IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,

Respondents.

No. 84345

180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,

Respondent/Cross-Appellant.

No. 84640

JOINT APPENDIX, VOLUME NO. 10

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X, Petitioners, v. CITY OF LAS VEGAS, a 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, Respondents.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **NOTICE OF FILING OF** **PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** **AND** **EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY IN THE NEVADA SUPREME COURT**

NOTICE IS HEREBY GIVEN pursuant to NRAP 21(a)(1), NRS 34.160, et seq., and NRS 34.330, et seq. that, on May 17, 2019, Defendant City of Las Vegas filed a Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition ("Writ Petition"), and an Emergency Motion Under NRAP 27(e) For Stay in the Nevada Supreme Court regarding the May 15, 2019 Order Granting The Landowners' Countermotion to Amend/Supplement the Pleadings and Denying The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims. A true and correct copy of the Writ Petition and Emergency Motion to Stay are attached hereto as Exhibits 1 and 2.

Respectfully submitted this 17th day of May 2019.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 17th day of May, 2019, a true and correct copy of the foregoing **NOTICE OF FILING OF PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION AND EMERGENCY MOTION FOR STAY IN THE NEVADA SUPREME COURT** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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EXHIBIT 1

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,

Real Party in Interest

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

PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. The City of Las Vegas is a political subdivision of the State of Nevada and has no corporate affiliation.
2. The City is represented in the district court and this Court by the Las Vegas City Attorney's Office and McDonald Carano LLP.

DATED this 17th day of May, 2019.

MCDONALD CARANO LLP

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INTRODUCTION

Petitioner, the City of Las Vegas, seeks a writ of mandamus, or in the alternative, prohibition to prevent the district court from acting outside the bounds of its jurisdiction and to direct the district court to dismiss the inverse condemnation claims of Real Party in Interest, 180 Land Company ("the Developer"). The Developer's inverse condemnation claims challenge the Las Vegas City Council's June 21, 2017 decision (the "June 21, 2017 Decision") to deny four discretionary redevelopment applications that sought to convert a 35-acre portion of the Badlands golf course to houses ("the 35-Acre Applications"). The Developer also filed a petition for judicial review of the June 21, 2017 Decision ("the PJR").

The district court denied the PJR, holding that the City Council properly exercised its discretion to deny the 35-Acre Applications, and substantial evidence supported the June 21, 2017 Decision. In so doing, the district court concluded as a matter of law that: (1) the Developer had no vested rights to have the 35-Acre Applications approved; and (2) the Developer must first give the City Council the opportunity to consider an application for a major modification to the Peccole Ranch Master Development Plan ("Major Mod Application") before it can redevelop the golf course property. The district court reaffirmed these conclusions of law when denying the Developer's motion to reconsider the PJR.

Based on these dispositive legal conclusions, the City moved for judgment on the pleadings, seeking dismissal of the Developer's inverse condemnation claims. Notwithstanding its earlier conclusions of law that the Developer lacked vested rights to have the 35-Acre Applications approved and that a Major Mod was a prerequisite to redevelopment of the golf course property, and in disregard of its jurisdictional limits and this Court's precedents, the district court denied the City's motion for judgment on the pleadings and ordered that discovery proceed. For two reasons, this was reversible error of such magnitude that a writ is warranted here to direct the district court to dismiss the inverse condemnation claims as a matter of law.

First, under the binding authority of *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004), and similar cases, because the City Council had discretion to deny the 35-Acre Applications, the Developer has no vested rights to have the 35-Acre Applications approved. And absent vested rights, there can be no regulatory taking, as a matter of law. Even though, when denying the Developer's PJR, the district court concluded that the Developer lacks vested rights to redevelop the golf course, it nevertheless refused to dismiss the inverse condemnation claims. The net result is that the City – and, if the district court's determination were accepted as Nevada law, every other land

use authority in the State – is now exposed to takings liability for decisions that are squarely within governmental discretion. That is not the law.

Second, the district court lacks jurisdiction over the inverse condemnation claims because they are not ripe for review. Even though, when denying the Developer's PJR, the district court concluded that a Major Mod was a prerequisite to redevelopment of the golf course and found that the Developer had withdrawn the only Major Mod Application it ever submitted, the district court would not dismiss the inverse condemnation claims on ripeness grounds. Yet these are precisely the circumstances in which the ripeness requirements set forth in *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City* bar a court from exercising jurisdiction over inverse condemnation claims. 473 U.S. 172, 186 (1985). Notwithstanding its lack of subject matter jurisdiction, the district court has allowed the Developer to engage in extensive discovery to which the City should not be subjected.

These inconsistencies between the district court's denial of the City's motion for judgment on the pleadings and its order denying the Developer's PJR were based on the erroneous premise that, because a petition for judicial review has a different evidentiary standard of proof than inverse condemnation claims, the district court must disregard its earlier legal conclusions. However, the standard of

proof addresses a litigant's duty to convince the fact finder to view the facts in a way that favors that litigant. It does not alter the applicable law.

To reach its erroneous result, the district court relied on matters outside the pleadings, that post-dated the June 21, 2017 Decision and that the Developer did not plead in the operative complaint. In other words, the district court did not restrict itself to the pleadings, notwithstanding that the City's motion was brought under NRCP 12(c). Compounding this error, the district court granted the Developer leave to amend its complaint to add claims that the Developer is litigating in other pending cases. This amounts to impermissible claim splitting. The district court allowed the Developer to shop its claims to the most receptive judge, thereby unfairly requiring the City to defend duplicative claims, exposing the City to potentially conflicting results and undermining the integrity of the judiciary.

Because the district court's decision has profound consequences for the City Council's discretionary authority over land use decisions, exceeds the district court's subject matter jurisdiction, and could bear on the numerous other pending lawsuits related to the Developer's efforts to redevelop the Badlands golf course,[1] writ relief is warranted here.

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[1] *See Jack B. Binion, et al. v. Fore Stars, Ltd., City of Las Vegas, et al.*, 8JDC Case No. A-15-729053-C, NSC Case No. 73813; *Jack B. Binion, et al. v. City of Las Vegas, et al.*, 8JDC Case No. A-17-752344-J, NSC Case No. 75481; *180 Land*

ROUTING STATEMENT

The principal issues raised in this writ petition affect government decision makers and land use planners throughout Nevada and are of great statewide public importance. The district court's decision to allow the Developer's inverse condemnation claims to proceed in the absence of vested rights, and where the City Council appropriately exercised its discretion to deny land use applications, creates significant liability exposure to which the City should not be subjected. Under the district court's rationale, the denial of any discretionary land use application alone could constitute a regulatory taking. This would turn longstanding Nevada precedent, including *Stratosphere*, on its head.

Moreover, the district court exercised jurisdiction even though it concluded, as a matter of law, that the City Council could not grant the Developer's redevelopment applications unless and until the Developer allowed the City Council to consider a Major Mod Application. The district court cited to no facts

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Company, LLC v. City of Las Vegas, 8JDC Case No. A-17-758528-J, NSC Case No. 77771; *Frank A. Schreck v. City of Las Vegas and 180 Land Co., LLC*, 8JDC Case No. A-18-768490-J; *180 Land Co LLC v. City of Las Vegas*, 8JDC Case No. A-18-771389-C; *180 Land Co LLC, et al. v. City of Las Vegas, James R. Coffin, Steven G. Seroka*; USDC Case No. 2:18-cv-0547-JCM-CWH; *Fore Stars, Ltd., et al. v. City of Las Vegas, et al.*; 8JDC Case No. A-18-773268-C; *180 Land Company, LLC v. City of Las Vegas*, 8JDC Case No. A-18-775804-J; *180 Land Company, LLC, et al. v. City of Las Vegas*, 8JDC Case No. A-18-780184-C; *Laborers' Int'l Union N. Am., Local 872 v. City of Las Vegas, James Robert Coffin, and Steve Seroka*, USDC Case No. 2:19-cv-00322-GMN-NJK.

alleged in the operative complaint that could support its conclusion that a Major Mod Application would be futile. Under *Williamson*, therefore, the Developer's claims are not ripe, and the district court lacks subject matter jurisdiction.

The district court disregarded these legal impediments based on its misunderstanding of the distinction between an evidentiary burden of proof and a conclusion of law. The evidentiary burden that a litigant must meet does not alter the legal principles that a court must apply to the facts. By conflating these two concepts, the district court allowed the Developer to circumvent the rule of administrative res judicata simply by bringing its petition for judicial review and inverse condemnation claims in one action. Moreover, the district court accepted as true on a Rule 12 motion the Developer's allegations of legal conclusions, which is contrary to law.

Because these are important issues of law that affect municipalities, regional planning agencies and litigants statewide, the matter should be retained by the Supreme Court. NRAP 17(a)(12).

ISSUES PRESENTED

1. Whether this Court should issue a writ that requires the district court to dismiss the Developer's inverse condemnation claims because:
    a. The Developer has no vested rights to have its redevelopment applications approved, and as a matter of law, a regulatory taking cannot occur in the absence of vested rights; and
    b. The district court lacks subject matter jurisdiction over the Developer's unripe inverse condemnation claims until the Developer gives the City Council the opportunity to consider and decide a Major Mod Application.
2. Whether the different standards of proof for a petition for judicial review and inverse condemnation claims render the legal conclusions from the judicial review proceeding inapplicable to the inverse condemnation claims.
3. Whether, on a motion for judgment on the pleadings, the district court could:
    a. Accept the Developer's erroneous assertion that it has vested rights to redevelop the golf course simply because it was pled in the complaint, even though that assertion is (i) a legal conclusion and (ii) directly contrary to the district court's earlier conclusions of law.

b. Consider matters outside the pleadings and that post-dated the City Council's June 21, 2017 Decision that the Developer's operative complaint challenges.

4. Whether the district court should have denied leave to amend as impermissible claim splitting where the Developer sought to add claims that are being litigated in other cases.

PERTINENT FACTS

A. The City Council Denied the Developer's Applications to Redevelop the Golf Course Property Built by its Predecessor

In 1989 and 1990, the Developer's predecessor obtained approval from the Las Vegas City Council for the Peccole Ranch Master Development Plan ("Master Development Plan"). 1(205-206); 6(905-926, 947).[2] Phase II of the Master Development Plan set aside approximately 250 acres for a golf course, drainage and open space. 1(205-206); 6(924). Through the open space designation, the Developer's predecessor was able to satisfy the City's parks set-aside requirement and develop non-open space areas at greater densities and for greater economic benefit. 6(917-924). The Developer's predecessor chose the location of the open space and built the golf course in furtherance of the development plan it submitted.

[2] References to the Petitioner's Appendix consist of the volume number followed by the page number(s) in parentheses.

6(947). The golf course is designated in the City's General Plan as Parks, Recreation and Open Space ("PR-OS"). 1(205); 6(928-946).

The Developer purchased the golf course and seeks to redevelop it into residential uses. 6(947). To that end, the Developer filed four land use applications ("the 35-Acre Applications") related to a 34.07-acre portion of the golf course ("the 35-Acre Property"). 6(948-951). The 35-Acre Applications consisted of requests for a General Plan Amendment to change the open space designation of the golf course to low-density residential, a waiver of the size of private streets, a site development review for 61 lots and a tentative map. 6(948-951). On June 21, 2017, the City Council voted to deny the 35-Acre Applications. 6(952-955).

B. The District Court Denied the Developer's Petition for Judicial Review of the City Council's Decision

The Developer filed a Petition for Judicial Review to challenge the June 21, 2017 Decision. 1(1-8). Thereafter, the Developer filed a First Amended Petition for Judicial Review and Alternative Verified Claims for Inverse Condemnation. 1(9-27). The district court bifurcated the PJR from the inverse condemnation claims pursuant to NRCP 42, after which the Developer filed a Second Amended Petition for Judicial Review (the "PJR") and a First Amended Complaint asserting the inverse condemnation claims ("the FAC"). 1(28-76). The FAC is the operative complaint at issue in this writ petition. 1(28-61).

After briefing and oral argument, on November 21, 2018, the district court entered Findings of Fact and Conclusions of Law on Petition for Judicial Review that denied the PJR and dismissed the alternative claims for inverse condemnation (the "November 21, 2018 Order"). 1(200-227). The district court concluded that the City Council properly exercised its discretion to deny the 35-Acre Applications and that substantial evidence supported the June 21, 2017 Decision. 1(214-219).

Relevant to this writ petition, the November 21, 2018 Order contained the following conclusions of law:

> 35. A zoning designation does not give the developer a vested right to have its development applications approved. "In order for rights in a proposed development project to vest, zoning or use approvals ***must not be subject to further governmental discretionary action affecting project commencement***, and the developer must prove considerable reliance on the approvals granted." *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995) (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60 (holding that because City's site development review process under Title 19.18.050 involved discretionary action by Council, the project proponent had no vested right to construct).
>
> 36. "[C]ompatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *see Nevada Contractors v. Washoe Cty.*, 106 Nev. 310, 311, 792 P.2d 31, 31-32 (1990) (affirming county commission's denial of a special use permit even though property was zoned for the use).
>
> 37. The four Applications submitted to the Council for a general plan amendment, tentative map, site development review and waiver were all subject to the Council's discretionary decision making, no matter the zoning designation. *See Am. W. Dev.*, 111 Nev. at 807, 898

> P.2d at 112; *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds.*; *Bd. of Cty. Comm'rs of Clark Cty. v. CMC of Nevada, Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).
>
> 38. The Court rejects the Developer's attempt to distinguish the *Stratosphere* case, which concluded that the very same decision-making process at issue here was squarely within the Council's discretion, no matter that the property was zoned for the proposed use. *Id.* at 527; 96 P.3d at 759.
>
> * * *
>
> 52. … NRS 278.349(e) does not confer any vested rights.

1(219-222). As an additional basis to deny the PJR, the district court concluded that an order entered by the Honorable James Crockett in the case of *Jack B. Binion, et al. v. The City of Las Vegas, et al.*, A-17-752344-J ("Judge Crockett's Decision"), had preclusive effect on this case and required the Developer to obtain approval of a major modification of the Master Development Plan before redeveloping the Badlands Property.[3] 1(77-90); 1(223-225). Because of the dispositive effect of these conclusions of law, the November 21, 2018 Order also contained several paragraphs dismissing the inverse condemnation claims. 1(225).

The Developer filed two separate motions for reconsideration of the November 21, 2018 Order, one that challenged denial of the PJR (which the Developer called a "motion for new trial") and one that challenged dismissal of the

[3] The Developer appealed Judge Crockett's Decision, which is pending before the Court as Case No. 75481.

inverse condemnation claims. 2(228-255). The district court granted the latter and entered an Order Nunc Pro Tunc that removed only those portions of the November 21, 2018 Order that dismissed the inverse condemnation claims. 2(256-258). Specifically, the Order Nunc Pro Tunc removed page 23:4-20 and page 24:4-5 of the November 21, 2018 Order. 2(257). All other findings of fact and conclusions of law remained intact. 2(257).

In a separate order, the district court denied the Developer's "motion for new trial" of the denial of its PJR, finding no clear error in its November 21, 2018 Order, as amended by the Order Nunc Pro Tunc. 5(852-867). Importantly, the district court reiterated its earlier conclusions of law:

> 22. This Court correctly concluded that the Developer does not have vested rights to have the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme Court's orders of affirmance, alter that conclusion.

5(863) (referencing 11.30.16 and 1.31.17 orders issued by the Honorable Judge Smith in Case No. A-16-739654-C and Nevada Supreme Court Case No. 72455).

> 24. The Court correctly determined that Judge Crockett's Order has preclusive effect here and, as a result, the Developer must obtain the City Council's approval of a major modification to the Peccole Ranch Master Developer Plan before it may develop the 35-Acre Property.

5(863) (referencing 1(77-90) and 1(223-224)).

Yet the district court determined that it could ignore these correct conclusions of law when considering the Developer's inverse condemnation claims:

> 37. The Developer's petition for judicial review and its inverse condemnation claims involve different evidentiary standards.
>
> 38. Relative to the petition for judicial review, the Developer had to demonstrate that the City Council abused its discretion in that the June 21, 2017 decision was not supported by substantial evidence; whereas, relative to its inverse condemnation claims, the Developer must prove its claims by a preponderance of the evidence.
>
> 39. Because of these different evidentiary standards, the Court concludes that its conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims.

5(865).

C. The District Court Contravened its Earlier Conclusions of Law by Denying the City's Motion for Judgment on the Pleadings and Granting the Developer Leave to Amend its Complaint

While the Developer's motion for reconsideration of the PJR denial was pending, the City moved for judgment on the pleadings on the Developer's inverse condemnation claims, arguing that the legal conclusions in the November 21, 2018 Order required dismissal of the inverse condemnation claims, as a matter of law. 2(259-272). Specifically, the City argued that:

1. Absent vested rights to have the redevelopment Applications approved, the City Council's denial of the 35-Acre Applications could not, as a matter of law, constitute a regulatory taking;
2. The district court lacked subject matter jurisdiction over the Developer's inverse condemnation claims on ripeness grounds because, as directed by Judge Crockett's Decision (which the district court concluded had preclusive effect), the Developer must first obtain the City Council's approval of a Major Mod Application before redeveloping the golf course property.[4]

2(259-272).

The district court denied the City's motion for judgment on the pleadings, erroneously determining that its conclusions of law regarding the PJR did not apply to its consideration of the inverse condemnation claims because the two proceedings had different standards of proof. 5(875-901). As articulated by the district court:

> We have … the petition for judicial review, and I do understand what my charge is under those circumstances. And it's to make a determination as to whether or not there's substantial evidence in the

[4] The City also argued that the Developer's claims are time barred because the Parks, Recreation and Open Space designation in the City's General Plan that the Developer challenges has existed since at least 1990, when it was sought and obtained by the Developer's predecessor. 2(265-267). Although the City does not raise the statute of limitations as a basis for this writ petition, it nevertheless preserves that issue to raise again at the appropriate time and under the appropriate procedural posture.

> record to support the decision and findings of the Las Vegas City Council in that case regarding that specific issue.
>
> And then we have another -- we had a complaint that was filed in this matter. They were in the same case, and the complaint was seeking -- primarily based on inverse condemnation. I understand that. There's completely [different] standards of proof involved. It's really and truly a different matter.
>
> * * *
>
> Understand this, a petition for judicial review is much different than a complaint for inverse condemnation. There's [*sic*] completely different levels of proof. I think we can all agree. In a petition for judicial review, I think it's important to point this out on the record, my charge is limited; right? It really and truly is. To make the determination as to whether or not there's substantial evidence in the record to support the decision of the administrative body. Nothing -- or the City council or the County commission or whom ever it might be; right?
>
> Okay. Now, and I thought about this. I don't mind telling everybody. Now, we're talking about a much different animal. We're talking about an inverse condemnation case. And it's a – it's a case alleging a taking by the City of Las Vegas based upon a myriad of different actions by the City council. Now, the standard of proof there is much different. We can all agree; right? It's much higher. It's by a preponderance of the evidence, right, versus a lower standard of proof as to the substantial evidence in the record to support the decision of the administrative body, City council or whatever; right? We can all agree. That's a different animal. And so when I hear these arguments, I question whether there's any preclusive effect because that's a different animal.

4(571:13-25); 4(580:5-581:7). Based upon "the distinction between the evidentiary burdens in a petition for judicial review versus a general civil litigation case," the district court concluded it could and should ignore its earlier conclusions of law

when considering the City's motion for judgment on the pleadings. 4(691:16-20); 4(692:17-20).

The district court's written order denying the City's motion for judgment on the pleadings did exactly that. 5(875-901). The district court determined that the Developer's assertion of a "property interest" in the 35-Acre Property, based on mere ownership and the residential zoning designation, was sufficient to trigger a regulatory taking claim arising from the City Council's denial of the 35-Acre Applications. 5(882-885). This was directly contrary to the district court's earlier conclusions of law that zoning alone does not create a vested right to have discretionary approvals granted. *Compare id.* to 1(219-222).

The district court went further to conclude that where the Developer pled in its complaint that it had a vested right to have the 35-Acre Applications approved, that assertion of a legal conclusion must be accepted as true on a motion for judgment on the pleadings, even where, as here, the district court already reached a contrary legal conclusion. *Compare* 4(691:5-9) *to* 1(219-222); 5(882-885, 893).

As to ripeness, the district court concluded that a Major Mod Application would be futile and, alternatively, that the Developer had satisfied the Major Mod requirements. 5(893-897). To reach this conclusion, the district court relied almost exclusively on documents outside the pleadings, that related to actions that post-date the City Council's June 21, 2017 Decision and regarding which the Developer

did not assert any allegations in the FAC, which was the operative complaint. 5(893-897). Indeed, ***not once*** in its May 15, 2019 Order did the district court cite to a single paragraph of the FAC. 5(878-901).

Finally, the district court allowed the Developer to amend its complaint to add actions that are being litigated in the Developer's other lawsuits against the City. 5(879-880); *compare* 2(363-399) *to* 3(422-482).

Because the law does not change simply because inverse condemnation claims have a different evidentiary standard of proof from a petition for judicial review, and the district court should have prohibited the Developer from engaging in claim splitting, writ relief is warranted here.

ARGUMENT

A. Standard for Issuance of Writ

A writ of prohibition is available to "arrest[ ] the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." NRS 34.320; *see Nevada Power Co. v. Eighth Jud. Dist. Ct.*, 120 Nev. 948, 954,102 P.3d 578, 582-83 (2004). This Court has not hesitated to issue a writ of prohibition when a district court acts without jurisdiction. *See Gaming Control Bd. v. Breen*, 99 Nev. 320, 324, 661 P.2d 1309,

1311 (1983); *Gray Line Tours v. Eighth Jud. Dist. Ct.*, 99 Nev. 124, 126, 659 P.2d 304, 305 (1983).

A writ of mandamus compels the performance of an act that "the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person." NRS 34.160; *Int'l Game Tech. v. Sec. Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ is appropriate when the petitioner does not have a plain, speedy, and adequate remedy at law. *Club Vista Fin. Servs. v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012).

The Court has granted writ relief where a district court erroneously denied a motion to dismiss. *See Fulbright & Jaworski LLP v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 342 P.3d 997, 1005-06 (2015) (granting petition for writ of prohibition to vacate district court order denying motion to dismiss); *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1344-45, 1348, 950 P.2d 280, 281, 283 (1997) (issuing writ of mandamus compelling the district court to vacate its order denying a motion to dismiss). The Court will "entertain a writ petition challenging the denial of a motion to dismiss … where … the issue is not fact-bound and

involves an unsettled and potentially significant, recurring question of law." *Buckwalter v. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010).

Particularly when a case is in "the early stages of litigation," "policies of judicial administration" warrant the Court's consideration of a writ petition. *Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559. Where a petition raises an important legal issue in need of clarification, involving public policy, of which this court's review would promote sound judicial economy and administration, [the Court] will exercise [its] discretion and consider [a writ] petition." *Id.* Such is the case here.

B. The District Court Could Not Disregard Its Correct Conclusions of Law That the Developer Lacks Vested Rights to Redevelop the Golf Course Into Another Use

1. The City Council's Discretion to Deny the Applications Meant the Developer Had No Vested Rights to Have Them Approved

Because the Developer had no vested rights that could give rise to the taking it alleged, the Developer's inverse condemnation claims had to be dismissed, as a matter of law. Constitutional guarantees are only triggered by a vested right. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994); *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Only a "legitimate claim of entitlement" under state law that derives from "existing rules or understandings" can give rise to a takings claim. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

"To determine whether a property interest has vested for Takings Clause purposes, 'the relevant inquiry is the certainty of one's expectation in the property interest at issue.'" *Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *quoting Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 1002 (9th Cir. 2007), *aff'd.* 553 U.S. 591 (2008); *see also Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (noting a property right must be "established" for a taking to occur). If a property interest is "contingent and uncertain," "speculative," "discretionary," "inchoate," or "does not provide a certain expectation," then it cannot be deemed a vested right that gives rise to a taking. *Bowers*, 671 F.3d at 913, *quoting Engquist*, 478 F.3d at 1002-03; *accord Angelotti Chiropractic, Inc. v. Baker*, 791 F.3d 1075, 1081 (9th Cir. 2015).

Contrary to the district court's erroneous conclusion (at 5(884)), therefore, the legal standard for a vested right is no different for eminent domain law than for land use law because applications that are subject to the governmental authority's discretion are not "established" and do not create constitutional guarantees. *See Bowers*, 671 F.3d at 913; *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537; *Hermosa on Metropole, LLC v. City of Avalon*, 659 F. App'x 409, 411 (9th Cir. 2016); *Charles Wiper, Inc. v. City of Eugene*, 486 F. App'x 630, 631 (9th Cir. 2012). This Court's precedent is clear that for a property interest to vest under Nevada law, it must be "fixed and established." *Application of Filippini*, 66 Nev. at

22, 202 P.2d at 537; *see also Sandpointe Apts. v. Eighth Jud. Dist. Ct.*, 129 Nev. 813, 824, 313 P.3d 849, 856 (2013) (citing *Filippini* for the proposition that "the sale of the secured property is the event that vests the right to deficiency… [because that is when] the amount of a deficiency is crystalized.…").

