as the decision was supported by substantial evidence").

[3]The report erroneously found that Seventy Acres had to obtain a major modification of the Peccole Ranch Master Plan prior to submitting a general plan amendment. Setting that finding aside, the report found that Seventy Acres met the other statutory requirements for approval of its general plan amendment, its rezoning application, and its site development plan amendment.

of the Planning Director, who found that the applications were consistent with the goals, objectives, and policies of the City's 2020 Master Plan, compatible with surrounding developments, and substantially complied with the requirements of the City's land use ordinances. Evidence in the record supports these findings. Accordingly, we conclude that a reasonable person would find this evidence adequate to support the City's decision to approve Seventy Acres's general plan amendment, rezoning application, and site development plan amendment. *Reno Police Protective Ass'n*, 118 Nev. at 899, 59 P.3d at 1219.

In sum, we conclude that the district court erred when it granted respondents' petition for judicial review. The City correctly interpreted its land use ordinances and substantial evidence supports its decision to approve Seventy Acres's three applications. We therefore

ORDER the judgment of the district court REVERSED.

_____, J.
Stiglich

_____, J.
Cadish

_____, D.J.
Simons

cc: Hon. James Crockett, District Judge
Ara H. Shirinian, Settlement Judge
Law Offices of Kermitt L. Waters
EHB Companies, LLC
Marquis Aurbach Coffing
Claggett & Sykes Law Firm
Hutchison & Steffen, LLC/Las Vegas
Pisanelli Bice, PLLC
Las Vegas City Attorney
Eighth District Court Clerk

EXHIBIT “GGG”

Seth T. Floyd
Deputy City Attorney

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Office of the City Attorney

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September 1, 2020

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135

RE: FINAL ENTITLEMENTS FOR 435-UNIT HOUSING DEVELOPMENT PROJECT IN BADLANDS

Dear Mr. Kaempfer:

On March 26, 2020, the City sent you a letter concerning the Nevada Supreme Court's Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Order"). *See* March 26, 2020 Letter Re: Entitlements on 17 Acres, attached as **Exhibit A**. The Order reversed a decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J, which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 housing units on a 17-acre portion of the former Badlands golf course in the Peccole Ranch Master Plan area.

As the City emphasized in its prior letter, once remittitur issues, the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) will be reinstated. Remittitur issued on August 24, 2020. *See* **Exhibit B**. Accordingly, the City Council's February 2017 action approving all discretionary entitlements required for your client's 435-unit project on the 17-acre portion of the Badlands are now valid and will remain so for two years after the date of the remittitur (or as extended by any approved Extension of Time). Now that there are no more discretionary entitlements required to develop your client's project, the City will accept applications for any ministerial permits required to begin construction pursuant to the approved discretionary entitlements and the conditions included in them.

If you have any questions about the effect of the Order, please do not hesitate to contact me at (702) 229-6629. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to continue with development pursuant to its entitlements.

Sincerely,

OFFICE OF THE CITY ATTORNEY

SETH T. FLOYD
Deputy City Attorney

Attachments
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)
CERTIFIED MAIL NO. 7003 3110 0003 1081 5236

EXHIBIT A

EXHIBIT A

Seth T. Floyd
Deputy City Attorney

City of Las Vegas
Office of the City Attorney

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March 26, 2020

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135

RE: ENTITLEMENTS ON 17 ACRES

Dear Mr. Kaempfer:

As you know, on March 5, 2020, a panel of the Nevada Supreme Court entered an unpublished Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Order"). The Order reversed a prior decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J, which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 multi-family housing units on a 17-acre portion of the former Badlands golf course in the Peccole Ranch Master Plan area.

Under the Reversal Order, that major modification is no longer required and, once remittitur issues, the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) will be reinstated. Such entitlements include all of the discretionary entitlements required for your client's project and the SDR will remain valid for two years after the date of remittitur, despite the fact that 382 days elapsed between the City's February 16, 2017 approval and Judge Crockett's March 5, 2018 Order vacating those entitlements. The City will accept applications for any ministerial permits required to begin construction pursuant to those discretionary entitlements.

If you have any questions about the effect of the Order, please do not hesitate to contact me at (702) 229-6629. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to continue with development pursuant to its entitlements.

Sincerely,

OFFICE OF THE CITY ATTORNEY

SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4955
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
JACK B. BINION, AN INDIVIDUAL; DUNCAN R. LEE; IRENE LEE, INDIVIDUALS AND TRUSTEES OF THE LEE FAMILY TRUST; FRANK A. SCHRECK, AN INDIVIDUAL; TURNER INVESTMENTS, LTD., A NEVADA LIMITED LIABILITY COMPANY; ROGER P. WAGNER; CAROLYN G. WAGNER, INDIVIDUALS AND AS TRUSTEES OF THE WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC; JASON AWAD; SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE THOMAS; KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST; DR. GREGORY BIGLER; AND SALLY BIGLER,
Respondents.

Supreme Court No. 75481
District Court Case No. A752344

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 24, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Hon. James Crockett, District Judge
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Law Offices of Kermitt L. Waters
Hutchison & Steffen, LLC/Las Vegas
EHB Companies, LLC
Las Vegas City Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on AUG 2 6 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS
AUG 25 2020
CLERK OF THE COURT

EXHIBIT “HHH”

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)
HUTCHISON & STEFFEN, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company; Seventy Acres LLC, a Nevada limited-liability company; Yohan Lowie, an individual,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; JAMES R. COFFIN, in both his official capacity with the City of Las Vegas and in his personal capacity; STEVEN G. SEROKA, in both his official capacity with the City of Las Vegas and in his personal capacity,

Defendants.

COMPLAINT PURSUANT TO 42 U.S.C. § 1983

Jury trial requested

Plaintiffs 180 Land Co LLC, Fore Stars, Ltd., Seventy Acres LLC, and Yohan Lowie (collectively, "Plaintiffs") complain against the above-referenced defendants (collectively, "Defendants") as follows:

/ / /

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1. Jurisdiction and Venue.

1. This lawsuit is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation that occurred under color of state statute, ordinance, regulation, custom, and usage of the rights, privileges, and immunities secured to the Plaintiffs by the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal Protection Clause of Article 4, Section 21 and the Due Process Clause of Article 1, Section 8(5) of the Constitution of the State of Nevada.

2. With respect to Plaintiffs' claims arising from Defendants' violations of Plaintiffs' rights secured by the United States Constitution, original jurisdiction is conferred upon this Court by 28 U.S.C. § 1331.

3. With respect to Plaintiffs' claims arising from Defendants' violations of Plaintiffs' rights secured by the Constitution and laws of the State of Nevada, supplemental jurisdiction is conferred upon this Court by 28 U.S.C. § 1367(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because the acts or omissions which form the basis of the Plaintiffs' claims occurred in the State of Nevada and all Defendants reside in the State of Nevada.

2. The Parties.

5. Plaintiff Fore Stars, Ltd. ("Fore Stars") is, and at all relevant times was, a Nevada limited-liability company.

6. Plaintiff 180 Land Co LLC ("180 Land") is, and at all relevant times was, a Nevada limited-liability company.

7. Plaintiff Seventy Acres LLC ("Seventy Acres") is, and at all relevant times was, a Nevada limited-liability company.

8. Fore Stars, 180 Land and Seventy Acres are managed by EHB Companies LLC, a Nevada limited-liability company.

9. Plaintiff Yohan Lowie is, and at all relevant times was, an individual residing in Clark County, Nevada. Yohan Lowie is a Manager of EHB Companies LLC.

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10. Defendant City of Las Vegas ("City") is, and at all relevant times was, a political subdivision of the State of Nevada and a municipal corporation subject to the provisions of the Nevada Revised Statutes. The governing body of the City is the "City Council," which is comprised of six councilpersons and the mayor.

11. Defendant James R. Coffin ("Coffin") is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 2011 to the present, Defendant Coffin was and continues to be a councilperson on the City Council.

12. Defendant Steven G. Seroka ("Seroka") is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 19, 2017 to the present, Defendant Seroka was and continues to be a councilperson on the City Council.

3. General Allegations.

13. Yohan Lowie and his partners have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs and semi-custom homes, and (4) the recently-opened Nevada Supreme Court and Appellate Court building located in downtown Las Vegas.

A. The Land.

14. Fore Stars, 180 Land and Seventy Acres (collectively "Plaintiff Landowners") collectively own approximately 250 acres of real property (collectively the "Land") within the boundaries of the City. The Land is located between the following roads: Alta Drive (to the north of the Land); Charleston Boulevard (to the south of the Land); Rampart Boulevard (to the east of the Land); and Hualapai Way (to the west of the Land).

15. In March 2015, Yohan Lowie and his partners, acquired the membership interests of Fore Stars, which at that time owned the entirety of the parcels that comprise the Land.

16. In June, 2015, Fore Stars re-drew the boundaries of the various parcels that comprise the Land, and in November, 2015 ownership of approximately 178.27 acres of the Land

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was transferred to 180 Land and approximately 70.52 acres of the Land was transferred to Seventy Acres. Fore Stars retained ownership of approximately 4.5 acres of the Land.

17. Today, 180 Land owns the parcels with the following Clark County Assessor Parcel Numbers ("APNs"): APNs 138-31-201-005 (herein referred to as "Parcel 1," totaling 34.07 acres), 138-31-601-008 (herein referred to as "Parcel 2," totaling 22.19 acres), 138-31-702-003 (herein referred to as "Parcel 3," totaling 76.93 acres), 138-31-702-004 (herein referred to as "Parcel 4," totaling 33.8 acres), and 138-31-801-002 (herein referred to as "Parcel 5," totaling 11.28 acres).

18. Today, Seventy Acres owns the parcels more particularly described by the Clark County Assessor as APNs 138-31-801-003 (herein referred to as "Parcel 6," totaling 5.44 acres), 138-32-301-007 (herein referred to as "Parcel 7," totaling 47.59 acres), and 138-32-301-005 (herein referred to as "Parcel 8," totaling 17.49 acres).

19. Today, Fore Stars owns the parcels more particularly described by the Clark County Assessor as APNs 138-32-210-008 (herein referred to as "Parcel 9," totaling 2.37 acres); and 138-32-202-001 (herein referred to as "Parcel 10," totaling 2.13 acres).

20. The Land abuts the common interest community commonly known as "Queensridge" (the "Queensridge CIC"). The Queensridge CIC is governed by the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge ("Queensridge Master Declaration"), recorded with the Clark County Recorder's Office on May 30, 1996.

21. The Land is not a part of the Queensridge CIC.

22. In Clark County, Nevada, District Court Case No. A-16-739654, Judge Douglas Smith affirmed that the Land is not part of the Queensridge CIC in an order dated November 30, 2016 and titled Findings of Fact and Conclusions of Law (the "November 30, 2016 Court Order"). In finding No. 53 of the November 30, 2016 Order, Judge Smith found that "The land which is owned by the Defendants [herein "Plaintiff Landowners"], upon which the Badlands Golf Course is presently operated ("GC Land") [herein "Land"] that was never annexed into the Queensridge CIC, never became part of the "Property" as defined in the Queensridge Master Declaration and is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge

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Master Declaration." A true and correct copy of the November 30, 2016 Court Order is attached as Exhibit 1.

23. The Queensridge Master Declaration provides in recital B, on page 2, "*The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property*." After the Badlands Golf Course was expanded to 27 holes, the Queensridge Master Declaration was refiled in an August 16, 2002 filing of the Amended and Restated Queensridge Master Declaration providing "*The existing 27-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property*."

24. The Land was leased to a golf course operator. On August 31, 2016, the golf course operator served a 90 day notice of termination of the Golf Course Lease. On December 1, 2016, the Golf Course Lease terminated, the golf course operator vacated the property and the property ceased to be used as a golf course.

25. The Clark County Assessor determined that the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, is no longer deemed to be used as an open-space use under NRS 361A.050, in accordance with NRS 361A.230 the Land has been disqualified for open-space use assessment, and the Land has been converted to a higher use in accordance with NRS 361A.031 (collectively "Clark County Assessor Determinations").

26. On November 30, 2017, the State of Nevada State Board of Equalization approved, by unanimous vote, the Clark County Assessor's Determinations. True and correct copies of the approval letter from the Nevada State Board of Equalization and the "determination and stipulation" documents from the Clark County Assessor are attached as Exhibit 2.

27. The taxes are assessed on the Land by the Clark County Assessor based on the following "higher use(s)" of the Land:

a. The Assessor Land Use Classification for Parcel 1 is "**12.00 – Vacant – Single Family Residential**";

b. The Assessor Land Use Classification for Parcel 2 is "**12.00 – Vacant Single Family Residential**";

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c. The Assessor Land Use Classification for Parcel 3 is "**12.00 – Vacant Single Family Residential**";

d. The Assessor Land Use Classification for Parcel 4 is "**12.00 – Vacant Single Family Residential**";

e. The Assessor Land Use Classification for Parcel 5 is "**12.00 – Vacant Single Family Residential**";

f. The Assessor Land Use Classification for Parcel 6 "**12.00 – Vacant Single Family Residential**";

g. The Assessor Land Use Classification for Parcel 7 is "**12.00 – Vacant Single Family Residential**"

h. The Assessor Land Use Classification for Parcel 8 is "**13.000 – Vacant – Multi residential**";

i. The Assessor Land Use Classification for Parcel 9 is "**40.399 – General Commercial, Other Commercial**"; and

j. The Assessor Land Use Classification for Parcel 10 is "**12.00 – Vacant Single Family Residential**".

28. As a result of the cessation of the golf course operations on the Land and the conversion of the Land to higher use(s), meaning a use other than agricultural use or open-space use, Plaintiff Landowners were required by Nevada law to pay property taxes for the tax years commencing in 2011 through the present, based on the value of the respective higher uses for each of the parcels.

B. The planning and zoning relating to the Land.

29. At all relevant times, the City Council and its councilpersons acted under color of state statute, ordinance, regulation, and custom and usage. Nevada Revised Statutes, Title 21 provides for the incorporation of cities and towns within the State of Nevada, such as the City. The Municipal Code of the City of Las Vegas, Nevada ("Municipal Code"), which includes the Las Vegas City Charter, provides for the roles, responsibilities, and authorities of the City Council and the councilpersons. Nevada Revised Statutes, Chapter 278 provides for the State of Nevada's

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laws for zoning and land use. An official policy and custom of the City is for the City Council to participate in and adjudicate zoning and land use matters that arise in the City.

30. The Las Vegas City Council adopted the Unified Development Code – Title 19 ("Title 19") as part of its Municipal Code pursuant to the provisions of the Nevada Revised Statutes (NRS), including NRS Chapter 278. The City of Las Vegas Official Zoning Map Atlas is a part of Title 19.

31. Title 19 establishes "zoning districts". Zoning districts are areas designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with Title 19.

32. The "PD" and "R-PD" zoning districts are separate and distinct from each other, with each being governed by different sections of Title 19. The PD district is governed by Title 19.10.40 subsection titled "PD Planned District Development" and the R-PD district is governed by Title 19.10.050 subsection titled "R-PD Residential Planned Development District".

33. The density allowed in the R-PD District is reflected by a numerical designation for that district. By way of example, R-PD4 allows up to four units per gross acre.

34. On August 15, 2001, the Las Vegas City Council passed, adopted and approved Bill No. Z-2001-1 Ordinance No. 5353 zoning Parcels 1, 2, 3, 4, 5, 6, 7, 8, and 10 R-PD7.

35. In the November 30, 2016 Court Order, Finding No. 58 states that "…the R-PD7 Zoning was codified and incorporated into the amended Atlas in 2001."

36. CLV Ordinance 5353 provided in its Section 4: "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada 1983 Edition, in conflict herewith are hereby repealed."

37. On December 30, 2014, the City of Las Vegas issued a zoning verification letter for the Land confirming that "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre)." A true and correct copy of the "Zoning Verification Letter" is attached as Exhibit 3.

38. On October 18, 2016, at a Las Vegas Special Planning Commission Meeting specifically relating to the Land, City Attorney Brad Jerbic confirmed that the Land is hard zoned R-PD7 entitling the property owners up to 7.49 units per acre, subject to adjacency and compatibility planning principles.

39. The November 30, 2016 Court Order affirmed City Attorney Jerbic's legal opinion in Finding No. 58 stating "Attorney Jerbic's presentation is supported by the documentation of public record"; and in Finding No. 82 stating, "The Court finds that the GC Land owner by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements."

40. Today, the zoning districts for the various parcels comprising the Land, are as follows:

a. The zoning district for Parcel 1 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

b. The zoning district for Parcel 2 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

c. The zoning district for Parcel 3 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

d. The zoning district for Parcel 4 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

e. The zoning district for Parcel 5 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

f. The zoning district for Parcel 6 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

g. The zoning district for Parcel 7 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;

h. In February 2017, the zoning district for Parcel 8 was changed by the Las Vegas City Council from "R-PD7" (per CLV Ordinance 5353 adopted on August 15,

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2001) to "R-4". R-4 is the zoning designation for residential high-density multi-family unit development;

i. The zoning district for Parcel 9 was changed to "PD" in July of 2004;

j. The zoning district for Parcel 10 was changed to "PD" in July of 2004;

41. The November 30, 2016 Court Order found in Finding No. 82, "The Court finds that the GC Land owned by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements."

42. The November 30, 2016 Court Order also affirmed the Plaintiff Landowner's property rights in Finding No. 81 which stated, "The Court finds that the Developer Defendants ["Plaintiff Landowners" in the present matter] have the right to develop the GC Land ["Land" in the present matter]."

43. At all relevant times — including from the time the Land was purchased in or around March 2015 to the present — Plaintiffs have been entitled with the rights to develop the Land with residential dwelling units under the R-PD7 zoning district subject to compliance with Title 19.

C. Plaintiffs' applications to develop the Land.

44. It is the purpose and intent of the Las Vegas City Council for Title 19:

a. to promote the establishment of a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for the review and approval of all proposed development, divisions, and mapping of land within the City in a manner consistent with Nevada law;

b. to promote fair procedures that are efficient and effective in terms of time and expense and that appropriate process is followed in the review and approval of applications made under Title 19;

c. to be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed and elected officials; and to foster a positive customer service attitude and to respect the rights of all applicants and affected citizens

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45. Title 19 provides that no land shall be divided, used, or structure constructed upon, except in accordance with the regulations and requirements of Title 19, including the requirement to obtain applicable approvals and permits prior to the development of the property.

46. In Title 19 the City codified the process that the City must follow when reviewing and adjudicating an application to use or develop real property within the City's jurisdiction, whether within the property's existing zoning district classification or as part of an application to change the zoning. The process is codified in Title 19 and NRS Chapter 278.

47. The City Council acts in a quasi-judicial capacity when reviewing and acting upon applications related to the use and development of real property within the City.

48. Since 2015, in accordance and compliance with NRS 278 and Title 19, Plaintiff Landowners have submitted numerous applications to the City relating to development and use of the Land, including but not limited to, site development reviews (SDR), zone change requests (ZON), waiver requests (WVR), and general plan amendments (GPA).

