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. 80

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **NOTICE OF ENTRY OF ORDER REGARDING AUGUST 19, 2021, STATUS CHECK HEARING** **Hearing Date: August 19, 2021** **Hearing Time: 9:00 a.m.**

PLEASE TAKE NOTICE that an Order Regarding the August 19, 2021 Status Check Hearing was entered in the above-captioned case on August 25, 2021.

///

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A true and correct copy of which is attached hereto.

DATED this 26th day of August, 2021.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 26th day of August, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF ORDER REGARDING AUGUST 19, 2021, STATUS CHECK HEARING** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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8/25/2021 1:33 PM

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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; 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 REGARDING AUGUST 19, 2021, STATUS CHECK HEARING** **Hearing Date: August 19, 2021**

On August 19, 2021, the parties appeared via BlueJeans remote conferencing for a Status Check hearing regarding trial readiness, with James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf of Plaintiffs 180 LAND CO LLC, a Nevada limited-liability company; FORE STARS, LTD., a Nevada limited-liability company (hereinafter

Case Number: A-17-758528-J

"Landowners), along with the Landowners' in-house counsel, Elizabeth Ghanem Ham, Esq., and J. Christopher Molina, Esq., and Rebecca Wolfson, Esq. with the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City"). After reviewing the Status Reports filed by both parties and hearing argument of counsel, the Court orders as follows:

IT IS HEREBY ORDERED THAT Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief, filed with the Court on March 26, 2021, shall be set for a two-day evidentiary hearing, beginning on September 23, 2021, at 1:30 pm and continuing on September 24, 2021, at 9:30 am.

IT IS FURTHER ORDERED THAT the City of Las Vegas Opposition to Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the First, Third, and Fourth Claims for Relief shall be due to the Court by 10 days after the Status Check hearing – August 30, 2021.

IT IS FURTHER ORDERED THAT a status check hearing regarding trial readiness shall be set for September 24, 2021.

Dated this 25th day of August, 2021

NS

A18 58E 768F 77DA
Timothy C. Williams
District Court Judge

Submitted by:

LAW OFFICES OF KERMITT L. WATERS

/s/ *James J. Leavitt*

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Attorneys for 180 Land Co., LLC and Fore Stars, Ltd..

Reviewed as to Content and Form By:

MCDONALD CARANO LLP

By: /s/ *J. Christopher Molina*

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Attorneys for the City of Las Vegas

From:	James Leavitt
To:	Sandy Guerra
Subject:	FW: Proposed order from August 19, 2021 Status Check Hearing
Date:	Monday, August 23, 2021 1:47:09 PM

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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Cc: Elizabeth Ham (EHB Companies) <eham@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>
Subject: RE: Proposed order from August 19, 2021 Status Check Hearing

Jim,

The proposed order looks good. Just one minor comment – Chris is my middle name and J. is my first initial. Could you fix that on page 2 line 2? Otherwise its good to go and you can affix my e-signature. Thanks.

Chris Molina | Attorney

McDONALD CARANO

P: 702.873.4100 | **E:** cmolina@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>
Sent: Monday, August 23, 2021 9:23 AM
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

180 Land Company LLC, Petitioner(s) vs. Las Vegas City of, Respondent(s)	CASE NO: A-17-758528-J DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO., LLC, a Nevada limited liability company, FORE STARS Ltd., DOE INDIVIDUALS I through X, ROE CORPORATIONS I through X, and ROE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **DECLARATION OF ELIZABETH GHANEM HAM, ESQ. IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTIONS IN LIMINE** ***Hearing Requested***

///

DECLARATION OF ELIZABETH GHANEM HAM, ESQ.
PURSUANT TO EDCR 2.47(b)

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, Elizabeth Ghanem Ham Esq., do hereby declare under penalty of perjury, as follows:

1. I am licensed to practice law in the State of Nevada and am in-house counsel of record for EHB Companies, which is the manager of 180 Land LLC and Fore Stars, the owners of the 35 Acre Property at issue in the above captioned matter. I am competent to testify to the facts stated herein and would so testify if called upon to do so.

2. On or about September 2, 2021, pursuant to EDCR 2.47(b), I emailed counsel for the City of Las Vegas ("City") in the above captioned matter, wherein I requested to set a conference for September 9th, providing that the filing deadline of the Motions in Limine would be extended to September 10th, or to hold the conference on September 7th if the deadline extension was not agreed to.

3. I have attempted in good faith to resolve the issues that are the subject of Plaintiff Landowners' motions in limine, but was unable to do so as the City's Counsel has not responded to my email as of the time of the filing of this declaration.

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

DATED this 7th day of September, 2021.

/s/ Elizabeth Ghanem Ham
ELIZABETH GHANEM HAM, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 7th day of September, 2021, pursuant to NRCP 5(b), a true and correct copy of the foregoing: DECLARATION OF ELIZABETH GHANEM HAM, ESQ. IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTIONS IN LIMINE was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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COMES NOW Plaintiffs Landowners, 180 land Co., LLC and Fore Stars Ltd. (hereinafter "Landowners"), by and through their attorneys, the Law Offices of Kermitt L. Waters, and hereby move this Court for an Order excluding all evidence of the price the Landowners negotiated and agreed upon in 2005 ("2005 purchase price") to acquire the entire 250 Acres of Land (of which

Case Number: A-17-758528-J

the 35 Acre Property is a part) as it is irrelevant to the value of the 35 Acre Property as of the date of valuation - September 14, 2017. This Motion is based upon the Memorandum of Points and Authorities cited herein.[1]