Redevelopment applications do not meet the vested rights standard because "[i]n order for rights in a proposed development project to vest, zoning or use approvals must not be subject to further governmental discretionary action affecting project commencement, and the developer must prove considerable reliance on the approvals granted." *Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112 (emphasis added); *see also Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60 (holding that, because City's site development review process under Title 19.18.050 involved discretionary action by City Council, the project proponent had no vested right to construct). The RPD-7 zoning designation on the golf course does not create a vested right because "compatible zoning does not, ipso facto, divest a municipal government of the right to deny certain uses based upon considerations of public interest." *Tighe*, 108 Nev. at 443, 833 P.2d at 1137; *see also Nevada Contractors*, 106 Nev. at 311, 792 P.2d at 31-32 (affirming county commission's denial of a special use permit even though property was zoned for the use).

Because the redevelopment of the golf course that the Developer proposed was not "fixed and established," the Developer had no vested right to build pursuant to the Applications it submitted. *See Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537. Similarly, because the Developer's Applications were contingent upon the Council's discretionary decision-making authority, and the City Council had discretion to deny the General Plan Amendment, Waiver, Site Development Plan Review and Tentative Map applications, the Developer had no vested right to have the Applications approved. *See Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60. As a result, dismissal of the inverse condemnation claims was required. *See Roth*, 408 U.S. at 577.

2. The District Court Should Not Have Accepted as True the Legal Conclusions Pled in the Developer's Complaint

The district court failed to follow the proper standard for a motion for judgment on the pleadings by accepting as true the Developer's "allegation" of a vested property right. 4(691:5-9) On a Rule 12 motion, a district court must only accept factual allegations and "fair" inferences as true. *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). Bald contentions, unsupported characterizations, and legal conclusions are not well-pleaded allegations, and will not defeat a motion to dismiss or, by analogy, a motion for judgment on the pleadings. *See G.K. Las Vegas, Ltd. P'ship v. Simon Prop. Grp., Inc.*, 460 F. Supp.

2d 1246, 1261 (D. Nev. 2006). Legal conclusions are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

Here, the May 15, 2019 Order stated:

> [A] landowner merely need allege an ownership interest in the land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners have made such an allegation. The Landowners assert that they have a property interest and vested property rights in the Subject Property …

5(882-885) (describing supposed examples). The district court explained its rationale at the May 15, 2019 hearing:

> I'm charged with reviewing the complaints in this case, the plaintiff alleges a vested property right, and I accept that; right? I do. You know, that's a factual dispute. I get it. But nonetheless, this is the pleading stage of the case.

4(691:5-9).

This statement was wrong on multiple fronts. First, the existence of a vested right is a question of law, not a question of fact. *See CMC of Nevada*, 99 Nev. at 747, 670 P.2d at 107. Second, because the existence of a vested right is a question of law, the district court should not have accepted it as true simply because the Developer pled it in the complaint. *See Iqbal*, 556 U.S. at 678-79. Third, the district court had already correctly concluded as a matter of law that the Developer did not have vested rights to have the Applications approved, and as set forth *infra*, should not have jettisoned that conclusion simply because the Developer asserted otherwise in its complaint. 1(219-220). The district court should have followed its

earlier legal conclusion, not blindly accepted the contrary and erroneous legal conclusion baldly asserted by the Developer.

3. Different Evidentiary Standards Between a Petition for Judicial Review and Inverse Condemnation Claims Does Not Alter the Applicable Law

The district court's disregard for the legal principles it espoused in denying the PJR cannot be justified by the different standard of proof for an inverse condemnation claim. In denying the Developer's petition for judicial review, the district court expressly and correctly determined that the Developer has no vested rights to have its redevelopment applications approved because the City had the discretion to deny those applications. *See* 1(219-220, 222), *citing Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112; *Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60; *CMC of Nevada*, 99 Nev. at 747, 670 P.2d at 107. Nevertheless, the district court felt untethered to that conclusion because the evidentiary standard differs between a petition for judicial review and inverse condemnation claims. 4(571:13-25); 4(580:5-581:7).

The applicable principles of law do not change, however, simply because a litigant's evidentiary burden to prove facts might be different. That is because an evidentiary burden relates to *evidence* that a party must possess to prove *facts* that meet the elements of a claim. *See Rivera v. Philip Morris, Inc.*, 125 Nev. 185, 191, 209 P.3d 271, 275 (2009); *Nassiri v. Chiropractic Physicians' Bd. of Nev.*, 130

Nev. Adv. Op. 27, 327 P.3d 487, 490 (2014) (The function of a standard of proof "is to instruct the *factfinder* concerning the degree of confidence our society thinks he should have in the correctness of *factual* conclusions for a particular type of adjudication.") (emphases added) (internal quotations omitted). The law stays the same, no matter what the standard of proof is. *See McNabney v. McNabney*, 105 Nev. 652, 659, 782 P.2d 1291, 1295 (1989) (explaining the concept of a "legal rule").

This is clear from the doctrine of administrative res judicata, under which issues decided in an administrative proceeding can have preclusive effect on subsequent legal proceedings. *See Britton v. City of North Las Vegas*, 106 Nev. 690, 693, 799 P.2d 568, 570 (1990). If the district court had entered a final judgment on the PJR, the district court's legal conclusion in the November 21, 2018 Order that the Developer lacks vested rights to have its redevelopment applications approved would have preclusive effect on a subsequent legal action. *See id.* Simply because the Developer brought its inverse condemnation claims and PJR in the same action does not allow the Developer to circumvent the principles of administrative res judicata.[5]

[5] Notably, the Developer argued to this Court in Case No. 77771 that the November 21, 2018 Order *was* a final judgment. *See* App.'s Opp. to Mot. to Dismiss Appeal for Lack of Jurisdiction, Case No. 77771. Although the Court correctly concluded otherwise and dismissed the Developer's appeal for lack of

Because the district court could not stray from its earlier conclusions of law that the Developer lacked vested rights, dismissal of the inverse condemnation claims was required.

C. The District Court Acted Outside the Bounds of its Jurisdiction By Allowing the Developer's Unripe Claims to Proceed

Under the ripeness doctrine, the district court lacked subject matter jurisdiction to hear the Developer's inverse condemnation claims. If a party's claims are not ripe for review, they are not justiciable, and the Court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). A taking claim is not ripe unless "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Cnty.*, 473 U.S. at 186. "A final decision by the responsible state agency informs the constitutional determination whether a regulation has deprived a landowner of all economically beneficial use of the property … or defeated the reasonable investment-backed expectations of the landowner to the extent that a taking has occurred." *Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) (internal citations and quotations omitted).

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jurisdiction, this demonstrates that Developer is advancing conflicting positions as it deems convenient. *See id.*

To resolve a taking claim, a court must know "the extent of permitted development on the land in question." *Id.*, *quoting MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351 (1986)). The decisions of the U.S. Supreme Court regarding ripeness of inverse condemnation claims "uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." *MacDonald, Sommer*, 477 U.S. at 351. If a developer withdraws an application, "the application was not meaningful." *Zilber v. Town of Moraga*, 692 F. Supp. 1195, 1199 (N.D. Cal. 1988); *see also Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1455 (9th Cir. 1987), *amended*, 830 F.2d 968 (9th Cir. 1987) (holding that trial court erred by reaching merits of unripe takings claims because "[t]he application made by the developer was not meaningful since it was abandoned at an early stage in the application process.").

In its November 21, 2018 Order, the district court concluded, as a matter of law, that Judge Crockett's Decision in the case of *Jack B. Binion, et al. v. The City of Las Vegas, et al.*, A-17-752344-J, had preclusive effect on this case and required the Developer to obtain approval of a Major Mod before redeveloping the Badlands Property. 1(223-226). The district court reiterated this conclusion of law when denying the Developer's motion for retrial of the PJR. 5(863). Furthermore, the district court found that the Developer submitted and then withdrew a Major

Mod Application, preventing the City Council from considering it. 1(208-209). This rendered the inverse condemnation claims unripe. *See Zilber*, 692 F. Supp. at 1199; *Kinzli*, 818 F.2d at 1455.

The City Council's consideration of Major Mod Application is precisely the type of procedure the Supreme Court recognizes as a threshold requirement before a landowner can assert a takings claim:

> [A] landowner may not establish a taking before a land-use authority has the opportunity, using its own reasonable procedures, to decide and explain the reach of a challenged regulation. Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established.

Palazzolo, 533 U.S. at 620-21. Judge Crockett's Decision requires the City Council to modify the Master Development Plan before approving development applications that seek to convert the golf course to residential and commercial uses. 1(89). But the Developer has not allowed the City Council to even consider a Major Mod application, much less approve one. 1(208-209, 225).

Because a district court cannot second guess another court's final judgment, the Developer must comply with Judge Crockett's Decision unless and until it is reversed on appeal. *See Rohlfing v. Second Jud. Dist. Ct.*, 106 Nev. 902, 906, 803

P.2d 659, 662 (1990) (citing Nev. Const. art. 6, § 6; NRS 3.220). Absent compliance with the Major Mod requirement recognized in Judge Crockett's Decision, there has been no final determination of the Developer's rights to redevelop the golf course, and the inverse condemnation claims had to be dismissed on jurisdictional grounds. *See Palazzolo*, 533 U.S. at 618; *Kinzli*, 818 F.2d at 1455; *Zilber*, 692 F. Supp. at 1199.

D. The District Court Could Not Grant Leave to Amend Where the Developer's Proposed Amended Complaint Constituted Impermissible Claim Splitting

The only matter presented in the Developer's original and first amended complaints was whether the City Council's June 21, 2017 Decision to deny the Applications constituted a taking. 1(9-44). In the November 21, 2018 Order, the district court concluded this denial was a proper exercise of the City Council's discretion. 1(216-219). Nevertheless, the district court granted the Developer leave to amend to add allegations related to actions that occurred after June 21, 2017 and that are the subject of the Developer's other lawsuits. *Compare* 2(363-399) *to* 3(422-482) (demonstrating that allegations and claims in the Developer's proposed Second Amended Complaint were already the subject of its Complaints in Case Nos. A-18-775804-J and A-18-780184-C); 5(879-880) (granting motion for leave to amend).

"[L]eave to amend should not be granted if the proposed amendment would be futile.… A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim." *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013), as corrected (Aug. 14, 2013) (citations omitted). Other "[s]ufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant." *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000).

Impermissible claim splitting is grounds to reject an amended complaint. See *Fairway Rest. Equip. Contracting, Inc. v. Makino*, 148 F. Supp. 3d 1126, 1129 (D. Nev. 2015). "As a general proposition, a single cause of action may not be split and separate actions maintained." *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977) (citing *Reno Club, Inc. v. Harrah*, 70 Nev. 125, 260 P.2d 304 (1953)). When identical causes of action are pending, involving the same parties and arising from the same incident, a trial court may properly dismiss the second action. *See Fitzharris v. Phillips*, 74 Nev. 371, 376, 333 P.2d 721, 724 (1958), disapproved on other grounds by *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). "It would be contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause." *Id.* "To determine whether a plaintiff is claim-splitting, as would support dismissal, the proper question is whether, assuming the first suit was already final, the second

suit would be precluded under res judicata analysis." *Id.* A main purpose behind the rule preventing claim splitting is "to protect the defendant from being harassed by repetitive actions based on the same claim." Restatement (Second) Judgments, § 26 cmt. a; accord 1 Am. Jur. 2d Actions § 99.

The matters that the district court allowed the Developer to add in its proposed new pleading are the subject of other currently pending cases and therefore amount to claim splitting. *Compare* 2(363-399) *to* 3(422-482). Indeed, the Developer effectively conceded as much by broadly describing its litigation before other judges on the same matters it sought to incorporate into this case and arguing that those other cases have preclusive effect here. 2(289-291); 2(318-331). The district court then incorporated these allegations from the Developer's other lawsuits, that post-dated the City Council's June 21, 2017 Decision and that were not in the First Amended Complaint into its May 15, 2019 Order. 5(886-893). This was prohibited. *Hutchins*, 93 Nev. at 432, 566 P.2d at, 1137.

The district court should have prohibited the Developer from splitting its claims among different lawsuits before different judges to shop for the best result. *See id.* This is an improper purpose and in bad faith. Moreover, because the Developer could not prove a taking without the facts alleged in its other litigation, it conceded that its existing claims are not ripe. The district court therefore abused

its discretion by granting leave to amend. *See Halcrow*, 129 Nev. at 398, 302 P.3d at 1152.

E. A Writ is Warranted Here to Protect the City and Other Government Entities From A Flood of Inverse Condemnation Claims Arising From the Denial of Discretionary Land Use Decisions

The fall-out from the district court's order could be catastrophic for the City and other land use authorities. Every month, the City Council or Planning Commission considers and decides as many as 100 discretionary land use applications. Until the district court's order, such discretionary decisions have been protected from inverse condemnation claims under the authority of this Court's *Stratosphere* line of cases, which hold that rights to obtain land use approvals do not vest if they remain subject to governmental discretionary decision-making authority. *See Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60; *Am. W. Dev.*, 111 Nev. at 807, 898 P.2d at 112. This is consistent with federal takings law. *See Roth*, 408 U.S. at 577; *Landgraf*, 511 U.S. at 266. If the district court's conclusion that the City properly exercised its discretion to deny the 35-Acre Applications provides no assurances that the City will be protected against liability for inverse condemnation, the City's Planning Department and City Council will be chilled from exercising their discretion to deny land use proposals when warranted for fear of the potential impact on the public fisc.

The district court failed to comply with binding precedent, exposing the City and, if adopted as Nevada law, land use authorities throughout the State to claims for inverse condemnation. *See Stratosphere Gaming*, 120 Nev. at 527–28, 96 P.3d at 759–60. The drain on government resources just to defend this case is tremendous, and the defense costs for the potential onslaught of litigation against the City and similarly-situated land use authorities could be disastrous. Much worse, the dollar value of all of the possible claims arising from denials of special use permits, waivers, site development plan reviews, tentative maps, general plan amendments, variances, parcel maps, rezoning, vacations and other discretionary permits is astronomical. Writ relief is warranted under these circumstances.

F. Issuance of the Writ Requested by the City is in the Interest of Judicial Economy

Judicial economy will be advanced by the writ relief sought by the City. "[T]he primary standard" in the Court's determination of whether to entertain a writ petition is "the interests of judicial economy." *Smith*, 113 Nev. at 1345, 1348, 950 P.2d at 281. Particularly when a case is in "the early stages of litigation," "policies of judicial administration" warrant the Court's consideration of a writ petition. *Int'l Game Tech.*, 124 Nev. at 198, 179 P.3d at 559.

Here, the case is at the pleadings stage, where it should have ended. 6(956-1050). Urgency exists to halt the district court proceedings because the district court has allowed discovery to proceed. 4(726-760). The Developer has served

extensive written discovery requests on the City. 4(726-749). The City moved the district court for a stay on an order shortening time, which the district court denied on May 15, 2019. 5(761-851, 902). Moreover, because the Court's ruling on this Writ Petition may provide guidance to the district court in not only this case but the other cases involving the Badlands golf course (of which there are many[6]) writ relief here will make the most efficient use of judicial resources. Judicial economy weighs in favor of the Court's consideration of this petition and issuance of the writ requested.

CONCLUSION

Because the district court should have dismissed the Developer's unripe inverse condemnation claims for want of subject matter jurisdiction and because the Developer has no vested rights to trigger the taking it alleges, writ relief is warranted here. The City asks this Court to issue a writ of mandamus, or in the

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[6] *See* footnote 1, *supra*.

alternative prohibition, that directs the district court to dismiss the Developer's claims with prejudice.[7]

DATED this 17th day of May, 2019.

McDONALD CARANO LLP

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[7] The absence of vested rights requires dismissal with prejudice even though dismissal on ripeness grounds is often without prejudice.

VERIFICATION

Debbie Leonard, being first duly sworn, deposes and says:

1. Pursuant to NRS 15.010, NRS 34.030 and NRS 34.170, and under penalty of perjury, I declare that I am counsel for the City of Las Vegas and know the contents of this writ petition.

2. Th facts stated in this writ petition are true and correct to the best of my own knowledge or based on information and belief. I make this verification because the relevant facts are largely procedural and within my knowledge as the City's attorney.

3. On March 22, 2019, the district court held oral argument on the City's motion for judgment on the pleadings and the Developer's countermotions for judicial determination of liability and to amend the pleadings.

4. Ruling from the bench, the district court denied the City's motion for judgment on the pleadings and the Developer's countermotion for judicial determination of liability and granted the Developer's countermotion to amend the pleadings. The district court directed counsel to prepare written orders.

5. Counsel exchanged drafts of the proposed orders, but because they did not reach agreement on language, the parties submitted competing proposed orders.

6. On April 2, 2019, the district court held a 16.1 conference.

7. On April 3, 2019, the City Council voted to authorize the filing of this Writ Petition.

8. On April 15, 2019, the Developer served written discovery requests on the City, true and correct copies of which are included in the concurrently filed appendix. Responding to these requests is hugely time consuming and is diverting the attention of Planning Department staff and the City Clerk from their daily tasks to serve the public. The loss of this time and attention if the City were to be sued for a taking every time it denied a discretionary land use application could cripple the City's resources.

9. On April 23, 2019, the City filed a motion to stay the proceedings in the district court pending the Court's consideration of this writ petition on an order shortening time. The district court did not hold the hearing on the motion to stay until May 15, 2019.

10. At the May 15, 2019 hearing, the district court denied the City's motion to stay and entered a minute order that day. The district court stated at the hearing that the factors specified in *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000), were not satisfied. I have ordered a transcript of the May 15, 2019 hearings, but as of the time of this filing, have not yet received a copy. I will supplement the appendix with the transcript when I receive it.

11. Also on May 15, 2019, the district court entered a written order that denied the City's motion for judgment on the pleadings and granted the Developer leave to amend the complaint. The Developer then filed its Second Amended Complaint. The City has not yet had the opportunity to answer the Second Amended Complaint.

12. The City Council and Planning Commission consider numerous discretionary land use applications, sometimes as many as 100 per month. This information is publicly available on the City's website.

13. The district court's denial of the City's motion for judgment on the pleadings subjects the City to proceedings over which the district court lacks jurisdiction; could chill the City Council and Planning Commission from lawfully exercising their discretion to deny land use applications; and may open the floodgates to inverse condemnation litigation over discretionary denials of land use

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applications, writ relief is appropriate and a stay pending the Court's disposition of this Writ Petition is warranted.

Dated this 17th day of May, 2019.

Debbie Leonard (#8260)

STATE OF NEVADA)
)
COUNTY OF WASHOE)

Subscribed and sworn before me on
this 17th day of May, 2019

NOTARY PUBLIC

PAMELA K. MILLER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 92-0545-2 - Expires Nov. 01, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 8,103 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 17th day of May, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 17th day of May, 2019, a copy of the foregoing **PETITIONER'S PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF PROHIBITION** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78792

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,

Real Party in Interest

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

EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PETITION

(immediate relief requested)

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INTRODUCTION

The City of Las Vegas files this emergency motion pursuant to NRAP 8 and 27(e) to stay all district court proceedings pending the disposition of its petition for writ of mandamus, or in the alternative, writ of prohibition (the "Writ Petition"). Immediate action by the Court is needed because the district court denied the City's motion to stay, the City will be irreparably and seriously harmed, and the purpose of its Writ Petition defeated, should a stay not be granted.

A stay is warranted because the district court denied the City's motion for judgment on the pleadings on Real Party-in-Interest 180 Land Company, LLC's ("the Developer") inverse condemnation claims, notwithstanding two independent legal grounds for dismissing them. First, the district court's November 21, 2018 Order denying the Developer's petition for judicial review (the "PJR") established that the City lawfully exercised its discretion to deny the Developer's applications to redevelop the Badlands golf course, and as a matter of law, the Developer lacked any vested rights to have its redevelopment applications approved. 1(216-222).[1] As a result, there can be no regulatory taking. Allowing the Developer's inverse condemnation claims to proceed in the absence of vested rights is directly contrary to this Court's precedents, exposes the City to a flood litigation from the Developer

[1] References are to the Petitioner's Appendix, filed with the Writ Petition, volume number followed by pages numbers in parentheses.

and others for its discretionary land use decisions, and is disruptive to the City's exercise of its public service functions.

Second, the November 21, 2018 Order determined that an Order issued by the Honorable James Crockett in *Jack B. Binion, et al. v. The City of Las Vegas, et al.*, A-17-752344-J ("Judge Crockett's Decision") requiring a major modification of the Peccole Ranch Master Plan before the Developer may redevelop the golf course has preclusive effect. 1(77-90); 1(223-225). The district court made the finding that the Developer withdrew the only major modification application it submitted. 1(208-209). Since the Developer's inverse condemnation claims cannot be ripe under Judge Crockett's Decision until the Developer receives a final decision from the City Council on at least one meaningful major modification application, , the district court is acting outside the bounds of its jurisdiction.

The City should not be forced to bear the burden of defending against the Developer's inverse condemnation claims under these circumstances. The Developer's litigation over the Badlands golf course in this case and numerous others is placing significant demands on government resources, both financial and with personnel being diverted from their usual tasks to address broad discovery requests. The tax dollars consumed and the lost productivity of City employees will likely never be recovered. All of this is contrary to the public interest. Because the legal issues presented in the Writ Petition have statewide importance, will affect all

land use and planning authorities in Nevada, and have the potential to flood the courts with a multitude of inverse condemnation claims arising from discretionary land use decisions, a stay is warranted.

The City first sought a stay in the district court on the same grounds asserted here, which was denied on May 15, 2019. 5(902). The district court even denied the City's request for a temporary stay pending a request to this Court, prompting the City to bring this motion on an emergency basis. In its minute order, the district court did not state its reasons for denying the City's motion for stay but stated at the hearing that it believed the factors in *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) were not satisfied. 5(902).

LEGAL ARGUMENT

A. Standard For A Stay

Under NRAP 8(c), the following factors are considered for a motion to stay: (1) whether the object of the appeal or writ petition will be defeated if the stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition. *Hansen*, 116 Nev. at 657, 6 P.3d at 986. A motion for stay is appropriate pending the Court's disposition of a writ petition. *See id.*

The authority of an appellate court to grant a stay "has historically been justified by the perceived need 'to prevent irreparable injury to the parties or to the public'" pending review. *Nken v. Holder*, 556 U.S. 418, 432 (2009), *quoting Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 9 (1942). By entering a stay, the appellate court can "save the public interest from injury or destruction" during its review and fulfill its "task of safeguarding the public interest." *Scripps-Howard*, 316 U.S. at 15.

B. Allowing the Case to Proceed Defeats the Purpose of the Writ Petition

One purpose of the Writ Petition is to compel the district court to act within the confines of its jurisdiction and dismiss the Developer's inverse condemnation claims, as required by its own conclusions of law. The law is settled that ripeness is a jurisdictional requirement in inverse condemnation actions. *S. Pac. Transp. Co. v. City of Los Angeles*, 922 F.2d 498, 502 (9th Cir. 1990) ("Ripeness is more than a mere procedural question; it is determinative of jurisdiction.").

The ripeness of an as-applied claim for inverse condemnation "depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in consideration development plans for the property, ***including the opportunity to grant variances or waivers allowed by law***." *Palazzolo v. Rhode Island*, 533 U.S. 606, 620–21 (2001) (emphasis added). "As a general rule, until these ordinary processes have been followed the

extent of the restriction on property is not known and a regulatory taking has not yet been established." *Id.* at 621 (emphasis added).

Another object of the Writ Petition is to avoid subjecting the City to inverse condemnation claims in the absence of vested rights and based on the lawful exercise of authority granted pursuant to NRS 278.250 and 278.260. The Writ Petition is necessary to prevent a barrage of takings litigation over every discretionary land use application that the City may deny and seeks to stem the loss of additional public resources in defending a suit over which there is no jurisdiction.

> If a Government official is to devote time to his or her duties, and to the formulation of sound and responsible policies, it is counterproductive to require the substantial diversion that is attendant to participating in litigation and making informed decisions as to how it should proceed. Litigation, though necessary to ensure that officials comply with the law, exacts heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government.

Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009) (discussing qualified immunity).

The City has invested a tremendous amount of time in this and at least ten other cases involving the Developer's attempts to convert the Badlands golf course to residential development.[2] In addition to its reams of motions, countermotions,

[2] *See Jack B. Binion, et al. v. Fore Stars, Ltd., City of Las Vegas, et al.*, 8JDC Case No. A-15-729053-C, NSC Case No. 73813; *Jack B. Binion, et al. v. City of Las Vegas, et al.*, 8JDC Case No. A-17-752344-J, NSC Case No. 75481; *180 Land Company, LLC v. City of Las Vegas*, 8JDC Case No. A-17-758528-J, NSC Case No. 77771; *Frank A. Schreck v. City of Las Vegas and 180 Land Co., LLC*, 8JDC Case No. A-18-768490-J; *180 Land Co LLC v. City of Las Vegas*, 8JDC Case No. A-18-

oppositions, replies, appendices and other filings, the Developer has served extensive discovery requests on the City, which the district court has allowed to proceed. 4(726-760). The City's Planning Department is currently searching its records to respond, which involves a review of multiple land use application files. Many of the requests will cause staff to search for and retrieve numerous files from the 1980s and 1990s. This must be done manually and is quite time consuming, thereby taking staff away from their normal duties of serving the public.

