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. 92

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
Nevada Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq.
Nevada Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq.
Nevada Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq.
Nevada Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877

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

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott, Esq.
Nevada Bar No. 4381
bscott@lasvegasnevada.gov
Philip R. Byrnes, Esq.
pbyrnes@lasvegasnevada.gov
Nevada Bar No. 166
Rebecca Wolfson, Esq.
rwolfson@lasvegasnevada.gov
Nevada Bar No. 14132
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM
Micah S. Echols, Esq.
Nevada Bar No. 8437
micah@claggettlaw.com
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone

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

McDONALD CARANO LLP
George F. Ogilvie III, Esq.
Nevada Bar No. 3552
gogilvie@mcdonaldcarano.com
Amanda C. Yen, Esq.
ayen@mcdonaldcarano.com
Nevada Bar No. 9726
Christopher Molina, Esq.
cmolina@mcdonaldcarano.com
Nevada Bar No. 14092
2300 W. Sahara Ave., Ste. 1200
Las Vegas, Nevada 89102
Telephone: (702)873-4100

LEONARD LAW, PC
Debbie Leonard, Esq.
debbie@leonardlawpc.com
Nevada Bar No. 8260
955 S. Virginia Street Ste. 220
Reno, Nevada 89502
Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz, Esq.
schwartz@smwlaw.com
California Bar No. 87699
(admitted pro hac vice)
Lauren M. Tarpey, Esq.
ltarpey@smwlaw.com
California Bar No. 321775
(admitted pro hac vice)
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272

Attorneys for City of Las Vegas

OML
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

(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'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE

Hearing Date: October 26, 2021
Hearing Time: 9:00 AM

The City of Las Vegas ("City") hereby opposes the Plaintiff Landowners' 180 Land Co., LLC and Fore Stars Ltd. (collectively, the "Developer") Motion in Limine No. 1 to exclude evidence of the 2005 purchase price the Developer paid for the 250-Acre Badlands Property ("Motion"). The Developer's attempt to exclude evidence of the "2005 purchase price" is the height of irony because **there is no 2005 purchase price**. The only relevant purchase price is the $7.5 million purchase price the Developer's principals paid in 2015 to acquire Fore Stars Ltd., the entity that owned the entire 250-acre Badlands property. The only reason the 2005 transactions between the Developer and the Peccole family are even

at issue is because the Developer claims it paid the Peccole family $45 million to acquire the Badlands golf course, which is demonstrably false.

The purchase and sale agreement for Fore Stars states a purchase price of $7.5 million. During his deposition, Mr. Lowie admitted that $3 million of the $7.5 million purchase was directly attributable to the golf course clubhouse, which is located on a separate parcel with different zoning than the rest of the 250-acre Badlands property. Accordingly, there should be no dispute that the Developer paid less than $4.5 million for the Badlands property in March of 2015. Yet, the Developer continues to make this baseless claim that it paid 10 times that amount even though the Developer admits that there no documents exist to support it.

The Developer's Motion is an apparent last-ditch effort to hide from the purchase price for the Badlands, which reveals the Developer's purchase of the Badlands was a pure gamble that it could convince the City Council to exercise its discretion to approve over 3,000 housing units in the Badlands and increase the density of an existing master planned community by more than 40%. The Developer has obfuscated the purchase price of the Badlands since the inception of this litigation, refusing to provide a clear answer about how much it paid for this property. The reason is clear, as this Motion reinforces: the Developer paid a bargain price for the Badlands, knowing that it would be challenging to develop given its open space designation and historic use as a golf course and that the Developer never had the constitutional right it claims in this litigation to build whatever housing it desires on the Badlands.

The Motion to prevent the City from presenting evidence of the "2005 purchase price" is just the Developer's latest attempt to prevent this Court and the jury from understanding the Developer's speculative investment in a failing golf course. There simply is no "2005 purchase price" for the Badlands property; there is only the $7.5 million purchase price the Developer paid in 2015, of which $3 million was for property that is not part of any of the four inverse condemnation cases the Developer filed against the City. What the Developer is really seeking to exclude with this Motion is the evidence showing that: (1) the Developer *never* had an option to purchase the golf course; and (2) the Developer's claim that it paid $45 million for the golf course is a complete fiction. This Court should not reward the Developer's obfuscation. Instead, should this matter be heard by a jury, that jury must be apprised of all the relevant facts, key among them being the price the Developer paid for the property in question.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

As an initial matter, the Motion is premature, as it ignores the fact that the Court must first determine liability for a taking. This issue is set for hearing on September 23rd and 24th. In this case, there can be no liability for a taking for several reasons, including that (1) the Developer's taking claim is not ripe, as it filed only a single application to develop the 35-Acre Property and was denied, but it has not yet filed a second claim for a less dense development; (2) even if the taking claim were ripe, the City's approval of 435 luxury units on the 17-Acre Property has actually increased the value of the parcel as a whole, whether that is defined as the entire PRMP or the 250-Acre Badlands.

Nevertheless, should the Court decide to reach the Developer's premature Motion regarding whether a jury can consider the purchase price the Developer paid for the 250-Acre Property as shown in the purchase and sale agreement for Fore Stars, this evidence is patently relevant and must be admitted. The Developer's own cited cases explain that the purchase price of the subject property is often the "best evidence" of that property's value. *Pearl River Val. Water Supply Dist. v. May*, 194 So.2d 227-28 (1976). Although the trial court retains discretion regarding whether to admit evidence of the last purchase price, based on a review of various factors, in this case those factors show that the evidence of the $4.5 million purchase price is relevant and probative of the just compensation to which the Developer would be due if there had been a taking.

RELEVANT BACKGROUND

I. There is no "2005 purchase price" for the Badlands property and the Developer's claim that it negotiated a purchase price is patently false.

The Developer apparently claims that the purchase price for the Badlands was set in 2005 and was $45 million. There is no evidence to support these claims. Communications exchanged between the Developer and the seller of the Badlands show that the purchase price was negotiated in 2014-15 and was memorialized as $7.5 million in the March 2015 Purchase and Sale Agreement. Judge Herndon agreed. *See* Ex. A at p. 15. Documents later produced by the Developer in response to the City's motion to compel show that the Developer paid only $4.5 million for the entire 250-acre Badlands.

In 2005, the Peccole family sold their interest in three entities: (1) Queensridge Towers LLC, which developed One Queensridge Place; (2) Great Wash Park LLC, which developed Tivoli Village; and (3) Sahara Hualapai LLC, which developed the Sahara Center shopping center. *See* Ex. B, Securities

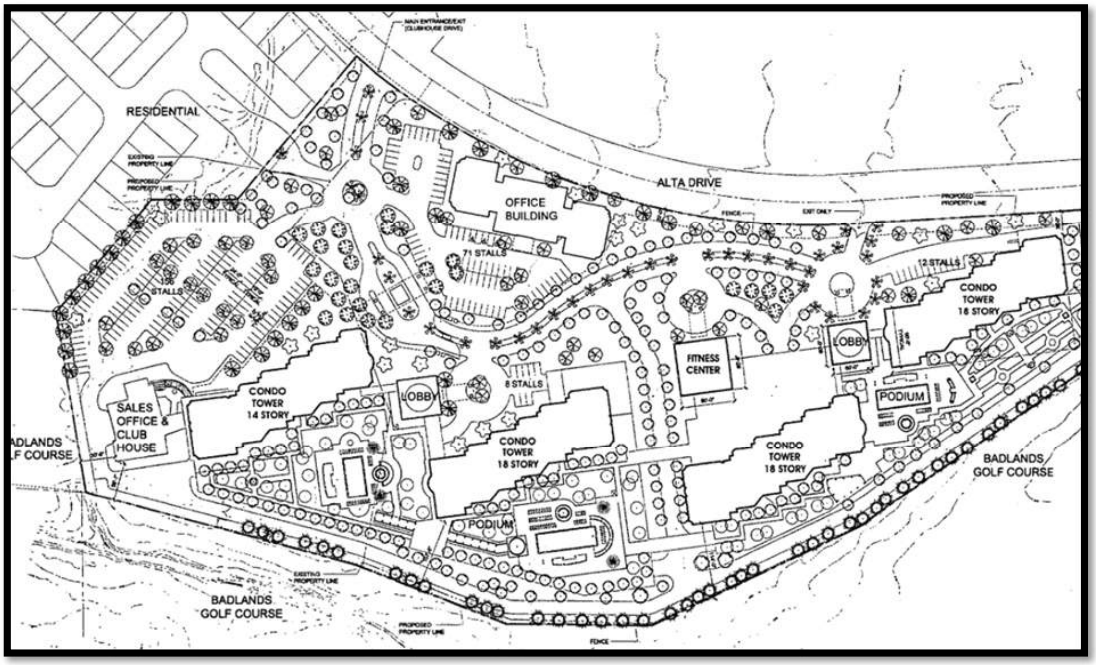
McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Redemption Agreement (QT); Ex. C, Securities Redemption Agreement (GW); Ex. D, Securities Redemption Agreement (SH). The Peccole family received consideration totaling approximately $80 million for their interests in these three entities, which coincided with a $90 million investment by certain Israeli publicly traded companies (IDB Group). *See* Ex. E, Securities Purchase Agreement (QT); Ex. F, Securities Purchase Agreement (GW); Ex. G, Securities Purchase Agreement (SH).

Around the same time, in a separate transaction not involving IDB Group, the Peccole family sold their interest in Fort Apache Commons Park LLC, which developed the shopping center on the corner of Charleston and Fore Apache. *See* Ex. H Billy Bayne Deposition Transcript ("Bayne Depo.") at 86:6-25; 87:1-14. The sale of their interest in Fort Apache Commons Park LLC brought the total consideration for all four entities up to $100 million. *Id.* at 87:13-14. However, none of the documents related to these transactions mentions an option to purchase the Badlands property. Moreover, none of the documents indicate that the Developer paid anything to the Peccole family in 2005.

II. The NRCP 30(b)(6)-designee for Peccole-Nevada Corporation testified that Mr. Lowie's claim that he paid the Peccole family $30 million to buy out the golf course lessee is false.

The original plans for the Queensridge Towers project contemplated four towers, with the westernmost tower proposed to be located on a portion of the site occupied by the golf course clubhouse:



Ex. I, ZON-4205 site plan.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Prior to selling their interest in Queensridge Towers LLC, the Peccole family entered into an agreement that required Queensridge Towers LLC to spend up to $3.15 million on a new clubhouse and to reimburse the Peccole family for up to $850,000 for costs incurred in reconfiguring a portion of the golf course. Ex. J, Badlands Golf Course Clubhouse Improvements Agreement. The Peccole family also agreed to transfer approximately 5.13 acres to Queensridge Towers LLC, including the clubhouse property. Ex. K, Record of Survey for Boundary Line Adjustment.

A portion of the 5.13 acres transferred to Queensridge Towers LLC encroached on the existing golf course, which caused a dispute with the golf course lessee. *See* Ex. H, Bayne Depo. at 43:8-25. In order to resolve that dispute, the Peccole paid approximately $30 million to buy out the golf course lessee's leasehold interest. *Id.* at 44:1-11. The Peccole family obtained a loan for $30.6 million from Nevada State Bank secured by the Suncoast Hotel property to buy out the leasehold interest. *Id.* at 49:9-20; *see also* Ex. L, Term Loan Trust Deed.