I. INTRODUCTION

This is a Fifth Amendment constitutional proceeding with a jury trial set on this Court's October 25, 2021, five week stack. At trial, the jury will decide **only one** issue – the constitutional mandated just compensation to which the Landowners are entitled for the taking of their 35 Acre Property, which includes the value of the taken property and other appropriate damages. NRS 37.110. Just compensation is based on the "value" of the taken 35 Acre Property as of September 14, 2017, the date of the first service of summons in this matter. NRS 37.009 ("Value means the highest price, on the date of valuation"); NRS 37.120 (date of value is the date of first service of summons or date of trial if there is a delay of more than two years and the delay is caused primarily by the government or congestion in the court calendar); County of Clark v. Alper, 100 Nev. 382 (1984) (applying NRS 37.120 to eminent domain and inverse condemnation cases, because "Inverse condemnation proceedings are the constitutional equivalent to eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings." Id., at 391).[2]

The issue presented in this motion in limine is whether the City should be permitted to introduce evidence of the price the Landowners negotiated and agreed upon in 2005 ("2005 purchase price") to acquire the entire 250 Acre Land (of which the 35 Acre Property is a part). The facts below will show that this 2005 purchase price for the entire 250 Acre Land is irrelevant

[1] The EDCR 2.47 Declaration of Counsel has been filed concurrently herewith as separate document related to all Landowners' Motions in Limine.

[2] Depending upon the outcome of the hearing on the Landowners' Motion to Determine Take, set for September 23 and 24, this date of valuation may change to the date of trial.

to the value of the 35 Acre Property as of the date of valuation - September 14, 2017. The facts below will further show that the 2005 purchase price was arrived at through a series of "complex" transactions and that the actual transfer did not occur until 2015 through several other transactions "with a lot of hair" on them. This motion in limine will show that specific eminent domain law excludes this 2005 purchase price evidence as it is not relevant nor reliable to the only trial issue – the value of the 35 Acre Property as of September 14, 2017 - and any negligible probative value of the 2005 purchase price evidence is far outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

This motion in limine is brought at this time to avoid lengthy interruptions during the jury trial, to allow for a more thorough briefing of this important evidentiary issue, and to request that this Court exercise its gatekeeping function to exclude the evidence now so the parties may fully prepare for trial. Banque Hypothecaire du Danton de Geneve v. Union Mines, Inc., 652 F.Supp. 1400 (D. Md. 1987) ("the office of a motion in limine . . . is to aid the trial process by enabling the Court to rule in advance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of trial." Id., at 1401).

II. STATEMENT OF FACTS

The following will show that a representative of the Landowners, Yohan Lowie (Mr. Lowie), and the "Peccole Family" (the original owner of the entire 250 Acre Land, of which the 35 Acre Property is a part), had a long-time development relationship and significant business dealings beginning in 1996 through 2015, and that the option to purchase the 250 Acre Land arose out of this relationship and these business dealings. The option purchase price was agreed to in 2005, but the transaction did not close until 2015 ("2005 purchase price"). This 2005 purchase price transaction is so complex that two depositions were conducted to unravel the terms. First, the City conducted the deposition of Billy Bayne, the PMK for the Peccole Family, on July 16,

2021, from 9:10 am to 5:01 pm, with 53 exhibits amounting to over 1,000 pages, nearly all of which was unraveling the terms of the 2005 purchase price and 2015 closing. Exhibit 1, Bayne deposition. Second, the City conducted the deposition of Mr. Lowie on August 12, 2021, from 9:22 a.m. to 5:53 p.m., with 44 Exhibits, amounting to about 1,000 pages, nearly all of which was unraveling the terms of the 2005 purchase price. Exhibit 2, Lowie deposition, 35 Acre Case.

To fully understand the 2005 purchase price, it is critical to know that Peccole purchased over 3,000 acres of land (which includes the 250 Acre Land) in the mid-1980s. Mr. Lowie and the Peccole Family had significant business dealings that involved this 3,000 acres beginning in 1996, many of which dealings involved handshake agreements:

> A. I have a great – I had and have a great relationship with the family [Peccole Family], and most of my deals with them are like that. Handshakes, and this is the way we did our business.

Exhibit 3, Lowie deposition, Binion v. Fore Stars, 32:3-6, 21:2-8; Exhibit 2, Lowie deposition, 35 Acre Case, 218:11-24.

Beginning in 1996, Mr. Lowie through his various business entities and along with his partners, Vickie and Paul DeHart, began acquiring lots from the Peccole Family in the Queensridge Community and developed those lots into custom homes. Exhibit 3, Lowie Deposition, Binion v. Fore Stars, 28:19-21; Exhibit 4, Lowie Declaration 11.23.20, p. 1, para. 3. By 2001, the Peccole Family and Mr. Lowie[3] entered into an agreement whereby Mr. Lowie would develop homes on an entire block in the Queensridge Community - about 29-30 residential lots. Exhibit 3, Lowie deposition, Binion v. Fore Stars, 46:7-10, 47:7-14, 25:16-17; Exhibit 2, Lowie deposition, 35 Acre Case, 219:2-4. Ultimately, Mr. Lowie developed 42 of the 106 lots in the Queensridge Community. Exhibit 4, Lowie Declaration, 11.23.20, p. 1, para 2. Through these dealings, Mr.

[3] Although referred to as Mr. Lowie, these dealings included Mr. Lowie's longtime partners through various business entities.

Lowie obtained significant information and knowledge that the entire 250 Acre Land that the Queensridge Community surrounds (and was being used as a golf course at the time) was always zoned for residential development and there is nothing that can stop that residential development. Exhibit 3, Lowie Deposition, Binion v. Fore Stars, 43-48, 56-60, 65, 69-79; Exhibit 4, Lowie Declaration, 11.23.20, pp. 1-3.

Mr. Lowie and the Peccole Family continued their business dealings through 2002-2004, and, in 2004, they entered into agreements to build the Queensridge Towers – two high-rise, luxury residential towers with a total of 219 residential units (hereinafter "QR Towers"). Mr. Lowie was a partner with the Peccole Family and Mr. Lowie was also the contractor in the QR Towers agreements. Exhibit 2, Lowie deposition, 35 Acre Case, 86:3-16. The location of the QR Towers was directly adjacent to the 250 Acre Land at the southwest corner of Alta Dr. and Rampart Blvd.