49. In late-2015, and continuing to the present, a handful of wealthy and influential homeowners living in the Queensridge CIC and One Queensridge Place (the "Queensridge Elite") schemed to oppose *any and all* development or use of the Land, notwithstanding that:

a. the Land was not part of the Queensridge CIC, the Queensridge Master Declaration expressly stated that the "golf course commonly known as "Badlands Golf Course" is not a part of the Property or the Annexable Property [of the Queensridge CIC]";

b. the Queensridge CIC custom Purchase Agreements expressly disclosed:

   i. "Seller has made no representations or warranties concerning zoning or the future development of phases of the Planned Community [Queensridge] or the surrounding area or nearby property";

   ii. "Purchaser shall not acquire any rights, privileges, interest, or membership in the Badlands Golf Course or any other golf course, public or private, or any country club membership by virtue of its purchase of the Lot";

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iii. "The view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple family residential structures, commercial structures, utility facilities, landscaping and other items"

c. the One Queensridge Place purchase documents expressly disclosed:

i. in the Purchase Contract, "Seller makes no representation as to the subdivision, use or development of any adjoining or neighboring land…views from the Unit may be obstructed by future development of adjoining or neighboring land and Seller disclaims any representation that views from the Unit will not be altered or obstructed by development of neighboring land", and "Neither Seller nor its affiliates made any representation whatsoever relating to the future development of neighboring or adjacent land and expressly reserve the right to develop this land in any manner that Seller or Seller's affiliates determine in their sole discretion."

ii. In the Public Offering Statement (2007), " current zoning on the contiguous parcels is as follows: [to the] South R-PD7 Residential up to 7 du."

d. Plaintiffs have vested zoning rights to develop residential units on the Land.

50. The City Council has held numerous and lengthy hearings on Plaintiff Landowners' applications for use and/or development of the Land.

D. Defendant Coffin's personal agenda, animus, bias, and discrimination against Plaintiff Lowie and Plaintiff Landowners in the development of the Land.

51. Defendant Coffin has repeatedly and publicly, including during City Council hearings, furthered his personal agenda and demonstrated personal animus against Mr. Lowie, an American citizen of Israeli descent, for reasons totally unconnected to the merits of Plaintiff Landowners' applications.

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52. In late 2015, Defendant Coffin contacted Mr. Lowie about the development of the Land, telling Mr. Lowie to "shut up and listen" and telling Mr. Lowie that Jack Binion was demanding that no development occur on the portion of the Land where 18 of the 27 holes of the Badlands Golf Course were located (*i.e.*, approximately 180 acres comprising Parcels 1, 2, 3, and 4). Defendant Coffin told Mr. Lowie that if Mr. Binion's demands were met that Defendant Coffin would "allow" Mr. Lowie to build "anything" he wanted on the remainder portion of the Land (*i.e* approximately 70 acres comprising Parcels 5, 6, 7, 8, 9, and 10). Defendant Coffin told Mr. Lowie that Mr. Binion was Defendant Coffin's longtime friend and that he would not take a position against Mr. Binion.

53. In or around April 2016, in a meeting between a representative of the Plaintiffs and Mr. Binion, Defendant Coffin repeated his command not to develop the portion of the Land where the 18 holes of the golf course were located. In that meeting, the Plaintiffs' representatives were told by Defendant Coffin that in order to allow any development on the northeast portion of the Land, Plaintiffs need to "hand over" 183 acres of the Land and certain water rights in perpetuity to a group of wealthy and high-profile members of the Queensridge community ("Queensridge Elite"). Defendant Coffin told the Plaintiffs' representatives that this was a "fair deal" and that Plaintiffs should accept it.

54. In or around February 2016, in a meeting between Defendant Coffin and Mr. Lowie, Defendant Coffin made statements that compared Mr. Lowie's personal actions in pursuing the development of the Land to the treatment of "unruly Palestinians." Thereafter, Defendant Coffin authored and sent a letter to Todd Polikoff, the president and CEO of Jewish Nevada, wherein Defendant Coffin stated, "*In the context of the Council meeting in question I was describing a private meeting with Mr. Yohan Lowie and his colleagues at EHB. I said that I thought his opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood reminded me of Bibi Netanyahu's insertion of the concreted settlements in the West Bank Neighborhoods. To me it is just as inconsiderate and Yohan looked upon them as a band of unruly Palestinians. I feel that it is such.*" A true and correct copy of the letter sent from Defendant Coffin to Todd Polikoff is attached as Exhibit 4.

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55. In April 2017, in a City meeting relating to the Plaintiffs' applications, Defendant Coffin met with Anthony Speigel, a representative of the Plaintiffs. Defendant Coffin told Mr. Speigel that the only issue that mattered to Defendant Coffin was the statements that Defendant Coffin made to Mr. Lowie regarding "unruly Palestinians." Defendant Coffin stated that until that issue is remedied, [Defendant Coffin] could not be impartial to any application that [the Plaintiffs] present before the City Council. Defendant Coffin followed through with this statement by subsequently voting to deny every application relating to the development of the Land or, alternatively, voting to hold in abeyance a vote to approve or deny Plaintiffs' applications thereby causing extensive delay and costs to Plaintiffs. Defendant Coffin in furtherance of his ultimatum given to Plaintiffs, and admitted inability to be impartial toward Plaintiff Lowie, has voted against every one of Plaintiffs' applications to develop the Land.

56. On June 20, 2017, Plaintiffs sent a letter to Defendant Coffin recommending his recusal from Plaintiffs' applications to develop a portion of the Land set to be heard June 21, 2017. Defendant Coffin ignored the letter and on June 21, 2017 voted to deny Plaintiffs' applications.

57. On February 15, 2018, Plaintiffs sent a letter to Defendant Coffin, formally requesting that Defendant Coffin recuse himself from voting on all matters before the City Council related to Plaintiffs' efforts to exercise their property rights and develop the Land. A true and correct copy of the letter to Defendant Coffin requesting Defendant Coffin's recusal is attached as Exhibit 5. On February 21, 2018, at a City Council hearing, Plaintiffs made another request that Defendant Coffin recuse himself from voting on all matters related to Plaintiffs' Land. In response, on February 21, 2018, Defendant Coffin stated at the same City Council hearing that he would not recuse himself from participating in and voting on matters before the City Council related to Plaintiffs' applications. Defendant Coffin, on the record, embraced his earlier Lowie-targeted anti-Semitic comments and comparisons to Israeli Prime Minister Netanyahu. Defendant Coffin proceeded to call Prime Minister Netanyahu a "buffoon" who "was driving his country to war." After stating that he would not recuse himself, Defendant Coffin proceeded to vote on a motion for an abeyance of several of Plaintiffs' applications, despite Plaintiffs' objection to the

abeyance and right to have the applications heard and voted upon and despite the fact that this would further delay decision on Plaintiffs' applications, causing additional unnecessary costs to Plaintiffs.

58. In all instances where Plaintiffs' applications relating to the development of the Land were presented to the City Council, Defendant Coffin was a member of the City Council and voted on all applications related to the projects. In every instance, in furtherance of his ultimatum given to Plaintiffs, admitted inability to be impartial and personal bias against Plaintiffs, Defendant Coffin advocated against and voted against Plaintiffs' applications.

E. Defendant Seroka's personal agenda, animus, bias, and discrimination against Plaintiff Lowie and Plaintiff Landowners in the development of the Land.

59. From July 2017 to the present, Defendant Seroka has been a member of the City Council, representing Ward 2. The Land is located in Ward 2.

60. Defendant Seroka campaigned on the promise that, if elected to the City Council, he would prevent Plaintiff Landowners from developing the Land.

61. Defendant Seroka's campaign was heavily financed by members of the Queensridge Elite.

62. Upon information and belief, Defendant Seroka agreed to deny Plaintiffs' constitutional property rights in exchange for campaign funding by the Queensridge Elite.

63. Notwithstanding Plaintiff Landowner's property rights, the Land's zoning, the Queensridge Master Declaration, the Queensridge purchase documents and disclosures, and the November 30, 2016 Court Order, during Defendant Seroka's campaign he publicly proclaimed:

a. That he was "**focused on the property rights of the existing homeowners, all of whom have an expectation to the open space that played heavily in their [previous] decisions to purchase**".

b. That, if elected, he would require Plaintiff Landowners to participate in a property swap with the City of Las Vegas. He called it the "Seroka Badlands Solution." Upon information and belief, the City of Las Vegas deemed the Seroka Badlands Solution "illegal".

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c. At a Planning Commission in February 2017, while wearing a "Steve Seroka for Las Vegas City Council" pin, at the podium, Seroka stated that he was "**representing [his] neighbors in Queensridge and hundreds of thousands of people that [he] had spoken to in [his] community**." At the hearing, Defendant Seroka strongly advocated against the Plaintiffs' property rights and applications, broadcasting that "**over my dead body will I allow a project that would drive property values down 30%**" and "**over my dead body will I allow a project that will set a precedent that will ripple across the community that those property values not just affected in Queensridge but throughout the community**."

64. Shortly after Defendant Seroka was sworn in as a City Council member, he appointed Christina Roush, his rival in the election, as the Planning Commissioner for Ward 2. Upon information and belief, Ms. Roush was specifically appointed by Defendant Seroka because of her vocal opposition to the land rights of the Plaintiff Landowners during her campaign.

65. On August 2, 2017, the City Council held a hearing on a development application (in this case, a "Development Agreement") that the City demanded Plaintiffs submit relating to the development of the Land. The Development Agreement had been negotiated and drafted by and between the Staff, the City Attorney, and representatives for Plaintiffs, and received recommendations for approval by Staff and the Planning Commission. Notwithstanding such recommendations for approval, Defendant Seroka made a motion to deny the Development Agreement and read a prepared statement underscoring the basis for denial.

66. Upon information and belief, the statement made by Defendant Seroka at the August 2, 2017 City Council hearing was written by Frank Schreck, the leader among the Queensridge Elite.

67. At a City Council hearing on September 6, 2017, as a direct attack on the Plaintiff Landowners' efforts to exercise their property rights and develop the Land, Defendant Seroka proposed that the City impose a six-month development moratorium directed to delay the development of the Land ("Queensridge Ordinance"). Defendant Seroka made the motion to

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approve the Queensridge Ordinance, and upon Defendant Seroka's determining that the moratorium motion would fail, he modified it to convert it to a directive to City Staff to revise the ordinance so that the City Council could revisit it in the future.

68. In November 29, 2017, in a "town hall meeting" held at the Queensridge CIC clubhouse, Defendant Seroka publicly stated, while a member of the City Council and while Plaintiffs' applications for the development of the Land were pending before the City Council, that for the City to follow the letter of the law in adjudicating Plaintiffs' applications — as Staff desired to do — was "**the stupidest thing in the world**." In contravention to his duties as a seated Councilman, Defendant Seroka advocated to the residents of the Queensridge CIC to send in opposition letters to all of Plaintiffs' applications and development efforts to both the Planning Commission and City Council.

69. On February 15, 2018, Plaintiffs sent a letter to Defendant Seroka, formally requesting that Defendant Seroka recuse himself from voting on all matters before the City Council related to Plaintiffs' efforts to exercise their property rights to develop the Land. A true and correct copy of the letter to Defendant Seroka requesting Defendant Seroka's recusal is attached as Exhibit 6. On February 21, 2018, at a City Council hearing, Plaintiffs made another request that Defendant Seroka recuse himself from voting on all matters related to Plaintiffs' Land. In response, on February 21, 2018, Defendant Seroka stated at the same City Council hearing that he would not recuse himself from participating in and voting on matters before the City Council related to Plaintiffs' applications. After stating that he would not recuse himself, Defendant Seroka proceeded to vote on a motion for an abeyance of several of Plaintiffs' applications, despite Plaintiffs' objections to the abeyance and right to have the applications heard and voted upon and despite the fact that this would further delay decision on Plaintiffs' applications, causing additional unnecessary costs to Plaintiffs.

70. In all instances where Plaintiffs' applications relating to the development of the Land were presented to the City Council after July 2017, Defendant Seroka was a member of the City Council and voted on all applications related to the projects. In every instance, in furtherance of his statements that applying applicable law to Plaintiffs' applications would be "the stupidest

thing in the world," and his objective inability to be fair and impartial regarding Plaintiffs, Defendant Seroka advocated against and voted against Plaintiffs' applications.

F. Defendant Coffin and Defendant Seroka illegally scheme to deprive Plaintiff Landowners of their constitutional property rights through abuse of authority and violation of municipal code.

71. Upon information and belief, Defendant Coffin and Defendant Seroka have aggressively advocated to the City Staff, Planning Commission, and City Council members to oppose all of Plaintiff Landowners' applications with the City relating in any way to the Land.

72. Upon information and belief, Defendant Coffin and Defendant Seroka conspired with members of the Queensridge Elite to deprive Plaintiffs of their property rights and constitutional rights of equal protection and due process.

73. Upon information and belief, Defendant Coffin and Defendant Seroka are conducting their duties as members of the City Council under the direction of Frank Schreck, Jack Binion and the Queensridge Elite with the instructions and intention to deny the constitutional property rights of Plaintiff Landowners.

74. Upon information and belief, Defendant Coffin and Seroka have acted illegally and with the intent to deprive Plaintiffs of their constitutional rights to equal protection and procedural due process, by among other things, they:

a. Instructed City Staff to to alter federal mails by checking the 'I OPPOSE' box on City of Las Vegas Official Notice of Public Hearing postcards, both before cards are sent to Las Vegas citizens, and after returned by the United States Post Office; and

b. Instructed City Staff to violate Title 19.16.100(F)(3), which provides that the City Council may not review building permit level reviews, by mandating that all building permit level review applications submitted by Plaintiff Landowners must go through formal City Council hearings, thereby depriving Plaintiffs of the ability to protect or safely access the Land; and

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c. Instructed City Staff to alter Staff Reports relating to land use applications submitted by Plaintiff Landowners, such that they fraudulently describe the Land's permitted use as "Non-operational Golf Course" a non-existent classification under Title 19.12, as opposed to the proper Title 19.12 classification for the Land being "Single Family, Vacant"; delete the Existing Land Use column reference to "Title 19.12"; and make other biased and non-customary changes to the reports intended to prejudice Plaintiff Landowners' zoning rights; and

d. Instructed City Staff to impose applications submittal requirements upon Plaintiff Landowners' that are intended solely for the purpose of delay; and

e. Instructed City Staff to draft the Queensridge Ordinance in a manner to target and impair the constitutional property rights and existing zoning rights of Plaintiff Landowners; and

f. Instructed City Staff on what to say at public hearings such that notwithstanding that the Queensridge Ordinance is specifically targeted at the Land, the City Staff is fed sound bites to give the appearance of broad applicability; and

g. Instructed City Staff not to do an analysis of what properties would actually be subject to the Queensridge Ordinance; and

h. Requested that third party quasi-municipal and county agencies manufacture unjustified reasons to support the denial of the applications by the City Council.

75. Have taken the position that the PROS land use designation governs the use of the Land in blatant violation of NRS 278.349(3)(e), which states, in pertinent part, as follows: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider . . . [c]onformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence . . . ."When Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons of the City Council against Plaintiffs' applications to develop the Land, Defendant Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City Charter, which outlines the position and duties of a councilperson of the City Council

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(*see, e.g.*, Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; and Nevada Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land use.

76. The City and the City Council permitted Defendant Coffin and Defendant Seroka to engage in the aforementioned conduct that was intended to intentionally violate Plaintiffs' constitutional rights of equal protection and due process.

77. The City and the City Council have treated Plaintiffs as a class of one, foisting upon them extraordinary requirements that have not been required of other similarly situated individuals or entities. The City's and the City Council's treatment of Plaintiffs as a class of one has caused Plaintiffs to incur extraordinary costs and expenses in attempting to meet requirements that are both unlawful and not required of any other similarly situated individual or entity.

78. The City and the City Council have also consciously and willfully prevented Plaintiffs from having their applications heard by an impartial decision maker such that Plaintiffs' applications are either denied or decisions delayed, causing extensive delay and costs to Plaintiffs.

79. The City and the City Council ratified Defendant Coffin's and Defendant Seroka's aforementioned conduct.

80. Regardless of the ultimate outcome of any of Plaintiffs' applications concerning the Land, Plaintiffs have suffered substantial harm in the process of pursuing approval of such applications based on the conduct of Defendants as set forth herein.

First Cause of Action

Violation of Equal Protection of 14th Amendment to United States Constitution, brought pursuant to 42 U.S.C. § 1983 (against all Defendants)

81. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

82. Section 1 of the 14th Amendment to the United States Constitution states, in part, as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

83. Plaintiffs have vested property rights in the Land.

84. Plaintiffs have been deprived of their equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The deprivation was caused by Defendants' actions that were taken under color of state statute, ordinance, regulation, and custom and usage.

85. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

86. Defendant Coffin's discrimination towards Plaintiffs is based, in part, on Plaintiff Lowie's Israeli ethnicity and Jewish faith. Defendant Coffin's discrimination was not narrowly tailored to advance a compelling government interest.

87. Defendants, including Defendant Coffin and Defendant Seroka and other members of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners. Defendants had no rational basis for treating Plaintiffs differently than other similarly situated land use applicants and property owners. When other similarly situated land use applicants and property owners presented applications to the City Council that were similar to Plaintiffs' applications — meaning, in part, that the applications conformed with all relevant laws and regulations and were approved by the Staff and the Planning Commission — the City Council has not repeatedly refused to approve such applications, created unreasonable delay, or imposed unsupported and suspect conditions, like the City Council has done with Plaintiffs' applications. Further, with respect to the property rights, development rights, and applications of other developers and property owners that are similarly situated to Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those property rights, development rights, and applications, like Defendant Coffin and Defendant Seroka have done, including in private gatherings, City Council meetings, "town hall meetings," and elsewhere with respect to Plaintiffs' applications. Further, with respect to the property rights, zoning rights, and applications of other developers and property owners that are similarly situated to Plaintiffs and the Principals, the City Council has not repeatedly refused to uphold and approve

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those rights and applications due to certain councilpersons' personal friendships with wealthy, high-profile homeowners who are opposed to the applications, like Defendant Coffin and Defendant Seroka have done towards Plaintiffs' applications due to personal relationships with Frank Schreck, Jack Binion and other members of the Queensridge Elite. Upon information and belief, the applications to develop the Land have experienced more delays, abeyances, and denials than any other applications in the history of the City of Las Vegas.

88. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the 14th Amendment to the United States Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

89. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Equal Protection Clause of the 14th Amendment to the United States Constitution, as set forth herein, in a sum to be proven at trial.

90. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Second Cause of Action

Violation of Procedural Due Process of 14th Amendment to United States Constitution, brought pursuant to 42 U.S.C. § 1983 (against all Defendants)

91. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

92. Section 1 of the 14th Amendment to the United States Constitution states, in part, as follows: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

93. Plaintiffs have been deprived of their procedural due process rights, privileges, and immunities provided by the Due Process Clause of the Fourteenth Amendment of the United

States Constitution. The deprivation was caused by Defendants acting under color of state statute, ordinance, regulation, and custom and usage.