Mr. Lowie is now attempting to claim that the money the Peccole family received from the sale of their interests in the four entities described above was part of a fictional "2005 purchase price" because the Peccole family used a portion of the funds to pay off the loan from Nevada State Bank. *See* Motion at During the 30(b)(6) deposition for Peccole-Nevada Corporation, the City's counsel specifically asked whether the Developer's claims regarding the supposed "2005 purchase price" were accurate:

> **Q. Okay. Immediately below the photographs, there is the paragraph, "In 2005, the golf course was being leased by American Golf. Mr. Lowie stated that after the above hole conversion was completed, at a cost of approximately $800,000 to Mr. Lowie's company, American Golf informed the Peccole family that they had broken their lease by changing the course and using a portion of it for the development." Are those two -- two sentences generally accurate?**
>
> A. Yes.
>
> **Q. Then the next sentence says, "American Golf demanded the Peccole Family buy out the lease for $30 million." Is -- is that accurate?**
>
> A. American Golf told us to vacate the property or buy out the lease.
>
> **Q. Okay. "At the same time" -- the next sentence says, "At the same time, there was a cash call for the partners in Queensridge Towers, of which the Peccole family had a 30 percent interest. To" –**
>
> A. That is my understanding.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Q. Okay. And then it continues on, "To resolve the issues, Mr. Lowie worked a deal with his then partners to borrow money to cover the Peccole family obligation to American Golf and buy them out of their joint ventures." Is that accurate?

A. That is not my understanding.

Q. Okay. What is your understanding?

A. We borrowed money against the Suncoast Hotel and paid American Golf.

Q. And what is your understanding based on?

A. The fact that we had a loan and we borrowed money from the Suncoast Hotel and wrote a check to American Golf.

Bayne Depo. at 48:2-49:20.

Peccole-Nevada's 30(b)(6)-designee also refuted the Developer's claims when he was cross-examined by the Developer's counsel:

Q. Okay. And there has been, I'll represent to you, an assertion by Mr. Lowie, or a representation by Mr. Lowie, that as part of that hundred-million-dollar transaction, he spoke to an individual at Peccole and advised them that as part of this whole deal he wanted $30 million to go to pay American -- is it American Golf?

A. Um-hmm.

Q. -- American Golf, so that their leasehold interest could be removed from the 250-acre property, so that he could move forward, at some point in time in the future, with purchasing that 250-acre property. So that -- that's been the representation by Mr. Lowie, generally, that's been made. Okay? And I'm going to walk through this a little bit with you.

A. I don't agree with that, but go ahead.

Q. I got -- I understand. So there's some disagreement over -- at least Mr. Lowie says that a portion of that hundred million dollars was supposed to be attributed to removing American Golf from the golf course, and you disagree with that?

A. I disagree that Mr. Lowie -- Mr. Lowie weighed in on how we should spend the hundred million dollars.

Id. at 219:9-220:5.

Mr. Lowie's claim that he paid $30 million for the golf course in 2005 is a complete fiction. The Peccole family paid $30 million to buyout the golf course lease, Mr. Lowie did not. How the Peccole family spent their money in 2005 had no bearing on the amount the Developer paid to acquire the Badlands in 2015.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

III. The Developer's principal had neither an option nor a right of first refusal to acquire the Badlands property when he started negotiating to purchase the Badlands Golf Course.

In 2007, an entity affiliated with Mr. Lowie sued the Peccole family to enforce a letter of intent to purchase the Badlands golf course and water rights for $12 million. Ex. M, Complaint filed by BGC Holdings LLC. The fact that Mr. Lowie initiated this lawsuit in 2007 demonstrates that his claim that he obtained an option to purchase the Badlands golf course in 2005 was false. If Mr. Lowie had obtained such an option, as he claims, there would have been no reason to file that lawsuit.

In negotiating a settlement of that lawsuit, Mr. Lowie requested that the Peccole family execute a restrictive covenant prohibiting development on the golf course near the Queensridge Towers because he was concerned that it would hurt sales of the towers. Ex. H, Bayne Depo. at 110:19-111:5. The settlement agreement also gave BGC Holdings LLC a right of first refusal to purchase the golf course. *Id.* at 114:15-25. When Mr. Lowie began negotiating to purchase the golf course in 2014, he failed to mention that he no longer held an interest in BGC Holdings LLC, and consequently, that he had no right of first refusal. *Id.* at 163:17-164:24.

As there were no options to purchase or rights of refusal that affected the sale of the Badlands property, the purchase price was negotiated in 2015 at arms-length by a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and taking into consideration the uses to which the property was adapted and might reasonably be applied. This is the definition of fair market value. *Unruh v. Streight*, 96 Nev. 684, 686, 615 P.2d 247, 249 (1980).

IV. The Developer determined how to allocate the purchase price between Fore Stars Ltd and WRL LLC; Mr. Lowie now admits that $3 million of the $7.5 million purchase price was for the clubhouse parcel

The Developer initially offered to purchase the Badlands golf course, all property used for the operation of the golf course, and all related water rights for $12 million. Ex. M, Letter of intent dated June 12, 2014. At the time negotiations began, there was uncertainty about whether IDB Group would transfer the clubhouse parcel back to Fore Stars or pay the amounts owed under the Badlands Golf Course Improvements Agreement. Ex. H, Bayne Depot at 152-156. In November of 2014, IDB Group elected to transfer the clubhouse back to Fore Stars, and at that point the purchase price went from $12 million to $15 million. *Id.* at 172:24-173:1-17.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

In December 2014, the Peccole family agreed to separate the acquisition of Fore Stars and WRL LLC into two different agreements, per the Developer's request. *Id.* at 180:7-19. When the parties finalized the purchase and sale agreements, the Developer's counsel requested that the purchase price allocation be $7.5 million for each entity. Ex. N, February 27, 2015 email. Ex. H, Bayne Depo. at 226:7-:227:12. During his deposition, Mr. Bayne agreed that it was reasonable to conclude that the Developer paid less than $4.5 million for the golf course land because the purchase price for Fore Stars was $7.5 million, Fore Stars owned other valuable assets, and the parties agreed that the clubhouse was worth $3 million. *Id.* at 236-238.

The Developer now concedes that the clubhouse parcel was worth $3 million, as Mr. Lowie testified in his deposition. *See* Motion at 7:14-17 (citing Mr. Lowie's deposition). Accordingly, there should be no dispute that the Developer paid less than $4.5 million for the Badlands property. This is consistent with the appraisal the Peccole family received for the Badlands property in 2010, which valued the property at $3.9 million. Ex. H, Bayne Depo. at 142:9-14.

LEGAL ARGUMENT

I. Courts consider the purchase price of property to determine just compensation when the property has been taken.

The Developer contends 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 that any probative value of the purchase price is outweighed by the risk of misleading the jury. Motion at 3. There is no "2005 purchase price" and there is no such law that excludes the last purchase price of the property in question in an inverse condemnation action. To the contrary, courts consider the last purchase price both when deciding liability for a taking, based on whether the landowner has suffered a near-wipeout of the value of the property and/or whether the landowner had a distinct investment backed expectation, and, if they have found liability for a taking, the last purchase price is also relevant when deciding the just compensation owed. Accordingly, the $4.5 million purchase price for the Badlands reflected in the purchase and sale agreement is highly probative.

The price paid for a property is central in determining whether a taking has occurred. In *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120 (9th Cir, 2010), for example, the court noted that,

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

because a rent control ordinance had been in place before the Guggenheims bought the mobile home park in question, and the ordinance was a matter of public record, "the price they paid for the mobile home park doubtless reflected the burden of rent control they would have to suffer." As a result, the Guggenheims could have "no 'distinct investment-backed expectations' that they would obtain illegal amounts of rent." *Id.* at 1120. The court further explained that the stream of income that the Guggenheims might have expected was reduced at the time they purchased the property due to the rent control ordinance, "so what they paid would reflect the flow that the law allowed." *Id.* at 1120. Thus, because the Guggenheims had purchased a trailer park burdened by rent control, they had no concrete reason to believe they would get something more valuable, due to hoped-for changes in the law, than what they had. *Guggenheim* reveals the central importance of the last purchase price in determining whether a landowner has suffered a taking.

General principles regarding how to determine the amount of just compensation owed help to explain why the last purchase price is relevant and helpful for a jury. For example, in *Merced Irrigation District v. Woolsenhulme*, 4 Cal.3d 478, 489 (1971), the court explained that "the compensation required is to be measured by the market value of the property at the time of the taking," where "market value" is defined as "the highest price estimated in terms of money which the land would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all the uses and purposes to which it was adapted and for which it was capable." (internal citation omitted). Common sense dictates that a purchaser on the open market would consider the last purchase price when determining a fair market value. Accordingly, because the last purchase price is relevant to determine market value, it is relevant to determining just compensation required. Similarly in *County of Glenn v. Foley*, 212 Cal.App.4th 393, 400 (2012), the court affirmed an appraiser's opinion of the values of comparable properties, explaining that these were "tied to an objective measure: *their sales price*." (emphasis added). Insofar as the last purchase price is an objective measure of the last price the property fetched on the open market, it is plainly relevant to determine the property's value at the time it is taken. The Developer's own authorities support this conclusion. *See, e.g.*, *Housing Authority of City of Decatur vs. Decatur Land Co.*, 258 Ala. 607, 613 (1953) ("Whatever an intelligent buyer would esteem as an element of value at the time of taking may be considered.") (internal citation omitted). An "intelligent buyer" of the Badlands or of the 35-Acre Property therein would certainly want to know that the entire

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

250-Acre property sold for $4.5 million in 2015, whether that buyer was being presented with a $35 million price tag for the 35-Acre Property or with a $100 million price tag for the 250-Acre Property as a whole a mere fifteen years later. *See* Motion at 15. Thus, the purchase price in 2015 is necessary—and would be demanded by an "intelligent buyer"—to ascertain the fair market value of the property at the time of a hypothetical taking.

Indeed, courts have extolled the importance of the purchase price of the subject property in determining the just compensation owed. *See New Jersey Highway Authority v. Rudd*, 36 N.J. Super. 1 at *4-*5 (1955) ("*Rudd*") ("[I]n an eminent domain proceeding such as this evidence of the price which the owner paid for the subject property . . . . if it meets certain qualifications it is said to be ***an exceedingly important piece of evidence***.") (citing 5 Nichols, Eminent Domain 266 s. 21.2) (emphasis added). In *Rudd*, the court noted that the evidence of the purchase price must be bona fide, "such as to exemplify the bargain of a willing seller and a willing buyer, and that the sale occurred within a reasonable time of the value date in the condemnation proceedings." *Id.* at *5. When evidence of the sale "possesses the requisite essentials and is not destitute of probative worth because of special circumstances, it is admissible." *Id.* (citing Jahr, Eminent Domain, s. 136 pp. 209, 210).