During this time, two problems arose in regard to the QR Towers development between Mr. Lowie and the Peccole Family. First, the Peccole Family had trouble meeting its financial obligations under the QR Towers agreements. Exhibit 2, Lowie deposition, 35 Acre Case, 219:5-220:1. Second, significant construction had commenced on the QR Towers, which had been constructed on approximately 4.6 acres of the 250 Acre Land, which was, at that time, being operated as a golf course and leased to a golf course operator - American Golf. Id.; Exhibit 3, Lowie deposition, Binion v. Fore Stars, 15:11-20, 20:11-15, 23:18-20. The Peccole Family was required to obtain a release from American Golf to use the 4.6 acres of golf course land the QR Towers were built on, but failed to do so and thus, American Golf demanded $30 million or removal of the QR Towers. Exhibit 2, Lowie deposition, 35 Acre Case, 219:13-15, 220:7-11.

Therefore, Mr. Lowie and the Peccole Family agreed to enter into a series of complex transactions that: 1) resolved the Peccole Family funding issue; 2) resolved the Peccole Family $30 million American Golf demand issue; 3) transferred several properties to Mr. Lowie; and, 4)

provided Mr. Lowie the option to purchase the 250 Acre Land (of which the 35 Acre Property is a part). Exhibit 2, Lowie Deposition, 35 Acre Case, pp. 218-233; Exhibit 4, Lowie Declaration (11.23.20); Exhibit 5, Lowie Declaration (1.27.21); Exhibit 6, Lowie Declaration (5.21.21). The general terms of these series of complex transactions are as follows:

- Mr. Lowie obtained another investor (IDB) that paid $90 million to become a partner in the QR Towers;
- Peccole Family transferred all of its ownership interest in the QR Towers to Mr. Lowie and IDB;
- Peccole Family transferred all of its ownership interest in Tivoli Village, a large commercial complex at the northeast corner of Alta Dr. and Rampart Blvd., to Mr. Lowie;
- Peccole Family transferred all of its ownership interest in Hualapai Commons, a large commercial shopping center at the northeast corner of Sahara and Hualapai, to Mr. Lowie;
- **Peccole Family granted to Mr. Lowie an option to purchase the 250 Acre Land;**[4]
- Peccole Family received $10 million in condominium units in the QR Towers;
- Peccole Family received $90 million;
- **Peccole Family paid $30 million from this complex transaction to American Golf to remove American Golf from the 250 Acre Land;**[5] and,
- **At the time Mr. Lowie exercises the option to purchase the 250 Acre Land, he will pay an additional $15 million.**[6]

Therefore, the option to purchase the 250 Acre Land was just one piece of many moving parts of a series of complex transactions that worked together to resolve the issues related to the QR Towers. And, although $45 million cash was attributed directly to the 250 Acre Land, Mr. Lowie testified that, based on his expertise and due diligence on the 250 Acre Land, he considered

[4] Exhibit 3, Lowie deposition, Binion v. Fore Stars, 15:6-8, 17:5-6, 18:17-21, 21:2-21, 22:21-23, 28:22-30:5, 31:1-6, Exhibit 2, Lowie deposition, 35 Acre Case, 218:19-24.

[5] Exhibit 3, Lowie Deposition, Binion v. Fore Stars, 22:5-7; 28:22-29:1, 41:20-22; *See also* Exhibit 8, Minutes of Special Meeting of Board of Directors of Peccole-Nevada Corporation, p. 2.

[6] Exhibit 2, Lowie deposition, 35 Acre Case, 225:1-6, 231:2-9.

the value attributed to the 250 Acre Land in 2005 to be $100 million. Exhibit 2, Lowie deposition, 35 Acre Case, 232:18-233:2.

The Option to acquire the 250 Acre Land was not reduced to writing, because IDB did not want the option to be part of any transaction it was entering into on the QR Towers, but it was memorialized in other ways. Exhibit 2, Lowie deposition, 35 Acre Case, 223:4-23, 233:8-17; Exhibit 3, Lowie Deposition, Binion v. Fore Stars, 21:19-21. Therefore, it was a handshake agreement between Mr. Lowie and Larry Miller, Peccole CEO and this handshake agreement was confirmed by the Peccole Family PMK, Billy Bayne:

Q. Understood.

Do you know whether Mr. Lowie had an option to purchase or right of first refusal to purchase the 250-acre golf course prior to 2006?

A. From these documents that we looked at today, it looks like he did.

Exhibit 1, Bayne deposition, 222:14-19.

Moreover, Larry Miller, Peccole Family CEO, and Mr. Lowie signed a letter of intent to finalize the option to purchase the 250 acres. *See* Exhibit 7, May 31, 2007, letter of intent. The final payment price provided $12 million in the letter of intent, reflecting another agreement between Mr. Lowie and the Peccole Family regarding the club house portion of land with an attributed value of $3 million.[7] Exhibit 2, Lowie Deposition, 35 Acre Case, 224:4-19.