Each request also contains language that will cause the City to retrieve the City Council and Planning Commission records that correspond with each planning file. This requires the resources of both the City Clerk and the Planning Department, plus the City Attorney's Office and outside counsel. Moreover, it appears that the Developer intends to use discovery into its inverse condemnation claims to launch a collateral attack on the district court's November 21, 2018 Order denying its petition for judicial review and to contend that the City intentionally delayed consideration of its applications. 1(200-227); 4(636). No amount of discovery will change the fact

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771389-C; *180 Land Co LLC, et al. v. City of Las Vegas, James R. Coffin, Steven G. Seroka*; USDC Case No. 2:18-cv-0547-JCM-CWH; *Fore Stars, Ltd., et al. v. City of Las Vegas, et al.*; 8JDC Case No. A-18-773268-C; *180 Land Company, LLC v. City of Las Vegas*, 8JDC Case No. A-18-775804-J; *180 Land Company, LLC, et al. v. City of Las Vegas*, 8JDC Case No. A-18-780184-C; *Laborers' Int'l Union N. Am., Local 872 v. City of Las Vegas, James Robert Coffin, and Steve Seroka*, USDC Case No. 2:19-cv-00322-GMN-NJK.

that the Developer has not filed a major modification application so any delay is its own doing. 1(208-209).

If the City is forced to go through discovery and trial on the Developer's inverse condemnation claims only to have this Court simply apply its precedents that the Developer lacks vested rights and the district court lacks jurisdiction, the purpose of the Writ Petition will be defeated. The City has no plain and speedy remedy.

C. The City Will Suffer Irreparable or Serious Harm Without a Stay

Allowing the case to proceed will cause irreparable harm to the City and, in turn, the taxpayers funding the City's staff and this litigation. As the district court acknowledged during the hearing on the Rule 12(c) Motion, "we could waste a year" allowing this case to proceed. 4(636). The loss of public resources occasioned by defending a meritless lawsuit is a harm that cannot be undone. There is more at stake here, however, than just time and money.

Every month, the City Council or Planning Commission considers and decides as many as 100 discretionary land use applications. Until the district court's order, such discretionary decisions have been protected from inverse condemnation claims under the authority of this Court's *Stratosphere* line of cases, which hold that rights to obtain land use approvals do not vest if they remain subject to governmental discretionary decision-making authority. *See Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 527-28, 96 P.3d 756, 759-60 (2004); *Am. W. Dev., Inc. v.*

City of Henderson, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995). This is consistent with federal takings law. *See Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994). The current posture of this case establishes a dangerous precedent that would allow disappointed landowners to sue for inverse condemnation whenever a land use application has been denied, regardless of the reasons for the denial.

If the district court's conclusion that the City properly exercised its discretion to deny the 35-Acre Applications and this Court's precedents provide no assurances that the City will be protected against liability for inverse condemnation, the City's Planning Department and City Council (and every other municipality and planning authority) will be chilled from denying deficient land use proposals when such denial is permitted and warranted. These are serious and irreparable effects.

D. Staying This Case Results in No Prejudice to the Developer

Since the Developer is merely seeking compensation for an alleged taking, in the unlikely event that the Developer should ultimately prevail, any delay in the proceedings can be compensated for by prejudgment interest. Moreover, shortly before the City sought the instant stay, the Developer itself requested a stay of the case, a further indication that it will not be prejudiced should the proceedings be held in abeyance pending the Court's disposition of the Writ Petition. 2(229).

E. The City is Likely to Prevail on the Merits of the Writ Petition

1. The District Court Cannot Disregard its Own Conclusions of Law

The district court's conclusion of law that the Developer lacks vested rights to have its redevelopment applications approved is a legal bar to the inverse condemnation claims. 1(219-222). Constitutional guarantees are only triggered by a vested right. *Landgraf v. USI Film Prod.*, 511 U.S. 244, 266 (1994); *Nicholas v. State*, 116 Nev. 40, 44, 992 P.2d 262, 265 (2000); *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). Only a "legitimate claim of entitlement" under state law that derives from "existing rules or understandings" can give rise to a taking claim. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). If a property interest is "contingent and uncertain," "speculative," "discretionary," "inchoate," or "does not provide a certain expectation," then it cannot be deemed a vested right that gives rise to a taking. *Bowers v. Whitman*, 671 F.3d 905, 913 (9th Cir. 2012); *quoting Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 1002-03 (9th Cir. 2007). "[A] mere unilateral expectation or an abstract need is not a property interest entitled to protection." *Webb's Fabulous Pharms., Inc. v. Beckwith*, 449 U.S. 155, 161 (1980).

The City is likely to prevail on the Writ Petition because: (a) the district court's November 21, 2018 Order conclusively establishes that the Developer does not have a vested right to have its redevelopment applications approved; (b) this Court's *Stratosphere* line of cases conclusively establishes that there can be no

vested right in a land use approval that is subject to the discretionary decision-making authority; and (c) an unapproved proposed new use of property is not "fixed and established." *Application of Filippini*, 66 Nev. at 22, 202 P.2d at 537; *Stratosphere Gaming*, 120 Nev. at 527-28, 96 P.3d at 759-60. 2(219-222).

2. The District Court Exceeded its Jurisdiction by Allowing Unripe Claims to Proceed

The district court concluded as a matter of law that Judge Crockett's Decision has preclusive effect in this case. 2(223-225). Judge Crockett's Decision requires the Developer to obtain a major modification of the Peccole Ranch Master Plan before any redevelopment of the golf course could occur, and the district court correctly found that the Developer withdrew the only major modification application it ever filed. 1(77-90); 2(208-210). Under these circumstances the Developer failed to satisfy the final decision requirement under *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). If a party's claims are not ripe for review, they are not justiciable, and the district court lacks subject matter jurisdiction to review them. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010); *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66, 752 P.2d 229, 233 (1988). By allowing the Developer's unripe claims to proceed, the district court is acting without jurisdiction.

CONCLUSION

For the foregoing reasons, the City respectfully requests a stay of all further proceedings in this action pending the Court's resolution of the City's Writ Petition.

DATED this 17th day of May, 2019.

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NRAP 27(e) CERTIFICATE and
DECLARATION OF DEBBIE LEONARD

I, Debbie Leonard, do hereby swear under penalty of perjury that the assertions of this declaration are true and correct.

1. I am over the age of eighteen (18) years. I have personal knowledge of the facts stated within this declaration. If called as a witness, I would be competent to testify to these facts.

2. I am a partner with the law firm of McDonald Carano LLP, which represents the City of Las Vegas in the above-titled matter and am licensed to practice in the State of Nevada and in front of this Court.

3. This declaration is offered in support of the City's Emergency Motion for Stay Pending Appeal. The documents referenced in this Motion and the Writ Petition are found in the Appendix filed concurrently herewith.

4. The contact information for Real Party in Interest 180 Land Company's attorney is:

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5. The facts stated in the City's Writ Petition, Emergency Motion, and the supporting appendix thereto show the need for emergency relief in the form of a stay pending the City's Writ Petition.

6. On April 4, 2019, an early case conference was held pursuant to Rule 16.1(b) during which the district court bifurcated discovery into two phases for liability and damages.

7. On April 15, 2019, the Developer served the following documents on the City: (i) Rule 16.1(a) initial disclosures; (ii) the Developer's first set of requests for admission; and (iii) the Developer's first set of requests for production of documents.

8. The Developer's initial disclosures indicate that the Developer will seek to depose City officials about matters dating back to 1986.

9. The Developer's requests for production of documents will require the City Clerk, Planning Department and City Attorney's Office to undertake a comprehensive review and produce several decades of voluminous records.

10. The City has invested a tremendous amount of time in this and at least ten other cases involving the Developer's attempts to convert the Badlands golf course to residential development.

11. The Developer has filed numerous and voluminous motions, countermotions, oppositions, replies, appendices and other filings in the district court

12. The City's Planning Department is currently searching its files for the requested records, which involves a review of numerous land use application files. Many of the Developer's requests will cause staff to search for and retrieve numerous files from the 1980s and 1990s. This must be done manually and is quite time consuming, thereby taking staff away from their normal duties.

13. Each of the Developer's requests also contains language that will cause the City to retrieve the City Council and Planning Commission records that correspond with each of the planning files. This requires the resources of both the City Clerk and the Planning Department, plus the City Attorney's Office and outside counsel.

14. The public's interest is not served in allowing this case to proceed and requiring the City to expend taxpayer dollars and other public resources defending inverse condemnation claims based on the City's lawful exercise of its discretionary

authority over land use matters and when the district court lacks subject matter jurisdiction.

15. Every month, the City Council or Planning Commission considers and decides as many as 100 discretionary land use applications. Allowing inverse condemnation cases to proceed in the absence of vested rights exposes the City of Las Vegas and every other land use authority in the State to liability for inverse condemnation even in instances in which the governing body properly exercises its discretion to deny a land use application and when the applicant lacks vested rights to have the application approved. This could chill the City's Planning Department and City Council (and every other municipality and planning authority) from denying deficient land use proposals when such denial is permitted and warranted.

16. On April 3, 2019, the City Council voted to approve the filing of a writ petition to challenge the district court's denial of the City's motion for judgment on the pleadings.

17. On April 23, 2019, the City moved the district court for a stay of proceedings on an order shortening time. The district court did not hear the City's motion until May 15, 2019. At that hearing, the district court concluded that the requirements of NRAP 8(c) had not been satisfied. Counsel for the City asked the district court to enter a temporary stay to give the City time to seek a stay in this Court. The district court would not do so. The district court entered a minute order

denying the City's motion for stay on May 15, 2019. I have ordered a transcript of the May 15, 2019 hearing and will supplement the appendix with it once it is received.

18. The City's responses to the Developer's discovery requests were due on May 15, 2019. When the district court denied the City's stay request, the City asked the Developer for a 60-day extension of time to respond to the discovery requests. As of the time of this filing, no response has been received.

19. On May 17, 2019, I emailed counsel for the Developer to advise them that the City was seeking an emergency motion for stay in this Court. Concurrent with this filing, I will email them a copy of the Motion and Writ Petition.

20. Prior to filing this emergency motion, I made every practicable effort to notify the Supreme Court clerk and opposing counsel and caused to be served notice of the writ petition on the district court and real party in interest, with courtesy copy by email.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED: May 17, 2019.

/s/ *Debbie Leonard*
Debbie Leonard (#8260)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 17th day of May, 2019, a copy of the foregoing **EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PETITION** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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/s/ Pamela Miller
An employee of McDonald Carano, LLP

4834-0751-9383, v. 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

180 LAND CO LLC, A NEVADA LIMITED-LIABILITY COMPANY,
Appellant,
vs.
CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77771
District Court Case No. A758528

FILED
MAY 21 2019
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDERS this appeal DISMISSED."

Judgment, as quoted above, entered this 22nd day of April, 2019.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this May 17, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

A-17-758528-J
CCJD
NV Supreme Court Clerks Certificate/Judgt
4837395

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IN THE SUPREME COURT OF THE STATE OF NEVADA

180 LAND CO LLC, A NEVADA LIMITED-LIABILITY COMPANY,
Appellant,
vs.
CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 77771

FILED

APR 22 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a petition for judicial review of a decision of the Las Vegas City Council regarding land use applications, and dismissing appellant's claims for inverse condemnation. Respondent has filed a motion to dismiss this appeal for lack of jurisdiction. Appellant opposes the motion and respondent has filed a reply.

Notice of entry of the challenged order was served electronically on counsel on November 26, 2018. On December 11, 2018, appellant filed a timely motion for rehearing or reconsideration of the portion of the challenged order dismissing its inverse condemnation claims, which tolled the time to file a notice of appeal. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010). Appellant filed its notice of appeal on December 20, 2018. On February 6, 2019, the district court entered an order granting appellant's motion for reconsideration and removing its findings from the challenged order in regard to appellant's inverse condemnation claims. *See* NRAP 4(a)(6) ("A premature notice of appeal does not divest the district court of jurisdiction.").

Respondent argues that this appeal should be dismissed for lack of jurisdiction because, after the district court's order granting reconsideration, the challenged order is no longer a final judgment. *See* NRAP 3A(b)(1) (allowing an appeal from a final judgment); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000) (defining a final judgment). In its opposition, appellant concedes that the appeal as it relates to the inverse condemnation claims should be dismissed. However, appellant argues that the appeal in regard to the denial of the petition for judicial review should proceed because it represents a separate claim that was severed by the district court pursuant to NRCP 21.[1] *See Valdez v. Cox Commc'ns Las Vegas, Inc.*, 130 Nev. 905, 336 P.3d 969 (2014) (holding that an order finally resolving claims severed pursuant to NRCP 21 is final and appealable). Respondent counters that the district court's "severance" was made pursuant to NRCP 42, which does not provide for severance, but rather, for separate trials. *See, e.g., Corvello v. New England Gas Co.*, 247 F.R.D. 282, 285 (D.R.I. 2008) (noting that, although the terms "severance" and "separate trial" are sometimes used interchangeably, severing claims under FRCP 21 is distinguishable from separate trials under FRCP 42(b), and the distinction is meaningful for appellate jurisdiction purposes, because orders entered after the conclusion of a separate trial are often interlocutory and not appealable); *Reno Hilton Resort Corp. v. Verderber*, 121 Nev. 1, 106 P.3d 134 (2005) (recognizing that an order entered after the first phase of a bifurcated proceeding is not final, but interlocutory).

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[1]Appellant acknowledges, however, that its motion for new trial pursuant to NRCP 59(e) remains pending in the district court, which could subject this appeal to dismissal as premature. *See* NRAP 4(a)(6) (providing this court with discretion to dismiss a premature appeal).

After review of the district court's order entered February 1, 2018, and the transcript of the hearing held January 11, 2018, it is apparent that the district court assigned the petition for judicial review and the inverse condemnation claims for separate trial pursuant to NRCP 42, rather than severance pursuant to NRCP 21. Thereafter, the district court's order granting appellant's motion for reconsideration rendered the challenged order interlocutory. Because appellant's claims for inverse condemnation remain pending below, the order challenged on appeal is not final and this court lacks jurisdiction over this appeal. Accordingly, respondent's motion to dismiss this appeal is granted, and this court

ORDERS this appeal DISMISSED.[2]

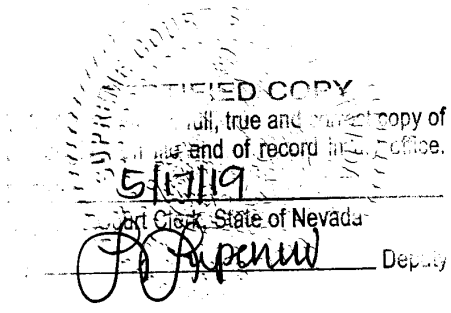
_____ C.J.
Gibbons

_____, J.
Stiglich

_____, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
M. Nelson Segel, Settlement Judge
Law Offices of Kermitt L. Waters
Kaempfer Crowell/Las Vegas
Hutchison & Steffen, LLC/Las Vegas
McDonald Carano LLP/Las Vegas
Las Vegas City Attorney
McDonald Carano LLP/Reno
Eighth District Court Clerk

[2]In light of this order, this court takes no action in regard to appellant's motion to correct caption, filed on February 15, 2019.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full, true and correct copy of
the and of record in this office.
5/17/19
Court Clerk, State of Nevada
Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

180 LAND CO LLC, A NEVADA LIMITED-LIABILITY COMPANY,
Appellant,
vs.
CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77771
District Court Case No. A758528

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: May 17, 2019

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Timothy C. Williams, District Judge
Hutchison & Steffen, LLC/Las Vegas
Kaempfer Crowell/Las Vegas
Law Offices of Kermitt L. Waters
McDonald Carano LLP/Las Vegas
McDonald Carano LLP/Reno
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 MAY 21 2019.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
MAY 21 2019
CLERK OF THE COURT

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6/18/2019 6:19 PM
Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Defendant City of Las Vegas

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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-17-758528-J

DEPT. NO.: XVI

CITY OF LAS VEGAS' ANSWER TO PLAINTIFF 180 LAND COMPANY'S SECOND AMENDMENT AND FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION

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 BIGLER AND SALLY BIGLER,

Intervenors.

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PHONE 702.873.4100 • FAX 702.873.9966

The City of Las Vegas (the "City"), by and through its undersigned counsel, as and for its Answer to the Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation (the "Second Amended Complaint") filed by Plaintiff 180 Land Company, LLC, hereby admits, denies and responds as follows:

1. Answering paragraphs 1, 3, 4, 7, 8, 9, 73, 128, 129, 137, 138, 175, 182, 196, 205, 217, 223 and 226 of the Second Amended Complaint, the City lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth therein and, on that basis, denies each and every allegation set forth in said paragraphs.

2. Answering paragraph 2 of the Second Amended Complaint, the City admits that it is a political subdivision of the State of Nevada and municipal corporation, but submits that the remaining allegations set forth in said paragraphs constitute conclusions of law for which no response is required, and denies each and every allegation that is inconsistent with state and federal law.

. . .

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3. Answering paragraph 5 of the Second Amended Complaint, the City admits that the Order Denying Motion to Dismiss and Countermotion to Stay Litigation that was entered on February 1, 2018 includes the finding, "[b]oth the Petition for Judicial Review and Alternative Verified Claims in Inverse Condemnation comprise one action for which this Court has jurisdiction", but otherwise denies each and every allegation set forth in said paragraph.

4. Answering paragraphs 6, 80, 103, 150, 154, 155, 160, 183, 198, 201, 202, 219, 220, and 221 of the Second Amended Complaint the City submits that the allegations set forth in said paragraphs constitute conclusions of law for which no response is required, and denies each and every allegation that is inconsistent with state and federal law. To the extent said paragraphs assert fact allegations, the City denies them.

5. Answering paragraphs 10, 11, 12, 13, 42, 43, 44, 62, 64, 74, 76, 77, 78, 83, 85, 86, 87, 88, 90, 91, 97, 99, 100, 102, 106, 112, 115, 116, 118, 124, 125, 126, 127, 132, 135, 136, 140, 141, 142, 143, 144, 145, 146, 147, 148, 151, 156, 158, 159, 161, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 177, 178, 181, 184, 185, 186, 187, 188, 189, 190, 192, 193, 194, 195, 199, 200, 203, 204, 207, 208, 209, 210, 211 212, 213, 214, 215, 216, 222 and 225 of the Second Amended Complaint, the City denies each and every allegation set forth therein.

6. Answering paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41 of the Second Amended Complaint, because all of the aforementioned paragraphs that succeed paragraph 14 appear to be bases on which Plaintiff alleges that its "property interest and vested right to use and develop the 35 Acre Property is confirmed", the City denies each and every allegation set forth in said paragraphs. To the extent the allegations set forth in said paragraphs constitute conclusions of law, no response is required, and the City denies each and every allegation that is inconsistent with state and federal law.

7. Answering paragraphs 45, 50, 51 and 52 of the Second Amended Complaint, the City admits that the Developer filed applications designated as GPA-68385, WVR-68480, SDR-68481, and TMP-68482, but submits that the applications speak for themselves and denies each and every allegation set forth in said paragraphs that is inconsistent with the applications, and denies each and every remaining allegation set forth in said paragraphs.

8. Answering paragraph 46 of the Second Amended Complaint, the City submits that the General Plan Designation speaks for itself and denies each and every allegation set forth in said paragraphs that are inconsistent with the City's general plan.

9. Answering paragraphs 47, 48 and 49 of the Second Amended Complaint, the City admits that there are existing residences developed on certain lots generally located to the north and south of the 35-Acre Property, and denies each and every remaining allegation set forth therein.

10. Answering paragraphs 53, 54, 60, and 79 of the Second Amended Complaint, the City admits that it reviewed the applications, but submits that the Planning Staff's reports speak for themselves, and denies each and every allegation set forth in said paragraphs that is inconsistent with those materials, and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 55, 63, 67, 68, 69, 70, 71, 122, and 133 of the Second Amended Complaint, the City submits that the video and transcripts of the referenced meetings speak for themselves, and the City denies each and every allegation set forth in said paragraphs that are inconsistent with said materials.

12. Answering paragraphs 56, 57, 58, 59 and 101 of the Second Amended Complaint, the City admits the allegations set forth therein.

13. Answering paragraph 61 of the Second Amended Complaint, the City submits that the allegations contained in such paragraph are unintelligible and on that basis denies each and every allegation set forth therein.

14. Answering paragraph 65 of the Second Amended Complaint, the City admits the City Council voted to deny applications GPA-68385, WVR-68480, SDR-68481, and TMP-68482, but submits that said paragraph contains legal conclusions for which no responses is required and denies each and every remaining allegation contained in said paragraph.

15. Answering paragraph 66, the City submits that the City's notice of final action and the transcripts of the City Council's meeting speak for themselves, and denies each every all allegation that is inconsistent with these materials.

. . .

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16. Answering paragraphs 72, 180 and 191 of the Second Amended Complaint, the City admits that representatives of the City were involved in negotiating a proposed master development agreement and that the City Council voted to deny the Developer's proposed master development agreement, but the City denies each and every remaining allegation set forth in said paragraphs.

17. Answering paragraph 75 of the Second Amended Complaint, the City submits that the MDA speaks for itself and denies each and every allegation contained in said paragraph that is inconsistent with the MDA.

18. Answering paragraph 81 and 82 of the Second Amended Complaint, the City admits that the City Council considered and voted to deny a master development agreement during the City Council meeting on August 2, 2017, but the City denies each and every remaining allegation contained in such paragraph.

19. Answering paragraph 84 of the Second Amended Complaint, the City admits that Notices of Final Action regarding GPA-68385, WVR-68480, SDR-68481, and TMP-68482 were issued on or about June 28, 2017, submits that said Notices of Final Action speak for themselves, and denies each and every allegation set forth in paragraph 84 that is inconsistent with said documents.

20. Answering paragraph 89 of the Second Amended Complaint, the City admits that Councilwoman Fiore made the statements quoted in said paragraph, but denies each and every remaining allegation set forth therein.

21. Answering paragraph 92 of the Second Amended Complaint, the City admits that the recommending committee considered Bill 2018-24 on October 15, 2018, but denies each and every remaining allegation in said paragraph.

22. Answering paragraphs 93, 94 and 95 of the Second Amended Complaint, the City submits that the text of Bill No. 2018-24 speaks for itself, and the City denies each and every allegation set forth in said paragraphs that is inconsistent with said document.

23. Answering paragraph 96 of the Second Amended Complaint, the City admits that Councilwoman Fiore made statements during the Recommending Committee's meeting on

September 4, 2018 but submits that the video and transcripts of the meeting speak for themselves, and the City denies each and every allegation set forth in said paragraph that is inconsistent with said materials.

24. Answering paragraph 98 of the Second Amended Complaint, the City admits that Bill No. 2018-24 was adopted on November 7, 2018, but denies each and every remaining allegation set forth therein.

25. Answering paragraphs 104 and 109 of the Second Amended Complaint, the City admits that its letters to Plaintiff contain the language quoted in said paragraphs but submits that the letters speak for themselves and denies each and every allegation set forth in said paragraph inconsistent with said letters, and denies each and every remaining allegation set forth in said paragraphs. Paragraph 104 further contains conclusions of law for which no response is required, and the City denies each and every allegation that is inconsistent with state and federal law.

26. Answering paragraph 105, the City admits that Plaintiff's access request required a Major Review pursuant to LVMC 19.16.100(G)(1)(b), but denies each and every remaining allegation set forth therein. Paragraph 105 further contains conclusions of law for which no response is required, and the City denies each and every allegation that is inconsistent with state and federal law.

27. Answering paragraph 107 of the Second Amended Complaint, the City admits that Plaintiff submitted a request to install chain link fencing in August 2017, but denies each and every remaining allegation set forth therein.

28. Answering paragraphs 108, 111 and 114 of the Second Amended Complaint, the City submits that the referenced provisions of the City Code speak for themselves and denies each and every allegation set forth in said paragraphs that is inconsistent with the City Code.

29. Answering paragraph 110 of the Second Amended Complaint, the City admits that it informed the Plaintiff that an application for a major review would be required, but denies each and every remaining allegation set forth therein.

30. Answering paragraph 113 of the Second Amended Complaint, the City admits that it engaged in the normal review process with respect to the drainage study and responded with

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additional items that needed to be addressed and that the City entered into the On-Site Drainage Improvements Maintenance Agreement with Plaintiff dated January 24, 2017, but denies each and every remaining allegation set forth therein.

31. Answering paragraph 117 of the Second Amended Complaint, the City admits that Planning Staff reviewed the applications and recommended approval subject to conditions, but the City submits that the Staff's report speaks for itself and denies each and every allegation set forth in said paragraph inconsistent with the Staff's report.

32. Answering paragraph 119 of the Second Amended Complaint, the City admits that Bill No. 2018-5 was on the morning agenda and Plaintiff's applications were on the afternoon agenda for the May 16, 2018 City Council meeting, but denies each and every remaining allegation contained in said paragraph.

33. Answering paragraph 120 of the Second Amended Complaint, the City admits that Bill No. 2018-5 was approved during the morning session but denies each and every remaining allegation contained in said paragraph.