Furthermore, the Nevada Supreme Court has affirmed the admission of purchase price evidence, revealing that there is no evidentiary bar to the reliance on such evidence. *See, e.g.*, *State, Dept. of Transp. v. Cowan*, 120 Nev. 851, 858 (2004) ("*Cowan*") (affirming the admission of the purchase price of a business-goodwill interest in a franchise five years before the State took that property). In *Cowan*, the Nevada Supreme Court held that the five-year gap in time between the purchase and the taking was "not so remote, nor any increase in business value so extensive, that the original purchase price was an unfair criterion for the jury to consider in calculating damages." *Id.*

Because the 2015 purchase price reflected in the purchase and sale agreement is highly relevant to determine the 35-Acre Property's fair market value as of the date that the Developer asserts it was taken. NRS 48.025 ("All relevant evidence is admissible" unless otherwise excluded by statute or constitutional provision.); NRS 48.015 ("'[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.")

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

II. The Developer's "Factors" Cut in the City's favor

Although the Developer relies on five factors to argue that the non-existent "2005 purchase price" should not be admitted, these factors support the admission of the 2015 purchase price shown in the purchase and sale agreement. The Developer contends that the purchase price paid for a property is admissible at the Court's discretion as long as (1) the sale covers substantially the same property that is being acquired; (2) the sale is not remote, but instead occurred relevantly in point of time with no changes in conditions or marked fluctuations in values; (3) the sale is bona fide; (4) the sale is voluntary; (5) and the sale is not otherwise shown to have no probative value. Motion at 11. The Court should not permit these factors to impede its discretion to admit evidence of the 2015 purchase price, given that "[o]nly a few principles exist which may be deemed to rise to the category of general rules, and even these may yield to exceptional circumstances; in fact, an owner's compensation depends so much on the facts of a case that *no rigid formula is appropriate*." 26 Am. Jur. 2d Eminent Domain § 223 (emphasis added) (citing *U.S. v. L.E. Cooke, Co., Inc.*, 991 F.2d 336 (6th Cir. 1993).

However, even assuming these factors were valid, they cut in the City's favor with respect to the 2015 purchase price, as discussed below. And even if the Court should find that one or more of the factors weighs in the Developer's favor, these factors go to the weight of the evidence, not to its admissibility. *See In re Redevelopment Authority of City of Harrisburg*, 386 A.2d 1052, 1058 (Pa. Cmwlth. Ct. 1978). Thus, the Court should permit the City to introduce this evidence before a jury, at which point the Developer will have the opportunity to provide its rationale for assigning less weight to the evidence.

A. The 2015 purchase and sale agreement covered substantially the same property that the Developer asserts was taken.

The Developer's first factor addresses whether the purchase price in question covered substantially the same subject property that is at issue in the takings case. Motion at 11-12. Here, the Developer contends that because the 250 Acre Badlands is comprised of varying topographies, with some sections requiring culvert engineering, whereas the 35-Acre Property does not, the Badlands is not "Substantially the Same Property at issue." Motion at 12-13.

To the contrary, despite the Developer's having segmented the 250-Acre Badlands into four portions for purposes of its takings claims, the entire Badlands is precisely the "property at issue" in this

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

case. *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017). "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. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 130-31 (1978). Instead, a takings analysis must "focus[] . . . on the nature and extent of the interference with rights in *the parcel* as *a whole*." *Id.* (emphasis added). As a result, a court must delineate the whole of the claimant's property to properly evaluate the effect of the challenged regulation. The Nevada Supreme Court is consistent with the United States Supreme Court, and it similarly rejects the tactic of segmenting the whole parcel to manufacture takings claims. In *Kelly v. Tahoe Regional Planning Agency*, for example, the court found that the developer had improperly segmented seven lots out of the 49-lot planned unit development, holding that the development "must be viewed as a whole, not as thirty-nine individual lots" when assessing whether a taking had occurred. 109 Nev. 638, 651, 855 P.2d 1027, 1035 (1993) (citing *Penn Central*, 438 U.S. at 130). Three factors determine the parcel as a whole for takings claims: (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. Here, the Developer has engaged in classic segmentation of the PRMP and the Badlands to fabricate a takings claim. Under the *Murr* test for determining the whole parcel, the Developer has defined the relevant parcel too narrowly; the relevant parcel is the PRMP or, at a minimum, the Badlands. As a result, the purchase price paid for the Badlands in 2015, which the Purchase and Sale Agreement ("PSA") shows was $4.5 million, is the relevant purchase price.

Furthermore, even if it were appropriate to focus on the 35-Acre Portion in isolation, and even if it were true that, as the Developer asserts, the 35-Acre Property requires less drainage and culvert infrastructure development than other areas in the Badlands, this would not render the purchase price for the Badlands irrelevant. Rather, under the Developer's logic, the 35-Acre Property would simply be worth relatively more than the remainder of the property. That fact would not be cause to eschew the $4.5 purchase price for the Badlands, but would only be a factor for the jury to weigh when considering how to value the 35-Acre Property, using the overall purchase price of the 250-Acre Property as a guide.

The Developer's cases on this factor do not support its argument. For example, the Developer misconstrues *Pearl River Val. Water Supply Dist. v. May*, 194 So.2d 226 (1976). *See* Motion at 11, n. 12.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Contrary to the Developer's assertion that the case stands for the fact that the court properly excluded the purchase price of the subject property because it was part of a larger tract, the court in that case instead found that "[t]he ***best evidence of the fair market value of the subject property was the sale*** made on January 2, 1965, for $8,000 by J.C. Murray, A willing seller, to George W. May and E.G. Jeffreys, willing buyers." 194 So.2d at 227-28. May and Jeffreys were the owners of the property when it was condemned. In other words, the court found that the sale of the property to its current owners was "***the best evidence***" of its fair market value. *Id.* at 227. In contrast, the evidence the court found to be irrelevant was the *previous* owner's (Murray's) valuation of the property at $14,660. *See id.* at 228 (emphasis added). The court specifically noted that "Murray was not the condemnee," that he "had not even been out to see this land for some years," and that the property *he* had bought, and which the subject of his testimony, was "a much larger tract bought over a three year period of time." *Id.* at 228. Thus, the court's finding that the previous owner's testimony need not be admitted was based on the fact that he was not the relevant owner, the sale with which he was familiar was not the relevant sale, and that he was unfamiliar with the land in question. Given the many reasons not to consider the previous owner's testimony, *Pearl River* does not support the Developer's argument that a purchase price is irrelevant when the subject property is a subset of the property at interest in the sale. Instead, it supports the reliance on the most recent sale of the property to its current owners as "***the best evidence***" of its value. *Id.* at 227 (emphasis added).

Additionally, although the Developer relies on *West Virginia Division. of Highways v. Butler*, 205 W.Va. 146, 153 (1999) ("*Butler*"), that case is inapposite. *See* Motion at 11 n. 12. In *Butler*, the court concluded that the purchase price for 20 acres of mostly hilly land was not helpful to determine the value of the 3.665 acres of mostly flat land therein. 205 W.Va at 153. That is not the situation at issue in this case. The court in *Butler* also noted that economic conditions had changed during the roughly ten years since the purchase, based on testimony at trial of "remarkable and dramatic change[s] in the desirability of land in the area where the subject property is located." *Id.* at 154. Accordingly, that case did not rely solely on topographic variations within the larger property to discount the purchase price evidence, but instead noted other significant reasons that the purchase price was no longer relevant.

The Developer also relies on *Love v. Smith, Department of Transportation, Tennessee*, 566 So.2d 876 (Tenn. 1978), in which the court found it was proper not to consider the purchase price for a 161-acre

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

farm, from which 3-acres had been condemned. Motion at 13 n. 17. That case is distinguishable. First, the court relied on the fact that "[e]vidence shows that there had been a substantial increase in land values in the area of this property" since the sale, that the "land features themselves have been altered," that the sale was not purely voluntary, that there had been a lapse in time, and that the deed did not describe the land in question. *Id.* at 879. Thus, there were many factors weighing in favor of omitting evidence of the sale price which are not present here. Further, the strip of land taken in *Love* represented less than two percent of the property as a whole (3 acres/161 acres), whereas here the 35-Acre Property represents 14 percent of the Badlands (35 acres/250 acres). As a result, the 2015 purchase price at issue in this case is far more relevant than the purchase price in *Love.*

The Developer's reliance on *Housing Authority of City of Decatur v. Decatur Land Co.*, 258 Ala. 607, 614 (1953) fails for the same reason. Motion at 13 n. 17. In that case, only three blocks or less were taken out of more than 900 other blocks. 258 Ala. at 614. Thus, it was not error to refuse testimony as to the purchase price of those three blocks. *Id.* As in *Love*, the subject property in *Housing Authority* was such an insignificant portion of the whole property with which the purchase price was associated (representing less than one percent of the more than 900 "other blocks") as to be essentially irrelevant. Here, in contrast, as noted above, the 35-Acre Property represents 14 percent of the 250-Acre Property as a whole, and as such, the purchase price for the Badlands is far more relevant than was the purchase price in either *Love* or *Housing Authority*.

B. The Developer has presented no evidence of significant changes in conditions of the property or surrounding areas between 2015 and 2017.

The Developer cites as its second factor whether the sale is "remote" in terms of time, changes in conditions, or marked fluctuations in values having occurred since the sale. Motion at 11. In support, it cites cases in which the real estate market significantly changed between the purchase and the alleged taking, or the property's use was significantly changed in that period. Motion at 13-18. Since there is no "2005 purchase price," any fluctuations in the market between 2005 and 2017 are irrelevant. Furthermore, given that only two years passed between 2015 and 2017, this factor weighs in favor of admitting the 2015 purchase price shown in the purchase in sale agreement.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1. There is no evidence of significant changes to the Badlands or the 35-Acre Property.

The Developer's own cases show that the purchase price is relevant unless there are "changes in circumstance" that render that it irrelevant. *In re Redevelopment Authority of City of Harrisburg*, 386 A.2d 1052, 1057 (Pa. Cmwlth. Ct. 1978). In that case, the court noted that "a substantial change in use occurred" when an antiquated carwash was converted into a modern automated facility that also sold gasoline and oil. *Id.* at 1058. The court ultimately rejected the purchase price because of those substantial changes, but in so doing it cautioned: "[o]ur decision here . . . should not be construed to suggest that the wise trial judge will generally exclude evidence of the condemnee's purchase price. ***Just the opposite is true***. In exercising his discretion in this area, the trial judge should start with the premise that the condemnee's purchase price . . . ***as logically relevant evidence, should be admitted***." *Id.* (emphases added). The court also explained that while a court should consider various factors in deciding the probative value of the purchase price evidence, "what changes had occurred in real estate values in the area or in the general character of the neighborhood in the interim; and . . . what changes had occurred in the subject property . . . should generally be considered as going to the ***weight of the evidence, not to its admissibility***." *Id.* As the court explained, the condemnee will be able to sufficiently explain the effect of those changes "once the evidence has been admitted." *Id.* Thus, this case firmly supports the admission of the purchase price in this case. Because the substantial differences that had occurred after the purchase in *Redevelopment Authority* are not present here, the court should admit the purchase price as highly probative evidence of the value of the 35-Acre Property. As that case makes clear, the owners had effected many substantial changes on the property, and furthermore, "all parties stipulated that the value and machinery" added to the property "was over $100,000, when the price for the entire property had only been $35,000." *Id.* at 1057. Here, the Developer has made no such changes to the 35-Acre Property or to the Badlands as a whole since it purchased the property in 2015.