It should be noted that Billy Bayne, the Peccole Family PMK, testified that he does not agree with Mr. Lowie's testimony that the complex transactions above provided for how the "hundred-million-dollars" would be allocated or that $30 million of it was to be used to pay American Golf to quit the premises. However, Mr. Lowie did not deal directly with Billy Bayne as Billy Bayne was not involved in the family business dealings until 2007. Rather, Mr. Lowie

[7] The ultimate price contemplated a scenario with and without the clubhouse portion of land which is why the final price would be either 12 million or 15 million.

dealt primarily with Larry Miller.[8] Exhibit 2, Lowie deposition, 35 Acre Case, 221:3-5. Billy Bayne acknowledged that, "I don't think he [Mr. Lowie] would have bought a golf course with a $30 million note on it and assumed that obligation." Exhibit 1, Bayne Deposition, 223:5-7. Finally, 9 days prior to closing on the complex transaction referenced above, the Peccole Family had a Board Meeting wherein it was "resolved:"

> That this Corporation is directed to reserve a portion of the proceeds [from the $100 transaction] in a separate interest bearing account prior to any distributions to any shareholders of the Corporation from the sale of the Securities **of approximately $30 million** to pay off the current loan in full with Nevada State Bank **related to the purchase of the leasehold interest of the Badlands Golf Course [American Golf lease]** when such loan can be paid. Exhibit 8, Minutes of Special Meeting of Board of Directors of Peccole-Nevada Corporation, p. 2. *See also* Exhibit 2, Lowie Deposition, 35 Acre Case, 225:13-18.

For various reasons, including the recession that hit the country in 2008, Mr. Lowie did not complete the acquisition of the 250 Acre Land until 2015. In 2015 the deal was ultimately consummated by purchasing all of the assets and liabilities of the entity Fore Stars, Ltd, which was the title holder of the 250 Acre Land in 2015 and all of the water rights of WRL, Inc.[9] Exhibit 3, Lowie Deposition, Binion v. Fore Stars, 34:5-25; 36:9-37:5. The deal was then split into two separate Membership Interest Purchase Agreements – one for Fore Stars, Ltd (title holder of the land) and one for WRL, Inc. (owner of the water rights). Exhibit 9, Membership Interest Purchase and Sale Agreement (Fore Stars); Exhibit 10, Membership Purchase Agreement (WRL). For accounting purposes only,[10] $7.5 million was assigned to each Agreement, totaling the final $15 million (as the previously mentioned $3 million club house issue was resolved).

Finally, the Agreement to acquire Fore Stars, Ltd. included all of the following:

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[8] Larry Miller lives in Australia.

[9] Although portions of the transaction involved transfers to other entities, Mr. Lowie, and the Peccole Family honored the option agreement, as set forth herein.

[10] Exhibit 2, Lowie deposition, 35 Acre Case, 178:21-179:24.

- "fixtures, fittings and equipment" (3 page list);
- Use of the name "Badlands Golf Course;"
- Vendors list;
- All "stock of goods" related to the golf course – "pro shop, club house, office, and kitchen goods;"
- Seller's "existing contracts" with suppliers and vendors;
- "Waters Rights Lease" with Allen G. Nel;
- All of Seller's "leases and agreements" with respect to "machinery, equipment, vehicles, and other tangible property;"
- City of Las Vegas issued liquor "License Number L16-00065;" and,
- Post-closing obligation to subdivide land the QR Towers were built on already.[11]

Exhibit 9, Membership Interest Purchase and Sale Agreement (Fore Stars), p. 1, section 1.01 "Assets;" Exhibit 10, Membership Purchase Agreement (WRL). All parties agree the above transactions were "complicated" and "had a lot of hair on it."

BY MR. LEAVITT:

Q. During the questioning, Mr. Bayne, in regards to this hundred-million-dollar transaction that occurred, I believe you used the word several times that it was a **complicated transaction**, would you agree with that?

A. [Billy Bayne**] It was a complicated transaction**.

Q. And, Mr. Ogilve [City Counsel] actually even said it **had a lot of hair on it.** Would you agree with that?

A. **I agree with Mr. Ogilve it had a lot of hair on it.**

MR. OGILVE:

Objection; **that mischaracterizes what I said**. **I said the asset purchase agreement [Exhibits 7 and 8], as opposed to the purchase of the entity, was beginning to get a lot of hair on it.**

THE WITNESS [Billy Bayne]:

I agree with that too.

Exhibit 1, Bayne deposition, 227:22 – 228:10.

[11] Exhibit 2, Lowie deposition, 35 Acre Case, 52:20-53:18.

Veteran attorney Todd Bice, who represented other nearby property owners and was deposing Mr. Lowie in regards to these complicated transactions, also stated, "It's taken me a while to get my arms around all the transactions." Exhibit 3, Lowie deposition, Binion v. Fore Stars, 23:22-23.

The 2005 to 2015 purchase price transactions were so complicated, that even Mr. Lowie and Mr. Bayne (Peccole PMK) did not entirely agree what the specific terms were in their depositions as there was disagreement over how the $30 million to release American Golf from the 250 Acre Land was paid causing the City's counsel to declare at Mr. Lowie's deposition:

> "Mr. Lowie, do you have an understanding of what you just testified is directly contrary to everything or to what Billy Bayne testified?" Exhibit 2, Lowie deposition, 35 Acre Case, 226:17-227:14.
>
> Mr. Lowie: "Billy wasn't there. I was at the table." Id., 227:11-13.

Additionally, there is only one expert appraiser that has submitted a report in this matter – MAI Tio DiFederico – and Mr. DiFederico, based on the above data, opined that there were "dramatic changes" in the market since 2005 and, therefore, the 2005 purchase price "had no relationship to the subject site's September 14, 2017 market value." Exhibit 11, Tio DiFederico Appraisal report, TDG Rpt 000010. There is no other expert opinion to dispute this conclusion, as the City disclosed no expert opinions and discovery has closed.

In summary, the acquisition of the 250 Acre Land was not a simple, arms-length transaction, wherein a price for the transfer can be determined from a simple contract or deed. It is a "complicated" deal, with "a lot of hair" on it, that began in 2005 and closed in 2015, with the purchase of the entity, Fore Stars, that owned the 250 Acre Land. And, "dramatic changes" have occurred in the market since the 2005 purchase price. Accordingly, all reference to the purchase price should be excluded from presentation to a jury.