94. Defendant Coffin and Defendant Seroka, as members of the City Council, participated in and voted at multiple hearings wherein the City Council voted on and adjudicated whether Plaintiffs would be allowed to develop the Land pursuant to Plaintiffs' applications. Further, Defendant Coffin and Defendant Seroka participated in multiple meetings and discussions relating to Plaintiffs' applications to develop the Land.

95. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to act as impartial decision-makers.

96. The members of the City Council, including Defendant Coffin and Defendant Seroka, have not acted as impartial decision-makers. The members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs and as a result, the City Council has repeatedly refused to approve such applications, has created unreasonable delay, and has imposed unsupported and suspect conditions, all of which cause unnecessary and extraordinary costs to Plaintiffs in pursuing the right to develop the Land.

97. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to base their decisions on articulated standards and requirements — such as the standards and requirements provided for by the relevant laws and regulations, including those in Title 19 and Nevada Revised Statutes, and Chapter 278— but the members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so. Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs and their applications to develop the Land. In fact, Defendant Seroka publicly advocated against application of relevant law regarding Plaintiffs' applications.

98. Defendant Coffin and Defendant Seroka also made their decisions and engaged in their City Council discussions motivated by favoritism and partiality to their friends who lived in

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the Queensridge CIC and were members of the Queensridge Elite, such as Mr. Binion's friendship with Defendant Coffin and Defendant Seroka's relationship with Frank Schreck.

99. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and immunities provided by the Due Process Clause of the 14th Amendment to the U.S. Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

100. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Procedural Due Process Clause of the 14th Amendment to the United States Constitution, as set forth herein, in a sum to be proven at trial.

101. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Third Cause of Action
Violation of Equal Protection of Article 4, Section 21 of Nevada Constitution (against all Defendants)

102. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

103. Article 4, Section 21 of the Nevada Constitution states as follows: "In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

104. Plaintiffs have vested property rights in the Land. Plaintiffs have been deprived of their equal protection rights, privileges, and immunities provided by the Equal Protection Clause of the Nevada Constitution. The deprivation was caused by Defendants' actions that were taken under color of state statute, ordinance, regulation, and custom and usage. For example, when Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons of the City Council against Plaintiffs and Plaintiffs' applications to develop the Land, Defendant Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City

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Charter, which outlines the position and duties of a councilperson of the City Council (*see, e.g.*, Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; Nevada Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land use.

105. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

106. Defendant Coffin's discrimination towards Plaintiffs was based, at least in part, on Plaintiff Lowie's Israeli ethnicity and Jewish faith. Defendant Coffin's discrimination was not narrowly tailored to advance a compelling government interest.

107. Defendants, including Defendant Coffin and Defendant Seroka and other members of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly situated land use applicants and property owners. Defendants had no rational basis for treating Plaintiffs differently than other similarly situated land use applicants and property owners. When other similarly situated land use applicants and property owners presented development applications to the City Council that were similar to Plaintiffs' applications — meaning, in part, that the applications conformed with all relevant laws and regulations and were approved by the Staff and the Planning Commission — the City Council has not repeatedly refused to approve such applications, created delays, or imposed unsupported and suspect classifications, like the City Council has done with Plaintiffs' applications. Further, with respect to the property rights, development rights, and applications of other property owners that are similarly situated to Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those property rights, zoning rights, and applications, like Defendant Seroka and Defendant Coffin have done, including in private gatherings, City Council meetings, "town-hall meetings," and elsewhere with respect to Plaintiffs' applications. Further, with respect to the property rights, zoning rights, and applications of other land use applicants and property owners that are similarly situated to Plaintiffs, the City Council has not repeatedly refused to uphold and approve those rights and applications due to certain councilpersons' personal friendships with wealthy, high-profile homeowners who are opposed to the applications, like Defendant Coffin and Defendant

Seroka have done towards Plaintiffs and Plaintiffs' applications due to personal relationships with Frank Schreck, Jack Binion and other members of the Queensridge Elite.

108. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and immunities provided by the Nevada Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

109. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Equal Protection Clause of the Nevada Constitution, as set forth herein, in a sum to be proven at trial.

110. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Fourth Cause of Action
Violation of Procedural Due Process of Article 1, Section 8(5) of Nevada Constitution (against all Defendants)

111. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

112. Article 1, Section 8(5) of the Nevada Constitution states, in part, as follows: "No person shall be deprived of life, liberty, or property, without due process of law."

113. Plaintiffs have been deprived of their procedural due process rights, privileges, and immunities provided by the Due Process Clause of the Nevada Constitution. The deprivation was caused by Defendants acting under color of state statute, ordinance, regulation, and custom and usage.

114. Defendant Coffin and Defendant Seroka, as members of the City Council, participated in and voted at multiple hearings wherein the City Council voted on and adjudicated whether Plaintiffs would be allowed to develop the Land and associated conditions pursuant to

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Plaintiffs' applications. Further, Defendant Coffin and Defendant Seroka participated in multiple meetings and discussions relating to Plaintiffs' applications to develop the Land.

115. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to act as impartial decision-makers, but the members of the City Council, including Defendant Coffin and Defendant Seroka, were not impartial decision-makers. The members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Mr. Lowie and Plaintiffs' applications to develop the Land.

116. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the Land, the members of the City Council had a duty to base their decisions on articulated standards and requirements — such as the standards and requirements provided for by the relevant laws and regulations, including those in Title 19 and Nevada Revised Statutes, Chapter 278— but the members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so. Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and discrimination against Plaintiffs, and Plaintiffs' applications to develop the Land. In fact, Defendant Seroka publicly advocated against application of relevant law regarding Plaintiffs' applications. Defendant Coffin and Defendant Seroka also made their decisions and engaged in their City Council discussions motivated by favoritism and partiality to their friends Frank Schreck, Jack Binion and other members of the Queensridge Elite.

117. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and immunities provided by the Due Process Clause of the Nevada Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious motive and intent.

118. Plaintiffs have suffered damages, including, but not limited to, increased maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants' violations of the Procedural Due Process Clause of the Nevada Constitution, as set forth herein, in a sum to be proven at trial.

119. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Fifth Cause of Action

Attorneys' fees and costs as special damages, pursuant to Nevada Rule of Civil Procedure 9(g) (against all Defendants)

120. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

121. Based upon Defendants' aforementioned violations of Plaintiffs' constitutional rights, privileges, and immunities, Plaintiffs have incurred attorneys' fees and costs in bringing this lawsuit to protect and enforce Plaintiffs' rights.

122. The attorneys' fees and costs incurred by Plaintiffs were directly and proximately caused by Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities. Defendants' actions involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, were motivated by evil and malicious motive and intent.

123. It was reasonably foreseeable that Plaintiffs would have to incur attorneys' fees and costs in response to Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities.

124. Plaintiffs are therefore entitled to recover their attorneys' fees and costs as special damages pursuant to Nevada Rule of Civil Procedure 9(g).

Prayer for Relief

Plaintiffs pray for relief, as follows:

1. Injunctive relief;

2. An award of damages in the nature of fees, costs, and expenses incurred as a result of Defendants' unlawful actions set forth herein, in an amount to be proven at trial;

3. An award of punitive damages;

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4. An award of attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1988 and Nevada Rule of Civil Procedure 9(g); and

5. Any other relief that this Court deems necessary and justified.

Plaintiffs also demand a jury trial for all issues triable by a jury.

Dated this 26th day of March 2018.

HUTCHISON & STEFFEN, PLLC

/s/ Mark A. Hutchison

Mark A. Hutchison (4639)
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EXHIBIT “III”

FILED

OCT 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

180 LAND CO. LLC; et al., Plaintiffs-Appellants, v. CITY OF LAS VEGAS; et al., Defendants-Appellees.	No. 19-16114 DC No. 2:18 cv-0547-JCM MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted September 16, 2020
San Francisco, California

Before: WALLACE, TASHIMA, and BADE, Circuit Judges.

Plaintiffs, land developers who own property in Las Vegas, Nevada, appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 action alleging equal protection and procedural due process claims stemming from the Las Vegas City Council's denial of plaintiffs' applications to develop their property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6); denial of leave to amend is reviewed for abuse of discretion. *Cervantes*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1040–41 (9th Cir. 2011). We affirm in part, vacate in part, and remand.

1. The district court properly dismissed plaintiffs' "class of one" equal protection claim because plaintiffs failed to allege facts that were sufficient to show that plaintiffs were intentionally treated differently from others similarly situated. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (stating elements of an equal protection "class of one" claim); *see also In re Candelaria*, 245 P.3d 518, 523 (Nev. 2010) (holding that the standard under the Equal Protection Clause of the Nevada Constitution is the same as the federal standard).

Contrary to plaintiffs' contention, the district court did not apply a heightened pleading standard to evaluate plaintiffs' "class of one" equal protection claim. Rather, the district court properly applied binding precedent and correctly determined that plaintiffs failed to plead sufficient facts regarding similarly situated landowners. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (clarifying that a complaint does not "suffice if it tenders naked assertions devoid of further factual enhancement") (citation, alteration and internal quotation marks omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a complaint must provide "enough facts to state a claim to relief that is plausible on its face").

Although plaintiffs concede that they failed to request leave to amend below,

the district court abused its discretion by denying plaintiffs leave to amend their "class of one" equal protection claim because it is not clear that the claim's shortcomings cannot be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) ("[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." (quotation marks and citation omitted)). Thus, although we affirm the dismissal of plaintiffs' "class of one" equal protection claim, we vacate the district court's denial of leave to amend and remand with instructions to grant plaintiffs leave to amend their "class of one" claim.

2. Dismissal of plaintiffs' class-based equal protection claim was proper because plaintiffs alleged contradictory facts as to defendants' motivation that were insufficient to show that intentional discrimination was a motivating factor for defendants' actions. *See Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016) (holding that an equal protection claim is supported if a discriminatory purpose was a motivating factor behind the challenged action); *Somers v. Apple, Inc.*, 729 F.3d 953, 964 (9th Cir. 2013) (holding that plaintiff's theory was "implausible in the face of contradictory . . . facts alleged in her complaint").

3. The district court properly dismissed plaintiffs' procedural due

process claim because plaintiffs failed to allege facts sufficient to show that they were deprived of a constitutionally protected property interest. To succeed on a procedural due process claim, a plaintiff must first demonstrate that he or she was deprived of a constitutionally protected interest. To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a "legitimate claim of entitlement," that imposes significant limitations on the discretion of the decision maker. *Gerhart v. Lake County, Mont.*, 637 F.3d 1013, 1019, 1022 (9th Cir. 2011); *see also Reinkemeyer v. Safeco Ins. Co.*, 16 P.3d 1069, 1072 (Nev. 2001) (observing that federal caselaw is used to interpret the Due Process Clause of the Nevada Constitution).

We reject as without merit plaintiffs' contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest and should be given preclusive effect.

The district court did not abuse its discretion by denying plaintiffs leave to amend their class-based equal protection claim or their due process claim because these claims cannot be cured by amendment.

We do not consider claims that were not raised in the operative complaint, including any substantive due process claim. *See Crawford v. Lungren*, 96 F.3d 380, 389 n.6 (9th Cir. 1996) (declining to address claims raised for the first time on

appeal).

Plaintiffs' Request for Judicial Notice (Docket Entry No. 18) is denied as unnecessary.

• ● •

The dismissal of plaintiffs' claims is affirmed, as is the denial of leave to amend plaintiffs' complaint, except that plaintiffs shall be granted leave to amend their "class of one" equal protection claim.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

EXHIBIT “NNN”

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March 26, 2020

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

RE: ENTITLEMENT REQUESTS FOR 65 ACRES

Dear Counsel:

As you know, on March 5, 2020, a panel of the Nevada Supreme Court entered an unpublished Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Reversal Order"). The Reversal Order reversed a prior decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J ("Order"), which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 multi-family housing units on a 17-acre portion of the Badlands golf course in the Peccole Ranch Master Plan area.

Under the Reversal Order, that major modification application is no longer required to apply to develop any other portion of the former Badlands golf course. This includes approximately 65 acres of land owned by one of EHB's other subsidiaries, 180 Land Company, LLC. 180 Land has not filed any applications or requested any specific entitlements to develop the 65 acres, but it may now do so without submitting a major modification application as part of its entitlement package.

If you have any questions about the contents of this letter, please do not hesitate to contact me at (702) 229-6629. If you have any questions about the submittal requirements for land use entitlements, please do not hesitate to contact the appropriate City department.

Sincerely,

OFFICE OF THE CITY ATTORNEY

SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4931
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)

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Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

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EXHIBIT “OOO”

City of Las Vegas
Office of the City Attorney

Seth T. Floyd
Deputy City Attorney

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Office (702) 229-6629
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March 26, 2020

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

RE: ENTITLEMENT REQUESTS FOR 133 ACRES

Dear Counsel:

As you know, on March 5, 2020, a panel of the Nevada Supreme Court entered an unpublished Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Reversal Order"). The Reversal Order reversed a March 5, 2018 decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J ("Order"), which provided that your client, Seventy Acres, LLC (one of the entities controlled by EHB Companies, LLC), was required to obtain a major modification to the Peccole Ranch Master Plan ("PRMP") pursuant to Title 19 of the Las Vegas Municipal Code before it could redevelop a 17-acre portion of the former Badlands golf course with 435 multi-family housing units. Because Seventy Acres had not filed a major modification application for the City's consideration, Judge Crockett vacated the City Council's approval of Seventy Acres' redevelopment applications. In reversing Judge Crockett's Order, the Nevada Supreme Court held that the City properly approved the 17-acre applications without requiring a major modification of the PRMP. The Reversal Order, once final, reinstates the entitlements your client obtained on the 17-acre property.

While Judge Crockett's Order was in effect, the City followed the Court's directive and required a major modification of the PRMP to redevelop any part of the Badlands golf course. This included approximately 133 acres of land owned by one of EHB's other subsidiaries, 180 Land Company, LLC, for which the City Council considered entitlement applications on May 16, 2018 ("the 133-Acre Applications"). The 133-Acre Applications consisted of GPA-72220, WVR-72004, SDR-72005, TMP-72006, WVR-72007, SDR-72008, TMP-72009, WVR-72010, SDR-72011, and TMP-72012. The City Council struck the 133-Acre Applications from its agenda as incomplete for two reasons. First, they did not include an application for a major modification, as Judge Crockett's Order required. Second, the application for a General Plan Amendment ("GPA") violated the City's Unified Development Code §19.16.030(D) because it was duplicative of one that had been filed within the previous 12-month period and was therefore time-barred. Now that more than a year has passed from the original GPA request and with the Supreme Court having reversed Judge Crockett's decision, the City Council is now permitted by law to consider the 133-Acre Applications.

For the City Council to consider the 133-Acre Applications, 180 Land needs to contact the Department of Planning and request the 133-Acre Applications be heard on the next available City Council agenda. The City will waive any applicable fees for the reconsideration of your application. If you have any questions about the contents of this letter, please do not hesitate to contact me at (702) 229-6629.

Sincerely,

OFFICE OF THE CITY ATTORNEY

SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4948
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)

SENDER: *COMPLETE THIS SECTION*

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1. Article Addressed to:

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

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133

EXHIBIT “PPP”

Seth T. Floyd
Deputy City Attorney

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Office of the City Attorney

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Office (702) 229-6629
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April 15, 2020

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

RE: ENTITLEMENT REQUESTS FOR 35 ACRES

Dear Counsel:

As you know, on March 5, 2020, a panel of the Nevada Supreme Court entered an unpublished Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Reversal Order"). The Reversal Order reversed a prior decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J ("Order"), which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 multi-family housing units on a 17-acre portion of the Badlands golf course in the Peccole Ranch Master Plan area.

Under the Reversal Order, that major modification application is no longer required to develop any other portion of the former Badlands golf course. This includes approximately 35 acres of land owned by one of EHB Properties, LLC's other subsidiaries, 180 Land Company, LLC (the "35 Acres"). 180 Land filed one set of applications for entitlements to develop the 35 Acres (WVR-68480, SDR-68481, TMP-68482), which the City Council denied. Under the Reversal Order, and because 180 Land only submitted a single set of requests for entitlements, the City is now able to consider new applications to develop the 35 Acres without any requirement for a major modification application.

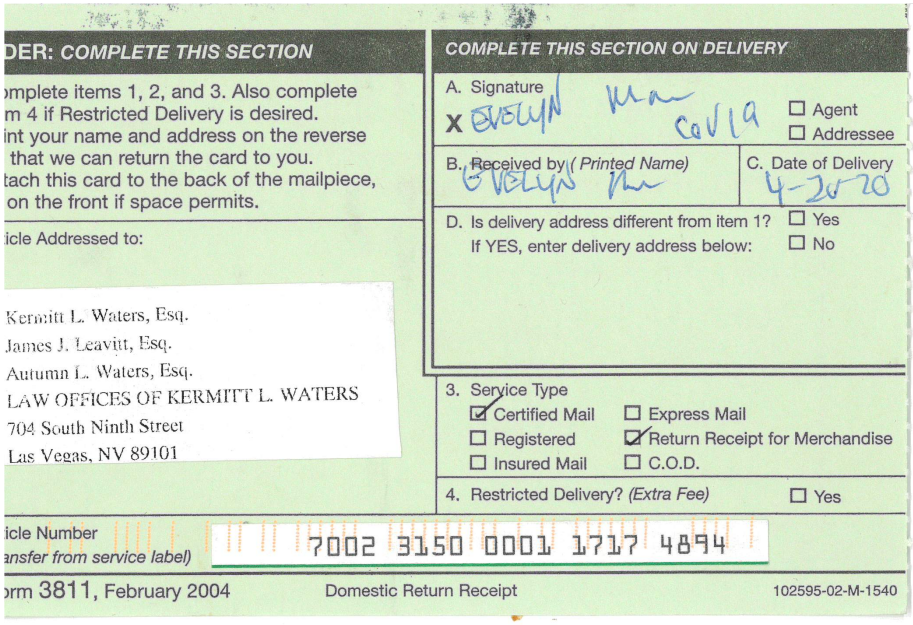
If you have any questions about the contents of this letter, please do not hesitate to contact me at (702) 229-6629. If you have any questions about the submittal requirements for land use entitlements, please do not hesitate to contact the appropriate City department.

Sincerely,

OFFICE OF THE CITY ATTORNEY

SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4894
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)



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icle Addressed to:

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101

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☐ Agent
☐ Addressee

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EXHIBIT “UUU”

CASE NO. A-17-758528-J

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

180 LAND COMPANY LLC,
Plaintiff,
vs.
LAS VEGAS CITY OF,
Defendant.

REPORTER'S TRANSCRIPT
OF
HEARING
(TELEPHONIC HEARING)

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED TUESDAY, November 17, 2020

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

APPEARANCES:

(PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC APPEARANCE)

FOR THE PLAINTIFF:

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AND

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(702) 940-6938 Fax
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APPEARANCES CONTINUED:

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AND

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ANDREW W. SCHWARTZ

* * * * *

LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 11, 2020

1:31 P.M.