The court in *Miller v. Glacier Development Co., LLC*, 161 P.d 730 (2007) reached the same conclusion, finding that the purchase price was too far removed when, among other things, where a great deal of improvements to the property had taken place between the purchase and the taking, including grading and leveling the property, earth moving and land overhaul, including road improvements, engaging

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

architects, engineers, and legal services, and more. *Id.* at 741-42. Therefore, because the purchase prices were removed in time and "further separated from the taking by changes in the condition of the land and the economy," they were inadmissible and irrelevant. *Id.* at 492; *see also Village of Maplewood, Ramsey County v. Johnson*, 228 N.W.2d 269, 270 (Minn. 1975) (no error to exclude cross-examination of the landowner with respect to the purchase price of the property, where landowner testified that the "property had gone up considerably in value" since the purchase, as a result of his almost leveling the entire property for mining.)

Here, there has not been any improvement to the 35-Acre Property or to the Badlands since the 2015 purchase. Instead, if anything, the Developer has reduced the value of the property by terminating its use as a golf course and letting the land lay idle. The Developer contends that because the parties stipulated to a change in the property's use from golf course to residential, the purchase price is no longer relevant. Motion at 17. However, the Developer's own evidence shows that the change in use for purposes of assessment to which the Developer stipulated was triggered by *the Developer's closing the golf course* for play, which disqualified it for assessment as open space. *See* Ex. O, Stipulation with County Tax Assessor ("The Land ceased to be used as a golf course . . . on December 1, 2016") (citing NRS 361A.0315). The Developer also asserts that merely "submitting plans to develop a property residentially" and being denied "was a changed circumstance" that justifies excluding the purchase price. Motion at 17. The Developer's cited case for this proposition, *State Highway Commission v. Lee*, 207 Kan. 284, 292 (1971), *superseded on other grounds by Miller v. Glacier Dev't Co. L.L.C.*, 248 Kan. 476 (2007) ("*Lee*"), holds nothing of the sort.

In *Lee*, the two tracts of land in question had not been developed by the owners before the date of the taking, but the court found, nevertheless, that the character of the land had changed substantially in value. Nearly all of the surrounding properties had been sold/and or developed, including the addition of "three major apartment complexes " that created "over 350 living units," along with three football stadiums. *Id.* at 292. Contrary to the Developer's contention, the court did *not* find that merely "submitting plans to develop a property residentially . . . .that met all government requirements . . . was a changed circumstance" justifying excluding the purchase price. Motion at 17. Instead, the court found that the "mere fact that the two tracts of land in question were not developed . . . *does not mean that the character of the land had not*

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

changed substantially in value," but it did not rely on the fact that the development applicants had been denied as the *reason* the character of the land had changed. *Id.* at 293 (emphasis added). In other words, the court found that the mere fact that the landowner in *Lee* had not developed the property was not an impediment to finding that the value of the property had changed, given that all of the surrounding land had increased in value. The reason for the change in the value of the land was that much of the surrounding area had been purchased and/or developed, including a large apartment complex and three football stadiums. Here, there are no such changes since 2015 in the surrounding area, as discussed below.

Furthermore, courts have held that "[m]erely planning or platting land does not change the character of the land to the extent that valuation witnesses are limited to such considerations." *Dept. of Public Works and Buildings v. Hufeld*, 68 Ill.App.2d 120, 130. In that case, the Appellant asserted that the trial court erred in permitting testimony of the purchase price paid for the subject property by the Appellant. *Id.* at 129-30. The Appellant argued that the use of the subject property for agricultural purposes at the time of its purchase was different from its later planned use as a planned subdivision. *Id.* at 130. The court disagreed, finding that the "Appellant's admitted sole purpose in buying the subject tract was for its residential subdivision development potential." *Id.* at 130. Accordingly, the Appellate Court affirmed the introduction of testimony about the purchase price of the subject property. *Id.* at 131. That case reveals that just because the Developer purportedly hopes to develop the 35-Acre Property with residential units—just as the Appellant in *Hufeld* did, that does not constitute a sufficient change from the use of the property when the Developer purchased it in 2015. That is especially the case because, as in *Hufeld*, the Developer purchased the Badlands with those residential development plans in mind. Accordingly, the 2015 purchase price for the 250-Acre Badlands is relevant to determine the fair market value of the property today, despite the Developer's purported change in use. The court in that case also noted that "the amount of the expected or hoped for gain, benefit or advantage is not the present value of the property." *Id.* at 128.

2. There is no evidence of a significant change in the real estate market since 2015 that justifies ignoring the purchase price.

As *Lee* reveals, courts also examine whether the real estate market has changed substantially since the previous purchase in order to determine whether the purchase price is still relevant. In *Illinois State Toll Highway Auth. v. Grand Mandarin Restaurant*, 544 N.E.2d1145, 1149 (App. Ct. Ill. 2d Dist. 1989),

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

cited in the Motion at p. 14, the court explained that the real estate market was depressed at the time of the previous purchase in 1982, and that there was a "substantial increase in property values between 1981 and 1987." *Id.* at 1149. The court therefore concluded that it was proper to exclude evidence of the 1982 purchase price, not based on the time that had elapsed since the sale, but because of the "unique differences in the real estate market." *Id.* The court also enumerated the "substantial improvements in the property subsequent to its purchase in 1982," including repaving the parking lot, connecting the property to a sewer, landscaping the outside, adding heating, air conditioning, electrical wiring, plumbing, and completely rebuilding the banquet halls, among other improvements. *Id.* at 1149-50. The instant case is significantly different, because there is no such evidence that the real estate market was depressed in 2015 and that it has substantially increased in the two years between the purchase and alleged taking, nor is there any evidence that the Developer has made any improvements to the property that would change its value.

3. Differences in experts' opinions about the value of the property do not justify ignoring the 2015 purchase price.

The Developer also attempts to argue that a purported change in expert valuations between the date of purchase and the date of the alleged taking constitutes a reason to exclude the purchase price. Motion at 13-16. Because there was no "2005 purchase," it matters not how different the expert valuations were from any purported valuation in 2005. Furthermore, with respect to the 2015 purchase price, the Developer's cases do not support its contention that differences in expert opinions justify ignoring a purchase price.

For example, the Developer cites *U.S. v. 1.604 Acres of Land, More or Less*, 844 F.Supp.2d 685, 689 (E.D. VA. 2011) ("*1.604 Acres*") for the proposition that an "order to exclude purchase price [was] based, in part, on the 'substantial gap between the prior sales price and the experts' estimates." Motion at 14. This parenthetical completely misunderstands both the court's decision and its rationale. In fact, the court did not exclude the purchase price, but "postpone[d] making a final determination" of the admissibility of the purchase price of the property. *1.604 Acres* at 688-89. Further, the court noted that the price was likely irrelevant because *none* of the parties contended the purchase price was close to the current market value. *Id.* ("None of the expert opinions of the value of the land are close to the total value of the individual parcels . . . Evidently, the parties agree that the value of the assembled property [on the date of valuation] is significantly more than the sum of the prices paid for the three individual parcels."). Thus,

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

because assembling three parcels together had "substantially increased their value," there was no contention that the purchase price was relevant to determine the current market value. *Id.* at 689. In this case, there is no such agreement that the value of the subject property is different from the 2015 purchase price. Accordingly, *1.604 Acres* is irrelevant: there is no reason to discount the 2015 purchase price as probative of the property's value.

Other cases cited by the Developer are similarly inapposite. The Developer relies on *Board of Supervisors of La. State Univ. v. Boudreaux's Tire & Auto Repair, LLC*, 133 So.3d 1262 (Ct. App. La., 4th Cir. 2014) for the notion that the purchase price should be excluded where no expert identified the purchase price as relevant. Motion at 18. However, in *Boudreaux's*, the "uncontested evidence in the record suggest[ed] that Boudreaux's acquisition of the subject property was made below fair market value, was made between friends, and was not fully accounted for in the money that exchanged hands (the seller took a management position with Boudreaux's after the sale)." *Id.* at 1268-69. Accordingly, the court concluded that the trial court might have properly concluded the price paid was "as poor an indicator of the property's true value as if the deal had been a sham." *Id.* at 1269.

That is not the case here, although the Developer has tried to create the impression of such circumstances. Unlike in *Boudreaux's*, there is no "uncontested evidence" in the record indicating that the 2015 sale of the Badlands was such a poor indicator of the property's true value. Indeed, the only evidence in the record of the 2015 purchase price is the PSA , which the Developer refused to give to the City for years. This PSA reveals the purchase price in 2105 was $4.5 million. Only after the PSA was revealed did the Developer concoct a different story regarding a "complex" series of transactions beginning in 2005 with 'a lot of hair on them" to try to muddy the water. Despite the Developer's attempts to confuse the issues, the PSA clearly states the purchase price for the Badlands.

The Developer relies on its appraisal to contend that the 35-Acre Property was worth $35 million when the Developer bought it based on its potential for development of housing, and following the City's denial of an application to develop housing on the property, the City rendered the property worthless. The Developer's appraisal, however, fails to mention that the 35-Acre Property was subject to the PR-OS designation at the time the Developer bought the property, which does not allow housing development, or that the Developer paid only $4.5 million for the entire Badlands ($630,000 for the 35-Acre portion),

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

reflecting that fact that it could not be developed with housing. The appraiser's conclusion that the Developer bought property worth $35 million for only $630,000 is not credible and demonstrates why the $4.5 million purchase price is highly relevant.

III. The 2015 sale of the subject property was voluntary, bona fide and at arm's length.

Because there was no 2005 purchase, it is irrelevant how the Developer describes the purported transactions. However, the 2015 purchase of the Badlands was clearly a voluntary transaction that occurred at arms-length. As a result, the Developer's cases on this issue are inapposite. In *Colonial Pipeline Co. v. Weaver*, 10 S.E.2d 338 (N.C. 1984), the court found it was proper not to admit purchase price evidence where the purchase was not an arms-length transaction. There, the prior sale was only one of several considerations between two business partners upon the dissolution of their corporation. *Id.* at 342. The court noted that "specific details of the negotiations . . . [were] not in the record," and instead the court had the respondent's account of the purchase, in which the corporation was dissolved and the respondent acquired his partner's interest simultaneously. Because the sale was not an arms-length transaction, the court found the "evidence was not competent for substantive purposes." *Id.* Because the court in *Colonial Pipeline* had *no evidence in the record regarding the negotiations at issue*, it took the respondent's account.

Here, in contrast, the court should look to the PSA, which is competent evidence of the transaction by which the Developer acquired the Badlands. Although the Developer has attempted to create the impression that the transfer of the Badlands was not an arms-length transaction, the PSA indicates otherwise. *See Margrave v. Dermody Props., Inc.*, 110 Nev. 824, 829, 878 P.2d 291, 294 (1994) ("Under the parole evidence rule, extrinsic evidence cannot be introduced to aid the court in interpreting a contract unless the contract contains ambiguities."). Indeed, the Developer appears to have cooked up the appearance of complexity just as a way to hide the purchase price. Here, the PSA does not contain ambiguities about the purchase price of the Badlands, nor has the Developer asserted that the PSA is ambiguous. Accordingly, it would be inappropriate to allow the Developer to attempt discredit that 2015 purchase price using extrinsic evidence of what calls a "series of 'complex' transactions" with "'a lot of hair' on them," which it claims represent the true purchase price of the Badlands property. Motion at 3. The Developer is trying to get distance from the plain terms of the PSA by creating confusion around the transactions, concluding that the purchase of the Badlands "was not a simple, arms-length transaction,

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

wherein a price for the transfer can be determined from a simple contract or deed." Motion at 10. To the contrary, that is exactly what it is, as the PSA makes clear. This court should not give in to this gamesmanship, and should instead permit the evidence of the 2015 purchase price as conveyed in the PSA.