III. LEGAL ARGUMENT TO EXCLUDE THE 2005 PURCHASE PRICE

A. General Rule.

It is generally held that the purchase price paid for the property taken in an eminent domain or inverse condemnation action is admissible at the discretion of the District Court, reviewable for abuse of discretion, if the following conditions are satisfied:

1) the sale must cover substantially the same property that is being acquired;[12]

2) the sale must not be remote; it must have occurred relevantly in point of time with no changes in conditions or marked fluctuations in values having occurred since the sale;[13]

3) the sale must be bona fide;[14]

4) the sale must be voluntary, not forced;[15]

and,

5) the sale is not otherwise shown to have no probative value.[16]

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[12] 27 Am. Jur. 2d Eminent Domain section 534; West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999) (citing factors to admit purchase price, including "the sale must cover substantially the same property which is the subject of the appropriation action." Id., at 776); Pearl River Valley Water Supply Dist. V. May, 194 o.2d 226 (1967) (no abuse of discretion to exclude purchase price where sale of subject property was part of a much larger tract).

[13] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957); West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999).

[14] 27 Am. Jur. 2d Eminent Domain section 534.

[15] 27 Am. Jur. 2d Eminent Domain section 534; 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957).

[16] 55 A.L.R.2d 791, Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 11 (2021, originally published in 1957). *See also* 5 Nichols on Eminent Domain 21.01(2)(a), 21-10 (2001) (sale must be bona fide, voluntary, relevant in point of time, and cover substantially the same property). The Nevada Supreme Court held admissible the purchase price for "goodwill" in a gas station where the goodwill price occurred in 1994 and the date of value was 1999. Dept. of Transp. v. Cowan, 120 Nev. 851 (2004). The Cowan case is consistent with the Landowners' position in this matter as the goodwill purchase price was easily identifiable and clearly set forth by way of contract and the Court found that the sale (1994) was not so remote to the date of value (1999) so that the price was an unfair criterion to consider in calculating damages. These two criteria are not

B. Policy for the General Rule.

The public policy for the general rule is the court must determine whether the probative value of the purchase price evidence is outweighed by other factors that would unduly prejudice the landowner, confuse the jury, or distract the jury from its primary inquiry as to the value of the property as of the relevant date of valuation. For example, a landowner may have acquired property that increased tenfold by the date of valuation but if the purchase price is admitted, the jury may opine that any amount over the purchase price seemingly shows the owner "made money," even though the higher value is absolutely necessary to meet the constitutional standard of "just compensation" and "value" as of the date of valuation. As stated by one court, "[t]he amount to be awarded [an] owner is the value of the land at the time of the taking [or date of value], not the price he gave for it, whether high or low." City of Pigeon Forge v. Loveday, 2003 WL 358704 (Ct. App. Tenn. 2003), citing Nashville Interurban Railway Co. v. Seay (Tenn. Civ. App. 1911).

C. Application of the General Rule to the Facts of this Case Demonstrates the 2005 Purchase Price Should be Excluded.

1. The 2005 Purchase Price Did Not Cover Substantially the Same Property at Issue in This Matter.

Where the original purchase price does not cover substantially the same property being taken, the purchase price is properly excluded. Directly on point is the case of West Virginia Div. of Highways v. Butler, 516 S.E.2d 769 (Supr. Ct. App. W.Va. 1999), wherein the landowner purchased 20 acres of mostly hilly property, but the 3.665 acres that was taken "is, to a large

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present in this case, as set forth below. Also, The Cowans presented testimony that there were no similar leaseholds or business franchises in the Las Vegas market comparable to what the State had taken. Cowan, at 854. With no comparable leaseholds available in the market area the Court allowed evidence of the 5 year old purchase price which specifically placed a value on the business goodwill.

degree, level." The court held that "[t]his makes it difficult for a jury to apportion from the purchase price paid for the entire tract of land the value of the actual property taken."[17]

Here, the 2005 purchase price was for the entire 250 Acre Land, with the acquisition of Fore Stars, Ltd. and all of the assets and liabilities of Fore Stars, Ltd. - not just the 35 acres at issue in this case. Other parts of the 250 Acre Land have drainage channels through it that requires culvert engineering as part of the residential development, whereas the 35 Acre Property has none. Exhibit 12, Drainage Map from the City / Landowner Drainage Improvement Agreement, with additions to identify the 35 Acre Property in comparison to entire 250 Acre Land. Therefore, it is impossible to apportion from the purchase price paid for the entire 250 Acre Land, the value of the 35 Acre Property. Accordingly, the purchase price evidence should be excluded for this reason alone.

2. Remoteness – The 2005 Purchase Price is too Remote as it Does not Reflect the Value of the Property as of the Relevant September 14, 2017, Date of Valuation.

A purchase price is always excluded if it is too remote. Remoteness does not focus only on time. "To exclude evidence of the purchase price of the condemned property only where it is remote in time would be to bestow an element of **magic on an arbitrary time period.**" Brown v. Redevelopment Auth. Of the City of Harrisburg, 386 A.2d 1052, 1058 (Pa. Comm. Ct. 1978). Emphasis added. Instead, the underlying inquiry is whether there have been changes between the date of the purchase price and the relevant date of valuation such that the purchase price is not a

[17] *See also* Love v. Smith, Dept. of Transp., Tennessee, 566 S.W.2d 876 (Tenn. 1978) (proper to exclude purchase price for two tracts of land where only one tract of land is being taken as there is no way of knowing which portion of the purchase price should be allocated to the part taken); Housing Auth. of City of Decatur v. Decatur Land Co., 64 So.2d 594 (1953) (finding purchase price evidence "manifestly illegal" where the purchase price was not for the same size property being condemned meaning the evidence "would have afforded the jury no more than a guess at what price this particular property bore with reference to the total purchase price." Id., at 599.).