P R O C E E D I N G S

* * * * * * *

THE COURT: All right. Thank you, CJ.

Good afternoon to everyone. This is the time set for the Tuesday, November 17th, 2020, 1:30 law and motion calendar. We only have one matter on this afternoon, and that's 180 Land Company LLC versus the City of Las Vegas.

And let's go ahead and set forth our appearances on the record.

MR. LEAVITT: Good morning, your Honor. For the plaintiff, 180 Land LLC, the landowner, James J. Leavitt.

MS. HAM: Good morning, your Honor. Elizabeth Ghanem Ham, also on behalf of the plaintiff landowners.

MR. OGILVIE: Good afternoon, your Honor. This is George Ogilvie on behalf of the City of Las Vegas. Also with me today is Phil Byrnes from the City attorney's office.

MR. SCHWARTZ: This is Andrew Schwartz representing the City.

THE COURT: All right. Does that cover

price. And I think it's important so that you understand we answered the question both as an interrogatory, what did you pay, 45 million; and both of the requests for production. And we had a 2.34 conference about it and responded again. There are no documents that state that the landowner paid the 45 million for the golf course. There are simply no documents that state that.

Having -- does that mean that that's not what we paid for it? It certainly does not. Our position will remain that that is what was paid for the course. So we always say -- and how these 2.34 conferences go, which I've been involved in, is that the government will say, Well, we don't understand. But it's not -- I'm not being deposed at the 2.34 conferences, and it's not my job to explain it. There are other tools available.

I understand that when you take a deposition that you want every document in front of you, but there are simply none. So I just want it so you understand. It's not that we're not answering. We are answering very truthfully.

Are there documents that support eventually this position through other transactions? Yes.

Do they relate to this? Not necessarily.

02:31:40 is still on the phone here with us.

MS. HAM: I'm still on the phone. I am still on the phone.

And so you wanted me to respond to

02:31:47 specifically in regard to our response to interrogatory -- I forget which number it was -- where we stated that the consideration given for the former Badlands Golf Course property was 45 million. And our response to that request for production was that -- and

02:32:07 we revised it, but the request of the government, the defendant, that said that there are no documents, again, as I stated to you earlier, your Honor, that within the plaintiff's custody and control that states that the aggregate of consideration given to the

02:32:24 Peccole family for the former Badlands Golf Course property was 45 million.

There is a multitude in binders and binders of documents that memorialize this complicated transaction to ultimately finalize the dealings with -- that they

02:32:39 were already in process with the Peccoles, some of which Mr. Leavitt has already referenced previously in the different properties and different ventures whether they were joint ventures or partnerships or whatever they were in multitude of properties, and none of them

02:32:56 will address that.

whether it's been the City directly through their counsel members or the homeowners that they have worked with to destroy relationships, to change positions. So we are highly guarded over here, more than usual, because of what's gone on for the past five years.

And they -- the City doesn't want you to know what they have done. They don't want you to know what they have said. They don't want -- they don't want to get to that issue. They keep trying to dismiss our case because what they have done is outrageous, and they continue their outrageous conduct through this discovery.

I take very great issue with how Mr. Ogilvie has raised what has gone on here and that it's taken all these months to get it. When he agreed to extensions of time, he can't now complain about it when we're in the middle of a pandemic complaining that we didn't produce these documents. The minute we got the protective order from the discovery commissioner, the next day we produced documents. We have produced thousands of pages of documents.

So, again, if you are going to order that these documents be produced, I ask that you first review them. They are binders and binders of complicated, involved transactions that will never

mention the transaction of the golf course. It was honored for this price because of the family dealings and because of these years -- years of dealings with the Peccole family.

So this is why we thought it would be important and we continue to offer up information and go beyond what we think is -- is related to either the claims for defenses of this case in order to appease the City, but they keep digging deeper into other things which have nothing to do with it.

I understand why they would want the documents in front of them, but they are not going to be relevant. They are not going to show this number. The only thing that will show that is the explanation.

So, again, if you're inclined to order it, I would ask that it be 100 percent protected. We may have to alert some other parties. I don't know how they'll feel about this being produced in any other manner beyond an in-camera review, and then you can make the determination if at all it's relevant to this case and this action.

And that's -- and that's all I can offer in regards to that. Our positions and our responses have been 100 percent accurate and truthful.

And so, you know, I -- I -- we have continued

02:38:00 the Court system, that's another avenue we have to look at as to whether documents are confidential or not. I just can't arbitrarily make that determination.

Any determination I make as to 02:38:14 confidentiality, I have to make specific findings of fact as to why it's confidential pursuant to the rule. That's another issue.

But at the end of the day -- and this is all I can say is this: That if there's transactions and/or 02:38:33 documents out there that support the valuation property by the plaintiff as to the purchase price, it seems to me potentially those might be germane to the case.

MS. HAM: And, your Honor, this may be splitting hairs. It's not that they support the 02:38:55 $45 million answer that we provided in regard to this request.

They support the 20-year history that from those transactions was born this right to purchase it for the -- for the 15 million, which included the water 02:39:16 rights. Then that was divided later.

So they're not going to reference at all the golf course property.

It's -- it's, you know, again, I don't mean to -- it is the testimony of Mr. Lowie what was given 02:39:35 over the years, but it is not -- these documents will

not state that. They will not support that. It will only support what his testimony will ultimately be, that, yes, all of these transactions took place; yes, they have all developed these other properties and parcels and the Towers and Tivoli and so on and so forth. But they are not going to say anything about the Badlands Golf Course property.

So that's the issue that we have. It's not going to be relevant whatsoever beyond his testimony, which was why we think -- I think that you're only going to understand that once you see the testimony, which he has testified to before.

So, you know, I -- I understand what -- it's really difficult to understand without knowing the story. And that's all I can say, which is why we offered him up to tell the story.

THE COURT: Well, but, I mean, I kind of get that. But I would anticipate that if it's a series of transactions and relationships, as you go down the path of each transaction, there has to be value and consideration potentially that would couple with the next transaction and the next transaction that would be the basis for the valuation offered as to potentially what the purchase price would be.

And that's kind of my point. Because at the

REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF NEVADA.

_____
PEGGY ISOM, RMR, CCR 541

EXHIBIT “CCCC”

NEFF
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
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sfloyd@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No.: A-18-780184-C Dept. No. III **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment was entered in the above-referenced case on the 30th day of December, a copy of which is attached hereto.

. . .

. . .

. . .

. . .

DATED this 30th day of December 2020.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
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SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
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396 Hayes Street
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Attorneys for City of Las Vegas

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 30th day of December, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.
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/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No. A-18-780184-C Dept. No. III **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

Departmental History

The instant matter was filed in the Eighth Judicial District Court (hereinafter referred to by "Department" designations) by Plaintiff's 180 Land Company, LLC et al. (hereinafter "Developer") on August 28, 2018, and assigned to Judge Israel in Department 28. Based on a peremptory challenge filed by the Defendant City of Las Vegas (hereinafter "City"), the matter was reassigned on February 5, 2019, to Judge Silva in Department 9. The peremptory challenge was subsequently reversed and the matter was reassigned back to Department 28 on February 22, 2019.

Thereafter, on March 12, 2019, Department 28 recused itself from hearing the matter and it was again reassigned to Department 9. Based on a new peremptory challenge filed by

the Developer, the matter was reassigned on April 26, 2019, to Department 8, which was at that time vacant pending the appointment of a new judge.

Prior to the appointment of the new Department 8 judge, the matter was removed to Federal Court on August 22, 2019. In September, 2019, Judge Atkin was appointed to Department 8. On October 24, 2019, the matter was remanded back to State Court by the Federal Court.

On November 6, 2019, Department 8 recused itself and the matter was then reassigned to Judge T. Jones in Department 10. Department 10 presided over the case until September, 2020. At that time, a caseload reassignment occurred and the matter was reassigned to this court, Department 3.

Procedural History

The instant case centers on disputes between the Developer and the City over property formerly known as the Badlands Golf Course. Based on those disputes, Developer filed a series of inverse condemnation actions in the Eighth Judicial District Court. The actions are each specific to separate parcels of land and are commonly identified by the acreage at issue.

The instant matter is commonly referred to as the "65-Acre Property case" and was filed, as stated above, on August 28, 2018. Pending before Judge Williams in Department 16 is Case A758528, the "35-Acre Property case," which was filed on July 18, 2017. Pending before Senior Judge Bixler is Case A773228, the "17-Acre Property case," which was filed on April 20, 2018. Lastly, pending before Judge Sturman in Department 26 is Case A775804, the "133-Acre Property case," which was filed on June 7, 2018.

Also relevant and of note is the fact that the above four inverse condemnation actions were preceded by Case A752344, the "Crockett case" which was filed on March 10, 2017, and assigned to Judge Crockett in Department 24. That matter also dealt with the "17-Acre Property" and was a Petition for Judicial Review filed by a group of citizens challenging the

decision of the City to grant Developer's application to develop that particular property. Judge Crockett granted the Petition for Judicial Review over the objection of both the Developer and the City. Developer then appealed and the City filed an amicus brief in support of the Developer. The Nevada Supreme Court reversed Judge Crockett's decision by way of an order filed March 5, 2020. By then, however, Developer had filed the "17-Acre Property case" now pending before Senior Judge Bixler.

On November 9, 2020, City filed the instant Motion for Summary Judgment (hereinafter "Motion"). On November 23, 2020, Developer filed their Opposition and a Countermotion to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order (hereinafter "Countermotion"). On December 9, 2020, City filed a Motion to Strike Developer's Countermotion (hereinafter "Motion to Strike"). The pending motions have been fully briefed.

The court held a lengthy hearing on the pending motions on December 16, 2020. Appearing remotely were James J. Leavitt, Elizabeth Ghanem Ham, Autumn Waters and Michael Schneider on behalf of the Developer, and George F. Ogilvie III, Andrew Schwartz and Philip R. Byrnes on behalf of the City. The court made an initial ruling denying the City's Motion to Strike, finding that the relief requested was proper for a countermotion as it simply asked this court to engage in a certain legal analysis format if and when it addressed the merits of the City's summary judgement request, and to make certain findings, if necessary, in favor of Developer based on that legal analysis.

Regarding the Summary Judgment Motion and the Countermotion, the Court having reviewed the pleadings and exhibits in the instant case, and, where relevant and necessary, in the companion cases, and having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

I. The Badlands as open space for Peccole Ranch

1. In 1980, the City approved William Peccole's petition to annex 2,243 acres of undeveloped land to the City. Ex. A at 1-11.[1] Mr. Peccole's intent was to develop the entire parcel as a master planned development. *Id.* at 1. After the annexation, the City approved an integrated plan to develop the land with a variety of uses, called the "Peccole Property Land Use Plan." Ex. B at 12-18. In 1986, Mr. Peccole requested approval of an amended master plan featuring two 18-hole golf courses, one of which was in the general area where the Badlands golf course was later developed. Ex. C at 31-33; Ex. WW.

2. In 1988, the Peccole Ranch Partnership ("Peccole") submitted a revised master plan known as the Peccole Ranch Master Plan ("PRMP") and an application to rezone 448.8 acres for the first phase of development ("Phase I"). Ex. E at 62-93. In 1989, the City approved the PRMP and Phase I rezoning application, after Peccole agreed to limit the overall density in Phase I and reserve 207.1 acres for a golf course and drainage in the second phase of development ("Phase II") of the PRMP. *Id.* at 96-97.

3. In 1989, the City included Peccole Ranch in a Gaming Enterprise District ("GED"), which allowed Peccole to develop a resort hotel in the PRMP so long as Peccole provided a recreational amenity such as an 18-hole golf course. Ex. G at 114-124, 130, 135-37. Peccole reserved 207 acres for a golf course to satisfy this requirement. Ex. E at 96, 98; Ex. G at 123-124.

4. In 1990, Peccole applied to amend the PRMP for Phase II. Ex. H at 138-161. The revised PRMP highlighted an "extensive 253-acre golf course and linear open space system winding throughout the community [that] provides a positive focal point while creating a

[1] References to lettered Exhibits are to the Exhibits contained in the City's Appendix. References to numbered Exhibits and/or "LO Appx" Exhibits are to the Exhibits contained in the Developer's Appendix.

mechanism to handle drainage flows." *Id.* at 145. The City approved the Phase II rezoning application under a resolution of intent subject to all conditions of approval for the revised PRMP. *Id.* at 183-94.

II. The PR-OS General Plan designation of the Badlands

5. Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. On April 1, 1992, the City Council adopted a new Las Vegas General Plan, including revisions approved by the Planning Commission. Ex. I at 195-204, 212-18. The 1992 General Plan included maps showing the existing land uses and proposed future land uses. *Id.* at 246. The future land use map for the Southwest Sector designated the area set aside by Peccole for an 18-hole golf course as "Parks/Schools/ Recreation/Open Space." *Id.* at 248. That designation allowed "large public parks and recreation areas such as public and private golf courses, trails and easements, drainage ways and detention basins, and any other large areas of permanent open land." *Id.* at 234-35.

6. From 1992 to 1996, Peccole developed the 18-hole golf course in the location depicted in the 1992 General Plan, and a 9-hole course to the north of the 18-hole course. *Compare id.* at 248 *with* Ex. TT; *see also* Ex. J, UU. The 9-hole course was also designated "P" for "Parks" in the City's General Plan as early as 1998. *See* Ex. K. The Badlands 18-hole and 9-hole golf courses, totaling 250 acres, remain in the same configuration today. When the City Council adopted a new General Plan in 2000 to project growth over the following 20 years ("2020 Master Plan"), it retained the "parks, recreation, and open space" [PR-OS] designation. Ex. L at 265; compare *id.* at 269 with Ex. I at 234-35, 248. Beginning in 2002, the City's General Plan maps show the entire Badlands designated as PR-OS. Ex. M at 274-77.

7. In 2005, the City Council incorporated an updated Land Use Element in the 2020 Master Plan. Ex. N at 278-82. This 2005 Land Use Element designated all 27 holes of the

Badlands golf course as PR-OS for "Park/Recreation/Open Space." *Id.* at 291. Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged. *See* Ex. O at 292, 300-01 (Ordinance #6056 9/2/2009); Ex. P at 302-04, 316-17 (Ordinance #6152 5/8/2011); Ex. Q at 318, 331-32 (Ordinance #6622 6/26/2018).

III. The R-PD7 zoning of the Badlands

8. In 1972, the City established R-PD7 zoning (Residential-Planned Unit Development, 7 units/acre). Ex. R. "The purpose of a Planned Unit Development [was] to allow a maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan." *Id.* at 333. The "PD" in R-PD stands for "Planned Development." Planned Development zoning, generally applicable to larger development sites, "permits planned-unit development by allowing a modification in lot size and frontage requirements under the condition that other land in the development be set aside for parks, schools, or other public needs." *Zoning*, *Black's Law Dictionary* (11th ed. 2019). The R-PD district in the Las Vegas Uniform Development Code was intended "to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and a homogeneity of use patterns." Ex. R at 333. "As a[n R-PD7] Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations." Ex. ZZZ at 1414-15.

9. During the 1990's, the City approved rezoning requests by a resolution of intent, meaning that a rezoning was provisional until the rezoned property was developed. Once rezoned property was developed, the City would adopt an ordinance amending the Official

Zoning Map Atlas to make the rezoning permanent. *See, e.g.* Ex. S at 341. In 1990, the City adopted a resolution of intent to rezone the 996.4 acres in Phase II in accordance with the amended PRMP. Ex. H at 189-94. To obtain the City Council's approval of tentative R-PD7 zoning for housing lining the fairways of a golf course, Peccole agreed to set aside 211.6 acres for a golf course and drainage. *Id.* at 159, 163-165, 167-168, 171-172, 187-188.

10. In 2001, the City amended the Zoning Map to rezone to R-PD7 the Phase II property previously approved for R-PD7 zoning under the resolution of intent. Ex. T at 345-61. In 2011, the City discontinued the R-PD zoning district for new developments, replacing the R-PD zoning category with "PD." The City, however, did not alter the R-PD7 zoning of the Badlands and surrounding residential areas of Phase II. Ex. U at 363.

IV. The Developers due diligence in acquiring the Badlands property

11. The principals of the Developer are accomplished and professional developers that have constructed more homes and commercial development in the vicinity of the 65-Acre Property than any other person or entity and, through this work, gained significant information about the entire 250-Acre Residential Zoned Land (which includes the 65-Acre Property).[2] *LO Appx. Ex. 22*, Decl. Lowie. They have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) multiple commercial shopping centers to name a few. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 2. The Developer principles live in the Queensridge common interest community and One Queensridge Place (which is adjacent to the 250 Acre Residential Zoned Land) and are

[2] Yohan Lowie, one of the Landowners' principles, has been described as the best architect in the Las Vegas valley. *LO Appx. Ex 21* at 00418-419.

the single largest owners within both developments having built over 40% of the custom homes within Queensridge. Id.

12. In 1996, the principals of the Developer began working with William Peccole and the Peccole family (referred to as "Peccole") to develop lots adjacent to the 250-Acre Residential Zoned Land within the common interest community commonly known as "Queensridge" (the "Queensridge CIC") and consistently worked together with them in the area on property transactions thereafter. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 3.

13. In or about 2001, the principals of the Developer learned from Peccole that the Badlands Golf Course was zoned R-PD7. *LO Appx. Ex 22*, Decl. Lowie, at 00535, p. 2, para. 4. They further learned that Peccole had never imposed any restrictions on the use of the 250-Acre Property and that the 250-Acre Property would eventually be developed. Id. Peccole further informed the Developer that the 250-Acre Residential Zoned Land is "developable at any time" and "we're never going to put a deed restriction on the property." Id. The Land abuts the Queensridge CIC. Id.

14. In or about 2001, the principals of the Developer retained legal counsel to confirm Peccoles' assertions and counsel advised that the 250-Acre Residential Zoned Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Queensridge Covenants, Conditions and Restrictions (the "CC&Rs") they had no right to interfere with the development of the 250-Acre Residential Zoned Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 5.

15. In 2006, Mr. Lowie met with the highest ranking City planning official, Robert Ginzer, and was advised that: 1) the entire 250-Acre Residential Zone Land is zoned R-PD7; and, 2) there is nothing that can stop development of the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

16. With this knowledge and understanding, the principals of the Developer then obtained the right to purchase all five separate parcels that made up the 250-Acre Residential Zoned Land and continued their due diligence and investigation of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

17. In November 2014, the Developer was given six months to exercise their right to purchase the 250-Acre Residential Zoned Land and conducted their final due diligence prior to closing on the acquisition of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2-3, para. 6. The Developer met with the two highest ranking City Planning officials at the time, Tom Perrigo and Peter Lowenstein, and asked them to confirm that the entire 250-Acre Residential Zoned Land is developable and if there was "anything" that would otherwise prevent development and the City Planning Department agreed to do a study that took approximately three weeks. Id.; *LO Appx. Ex. 23* at 00559-560, pp. 66-67; 69:15-16; 70:13-16 (Lowie Depo, Binion v. Fore Star).