34. Answering paragraph 121 of the Second Amended Complaint, the City admits that Councilman Seroka moved to strike Plaintiff's applications but denies each and every remaining allegation contained in said paragraph.

35. Answering paragraph 123 of the Second Amended Complaint, the City admits that City Council voted to strike Plaintiff's applications but denies each and every remaining allegation contained in said paragraph.

36. Answering paragraphs 130, 131 and 134 of the Second Amended Complaint, the City admits that Councilmen Seroka and Coffin wrote emails concerning the Badlands property, but submits that those emails speak for themselves, denies each and every allegation set forth in said paragraphs that is inconsistent with the emails, and denies each and every remaining allegation set forth in said paragraphs.

37. Answering paragraph 139 of the Second Amended Complaint, to the extent that such paragraph refers to emails from Councilman Coffin, the City submits that such emails speak for themselves, denies each and every allegation set forth in said paragraph that is inconsistent

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with the emails, and denies each and every remaining allegation set forth in said paragraphs.

38. Answering paragraph 149 of the Second Amended Complaint, the City submits that the referenced Court Order speaks for itself, denies each and every allegation set forth in said paragraph that is inconsistent therewith, and denies each and every remaining allegation set forth in said paragraph.

39. Answering paragraph 152 of the Second Amended Complaint, the City admits that the City denied the referenced applications and that Planning Staff recommended approval, but submits that said paragraphs contains legal conclusions for which no response is required and denies each and every remaining allegation set forth therein.

40. Answering paragraphs 153 of the Second Amended Complaint, the City submits that representatives of the City negotiated with Plaintiff regarding a master development agreement, but submits that the referenced MDA speaks for itself, denies each and every allegation that is inconsistent with the MDA, and denies each and every remaining allegation set forth therein.

41. Answering paragraph 157 of the Second Amended Complaint, to the extent the allegations refer to the content of transcripts and emails, the City submits that those materials speak for themselves, denies each and every allegation set forth in said paragraphs that is inconsistent with those materials, and denies each and every remaining allegation set forth in said paragraph.

42. Answering paragraphs 162, 176, 197, 206, 218 and 224 of the Second Amended Complaint, the City repeats, realleges and incorporates each of its responses to the paragraphs referenced therein as though fully set forth herein.

43. Answering paragraph 179 of the Second Amended Complaint, the City admits that the City denied GPA-68385, WVR-68480, SDR-68481, and TMP-68482 and that the Planning Staff and Planning Commission recommended approval of such applications subject to conditions, but submits that paragraph 179 includes contains legal conclusions for which no response is required, and denies each and every remaining allegation set forth therein.

. . .

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44. The City denies each and every allegation set forth in the Second Amended Complaint to which a specific response is not set forth herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Plaintiff's proposed development is inconsistent with the City's general plan.

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to follow reasonable and necessary procedures in seeking approval for Plaintiff's proposed development.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff lacks vested rights to have its development applications approved.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust its administrative remedies.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are not ripe.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by res judicata and/or collateral estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The Second Amended Complaint violates the rule against splitting causes of action.

NINTH AFFIRMATIVE DEFENSE

The City's actions toward Plaintiff were lawful, necessary, justified, and supported by substantial evidence.

TENTH AFFIRMATIVE DEFENSE

Plaintiff has no greater rights to develop the subject property than Plaintiff's predecessor in interest.

. . .

. . .

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ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate its alleged damages.

FOURTEENTH AFFIRMATIVE DEFENSE

The incidents alleged in the Second Amended Complaint, and the alleged damages and injuries, if any, to Plaintiff, were proximately caused or contributed to by the acts or omissions of Plaintiff and/or third parties not subject to the City's direction or control.

FIFTEENTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff lacked reasonable investment-backed expectations regarding its desire to redevelop the Badlands golf course.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff has the same property rights that Plaintiff enjoyed prior to submitting applications to redevelop the Badlands golf course.

NINETEENTH AFFIRMATIVE DEFENSE

The City reserves the right to amend this list of affirmative defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

PRAYER FOR RELIEF

WHEREFORE, having responded to the allegations set forth in Plaintiff's Second Amended Complaint, the City respectfully requests that this Court enter judgment as follows:

A. Dismissing Plaintiff's Complaint and all claims asserted therein, and ordering that Plaintiff takes nothing by reason thereof;

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B. Awarding the City its costs of suit and attorneys' fees incurred in connection with this litigation; and

C. Such other and further relief as the Court deems just and proper.

DATED this 18th day of June, 2019.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 18th day of June, 2019, a true and correct copy of the foregoing **CITY OF LAS VEGAS' ANSWER TO PLAINTIFF 180 LAND COMPANY'S SECOND AMENDMENT AND FIRST SUPPLEMENT TO COMPLAINT FOR SEVERED ALTERNATIVE VERIFIED CLAIMS IN INVERSE CONDEMNATION** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

Electronically Filed
8/22/2019 2:25 PM
Steven D. Grierson
CLERK OF THE COURT

RMFC
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Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, et al. Plaintiffs, v. CITY OF LAS VEGAS, a 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-17-758528-J **NOTICE TO STATE COURT OF REMOVAL TO THE UNITED STATES DISTRICT COURT**

TO: CLERK OF THE COURT FOR THE EIGHTH JUDICIAL DISTRICT COURT, PLAINTIFFS AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on August 22, 2019, defendant City of Las Vegas (the "City") filed a Petition for Removal of Civil Action with the Clerk of the United States District Court for the District of Nevada removing this action to that court pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446. A true and correct copy of Petition for Removal of Civil Action, excluding exhibits, is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of the Petition for Removal of Civil Action in the United States District Court for the District of Nevada effectuates the removal of this action. Accordingly, no further proceedings should take place in this Court unless and until the case has been remanded.

DATED this 22th day of August, 2019.

McDONALD CARANO LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of August, 2019, a true and correct copy of the foregoing **NOTICE TO STATE COURT OF REMOVAL TO THE UNITED STATES DISTRICT COURT** 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 as follows:

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EXHIBIT “A”

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD., SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X,and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, a 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. **THE CITY OF LAS VEGAS' PETITION FOR REMOVAL OF CIVIL ACTION** (Clark County District Court, Case No. A-17-758528-J)

TO: THE CLERK OF THE ABOVE-ENTITLED COURT, THE PARTIES, AND ALL ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, defendant City of Las Vegas (the "City") files this Petition for Removal of Civil Action with respect to the above-captioned case, which was filed and currently is pending in the District Court of Clark County, State of Nevada, Case No. A-17-758528-J (the "State Court Action"). In support of its Petition for Removal of Civil Action, the City states as follows:

THE ACTION

1. On May 15, 2019, plaintiffs 180 Land Company, LLC; Fore Stars, Ltd. and Seventy Acres, LLC (collectively, the "Developer") filed their Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims In Inverse Condemnation ("Complaint") against the City. *See* Complaint attached hereto as **Exhibit A**.

2. The Complaint alleges causes of action for (1) Categorical Taking; (2) Penn Central Regulatory Taking; (3) Regulatory Per Se Taking; (4) Nonregulatory Taking; (5) Temporary Taking; and (6) Judicial Taking. *Id.*

3. The Developer claims that the City's alleged taking was in violation of the United States Constitution, the Nevada State Constitution and the Nevada Revised Statutes. *Id.*, ¶¶ 173, 194, 203, 215 and 221.

4. The Developer also alleges that the "City is also subject to all of the provisions of the Just Compensation Clause of the United States Constitution." *Id.*, ¶ 2; *see also* ¶¶ 173, 174, 193-5, 202-4, 214-16 and 219-22 (alleging that the City has not paid just compensation for the alleged taking). For their relief, Developer seeks, among other things, "[a]n award of just compensation. . . for the taking." *Id.* at 35:15.

5. In addition to the Developer's Complaint at **Exhibit A**, **Exhibit B** contains all prior pleadings, services of process and orders that have been served on the City prior to the filing of this Petition for Removal of Civil Action.

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JURISDICTION AND VENUE

6. On June 21, 2019, the United States Supreme Court decided *Knick v. Township of Scott, Pennsylvania, et al.*, 139 S.Ct. 2162 (2019). *Knick* overruled, in part, *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) and held that a property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it and, therefore, may bring his claim in federal court under 42 U.S.C §1983 at the time of the alleged taking. *Knick*, 139 S.Ct. at 2167-8. In other words, *Knick* overturned the Supreme Court's prior ruling that a property owner's state law remedies must be exhausted before a taking claim could be filed in federal court.

7. Based on *Knick,* this Court has original jurisdiction under 28 U.S.C. § 1331. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The Developer's Complaint seeks just compensation for the City's alleged taking under the United States Constitution; therefore, pursuant to 28 U.S.C. § 1331, the Fifth Amendment of the United States Constitution and the United States Supreme Court's decision in *Knick,* this Court has jurisdiction over this action.

8. This action may be removed to this Court pursuant to 28 U.S.C. § 1441 as any action commenced in state court is removable if it might have been brought originally in federal court. *See* 28 U.S.C. § 1441(a); *see also Exxon Mobil Corp. v. Allapattach Servs., Inc.*, 545 U.S. 546, 563-64 (2005) ("[A] district court has original jurisdiction of a civil action for purposes of section 1441(a) as long as it has original jurisdiction over a subset of claims constituting the action").

9. The United States Supreme Court entered judgment in *Knick* on July 23, 2019. *See* United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate collectively attached as **Exhibit C**. Therefore, this Removal is timely in that the City has sought removal within 30 days of the final judgment authorizing removal of this matter. *See* 28 U.S.C. § 1446(b)(3) ("[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy

of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.").

10. To the extent the Complaint alleges any state causes of action or other non-federal claims, this Court has supplemental jurisdiction over any such claims pursuant to 28 U.S.C. § 1367 because those claims arise out of the same operative facts as the Developer's federal claims and "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

11. This Court is in the judicial district and division embracing the place where the state court action was brought and is pending. Thus, this Court is the proper district court to which this case should be removed. *See* 28 U.S.C. §§ 1441 and 1446(a).

COMPLIANCE WITH 28 U.S.C. § 1446(d)

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Petition for Removal of Civil Action will be promptly served on the Developer and will be filed with the Clerk of the District Court of the State of Nevada, Clark County, in the State Court Action.

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PRAYER FOR REMOVAL

WHEREFORE, the City prays that the State Court Action be removed to the United States District Court for the District of Nevada.

DATED this 22nd day of August, 2019.

McDONALD CARANO LLP

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EXHIBIT LIST

Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims In Inverse Condemnation	Exhibit A
State Court Action Prior Pleadings, Process and Orders	Exhibit B
United States Supreme Court Case No. 17-647 Docket and Notice of Issuance of Court Mandate	Exhibit C

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 22nd day of August, 2019, I caused a true and correct copy of the foregoing **THE CITY OF LAS VEGAS' PETITION FOR REMOVAL OF CIVIL ACTION** to be electronically filed with the Clerk of the Court by using CM/ECF service and serving on all parties of record via U.S. Mail as follows:

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

180 LAND COMPANY, LLC, *et al.*, Plaintiffs, v. CITY OF LAS VEGAS, *et al.*, Defendants.	Case No. 2:19-cv-1467-KJD-DJA **ORDER**

Before the Court is a motion to remand to state court (ECF No. 7) filed by plaintiffs 180 Land Company, LLC, Fore Stars, LTD., and Seventy Acres, LLC.[1] Defendant, the City of Las Vegas, has responded (ECF No. 10), and the developers replied (ECF No. 11). Also before the Court is the City's motion for leave to file a sur-reply (ECF No. 16), to which the developers responded (ECF No. 17), and the City replied (ECF No. 19).

The developers' motion to remand turns on whether a Supreme Court opinion from an unrelated case constitutes an "other paper" under 28 U.S.C. § 1446(b)(3), which would re-open the window for the City to remove this case to federal court. Until recently, this type of inverse-condemnation claim required state-court exhaustion before a federal district court assumed jurisdiction. However, the Supreme Court's decision in Knick v. Twp. of Scott, 139 S.Ct. 2162 (2019), removed the state-exhaustion requirement and allowed property owners to skip state court and bring their claim directly to federal court. The Court concludes that an order from an unrelated case—even from the Supreme Court—does not meet § 1446(b)(3)'s definition of "other paper" and could not reopen the City's removal widow. Because Knick did not reopen the removal window, this removal was untimely. Accordingly, the Court remands this case to the

[1] For ease of reference, the Court will refer to the defendants collectively as "the developers" unless otherwise necessary.

Eighth Judicial District Court of Nevada.

I. Background

This is one of four related cases that have been removed from the Eighth Judicial District Court.[2] The underlying dispute in each case involves the developers' plans to build homes on a 250-acre parcel of land formerly known as the Badlands Golf Course. D's Resp. to Mot. to Rem. 3, ECF No. 10. The developers' predecessor-in-interest, non-party Peccole Ranch Partnership, designated the parcel as "open space," which the Las Vegas City Council approved in 1990. Id. Around December of 2016, the developers sought City Council approval re-classify 35-acre sections of the original 250-acre parcel as "Low Density Residential." Id. The plan was to divide the 35-acre portions into sixty-one lots and build homes on the individual lots. Id. The plan met considerable backlash from the community, leading the City Council to deny the applications. Id.

The developers challenged the denial in a petition for judicial review in the Eighth Judicial District Court. That petition became the underlying state court action. The state court eventually denied the petition for judicial review but not before the developers amended their complaint to include inverse condemnation claims against the City. Mot. to Rem. 3, ECF No. 7. The gist of the complaint was that the City Council's denial decreased the value of the developers' property, resulting in a taking without just compensation. Id. The parties litigated the case exclusively in state court, and the City repeatedly moved to dismiss the developers' complaint. The City first moved to dismiss the developers' inverse condemnation claims in October of 2017, which the state court denied. Id. at 6. The City moved for reconsideration, which that court also denied. Id. More than a year later, the City moved for judgment on the pleadings but was denied again. Id.

The City then sought interlocutory review by writ petition with the Nevada Supreme Court. In an unpublished order, the Nevada Supreme Court denied the City's writ petition and found that its "extraordinary intervention" was not warranted. See Order of Denial at *1, No. 78792, 2019 WL 2252876 (Nev. May 24, 2019). The City moved for both panel and en banc

[2] See 180 Land Co. v. City of Las Vegas, 2:19-cv-1471 JCM (EJY) (remanded to state court); Fore Stars, Ltd. v. City of Las Vegas, 2:19-cv-1469-JAD-NJK (currently pending); 180 Land Co., LLC v. City of Las Vegas, 2:19-cv-1470-RFB-BNW (currently pending).

rehearing, which both failed. See Mot. to Rem., ECF No. 7 Exs. 8, 9. The case returned to the state trial court for further proceedings.

In August of 2019, the Supreme Court issued Knick, which allowed inverse-condemnation plaintiffs to skip state court and bring their claims directly to federal court under § 1983. The City promptly removed to this Court after Knick. Its justification for removal was that this Court lacked jurisdiction before Knick and that the Supreme Court's decision re-opened the window to remove the case to federal court. This motion to remand followed.

II. Legal Standard

Federal jurisdiction is limited to the power granted by the Constitution and federal statutes. Gunn v. Minton, 568 U.S. 251, 256 (2013). Where a plaintiff elects to bring its claims in state court, 28 U.S.C. 1441(a) authorizes the defendant to remove the case to federal court if the federal court has original jurisdiction over the matter. It is the removing party's burden to demonstrate that federal jurisdiction is appropriate. Hunter v. United Van Lines, 746 F.2d 635, 639 (9th Cir. 1984). Because the federal court's jurisdiction is limited, the threshold question is whether the plaintiff's complaint includes a cause of action that would vest jurisdiction in the federal court. Ansley v. Ameriquest Mortg. Co., 340 F.3d 858, 861 (9th Cir. 2003). The Court presumes that a case is not removeable until the defendant demonstrates otherwise. Hunter v. Philip Morris, 582 F.3d 1039, 1042 (9th Cir. 2009).

A removing defendant generally has two opportunities to remove a case to federal court. The first opportunity happens early in the case and is fairly straightforward. The defendant has thirty days to remove a case where it is clear from the face of the complaint that at least one cause of action creates federal jurisdiction. 28 U.S.C. § 1446(b). The thirty-day clock starts when the defendant receives service of the initial complaint. Alternatively, if the complaint is not required to be served, the clock starts when the plaintiff files the complaint, whichever period is shorter. Id. Importantly, the Court only considers the allegations in the plaintiff's well-pleaded complaint to determine whether a federal claim exists. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). The so-called well-pleaded complaint rule excludes from the analysis any federal defenses the defendant may bring and recognizes that the plaintiff is the "master of his or her

claim." Id.

The defendants' second opportunity to remove is at issue here. This opportunity arises later and is less straightforward. The window only opens if an "amended pleading, motion, order or other paper" alerts the defendant that the case has become removable. 28 U.S.C. § 1446(b)(3). Still, the defendant must overcome the "strong presumption against removal jurisdiction" and demonstrate that removal is proper. Hunter, 582 F.3d at 1042. Given the presumption against removability, the Court resolves ambiguity in favor of remanding to state court. Id.

III. Analysis

The parties agree that the City's first opportunity to remove expired long before it removed to this Court. At issue here is whether the second window ever opened, and if so, did the City timely remove during that thirty-day window? That question boils down to whether the Supreme Court's decision in Knick qualifies as "other paper" under § 1446(b)(3). If the Knick decision is, in fact, an "other paper" under § 1446(b)(3), the City had thirty days to remove after that decision became final.[3] If, on the other hand, the Knick decision does not satisfy § 1446(b)(3), the second removal window never opened, and removal was untimely.

A. Inverse Condemnation Claims Before Knick

A brief history of these inverse-condemnation claims is helpful. Since the mid-eighties, parties pursuing inverse condemnation claims must have fully exhausted their state law remedies before filing in federal court. Williamson Cty. Reg. Planning Com'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985). The state-exhaustion requirement rested on the assumption that a taking did not actually occur until the government denied the landowner reasonable compensation. Id. at 195. It followed that a final judgment in state court would be the culmination of the taking. The problem with that assumption was the state court's ultimate judgment would have a preclusive effect on any future federal suit. In essence, the very judgment that unlocked the door to federal court simultaneously barred the federal case. See Knick, 139 S.Ct. at 2167 (discussing San Remo Hotel, L.P. v. City and Cty. of San Francisco, 545 U.S. 323

[3] The parties disagree when exactly the thirty-day clock began ticking: the date the Court issued Knick vs. the date the Knick decision was no longer eligible for rehearing or reconsideration. However, the Court need not determine that issue here because Knick was not an "other paper" under the statute.

(2005)).

That catch-22 became apparent twenty years after Williamson Cty. when the Supreme Court issued San Remo. There, the San Remo Hotel sued the City and County of San Francisco over a city ordinance that required the hotel to pay a $567,000 "conversion fee." San Remo, 545 U.S. at 326. Under Williamson Cty., the hotel pursued its claim against the city and county in California state court and expressly reserved its federal constitutional claims in case the city suit was unsuccessful. Id. at 331. Despite the hotel's efforts to reserve its constitutional claims, the Supreme Court found that the Full Faith and Credit Clause required the federal court to honor the state court decision, dooming the federal claim before it begun. Id. at 336.

Enter Knick v. Twp. of Scott, Pa. 139 S.Ct. 2162 (2019). In June of 2019, the Supreme Court overturned Williamson Cty. to the extent that it required a takings plaintiff to first exhaust all available state remedies. Knick made two vital findings. First, it clarified that a governmental taking occurs "as soon as private property has been taken." Id. at 2172 (internal alterations omitted). Whether the taking happens through a formal condemnation or by regulation, "the landowner has *already* suffered a constitutional violation." Id. (citing San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting). The fact that the landowner suffers a taking at the time the government interferes with the property leads to Knick's second vital finding: the landowner's claim is ripe *before* the state court decides the merits of the claim. The landowner has a viable takings claim when the government takes its property not when the state refuses just compensation. After all, "the violation is the only reason compensation was owed in the first place." Id. at 2172. Therefore, a landowner may bring a takings claim in federal court without first seeking just compensation from the state.

B. The Developers' Motion to Remand

It is against that backdrop that the City of Las Vegas removed the developers' claims to this Court. The City argues that removal is proper this late in the game because removal was impossible before Knick vested this Court with jurisdiction. The developers disagree. They classify the City's removal as an attempt to forum shop their way around several adverse decisions in state court. The developers also argue that even if removal was available under

Knick, the City has waived removal by litigating extensively in state court.

Knick does not directly address the issue of whether previously unremovable takings cases would become removable upon its issuance. Knick stands for the proposition that a landowner may now bypass state court and bring a *new* takings claim directly to federal court. Nothing in Knick leads the Court to believe that the decision opened the federal courts to pending takings cases. Accordingly, the federal removal statutes—not Knick—are the key to whether removal is proper here. The parties agree that the first removal window has closed. Therefore, this entire motion to remand turns on whether Knick constitutes "other paper" under § 1446(b)(3).

Whether a Supreme Court opinion from an unrelated case constitutes an "other paper" under § 1446 is somewhat of an open question. Neither the Supreme Court nor the Ninth Circuit has directly addressed the issue. As discussed more fully below, the majority of courts have rejected the City's argument. However, there seems to be at least some support for the proposition that an intervening change in the law can reopen the removal window in narrow circumstances. For example, the City points to Rea v. Michaels Stores, Inc., 742 F.3d 1234 (9th Cir. 2014). Rea was a class action between the Michael's retail chain and a group of its store managers who were allegedly excluded from receiving overtime pay. The managers filed their case in state court, and Michaels removed within the first thirty-day window under the Class Action Fairness Act ("CAFA"). Id. at 1236. The district court remanded the case, however, finding that the plaintiffs' demand did not satisfy CAFA's $5,000,000 amount-in-controversy requirement because the plaintiffs expressly disclaimed any recovery greater than $4,999,999. Id. Shortly after remand, the Supreme Court determined that damages waivers, like the one in Rea, could not defeat removal under CAFA. Id. (citing Standard Fire Ins. Co., v. Knowles, 568 U.S. 588 (2013)). Following the Supreme Court's clarification of CAFA's amount-in-controversy requirement, Michaels again removed to federal court. The Ninth Circuit found the removal proper, holding that the controlling law at the time Michaels received the complaint did not "affirmatively reveal[] on its face the facts necessary for federal court jurisdiction." Id. at 1238.

The City argues that Rea also supports removal here. The Court disagrees. There are two problems with Rea. First, there are fundamental differences between the federal question jurisdiction asserted here and the CAFA-based diversity jurisdiction in Rea. CAFA's jurisdictional requirements *expanded* federal jurisdiction over diverse class action cases. Diversity jurisdiction generally requires complete diversity. However, CAFA relaxed the diversity requirement, which is "noteworthy" because it "expand[ed] the jurisdiction of federal court: unlike traditional diversity cases . . . which require complete diversity." Chan Healthcare Grp, PS v. Liberty Mut. Fire Ins. Co., 844 F.3d 1133, 1137 (9th Cir. 2017). By contrast, federal question cases like this one, confront a presumption that they do not belong in federal court. Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir. 1039) ("[a] defendant may remove an action to federal court based on federal question jurisdiction," however "it is presumed that a cause lies outside [the] limited jurisdiction [of the federal courts]") (internal quotations omitted). Thus, CAFA-diversity jurisdiction presents a completely different standard than federal question jurisdiction.

Second, Rea does not answer the question this case asks, which is whether a Supreme Court decision in an unrelated case constitutes an "other paper" under § 1446(b)(3). Admittedly, Rea briefly discusses § 1446(b)(3)'s requirement that some "other paper" reveal that the case has become removeable. However, Rea stopped short of deciding that the Supreme Court's intervening decision (Standard Fire, 568 U.S. 588 (2013)) qualifies as "other paper." It merely found that Standard Fire was a "relevant change of circumstances" that justified a second chance at removal. Rea, 742 F.3d at 1238. Simply put, the Ninth Circuit confronted Rea in a different context (CAFA diversity jurisdiction) and did not directly answer whether unrelated Supreme Court precedent constitutes "other paper" under § 1446(b)(3). Therefore, Rea is distinguishable.

Meanwhile, most other courts who have confronted this issue have concluded that an order from an unrelated case does not constitute "other paper." Two cases are particularly persuasive. First is Phillips v. Allstate Ins. Co., 702 F.Supp. 1466 (C.D. Cal. 1989). At issue there was the removability of cases involving fictitious defendants under the Judicial Improvement and Access to Justice Act. Id. at 1467. At the time Phillips filed the complaint, the

presence of properly joined Doe defendants precluded removal. Id. (citing Bryant v. Ford Motor Co., 844 F.2d 602 (9th Cir. 1987)). During the litigation, Congress passed the Judicial Improvement and Access to Justice Act, which allowed removing defendants to disregard the citizenship of fictitious defendants" and remove the case to federal court based solely on the citizenship of the named parties. Id. Armed with that authority, Allstate removed the case to federal court. That court remanded, however, finding that an "other paper" under § 1446(b)(3) "does not include intervening statutory or case law changes." Id. at 1468. It continued, "a reasonable interpretation of that section *would limit its effect to papers generated within the action*." Id. (quoting Ehrlich v. The Oxford Ins. Co., 700 F.Supp. 495, 498 (N.D. Cal. 1988)) (emphasis added). Thus, the Phillips court clearly believed an intervening change of law outside the underlying state action is not an "other paper" for purposes of removal.