fair reflection of the value of the property as of this date of valuation - "in determining whether such evidence is admissible, the inquiry is whether, under all the circumstances, the purchase price fairly points to the value of the property at the time of the taking [date of valuation]." Colonial Pipeline Co. v. Weaver, 310 S.E.2d 338, 342 (N.C. 1984). Therefore, the period of time between the purchase price and the date of value "is of no particular consequence under the circumstances [], but rather, it is the unique differences in the real estate market which render the [] purchase price inadmissible." Illinois State Toll Highway Auth. V. Grand Mandarin Restaurant, 544 N.E.2d 1145, 1149 (App. Ct. Ill. 2d Dist. 1989).[18] Nichols on Eminent Domain agrees, finding the purchase price admissible only where "the values in the area have not changed since the purchase" and where "no change in conditions or marked fluctuation in value has since occurred." State of Kansas v. Glacier Dev., 161 P.3d 730, 739-40 (Kan. 2007), citing Nichols on Eminent Domain. Finally, on point is a case where the court held a purchase price was not relevant as "indicated by the fact that the condemner's experts valued the land and improvements at **over twice the purchase price**." Brown v. Redevelopment Auth. Of the City of Harrisburg, 386 A.2d 1052, 1058 (Pa. Comm. Ct. 1978). *See also* U.S. v. 1.604 Acre of Land, More or Less, 844 F.Supp.2d 685 (E.D. Virg. 2011) (order to exclude purchase price based, in part, on the "substantial gap between the prior sales price and the experts' estimates." Id., at 689).

Here, as explained, the Nevada Legislature has determined that "value" must be based "on the date of valuation" and the date of valuation is September 14, 2017. NRS 37.009; 37.120. The

[18] *See also* Board of Supervisors of La. State Univ. v. Boudreaux's Tire & Auto Repair, LLC, 133 So.3d 1262 (Ct. App. La., 4th Cir. 2014) (granting motion in limine to exclude purchase price, in part, because it "was made below fair market value." Id., at 1268); State of Kansas v. Glacier Dev., 161 P.3d 730 (Kan. 2007) (purchase price must be closely related in time and circumstances to the fair market value of the land as of the relevant date of value); Village of Maplewood, Ramsey County v. Johnson, 228 N.W.2d 269 (Minn. 1975) (exclusion of purchase price proper where there was "substantial change in market value." Id., at 270).

only relevant valuations submitted in this case as of September 14, 2017, are much more than over twice the 2005 purchase price – they are anywhere from **5 times** to over **9 times** higher. As explained, in 2005, $45 million ($180,000 / acre) was allocated to the option and acquisition of the 250 Acre Land, among many other factors, with Mr. Lowie stating it had a value of $100 million to him at the time. The **only** "value" evidence that has been produced in this case as of the relevant September 14, 2017, date of valuation is the following:

- Expert MAI appraiser, Tio DiFederico – Mr. DiFederico appraised the 35 Acre Property, alone, under the comparable sales approach as of the relevant September 14, 2017, date of valuation, at $34,135,000 ($1,001,880 / acre), based on recent sales of other similarly situated properties in the area. Exhibit 11, Tio DiFederico Appraisal Report, TDG Report 000005, 0000069-0000084. This is over **5 times** the 2005 purchase price. And, as explained above, Mr. DiFederico opined, based on the "dramatic changes" since the 2005 purchase price, that it "had no relationship" to the value of the 35 Acre Property as of the relevant September 14, 2017, date of valuation. Exhibit 11, Tio DiFederico appraisal report, TDG Rpt 000010.
- Landowner, Yohan Lowie – Mr. Lowie disclosed an opinion of value for the 35 Acre Property at $58,000,000 ($1,657,000 / acre). This is more than **9 times** the 2005 purchase price. Exhibit 13, Plaintiff Landowners' Twenty-Second Supplement to Initial Witness List and Disclosures Pursuant to NRCP 16.1, 7-14.

Moreover, the City's own Tax Assessor placed a tax value on the entire 250 Acre Property, as of December, 2016, at $88 million ($352,000 / acre). Exhibits 14 – 18, Tax Assessor documents. And, it is an "open secret" that the Tax Assessor value for tax assessment purposes is low. Nichols on Eminent Domain § 22.1, 22-6 ("it is an open secret that the [tax] assessment rarely approaches the true market value."). And, an appraisal report on 70.52 acres of the 250 Acre Property (that

did not include the 35 Acre Property), valued that 70.52 acres of land, as of July 23, 2015, at $49,400,00 ($700,510 / acre). Exhibit 19, Lubawy appraisal report, p. 3. These values are nearly **2 times** and **4 times** the 2005 purchase price, respectively.[19]

Considering these values, and taking judicial notice of the significant "changes" in the Las Vegas real estate market from 2005 to the relevant September 14, 2017, date of valuation,[20] it is clear that the 2005 $45 million price ($180,000 / acre) does not "fairly point[] to the value of the property" as of the September 14, 2017, date of valuation. *See* Colonial Pipeline Co. v. Weaver, 310 S.E.2d 338, 342 (N.C. 1984). Therefore, this is an additional independent ground to exclude the 2005 purchase price.

3. Remoteness - A Change in Use Between the Purchase Price Date and the Date of Valuation Renders the Purchase Price Evidence Inadmissible.

It is also held that where the property undergoes a significant change in use between the purchase price and the date of valuation, the purchase price is remote and should be excluded. Illinois State Toll Highway Auth. V. Grand Mandarin Restaurant, 544 N.E.2d 1145, 1149 (App.

[19] This does not even take into consideration the incredible improvements and increase in value due to the addition of One Queensridge Towers and Tivoli developed by the same principals in the immediate area.