IV. Introducing the evidence of the 2015 purchase price would not prejudice the Developer or confuse the jury.

The 2015 purchase price is highly probative of the value of the 35-Acre and 250-Acre Properties as of the date of the alleged taking in 2017. The Developer has not established that there were significant changes to the property or to the surrounding areas that would justify ignoring this evidence. Furthermore, there is no risk of confusing the jury or prejudicing the Developer. As noted in *Harrisburg*, *supra*, even if any of the factors were to cut against relying on the 2015 purchase price, those factors go to the weight of the evidence, not to its admissibility. 386 A.2d at 1058. Even if there were the potential for the jury to be confused by the purchase price evidence from 2015, the Developer will have the opportunity at trial to provide its rationale to the jury for assigning less weight to the evidence.

In addition to showing that the Developer has not suffered a taking on the property as a whole, given that the City's approval of 435-units of luxury housing on the 17-Acre Property significantly increased the value of the Badlands as a whole , the 2015 purchase price from the PSA is also relevant with respect to the Developer's expert witness's valuation. Accordingly, barring the purchase price would prejudice the City by hindering its ability to impeach the expert.

CONCLUSION

For the reasons stated herein, the City requests that the Court deny the Developer's Motion to exclude evidence of the 2005 purchase price. Because there was no purchase in 2005, the Developer's arguments are irrelevant. However, they show, as demonstrated here, why the 2015 purchase price revealed in the 2015 PSA is so probative of the value of the 35-Acre Property at the time of the alleged taking in 2017. Should this matter reach the stage of determining just compensation, the evidence of the 2015 purchase price will be highly probative of the compensation owed.

. . .

. . .

. . .

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

DATED this 21st day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of September, 2021, I caused a true and correct copy of the foregoing **CITY'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

APEN
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov
(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

APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE

VOLUME 1

The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's Opposition to Plaintiff's Motion in Limine No. 1: To Exclude 2005 Purchase Price.

Exhibit	Exhibit Description	Vol. No.	Bates No.
A	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	1	001-038
B	2005 Securities Redemption Agreement (QT)	1	039-056
C	2005 Securities Redemption Agreement (GW)	1	057-069

Exhibit	Exhibit Description	Vol. No.	Bates No.
D	2005 Securities Redemption Agreement (SH)	1	070-077
E	2005 Securities Purchase Agreement (QT)	1	078-115
F	2005 Securities Purchase Agreement (GW)	1	116-141
G	2005 Securities Purchase Agreement (SH)	1	142-165
H	Deposition transcript excerpts of the NRCP 30(b)(6) Designee of Peccole-Nevada Corporation - William Bayne	1	166-191
I	ZON 4205 Site Plan	1	192
J	2005 Badlands Golf Court Improvements Agreement	2	193-230
K	Record of Survey Boundary Line Adjustment	2	231-235
L	Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing	2	236-260
M	Letter of Intent	2	261-263
N	February 27, 2015 email	2	264-265
O	Assessor's Stipulation	2	266-268

DATED this 21st day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of September, 2021, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO CITY'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE VOLUME 1** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

EXHIBIT “A”

NEFF
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

(Additional Counsel Identified on Signature Page)

Attorneys for City of Las Vegas

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, Ltd., SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No.: A-18-780184-C Dept. No. III **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment was entered in the above-referenced case on the 30th day of December, a copy of which is attached hereto.

. . .

. . .

. . .

. . .

DATED this 30th day of December 2020.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Amanda C. Yen (NV Bar No. 9726)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Seth T. Floyd (NV Bar No. 11959)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 30th day of December, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT** was electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.
LAW OFFICES OF KERMITT L. WATERS
704 South Ninth Street
Las Vegas, NV 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Email: info@kermittwaters.com
jim@kermittwaters.com
michael@kermittwaters.com
autumn@kermittwaters.com

Mark A. Hutchison
Joseph S. Kistler
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Facsimile: (702) 385-2086
Email: mhutchison@hutchlegal.com
jkistler@hutchlegal.com

EHB COMPANIES
Elizabeth Ghanem Ham, Esq.
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117
Email: EHam@ehbcompanies.com

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, FORE STARS, LTD, SEVENTY ACRES, LLC, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, v. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entitles I through X, ROE Corporations I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entitles I through X, Defendants.	Case No. A-18-780184-C Dept. No. III **FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING CITY OF LAS VEGAS' MOTION FOR SUMMARY JUDGMENT**

Departmental History

The instant matter was filed in the Eighth Judicial District Court (hereinafter referred to by "Department" designations) by Plaintiff's 180 Land Company, LLC et al. (hereinafter "Developer") on August 28, 2018, and assigned to Judge Israel in Department 28. Based on a peremptory challenge filed by the Defendant City of Las Vegas (hereinafter "City"), the matter was reassigned on February 5, 2019, to Judge Silva in Department 9. The peremptory challenge was subsequently reversed and the matter was reassigned back to Department 28 on February 22, 2019.

Thereafter, on March 12, 2019, Department 28 recused itself from hearing the matter and it was again reassigned to Department 9. Based on a new peremptory challenge filed by

the Developer, the matter was reassigned on April 26, 2019, to Department 8, which was at that time vacant pending the appointment of a new judge.

Prior to the appointment of the new Department 8 judge, the matter was removed to Federal Court on August 22, 2019. In September, 2019, Judge Atkin was appointed to Department 8. On October 24, 2019, the matter was remanded back to State Court by the Federal Court.

On November 6, 2019, Department 8 recused itself and the matter was then reassigned to Judge T. Jones in Department 10. Department 10 presided over the case until September, 2020. At that time, a caseload reassignment occurred and the matter was reassigned to this court, Department 3.

Procedural History

The instant case centers on disputes between the Developer and the City over property formerly known as the Badlands Golf Course. Based on those disputes, Developer filed a series of inverse condemnation actions in the Eighth Judicial District Court. The actions are each specific to separate parcels of land and are commonly identified by the acreage at issue.

The instant matter is commonly referred to as the "65-Acre Property case" and was filed, as stated above, on August 28, 2018. Pending before Judge Williams in Department 16 is Case A758528, the "35-Acre Property case," which was filed on July 18, 2017. Pending before Senior Judge Bixler is Case A773228, the "17-Acre Property case," which was filed on April 20, 2018. Lastly, pending before Judge Sturman in Department 26 is Case A775804, the "133-Acre Property case," which was filed on June 7, 2018.

Also relevant and of note is the fact that the above four inverse condemnation actions were preceded by Case A752344, the "Crockett case" which was filed on March 10, 2017, and assigned to Judge Crockett in Department 24. That matter also dealt with the "17-Acre Property" and was a Petition for Judicial Review filed by a group of citizens challenging the

decision of the City to grant Developer's application to develop that particular property. Judge Crockett granted the Petition for Judicial Review over the objection of both the Developer and the City. Developer then appealed and the City filed an amicus brief in support of the Developer. The Nevada Supreme Court reversed Judge Crockett's decision by way of an order filed March 5, 2020. By then, however, Developer had filed the "17-Acre Property case" now pending before Senior Judge Bixler.

On November 9, 2020, City filed the instant Motion for Summary Judgment (hereinafter "Motion"). On November 23, 2020, Developer filed their Opposition and a Countermotion to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order (hereinafter "Countermotion"). On December 9, 2020, City filed a Motion to Strike Developer's Countermotion (hereinafter "Motion to Strike"). The pending motions have been fully briefed.

The court held a lengthy hearing on the pending motions on December 16, 2020. Appearing remotely were James J. Leavitt, Elizabeth Ghanem Ham, Autumn Waters and Michael Schneider on behalf of the Developer, and George F. Ogilvie III, Andrew Schwartz and Philip R. Byrnes on behalf of the City. The court made an initial ruling denying the City's Motion to Strike, finding that the relief requested was proper for a countermotion as it simply asked this court to engage in a certain legal analysis format if and when it addressed the merits of the City's summary judgement request, and to make certain findings, if necessary, in favor of Developer based on that legal analysis.

Regarding the Summary Judgment Motion and the Countermotion, the Court having reviewed the pleadings and exhibits in the instant case, and, where relevant and necessary, in the companion cases, and having considered the written and oral arguments presented, and being fully informed in the premises, makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

I. The Badlands as open space for Peccole Ranch

1. In 1980, the City approved William Peccole's petition to annex 2,243 acres of undeveloped land to the City. Ex. A at 1-11.[1] Mr. Peccole's intent was to develop the entire parcel as a master planned development. *Id.* at 1. After the annexation, the City approved an integrated plan to develop the land with a variety of uses, called the "Peccole Property Land Use Plan." Ex. B at 12-18. In 1986, Mr. Peccole requested approval of an amended master plan featuring two 18-hole golf courses, one of which was in the general area where the Badlands golf course was later developed. Ex. C at 31-33; Ex. WW.

2. In 1988, the Peccole Ranch Partnership ("Peccole") submitted a revised master plan known as the Peccole Ranch Master Plan ("PRMP") and an application to rezone 448.8 acres for the first phase of development ("Phase I"). Ex. E at 62-93. In 1989, the City approved the PRMP and Phase I rezoning application, after Peccole agreed to limit the overall density in Phase I and reserve 207.1 acres for a golf course and drainage in the second phase of development ("Phase II") of the PRMP. *Id.* at 96-97.

3. In 1989, the City included Peccole Ranch in a Gaming Enterprise District ("GED"), which allowed Peccole to develop a resort hotel in the PRMP so long as Peccole provided a recreational amenity such as an 18-hole golf course. Ex. G at 114-124, 130, 135-37. Peccole reserved 207 acres for a golf course to satisfy this requirement. Ex. E at 96, 98; Ex. G at 123-124.

4. In 1990, Peccole applied to amend the PRMP for Phase II. Ex. II at 138-161. The revised PRMP highlighted an "extensive 253-acre golf course and linear open space system winding throughout the community [that] provides a positive focal point while creating a

---

[1] References to lettered Exhibits are to the Exhibits contained in the City's Appendix. References to numbered Exhibits and/or "LO Appx" Exhibits are to the Exhibits contained in the Developer's Appendix.

mechanism to handle drainage flows." *Id.* at 145. The City approved the Phase II rezoning application under a resolution of intent subject to all conditions of approval for the revised PRMP. *Id.* at 183-94.