The Ninth Circuit's decision in Eyak Native Village v. Exxon Corp., 25 F.3d 773 (9th Cir. 1994) reinforced that "other paper" is limited to papers filed in the underlying state court action. Evak Native Village arose out of the 1989 Exxon Valdez oil spill. In March of 1999, several environmental groups sued Exxon in Alaska state court for damages related to the spill. Around the same time, the state of Alaska and the federal government also sued Exxon, but in federal court. Id. at 775. Two years after the state court action began, Alaska and the federal government settled their claims by Consent Decree in federal court. Id. Having settled the federal case, Exxon removed the environmental groups' state court actions, claiming that the Consent Decree in the federal case presented a federal question. Id. In their reply brief, the state court plaintiffs admitted that they challenged the legitimacy of the federal Consent Decree and argued that the decree was not fully representative of their interests. Id. at 776. Exxon argued that removal was proper because the plaintiffs' reply brief implicated a federal question and because the Consent Decree itself represented a federal question.

The Ninth Circuit disagreed that the Consent Decree from a separate case created federal jurisdiction. The Court expressly rejected that the Consent Decree triggered removability because the decree "was not filed in state court in [those] cases." Id. Thus, Evak Native Village also supports the conclusion that an order from an unrelated case does not trigger removal under

§ 1446(b)(3).[4]

Having reviewed the parties' arguments and their cited authority, the Court finds that the term "other paper" "does not include intervening . . . case law changes" even from the United States Supreme Court. Phillips, 702 F.Supp. at 1468. The Court agrees with Phillips and Evak Native Village that a reasonable interpretation of § 1446(b)(3) limits the definition of "other papers" to papers filed in the parties' underlying state court proceeding. The City's reliance on Rea and its other arguments do not persuade the Court otherwise. Because the City of Las Vegas cannot point to an "other paper" filed in its state court action that supports removal, the window to remove never opened. As a result, the City's removal is untimely.

IV. Conclusion

Accordingly, the motion to remand (ECF No. 7) filed by plaintiffs 180 Land Company, LLC, Fore Stars, LTD., and Seventy Acres, LLC, is **GRANTED**, and this case is **REMANDED** to the Eighth Judicial District Court. All other motions are denied as moot.

Dated this 12th day of February, 2020.

Kent J. Dawson
United States District Judge

[4] The Court ultimately allowed removal based upon the environmental groups' admission in their reply brief that they challenged the Consent Decree.

OST
LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
kermitt@kermittwaters.com
jim@kermittwaters.com
michael@kermittwaters.com
autumn@kermittwaters.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, 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; DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J
DEPT. NO.: XVI

PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME

Hearing Date: May 14, 2020
Hearing Time: 9:30 a.m.

HEARING DATE(S) ENTERED IN ODYSSEY

Plaintiffs 180 Land Co LLC (hereinafter "180 Land Company"), Fore Stars, LTD. (hereinafter "Fore Stars"), and Seventy Acres, LLC (hereinafter "Seventy Acres LLC") (collectively "Plaintiffs," "Landowners," or "Plaintiff Landowners"), by and through their

undersigned counsel, the LAW OFFICES OF KERMITT L. WATERS, hereby move this Honorable Court to dismiss Seventy Acres LLC from this action. Plaintiffs also request an order shortening time so that the matter may be heard prior to the entry of an order on their motion for discovery.

This Motion is made and based on the following Memorandum of Points and Authorities, the Affidavit of James J. Leavitt, Esq., and exhibits thereto, the papers and pleadings on file herein, and any oral argument the Court entertains on the matter.

Dated this 24th day of April, 2020.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Landowners

NOTICE OF MOTION ON ORDER SHORTENING TIME

This matter having come before the Court, and for good cause appearing therefore,

IT IS HEREBY ORDERED that **PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME** will be heard on shortened time in Department XVI of the above-entitled Court, on the 14th day of May, 2020, at the hour of 9:30 a.m.

IT IS FURTHER ORDERED that on or before May 1, 2020 the following documents shall be served on all parties' counsel: (A) Notice of Motion on Order Shortening Time; and (B) Motion to Dismiss Seventy Acres LLC on Order Shortening Time.

IT IS FURTHER ORDERED that service shall be as follows:

X electronically pursuant to the April 17, 2020 Administrative Order 20-13 concerning court operations in response to COVID-19; or

_____ via hand delivery.

IT IS SO ORDERED.

DATED this 27th day of April, 2020.

DISTRICT COURT JUDGE

CG

AFFIDAVIT OF JAMES J. LEAVITT, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION TO DISMISS ON ORDER SHORTENING TIME

State of Nevada)
) ss.
County of Clark)

JAMES J. LEAVITT, ESQ., being duly sworn, deposes and says as follows:

1. I am counsel of record with the Law Offices of Kermitt L. Waters for Plaintiffs in the above captioned action. I am duly licensed to practice law in the State of Nevada. I make this Affidavit in support of Plaintiffs' Motion to Dismiss Seventy Acres LLC on Order Shortening Time. In addition, this Affidavit is made in support of Plaintiffs' request for an Order Shortening Time.

2. I have personal knowledge of the subject matter of this Affidavit, except where stated upon information and belief, and I am competent to testify thereto.

3. In March of 2015, Fore Stars owned five parcels of land comprising approximately 250 acres in Las Vegas, Nevada. A true and correct copy of those deeds is maintained within my office's files and attached here as **Exhibit "A."**

4. In June 2015, Fore Stars filed a parcel map to reconfigure the property boundaries of four of the parcels, creating Lot 1 (2.13 acres), Lot 2 (70.52 acres), Lot 3 (166 acres), and Lot 4 (11.28 acres).

5. In November 2015, Fore Stars transferred the following parcels to 180 Land Co LLC:

Prior Owner	New Owner	Assessor Parcel No.	Acreage
Fore Stars Ltd	180 Land Co LLC	138-31-801-002	11.28 acres
Fore Stars Ltd	180 Land Co LLC	138-31-712-004	.22 acres
Fore Stars Ltd	180 Land Co LLC	138-31-702-002	166.99 acres
Fore Stars Ltd	180 Land Co LLC	138-32-301-004	70.52 acres
		TOTAL	251.14 acres

Immediately thereafter, 180 Land Co LLC transferred the approximately seventy acre parcel to Seventy Acres LLC:

Prior Owner	New Owner	Assessor Parcel No.	Acreage
180 Land Co LLC	Seventy Acres LLC	138-32-301-004	70.52 acres

A true and correct copy of the quit claim deeds for the transfers are attached hereto as **Exhibit "B"**. Fore Stars retained ownership of approximately 4.5 acres of land. A true and correct copy of the deed is maintained within my office's files and attached here as **Exhibit "C."**

6. After the November 2015 transfers, the property previously owned by Fore Stars, was then owned as follows:

Owner	Assessor Parcel No.	Acreage
180 Land Co LLC	138-31-801-002	11.28 acres
180 Land Co LLC	138-31-712-004	.22 acres
180 Land Co LLC	*138-31-702-002	***166.99 acres**
Seventy Acres LLC	138-32-301-004	70.52 acres
Fore Stars Ltd	138-32-202-001	2.13 acres
Fore Stars Ltd	138-32-210-008	2.37 acres
	Total	253.51 acres

*** Note: The 35 Acre Property was divided from this parcel, never having owned by Seventy Acres LLC.**

7. As the landowner, 180 Land Company initiated this case by filing a petition for judicial review and, thereafter, a complaint (and first amended complaint) alleging various constitutional claims for inverse condemnation.

8. On May 15, 2019, I filed a second amended complaint which, among other things, named Fore Stars as a plaintiff because the company is a previous landowner of the 35 Acres Property, a divided portion of the 166.99 acres (138-31-702-002) transferred from Fore Stars to 180 Land. The subject 35 Acres Property was never owned by Seventy Acres LLC. In doing so, I inadvertently also named Seventy Acres LLC as a plaintiff. This error was recently discovered when Defendant City of Las Vegas (hereinafter "Defendant" or "City") served Seventy Acres LLC with discovery requests and subsequently moved to compel responses to them. The Plaintiff Landowners objected to the requests and opposed the motion, in part, because Seventy Acres LLC has no ownership interest in the 35 Acre Property underlying the claims in this matter.

9. On April 1, 2020, the Court held a status check hearing, and all parties discussed, among other things, removal of Seventy Acres LLC from the case caption as a party. The Court directed counsel to prepare a stipulation or file the appropriate motion to dismiss the company from this case. A true and correct copy of the minute order is maintained within my office's files and attached here as **Exhibit "D."** The City has refused to stipulate to a dismissal of Seventy Acres LLC thereby necessitating the need to file this motion.

10. A hearing before the Discovery Commissioner was held on April 16, 2020. A true and correct copy of the minute order is maintained within my office's files and attached here as **Exhibit "E."** At that time, the Plaintiff Landowners explained the error to the case caption and that Seventy Acres LLC has no ownership interest in the 35 Acres Property, not now nor in the past, and, as a result, no interest in this action and no interest or claim to any compensation that might be paid by the City for the taking of the property as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019. Given this, the Plaintiff Landowners indicated their desire to dismiss Seventy Acres LLC from this action. A true and correct copy of a Disclaimer of Interest of Seventy Acres LLC is maintained within my office's files and attached here as **Exhibit "F."**

11. With respect to the City's discovery requests propounded on Seventy Acres LLC, the Discovery Commissioner stated she would defer to the Court if the Plaintiff Landowners

sought dismissal of Seventy Acres LLC prior to entry of the order resolving the City's motion to compel. In other words, the discovery responses sought would be moot if Seventy Acres LLC was dismissed from the action. A true and correct copy of a proposed order of dismissal is maintained within my office's files and attached here as **Exhibit "G."**

12. The Discovery Commissioner has not yet entered a written order resolving the City's motion to compel. If set in the normal course, the Plaintiff Landowners' motion to dismiss will not be timely heard before entry of that order. As such, it is hereby requested that this motion be heard at the earliest possible time consistent with the Court's calendar and in compliance with Nevada law.

13. I declare under the penalty of perjury and laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JAMES JACK LEAVITT

Subscribed and Sworn to before me
This 24th day of April, 2020.

NOTARY PUBLIC in and for
Said County and State

EVELYN L. WASHINGTON
Notary Public, State of Nevada
Appointment No. 01-68713-1
My Appt. Expires May 4, 2021

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

This is a constitutional proceeding wherein the Plaintiff Landowners are seeking payment of just compensation for the taking of their 35 Acre Property by inverse condemnation. The Landowners were forced to initiate this lawsuit because the City engaged in systematic and aggressive actions to deny all use of the 35 Acre Property rendering the property useless and valueless and has refused to pay just compensation for this clear taking of property.

The Plaintiff Landowners seek to voluntarily dismiss Seventy Acres LLC from this action. Due to an error, the company was inadvertently named in the case caption when the Plaintiff Landowners amended their complaint in May 2019. The error was recently discovered when the City served Seventy Acres LLC with discovery requests and subsequently moved to compel responses to them. The Plaintiff Landowners objected to the requests and opposed the motion, in part, because Seventy Acres LLC has no ownership interest, not now nor in the past, in the 35 Acres Property underlying the claims in this matter.

Actions in Nevada must be prosecuted in the name of the real party in interest, which is the landowner in inverse condemnation cases. *See State v. Eighth Jud. Dist. Ct.,* 131 Nev. 411, 424, 351 P.3d 736, 745 (2015) (to state an inverse condemnation action for damages, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury). Because Seventy Acres LLC has no ownership interest in the 35 Acres Property, the company is not a real party in interest here, and it has no interest in this action and no interest or claim to any compensation that might be paid by the City for the taking of the property as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019. Seventy Acres LLC should be dismissed accordingly.

II. RELEVANT FACTS.

180 Land Company initiated this case by filing a petition for judicial review and a complaint (and first amended complaint) alleging various constitutional claims for inverse condemnation. *See* Leavitt Affidavit ¶ 5. On May 15, 2019, the Plaintiff Landowners filed a

second amended complaint which, among other things, named Fore Stars as a plaintiff because the company is a previous landowner of the 35 Acres Property. *See* Leavitt Affidavit ¶ 6. In doing so, Seventy Acres LLC was inadvertently also named as a plaintiff in the caption. *See id.* This error was recently discovered when the City served Seventy Acres LLC with discovery requests and subsequently moved to compel responses to them. *See id.* The Plaintiff Landowners objected to the requests and opposed the motion, in part, because Plaintiff Seventy Acres LLC has no ownership interest in the 35 Acres Property underlying the claims in this matter. *See id.*

On April 1, 2020, the Court held a status check hearing, and all parties discussed, among other things, removal of Seventy Acres LLC from the case caption as a party. *See* Exhibit D. The Court directed counsel to prepare a stipulation or file the appropriate motion to dismiss the company from this case. *See id.* The City has refused to stipulate to the removal of Seventy Acres from this matter. Subsequently, a hearing on the City's motion to compel discovery was held before the Discovery Commissioner on April 16, 2020. *See* Leavitt Affidavit ¶ 8. At that time, the Plaintiff Landowners explained the error in the case caption and that Seventy Acres LLC has no ownership interest in the 35 Acres Property, not now nor in the past, and, as a result, no interest in this action and no interest or claim to any compensation that might be paid by the City for the taking of the property as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019. *See id.; see also* Exhibits E and F. Given this, the Plaintiff Landowners indicated their desire to voluntarily dismiss Seventy Acres LLC from this action. *See id.*

With respect to the City's discovery requests propounded on Seventy Acres LLC, the Discovery Commissioner indicated that she would defer to this Honorable Court if the Plaintiff Landowners sought dismissal of Seventy Acres LLC prior to entry of the order resolving the City's motion to compel. *See* Leavitt Affidavit ¶ 9; *see also* Exhibit E. In other words, the discovery responses sought would be moot if Seventy Acres LLC was dismissed from the action. *See id.* A written order has not yet been entered on the City's motion to compel, and the Plaintiff

Landowners now seek to voluntarily dismiss Seventy Acres LLC from this lawsuit. *See* Exhibit G.

III. ARGUMENT.

Actions in Nevada must be prosecuted in the name of the real party in interest. *See* NRCP 17(a)(1). In inverse condemnation cases, the real party in interest is the landowner. *See State v. Eighth Jud. Dist. Ct.,* 131 Nev. 411, 424, 351 P.3d 736, 745 (2015); *see also Sproul Homes v. State,* 96 Nev. 441, 444, 611 P.2d 620, 621-22 (1980) (to state an inverse condemnation action for damages, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury). Here, Seventy Acres LLC was inadvertently named in the case caption as a plaintiff when the complaint was amended. *See* Leavitt Affidavit ¶ 6. It is undisputed, however, that Seventy Acres LLC has no ownership interest in the 35 Acre Property, not now nor in the past. *See* Leavitt Affidavit ¶¶ 3-4; Exhibits A, B and C. As such, Seventy Acres LLC is not a real party in interest, and the company has no interest in this action and no interest or claim to any compensation that might be paid by the City for the taking of the property as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019. *See* Leavitt Affidavit ¶ 8; *see also* Exhibits A-C, and F. Seventy Acres LLC should be dismissed accordingly. *See* NRCP 41(a)(2) (The Court may dismiss an action, or any part thereof, at the plaintiff's request, and may do so on terms it deems proper.).

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//

IV. CONCLUSION.

For the foregoing reasons, the Plaintiff Landowners' motion should be granted in its entirety.

Dated this 24th day of April, 2020.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 24th day of April, 2020, I caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford R. Jerbic, City Attorney
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pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

LEONARD LAW, PC
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955 S. Virginia Street, Suite 220
Reno, Nevada 89502
debbie@leonardlawpc.com

SHUTE, MIHALY & WEINBERGER LLP
Andrew W. Schwartz, Esq.
Lauren M. Tarpey, Esq.
396 Hayes Street
schwartz@smwlaw.com
ltarpey@smwlaw.com

/s/ Evelyn Washington
Employee of LAW OFFICES OF KERMITT L. WATERS

Exhibit A

7

20040116
.03461

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 138-32-210-001
   b) _____
   c) _____
   d) _____
2. Type of Property
   a) [X] Vacant Land b) [ ] Single Fam. Res.
   c) [ ] Condo/Twnhse d) [ ] 2 – 4 Plex
   e) [ ] Apartment Bldg. f) [ ] Comm'l / Ind'l
   g) [ ] Agricultural h) [ ] Mobile Home
   i) [ ] Other: _____

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value / Sales Price of Property $ _____
   Deed in Lieu of Foreclosure Only (value of property)) (_____)
   Transfer Tax Value: $ Ø
   Real Property Transfer Tax Due: $ _____
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section 8
   b. Explained Reason for Exemption: Grantors own 100% of the LLC Grantee _____
5. Partial Interests: Percentage being transferred: _____%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Tony G. Curtis Capacity: CEO
Signature: Tony G. Curtis Capacity: CEO

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Peccole Family Limited Partnership	Print Name: Queensridge TowersLC
Address: 851 Rampart #205	Address: 851 Rampart #205
City: LV	City: LV
State: NV Zip: 89145	State: NV Zip:89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)
Print Name: STEWART TITLE OF NEVADA Escrow # 03-09-0016
Address: 3800 HOWARD HUGHES PARKWAY, SUITE 1400
City: LAS VEGAS State: NEVADA Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

8461

20040116
.03461

CLARK COUNTY, NEVADA
FRANCES DEANE, RECORDER

RECORDED AT THE REQUEST OF:

STEWART TITLE OF NEVADA

01-16-2004 14:29 DOM

OFFICIAL RECORDS

BOOK/INSTR:20040116-03461

PAGE COUNT: 2

FEE: 15.00
RPTT: EX#008

APN NO: 138-32-210-001
RPTT.$ Exempt 8
ESCROW #04-09-0016

RECORDING REQUESTED BY:
STEWART TITLE COMPANY
WHEN RECORDED MAIL TO:
MAIL TAX STATEMENT TO:
Queensridge Towers LLC
c/o Peccole Nevada
851 s. Rampart Blvd. Ste. 205
Las Vegas, NV. 89145

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

The Peccole 1982 Trust, dated February 15, 1982 as to an undivided 45% interest and William peter and Wanda Ruth Peccole Family Limited Partnership, dated December 31, 1992 as to an undivided 55% interest

In consideration of $10.00 and other valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to:

Queensridge Towers LLC, a Nevada limited liability company

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

Lot Four (4) of Peccole West, as shown by map thereof on file in Book 77 of Plats, Page 23,in the Office of the County Recorder, Clark County, Nevada.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

The Peccole 1982 Trust

By: Larry A. Miller

Larry A. Miller

20040116
.03461

William Peter and Wanda Ruth Peccole
Family Limited Partnership U/A/D 12/31/92

By: Larry A. Miller
Larry A. Miller

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on January 16, 2004 by Larry A. Miller, as CEO of Peccole Nevada Corporation Trustee of '82 Trust

Joanne Baldassare
Notary Public

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

STATE OF NEVADA)
COUNTY OF CLARK)

This instrument was acknowledged before me on January 16, 2004 by Larry A. Miller, as CEO of Peccole Nevada Corporation General Partner of Peccole FLP.

Joanne Baldassare
Notary Public

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

20050414-0002951

Fee: $18.00 RPTT: EX#008
N/C Fee: $25.00

04/14/2005 13:59:00
T20050068007
Requestor:
STEWART TITLE OF NEVADA

Frances Deane JSB
Clark County Recorder Pgs: 5

3 4

RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller

C/S

MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982,** as to an undivided Forty Five percent (45%) interest and **WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP,** as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to **FORE STARS, LTD.**, a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: _____
Larry A. Miller, Chief Executive Officer

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

By: Peccole-Nevada Corporation, General Partner

By: _____
Larry A. Miller, Chief Executive Officer

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

_____
NOTARY PUBLIC
My commission expires: June 2, 2006

EXHIBIT "1"
TO
GRANT BARGAIN SALE DEED
Legal Description

PARCEL I:

Lot FIVE (5) of AMENDED PECCOLE WEST, as shown by map thereof on file in Book 83 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

AND

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.

29

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 138-31-212-002
   b) 138-31-312-001
   c) 138-31-312-002
   d) 138-31-418-001
   e) 138-31-610-002
2. Type of Property
   a) ☐ Vacant Land b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2 – 4 Plex
   e) ☐ Apartment Bldg. f) ☒ Comm'l / Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other: _____
3. Total Value / Sales Price of Property $ _____
   Deed in Lieu of Foreclosure Only (value of property)) (_____)
   Transfer Tax Value: $ _____
   Real Property Transfer Tax Due: $ Exempt
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section 8
   b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner
5. Partial Interests: Percentage being transferred: _____%

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes:

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached Capacity: see A attached
Signature: see B attached Capacity: see B Attached

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: see C attached
Address:
City :
State:

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Fore Stars, Ltd.
Address: 851 S. Rampart Blvd. #220
City : Las Vegas
State: Nevada Zip 89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)
Print Name: Stewart Title of Nevada Escrow # 405137-LJJ
Address: 3773 Howard Hughes Parkway
City: Las Vegas State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

2917

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

a) 138-31-212-002
b) 138-31-312-001
c) 138-31-312-002
d) 138-31-418-001
e) 138-31-610-002

A: Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Trustee of the Peccole 1982 Trust dated February 15, 1982 and General Partner of the William Peter and Wanda Ruth Family Limited Partnership
Larry A. Miller

B. Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Manager of Fore Stars, Ltd.
Larry A. Miller

C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

1951

20050414-0002951

Fee: $18.00 RPTT: EX#008
N/C Fee: $25.00

04/14/2005 13:59:00
T20050068007
Requestor:
STEWART TITLE OF NEVADA

Frances Deane JSB
Clark County Recorder Pgs: 5

39

RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller

MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982,** as to an undivided Forty Five percent (45%) interest and **WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP,** as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to **FORE STARS, LTD.**, a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: _____
Larry A. Miller, Chief Executive Officer

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

By: Peccole-Nevada Corporation, General Partner

By: _____
Larry A. Miller, Chief Executive Officer

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

_____
NOTARY PUBLIC
My commission expires: June 2, 2006

EXHIBIT "1"
TO
GRANT BARGAIN SALE DEED
Legal Description

PARCEL I:

Lot FIVE (5) of AMENDED PECCOLE WEST, as shown by map thereof on file in Book 83 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

AND

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.

29

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 138-31-212-002
   b) 138-31-312-001
   c) 138-31-312-002
   d) 138-31-418-001
   e) 138-31-610-002
2. Type of Property
   a) ☐ Vacant Land b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2 – 4 Plex
   e) ☐ Apartment Bldg. f) ☒ Comm'l / Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other: _____
3. Total Value / Sales Price of Property $ _____
   Deed in Lieu of Foreclosure Only (value of property)) (_____)
   Transfer Tax Value: $ _____
   Real Property Transfer Tax Due: $ Exempt
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section 8
   b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner
5. Partial Interests: Percentage being transferred: _____%

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes:

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached Capacity: see A attached
Signature: see B attached Capacity: see B Attached

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: see C attached
Address:
City :
State:

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Fore Stars, Ltd.
Address: 851 S. Rampart Blvd. #220
City : Las Vegas
State: Nevada Zip 89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)
Print Name: Stewart Title of Nevada Escrow # 405137-LJJ
Address: 3773 Howard Hughes Parkway
City: Las Vegas State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

2917

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

a) 138-31-212-002
b) 138-31-312-001
c) 138-31-312-002
d) 138-31-418-001
e) 138-31-610-002

A: Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Trustee of the Peccole 1982 Trust dated February 15, 1982 and General Partner of the William Peter and Wanda Ruth Family Limited Partnership
Larry A. Miller

B. Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Manager of Fore Stars, Ltd.
Larry A. Miller

C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

1951

20050414-0002951

Fee: $18.00 RPTT: EX#008
N/C Fee: $25.00

04/14/2005 13:59:00
T20050068007
Requestor:
STEWART TITLE OF NEVADA

Frances Deane JSB
Clark County Recorder Pgs: 5

34

RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller

MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982,** as to an undivided Forty Five percent (45%) interest and **WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP,** as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to **FORE STARS, LTD.**, a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: _____
Larry A. Miller, Chief Executive Officer

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

By: Peccole-Nevada Corporation, General Partner

By: _____
Larry A. Miller, Chief Executive Officer

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

_____
NOTARY PUBLIC
My commission expires: June 2, 2006

EXHIBIT "1"
TO
GRANT BARGAIN SALE DEED
Legal Description

PARCEL I:

Lot FIVE (5) of AMENDED PECCOLE WEST, as shown by map thereof on file in Book 83 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

AND

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.