[20] It is requested that this court take judicial notice of these significant changes, as demonstrated by the following articles included as Exhibit 20, articles showing Las Vegas real estate market fluctuations - **June 1, 2005**, Las Vegas Home Sales Report (medium home price tops $301,000 for first time; **2008**, History: A look at the housing bubble bursts long-term impact on Las Vegas, 13 Action News, May 1, 2018 (house prices in Las Vegas plumet by 60%); **2010,** Forbes.com, 2010's Worst Cities for Foreclosures (Las Vegas #1 worst); **November 11, 2011**, Is Las Vegas housing market ready to make a comeback?, CNN Money**; May 25, 2014**, Home Prices Through the Years, Las Vegas Sun (identifying changes from 2004 to 2014); **May 2, 2016**, Real estate market in Las Vegas rising from the grave, Las Vegas Sun; **May 22, 2016**, KNPR, "A Decade Out from the Mortgage Crisis, Former Homeowners Still Grasp for Stability; **August 12, 2017**, Las Vegas home builders see record prices, lower sales, Las Vegas Review Journal; **September 22, 2017**, These homes are still worth less than they were in 2007, Jacob Passy; **May, 2021**, The return of irrational exuberance to Las Vegas: The growing worries of another Las Vegas housing bubble (with charts showing changes from 2005 to 2015),

Ct. Ill. 2d Dist. 1989) (excluding purchase price, because at time of purchase the property was used as a grocery store, but at time of taking, the property has been converted to a restaurant and banquet hall use); Brown v. Redevelopment Auth. of the City of Harrisburg, 386 A.2d 1052 (Pa. Comm. Ct. 1978) (exclusion of purchase price proper where at time of purchase the property was used as an outmoded carwash, but at time of condemnation it was developed as a modern carwash facility). *See also* State v. Empire Bldg. Material Co., 523 P.2d 584 (Ct. App. Or. 1974) (exclusion of purchase price upheld, in part, because condition of property materially changed, including additional street access by virtue of being annexed with additional property). On point is State v. Lee, 485 P.2d 310 (Kan. 1971), where the Court reasoned that submitting plans to develop a property residentially (after a purchase) that met all government requirements (but was denied, because the government wanted to take the property), was a changed circumstance, among others, that was grounds to exclude the purchase price.

Here, there have been two significant changes to the 35 Acre Property (along with all other parts of the 250 Acre Land) from the 2005 purchase price to the 2017 date of valuation. **First,** the Landowners and the City's Tax Assessor **stipulated** that there was a change in use. The Landowners and the City agreed that the entire 250 acre property was changed from a failing golf course use to a residential development use as of December 1, 2016. Exhibit 18, Notice of Decision and "Stipulations." The City Tax Assessor then, based upon this **stipulated** changed use, imposed a massive tax increase on the Landowners amounting to $1 million per year. Exhibits 14 – 17, Tax Assessor Documents. **Second,** after the acquisition of the 250 Acre Land, the Landowners, like the owners in the above cited Lee case, submitted all necessary applications to develop the 35 Acre Property with 61 single-family residential lots and the City Planning Department issued a Staff Report that this new changed use met all Nevada Revised Statutes, all

City Municipal Code Provisions, and all City Development Standards. Exhibits 62-74 to MSJ.[21] The City Planning Department approved the use. Exhibit 75 to MSJ. The City Council eventually denied the use (which is part of the basis for the underlying taking). Exhibits 53, 76, and 93 to MSJ.

These changes between the 2005 purchase price and 2017 date of valuation provide an additional independent ground to exclude the purchase price.

4. Remoteness - The 2005 Purchase Price has no Probative Value as the Price has not been Properly Adjusted by an Expert to Reflect the Fair Market Value as of the Relevant 2017 Date of Valuation.

The remoteness standard also requires exclusion of a purchase price where the purchase price has not been properly adjusted by a certified expert for market conditions (rise or fall in values) between the date of the purchase price and the relevant date of valuation. Bern-Shaw Ltd. Partnership v. Mayor of Baltimore, 833 A.2d 502 (Ct. App. Md. 2003) ("a remote sale only becomes relevant evidence if the price is properly adjusted for time by a professional appraiser" especially where there are ample other recent comparable sales. Id., at 513); Board of Supervisors of La. State Univ. v. Boudreaux's Tire & Auto Repair, LLC, 133 So.3d 1262 (Ct. App. La., 4th Cir. 2014) (granting motion in limine to exclude purchase price, in part, because no expert identified the purchase price as relevant to determine the value of the property as of the relevant date of valuation); State of Kansas v. Glacier Dev., 161 P.3d 730 (Kan. 2007) (proper to exclude purchase price where it was not adjusted to the relevant date of valuation). The reason for this rule is clear – the only relevant inquiry is the value of the property as of the date of valuation. NRS 37.009 ("'value' means the highest price, on the date of valuation."). If the purchase price has not

[21] For efficiency, several exhibits are referenced as "MSJ." These exhibits are those previously submitted to the Court to support Plaintiff Landowners' Motion to Determine Take, filed on March 26, 2021.

been properly adjusted by an expert to the date of valuation, it is irrelevant to this underlying inquiry.

Here, it is undisputed that no expert has "properly adjusted" the 2005 purchase price to reflect a value as of the relevant September 14, 2017, date of valuation. In fact, the City has disclosed no experts in this case. Therefore, this is an additional independent ground to exclude the 2005 purchase price.

5. The 2005 Purchase Price Should be Excluded as it was Not Arm's Length, There was Consideration, Other than Cash Involved in the 2005 Purchase Price.

Purchase price evidence is excluded where it is not an arm's length transaction or where there are considerations paid for the property, other than the monetary value reported. Board of Supervisors of La. State Univ. v. Boudreaux's Tire & Auto Repair, LLC, 133 So.3d 1262 (Ct. App. La., 4th Cir. 2014) (granting motion in limine to exclude purchase price, in part, because acquisition of the property "was not fully accounted for in the money that exchanged hands." Id., at 1268); Colonial Pipeline Co. v. Weaver, 310 S.E.2d 338 (N.C. 1984) (excluding purchase price as not arm's length, because the land was only one of several considerations in the transaction and the acquisition was part of the dissolution of a corporation); 55 A.L.R.2d 791, at 24 (purchase price must be for money, and not, in whole or part, by way of exchange).