18. After three weeks the City Planning Department reported that: 1) the 250-Acre Residential Zoned Land was hard zoned and had vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250-Acre Residential Zoned Land can develop the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00536, p. 3, para. 8; *LO Appx. Ex. 23* at 00561, pp. 74-75, specifically, 75:13; 74:22-23; 75:12 (Lowie Depo, Binion v. Fore Star).

19. The Developer requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the entire 250-Acre Residential Zoned Land prior to closing on the acquisition of the property. *LO Appx. Ex 22*, Decl. Lowie, at 00536, p. 3, para. 9. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that

district. (Example, R-PD4 allows up to four units per gross acre.);" and, 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Id.; *LO Appx. Ex. 23* at 00561-562, pp. 77:24-25, 80:20-21.

20. Their due diligence now complete, Developer was ready to complete the acquisition of the subject property.

V. The Developer's acquisition and segmentation of the Badlands property

21. In early 2015, Peccole owned the Badlands through a company known as Fore Stars Ltd ("Fore Stars"). Ex. V at 365-68; Ex. VV. In March 2015, the Developer acquired Fore Stars, thereby acquiring the 250-Acre Badlands. Ex. W at 379; Ex. AAA. At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. Ex. QQQ at 1160; Ex. X at 382-410; Ex. XX. The Developer transferred 178.27 acres to 180 Land Co. LLC ("180 Land") and 70.52 acres to Seventy Acres LLC ("Seventy Acres"), leaving Fore Stars with 2.13 acres. Ex. W at 379; *see also* Ex. V at 370-77. Each of these entities is controlled by the Developer's EHB Companies LLC. *See* Ex. V at 371 and 375 (deeds executed by EHB Companies LLC). The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands. *See* Ex. HH; Ex. BBB; Ex. LL; Ex. Z. At issue in this case is a 65-Acre parcel of the Badlands owned by 180 Land, Fore Stars, and Seventy Acres (the "65-Acre Property"). *See* Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation filed Sept. 5, 2018 ("Compl.") ¶ 7.

VI. The City's approval of 435 luxury housing units on the 17-Acre Property

22. In November 2015, the Developer, acknowledging the need to make application to the City in order to develop a parcel of property, applied for a General Plan Amendment, Re-Zoning, and Site Development Plan Review to redevelop the 17-Acre Property from golf course use to luxury condominiums ("17-Acre Applications"). Ex. Z at 446-66. The 17-Acre Applications sought to change the General Plan designation from PR-OS, which did not permit residential development, to H (High Density Residential) and the zoning from R-PD7 to R-4 (High Density Residential). *Id.* at 449-52. The Planning Staff Report for the 17-Acre Applications noted that the proposed development required a Major Modification Application to amend the PRMP. Ex. AA at 470. In 2016, the Developer submitted a Major Modification Application and related applications, but later that year withdrew the applications. Ex. BB at 483-94; Ex. CC.

23. In February 2017, the City Council approved the 17-Acre Applications for 435 units of luxury housing and approved a rezoning to R-3, along with a General Plan Amendment to change the land use designation from PR-OS to Medium Density Residential. Ex. DD at 586, 587-89, 591-97; Ex. SSS. In approving the 17-Acre Applications, the City did not require the Developer to file a Major Modification Application.

VII. The homeowners' challenge to the City's approval of the 17-Acre Applications

24. After the City approved the 17-Acre Applications, nearby homeowners filed a Petition for Judicial Review of the City's approval, which was assigned to Judge Crockett in Department 24. Ex. EE at 599, 609 (the "Crockett Order"). On March 5, 2018, Judge Crockett granted the homeowners' petition over the objection of both the Developer and the City, vacating the City's approval on the grounds that the City Council was required to approve a Major Modification Application before approving applications to redevelop the Badlands. *Id.* at 598, 610-11. The Developer appealed the Crockett Order. *See* Ex. DDD.

Although the City did not appeal the Crockett Order, it did file an amicus brief in support of the Developer's position that a Major Modification Application was not required. Ex. CCC.

25. Following Judge Crockett's decision invalidating the City's approval, the Developer filed a lawsuit (the 17-Acre case) against the City, the Eighth Judicial District Court, and Judge Crockett. Ex. GG at 631, 632, 639. The City removed that case to federal court. Following a remand order, the 17-Acre case is now pending before Senior Judge James Bixler. On December 9, 2020 Judge Bixler denied the City's motion to dismiss the 17-Acre Complaint.

26. Ultimately, the Nevada Supreme Court reversed Judge Crockett's decision granting the Petition for Judicial Review. In its Order of Reversal filed March 5, 2020, the Nevada Supreme Court found that a Major Modification Application was not required to develop the 17-Acre Property because the City's UDC required Major Modification Applications for property zoned PD, but not property zoned R-PD. Ex. DDD. The Supreme Court subsequently denied rehearing and en banc reconsideration and issued a remittitur, rendering its determination final. Ex. EEE. The Supreme Court's decision was consistent with the City's argument in the District Court in support of it's granting of Developer's application, and in its amicus brief that a Major Modification Application was not required to develop the 17-Acre Property. Ex. CCC at 1003-06. The District Court thereafter, consistent with the Nevada Supreme Court's decision, entered an Order on November 6, 2020, denying the petition for judicial review. *See* Ex. RRR.

27. The Nevada Supreme Court's reversal of the Crockett Order reinstated the City's approval of the Developer's applications to develop the 17-Acre Property. Ex. DDD. The City provided the Developer with notice of that fact by letter on March 26, 2020. Ex. FFF at 1019. The City's letter explained that once remittitur issued in the Nevada Supreme Court's order of reversal, "the discretionary entitlements the City approved for [the Developer's] 435-unit project on February 15, 2017 . . . will be reinstated." *Id.* The City also notified the Developer that the approvals would be valid for two years after the date of the

remittitur. *Id.* On September 1, 2020, the City notified the Developer that the Nevada Supreme Court had issued remittitur, the City's original approval of 435 luxury housing units on the 17-Acre Property had been reinstated, and the Developer is free to proceed with its development project. Ex. GGG at 1021. The City again notified the Developer that the approvals would be extended for two years after the date of the remittitur. *Id.*

VIII. The 35-Acre Applications

28. While the 17-Acre Applications were pending, the Developer filed applications to redevelop the 35-Acre Property ("35-Acre Applications"). Ex. HH; Compl. ¶ 32. On June 21, 2017, the City Council denied the 35-Acre Applications due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area. Ex. 46; *see also* Ex. II at 673-78. Developer did not submit a second application to develop the 35-Acre Property.

The Developer filed a petition for judicial review and complaint for a taking (the 35-Acre Property case), which was assigned to Judge Williams in Department 16. Ex. JJ at 680, 692. Judge Williams concluded that substantial evidence supported the Council's denial of the 35-Acre Applications, that Judge Crockett's Decision had preclusive effect, and the Developer had no vested right under the R-PD7 to approval of its application. Ex. KK at 780-82, 789-92. The Developer filed an amended complaint alleging inverse condemnation claims, which is also currently pending before Judge Williams, following the City's removal to federal court and subsequent remand. *See 180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J.

IX. The Master Development Application

29. Before the City denied the 35-Acre Applications, the Developer sought a new Master Development Agreement (MDA) for the entire Badlands, including the 35-Acre Property. Ex. LL; Ex. II at 679. On August 2, 2017, the City Council disapproved the MDA by a vote of 4-3. Ex. MM at 880-82; Compl. ¶¶ 39, 42. The Developer did not seek judicial review of the City's decision to deny the development agreement.

X. The 133-Acre Applications

30. In October 2017, the Developer filed applications to redevelop the 133-Acre Property ("133-Acre Applications"). Compl. ¶ 46. On May 16, 2018, after the Crockett Order but before the Nevada Supreme Court's reversal of said order, the City Council voted to strike the 133-Acre Applications as incomplete because they did not include an application for a Major Modification, as the Crockett Order required. Compl. ¶¶68, 77, 85; Ex. BBB at 989-98.

31. The Developer filed a petition for judicial review (the 133-Acre Property case) challenging the City's action to strike the 133-Acre Applications and a complaint for a taking and other related claims. That action was assigned to Judge Sturman in Department 26, who dismissed the petition for judicial review on the grounds that the parties were bound by the Crockett Order and, therefore, the Developer's failure to file a Major Modification Application was valid grounds for the City to strike the application. Judge Sturman allowed the Developer's inverse condemnation claims to proceed. Ex. NN. The City removed the case to federal court, and it has since been remanded back to state court.

XI. The 65-Acre Applications

32. To date, there has been no evidence presented to the court that Developer has submitted any development applications to the City for consideration of a proposed development of the individual 65-Acre parcel. As noted above, there was a Master

Development application, Ex. LL; Ex. II at 679, that was eventually denied by the City but no individual applications for the 65-Acre property.

XII. The increase in value of the Badlands due to the City's approval of 435 units on the 17-Acre Property

33. Under the Membership Purchase and Sale Agreement between the Peccole Family and the Developer, the Developer purchased the 250-Acre Badlands Golf Course for $7,500,000, or $30,000 per acre ($7,500,000/250 acres = $30,000). Ex. AAA at 966. This figure does not represent the total cost to Developer as there were clearly monies spent during its due diligence process (Developer has stated that the total cost for due diligence and purchase was $45 million). $7,500,000 is however the stated figure, per the Purchase and Sale Agreement, that Developer paid for the actual property. Ex. UUU at 1300.

34. The Developer contends in its Initial Disclosures that if the Badlands can be developed with housing, it is worth $1,542,857 per acre. Ex. JJJ at 1135-36.[3] Thus, according to the Developer's own evidence, the City's approval of 435 housing units in the Badlands has increased the value of the 17-Acre Property alone to $26,228,569 (17 x $1,542,857 = $26,228,569), thereby quadrupling the Developer's property purchase investment in the Badlands. Furthermore, the Developer still owns the remaining 233 acres with the potential to continue golf course use or develop the remaining acreage.

35. Even if the Developer paid $45 million for the Badlands as it contends, or $180,000/acre ($45,000,000/250 acres = $180,000/acre), the City's approval of 435 housing units in the Badlands has increased the value of the Badlands by $23,168,569 (the City's approval improved the value of each acre in the 17-Acre Property from $180,000 to

[3] The Developer's Initial Disclosures in the 35-Acre case make the same claim. Ex. VVV at 1319. Both initial disclosures are based in part on the Lubawy appraisal of 70 acres of the Badlands that includes the entire 17-Acre Property and a portion of the 65-Acre Property. Ex. QQQ at 1165. The Lubawy appraisal assumed that the land being appraised could be developed with medium density housing. *Id.* at 1196-97.

$1,542,857, an increase of $1,362,857 per acre ($1,362,857 x 17 = $23,168,569).

CONCLUSIONS OF LAW

The instant motion and countermotion pose three areas of inquiry for the court's consideration. First, a discussion of the legal frame work surrounding the issue of a regulatory taking. Second, a discussion of whether or not the instant claims by the Developer are ripe for court action. And third, if necessary, a discussion of the merits of the Developer's claims under summary judgment standards.

I. The Legal Framework

A. City's liability for a regulatory taking is a question of law

1. Under NRCP 56(a), summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The non-moving party must "'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Id.* (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110 825 P.2d 588, 591 (1992)).

2. Whether the government has inversely condemned private property is a question of law. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

B. A regulatory taking requires extreme interference with the use or value of property

1. Courts generally defer to the exercise of land use regulatory powers by the legislative and executive branches of government

3. In the United States, planning commissions and city councils have broad authority to limit land uses to protect health, safety, and welfare. Because the right to use land for a

particular purpose is not a fundamental constitutional right, courts generally defer to the decisions of legislatures and administrative agencies charged with regulating land use. The United States Supreme Court declared that the Court does "not sit to determine whether a particular housing project is or is not desirable," since "[t]he concept of the public welfare is broad and inclusive." *Berman v. Parker*, 348 U.S. 26, 33 (1954). Instead, where the legislature and its authorized agencies "have made determinations that take into account a wide variety of uses," it is "not for [the courts] to reappraise them." *Id.*

4. The role of the courts in overseeing land use regulation is limited to cases of the most extreme restrictions on the use of private property under the regulatory takings doctrine. The narrow scope of the doctrine stems from the separation of powers between the legislative and executive branches of government and the judicial branch. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937) (judicial restraint respects the political questions doctrine and separation of powers because it requires that the courts refrain from replacing the policy judgments of lawmakers and regulators with their own with regard to non-fundamental constitutional rights); *Gorieb v. Fox*, 274 U.S. 603, 608 (1926) ("State Legislatures and city councils, who deal with the situation from a practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions . . . require; and their conclusions should not be disturbed by the courts, unless clearly arbitrary and unreasonable.").

5. Nevada's Constitution expressly prohibits any one branch of government from impinging on the functions of another. *Secretary of State v. Nevada State Legislature,* 120 Nev. 456, 466, 93 P.3d 746, 753 (2004). The Nevada State Constitution provides that the state government "shall be divided into three separate departments" and prohibits any person authorized to exercise the powers belonging to one department to "exercise any functions, appertaining to either of the others" except where expressly permitted by the Constitution. Nev. Const. art. 3 § 1.

6. Separation of powers "is probably the most important single principle of government." *Blackjack Bonding v. Las Vegas Mun. Ct.,* 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Within this framework, Nevada has delegated broad authority to cities to regulate land use for the public good. The State has specifically authorized cities to "address matters of local concern for the effective operation of city government" by "[e]xpressly grant[ing] and delegat[ing] to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government." NRS 268.001(6), (6)(a).

7. "Matters of local concern" include "[p]lanning, zoning, development and redevelopment in the city." NRS 268.003(2)(b). "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land." NRS 278.020(1); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 254, 439 P.2d 219, 222 (1968) (upholding a county's authority under NRS 278.020 to require an applicant for a special use permit to present evidence that the use is necessary to the public health and welfare of the community).

8. As a charter city, the City has the right to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within those districts" and "[e]stablish and adopt ordinances and regulations which relate to the subdivision of land." Las Vegas City Charter § 2.210(1)(a), (b). Cities in Nevada limit the height of buildings, the uses permitted and the location of uses on property, and many other aspects of land use that could have an impact on the community. *See, e.g.*, *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 239, 871 P.2d 320, 321 (1994) (upholding City's denial of building permit application); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 641, 224 P.2d 309, 311 (1950) (upholding Reno ordinance establishing land use plan and restricting use of land).

2. To avoid encroaching on the responsibilities and authority of other branches of government, courts intervene in land use regulation only in cases of extreme economic burden on the property

9. In its Third through Seventh Causes of Action, the Developer alleges a variety of types of takings under the Fifth Amendment of the United States Constitution, which provides "nor shall private property be taken for public use, without just compensation," and its counterpart in Article 1, Section 8 of the Nevada Constitution. The Just Compensation Clause of the Fifth Amendment was originally intended to require compensation only for eminent domain – *i.e.*, direct government takings. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992). In 1922, the Supreme Court held that a regulation that "goes too far," such that it destroys all or nearly all of the value or use of property, equivalent to an eminent domain taking, can require the regulatory agency to compensate the property owner for the value of the property before the regulation was imposed. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 539 (2005). This type of inverse condemnation that does not involve a physical occupation of private property by the government, but rather alleges excessive regulation of the property owner's use of the property, is known as a "regulatory taking."[4] Under separation of powers, however, courts intervene in regulation of land use by the legislative and executive branches of government only in cases of (1) extreme regulation where the economic impact of the regulation is equivalent to an eminent domain taking, wiping out or nearly wiping out the use of value of the property, similar to a physical ouster of the owner by eminent domain, or (2) interference with reasonable investment-backed expectations. *Lingle*, 544 US. at 539 (categorical and *Penn Central* regulatory takings test both "aim[] to identify regulatory actions that are

[4] The Developer conflates eminent domain and inverse condemnation. The two doctrines have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken. In inverse condemnation, by contrast, the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation.

functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain").[5]

10. The Nevada Supreme Court has established an identical test, requiring an extreme economic burden to find liability for a regulatory taking. *State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35 (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").

11. The Developer cites to numerous statements and actions of the City Council, individual Council members, City officials, and City staff that the Developer contends were unfair to the Developer. Because courts defer to the authority of local government to regulate land use for the public good, the regulatory takings doctrine is not concerned with the soundness or fairness of government regulation of land use. Because the regulation is presumed valid in regulatory takings cases, it is inappropriate to delve into the validity of or the motives underlying the regulation:

> The notion that . . . a regulation nevertheless "takes" private property for public use merely by virtue of its ineffectiveness or foolishness is untenable. [The] inquiry [as to a regulation's validity] is logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose. The Clause expressly requires compensation where government takes private property "for public use." It does not bar government from interfering with property rights, but

[5] In settling the test for a regulatory taking, *Lingle* resolved inconsistencies in prior federal and state court decisions. The *Lingle* opinion was unanimous and had no footnotes, indicating that the Supreme Court intended to bring clarity and simplicity to the regulatory takings doctrine.

> rather requires compensation "in the event of otherwise proper interference amounting to a taking.

Lingle, 544 U.S.at 543 (citing *First English Evangelical Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 315 (1987)); *cf. Sproul Homes of Nev. v. State ex rel. Dept. of Highways*, 96 Nev. 441, 445, 611 P.2d 620, 622 (1980) (judicial interference by mandamus, not by inverse condemnation, is appropriate if an agency's action was arbitrary or accompanied by manifest abuse). Assuming the truth of the Developer's allegations regarding the statements and actions of the City Council, individual Council members, City officials, and City staff, they are not relevant unless they can be shown to result in a wipeout or near wipeout of use and value or interfere with the Developer's reasonable investment-backed expectations.

12. A requirement that regulatory agencies pay compensation to property owners for regulation short of a wipeout would encroach on the powers of the legislative and executive branches of government to regulate land use to promote the general health, safety, and welfare. *Lingle*, 544 U.S. at 544 ("[R]equir[ing] courts to scrutinize the efficacy of a vast array of state and federal regulations" to determine whether they substantially advance legitimate state interests is "a task for which courts are not well suited. Moreover, it would empower-and might often require-courts to substitute their predictive judgments for those of elected legislatures and expert agencies."); *id.* at 537 (recognizing compensable regulatory takings only when the effect of government regulation is tantamount to a direct appropriation or ouster). As a result, a regulation is not a taking unless it virtually wipes out all the economic value or use of the property, because only then is it the functional equivalent of eminent domain. *Id.* at 539. Moreover, a standard for public liability for a regulatory taking that merely reduces the use or value of private property without destroying the use or value would lose its connection to the United States and Nevada Constitutions because that regulation would not be the functional equivalent of an eminent domain taking. *Id.* at 539.