29

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 138-31-212-002
   b) 138-31-312-001
   c) 138-31-312-002
   d) 138-31-418-001
   e) 138-31-610-002
2. Type of Property
   a) ☐ Vacant Land b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2 – 4 Plex
   e) ☐ Apartment Bldg. f) ☒ Comm'l / Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other: _____
3. Total Value / Sales Price of Property $ _____
   Deed in Lieu of Foreclosure Only (value of property)) (_____)
   Transfer Tax Value: $ _____
   Real Property Transfer Tax Due: $ Exempt
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section 8
   b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner
5. Partial Interests: Percentage being transferred: _____%

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes:

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached Capacity: see A attached
Signature: see B attached Capacity: see B Attached

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: see C attached
Address:
City :
State:

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Fore Stars, Ltd.
Address: 851 S. Rampart Blvd. #220
City : Las Vegas
State: Nevada Zip 89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)
Print Name: Stewart Title of Nevada Escrow # 405137-LJJ
Address: 3773 Howard Hughes Parkway
City: Las Vegas State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

2917

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

a) 138-31-212-002
b) 138-31-312-001
c) 138-31-312-002
d) 138-31-418-001
e) 138-31-610-002

A: Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Trustee of the Peccole 1982 Trust dated February 15, 1982 and General Partner of the William Peter and Wanda Ruth Family Limited Partnership
Larry A. Miller

B. Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Manager of Fore Stars, Ltd.
Larry A. Miller

C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

1951

Inst #: 20150708-0001621
Fees: $19.00 N/C Fee: $0.00
RPTT: $3159.45 Ex: #
07/08/2015 11:08:03 AM
Receipt #: 2486772
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: OSA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN No. 138-32-210-008

WHEN RECORDED, MAIL TO:

Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145
Attn.: Henry Lichtenberger, Esq.

QUIT CLAIM DEED

1454596 565

THIS INDENTURE WITNESSETH: That

QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company, whose principal place of business and post office address in the State of Nevada is 9525 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134.

In consideration of $10.00 and other valuable consideration, the receipt of which is hereby acknowledged, does hereby quitclaim to:

FORE STARS LTD., a Nevada limited liability company, whose principal place of business and post office address in the State of Nevada is 851 South Rampart, Suite 105, Las Vegas, Nevada 89145

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Subject to:
1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any,

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATE: June 22, 2015

HK

Queensridge Towers LLC,
a Nevada limited liability

By: QT Management LLC,
a Nevada limited liability company, Manager

Noam Ziv, Manager
Noam Ziv

Matthew Bunin, Manager

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on June 25, 2015 by Noam Ziv and Matthew Bunin, each a Manager of QT Management LLC, a Nevada limited liability company, the Manager of Queensridge Towers LLC, a Nevada limited liability company.

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

Jennifer Knighton
NOTARY PUBLIC
My Commission Expires 9/11/18

EXHIBIT "A"

LOT 2 AS SHOWN IN FILE 120, PAGE 44 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITH IN THE WEST HALF (W 1/2) OF SECTION 32, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 138-32-210-008
   b) _____
   c) _____
   d) _____
2. Type of Property:
   a) ✓ Vacant Land b) ☐ Single Fam. Res
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   ☐ Other_____

FOR RECORDER'S OPTIONAL USE ONLY
Book:_____ Page:_____
Date of Recording:_____
Notes:

3. a. Total Value/Sales Price of Property: $619,320.84
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 619,320.84
   d. Real Property Tax Due: 3159.45 $3159.45
4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Managers, QT Management LLC, the Manager of Seller

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Queensridge Towers LLC	Print Name: Fore Stars LTD
Address: 9525 Hillwood Dr. Ste. 100	Address: 9755 W. Charleston Blvd
City, State, Zip: Las Vegas, NV 89134	City, State, Zip: Las Vegas, NV 89117

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name Ticor Title of Nevada, Inc. Escrow #14545096SGS
Address, City, State, Zip: 8379 W. Sunset Road #220 Las Vegas, NV 89113

HK

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit B

Inst #: 20151116-0000238
Fees: $19.00 N/C Fee: $25.00
RPTT: $0.00 Ex: #001
11/16/2015 08:01:44 AM
Receipt #: 2607151
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 138-31-702-002
138-31-712-004
138-31-801-002
138-32-301-004

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

NOTICES OF TAXES SHOULD BE SENT TO:

180 Land Co LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: $-0- (exempt) Section 1

15340174 SGS

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That **FORE STARS, LTD.**, a Nevada limited-liability company ("**Grantor**"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **180 LAND CO LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

FORE STARS, LTD., a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By: V Dethart
Name: V DeHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Vickie DeHart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of Fore Stars, Ltd., a Nevada limited-liability company.

LeeAnn Stewart-Schencke
NOTARY PUBLIC

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

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

LOT 2, LOT 3 AND LOT 4 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

APNs: 138-32-301-004 (Lot 2)
138-31-702-002 (Lot 3)
138-31-801-002 (Lot 4)

PARCEL II:

PECCOLE WEST PARCEL 20 LOT G (COMMON AREA), LYING WITHIN TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., AND SHOWN BY MAP THEREOF ON FILE IN BOOK 87, PAGE 54, CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

APN: 138-31-712-004 (Lot G)

PARCEL III:

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 138-31-702-002
   b. 138-31-712-004
   c. 138-31-801-002
   d. 138-32-301-004
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☑ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 0
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 0
   d. Real Property Transfer Tax Due $ 0

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section 1
   b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature V Neidart Capacity: Grantor

Signature V Neidart Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Fore Stars LTD	Print Name: 180 Land Co LLC
Address: 1215 S. Fort Apache Ste 120	Address: 1215 S. Fort Apache Ste 120
City: Las Vegas	City: Las Vegas
State: NV Zip: 89117	State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.	Escrow # 15540174SGS
Address: 8379 W. Sunset Road #220	
City: Las Vegas	State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Inst #: 20151116-0000239
Fees: $19.00 N/C Fee: $25.00
RPTT: $0.00 Ex: #001
11/16/2015 08:01:44 AM
Receipt #: 2607151
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 138-32-301-004

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

NOTICES OF TAXES SHOULD BE SENT TO:

Seventy Acres LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: $-0- (exempt) *1*

15540174 SGS

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That **180 LAND CO LLC**, a Nevada limited-liability company ("**Grantor**"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **SEVENTY ACRES LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

180 LAND CO LLC, a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By: V Dellart
Name: V DeHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Vickie DeHart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of 180 Land Co LLC, a Nevada limited-liability company.

LeeAnn Stewart Schneider
NOTARY PUBLIC

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

State of Nevada
Appointment No. 07-4284-1
Expires Jul 26, 2019

EXHIBIT A
LEGAL DESCRIPTION

PARCEL I

LOT 2 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

PARCEL II

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 138-32-301-004
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☑ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 0
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 0
   d. Real Property Transfer Tax Due $ 0

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section 1
   b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.
5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature V Medart Capacity: Grantor

Signature V Medart Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: 180 Land Co LLC	Print Name: Seventy Acres LLC
Address: 1215 S. Fort Apache Ste 120	Address: 1215 S. Fort Apache Ste 120
City: Las Vegas	City: Las Vegas
State: NV Zip: 89117	State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.	Escrow # 15540174SGS
Address: 8379 W. Sunset Road #220	
City: Las Vegas	State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Inst #: 20151116-0000238
Fees: $19.00 N/C Fee: $25.00
RPTT: $0.00 Ex: #001
11/16/2015 08:01:44 AM
Receipt #: 2607151
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 138-31-702-002
138-31-712-004
138-31-801-002
138-32-301-004

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

NOTICES OF TAXES SHOULD BE SENT TO:

180 Land Co LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: $-0- (exempt) Section 1

1534-0174 SGS

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That **FORE STARS, LTD.**, a Nevada limited-liability company ("**Grantor**"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **180 LAND CO LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

FORE STARS, LTD., a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By: V Dethart
Name: V DeHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Vickie DeHart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of Fore Stars, Ltd., a Nevada limited-liability company.

LeeAnn Stewart-Schencke
NOTARY PUBLIC

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

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

LOT 2, LOT 3 AND LOT 4 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

APNs: 138-32-301-004 (Lot 2)
138-31-702-002 (Lot 3)
138-31-801-002 (Lot 4)

PARCEL II:

PECCOLE WEST PARCEL 20 LOT G (COMMON AREA), LYING WITHIN TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., AND SHOWN BY MAP THEREOF ON FILE IN BOOK 87, PAGE 54, CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

APN: 138-31-712-004 (Lot G)

PARCEL III:

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 138-31-702-002
   b. 138-31-712-004
   c. 138-31-801-002
   d. 138-32-301-004
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☑ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 0
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 0
   d. Real Property Transfer Tax Due $ 0

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section 1
   b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature V Neidart Capacity: Grantor

Signature V Neidart Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Fore Stars LTD	Print Name: 180 Land Co LLC
Address: 1215 S. Fort Apache Ste 120	Address: 1215 S. Fort Apache Ste 120
City: Las Vegas	City: Las Vegas
State: NV Zip: 89117	State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.	Escrow # 15540174SGS
Address: 8379 W. Sunset Road #220	
City: Las Vegas	State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Inst #: 20151116-0000238
Fees: $19.00 N/C Fee: $25.00
RPTT: $0.00 Ex: #001
11/16/2015 08:01:44 AM
Receipt #: 2607151
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 138-31-702-002
138-31-712-004
138-31-801-002
138-32-301-004

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Alan C. Sklar, Esq.
Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145

NOTICES OF TAXES SHOULD BE SENT TO:

180 Land Co LLC
1215 South Fort Apache Road, Suite 120
Las Vegas, Nevada 89117
Attention: Vickie DeHart

RPTT: $-0- (exempt) Section 1

15340174 SGS

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That **FORE STARS, LTD.**, a Nevada limited-liability company ("**Grantor**"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby quitclaim and convey to **180 LAND CO LLC**, a Nevada limited-liability company whose mailing address is 1215 South Fort Apache Road, Suite 120, Las Vegas, Nevada 89117, all right, title and interest of Grantor in and to that real property situated in the County of Clark, State of Nevada, bounded and described as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all right, title and interest of Grantor in and to all tenements, hereditaments and appurtenances to such real property, including, without limitation, all right, title and interest of Grantor in and to all streets and other public ways adjacent to such real property, and all water and development rights related to such real property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this instrument has been executed this 10 day of November, 2015.

FORE STARS, LTD., a Nevada limited-liability company

By: EHB Companies LLC, a Nevada limited-liability company and its Manager

By: V Dethart
Name: V DeHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

This instrument was acknowledged before me on November 10, 2015 by Vickie DeHart as a Manager of EHB Companies LLC, a Nevada limited-liability company and the Manager of Fore Stars, Ltd., a Nevada limited-liability company.

LeeAnn Stewart-Schencke
NOTARY PUBLIC

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

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

LOT 2, LOT 3 AND LOT 4 AS SHOWN BY MAP THEREOF ON FILE IN FILE 120 OF PARCEL MAPS, PAGE 49, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND THEREAFTER AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JULY 2, 2015 IN BOOK 20150702 AS INSTRUMENT NO. 01264 OF OFFICIAL RECORDS.

APNs: 138-32-301-004 (Lot 2)
138-31-702-002 (Lot 3)
138-31-801-002 (Lot 4)

PARCEL II:

PECCOLE WEST PARCEL 20 LOT G (COMMON AREA), LYING WITHIN TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., AND SHOWN BY MAP THEREOF ON FILE IN BOOK 87, PAGE 54, CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

APN: 138-31-712-004 (Lot G)

PARCEL III:

AN EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN EASEMENT AGREEMENT RECORDED FEBRUARY 9, 1996 IN BOOK 960209 AS INSTRUMENT NO. 00567, OFFICIAL RECORDS

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 138-31-702-002
   b. 138-31-712-004
   c. 138-31-801-002
   d. 138-32-301-004
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☑ Other Golf course land

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 0
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 0
   d. Real Property Transfer Tax Due $ 0

4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section 1
   b. Explain Reason for Exemption: Transfer of ownership to an affiliated entity with identical common ownership.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature V Neilart Capacity: Grantor

Signature V Neilart Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Fore Stars LTD	Print Name: 180 Land Co LLC
Address: 1215 S. Fort Apache Ste 120	Address: 1215 S. Fort Apache Ste 120
City: Las Vegas	City: Las Vegas
State: NV Zip: 89117	State: NV Zip: 89117

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Ticor Title of Nevada, Inc.	Escrow # 15540174SGS
Address: 8379 W. Sunset Road #220	
City: Las Vegas	State: NV Zip: 89113

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit C

20050414-0002951

Fee: $18.00 RPTT: EX#008
N/C Fee: $25.00

04/14/2005 13:59:00
T20050068007
Requestor:
STEWART TITLE OF NEVADA

Frances Deane JSB
Clark County Recorder Pgs: 5

39

RPTT: Exempt 8
APN: 138-31-212-002
138-31-312-001
138-31-312-002
138-31-418-001
138-31-610-002

RECORDING REQUESTED BY STEWART TITLE
AND WHEN RECORDED MAIL TO:

Fore Stars, Ltd.
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145
Attention: Larry A. Miller

MAIL TAX STATEMENTS TO:

Same as above.

GRANT, BARGAIN AND SALE DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the **PECCOLE 1982 TRUST, DATED FEBRUARY 15, 1982,** as to an undivided Forty Five percent (45%) interest and **WILLIAM PETER AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP,** as to an undivided Fifty Five percent (55%) interest, whose addresses are 851 S Rampart Blvd., Las Vegas, Nevada 89145, does hereby grant, bargain, sell and convey to **FORE STARS, LTD.**, a Nevada limited liability company, whose address is 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145, that certain real property in the County of Clark, State of Nevada, more particularly described in Exhibit "1" attached hereto and incorporated herein by this reference.

SUBJECT TO (a) non-delinquent taxes for the fiscal year 2004 - 2005, (b) encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and easements that are validly of record and (c) all matters that would be revealed by an accurate ALTA Survey or physical inspection of the real property.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Dated as of: April 11, 2005

PECCOLE 1982 TRUST, DATED
FEBRUARY 15, 1982

By: Peccole-Nevada Corporation, Trustee

By: _____
Larry A. Miller, Chief Executive Officer

WILLIAM PETER AND WANDA RUTH
PECCOLE FAMILY LIMITED PARTNERSHIP

By: Peccole-Nevada Corporation, General Partner

By: _____
Larry A. Miller, Chief Executive Officer

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on April 11, 2005, by Larry A. Miller Chief Executive Officer of Peccole-Nevada Corporation, the Trustee of the Peccole 1982 Trust, dated February 15, 1982 and the General Partner of the William Peter and Wanda Ruth Peccole Family Limited Partnership.

Notary Public - State of Nevada
County of Clark
JOANNE BALDASSARE
My Appointment Expires
June 2, 2006
No: 98-3510-1

_____
NOTARY PUBLIC
My commission expires: June 2, 2006

EXHIBIT "1"
TO
GRANT BARGAIN SALE DEED
Legal Description

PARCEL I:

Lot FIVE (5) of AMENDED PECCOLE WEST, as shown by map thereof on file in Book 83 of Plats, Page 57, in the Office of the County Recorder of Clark County, Nevada.

AND

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.

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STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s):
   a) 138-31-212-002
   b) 138-31-312-001
   c) 138-31-312-002
   d) 138-31-418-001
   e) 138-31-610-002
2. Type of Property
   a) ☐ Vacant Land b) ☐ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2 – 4 Plex
   e) ☐ Apartment Bldg. f) ☒ Comm'l / Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other: _____
3. Total Value / Sales Price of Property $ _____
   Deed in Lieu of Foreclosure Only (value of property)) (_____)
   Transfer Tax Value: $ _____
   Real Property Transfer Tax Due: $ Exempt
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per NRS 375.090, Section 8
   b. Explained Reason for Exemption: transfer to a business entity of which grantor is the 100% owner
5. Partial Interests: Percentage being transferred: _____%

FOR RECORDERS OPTIONAL USE ONLY
Document/Instrument No.: _____
Book: _____ Page: _____
Date of Recording: _____
Notes:

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 ½% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: see A attached Capacity: see A attached
Signature: see B attached Capacity: see B Attached

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: see C attached
Address:
City :
State:

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Fore Stars, Ltd.
Address: 851 S. Rampart Blvd. #220
City : Las Vegas
State: Nevada Zip 89145

COMPANY REQUESTING RECORDING (required if not seller or buyer)
Print Name: Stewart Title of Nevada Escrow # 405137-LJJ
Address: 3773 Howard Hughes Parkway
City: Las Vegas State: NV Zip: 89109

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED / MICROFILMED)

2917

STATE OF NEVADA DECLARATION OF VALUE SIGNATURE PAGE

Accessor Parcel Number(s):

a) 138-31-212-002
b) 138-31-312-001
c) 138-31-312-002
d) 138-31-418-001
e) 138-31-610-002

A: Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Trustee of the Peccole 1982 Trust dated February 15, 1982 and General Partner of the William Peter and Wanda Ruth Family Limited Partnership
Larry A. Miller

B. Signature: _____ Capacity: Chief Executive Officer of Peccole-Nevada Corporation, Manager of Fore Stars, Ltd.
Larry A. Miller

C. Peccole 1982 Trust dated February 15, 1982
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

William Peter and Wanda Ruth Peccole Family Limited Partnership
851 S. Rampart Blvd., Suite 220
Las Vegas, Nevada 89145

1951

Inst #: 20150708-0001621
Fees: $19.00 N/C Fee: $0.00
RPTT: $3159.45 Ex: #
07/08/2015 11:08:03 AM
Receipt #: 2486772
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: OSA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN No. 138-32-210-008

WHEN RECORDED, MAIL TO:

Sklar Williams PLLC
410 South Rampart Boulevard, Suite 350
Las Vegas, Nevada 89145
Attn.: Henry Lichtenberger, Esq.

QUIT CLAIM DEED

19545096 565

THIS INDENTURE WITNESSETH: That

QUEENSRIDGE TOWERS, LLC, a Nevada limited liability company, whose principal place of business and post office address in the State of Nevada is 9525 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134.

In consideration of $10.00 and other valuable consideration, the receipt of which is hereby acknowledged, does hereby quitclaim to:

FORE STARS LTD., a Nevada limited liability company, whose principal place of business and post office address in the State of Nevada is 851 South Rampart, Suite 105, Las Vegas, Nevada 89145

All that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and made a part hereof.

Subject to:
1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and easements now of record, if any,

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATE: June 22, 2015

HK

Queensridge Towers LLC,
a Nevada limited liability

By: QT Management LLC,
a Nevada limited liability company, Manager

Noam Ziv, Manager
Noam Ziv

Matthew Bunin, Manager

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on June 25, 2015 by Noam Ziv and Matthew Bunin, each a Manager of QT Management LLC, a Nevada limited liability company, the Manager of Queensridge Towers LLC, a Nevada limited liability company.

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

Jennifer Knighton
NOTARY PUBLIC
My Commission Expires 9/11/18

EXHIBIT "A"

LOT 2 AS SHOWN IN FILE 120, PAGE 44 OF PARCEL MAPS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITH IN THE WEST HALF (W 1/2) OF SECTION 32, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a) 138-32-210-008
   b) _____
   c) _____
   d) _____
2. Type of Property:
   a) ✓ Vacant Land b) ☐ Single Fam. Res
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   ☐ Other_____

FOR RECORDER'S OPTIONAL USE ONLY
Book:_____ Page:_____
Date of Recording:_____
Notes:

3. a. Total Value/Sales Price of Property: $619,320.84
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 619,320.84
   d. Real Property Tax Due: 3159.45 $3159.45
4. If Exemption Claimed:
   a. Transfer Tax Exemption per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____
5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Managers, QT Management LLC, the Manager of Seller

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Queensridge Towers LLC	Print Name: Fore Stars LTD
Address: 9525 Hillwood Dr. Ste. 100	Address: 9755 W. Charleston Blvd
City, State, Zip: Las Vegas, NV 89134	City, State, Zip: Las Vegas, NV 89117

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name Ticor Title of Nevada, Inc. Escrow #14545096SGS
Address, City, State, Zip: 8379 W. Sunset Road #220 Las Vegas, NV 89113

HK

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit D

Register of Actions
Case No. A-17-758528-J

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)

§
§
§
§
§
§
§
§

Case Type: **Other Judicial Review/Appeal**
Date Filed: **07/18/2017**
Location: **Department 16**
Cross-Reference Case Number: **A758528**
Supreme Court No.: **77771**

Party Information

Petitioner	**180 Land Company LLC**	**Lead Attorneys** **Mark A Hutchison** *Retained* 702-385-2500(W)
Petitioner	**Fore Stars Ltd**	**Elizabeth M. Ghanem** *Retained* 7028624450(W)
Petitioner	**Seventy Acres LLC**	**Elizabeth M. Ghanem** *Retained* 7028624450(W)
Respondent	**Las Vegas City of**	**George F. Ogilvie, III** *Retained* 7028734100(W)

Events & Orders of the Court

04/01/2020 **Status Check** (9:00 AM) (Judicial Officer Williams, Timothy C.)
04/01/2020, 05/14/2020
Status Check re Remand from Federal Court/Discovery Deadlines/Rescheduling of Trial

Minutes
04/01/2020 9:00 AM
- APPEARANCES: James Leavitt, Esq., Autumn Waters, Esq., and Elizabeth Ghanem, Esq. present telephonically for Petitioner. George Ogilvie, Esq. and Seth Floyd, Esq. present telephonically for Respondent. Dustun Holmes, Esq. present telephonically for Intervenor. Attorney Andrew Schwartz, Pro Hac pending, also present telephonically. There being no objection, COURT ORDERED, Motion to Associate Lauren Tarpey and Motion to Associate Andrew Schwartz GRANTED. Prevailing party to prepare each order. Colloquy regarding whether discovery period in this remanded matter to be 180 days counting from Governor's Declaration as to the recent public health issue. Court stated 180-day discovery period after the emergency declaration is acceptable and directed counsel prepare stipulation in that regard. Further colloquy regarding whether discovery to proceed joint or bifurcated with respect to liability and damages, and a related issue with computation of damages. Court stated it is appropriate to continue with the joint method of discovery at this time. Court noted the issue as to damages discussed is properly set before Discovery Commissioner; however; stated that computation of damages is a burden of Pltf. and damage claims are typically supported by expert testimony. Colloquy regarding whether matter stipulated as Business Court matter and additional issues with respect to subpoenas and depositions in light of recent public health concern. COURT ORDERED, Status Check SET in 45 days regarding status of discovery. Colloquy regarding removal of 70 Acres from case caption as a party. Court directed counsel prepare a stipulation regarding 70 Acres or file appropriate motion. CONTINUED TO: 5/14/20 9:00 AM STATUS CHECK: REMAND FROM FEDERAL COURT/DISCOVERY DEADLINES/RESCHEDULING OF TRIAL

05/14/2020 9:00 AM

Return to Register of Actions

Exhibit E

1936

Register of Actions
Case No. A-17-758528-J

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)

§ Case Type: **Other Judicial Review/Appeal**
§ Date Filed: **07/18/2017**
§ Location: **Department 16**
§ Cross-Reference Case Number: **A758528**
§ Supreme Court No.: **77771**
§
§
§

Party Information

		Lead Attorneys
Petitioner	**180 Land Company LLC**	**Mark A Hutchison** *Retained* 702-385-2500(W)
Petitioner	**Fore Stars Ltd**	**Elizabeth M. Ghanem** *Retained* 7028624450(W)
Petitioner	**Seventy Acres LLC**	**Elizabeth M. Ghanem** *Retained* 7028624450(W)
Respondent	**Las Vegas City of**	**George F. Ogilvie, III** *Retained* 7028734100(W)

Events & Orders of the Court

04/16/2020 **Motion to Compel** (9:00 AM) (Judicial Officer Truman, Erin)
The City of Las Vegas' Motion to Compel Discovery

Minutes
03/31/2020 9:30 AM

04/16/2020 9:00 AM
- Mr. Ogilvie stated the property at issue is the Bad Lands Golf Course in Queensridge. Four actions were brought for Land Use Applications to redevelop the golf course, and Mr. Ogilvie stated there is a failure and refusal to respond by Petitioner to Requests for Production of documents. Counsel attempted to work on a Stipulated Protective Order so City of Las Vegas can use the documents in other litigations. No agreement by counsel. Argument by Mr. Ogilvie; he is seeking to use the documents in any case where the City of Las Vegas is adverse to 180 Land Company LLC, or its affiliates as a party. Commissioner Will Not consider what is relevant in a case that is not before the Commissioner. Commissioner will protect the documents pursuant to NRCP 26(c) for use in this litigation only. No blanket Orders, and no Advisory Opinions from Commissioner Truman. Ms. Ghanem Ham has not refused to respond, but counsel requested Confidentiality. Commissioner DISCLOSED as a private attorney, she was Of Counsel for Hutchinson & Steffen from 2010 to May 2017. Commissioner has no personal knowledge of this case except what Commissioner has seen on the news. No objection by Ms. Ghanem Ham, or Mr. Ogilvie. Arguments by counsel. Ms. Ghanem Ham already allowed the City of Las Vegas to use documents in other inverse condemnation matters, and she requested a Stipulated Protective Order. Commissioner advised counsel that NRCP 33 allows 40 Interrogatories sent to each party. Mr. Ogilvie stated the City of Las Vegas agrees, and submits the matter. Mr. Leavitt stated Seventy Acres was inadvertently added by Mr. Leavitt's office; counsel requested to remove Seventy Acres as they do not have an interest in the action, but Mr. Ogilvie declined. Commissioner allowed discovery to go forward as Seventy Acres is currently a party. Ms. Ghanem Ham indicated Judge Williams stated if counsel cannot agree, the Court would consider a Motion to Dismiss. Ms. Ghanem Ham requested a Stay on Commissioner's decision to give Petitioner a chance to file a Motion to Dismiss. Arguments by counsel. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART; provide the documents, however, the documents are

PROTECTED for use in this litigation only pursuant to NRCP 26(c). Commissioner advised counsel if the documents are requested, and the City of Las Vegas offers to make them Confidential in other cases, if Plaintiff refuses the documents, Commissioner would CONSIDER a Motion for Sanctions. COMMISSIONER RECOMMENDED, Commissioner COMPELLED responses to the discovery, however, Commissioner will provide relief under EDCR 2.34(e), and production is STAYED until the DCRR becomes a final Order of the Court; documents are due within 14 days after the DCRR becomes a final Order of the Court. Mr. Ogilvie to prepare the Report and Recommendations, and Ms. Ghanem Ham to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

Parties Present
Return to Register of Actions

Exhibit F

1939

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, et al., Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, et al., Defendants.	Case No.: A-17-758528-J Dept. No.: XVI

DISCLAIMER OF INTEREST OF SEVENTY ACRES LLC

Plaintiff, SEVENTY ACRES LLC, through its undersigned counsel, hereby disclaims any interest in the real property that is the subject of this action and declares that it has no interest or claim to any compensation that might be paid by the City for the taking of this real property at issue in this litigation as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019, herein and further declares

that the other parties hereto may take whatever actions they deem desirable with respect to this action. SEVENTY ACRES LLC further waives any and all notices required by law in this action.