II. The PR-OS General Plan designation of the Badlands

5. Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. On April 1, 1992, the City Council adopted a new Las Vegas General Plan, including revisions approved by the Planning Commission. Ex. I at 195-204, 212-18. The 1992 General Plan included maps showing the existing land uses and proposed future land uses. *Id.* at 246. The future land use map for the Southwest Sector designated the area set aside by Peccole for an 18-hole golf course as "Parks/Schools/ Recreation/Open Space." *Id.* at 248. That designation allowed "large public parks and recreation areas such as public and private golf courses, trails and easements, drainage ways and detention basins, and any other large areas of permanent open land." *Id.* at 234-35.

6. From 1992 to 1996, Peccole developed the 18-hole golf course in the location depicted in the 1992 General Plan, and a 9-hole course to the north of the 18-hole course. *Compare id.* at 248 *with* Ex. TT; *see also* Ex. J, UU. The 9-hole course was also designated "P" for "Parks" in the City's General Plan as early as 1998. *See* Ex. K. The Badlands 18-hole and 9-hole golf courses, totaling 250 acres, remain in the same configuration today. When the City Council adopted a new General Plan in 2000 to project growth over the following 20 years ("2020 Master Plan"), it retained the "parks, recreation, and open space" [PR-OS] designation. Ex. L at 265; compare *id.* at 269 with Ex. I at 234-35, 248. Beginning in 2002, the City's General Plan maps show the entire Badlands designated as PR-OS. Ex. M at 274-77.

7. In 2005, the City Council incorporated an updated Land Use Element in the 2020 Master Plan. Ex. N at 278-82. This 2005 Land Use Element designated all 27 holes of the

Badlands golf course as PR-OS for "Park/Recreation/Open Space." *Id.* at 291. Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged. *See* Ex. O at 292, 300-01 (Ordinance #6056 9/2/2009); Ex. P at 302-04, 316-17 (Ordinance #6152 5/8/2011); Ex. Q at 318, 331-32 (Ordinance #6622 6/26/2018).

III. The R-PD7 zoning of the Badlands

8. In 1972, the City established R-PD7 zoning (Residential-Planned Unit Development, 7 units/acre). Ex. R. "The purpose of a Planned Unit Development [was] to allow a maximum flexibility for imaginative and innovative residential design and land utilization in accordance with the General Plan." *Id.* at 333. The "PD" in R-PD stands for "Planned Development." Planned Development zoning, generally applicable to larger development sites, "permits planned-unit development by allowing a modification in lot size and frontage requirements under the condition that other land in the development be set aside for parks, schools, or other public needs." *Zoning*, *Black's Law Dictionary* (11th ed. 2019). The R-PD district in the Las Vegas Uniform Development Code was intended "to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of open space, separation of pedestrian and vehicular traffic and a homogeneity of use patterns." Ex. R at 333. "As a[n R-PD7] Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations." Ex. ZZZ at 1414-15.

9. During the 1990's, the City approved rezoning requests by a resolution of intent, meaning that a rezoning was provisional until the rezoned property was developed. Once rezoned property was developed, the City would adopt an ordinance amending the Official

Zoning Map Atlas to make the rezoning permanent. *See, e.g.* Ex. S at 341. In 1990, the City adopted a resolution of intent to rezone the 996.4 acres in Phase II in accordance with the amended PRMP. Ex. H at 189-94. To obtain the City Council's approval of tentative R-PD7 zoning for housing lining the fairways of a golf course, Peccole agreed to set aside 211.6 acres for a golf course and drainage. *Id.* at 159, 163-165, 167-168, 171-172, 187-188.

10. In 2001, the City amended the Zoning Map to rezone to R-PD7 the Phase II property previously approved for R-PD7 zoning under the resolution of intent. Ex. T at 345-61. In 2011, the City discontinued the R-PD zoning district for new developments, replacing the R-PD zoning category with "PD." The City, however, did not alter the R-PD7 zoning of the Badlands and surrounding residential areas of Phase II. Ex. U at 363.

IV. The Developers due diligence in acquiring the Badlands property

11. The principals of the Developer are accomplished and professional developers that have constructed more homes and commercial development in the vicinity of the 65-Acre Property than any other person or entity and, through this work, gained significant information about the entire 250-Acre Residential Zoned Land (which includes the 65-Acre Property).[2] *LO Appx. Ex. 22*, Decl. Lowie. They have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) multiple commercial shopping centers to name a few. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 2. The Developer principles live in the Queensridge common interest community and One Queensridge Place (which is adjacent to the 250 Acre Residential Zoned Land) and are

[2] Yohan Lowie, one of the Landowners' principles, has been described as the best architect in the Las Vegas valley. *LO Appx. Ex 21* at 00418-419.

the single largest owners within both developments having built over 40% of the custom homes within Queensridge. Id.

12. In 1996, the principals of the Developer began working with William Peccole and the Peccole family (referred to as "Peccole") to develop lots adjacent to the 250-Acre Residential Zoned Land within the common interest community commonly known as "Queensridge" (the "Queensridge CIC") and consistently worked together with them in the area on property transactions thereafter. *LO Appx. Ex. 22*, Decl. Lowie, at 00534, p. 1, para. 3.

13. In or about 2001, the principals of the Developer learned from Peccole that the Badlands Golf Course was zoned R-PD7. *LO Appx. Ex 22*, Decl. Lowie, at 00535, p. 2, para. 4. They further learned that Peccole had never imposed any restrictions on the use of the 250-Acre Property and that the 250-Acre Property would eventually be developed. Id. Peccole further informed the Developer that the 250-Acre Residential Zoned Land is "developable at any time" and "we're never going to put a deed restriction on the property." Id. The Land abuts the Queensridge CIC. Id.

14. In or about 2001, the principals of the Developer retained legal counsel to confirm Peccoles' assertions and counsel advised that the 250-Acre Residential Zoned Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Queensridge Covenants, Conditions and Restrictions (the "CC&Rs") they had no right to interfere with the development of the 250-Acre Residential Zoned Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 5.

15. In 2006, Mr. Lowie met with the highest ranking City planning official, Robert Ginzer, and was advised that: 1) the entire 250-Acre Residential Zone Land is zoned R-PD7; and, 2) there is nothing that can stop development of the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

16. With this knowledge and understanding, the principals of the Developer then obtained the right to purchase all five separate parcels that made up the 250-Acre Residential Zoned Land and continued their due diligence and investigation of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2, para. 6.

17. In November 2014, the Developer was given six months to exercise their right to purchase the 250-Acre Residential Zoned Land and conducted their final due diligence prior to closing on the acquisition of the Land. *LO Appx. Ex. 22*, Decl. Lowie, at 00535, p. 2-3, para. 6. The Developer met with the two highest ranking City Planning officials at the time, Tom Perrigo and Peter Lowenstein, and asked them to confirm that the entire 250-Acre Residential Zoned Land is developable and if there was "anything" that would otherwise prevent development and the City Planning Department agreed to do a study that took approximately three weeks. Id.; *LO Appx. Ex. 23* at 00559-560, pp. 66-67; 69:15-16; 70:13-16 (Lowie Depo, Binion v. Fore Star).

18. After three weeks the City Planning Department reported that: 1) the 250-Acre Residential Zoned Land was hard zoned and had vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250-Acre Residential Zoned Land can develop the property. *LO Appx. Ex. 22*, Decl. Lowie, at 00536, p. 3, para. 8; *LO Appx. Ex. 23* at 00561, pp. 74-75, specifically, 75:13; 74:22-23; 75:12 (Lowie Depo, Binion v. Fore Star).

19. The Developer requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the entire 250-Acre Residential Zoned Land prior to closing on the acquisition of the property. *LO Appx. Ex 22*, Decl. Lowie, at 00536, p. 3, para. 9. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that

district. (Example, R-PD4 allows up to four units per gross acre.);" and, 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." Id.; *LO Appx. Ex. 23* at 00561-562, pp. 77:24-25, 80:20-21.

20. Their due diligence now complete, Developer was ready to complete the acquisition of the subject property.

V. The Developer's acquisition and segmentation of the Badlands property

21. In early 2015, Peccole owned the Badlands through a company known as Fore Stars Ltd ("Fore Stars"). Ex. V at 365-68; Ex. VV. In March 2015, the Developer acquired Fore Stars, thereby acquiring the 250-Acre Badlands. Ex. W at 379; Ex. AAA. At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. Ex. QQQ at 1160; Ex. X at 382-410; Ex. XX. The Developer transferred 178.27 acres to 180 Land Co. LLC ("180 Land") and 70.52 acres to Seventy Acres LLC ("Seventy Acres"), leaving Fore Stars with 2.13 acres. Ex. W at 379; *see also* Ex. V at 370-77. Each of these entities is controlled by the Developer's EHB Companies LLC. *See* Ex. V at 371 and 375 (deeds executed by EHB Companies LLC). The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands. *See* Ex. HH; Ex. BBB; Ex. LL; Ex. Z. At issue in this case is a 65-Acre parcel of the Badlands owned by 180 Land, Fore Stars, and Seventy Acres (the "65-Acre Property"). *See* Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation filed Sept. 5, 2018 ("Compl.") ¶ 7.

VI. The City's approval of 435 luxury housing units on the 17-Acre Property

22. In November 2015, the Developer, acknowledging the need to make application to the City in order to develop a parcel of property, applied for a General Plan Amendment, Re-Zoning, and Site Development Plan Review to redevelop the 17-Acre Property from golf course use to luxury condominiums ("17-Acre Applications"). Ex. Z at 446-66. The 17-Acre Applications sought to change the General Plan designation from PR-OS, which did not permit residential development, to H (High Density Residential) and the zoning from R-PD7 to R-4 (High Density Residential). *Id.* at 449-52. The Planning Staff Report for the 17-Acre Applications noted that the proposed development required a Major Modification Application to amend the PRMP. Ex. AA at 470. In 2016, the Developer submitted a Major Modification Application and related applications, but later that year withdrew the applications. Ex. BB at 483-94; Ex. CC.

23. In February 2017, the City Council approved the 17-Acre Applications for 435 units of luxury housing and approved a rezoning to R-3, along with a General Plan Amendment to change the land use designation from PR-OS to Medium Density Residential. Ex. DD at 586, 587-89, 591-97; Ex. SSS. In approving the 17-Acre Applications, the City did not require the Developer to file a Major Modification Application.

VII. The homeowners' challenge to the City's approval of the 17-Acre Applications

24. After the City approved the 17-Acre Applications, nearby homeowners filed a Petition for Judicial Review of the City's approval, which was assigned to Judge Crockett in Department 24. Ex. EE at 599, 609 (the "Crockett Order"). On March 5, 2018, Judge Crockett granted the homeowners' petition over the objection of both the Developer and the City, vacating the City's approval on the grounds that the City Council was required to approve a Major Modification Application before approving applications to redevelop the Badlands. *Id.* at 598, 610-11. The Developer appealed the Crockett Order. *See* Ex. DDD.

Although the City did not appeal the Crockett Order, it did file an amicus brief in support of the Developer's position that a Major Modification Application was not required. Ex. CCC.

25. Following Judge Crockett's decision invalidating the City's approval, the Developer filed a lawsuit (the 17-Acre case) against the City, the Eighth Judicial District Court, and Judge Crockett. Ex. GG at 631, 632, 639. The City removed that case to federal court. Following a remand order, the 17-Acre case is now pending before Senior Judge James Bixler. On December 9, 2020 Judge Bixler denied the City's motion to dismiss the 17-Acre Complaint.