13. Complying with government regulation, like the alleged regulation of the redevelopment of the Badlands in this case, is simply a cost of doing business in a complex society. "'[G]overnment regulation—by definition—involves the adjustment of rights for the public good.'" *Id.* at 538 (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)); *see also Mahon*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 133 (1978) ("Legislation designed to promote the general welfare commonly burdens some more than others.").

3. The Developer alleges a categorical and *Penn Central* regulatory taking

14. The Developer has alleged two types of regulatory takings: categorical and *Penn Central*. A categorical taking occurs either when a regulation results in a permanent physical invasion of property, or when a regulation "completely deprive[s] an owner of 'all economically beneficial us[e]' of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas*, 505 U.S. at 1019). A *Penn Central* taking is determined based on review of several factors; "[p]rimary" among them is "'[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.'" *Id.* at 538-39 (quoting *Penn Central*, 438 U.S. at 124. "[E]conomic impact is determined by comparing the total value of the affected property before and after the government action." *Colony Cove Props. v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). Under both the categorical and the *Penn Central* takings tests, the only regulatory actions that cause takings are those "that are functionally equivalent to the classic taking in

which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.[6]

15. To be the functional equivalent of eminent domain, the challenged regulatory action must cause a truly "severe economic deprivation" to the plaintiff. *Cienega Gardens v. United States*, 503 F.3d 1266, 1282 (Fed. Cir. 2007); see also *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (81% diminution in value not sufficient to show a taking); *Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) (citing cases in which diminutions of 75% and 92.5% insufficient to show a taking); *William C. Haas & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117, 1120 (1979) (95% diminution not a taking); *Pace Res., Inc. v. Shrewsbury Twp.*, 808 F.2d 1023, 1031 (3d Cir. 1987) (89% diminution in property value not a taking); *Brace v. United States*, 72 Fed. Cl. 337, 357 (2006) ("diminutions well in excess of 85 percent" required to show a taking).

16. The Developer cites several federal cases finding a taking even where the diminution in value was less than 100%. *E.g.*, *Formanek v. United States*, 26 Cl.Ct. 332 (Fed. Cl. Ct. 1992) (finding a taking where government action resulted in 88% decline in value). Even though the Developer's cases were decided before *Lingle* clarified the regulatory takings doctrine in 2005 to require that liability for a taking can be found only where government action wipes out or nearly wipes out the economic value of property, the cases cited did require a near wipeout of value before a finding of a taking.

17. The Developer also relies on *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007); *Sisolak*, 137 P.3d 1110; *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23

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[6] The Developer's "categorical" and "regulatory per se" takings are the same thing. The majority in *Lucas v. S.C. Coastal Council* classified economic wipeouts and physical takings resulting from government regulation as "categorical" takings, while the dissent characterized the same test as a "per se" standard. 505 U.S. at 1015, 1052 (Blackmun, J., dissenting). A unanimous Supreme Court in *Lingle* also uses the terms interchangeably. 544 U.S. at 538. Similarly, the Nevada Supreme Court in *Sisolak* refers to physical takings interchangeably as "categorical" and "per se." 122 Nev. at 662-63, 137 P.3d at 1122-23).

(2012); *ASAP Storage v. City of Sparks*, 123 Nev. 639 (2008); and *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327 (9th Cir. Ct. App. 1977) for the contention that regulation that "substantially impairs" or "direct[ly] interfere[s] with or disturb[s]" the owner's property can give rise to a regulatory taking. These cases are physical takings cases (*Tien, Sisolak, Arkansas*, and *ASAP*) or precondemnation cases (*Richmond*) and are inapplicable. The Developer also contends that takings are defined more broadly in Nevada than in federal law, citing *Vacation Village, Inc. v. Clark County*, 497 F.3d 902 (9th Cir. 2007). *Vacation Village*, however, concludes only that physical takings are broader in Nevada, not regulatory takings, citing *Sisolak. Id.* at 915-16. The scope of agency liability for regulatory takings in Nevada is identical to the federal standard. *See State*, 131 Nev. at 419, 351 P.3d at 741 (2015); *Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034; *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35.

18. To support its contention that the test for a regulatory taking is less deferential to the agency action than as established in *Lingle*, *Penn Central*, *Concrete Pipe*, *Colony Cove*, *State*, *Kelly*, and *Boulder City*, the Developer cites to a 2008 amendment to Article 1, Section 22 of the Nevada Constitution to allow owners of property taken by eminent domain to recover for damage to their property from the construction of a public improvement. This amendment concerns eminent domain and has no bearing on the test for a regulatory taking claim.

19. The Developer claims that the City has taken the 65-Acre Property because it did not comply with NRS 37.039, which sets out requirements for agencies exercising eminent domain to acquire property for open space. Because the City did not condemn the 65-Acre Property or any other portion of the Badlands, this statute does not apply.

II. The Ripeness Issue

20. A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is

also denied. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985), *overruled on other grounds by Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) ("*Williamson County*"); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) ("[T]he final decision requirement is not satisfied when a developer submits, and a land-use authority denies, a grandiose development proposal, leaving open the possibility that lesser uses of the property might be permitted."); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351-53 (1986) (at least two applications required to ripen takings claim).

21. The Nevada Supreme Court has fully embraced the final decision requirement:

> Generally, courts only consider ripe regulatory takings claims, and "a claim that the application of government regulations effects a taking of a property interest ***is not ripe until the government entity*** charged with implementing the regulations ***has reached a final decision regarding the application*** of the regulations to the property at issue. . . [The] regulatory takings claim is unripe for review for a failure to file any land-use application with the City. And although Ad America contends that exhaustion was futile because there was a de facto moratorium on developing property within Project Neon's path, the record does not support this contention. The opinion of Ad America's political consultant, which was based on alleged statements from only one of seven City Council members, is insufficient to establish the existence of such a moratorium." (emphasis added).

State v. Eighth Jud. Dist. Ct., 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Because the Nevada Supreme Court follows *Williamson County*, the courts of this state require that at least two applications be denied before finding that a regulatory takings claim is ripe.

22. A regulatory takings claim is not ripe unless it is "clear, complete, and unambiguous" that the agency has "drawn the line, clearly and emphatically, as to the sole use to which [the property] may ever be put." *Hoehne v. County of San Benito*, 870 F.2d 529, 533 (9th Cir. 1989). The property owner bears a heavy burden to show that a public agency's decision to restrict development of property is final. *Id.*

23. The Developer has failed to meet its burden to show that its regulatory takings claims are ripe. The Nevada Supreme Court requires that a regulatory takings claimant file at least two applications to develop "the property at issue." *State*, 131 Nev. at 419-20, 351 P.3d at 742.

24. The Developer filed this action seeking damages for a taking of the 65-Acre Property only. *See* Compl. ¶7. The Developer has submitted no evidence that it has filed any application, much less two or more, to redevelop the individual 65-Acre Property, and obviously, no subsequent application for a variance, reduced density, or alternate project. As such, Developer has provided City with no individual 65-Acre Property application to consider and the City cannot be said to have reached a "clear, complete, and unambiguous" decision and that the City has "drawn the line, clearly and emphatically, as to the sole use to which [the 65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533.

25. It can certainly be said that Developer may have very well been frustrated with what had occurred. Its first application was approved, only to then find itself being sued by a group of homeowners, thereafter receiving an unfavorable District Court ruling necessitating a Nevada Supreme Court appeal and the perceived need to file multiple lawsuits. That frustration does not, however, excuse the necessity of first making application to develop the 65-Acre Property before filing the instant case against the City alleging a taking of that property. This is especially true where, as here, Developer chose to file four separate court actions specifically directed at each individual parcel of property that Developer alleged was taken.

26. It must also be noted that fifty percent (50%) of Developer's applications directed to the individual properties were approved. Their first application for the 17-Acre Property was approved by the city. The application for the 35-Acre Property was denied. The application for the 133-Acre Property was deemed incomplete because of the then controlling Crockett Order and it was never resubmitted. And, as stated above, no application was ever submitted for the 65-Acre Property at issue in the instant case.

27. This court holds that any argument that proffering a development proposal for the 65-Acre Property would be futile is without merit as the City approved fifty percent (50%) of the individual applications it received, and felt it had legal authority to consider. This court would be engaging in inappropriate speculation were it to try and guess at what type of proposal Developer would have made for the 65-Acre Property and what type of response the City would have provided.

28. The Developer argued that the denial of the Master Development Agreement (MDA) also plays into the futility argument but the court finds that stance to be unpersuasive. To begin, the MDA was made after the individual 17-Acre Property proposal was made (which was approved) and after there was an application pending before the City for the development of the individual 35-Acre Property. Any denial of the MDA proposal while multiple individual proposals were pending and/or already approved cannot be said to be at all unreasonable. Moreover, even if the MDA denial was considered as part of the futility argument, the City would still have granted one-third (1/3) of the Developer's three proposals with the fourth proposal being deemed incomplete. As such, Developer's argument still places this court in the position of having to speculate about a possible 65-Acre Property proposal and the possible response by the City. Lastly, Developer made its 133-Acre Property application after the City denied the MDA. As such, it is clear that Developer did not believe that the MDA denial rendered further individual property development applications futile, rather, Developer chose to only proceed with the application for the 133-Acre Property.

29. The City's actions simply cannot be said to have been so "clear, complete, and unambiguous" as to excuse the need for Developer to propose a development plan for the 65-Acre Property before Developer made the choice to seek court intervention for that specific parcel of property.

30. To the extent Developer argues that the approval of the 17-Acre Property was somehow vacated and therefore no applications could be said to have been granted by the

City, the Court finds this position to also be without merit. There is no evidence that the City has taken any action to limit the Developer's proposed use of the 17-Acre Property for 435 luxury housing units. The Developer's contention that the City "nullified" the 435-unit approval is without any support in the evidence. The Developer's contention that the City's declining to extend the 17-Acre approvals after Judge Crockett invalidated the approvals means that the City "nullified" the approvals is frivolous. The City supported Developer and opposed Judge Crockett's Order at the trial court level and in the Nevada Supreme Court, where the City filed an amicus brief requesting that the Supreme Court reverse the Crockett Order and reinstate the 17-Acre Property approvals. Ex. CCC.

31. Prior to the Supreme Court's Order of Reversal, the 17-Acre Property approvals were legally void and there was nothing to extend. If the City had attempted to extend the approvals, the City could arguably have been in contempt of Judge Crockett's Order. *See* NRS 22.010(3) (disobedience or resistance to any lawful writ or order issued by the court shall be deemed contempt); *see also Edwards v. Ghandour*, 123 Nev. 105, 116, 159 P.3d 1086, 1093 (2007) (a judgment has preclusive effect even when it is on appeal), *abrogated on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (2008). After the Supreme Court reinstated the approvals, the City had no power to nullify the approvals even if it had intended to do so. And it evidenced no intent to do so. To the contrary, upon reinstatement, the City twice wrote to the Developer extending the approvals for two years after the date of the remittitur. Ex. FFF at 1019; Ex. GGG at 1021. The Court accordingly rejects the Developer's argument that the City "nullified" the City's approval of 435 luxury housing units on the 17-Acre Property. All evidence establishes the opposite. The 17-Acre approvals are valid, and the Developer may proceed to develop 435 luxury housing units on the 17-Acre Property.

32. The Developer argues that it is not subject to the final decision ripeness rule adopted by the United States and Nevada Supreme Courts because the "taking is known." This argument is circular and is rejected. The Court cannot determine whether the City has

"gone too far" unless the City denies specific applications to develop the property.

33. The Developer also argues that the final decision ripeness requirement adopted in *State* and *Kelly* has been eliminated because takings are "self-executing," citing *Knick* and *Alper v. Clark County*, 93 Nev. 569, 572, 571 P.2d 810, 811-12 (1977). *Knick* had nothing to do with final-decision ripeness, nor would it because the claimant in *Knick* alleged a physical taking. A physical taking is not subject to final-decision ripeness. *Knick*, 139 S.Ct. at 2169 ("the validity of [the] finality requirement . . . is not at issue here." The only issue in *Knick* was whether takings claims could be brought in the first instance in federal court. *Id.* at 2179.

34. In *Alper*, the Nevada Supreme Court stated that, "as prohibitions on the state and federal governments," the taking clauses of the state and federal constitutions are "self-executing," meaning that "they give rise to a cause of action regardless of whether the Legislature has provided any statutory procedure authorizing one." 93 Nev. at 572, 571 P.2d at 811-12. Thus, the "self-executing" nature of the taking clauses means only that the taking clauses do not need to be implemented by statute. Being self-executing does not mean, as the Developer asserts, that payment of just compensation is automatically due without first satisfying the requirement to obtain a final agency decision. The Developer further contends that *Alper* proscribes the ripeness requirement as a "barrier[] or precondition[]" to a taking claim. To the contrary, the Nevada Supreme Court in *Alper* did not address the ripeness requirement of taking claims. Instead, it held that the state's Six Months' Claims Statutes codified in NRS 244.245 and NRS 244.250, which require that a claimant presents his or her claim to a County before suing the County, do not apply to actions in inverse condemnation. *Alper*, 93 Nev. at 570, 572.

35. The Developer asserts that its *Penn Central* regulatory taking claim is ripe because the City disapproved the Developer's MDA for the entire Badlands. The MDA, while it included parts of the 65-Acre Property, covered the entire 250-acre Badlands outside of the 17-Acre Property, development on which the City had already approved. Ex. LL at 801. It did not constitute an application to develop the 65-Acre Property standing alone,

which is "the property at issue." *See State*, 131 Nev. at 419. The City's denial of the MDA, therefore, is not considered an application to develop the 65-Acre Property for purposes of ripeness. Even assuming that it was an application to develop the 65-Acre Property standing alone, the Developer's regulatory takings claim would not be ripe until the Developer files at least one additional application. Again, the Developer has presented no evidence that it has done so.

36. The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. *See* Ex. LL at 810-19 (general outline of proposed development in the Badlands). The MDA divided the Badlands into four "Development Areas" and proposed permitted uses, maximum densities, heights, and setbacks for the four areas. *Id.* at 812, 814. For Development Areas 2 and 3, which contained portions of the 65-Acre Property, the MDA proposed a maximum residential density of 1,669 housing units, and the Developer was to have the right to determine the number of units developed on each Area up to the maximum density. *Id.* at 813-14. The indefinite nature of the MDA is also evident from the uncertainty expressed about various uses. For example: "[t]he Community is planned for a mix of single family residential homes and multi-family residential homes including mid-rise tower residential homes"; "[a]ssisted living facilit(ies) . . . may be developed within Development Area 2 or Development Area 3"; and "additional commercial uses that are ancillary to multifamily residential uses shall be permitted." *Id.* at 812. Finally, the MDA provided that [t]he Property shall be developed as the market demands . . . and at the sole discretion of Master Developer." *Id.* at 814. Accordingly, the MDA was not clear as to how many housing units would eventually be built in the 65-Acre Property. Nor was the City Council apprised by the MDA of the types and locations of uses, the dimensions or design of buildings, or the amount and location of access roads, utilities, or flood control on the 65-Acre Property. *See id.* at 813-16.

37. Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper.

38. The MDA also did not constitute a valid set of land use applications for the 65-Acre Property. A development agreement is not a substitute for the required UDC Applications. The UDC states that "all the procedures and requirements of this Title shall apply to the development of property that is the subject of a development agreement." UDC 19.16.150(D). To develop the 65-Acre Property even after an MDA were approved, the Developer would be required to file a Site Development Review application and seek a General Plan Amendment. *See* Ex. LL at 819 (City would process "all applications, including General Plan Amendments, in connection with the Property"); *id.* at 820 ("Master Developer shall satisfy the requirements of the Las Vegas Municipal Code section 19.16.100 for the filing of an application for a Site Development Plan Review").

39. Developer had applied for the required Site Development Review and General Plan Amendment in applying for the original 17-Acre Property application and was therefore clearly aware of the requirements. The version of the MDA the City Council rejected on August 2, 2017 acknowledged that the Developer must comply with all "Applicable Rules," defined as the provisions of the "Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date." *Id.* at 804, 810. Similarly, the MDA indicated that the property would be developed "in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law." *Id.* at 802. Because the Developer did not submit any of the site-specific development applications related to the 65-Acre Property, the City Council's denial of the MDA did not constitute a final decision by the City Council regarding what development would be permitted on the 65-Acre Property.

40. The Developer contends that following the City's denial of the MDA, it would have been futile to file the UDC Applications to develop the 65-Acre Property. As with the earlier discussion on futility, the court finds Developer's position here to be unpersuasive. The Developer cites no evidence for its statement that the City insisted that the MDA was the only application it would accept to develop the 65-Acre Property. The Developer previously acknowledged that City Councilmembers expressed a preference for a holistic plan addressing the entire Badlands. Ex. WWW at 1323. Such a preference does not indicate a refusal to consider other options. Indeed, the City did consider—and approve—significant development on the 17-Acre Property within the Badlands, indicating that the City is open to considering development of this area.

41. The Developer contends that *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) supports the claim that it would be futile to file any application to develop the 65-Acre Property. In *Del Monte Dunes*, the City reviewed and denied five separate applications to develop the property, each of which proposed a lower density than the previous application. 526 U.S. at 695-96. The Court affirmed the Ninth Circuit's holding that the plaintiff had satisfied the final decision ripeness requirement. *Id.* at 698-99, 723. Unlike *Del Monte Dunes*, the Developer here has filed no application specific to the 65-Acre Property. Even if the MDA is considered an application, the ripeness rule applied in *Del Monte Dunes* requires at least a second application.

42. The Developer contends that this case is similar to *Del Monte Dunes* because the Developer conducted detailed and lengthy negotiations over the terms of the MDA with City staff and made many concessions and changes to the MDA requested by the staff before the MDA was presented to the City Council with the staff's recommendation of approval. Concessions and changes to the MDA requested by staff and a staff recommendation of approval, however, do not count for ripeness. The City Council, not the staff, is the decision-maker for purposes of a regulatory taking. An application must be made to the City Council, and if denied, at least a second application to the City Council must be made and denied

before a takings claim is ripe.

43. Furthermore, the Developer's reliance on Bills 2018-5 and 2018-24 in support of its claim of futility is misplaced. The bills imposed new requirements that a developer discuss alternatives to the proposed golf course redevelopment project with interested parties and report to the City and other requirements for the application to develop property. They were designed to increase public participation and did not impose substantive requirements for the development project, and did not prevent the Developer from applying to redevelop the 65-Acre Property. Moreover, the second bill was adopted in the Fall of 2018 after the Developer filed this action for a taking. As such, it could not have had any effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were also repealed in January 2020, and are therefore inapplicable to show futility. *See* Exs. LLL, MMM.