DATED this 23rd day of April, 2020.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Attorneys for Seventy Acres, LLC

Exhibit G

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DISTRICT COURT
CLARK COUNTY, 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; DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **ORDER DISMISSING SEVENTY ACRES LLC**

Having reviewed and considered the Motion to Dismiss Seventy Acres LLC on Order Shortening Time filed by Plaintiffs 180 Land Co LLC (hereinafter "180 Land Company"), Fore Stars, LTD. (hereinafter "Fore Stars"), and Seventy Acres, LLC (hereinafter "Seventy Acres LLC") (collectively "Plaintiffs," "Landowners," or "Plaintiff Landowners"), the Affidavit of James J. Leavitt, Esq., and exhibits thereto, and all relevant papers and pleadings on file herein, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Dismiss Seventy Acres LLC on Order Shortening Time is hereby granted;

IT IS FURTHER ORDERED that Seventy Acres LLC, having no ownership interest in the 35 Acres Property, and having disclaimed an interest in this action and any interest or claim to any compensation that might be paid by the Defendant City of Las Vegas for the taking of the property as described in the Second Amended and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed May 15, 2019, is hereby dismissed.

DATED this _____ day of April, 2020.

DISTRICT COURT JUDGE

OPPM
Bradford R. Jerbic (NV Bar No. 1056)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
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(Additional Counsel Identified on Signature Page)

Attorneys for Defendant City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **CITY OF LAS VEGAS' OPPOSITION TO SEVENTY ACRES, LLC'S MOTION TO DISMISS SEVENTY ACRES, LLC ON ORDER SHORTENING TIME** **Hearing Date: May 14, 2020** **Hearing Time: 9:30 a.m.**

I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs are entities owned by an experienced real estate developer ("the Developer"), which bought a 250-acre golf course property in 2015 that, for the previous 23 years, had been designated parks, recreation, and open space ("PR-OS") in the General Plan of Defendant City of Las Vegas ("City"). The PR-OS designation does not allow residential development. In purchasing the property, the Developer speculated that it could persuade the City to change the General Plan

designation to allow construction of housing, in which case the Developer could make a windfall profit. Under well-established Nevada and federal law, the City has broad discretion to maintain land uses designated in the General Plan or modify the General Plan to allow new uses. Claiming that the City's alleged refusal to change the City's General Plan designation effected a "taking" of its property without just compensation, the Developer now seeks a bailout from the City in the form of the profit it would have made had its bet paid off. Unanimous legal authority, however, prevents the Developer from shifting the risk of its speculative investment to City taxpayers.

This is one of multiple cases concerning the Developer's attempt to convert the former Badlands golf course and drainage lands ("Badlands") to housing. Since 1989, the Developer's predecessor, the Peccole family ("Peccole"), planned and executed the 1,569-acre Peccole Ranch Master Plan, a mixed-use development project ("PRMP"). Between 1992 and 2015, when the Developer acquired the Badlands, more than 1,300 acres of the PRMP were developed with thousands of housing units, retail, a hotel, and a casino in accordance with the master plan. In 1992, Peccole and the City designated the Badlands portion of the PRMP for recreation, open space, and drainage to complement these developed areas. The Badlands was developed first for an 18-hole golf course use. Peccole added a 9-hole golf course in 1998, completing development of the entire 250-acre Badlands as a golf course and for drainage for the PRMP.

The Badlands is part of a larger subarea of the PRMP zoned R-PD7 (Residential Planned Development – 7 units/acre). The "PD" in "R-PD7" means "Planned Development," a land use planning tool that allows the City to designate specific areas in the planned development for housing, retail, recreation-open space, and other uses to achieve community land use planning objectives, such as compatibility with surrounding development, provision of adequate open space, adequate streets and parking to reduce traffic congestion and improve traffic safety, convenient and accessible schools and other institutions, etc. In 1992, the City approved Peccole's requested use of the Badlands for parks, recreation, and open space as part of the City's General Plan, designating the Badlands Parks Recreation – Open Space ("PR-OS"). The Badlands have been designated PR-OS continuously from 1992 to the present.

Peccole owned the Badlands under an entity named Fore Stars, Ltd. The Developer acquired Peccole's interest in Fore Stars in 2015 through a stock acquisition by various entities and family limited partnerships managed by the same principals under a single entity named EHB Companies LLC. EHB is the manager of Fore Stars and two affiliates: 180 Land Co. LLC and Seventy Acres LLC. The principals of all of these entities are the same four individuals: Yohan Lowie, Vicki DeHart, Paul DeHart and Frank Pankratz. These individuals, through EHB and the nominal owners of the Badlands, constitute "the Developer."

In 2015-16, the Developer elected to shut down the golf course and carved up the Badlands, consisting of two assessor's parcels at the time the Developer acquired the Badlands, into ten assessor's parcels and four different development areas. In 2017, the Developer filed applications to convert the Badlands to residential use. The City approved the Developer's applications to develop 435 luxury condominium units on a 17-acre portion of the Badlands ("the 17-Acre Property"), which the Developer holds under the entity named Seventy Acres LLC ("Seventy Acres"), the same owner of the 35-acre portion of the Badlands at issue in the instant case (the "35-Acre Property"). After approving significant redevelopment on the 17-Acre Property, the City denied the Developer's applications to redevelop the 35-Acre Property and struck as procedurally deficient the development applications for another 133-acre area of the Badlands ("the 133-Acre Property"). The Developer has not filed development applications for the remaining 65-Acre portion of the Badlands.

Although the City approved 435 luxury housing units for the 17-Acre Property, the Developer filed four separate legal actions against the City based on the City's alleged denial of all development in the Badlands.[1] The Developer's four complaints each allege a "taking" of the entire

[1] Before the Developer commenced these actions, neighbors of the Badlands sued the City and the Developer to overturn the City's approval of 435 units. Although the district court overturned the City's approval, the Nevada Supreme Court later affirmed it. *Seventy Acres, LLC v. Binion*, 136 Nev. , 458 P.3d 1071 (Nev. 2020). The neighbors are currently seeking rehearing in the Nevada Supreme Court.

Badlands. To establish a taking, the Developer has the burden to show that government regulation eliminated the value of the "whole parcel."

By filing multiple suits, the Developer engages in classic "segmentation" – a tactic whereby a takings claimant artificially carves up the property and focuses on the alleged economic impact of a regulation on a single segment, rather than the parcel as a whole. If property is broken down into segments, however, virtually any regulation can be deemed to effect a taking if it restricts development of that segment, even though, as here, substantial development has been allowed on another part of the property. Courts have uniformly rejected segmentation, instead requiring a showing that the regulation eliminates the economic use of the parcel as a whole.

The Developer's motion to dismiss Seventy Acres seeks to perpetuate its artificial segmentation of the Badlands by contending that Seventy Acres is not the entity name under which the Developer owns the 35-Acre Property. This is a pretense and should be rejected for a number of reasons. The whole parcel for which the takings claim must be evaluated is the entire PRMP, not just a fraction of it. The 250-acre Badlands is only 16 percent of the PRMP. Because the City approved thousands of housing units, retail, a hotel, and a casino for development in approximately 84 percent of the whole parcel (*see* City's Appendix of Exhibits in Support of Opposition to Motion to Dismiss, Ex. R),[2] under well-established law the Developer cannot complain of a taking if the City declines to change the historic PR-OS designation and allow building in the remaining 16 percent of the PRMP. Accordingly, the Developer's takings claims would fail as a matter of law even if the City had not approved 435 units in the Badlands.

Even if the PRMP is not deemed the parcel as a whole, at a minimum the whole parcel for evaluating a takings claim is the 250-acre Badlands. The sweeping allegations in the Developer's complaint allege a taking of the entire 250-acre Badlands, not just 35 acres of it. When presenting its redevelopment applications to the City, the Developer touted itself as one development company

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[2] City Ordinances, Resolutions, legislative history, transcripts of public hearings, and other documents subject to judicial notice are attached as Exhibits to the Appendix to the City's Opposition to this Motion to Dismiss. The City requests that the Court take judicial notice of the Exhibits under NRS 47.130, 47.140, and 47.150.

(EHB), led by Yohan Lowie, which developed other successful projects in Las Vegas. Ex. M at 253, 255. The new lots and new owners the Developer created by carving up the Badlands and conveying title to one or more EHB subsidiaries are merely a front for a single Developer. The Developer cannot claim this unified ownership when doing so works to its advantage and then ignore its unified ownership to engage in improper segmentation.

The Developer's strategy is to have the Court examine the City's regulation affecting only one narrow segment of the property instead of the parcel as a whole. This approach aims to inflate the economic harm if the City approves development on other parts of the property, but limits use on the part in question. If the Court focuses on the impact of regulation on only one segment of the overall property, it is easier for the Developer to show that regulation limits all use of the segmented property and hence effects a taking. The Badlands consists of contiguous properties under single ownership and was historically used as a golf course and drainage. The Developer acquired the entire Badlands in a single transaction. The Developer also has treated all four properties it recently created as a single economic unit for purposes of development, and Seventy Acres is part of this effort. Because it owns part of the Badlands, Seventy Acres is a real party in interest to this case and must be bound by the City's successful defense of these broad allegations. The Court should therefore deny Seventy Acres' motion to dismiss.

II. LEGAL ARGUMENT

A. Seventy Acres is an Owner of the Relevant Parcel the Court Must Consider When Analyzing the Takings Claims Asserted in This Case

1. By Seeking Dismissal, Seventy Acres Engages in Improper Segmentation of the Whole Parcel

The Developer's effort to remove Seventy Acres from this case is consistent with its artificial segmentation of the whole parcel. When determining whether a government action wipes out the value of property and thereby causes a taking, the Court must first determine the scope of the relevant property:

> "Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a

> taking, this Court focuses rather . . . on the nature and extent of the interference with rights *in the parcel as a whole* . . . .

Penn Central Transp. Co. v. New York City, 438 U.S. 104, 130-31 (1978) (emphasis added). To that end, defining the relevant parcel requires a court to consider the "aggregate . . . in its entirety," not just the portion of a larger property most directly burdened by a regulation. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 327, 331 (2002). As the Supreme Court explained, "Of course, defining the property interest taken in terms of the very regulation being challenged is circular." *Id.* at 331. That is because, "[t]o the extent that any portion of property is taken, that portion is always taken in its entirety; the relevant question, however, is whether the property taken is all, or only a portion of, the parcel in question." *Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 644 (1993), *quoted in Tahoe-Sierra*, 535 U.S. at 331.

Nevada also rejects the tactic of whole-parcel segmentation to manufacture takings claims. *See Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 855 P.2d 1027 (1993). In *Kelly*, the Nevada Supreme Court rejected a developer's attempt to segment seven lots affected by regulation from the remainder of 39-lot planned unit development. *Id.* 109 Nev. at 641, 651, 855 P.2d at 1029, 1035. Quoting *Penn Central*, the Court held that the entire development "must be viewed as a whole, not as thirty-nine individual lots, when determining whether [the plaintiff] has been deprived of all economic use..." *Id.* "When viewed as a whole," the Court concluded, the plaintiff had not been deprived of all economic use because only seven lots were affected by the land use regulations at issue, not the entire subdivision. *Id.* The Court also noted that even of those seven affected lots, the developer was able to develop two and might be eligible in the future to develop another four. *Id.* at 648-49, 651, 855 P.2d at 1034-35. In other words, whether viewed under Nevada or federal law, where a regulation affects only a portion of contiguous property, the relevant property cannot be defined solely as the regulated portion, particularly when that portion is part of a larger development. *See id.*; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017).

2. Regardless of Whether the PRMP or the Badlands is the Parcel as a Whole, Seventy Acres, as an Owner of Two Segmented Portions of the Badlands, Must Be Retained as a Real Party In Interest

As one of the owners of the parcel as a whole in this case, Seventy Acres must remain as a plaintiff. The United States Supreme Court recently articulated specific standards for defining the parcel as a whole, identifying a three-factor test: (1) "the treatment of the land, in particular how it is bounded or divided, under state and local law"; (2) "the physical characteristics of the landowner's property"; and (3) "the value of the property under the challenged regulation," *Murr*, 137 S. Ct. at 1945-46. The Court emphasized that the goal is to "determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel, or, instead, as separate tracts." *Id.* at 1945; *see also id.* at 1950 ("Courts must . . . define the parcel in a manner that reflects reasonable expectations about the property."). Under this test, the parcels that the Developer holds in the name of Seventy Acres LLC are part of the whole parcel that the Court must consider in this case.

a. Peccole and the City Intended that Peccole Ranch Would Be Developed Under an Integrated Master Plan

The Badlands, owned by Seventy Acres and other Developer entities, is a part of the PRMP, which is the parcel as a whole in this case. In 1980, the City approved Peccole's petition to annex 2,243 acres of undeveloped land to the City. Ex. A at 1-11. Peccole made clear his intention to develop the entire parcel as a master planned development. *Id.* at 1. After the annexation, the City amended its General Plan to reclassify the property as suburban residential before approving an integrated plan for developing the land with a variety of uses, called the "Peccole Property Land Use Plan." Ex. B at 12-18.

In 1986, 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. S. The golf course/open space system was intended to provide a buffer between different land uses while using natural washes to direct drainage flows. *See id.* at 34 (purpose of golf course in Phase I). The 1986 Master Plan conformed to the City's 1985 General Plan by

creating suburban residential development "with local supporting uses such as parks and other recreation facilities, local commercial, pedestrian and bicycle paths, and elementary schools." Ex. D at 56; compare Ex. C at 35 (land use table) with Ex. D at 57 (Table 3-1 standards).

In 1988, the Peccole Ranch Partnership 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 February 1989, after Peccole agreed to limit the overall density in Phase I and reserved 207.1 acres for a golf course and drainage in the second phase of development, the City approved the PRMP and the Phase I rezoning application. *Id.* at 96-97. The following month, Peccole applied to rezone an additional 124.39 acres for Phase I in accordance with the PRMP. Ex. F at 107-10.

In 1989, the City was required to establish a Gaming Enterprise District ("GED") under state law. Ex. G at 127. At Peccole's request, the City Council included Peccole Ranch in the GED, which permitted Peccole to develop a resort hotel in the PRMP on the condition that Peccole provide a recreational amenity such as an 18-hole golf course. *Id.* at 123-24, 130. Peccole satisfied this requirement by reserving 207.1 acres for a golf course. *Id.*; Ex. E at 96, 98; Ex. G at 123.

In 1990, Peccole applied to amend the PRMP for the second phase of development ("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 mechanism to handle drainage flows." *Id.* at 145. The PRMP also noted that "the extensive golf course and open space network were determining factors in the decision not to integrate a public park in the proposed Plan." *Id.* at 153. 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.

Regarding the first *Murr* factor (the treatment of the land, in particular how it is bounded or divided, under state and local law), a reasonable restriction that predates a landowner's acquisition can be an objective consideration for most landowners in forming fair expectations about their property. *Murr*, 137 S. Ct. at 1945. Lot lines created under state law do not define the relevant

parcel in every instance. *Id.* at 1947. Courts routinely consider separate lots as a single property for takings purposes, as the Supreme Court did in *Murr*. *See id.*; *Kelly*, 109 Nev. at 651, 855 P.2d at 1035 (multiple parcels deemed a single property for purposes of takings analysis even though regulation at issue affected only some of the parcels); *see also Appolo Fuels, Inc. v. United States*, 381 F.3d 1338, 1344, 1346 (Fed. Cir. 2004) (six leases in different parcels, acquired at different times, part of same property for takings purposes); *Forest Props., Inc. v. United States*, 177 F.3d 1360, 1362-63, 1365-66 (Fed. Cir. 1999) (two parcels purchased at different times capable of separate development considered part of the same property for takings purposes).

Here, the PRMP historically has been treated as a single integrated project. The entire PRMP began as a single master planned development under one owner who intended that the Badlands would provide recreation, open space, and drainage for the other, developed parts of the PRMP, satisfy the City's parks set-aside requirement, and comply with the express conditions of the GED. Ex. H at 151, 153, 159. In the 25 years before the Developer purchased the Badlands, the master planned area was developed as a single economic unit under the PRMP approved in 1990. The City's approval of a casino and hotel in the PRMP was conditioned on Peccole providing a hotel and an 18-hole golf course to serve that destination resort. Ex. G at 123-24; Ex. H at 183. In 2005, 15 years after the City approved the PRMP, the City reconfirmed in Ordinance No. 5787 that the PRMP was a "Master Development Plan Area," in the City's General Plan, meaning a "comprehensively planned development[] with a site area of more than eighty acres." Ex. I at 200-01. In its Minute Order, rejecting the Developer's challenge to the City Council's denial of the 35-Acre applications, the Court confirmed that the PRMP was developed under a single master plan that set aside the Badlands as open space for the benefit of the other uses in the PRMP:

> Based on a review of the record, the 35-acre parcel at issue was once part of the 250.92 acres of land commonly referred to as the Badlands Golf Course and subject to the specifications set forth in the Peccole Ranch Master Planned Community, which were initially approved by the City of Las Vegas in 1990. Under the Master Plan, in addition to use as a golf course, the Badlands parcel was designed to be in a major flood zone and was designated as flood drainage and open spaces.

Ex. Z at 460; *see also* Ex. AA (Findings of Fact and Conclusions of Law on Petition for Judicial Review filed 11/21/18) at 468-470.

In its June 21, 2016 application to the City to redevelop the Badlands, the Developer readily acknowledged that the Badlands was developed as the open space and drainage for the PRMP to serve the other uses in the master planned development: "The purpose of this Major Modification of the 1990 Peccole Ranch Conceptual Master Plan . . . which represents a Major Modification to the 1990 Peccole Ranch Conceptual Master Plan . . . is solely to . . . [m]odify, commensurate with its repurposing, the land use designations for 250.92 acres upon which the Badlands Golf Course . . . is currently operated." Ex. K at 219. The Developer even developed portions of the PRMP itself. Ex. R. The Developer did not object to the City Planning staff's repeated statements that the Badlands were part of the PRMP. *See,* e.g., Ex. O at 311, 319 ("The [17-Acre] site is located within Phase II of the Peccole Ranch Master Plan area.").

Rather than pretend that the PRMP is a figment of the Peccole and City's imagination, as the Developer now does in this litigation, the Developer sought the City's approval to modify the PRMP to allow housing construction in the Badlands, where the Developer stated:

> The 1990 Master Plan was specifically intended, designed and drafted to, "maintain flexibility to accommodate future market changes" with a clear recognition that, "The Plan is conceptual in nature to allow detailed planning at the time of development." In fact, the developer under the 1990 Master Plan went to great lengths to both maintain and protect maximum flexibility for development purposes.

Ex. P at 347. The Developer further asserted:

> The previously approved 1989 and 1990 Peccole Ranch Master Plans incorporated 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 were approved in the most northern portion of the project area. Special attention was given to the compatibility of neighboring uses for smooth transitioning, circulation patterns, convenience and aesthetics. The vision and goal of those Master Pans continues with this 2016 Master Plan. . . . In 1989 and again in 1990, The Peccole Ranch Master Plan was designed to benefit the current and long range needs of the Las Vegas Metropolitan Area.

Id. at 348. In one application for permission to redevelop the Badlands, the Developer stated that the "Gross Acres" of the project was "1,569.6," which is the precise acreage of the PRMP. *Id.* at 324. At the hearing on the Developer's applications to develop 435 luxury housing units on the 17-Acre Property, the Developer's representative referred to the project as within the PRMP. Ex. Q at 429.

In light of the history of the formation, approval, and development of the PRMP and the integral role of the Badlands in that master planned development, repeatedly acknowledged by the Developer, it is disingenuous for the Developer to claim not only that the Badlands is not part of the PRMP, but that only a portion of the Badlands that the Developer carved out after it acquired the Badlands is the relevant parcel for takings purposes. *See Forest Props.*, 177 F.3d at 1366; *see also Ciampitti v. United States*, 22 Cl. Ct. 310, 319 (1991) (two parcels collectively considered the relevant property for takings purposes because plaintiff had viewed both parcels as an integrated unit for purposes of purchase and financing). In *Forest Properties*, the Federal Circuit rejected the assertion that parcels should be treated separately because they were acquired at different times and were capable of separate development. *Id.* at 1366. Because the entire parcel was acquired with the intent of integrated development, the Federal Circuit, recognizing the economic realities of the property, concluded that the regulated portion could not alone constitute the relevant parcel. *Id.* at 1365. This was the case even though a portion of the parcel had been sold off. *Id.* Several other courts have reached similar conclusions. *See, e.g., Norman v. United States*, 63 Fed. Cl. 231, 260-61 (2004); *Cane Tenn., Inc., v. United States*, 60 Fed. Cl. 694, 705 (2004); *Deltona Corp. v. United States*, 657 F.2d 1184, 1192 (Ct. Cl. 1981). Similarly, in *Ciampitti* the court ruled that denial of a wetland fill permit did not effect a taking where the plaintiff had knowledge of the restrictions applicable to the property but nevertheless agreed to purchase restricted wetlands as part of a package deal that included uplands that had already been developed. 22 Cl. Ct. at 319.

Despite (a) the plain language of Ordinance 5787 and other City Ordinances cited above approving the PRMP and designating the Badlands as the open space for the PRMP; (b) Judge Williams' Minute Order finding that the Badlands is part of the PRMP and is subject to

development standards under the PRMP; and (c) the Developer's acquisition of the entire Badlands in one transaction, its express recognition of the PRMP in its development applications, and its proposal to develop the entire Badlands at one time as a single, integrated project, the Developer now argues – following the City's denial of the Developer's applications to redevelop the 35-Acre Property and striking as procedurally deficient the Developer's applications to develop the 133-Acre Property – that it did not improperly segment the whole parcel because the PRMP does not exist or the City's legislation approving the PRMP does not exist. *See* Plaintiff Landowners' Opposition to the City's Motion to Dismiss, filed 3/27/20 in Case No. A-18-780184-C at 14-17. The history of the PRMP as a master planned development and the purpose of the Badlands under that plan as Public Recreation and Open Space and drainage, however, is self-evident from the City's ordinances and other official documents cited above, and completely undercuts the Developer's segmentation litigation strategy.