Here, as explained above, the 2005 purchase price allocated a cash payment of $45 million, but that was only one piece to a very "complicated" transaction with "a lot of hair" on it and the various pieces of the transaction cannot be considered independent of one another. Had all the pieces not been present, the complex transaction could not occur. Also, there was an element of compulsion present in the overall transaction where the option to purchase was granted, for two reasons: 1) the QR Towers were built on part of the 250 Acre Property and American Golf was demanding a $30 million pay off; and, 2) Peccole could not make payment on the underlying loan

for the QR Towers. Accordingly, this is an additional independent ground to exclude the 2005 purchase price.

6. The 2005 Purchase Price Should be Excluded as any Probative Value is Substantially Outweighed by the Danger of Unfair Prejudice, Confusion of the Issues, or Misleading the Jury.

Evidence is excluded where its probative value is substantially outweighed by the danger of unfair prejudice, of confusions of the issues, or of misleading the jury. NRS 48.035. See also Holderer v. Aetna Cas. And Sur. Co., 114 Nev. 845 (1998). Even if the 2005 purchase price evidence bore some relevance to the value of the 35 Acre Property as of the relevant September 14, 2017, date of value, this relevance is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

Negligible Relevance – although the purchase price of the property being taken can be relevant, under the circumstances of this case, the 2005 purchase price is of negligible relevance. As stated above, there have been significant changes between 2005 and the relevant September 14, 2017, date of value, not only in the Las Vegas real estate market but also specific changes to the property itself – converting from a failing golf course to a residential use. The **only** expert that has considered the 2005 purchase price, Tio DiFederico, opined that it "had no relationship to the subject site's September 14, 2017 market value." Exhibit 11, Tio DiFederico Appraisal report, TDG Rpt 000010. And, the City has no expert that adjusted the 2005 value to reflect a value as of September 14, 2017.

Danger of unfair prejudice – there is a clear unfair prejudice to introducing the 2005 purchase price in this matter. If the purchase price is introduced, the jury will consider, "how much should the landowner make on their investment?" That is not the question for the jury. Instead, the jury must decide the constitutionally mandated "just compensation" based on the "value" of the 35 Acre Property on September 14, 2017. As stated by one court, admitting a low purchase price puts

a landowner "in the position of seeking what some might regard as an excessively large profit on a comparatively small investment," which is "clearly prejudicial." Knabe v. State, 231 So.2d 887 (Ala. 1970).

Confusion of the issues – as explained, the 2005 purchase price was only one piece to a series of very "complicated" transactions "with a lot of hair" on them. The City conducted two recent depositions in this case and both were over seven hours long. Not once during those two depositions did the City ask either witness what they thought the value of the property was as of the relevant September 14, 2017, date of valuation. Instead, almost every minute was spent trying to unravel the 2005 purchase price from the complicated transactions. These transactions included hundreds of pages of documentation of various written and unwritten agreements between individuals and entities. Such transactions will take hours to properly explain and will only serve to confuse the issues and the jury will not even be asked to decide the price the Landowners paid over 15 years ago; it will be asked to decide the "just compensation" due the Landowners as of September 14, 2017. Thus, the jury will be utterly confused as to why the "complicated" transactions "with a lot of hair" on them from 2005 are even being presented when it is only required to decide the "value" of the 35 Acre Property as of September 14, 2017. NRS 37.009. And, there are plenty of "comparable sales" in the area that can be used to decide that issue.

Mislead the jury – as the only question the jury will decide is the just compensation as of September 14, 2017, the only reason to introduce a 12 year old 2005 purchase price, would be to try to mislead the jury into thinking it should ignore all of the relevant comparable sales in the area that provide a value as of September 14, 2017, and, instead, focus on the 2005 value. The City will then imply to the jury that, since the Landowners paid a lower value for the property, they should not be entitled to their constitutional right to payment of just compensation based on the value of the 35 Acre Property as of the September 14, 2017, date of value. In fact, during the

property interest motions before the various judges in the 17, 35, 65, and 133 acre cases that is the precise argument the City has been making:

- After discussing the purchase price and the approvals on the 17 Acres, the City's counsel argued – "**they've already made six times their investment** [purchase price]." Exhibit 21, hearing transcript, 65 Acre Case, May 27, 2021, 205:3-5. Emphasis added.
- After discussing the purchase price, the City's counsel argued – "they're [the Landowners] **weaponizing the courts to try to shake down the taxpayers**" and "**they've already made six times their money** with just the 17-Acres. . . . but they want more money." Exhibit 22, hearing transcript, 17 Acre Case, August 13, 2021, 31:5-11; 32:3-4. Emphasis added.
- After discussing the purchase price and the potential just compensation award, the City's counsel argues – "it's outrageous" and **"[t]hey made a windfall on their investment."** Exhibit 23, hearing transcript, 65 Acre Case, July 2, 2021, 174:11-12, 217:15-16. Emphasis added.

These arguments by the City's counsel show precisely how the 2005 purchase price would be used if admitted in this case. These inflammatory and unduly prejudicial arguments have no place in this case.

Therefore, this is another independent ground to exclude the 2005 purchase price evidence – the relevance is substantially outweighed by the extreme danger of unfair prejudice, confusion of the issues, and misleading the jury – as already demonstrated by the City's counsel in the prior hearings in these inverse condemnation cases.

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IV. CONCLUSION

For the foregoing reasons, the Landowners request that the 2005 purchase price be excluded.

Respectfully submitted this 7th day of September, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 7th day of September, 2021, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of **PLAINTIFFS LANDOWNERS' MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

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