44. At the City Council hearing on the MDA, no Councilmember indicated that he/she would not approve development of the Badlands at a reduced density if the Developer submitted a revised development agreement. *See* Ex. WWW at 1365-70. The vote to deny the MDA was 4-3 (*id.* at 1370). Therefore, had a modified proposal been made regarding the MDA, it was only necessary for one of the four members who voted to deny the application to became satisfied with the proposed changes, for it to be approved. And it must be noted that two of the four City Councilmembers who voted against the MDA are no longer members. Indeed, four of the seven members of the City Council that heard the MDA are no longer on the Council.

45. Much of the commentary about the MDA from Councilmembers at the public hearing indicates that they may approve a lower density development. For example, Councilmember Coffin, who voted against the MDA, stated that he would support "some sort of development agreement" for the Badlands. Ex. WWW at 1327; *see also id.* at 1328 (Badlands "still could be developed if you paid attention to [preserving the desert landscape]"). Similarly, Councilmember Seroka, who voted to deny the MDA, noted that

three different drafts of the development agreement had been circulated in the previous week (*id.* at 1362); he had insufficient time to review and understand the version of the agreement before the City Council (*id.*); the proposed residential development was too dense (*id.* at 1361-62); and the development agreement contained no timeline for development of the Badlands (*id.* at 1363). Seroka explained that "a reasonable and equitable development agreement is possible, but this is not it," and that the Developer could resubmit a development agreement for the Council's consideration. *Id.* at 1365-66. Similarly, the majority of citizens testifying at the City Council hearing on the development agreement indicated not that they were opposed to all development of the Badlands, but rather that the density of residential development proposed in the agreement was excessive. *E.g.*, *id.* at 1339, 1344-45, 1350, 1353-55, 1357-60.

46. The City's disapproval of the MDA falls short of the "clear, complete, and unambiguous" proof that the agency has "drawn the line, clearly and emphatically, as to the sole use to which the [65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533. Even if the MDA were considered to be an initial application, Nevada law requires that the Developer file at least one additional application and have that denied before its regulatory takings claims are ripe for adjudication.

47. In sum, Developer chose to file applications to develop each of the three other individual properties at issue in the aforementioned cases, while also filing a MDA. Developer chose not to file any application for the individual 65-Acre Property at issue in this case before instituting this court action, which is specific to the individual 65-Acre Property. The City indicated a willingness to reasonably consider the applications and has granted one of the two individual applications that were proposed, while denying a third due to the then controlling Crockett Order. The City was not, however, given an opportunity to evaluate an application for the individual 65-Acre Property. The court does not find that filing an application for the 65-Acre Property would have been futile. Accordingly, the Court concludes that the Developer's categorical and *Penn Central* regulatory takings claims are

unripe and the Court has no jurisdiction over the claims. The Court grants summary judgment to the City on that ground.

III. The Remaining Issues

48. Because the court finds that the failure to have made an application to the City in regard to the development of the individual 65-Acre Property renders the Developer's claims in the instant case unripe, that decision is fatal to Developer's case and renders further court inquiry unnecessary.

49. Moreover, the court believes that addressing the merits of any of the remaining issues would be unwise as there are three companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect in the other pending court actions, much like the then controlling Crockett Order was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case.

ORDER

IT IS HEREBY ORDERED THAT the City's Motion for Summary Judgment is **GRANTED** and Developer's Countermotion is **DENIED** as **MOOT.**

Dated this 29 day of December 2020.

Douglas W. Herndon, District Court Judge

EXHIBIT “DDDD”

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(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendants.

Case No. A-18-780184-C

DECLARATION OF PETER LOWENSTEIN IN SUPPORT OF CITY OF LAS VEGAS'S OPPOSITION TO DEVELOPER'S BRIEFS RE EVIDENTIARY HEARING AND RENEWED MOTION FOR SUMMARY JUDGMENT

I, PETER LOWENSTEIN, declare as follows:

1. I am the Deputy Director of Planning for the City of Las Vegas. I have held this position since 2018 and have been an employee of the City's Planning Department since January 6, 2003. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I

make this declaration in support of the City of Las Vegas's Opposition to Developer's Briefs re Evidentiary Hearing and Renewed Motion for Summary Judgment.

Requirements for obtaining building permits for access and fencing

2. For a developer to build access or fencing on its property, either (a) the City must approve a Site Development Plan Review (SDR) application for the development project that addresses access and fencing, or (b) the developer must apply for a SDR specifically to build access and/or fencing. *See* Las Vegas Municipal Code (LVMC) 19.16.100(B)(1) (SDR is "required for all proposed development in the City").

3. If the City has approved an SDR for the project that adequately addresses construction of access and fencing, the developer can obtain a building permit for the access and fencing through the City.

4. If the developer has no approved SDR for the project, the developer must apply for an SDR to build access and fencing.

5. The Director of Planning has discretion to determine whether an SDR to build access and fencing requires Major or Minor Review. LVMC 19.16.100(C)(1)(b).

6. A Site Development Plan that requires Minor Review may be approved administratively by the Director of Planning. LVMC 19.16.100(F)(1). The Minor Review process is started by submitting a pre-application conference requestor a building permit application. LVMC 19.16.100(F)(2). Minor Site Development Plans for certain construction types, including on-site walls and fences, are to be submitted and reviewed as part of a building permit application. LVMC 19.16.100(F)(2)(a). Issuance of the building permit constitutes approval of the minor review. *Id.* Minor Site Development Plans for other kinds of development must be submitted in a Minor Site Development Plan Review application. LVMC 19.16.100(F)(2)(b).

7. A Site Development Plan requires a Major Review and a public hearing if it does not qualify for a Minor Review, if the Planning Commission or City Council has determined, through prior action, that the improvements shall be processed as a Major Review, or if the Director of Planning determines that it is necessary based on the proposed

development's impact on the land uses on the site or on surrounding properties. LVMC 19.16.100(G)(1). Major Review requires a pre-application conference, an application, drawings and plans, and a Planning Commission hearing. LVMC 19.16.100(G)(2).

8. An SDR to build access and fencing will require a major review if the Director of Planning determines that the construction of access or fencing could significantly impact the land uses on the site or on surrounding properties. LVMC 19.16.100(G)(1)(b).

The Developer's application for access

9. On February 15, 2017, the City approved the construction of 435 luxury housing units on the Developer's 17-Acre Property. At that time, the 17-Acre Property had existing physical access through other contiguous property owned by the Developer at two locations within the Badlands: on Rampart Boulevard and Alta Drive as shown in the attached diagram. *See* **Exhibit 1**. The City's 17-Acre Approval required a Traffic Impact Analysis prior to the issuance of any building or grading permits, including permits to construct additional access or fencing. *See* **Exhibit 2**.

10. On June 28, 2017, the Developer applied to build three additional access points to the Badlands, only one of which was on the 17-Acre Property. *See* **Exhibit 3**; *see also* **Exhibit 4**.

11. On August 24, 2017, the Acting Director of the Department of Planning informed the Developer that the proposed construction of additional access could significantly impact the land uses on the site or on surrounding properties and that a major development review would be required. *See* **Exhibit 5**.

12. The Developer never filed an application for major review of the additional access the Developer proposed for the Badlands.

The Developer's application for fencing

13. In June and July of 2017, the Developer discussed with the City Planning Department its intent to build fencing around the entire perimeter of the Badlands, without filing a request for an SDR. *See* **Exhibit 6**.

14. Per LVMC 19.16.100.F.2.a.iii, a minor Site Development Plan Review for on-site walls and fences is initiated by filing an application for a building permit.

15. On August 10, 2017, the Developer applied for a building permit for fencing around ponds on the Badlands, thereby initiating a minor SDR. *See* **Exhibit 7.**

16. On August 24, 2017, the Acting Director of the Department of Planning informed the Developer that the proposed fencing around the ponds could significantly impact the land uses on the site or on surrounding properties and that a major review would be required. *See* **Exhibit 7.**

17. On August 24, 2017, City Planning Staff provided the Developer with a pre-application checklist to initiate the major review process for an SDR for both the access and fencing permit requests. *See* **Exhibit 8.** City Planning Staff informed the developer that the submittal deadline for the SDR had been extended. *Id.*

18. The Developer never filed an application for major review to construct access or fencing. Accordingly, the City has not denied any Developer request to construct additional access to the Badlands or to install fencing.

Bill 2018-24

19. The City adopted Bill 2018-24 on November 7, 2018. **Exhibit 9** at 1554, 1567. The Bill imposed requirements on owners proposing to redevelop golf courses to provide certain studies of the impact of the conversion and to engage the community in discussion of their proposals. *Id.* at 1554.

20. The Bill also provided that if a golf course that would be subject to the Bill had ceased operations or would be ceasing operations, the City "may notify the property owner of the requirement to comply" with the Bill's requirements. *Id.* at 1563. Within thirty days after such notice, the property owner would be required to submit a closure maintenance plan. *Id.* Such a maintenance plan was required to "[p]rovide documentation regarding ongoing public access, access to utility easement, and plans to ensure that such access is maintained." *Id.* at 1564. The City never gave notice to the Developer to provide a maintenance plan for the Badlands under Bill 2018-24, and the Developer never provided

the City with such a maintenance plan. The Developer closed the Badlands golf course to the public in 2016. The City has never required the Developer to allow the public on the Badlands, either before or after the Developer closed the golf course. The City has never purported to give permission to any member of the public to occupy the Badlands.

City's Aerial Exhibits

21. The City's Exhibit SS is a true and correct copy of a 1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

22. The City's Exhibit TT is a true and correct copy of a 1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

23. The City's Exhibit UU is a true and correct copy of a 1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

24. The City's Exhibit VV is a true and correct copy of a 2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

25. The City's Exhibit WW is a true and correct copy of a 2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

26. The City's Exhibit XX is a true and correct copy of a 2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

27. The City's Exhibit YY is a true and correct copy of a 2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation

litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

28. The City's Exhibit ZZ is a true and correct copy of a 2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS).

29. The City's **Exhibit 1** is a true and correct copy of an aerial image showing the existing and proposed access to the Badlands property, and the area where the Developer proposed to construct fencing.

The pyramid showing that zoning is subordinate to the General Plan

30. Attached as **Exhibit 10** is a true and correct copy of Las Vegas City Council Ordinance No. 6056, adopted on September 2, 2009. In this ordinance, the City Council adopted the City of Las Vegas' Land Use & Rural Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan that had been approved by the City Council on August 5, 2009 (relevant excerpts from the Land Use & Rural Neighborhoods Preservation Element are also attached).

31. The pyramid graphic depicted in the attached excerpt along with the associated text has not changed since its adoption in 2009 and it is still in the Land Use & Rural Neighborhoods Preservation Element today.

32. Attached as **Exhibit 11** is a true and correct copy of documents submitted to the Las Vegas Planning Commission by Jim Jimmerson, an attorney for 180 Land Company, LLC, the property owner in this case, at the February 14, 2017 Planning Commission meeting. Mr. Jimmerson submitted these materials to the record for items 21-24 in support of 180 Land Company, LLC's application to develop housing on the 17-Acre Property that was pending before the Planning Commission at that meeting, including General Plan Amendment GPA-68385, Waiver WVR-68480, Site Development Plan Review SDR-68481, and Tentative Map TMP-68482.

33. Page 10 (CLV055489) of the attached **Exhibit 11** contains a diagram showing two pyramids; one pyramid is designated as "pre-zoning" and the second is designated as "post-zoning," and contains an "N/A" designation over the General Plan layer at the base of the pyramid. Although an asterisk on the title of this diagram points the reader to the Land Use & Rural Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan, this diagram containing two pyramids was not generated by the City or by any representative of the City. The two-pyramid diagram in Exhibit H was not and is not contained in any City ordinance, City Code, General Plan, or the Land Use & Rural Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan. On information and belief, this diagram was created by 180 Land Company, LLC or by its attorney.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on this 29th day of April, 2021, at Las Vegas, Nevada.

Peter Lowenstein, AICP

1366666.1

EXHIBIT “DDDD-9”

FIRST AMENDMENT

BILL NO. 2018-24

ORDINANCE NO. 6650

AN ORDINANCE TO AMEND LVMC TITLE 19 (THE UNIFIED DEVELOPMENT CODE) TO ADOPT ADDITIONAL STANDARDS AND REQUIREMENTS REGARDING THE REPURPOSING OF CERTAIN GOLF COURSES AND OPEN SPACES, CONSOLIDATE THOSE PROVISIONS WITH PREVIOUSLY-ADOPTED PUBLIC ENGAGEMENT PROVISIONS REGARDING SUCH REPURPOSING PROPOSALS, AND PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven G. Seroka

Summary: Amends LVMC Title 19 (the Unified Development Code) to adopt additional standards regarding the repurposing of certain golf courses and open spaces, and to consolidate those provisions with previously-adopted public engagement provisions regarding such repurposing proposals.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Ordinance No. 6289 and the Unified Development Code adopted as Title 19 of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, together with Ordinance No. 6617, are hereby amended as set forth in Sections 2 and 3 of this Ordinance. The amendments in those Sections are deemed to be amendments to Ordinance Nos. 6289 and the Unified Development Code adopted as Title 19, as well as to Ordinance No. 6617.

SECTION 2: Title 19, Chapter 16, Section 10, as amended by Ordinance No. 6617, is hereby amended to delete and repeal Subsection (G) thereof, and to reletter Subsections (H), (I) and (J) of LVMC 19.16.10 so that they are lettered, respectively, Subsections (G), (H) and (I).

SECTION 3: Title 19, Chapter 16, is hereby amended by adding thereto, at the appropriate location, a new Section 105, reading as follows:

19.16.105: Repurposing of Certain Golf Courses or Open Spaces

A. General. Except as otherwise provided in this Section, any proposal by or on behalf of a property owner to repurpose a golf course or open space, whether or not currently in use as such, is subject to the Public Engagement Program requirements set forth in Subsections (C) and (D), as well as the requirements

pertaining to the Development Review and Approval Process, Development Standards, and the Closure Maintenance Plan set forth in Subsections (E) to (G), inclusive. The requirements of this Section apply to repurposing a golf course or open space located within 1) an existing residential development, 2) a development within an R-PD District, 3) an area encompassed by a Special Area Plan adopted by the City, or 4) an area subject to a Master Development Plan within a PD District. For purposes of this Section, "repurposing" includes changing or converting all or a portion of the use of the golf course or open space to one or more other uses.

B. Exceptions. This Section does not apply to:

1. Any project that has been approved as part of the City of Las Vegas Capital Improvement Plan.

2. Any project that is governed by a development agreement that has been approved pursuant to LVMC 19.16.150.

3. The repurposing of any area that has served as open space pertaining to a nonresidential development where that open space functions as an area for vehicle parking, landscaping, or any similar incidental use.

4. The reprogramming of open space recreational amenities that simply changes or adds to the programming or activities available at or within that open space.

5. The repurposing of any area where the currently-required development application or applications to accomplish the repurposing already have been approved by the approval authority, with no further discretionary approval pending.

C. Public Engagement Program Requirements. In connection with the scheduling of a pre-application conference pursuant to LVMC 19.16.010(B)(5), the applicant for a repurposing project subject to this Section must provide to the Department in writing a proposed Public Engagement Program meeting the requirements of this Subsection (C). The requirements of Subsections (C) and (D) must be completed before the submission and processing of the land use application(s) to which the pre-application conference applies. A PEP shall include, at a minimum, one in-person neighborhood meeting regarding the repurposing

proposal and a summary report documenting public engagement activities. The applicant is encouraged, but not required, to conduct additional public engagement activities beyond those required by the preceding sentence. Additional public engagement activities may include, but are not limited to, the following components:

1. Applicant's Alternatives Statement. This document is designed to inform the Department and stakeholders about the applicant's options and intentions, including the following statements:

a. A statement summarizing the alternatives if the golf course or open space is not repurposed and the current use of the property ceases.

b. A statement summarizing the rationale for repurposing in lieu of continuing to operate or maintain the golf course or open space, or finding another party to do so.

c. A statement summarizing the proposal to repurpose the golf course or open space with a compatible use.

d. A statement summarizing how the applicant's proposal will mitigate impacts of the proposed land uses on schools, traffic, parks, emergency services, and utility infrastructure.

e. A statement summarizing the pertinent portions of any covenants, conditions and restrictions for the development area and the applicant's intentions regarding compliance therewith.

f. If applicable, a statement summarizing any negotiations with the City in regards to a new or amended Development Agreement for the area.

2. Neighborhood Meeting. The PEP shall include at a minimum the neighborhood meeting that is described in this Subsection (C). Notice of such meeting shall be provided in general accordance with the notice provisions and procedures for a General Plan Amendment in LVMC Title 19.16.030(F)(2), except that no newspaper publication is required and the providing of notice shall be the responsibility of the applicant rather than the City. The applicant shall develop a written plan for compliance with the notice requirements of the preceding sentence, which shall be submitted to the Department for review and approval in advance of implementation. The required neighborhood meeting must be scheduled to begin between the hours of 5:30 pm and 6:30 pm, except that the Department in particular cases may require that a meeting begin earlier

in the day to allow greater participation levels. Additional neighborhood meetings are encouraged, but not required.

3. Design Workshops. The applicant may provide conceptual development plans at design workshops and solicit input from stakeholder groups. The applicant is encouraged (without requirement or limitation) to provide separate design workshops for each of the following stakeholder groups, as applicable:

a. Owners of properties that are adjacent to the area proposed for repurposing;

b. The owners of all other property within the same subdivision (master subdivision, if applicable), Master Development Plan Area or Special Area Plan area; and

c. Local neighborhood organizations and business owners located within the same Master Development Plan Area or Special Area Plan area.

D. Summary Report. Upon completion of a PEP, the applicant shall provide a report to the Department detailing the PEP's implementation, activities and outcomes. The summary report shall be included with any land use entitlement application related to a repurposing proposal. To document the applicant's public engagement activities, the summary report shall include the following, as applicable:

1. The original Applicant's Alternatives Statement.

2. Any revised Applicant's Alternatives Statement that has been produced as a result of the process.

3. Affidavit of mailings pertaining to the mailing of notice of the Applicant's Alternative Statements to prescribed stakeholders, and of the means by which the Alternatives Statements were made available to stakeholders.

4. Affidavits of mailings for the notices to prescribed stakeholders for all required neighborhood meetings and any design workshops.

5. Scanned copies of any and all sign-in sheets that were used for all required neighborhood meetings and any design workshops.

6. Meeting notes that may have been taken from all required neighborhood meetings and any design workshops.

7. Electronic copy of a spreadsheet with all comments received at meetings and workshops and the applicant's statement of how each of those comments were addressed, if applicable.

8. Affidavit of mailing for, and results of, a public engagement survey sent to all meeting and workshop attendees.

9. Accounting of City staff time devoted to required neighborhood meetings and any design workshops.

10. A copy of all materials distributed or displayed by the applicant at all neighborhood meetings and design workshops.

11. Statements from any facilitator of design workshops summarizing the input and results.

12. A statement acknowledging that additional public comment heard through a land use application's public hearing process will be taken into consideration by the applicant.