Under *Murr*'s second factor, ("the physical characteristics of the landowner's property"), physical characteristics of a parcel include the physical relationship of any distinguishable tracts, the parcel's topography, and the surrounding human and ecological environment. 137 S. Ct. at 1945. In *Murr* the Supreme Court held that contiguous lots under common ownership support treatment of property as a unified parcel. *Id.* at 1948; *see also Jentgen v. United States*, 657 F.2d 1210, 1213 (Ct. Cl. 1981) (concluding that the relevant parcel consists of 100 contiguous acres owned by the claimant, including 60 undevelopable acres and 40 developable acres). Peccole and the City designated the Badlands as golf course and drainage due to its topography – a series of washes and hills that provided natural drainage for the remainder of the PRMP. Ex. H at 151, 153. Accordingly, the physical characteristics of the PRMP indicate that it should be treated as a single, integrated unit. *See id.*

As to the third *Murr* factor, the value of the property subject to the regulation, a determination of whether a regulatory taking has occurred requires a comparison of "the value that has been taken from property with the value that remains in the property." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987). *Murr* holds that while "a use restriction may

decrease the market value of the property, the effect may be tempered if the regulated land adds value to the remaining property, such as by increasing privacy, expanding recreational space, or preserving surrounding natural beauty." 137 S. Ct. at 1946. The value of using property as an integrated whole can outweigh a restriction to individual lot development. *Id.* Here, the Badlands historically provided recreation, open space, and drainage, enhancing the quality and value of the entire PRMP. Ex. H at 151, 153. Accordingly, application of the third factor of the *Murr* test, like the first two factors, dictates that the Court treat the entire PRMP as the parcel as a whole. As an owner of a portion of the relevant parcel and a subsidiary of the development entity that has already been granted approval to develop significant portions of the PRMP (Ex. R) and the Badlands (435 units on the 17-Acre portion), Seventy Acres is a real party in interest for the Developer's takings claims and should remain as a party.

b. After It Acquired the Badlands, the Developer Segmented the Property

Even if the Court disagrees that the PRMP is the parcel as a whole for purposes of the Developer's takings claims, the Badlands is, at a minimum, the parcel as a whole. As of 2015, Peccole owned the entire 250-Acre Badlands under the name Fore Stars Ltd. Ex. J at 206-10; Ex. R. In March 2015, the Developer acquired Fore Stars and thus acquired the Badlands. Ex. K at 220. In its October 11, 2018 Minute Order re: Petition for Judicial Review (10/11/18 Minute Order"), the Court found: "In June, 2015, Fore Star Ltd. redrew boundaries of various parcels that [comprised] the Badlands property, and in November 2015, ownership of approximately 178.27 acres of land was transferred to Petitioner, 180 Land Co. LLC and approximately 70.52 acres of land was transferred to Seventy Acres, LLC . . . ." Ex. Z at 462; *see also* Ex. AA at 470; Ex. K at 220; Ex. J at 211-18. The Developer recorded parcel maps subdividing the Badlands into nine parcels. Ex. L at 223-51; Ex. T. 180 Land Co. LLC and Seventy Acres LLC are controlled by the Developer's EHB Companies LLC. *See* Ex. M at 253; *see also*, Ex. J at 212 and 216 (deeds executed by EHB Companies LLC).

The Developer's treatment of the Badlands easily meets the first criteria of the *Murr* test for the whole parcel. Although it attempts to segment the Badlands for purposes of this litigation, before

it sued the City for a taking, the Developer treated the Badlands as a single, integrated, real estate development project. In its literature describing its plans to develop the Badlands, the Developer stated that EHB Companies, whose principals are Yohan Lowie, Vickie DeHart, and Paul DeHart, has developed properties in the PRMP, including One Queensridge Place, Tivoli Village, and 40 percent of the custom homes in Queensridge. Ex. M at 253, 255. The Developer also acknowledged that the entire Badlands is designated PR-OS in the Las Vegas General Plan, which limits the uses to "Park/Recreation/Open Space . . . including a PUBLIC PARK, soccer fields, tennis courts and swimming pools, among others." *Id.* at 261 (emphasis in original). The brochure goes on to state: "EHB principals concluded that the [Badlands golf course] must be acquired in order to be protected from potentially destructive development." *Id.* at 257.

When the Developer applied to develop the Badlands in early 2017, it filed a Major Modification Application ("MMA") with the City to develop the entire 250-acre property. In its rezoning, General Plan Amendment, and Development Agreement applications, the Developer gave the Project Name as "2016 Peccole Ranch Master Plan" or "Peccole Ranch Master Plan 250.92 Acres," proposing a new master plan for the entire Badlands as a single, integrated development project. Ex. P at 324-27, 329-31, 333-36, 342, 387-88. The location maps for the applications show the entire Badlands as the "Subject Property" *Id.* at 332.

In a June 21, 2016 letter to the City' Planning Director, the Developer proposed to redevelop the Badlands as a single, multi-phased project:

> The purpose of this Major Modification of the 1990 Peccole Ranch Conceptual Master Plan . . . which represents a Major Modification to the 1990 Peccole Ranch Conceptual Master Plan . . . is solely to:
>
> 1. Modify, commensurate with its repurposing, the land use designations for 250.92 acres upon which the Badlands Golf Course (hereinafter "Property") is currently operated;
>
> 2. Allow on the Property twenty four hundred (2,400) Luxury Multi Family Units together with 200 Assisted Living Units; and

3. Remove from the 1990 Master Plan certain land located partially within and partially outside of the 1990 Master Plan, more specifically that approximate 17.8 acre portion of APN 138-32-723-001.

Ex. K at 219-20. The Developer proposed 75 Estate Lots on 183.7 acres and 2,400 Luxury Multi-Family housing units and 200 Assisted Living Units "within one cohesive residential village" on 67.21 acres of the Badlands. *Id.* at 221. *See also* Ex. M at 266 (Developer's brochure proposing development of entire Badlands as single development project). The Developer further acknowledged that the Badlands consisted of two assessor's parcels at the time it acquired the property, which the Developer then split into 10 assessor's parcels. *Id.* at 258; Ex. L at 225, 235, 240, 245; Ex. N at 287 ("The 17 Acres is in the process of being subdivided into a separate parcel and will have its own APN."). In the draft Development Agreement the Developer proposed for the 35-Acre Property and other parts of the Badlands, the Developer stated: "A Major Modification to the 1990 Approved Peccole Ranch Master Plan has been submitted." Ex. P at 394.

The "Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation" ("Compl."), which is the operative complaint in this case, contains sweeping allegations regarding the entire Badlands property and encompasses the parcels held in the name of Seventy Acres. The Developer defines the "250 Acre Residential Zoned Land" to include three parcels owned by Seventy Acres: 138-31-801-003; 138-32-301-007; 138-32-301-005. Compl. ¶7. Then, throughout the Complaint, the Developer asserts a "property interest/vested right to use and develop the 250 Acre Residential Zoned Land." Compl. ¶¶27, 30, 33, 37 41. According to the Developer's allegations, the City "will never allow any development on ... any ... part of the" Badlands and certain City actions "solely target[ed]" the *entire* Badlands. Compl. ¶¶88, 91, 99, 124-125, 132, 136-140, 157. The Developer contends that the City wants to acquire the *entire* Badlands, including parcels that the Developer owns in the name of Seventy Acres, as a park "for pennies on the dollar." Compl. ¶¶140, 143, 159. The Complaint challenges the PR-OS designation that has existed on the entire Badlands since 1992. Compl. ¶¶144-148. The Developer further alleges that the City's denial of the Developer's application for a master

development agreement for the *entire* Badlands, including the parcels that the Developer owns in the name of Seventy Acres, constituted a taking. Compl. ¶¶66, 83, 87, 180, 191-192.

The Complaint also attacks the City's decision not to appeal Judge Crockett's decision to vacate the City's approval of 435 luxury housing units on the 17-acre property – which is owned in the name of Seventy Acres – as a taking. Compl. ¶¶141-143; Ex. N at 290, 292, 294 (GPA-62387, ZON-62392, SDR-62392). Finally, the Developer alleges that the City's action to strike the Developer's applications to develop the 133-Acre Property on the grounds that they were incomplete constituted a taking, yet Seventy Acres was listed as the property owner on two of those applications. Compl. ¶116, 124; Ex. W at 446, 448 (WVR-72004 and TMP-72006). These applications, like the others filed by the Developer, were signed by Yohan Lowie, as manager of EHB Companies LLC, which in turn is the manager of Seventy Acres. *See id.*

Here, 84 percent of the PRMP had been developed when the Developer acquired the Badlands. The Developer had knowledge of the restrictions imposed on the Badlands by the PR-OS designation. Even so, the City approved substantial development in the Badlands. The Developer cannot sever the Badlands from the PRMP, or the 17 acres of the Badlands on which the City approved 435 housing units from the remainder of the Badlands to manufacture a taking of the 35-Acre Property.

Under *Murr*'s second factor, physical characteristics of a parcel include the physical relationship of any distinguishable tracts, the parcel's topography, and the surrounding human and ecological environment. 137 S. Ct. at 1945. In *Murr*, the Supreme Court held that contiguous lots under common ownership support treatment of property as a unified parcel. *Id.* at 1948; *see also Jentgen v. United States*, 657 F.2d 1210, 1213 (Ct. Cl. 1981) (concluding that the relevant parcel consists of 100 contiguous acres owned by the claimant, including 60 undevelopable acres and 40 developable acres). In the instant case, the Badlands was historically used solely as a 27-hole golf course and for drainage due to its topography – a series of washes and hills that provided natural drainage. Ex. H at 151, 153. Accordingly, the physical characteristics of the Badlands dictate that it be treated as a single development project, i.e. the parcel as a whole. *See id.*

As to the third *Murr* factor, the value of the property subject to the regulation, a determination of whether a regulatory taking has occurred requires a comparison of "the value that has been taken from property with the value that remains in the property." *Keystone Bituminous Coal Ass'n*, 480 U.S. at 497. *Murr* holds that while "a use restriction may decrease the market value of the property, the effect may be tempered if the regulated land adds value to the remaining property, such as by increasing privacy, expanding recreational space, or preserving surrounding natural beauty." 137 S. Ct. at 1946. The value of using property as an integrated whole can outweigh a restriction to individual lot development. *Id.* Here, the Developer proposed that the Badlands would provide housing, recreation, open space, and drainage, where the open space and drainage would enhance the quality and value of the entire master planned Badlands area. Ex. M at 268-71. Accordingly, application of the third factor of the *Murr* test, like the first two factors, dictates that the Court treat the entire Badlands as the parcel as a whole.

The Developer cannot segment the Badlands from the rest of the PRMP, much less the parcels owned by Seventy Acres from the rest of the Badlands. At a minimum, the entire Badlands property constitutes the whole parcel. Under both federal and Nevada law, all of the Developer's subsidiaries created for the sole purpose of owning property in the Badlands, including Seventy Acres, must remain parties to this case.

B. Seventy Acres is One of the Three Real Parties in Interest In Privity Who Must Prosecute This Case

Because the whole parcel includes the portions of the Badlands owned by the Developer in the name of Seventy Acres, and because the City should be able to enforce any judgment obtained in this case against Seventy Acres, NRCP 17 requires it to be a party. "An action must be prosecuted in the name of the real party in interest." NRCP 17(a)(1). "This language mandates that only a real party in interest may pursue an action in order to enable a defendant to avail himself of discoverable evidence and relevant defenses and assure him finality of judgment." *NAD, Inc. v. Eighth Jud. Dist. Ct.*, 115 Nev. 71, 76, 976 P.2d 994, 997 (1999). A real party in interest is "one who possesses the right to enforce the claim and has a significant interest in the litigation." *High Noon at Arlington*

Ranch Homeowners Ass'n v. Eighth Jud. Dist. Ct., 133 Nev. 500, 507, 402 P.3d 639, 645–46 (2017), *quoting Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983). Only the persons listed in NRCP 17(a)(1) [executors, guardians, trustees, etc.] "may sue in their own names without joining the person for whose benefit the action is brought." Seventy Acres is not one of them. *See* NRCP 17(a)(1)(A)-(G).

In its Minute Order, the Court ruled that Seventy Acres LLC is in privity with the other nominal owners of the Badlands and all owners must be treated as a single owner for purposes of this action:

> [P]rivity will now encompass a relationship in which there is a substantial identity between the parties which results in a sufficient commonality of interest. . . . Applying the expanded concept of privity, the Court considered the history of the land-use applications pertaining to the Badlands properties before the City Council and reviewed the Complaint filed in the United States District Court . . . Plaintiffs 180 Land Co. LLC, Fore Stars, Ltd., Seventy Acres, LLC and Yohan Lowie in his individual capacity, to determine whether there is a substantial identity of the parties resulting in a sufficient commonality of interest and therefore privity. . . [I]n March of 2015, Yohan Lowie and his partners acquired a membership interest in Fore Star Ltd., which at the time owned the 250.92 acre Badlands property. In June, 2015, Fore Star Ltd. redrew boundaries of various parcels that compromised the Badlands property, and in November 2015, ownership of approximately 178.27 acres of land was transferred to Petitioner, 180 Land Co. LLC and approximately 70.52 acres of land was transferred to Seventy Acres, LLC . . . . ¶A review of the August 3, 2017 deposition of Yohan Lowie reveals a 50% ownership interest in both Seventy Acres, LLC and 180 Land Co., LLC. . . . Also, from the record, Mr. Lowie manages and controls the 180 Land Co., LLC and Seventy Acres, LLC. Therefore, the record demonstrates a substantial identity between the 180 Land Co., LLC and Seventy Acres, LLC based on shared interest and actions.

Ex. Z at 462; *see also* Ex. AA at 482.

Seventy Acres must be considered a real party in interest to this case because it owns part of the whole parcel as a front for, and is in privity with, Yohan Lowie and EHB Companies. Seventy Acres LLC needs to be held to the judgment that is ultimately issued in this case. Absent Seventy Acre's continued role as a plaintiff, the City could be subject to multiple, conflicting decisions

regarding the same property and same claims. As it has demonstrated, the Developer will seek to use what it perceives as positive results from one lawsuit in its other lawsuits, yet it contends that adverse decisions from other judges should not be applied here. Seventy Acres must also be bound by results in this lawsuit that favor the City. For this reason, as well, the Developer's effort to artificially segment the Badlands should be rejected.

C. The Developer Has Always Held Itself Out as One Entity When it Works to the Developer's Advantage

To secure the entitlements the Developer has already received from the City to redevelop the 17-acre portion of the Badlands, the Developer touted its unified ownership of the Badlands under the EHB entity. In its presentation to the City Council, the Developer never identified itself just as "Seventy Acres." Instead, it identified itself as "the development company, EHB, ... [which] has been in this area for over 20 years." Ex. X at 455. According to the Developer's representative, EHB has:

> built over three million square feet of residential and commercial properties and have invested over $1 billion within a 1.5 mile radius of Queensridge, ... including building the two towers at One Queensridge Place and constructing 40 percent of all custom homes in Queensridge, one builder, 40 percent of all custom homes in Queensridge.
>
> * * *
>
> If you know Mr. Lowie's work and EHB companies, nobody, nobody builds a better product, whether it's the towers or the Supreme Court Building or Tivoli Village, nobody builds a better product than he does.

Id. at 455-56.

The justification letters for the Developer's applications at issue in this case are signed by Yohan Lowie in his capacity as manager of EHB Companies. *See, e.g.*, Ex. N at 289; Ex. P at 341. When presenting its redevelopment applications for the 35-acre portion of the Badlands at issue in this case, the Developer likewise identified itself as "Yohan" and "EHB," making no distinction between the EHB development company and Lowie's individual entities who happen to hold certain parcels. Ex. Y at 459. Lowie even had his daughter speak before the City Council to plug the work done by EHB:

> [G]o look at the Queensridge Towers and at Tivoli and the Supreme Court that just opened up, and you can see that it's not only good, it's amazing. And I'm not speaking because it's my father and because it's his, like company that he works in, but it's truly amazing. Like it's beautiful. And they don't even try a little. They go beyond, like above and beyond. Above and beyond. And so why wouldn't you want people to go above and beyond to keep going above and beyond?

Id. at 458; *see also* Ex. M at 281 (EHB's marketing materials for Badlands redevelopment). In light of the Developer's own representations, the Developer's attempt to distinguish among the entities that happen to hold title to specific Badlands parcels is a shell game that should be rejected.

III. CONCLUSION

Because the whole parcel at issue with the Developer's takings claims is the PRMP, but at a minimum, the entire Badlands, the Developer's takings claims in any of the four lawsuits filed by the Developer encompass parcels owned by Seventy Acres, and the Developer's attempt to distinguish among its entities is an illusion. Seventy Acres must remain a party to this case. Its motion to dismiss should be denied.

DATED this 12th day of May, 2020.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the City of Las Vegas, and that on the 12th day of May, 2020, a true and correct copy of the foregoing **CITY OF LAS VEGAS' OPPOSITION TO SEVENTY ACRES, LLC's MOTION TO DISMISS** 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.

/s/Cindy Kelly

An employee of the City of Las Vegas

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Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, 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; DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X,

Defendants.

CASE NO.: A-17-758528-J
DEPT. NO.: XVI

NOTICE OF ENTERY OF ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME AND ORDER RE STATUS CHECK

PLEASE TAKE NOTICE that on the 15th day of June, 2020, an Order Granting Plaintiffs' Motion to Dismiss Seventy Acres LLC on order shortening time and Order re Status Check, was entered in the above-captioned case, a copy of which is attached hereto.

Dated this 15th day of June, 2020.

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 15th day of June, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME** to be submitted electronically for filing and service via the Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a 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-17-758528-J
DEPT. NO.: XVI

ORDER GRANTING PLAINTIFFS' MOTION TO DISMISS SEVENTY ACRES LLC ON ORDER SHORTENING TIME
AND
ORDER RE STATUS CHECK

Date of Hearing: May 14, 2020
Time of Hearing: 9:00am

This matter having come before the Court on May 14, 2020 with oral argument having been held on Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time and a Status Check hearing, Autumn Waters, Esq. and James J. Leavitt, Esq., appearing for and on behalf Plaintiff 180 Land Company, LLC and Fore Stars, Ltd. ("Landowners"), along with the Landowners' corporate counsel, Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III Esq., Seth Floyd, Esq., Andrew W. Schwartz, Esq., and Lauren M. Tarpey, Esq. appearing for and on behalf of Defendant, the City of Las Vegas ("City").

Having reviewed the pleadings and papers on file herein and having heard arguments of counsel in regards to Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time, the **COURT HEREBY ORDERS** as follows:

1. That Seventy Acres, LLC, which is a Nevada Limited Liability Company has no ownership interest in the 35 acres at issue (Reporters Transcript of Motion, May 14, 2020 ("Transc.") 30:5-7);
2. That the Court cannot force standing under these circumstances when Seventy Acres, Ltd. wants to be voluntarily dismissed from this case (Transc., 30:8-10);
3. These are procedural issues and if the other tract should have been a party to this case, we have consolidation motions under Rule 19 and that could have been accomplished a long time ago. But each case appears to the Court to have gone down its own separate tract from a litigation perspective (Transc., 30:10-16);
4. Under the facts of this case, Seventy Acres, LLC was not a real party in interest as it relates to Rule 17 (Transc. 37:13-15); and,
5. Therefore, Plaintiffs' Motion To Dismiss Seventy Acres LLC on Order Shortening Time is **GRANTED.**

In regards to the Status Check, the **COURT HEREBY ORDERS** as follows:

1. Defendant's request to designate this matter a business court matter is **DENIED**, however, Defendant may file the appropriate motion to designate this a business court matter and the Court will give it due consideration (Transc. 42:8-21); and,

2. A Status Check will be set for June 11, 2020, at 9:00 a.m. to discuss discovery dates and the parties are encouraged to do what they can in the interim as far as discovery is concerned (Transc. 49:8-15).

Dated this 15th day of June, 2020.

DISTRICT COURT JUDGE

CG

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *James J. Leavitt*
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(Additional Counsel Identified on Signature Page)

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **NOTICE OF ENTRY OF ORDER GRANTING THE CITY OF LAS VEGAS' REQUEST FOR THE DISTRICT COURT TO DECIDE ALL DISCOVERY DISPUTES**

PLEASE TAKE NOTICE that the Order Granting The City of Las Vegas' Request for the District Court to Decide All Discovery Disputes was entered in the above-captioned case on the 16th day of July, 2020, a copy of which is attached hereto.

. . .

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. . .

DATED: July 16, 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)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 16th day of July, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING THE CITY OF LAS VEGAS' REQUEST FOR THE DISTRICT COURT TO DECIDE ALL DISCOVERY DISPUTES** to be 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, and as referenced below to the following:

LAW OFFICES OF KERMITT L. WATERS
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James J. Leavitt, Esq.
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/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **ORDER GRANTING THE CITY OF LAS VEGAS' REQUEST FOR THE DISTRICT COURT TO DECIDE ALL DISCOVERY DISPUTES**

This matter came before the Court during the July 9, 2020 Status Conference. James J. Leavitt, Esq. appeared on behalf Plaintiffs 180 Land Co., LLC and Fore Stars, Ltd. Philip R. Byrnes, George F. Ogilvie III Esq., Andrew W. Schwartz, Esq. and Lauren Tarpey, Esq. appeared on behalf of the City of Las Vegas.

Having entertained the arguments of counsel, the Court finds that, due to the abbreviated 120-day discovery period, this matter would be more efficiently administered if this Court adjudicated all discovery disputes. Therefore, in accordance with the Court's inherent authority to

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manage its docket in an efficient and effective matter under EDCR 1.90(b)(1), and good cause appearing therefor,

IT IS HEREBY ORDERED that the City's request that the District Court entertain and adjudicate all discovery disputes in this matter is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the Clerk's Office shall set all hearings on discovery disputes in this matter on the District Court Department XVI calendar, rather than setting such matters for hearing before the Discovery Commissioner.

Dated this 16th day of July, 2020.

DISTRICT COURT JUDGE

CG

Submitted by:

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
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Jelena Jovanovic

From: James Leavitt <jim@kermittwaters.com>
Sent: Tuesday, July 14, 2020 8:21 AM
To: George F. Ogilvie III
Cc: Autumn Waters; Michael Schneider; Amanda Yen; Jelena Jovanovic
Subject: Re: 35-acre case - Order re Discovery

Thank you George.
No revisions.

Sent from my iPhone

On Jul 11, 2020, at 9:16 PM, George F. Ogilvie III <gogilvie@mcdonaldcarano.com> wrote:

Jim,

In accordance with Judge Williams' ruling on Thursday, attached for your review and comment is a proposed Order granting the City's request that all discovery disputes be heard by Judge Williams rather than the Discovery Commissioner. Please let me know if you have any requested revisions to the proposed Order.

George

George F. Ogilvie III | Partner

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BIO | WEBSITE | V-CARD | LINKEDIN

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<Order Granting City's Request Re Discovery Matters - version 2.docx>

Electronically Filed
7/20/2020 3:52 PM
Steven D. Grierson
CLERK OF THE COURT

SCHTO

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD., a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASIGOVERNMENTAL ENTITIES I-X, Defendants.	)	Case No. A-17-758528-J Dept No. XVI

HEARING DATE(S) ENTERED IN ODYSSEY

SCHEDULING ORDER and ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL/CALENDAR CALL

SCHEDULING ORDER

NATURE OF ACTION**:** Severed Alternative Verified Claims in Inverse Condemnation

TIME REQUIRED FOR TRIAL**: 5-7 days** (Phase 1)

Counsel representing all parties and after consideration by the Judge at the Status Check held on July 9, 2020,

IT IS HEREBY ORDERED:

1. all parties shall complete discovery on or before **November 20, 2020.**

2. all parties shall file motions to amend pleadings or add parties on or before **August 21, 2020.**

. . .

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

Case Number: A-17-758528-J

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before **August 21, 2020.**

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before **September 21, 2020.**

5. all parties shall file dispositive motions on or before **December 21, 2020.**

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Discovery disputes that do not affect the Trial setting will be handled by the Discovery Commissioner.

A request for an extension of the discovery deadline, if needed, must be submitted to this department in compliance with EDCR 2.35. Stipulations to continue trial will be allowed only for cases that are less than three years old. All cases three years or older must file a motion and have it set for hearing before the Court.

ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL AND CALENDAR CALL

IT IS HEREBY FURTHER ORDERED THAT:

A. The above entitled case is set to be tried to a jury on a **five week stack,** to begin, **February 22, 2021** at **9:30 a.m.**

B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper person will be held on **February 11, 2021** at **10:30 a.m.**

C. Parties are to appear on **December 3, 2020 at 9:00a.m.,** for a Status Check re Trial Readiness.

D. The Pre-Trial Memorandum must be filed no later than **February 18, 2021**, with a courtesy copy delivered to Department XVI. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine or motions for partial

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

E. All motions in limine to exclude or admit evidence must be in writing and filed no later than **January 4, 2021. Orders shortening time will not be signed except in <u>extreme emergencies</u>**.

F. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the firm trial date given at the Pre-Trial Conference/Calendar Call. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the firm trial date given at the Pre-Trial Conference/Calendar Call. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the firm trial date. Counsel shall advise the clerk prior to publication.

G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the firm trial date given at the Pre-Trial Conference/Calendar Call. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be included in the Jury Notebook. Pursuant to EDCR 2.68, counsel shall be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

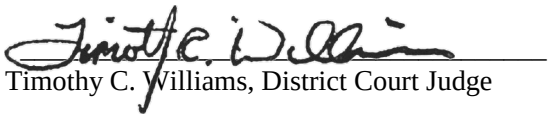
I. In accordance with EDCR 2.67, counsel shall meet and discuss preinstructions to the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide the Court, two (2) judicial days prior to the firm trial date given at Calendar Call, an agreed set of jury instructions and proposed form of verdict along with any additional proposed jury instructions with an electronic copy in Word format.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is asked to notify the Court Reporter at least two (2) weeks in advance if they are going to require daily copies of the transcripts of this trial or real time court reporting. Failure to do so may result in a delay in the production of the transcripts or the availability of real time court reporting.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED: July 20, 2020



Timothy C. Williams, District Court Judge

TIMOTHY C. WILLIAMS
DISTRICT JUDGE

DEPARTMENT SIXTEEN
LAS VEGAS NV 89155

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing Scheduling Order and Order Setting Civil Jury Trial, Pre-Trial/Calendar Call was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered service contacts in the Eighth Judicial District Court Electronic Filing Program.

/s/ Lynn Berkheimer

Lynn Berkheimer, Judicial Executive Assistant

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DISTRICT JUDGE

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