26. Ultimately, the Nevada Supreme Court reversed Judge Crockett's decision granting the Petition for Judicial Review. In its Order of Reversal filed March 5, 2020, the Nevada Supreme Court found that a Major Modification Application was not required to develop the 17-Acre Property because the City's UDC required Major Modification Applications for property zoned PD, but not property zoned R-PD. Ex. DDD. The Supreme Court subsequently denied rehearing and en banc reconsideration and issued a remittitur, rendering its determination final. Ex. EEE. The Supreme Court's decision was consistent with the City's argument in the District Court in support of it's granting of Developer's application, and in its amicus brief that a Major Modification Application was not required to develop the 17-Acre Property. Ex. CCC at 1003-06. The District Court thereafter, consistent with the Nevada Supreme Court's decision, entered an Order on November 6, 2020, denying the petition for judicial review. *See* Ex. RRR.

27. The Nevada Supreme Court's reversal of the Crockett Order reinstated the City's approval of the Developer's applications to develop the 17-Acre Property. Ex. DDD. The City provided the Developer with notice of that fact by letter on March 26, 2020. Ex. FFF at 1019. The City's letter explained that once remittitur issued in the Nevada Supreme Court's order of reversal, "the discretionary entitlements the City approved for [the Developer's] 435-unit project on February 15, 2017 . . . will be reinstated." *Id.* The City also notified the Developer that the approvals would be valid for two years after the date of the

remittitur. *Id.* On September 1, 2020, the City notified the Developer that the Nevada Supreme Court had issued remittitur, the City's original approval of 435 luxury housing units on the 17-Acre Property had been reinstated, and the Developer is free to proceed with its development project. Ex. GGG at 1021. The City again notified the Developer that the approvals would be extended for two years after the date of the remittitur. *Id.*

VIII. The 35-Acre Applications

28. While the 17-Acre Applications were pending, the Developer filed applications to redevelop the 35-Acre Property ("35-Acre Applications"). Ex. HH; Compl. ¶ 32. On June 21, 2017, the City Council denied the 35-Acre Applications due to significant public opposition to the proposed development, concerns over the impact of the proposed development on surrounding residents, and concerns on piecemeal development of the Master Development Plan area rather than a cohesive plan for the entire area. Ex. 46; *see also* Ex. II at 673-78. Developer did not submit a second application to develop the 35-Acre Property.

The Developer filed a petition for judicial review and complaint for a taking (the 35-Acre Property case), which was assigned to Judge Williams in Department 16. Ex. JJ at 680, 692. Judge Williams concluded that substantial evidence supported the Council's denial of the 35-Acre Applications, that Judge Crockett's Decision had preclusive effect, and the Developer had no vested right under the R-PD7 to approval of its application. Ex. KK at 780-82, 789-92. The Developer filed an amended complaint alleging inverse condemnation claims, which is also currently pending before Judge Williams, following the City's removal to federal court and subsequent remand. *See 180 Land Co. v. City of Las Vegas*, Eighth Judicial District Court Case No. A-17-758528-J.

IX. The Master Development Application

29. Before the City denied the 35-Acre Applications, the Developer sought a new Master Development Agreement (MDA) for the entire Badlands, including the 35-Acre Property. Ex. I.I.; Ex. II at 679. On August 2, 2017, the City Council disapproved the MDA by a vote of 4-3. Ex. MM at 880-82; Compl. ¶¶ 39, 42. The Developer did not seek judicial review of the City's decision to deny the development agreement.

X. The 133-Acre Applications

30. In October 2017, the Developer filed applications to redevelop the 133-Acre Property ("133-Acre Applications"). Compl. ¶ 46. On May 16, 2018, after the Crockett Order but before the Nevada Supreme Court's reversal of said order, the City Council voted to strike the 133-Acre Applications as incomplete because they did not include an application for a Major Modification, as the Crockett Order required. Compl. ¶¶68, 77, 85; Ex. BBB at 989-98.

31. The Developer filed a petition for judicial review (the 133-Acre Property case) challenging the City's action to strike the 133-Acre Applications and a complaint for a taking and other related claims. That action was assigned to Judge Sturman in Department 26, who dismissed the petition for judicial review on the grounds that the parties were bound by the Crockett Order and, therefore, the Developer's failure to file a Major Modification Application was valid grounds for the City to strike the application. Judge Sturman allowed the Developer's inverse condemnation claims to proceed. Ex. NN. The City removed the case to federal court, and it has since been remanded back to state court.

XI. The 65-Acre Applications

32. To date, there has been no evidence presented to the court that Developer has submitted any development applications to the City for consideration of a proposed development of the individual 65-Acre parcel. As noted above, there was a Master

Development application, Ex. LL; Ex. II at 679, that was eventually denied by the City but no individual applications for the 65-Acre property.

XII. The increase in value of the Badlands due to the City's approval of 435 units on the 17-Acre Property

33. Under the Membership Purchase and Sale Agreement between the Peccole Family and the Developer, the Developer purchased the 250-Acre Badlands Golf Course for $7,500,000, or $30,000 per acre ($7,500,000/250 acres = $30,000). Ex. AAA at 966. This figure does not represent the total cost to Developer as there were clearly monies spent during its due diligence process (Developer has stated that the total cost for due diligence and purchase was $45 million). $7,500,000 is however the stated figure, per the Purchase and Sale Agreement, that Developer paid for the actual property. Ex. UUU at 1300.

34. The Developer contends in its Initial Disclosures that if the Badlands can be developed with housing, it is worth $1,542,857 per acre. Ex. JJJ at 1135-36.[3] Thus, according to the Developer's own evidence, the City's approval of 435 housing units in the Badlands has increased the value of the 17-Acre Property alone to $26,228,569 (17 x $1,542,857 = $26,228,569), thereby quadrupling the Developer's property purchase investment in the Badlands. Furthermore, the Developer still owns the remaining 233 acres with the potential to continue golf course use or develop the remaining acreage.

35. Even if the Developer paid $45 million for the Badlands as it contends, or $180,000/acre ($45,000,000/250 acres = $180,000/acre), the City's approval of 435 housing units in the Badlands has increased the value of the Badlands by $23,168,569 (the City's approval improved the value of each acre in the 17-Acre Property from $180,000 to

[3] The Developer's Initial Disclosures in the 35-Acre case make the same claim. Ex. VVV at 1319. Both initial disclosures are based in part on the Lubawy appraisal of 70 acres of the Badlands that includes the entire 17-Acre Property and a portion of the 65-Acre Property. Ex. QQQ at 1165. The Lubawy appraisal assumed that the land being appraised could be developed with medium density housing. *Id.* at 1196-97.

$1,542,857, an increase of $1,362,857 per acre ($1,362,857 x 17 = $23,168,569).

CONCLUSIONS OF LAW

The instant motion and countermotion pose three areas of inquiry for the court's consideration. First, a discussion of the legal frame work surrounding the issue of a regulatory taking. Second, a discussion of whether or not the instant claims by the Developer are ripe for court action. And third, if necessary, a discussion of the merits of the Developer's claims under summary judgment standards.

I. The Legal Framework

A. City's liability for a regulatory taking is a question of law

1. Under NRCP 56(a), summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). The non-moving party must "'set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.'" *Id.* (quoting *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110 825 P.2d 588, 591 (1992)).

2. Whether the government has inversely condemned private property is a question of law. *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 661, 137 P.3d 1110, 1121 (2006).

B. A regulatory taking requires extreme interference with the use or value of property

1. Courts generally defer to the exercise of land use regulatory powers by the legislative and executive branches of government

3. In the United States, planning commissions and city councils have broad authority to limit land uses to protect health, safety, and welfare. Because the right to use land for a

particular purpose is not a fundamental constitutional right, courts generally defer to the decisions of legislatures and administrative agencies charged with regulating land use. The United States Supreme Court declared that the Court does "not sit to determine whether a particular housing project is or is not desirable," since "[t]he concept of the public welfare is broad and inclusive." *Berman v. Parker*, 348 U.S. 26, 33 (1954). Instead, where the legislature and its authorized agencies "have made determinations that take into account a wide variety of uses," it is "not for [the courts] to reappraise them." *Id.*

4. The role of the courts in overseeing land use regulation is limited to cases of the most extreme restrictions on the use of private property under the regulatory takings doctrine. The narrow scope of the doctrine stems from the separation of powers between the legislative and executive branches of government and the judicial branch. *See, e.g., West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937) (judicial restraint respects the political questions doctrine and separation of powers because it requires that the courts refrain from replacing the policy judgments of lawmakers and regulators with their own with regard to non-fundamental constitutional rights); *Gorieb v. Fox*, 274 U.S. 603, 608 (1926) ("State Legislatures and city councils, who deal with the situation from a practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions . . . require; and their conclusions should not be disturbed by the courts, unless clearly arbitrary and unreasonable.").

5. Nevada's Constitution expressly prohibits any one branch of government from impinging on the functions of another. *Secretary of State v. Nevada State Legislature,* 120 Nev. 456, 466, 93 P.3d 746, 753 (2004). The Nevada State Constitution provides that the state government "shall be divided into three separate departments" and prohibits any person authorized to exercise the powers belonging to one department to "exercise any functions, appertaining to either of the others" except where expressly permitted by the Constitution. Nev. Const. art. 3 § 1.

6. Separation of powers "is probably the most important single principle of government." *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). Within this framework, Nevada has delegated broad authority to cities to regulate land use for the public good. The State has specifically authorized cities to "address matters of local concern for the effective operation of city government" by "[e]xpressly grant[ing] and delegat[ing] to the governing body of an incorporated city all powers necessary or proper to address matters of local concern so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government." NRS 268.001(6), (6)(a).

7. "Matters of local concern" include "[p]lanning, zoning, development and redevelopment in the city." NRS 268.003(2)(b). "For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land." NRS 278.020(1); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 254, 439 P.2d 219, 222 (1968) (upholding a county's authority under NRS 278.020 to require an applicant for a special use permit to present evidence that the use is necessary to the public health and welfare of the community).

8. As a charter city, the City has the right to "regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within those districts" and "[e]stablish and adopt ordinances and regulations which relate to the subdivision of land." Las Vegas City Charter § 2.210(1)(a), (b). Cities in Nevada limit the height of buildings, the uses permitted and the location of uses on property, and many other aspects of land use that could have an impact on the community. *See, e.g., Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 239, 871 P.2d 320, 321 (1994) (upholding City's denial of building permit application); *State ex rel. Davie v. Coleman*, 67 Nev. 636, 641, 224 P.2d 309, 311 (1950) (upholding Reno ordinance establishing land use plan and restricting use of land).