E. Development Review and Approval Process.

1. Purpose. The City's review of golf course or open space repurposing projects is intended to ensure that:

a. The proposed repurposing is compatible and harmonious with adjacent development;

b. The proposed repurposing is consistent with the General Plan, this Title and other duly-adopted City plans, policies and standards;

c. Impacts of the proposed repurposing on schools, traffic, parks, emergency services, utility infrastructure, and environmental quality are mitigated;

d. Open space is preserved in furtherance of the goals and objectives of the City's 2020 Master Plan with regard to the preservation of open space; and

e. Appropriate measures are taken to secure and protect the public health, safety and general welfare.

2. General Provisions.

a. Development of the area within a repurposing project subject to this Section will be

governed by a development agreement and specific standards adopted by the City in conjunction with applications filed pursuant to this Title. The approval of a development agreement and these applications (the "Development Approvals") will include design criteria, infrastructure and public facility requirements, allowable land uses and densities, etc.

b. Development of the area within a repurposing project shall be in accordance with all applicable City Plans and policies, including the Centennial Hills Sector Plan, the Las Vegas 2020 Master Plan (and subsequent City of Las Vegas Master Plans) and Title 19.

c. Any General Plan Land Use designation and/or Special Area Plan Land Use designations that pertain to the area within a repurposing project shall be proposed to be made consistent with that of the proposed density and use of the project by means of a request to do so that is filed concurrently with any other required application. The means of doing so, whether by a General Plan Amendment or Major Modification, shall be determined in accordance with the Land Use & Rural Neighborhood Preservation Element of the Las Vegas 2020 Master Plan, as may be amended from time to time.

3. Additional Application Submittal Requirements. In addition to the requirements for submitting an application for Site Development Plan Review as detailed in LVMC 19.16.100, or any other required application under Title 19, the applicant for a repurposing project subject to this Section must submit the following items in conjunction with any such applications:

a. A certificate of survey regarding the repurposing project area, depicting:

i. Legal property description: lot, block, subdivision name;

ii. Name, address, and phone number of property owner and developer;

iii. Bearings and lot line lengths;

iv. Building locations and dimensions;

v. Existing grade contours;

vi. Proposed grade contours;

vii. North arrow and scale;

viii. Street name and adjacent street names;

ix. Benchmark and benchmark locations;

x. Complete name, address and phone number of engineering firm;

xi. Drainage arrows;

xii. List of symbols;

xiii. Registered Surveyor number and signature;

xiv. Wetlands, conservation easements, and flood zone and elevation, if applicable;

xv. Location of any wells or septic drain field or septic tanks; and

xvi. Other existing easements (public or private) of record.

b. A proposed master land use plan for the repurposing project area, depicting:

i. Areas proposed to be retained as golf course or open space, including acreage, any operation agreements, and easement agreements;

ii. Areas proposed to be converted to open space, including acreage, recreational amenities, wildlife habitat, easements, dedications or conveyances;

iii. Areas proposed to be converted to residential use, including acreage, density, unit numbers and type;

iv. Areas proposed to be converted to commercial use, including acreage, density and type; and

v. Proposed easements and grants for public utility purposes and conservation.

c. A density or intensity exhibit for the repurposing project area, depicting:

i. Developed commercial gross floor areas and residential densities;

ii. Undeveloped but entitled commercial gross floor area and residential densities;

iii. Proposed residential densities; and

iv. Proposed commercial gross floor areas.

d. For a repurposing project area of one acre or more in size, an environmental

assessment worksheet for the repurposing project area, consisting of:

i. Documentation of the project's impacts on wildlife, water, drainage, and ecology; and

ii. A copy of a Phase I environmental site assessment report for the repurposing project area.

e. For a repurposing project area of one acre or more in size, conceptual master studies that have been conditionally approved by the Department of Public Works prior to submittal of any formal Title 19 application, including:

i. A conceptual master drainage study (for any repurposing project of 2 acres or larger in size);

ii. A conceptual master traffic study for any repurposing project that will generate 100 or more peak hour trips; and

iii. A conceptual master sanitary sewer study. Regarding this study, the applicant must contact the City's Sanitary Sewer Planning Section to submit the initial draft of the study, to address all comments provided by that Section, and thereafter to receive approval of the study. The study shall identify locations where public sewer easements with drivable access will be provided to service the proposed development by gravity means. The study shall also include the total land use(s) proposed, anticipated connection point(s) to existing sewer system, calculations and exhibits to identify diameter and capacity of all on-property and off-property sewer improvements necessary to meet the needs of the development and the City.

f. For a repurposing project area of one acre or more in size, a 3D model of the repurposing project with accurate topography to illustrate potential visual impacts, as well as an edge condition cross section with improvements callouts and maintenance responsibility.

g. One or more construction and development phasing plans for any repurposing project to be completed in more than one phase.

h. A PEP Summary Report as required pursuant to Subsection (D).

F. Development Standards. Except as otherwise provided in this Subsection (F), each repurposing project subject to this Section shall conform to the standards as set forth in LVMC Chapters 9.02, 19.06 and 19.08, as well as any applicable development agreements and special area plans. In addition, in connection with the consideration of any development applications filed pursuant to LVMC Chapter 19 16, the Planning Commission and City Council shall take into account (and may impose conditions and requirements related to) the purpose set forth in Paragraph (1) of Subsection (E) of this Section, as well as the standards and considerations set forth in this Subsection (F).

1. When new development within the area of the repurposing project will be adjacent to existing residential development, the new development shall:

a. Provide minimum setbacks that meet or exceed those of the existing development.

b. Ensure that accessory structures are limited to a height of one story and 15 feet.

c. Provide screening of the uses and equipment listed in LVMC 19.08.040(E)(4) so that they are screened from view from all existing residential development adjacent to the repurposing project area and from public view from all rights-of-way, pedestrian areas, and parking lots.

d. Provide landscape buffering on all lots adjacent to existing residential development.

e. Screen all parking lots within the repurposing project area from view of existing residential properties adjacent to that area.

2. Existing channels or washes shall be retained or the developer shall provide additional means for drainage and flood control, as shown in a master drainage study approved by the Department of Public Works.

3. Where repurposing will result in the elimination or reduction in size of a contiguous golf course or open space, the developer shall consider providing for other facilities or amenities or resources that might help offset or mitigate the impact of the elimination or reduction.

4. The additional requirements imposed by this Subsection (F) shall not apply to the repurposing of property that is governed by covenants, conditions and restrictions (CC&R's) which address the repurposing of golf courses or open spaces in any manner whatsoever, whether or not the provisions of

those CC&R's are similar to or consistent with this Section. This exemption applies whether or not there is any likelihood that the applicable provisions of the CC&R's will be enforced.

G. Closure Maintenance Plan. At any time after the Department becomes aware that a golf course that would be subject to this Section if repurposed has ceased operation or will be ceasing operation, the Department may notify the property owner of the requirement to comply with this Section. Similarly, at any time after the Department becomes aware that an open space that would be subject to this Section if repurposed has been withdrawn from use or will be withdrawn from use, the Department may notify the property owner of the requirement to comply with this Section. Any such notification shall be by means of certified mail and by posting at the subject site. Within 10 days after the mailing and posting of the notice, the property owner shall meet with the Department to discuss the proposed plans for the property and process of complying with this Section. Within 30 days after the mailing and posting of the notice, the property owner shall submit to the Department a closure maintenance plan ("the maintenance plan") for review by the Department.

1. Purpose. The purpose of a maintenance plan is to address and protect the health, safety, and general welfare of occupants of properties surrounding the subject site, as well as to protect the neighborhood against nuisances, blight and deterioration that might result by the discontinuance of golf course operations or the withdrawal from use of an open space. The maintenance plan will accomplish those objectives by establishing minimum requirements for the maintenance of the subject site. Except as otherwise provided in the next succeeding sentence, the maintenance plan must ensure that the subject site is maintained to the same level as existed on the date of discontinuance or withdrawal until a repurposing project and related development applications have been approved pursuant to this Title. For discontinuances or withdrawals occurring before the effective date of this Ordinance, the required maintenance level shall be as established by the Department, taking into account the lapse of time, availability of resources, and other relevant factors.

2. Maintenance Plan Requirements. In addition to detailing how the subject property will be maintained so as to be in compliance with LVMC Chapter 9.04, LVMC 16.02.010, and LVMC 19.06.040(F), the maintenance plan must, at a minimum and with respect to the property:

a. Ensure that all exterior areas are kept free from dry vegetation, tumbleweeds, weeds, bushes, tall grass, and trees which present a visual blight upon the area, which may harbor insect or rodent infestations, or which are likely to become a fire hazard or result in a condition which may threaten the health, safety or welfare of adjacent property owners or occupants;

b. Provide security and monitoring details;

c. Establish a service or other contact information by which the public may register comments or complaints regarding maintenance concerns;

d Provide documentation regarding ongoing public access, access to utility easements, and plans to ensure that such access is maintained;

e. Detail how all applicable federal, state and local permitting requirements will be met; and

f. Provide any additional or supplemental items the Department may determine are necessary in connection with review of the maintenance plan.

3. Maintenance Plan Neighborhood Meeting. The property owner shall conduct a neighborhood meeting regarding the proposed maintenance plan, which shall be a prerequisite to final approval of the maintenance plan. Notice of such a meeting shall be provided in general accordance with the notice provisions and procedures for a General Plan Amendment in LVMC 19.16.030(F)(2), except that no newspaper publication is required and the providing of notice shall be the responsibility of the applicant rather than the City. In addition, notice of the meeting shall be provided to the Department at least 10 calendar days in advance of the meeting.

4. A maintenance plan that has been approved by the City may be recorded against the property at the property owner's expense.

5. Failure to comply with the provisions of this Subsection (G) or with the terms of an approved maintenance plan:

a. Shall be grounds for the denial of any development application under this Title that would be required for a repurposing project subject to this Section;

b. Is unlawful and may be enforced by means of a misdemeanor prosecution; and

c. In addition to and independent of any enforcement authority or remedy described in this Title, may be enforced as in the case of a violation of Title 6 by means of a civil proceeding pursuant to LVMC 6.02.400 to 6.02.460, inclusive.

SECTION 4: For purposes of Section 2.100(3) of the City Charter, Section 19.16.010 is deemed to be a subchapter rather than a section.

SECTION 5: The Department of Planning is authorized and directed to incorporate into the Unified Development Code the amendments set forth in Sections 2 and 3 of this Ordinance.

SECTION 6: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 7: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

. . .

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. . .

. . .

SECTION 8: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this 7th day of November, 2018.

APPROVED:

By: _____
CAROLYN G. GOODMAN, Mayor

ATTEST:

_____
LUANN D. HOLMES, MMC
City Clerk

APPROVED AS TO FORM:

_____ 11-7-18
Val Steed, Date
Deputy City Attorney

The above and foregoing ordinance was first proposed and read by title to the City Council on the 18th day of July, 2018, and referred to a committee for recommendation; thereafter the said committee reported on said ordinance on the 7th day of November, 2018, which was a regular meeting of said Council; that at said regular meeting, the proposed ordinance was read by title to the City Council as amended and adopted by the following vote:

VOTING "AYE": Councilmembers Tarkanian, Coffin, Seroka and Crear

VOTING "NAY": Goodman and Fiore

EXCUSED: Anthony

ABSTAINED: None

APPROVED:

CAROLYN G. GOODMAN, Mayor

ATTEST:

LUANN D. HOLMES, MMC City Clerk

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS

RECEIVED
CITY CLERK

2018 OCT 10 P 12:14

LV CITY CLERK
495 S MAIN ST
LAS VEGAS NV 89101

Account # 22515

Ad Number 0001010125

Leslie McCormick, being 1st duly sworn, deposes and says That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for, was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 10/04/2018 to 10/04/2018, on the following days:

10 / 04 / 18

BILL NO. 2018-24

AN ORDINANCE TO AMEND LVMC TITLE 19 (THE UNIFIED DEVELOPMENT CODE) TO ADOPT ADDITIONAL STANDARDS AND REQUIREMENTS REGARDING THE REPURPOSING OF CERTAIN GOLF COURSES AND OPEN SPACES, CONSOLIDATE THOSE PROVISIONS WITH PREVIOUSLY-ADOPTED PUBLIC ENGAGEMENT PROVISIONS REGARDING SUCH REPURPOSING PROPOSALS, AND PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by:
Councilman Steven G. Seroka

Summary: Amends LVMC Title 19 (the Unified Development Code) to adopt additional standards regarding the repurposing of certain golf courses and open spaces, and to consolidate those provisions with previously-adopted public engagement provisions regarding such repurposing proposals.

At the City Council meeting of

July 18, 2018

BILL NO. 2018-24 WAS READ BY TITLE AND REFERRED TO A RECOMMENDING COMMITTEE

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 2ND FLOOR, 495 SOUTH MAIN STREET, LAS VEGAS, NEVADA

PUB: Oct. 4, 2018
LV Review-Journal

/s/
LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 4th day of October, 2018

Notary

MARY A. LEE
Notary Public, State of Nevada
Appointment No 09-8941-1
My Appt. Expires Dec 15, 2020

AFFIDAVIT OF PUBLICATION

STATE OF NEVADA)
COUNTY OF CLARK) SS

RECEIVED
CITY CLERK

2018 NOV 19 P 12:11

LV CITY CLERK
495 S MAIN ST
LAS VEGAS NV 89101

Account # 22515
Ad Number 0001017271

Leslie McCormick, being 1st duly sworn, deposes and says: That she is the Legal Clerk for the Las Vegas Review-Journal and the Las Vegas Sun, daily newspapers regularly issued, published and circulated in the City of Las Vegas, County of Clark, State of Nevada, and that the advertisement, a true copy attached for, was continuously published in said Las Vegas Review-Journal and / or Las Vegas Sun in 1 edition(s) of said newspaper issued from 11/10/2018 to 11/10/2018, on the following days

11 / 10 / 18

FIRST AMENDMENT

BILL NO. 2018-24
ORDINANCE NO. 6650

AN ORDINANCE TO AMEND LVMC TITLE 19 (THE UNIFIED DEVELOPMENT CODE) TO ADOPT ADDITIONAL STANDARDS AND REQUIREMENTS REGARDING THE REPURPOSING OF CERTAIN GOLF COURSES AND OPEN SPACES, CONSOLIDATE THOSE PROVISIONS WITH PREVIOUSLY-ADOPTED PUBLIC ENGAGEMENT PROVISIONS REGARDING SUCH REPURPOSING PROPOSALS, AND PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steven G. Seroka

Summary: Amends LVMC Title 19 (the Unified Development Code) to adopt additional standards regarding the repurposing of certain golf courses and open spaces, and to consolidate those provisions with previously-adopted public engagement provisions regarding such repurposing proposals.

The above and foregoing ordinance was first proposed and read by title to the City Council on the 18th day of July, 2018, and referred to a committee for recommendation; thereafter the committee reported its recommendation, if any, on said ordinance on the 7th day of November, 2018, which was a regular meeting of said City Council; and that at said regular meeting the proposed ordinance was read by title to the City Council as amended and adopted by the following vote:

VOTING "AYE": Councilmembers Tarkanian, Coffin, Seroka and Crear

VOTING "NAY": Mayor Goodman and Councilwoman Fiore

EXCUSED: Councilman Anthony

COPIES OF THE COMPLETE ORDINANCE ARE AVAILABLE FOR PUBLIC INFORMATION IN THE OFFICE OF THE CITY CLERK, 2ND FLOOR, 495 SOUTH MAIN STREET, LAS VEGAS, NEVADA

PUB: November 10, 2018
LV Review-Journal

/S/
LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 12th day of November, 2018

Notary Linda Espinoza

LINDA ESPINOZA
Notary Public, State of Nevada
Appointment No 00-64106-1
My Appt Expires Jul 17, 2020

003217

EXHIBIT “HHHH”

STATE OF NEVADA
STATE BOARD OF EQUALIZATION
1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020

BRIAN SANDOVAL
Governor

DEONNE E. CONTINE
Secretary

In the Matter of **Fore Stars LTD, 180 Land Co LLC, and Seventy Acres, LLC** **PETITIONERS** **Michele Shafe, Clark County Assessor** **RESPONDENT**	)	**Case Nos. 17-175; 17-176; 17-177**

NOTICE OF DECISION

Appearances

Andrew Glendon, appeared on behalf of Fore Stars LTD, 180 Land Co LLC, and Seventy Acres, LLC (Taxpayers).

Jeff Payson appeared on behalf of the Clark County Assessor (Assessor).

Summary

The matter of the Taxpayers' direct appeal of conversion of golf course property came before the State Board of Equalization (State Board) on October 17, 2017 via telephone conference in Carson City, Nevada. The cases were consolidated at the request of the parties.

The Assessor and Mr. Glendon presented the State Board with a signed stipulation for review and approval of the State Board for each case number.

DECISION

The State Board, having considered the signed stipulations, hereby approves, by unanimous vote, the signed stipulations presented by the Department. The stipulations provide that the Taxpayers stipulated to and accepted the Assessor's determinations with the Taxpayers reserving their rights to appeal the 2017/2018 tax year valuations.

BY THE STATE BOARD OF EQUALIZATION THIS 30th DAY OF NOVEMBER, 2017.

Deonne E Contine
Deonne Contine, Secretary
DC/jm

Submitted at City Council
Date 5/16/18 Item 71 (FOR 74-83)
By: MARK Hutchison

CERTIFICATE OF SERVICE
Fore Stars Ltd Case No. 17-175, 176, 177

I hereby certify on the 30th day of November 2017, I served the foregoing Findings of Fact, Conclusions of Law, and Decision by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

CERTIFIED MAIL: 7013 1090 0000 7280 8415
PETITIONER'S REPRESENTATIVE
17-175
FORE STARS LTD
ANDREW J GLENDON
C/O SANTORO WHITMIRE LTD
10100 W CHARLESTON BLVD SUITE 250
LAS VEGAS NV 89135

CERTIFIED MAIL: 7013 1090 0000 7280 8460
RESPONDENT
17-175
MS. MICHELE SHAFE
CLARK COUNTY ASSESSOR
500 SOUTH GRAND CENTRAL PARKWAY 2ND FLOOR
LAS VEGAS NV 89155-1401

Copy: Clark County Clerk
Clark County Comptroller
Clark County Treasurer

Christina Griffith, Program Officer
Department of Taxation
State Board of Equalization

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

180 Land Co LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-176
Parcel No(s). 138-31-801-002; 138-31-201-005; 138-31-601-008;
138-31-702-003; 138-31-702-004; 138-31-712-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Petitioner reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

Seventy Acres LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-177
Parcel No(s). 138-31-801-003; 138-32-301-005; 138-32-301-007; 138-32-301-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Seventy Acres LLC

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

Fore Stars, Ltd ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-175
Parcel No(s). 138-32-202-001; 138-32-210-008; 138-31-212-002;
138-31-610-002; 138-31-713-002; 138-32-210-005 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Fore Stars Ltd.