2. To avoid encroaching on the responsibilities and authority of other branches of government, courts intervene in land use regulation only in cases of extreme economic burden on the property

9. In its Third through Seventh Causes of Action, the Developer alleges a variety of types of takings under the Fifth Amendment of the United States Constitution, which provides "nor shall private property be taken for public use, without just compensation," and its counterpart in Article 1, Section 8 of the Nevada Constitution. The Just Compensation Clause of the Fifth Amendment was originally intended to require compensation only for eminent domain – *i.e.*, direct government takings. *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992). In 1922, the Supreme Court held that a regulation that "goes too far," such that it destroys all or nearly all of the value or use of property, equivalent to an eminent domain taking, can require the regulatory agency to compensate the property owner for the value of the property before the regulation was imposed. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922); *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 539 (2005). This type of inverse condemnation that does not involve a physical occupation of private property by the government, but rather alleges excessive regulation of the property owner's use of the property, is known as a "regulatory taking."[4] Under separation of powers, however, courts intervene in regulation of land use by the legislative and executive branches of government only in cases of (1) extreme regulation where the economic impact of the regulation is equivalent to an eminent domain taking, wiping out or nearly wiping out the use of value of the property, similar to a physical ouster of the owner by eminent domain, or (2) interference with reasonable investment-backed expectations. *Lingle*, 544 US. at 539 (categorical and *Penn Central* regulatory takings test both "aim[] to identify regulatory actions that are

[4] The Developer conflates eminent domain and inverse condemnation. The two doctrines have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken. In inverse condemnation, by contrast, the government's liability is in dispute and is decided by the court. If the court finds liability, then a judge or jury determines the amount of just compensation.

functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain").[5]

10. The Nevada Supreme Court has established an identical test, requiring an extreme economic burden to find liability for a regulatory taking. *State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35 (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").

11. The Developer cites to numerous statements and actions of the City Council, individual Council members, City officials, and City staff that the Developer contends were unfair to the Developer. Because courts defer to the authority of local government to regulate land use for the public good, the regulatory takings doctrine is not concerned with the soundness or fairness of government regulation of land use. Because the regulation is presumed valid in regulatory takings cases, it is inappropriate to delve into the validity of or the motives underlying the regulation:

> The notion that . . . a regulation nevertheless "takes" private property for public use merely by virtue of its ineffectiveness or foolishness is untenable. [The] inquiry [as to a regulation's validity] is logically prior to and distinct from the question whether a regulation effects a taking, for the Takings Clause presupposes that the government has acted in pursuit of a valid public purpose. The Clause expressly requires compensation where government takes private property "for public use." It does not bar government from interfering with property rights, but

[5] In settling the test for a regulatory taking, *Lingle* resolved inconsistencies in prior federal and state court decisions. The *Lingle* opinion was unanimous and had no footnotes, indicating that the Supreme Court intended to bring clarity and simplicity to the regulatory takings doctrine.

> rather requires compensation "in the event of otherwise proper interference amounting to a taking.

Lingle, 544 U.S.at 543 (citing *First English Evangelical Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 315 (1987)); *cf. Sproul Homes of Nev. v. State ex rel. Dept. of Highways*, 96 Nev. 441, 445, 611 P.2d 620, 622 (1980) (judicial interference by mandamus, not by inverse condemnation, is appropriate if an agency's action was arbitrary or accompanied by manifest abuse). Assuming the truth of the Developer's allegations regarding the statements and actions of the City Council, individual Council members, City officials, and City staff, they are not relevant unless they can be shown to result in a wipeout or near wipeout of use and value or interfere with the Developer's reasonable investment-backed expectations.

12. A requirement that regulatory agencies pay compensation to property owners for regulation short of a wipeout would encroach on the powers of the legislative and executive branches of government to regulate land use to promote the general health, safety, and welfare. *Lingle*, 544 U.S. at 544 ("[R]equir[ing] courts to scrutinize the efficacy of a vast array of state and federal regulations" to determine whether they substantially advance legitimate state interests is "a task for which courts are not well suited. Moreover, it would empower-and might often require-courts to substitute their predictive judgments for those of elected legislatures and expert agencies."); *id.* at 537 (recognizing compensable regulatory takings only when the effect of government regulation is tantamount to a direct appropriation or ouster). As a result, a regulation is not a taking unless it virtually wipes out all the economic value or use of the property, because only then is it the functional equivalent of eminent domain. *Id.* at 539. Moreover, a standard for public liability for a regulatory taking that merely reduces the use or value of private property without destroying the use or value would lose its connection to the United States and Nevada Constitutions because that regulation would not be the functional equivalent of an eminent domain taking. *Id.* at 539.

13. Complying with government regulation, like the alleged regulation of the redevelopment of the Badlands in this case, is simply a cost of doing business in a complex society. "'[G]overnment regulation—by definition—involves the adjustment of rights for the public good.'" *Id.* at 538 (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)); *see also Mahon*, 260 U.S. at 413 ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 133 (1978) ("Legislation designed to promote the general welfare commonly burdens some more than others.").

3. The Developer alleges a categorical and *Penn Central* regulatory taking

14. The Developer has alleged two types of regulatory takings: categorical and *Penn Central*. A categorical taking occurs either when a regulation results in a permanent physical invasion of property, or when a regulation "completely deprive[s] an owner of 'all economically beneficial us[e]' of her property." *Lingle*, 544 U.S. at 538 (quoting *Lucas*, 505 U.S. at 1019). A *Penn Central* taking is determined based on review of several factors; "[p]rimary" among them is "'[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.'" *Id.* at 538-39 (quoting *Penn Central*, 438 U.S. at 124. "[E]conomic impact is determined by comparing the total value of the affected property before and after the government action." *Colony Cove Props. v. City of Carson*, 888 F.3d 445, 451 (9th Cir. 2018). Under both the categorical and the *Penn Central* takings tests, the only regulatory actions that cause takings are those "that are functionally equivalent to the classic taking in

which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539.[6]

15. To be the functional equivalent of eminent domain, the challenged regulatory action must cause a truly "severe economic deprivation" to the plaintiff. *Cienega Gardens v. United States*, 503 F.3d 1266, 1282 (Fed. Cir. 2007); see also *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1127 (9th Cir. 2013) (81% diminution in value not sufficient to show a taking); *Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993) (citing cases in which diminutions of 75% and 92.5% insufficient to show a taking); *William C. Haas & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117, 1120 (1979) (95% diminution not a taking); *Pace Res., Inc. v. Shrewsbury Twp.*, 808 F.2d 1023, 1031 (3d Cir. 1987) (89% diminution in property value not a taking); *Brace v. United States*, 72 Fed. Cl. 337, 357 (2006) ("diminutions well in excess of 85 percent" required to show a taking).

16. The Developer cites several federal cases finding a taking even where the diminution in value was less than 100%. *E.g.*, *Formanek v. United States*, 26 Cl.Ct. 332 (Fed. Cl. Ct. 1992) (finding a taking where government action resulted in 88% decline in value). Even though the Developer's cases were decided before *Lingle* clarified the regulatory takings doctrine in 2005 to require that liability for a taking can be found only where government action wipes out or nearly wipes out the economic value of property, the cases cited did require a near wipeout of value before a finding of a taking.

17. The Developer also relies on *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007); *Sisolak*, 137 P.3d 1110; *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23

[6] The Developer's "categorical" and "regulatory per se" takings are the same thing. The majority in *Lucas v. S.C. Coastal Council* classified economic wipeouts and physical takings resulting from government regulation as "categorical" takings, while the dissent characterized the same test as a "per se" standard. 505 U.S. at 1015, 1052 (Blackmun, J., dissenting). A unanimous Supreme Court in *Lingle* also uses the terms interchangeably. 544 U.S. at 538. Similarly, the Nevada Supreme Court in *Sisolak* refers to physical takings interchangeably as "categorical" and "per se." 122 Nev. at 662-63, 137 P.3d at 1122-23).

(2012); *ASAP Storage v. City of Sparks*, 123 Nev. 639 (2008); and *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327 (9th Cir. Ct. App. 1977) for the contention that regulation that "substantially impairs" or "direct[ly] interfere[s] with or disturb[s]" the owner's property can give rise to a regulatory taking. These cases are physical takings cases (*Tien, Sisolak, Arkansas*, and *ASAP*) or precondemnation cases (*Richmond*) and are inapplicable. The Developer also contends that takings are defined more broadly in Nevada than in federal law, citing *Vacation Village, Inc. v. Clark County*, 497 F.3d 902 (9th Cir. 2007). *Vacation Village*, however, concludes only that physical takings are broader in Nevada, not regulatory takings, citing *Sisolak*. *Id.* at 915-16. The scope of agency liability for regulatory takings in Nevada is identical to the federal standard. *See State*, 131 Nev. at 419, 351 P.3d at 741 (2015); *Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034; *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35.

18. To support its contention that the test for a regulatory taking is less deferential to the agency action than as established in *Lingle*, *Penn Central*, *Concrete Pipe*, *Colony Cove*, *State*, *Kelly*, and *Boulder City*, the Developer cites to a 2008 amendment to Article 1, Section 22 of the Nevada Constitution to allow owners of property taken by eminent domain to recover for damage to their property from the construction of a public improvement. This amendment concerns eminent domain and has no bearing on the test for a regulatory taking claim.

19. The Developer claims that the City has taken the 65-Acre Property because it did not comply with NRS 37.039, which sets out requirements for agencies exercising eminent domain to acquire property for open space. Because the City did not condemn the 65-Acre Property or any other portion of the Badlands, this statute does not apply.

II. The Ripeness Issue

20. A regulatory takings claim is ripe only when the landowner has filed at least one application that is denied and a second application for a reduced density or a variance that is

also denied. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985), *overruled on other grounds by Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) ("*Williamson County*"); *see also Palazzolo v. Rhode Island*, 533 U.S. 606, 618 (2001) ("[T]he final decision requirement is not satisfied when a developer submits, and a land-use authority denies, a grandiose development proposal, leaving open the possibility that lesser uses of the property might be permitted."); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 351-53 (1986) (at least two applications required to ripen takings claim).

21. The Nevada Supreme Court has fully embraced the final decision requirement:

> Generally, courts only consider ripe regulatory takings claims, and "a claim that the application of government regulations effects a taking of a property interest ***is not ripe until the government entity*** charged with implementing the regulations ***has reached a final decision regarding the application*** of the regulations to the property at issue. . . [The] regulatory takings claim is unripe for review for a failure to file any land-use application with the City. And although Ad America contends that exhaustion was futile because there was a de facto moratorium on developing property within Project Neon's path, the record does not support this contention. The opinion of Ad America's political consultant, which was based on alleged statements from only one of seven City Council members, is insufficient to establish the existence of such a moratorium." (emphasis added).

State v. Eighth Jud. Dist. Ct., 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Because the Nevada Supreme Court follows *Williamson County*, the courts of this state require that at least two applications be denied before finding that a regulatory takings claim is ripe.

22. A regulatory takings claim is not ripe unless it is "clear, complete, and unambiguous" that the agency has "drawn the line, clearly and emphatically, as to the sole use to which [the property] may ever be put." *Hoehne v. County of San Benito*, 870 F.2d 529, 533 (9th Cir. 1989). The property owner bears a heavy burden to show that a public agency's decision to restrict development of property is final. *Id.*

23. The Developer has failed to meet its burden to show that its regulatory takings claims are ripe. The Nevada Supreme Court requires that a regulatory takings claimant file at least two applications to develop "the property at issue." *State*, 131 Nev. at 419-20, 351 P.3d at 742.

24. The Developer filed this action seeking damages for a taking of the 65-Acre Property only. *See* Compl. ¶7. The Developer has submitted no evidence that it has filed any application, much less two or more, to redevelop the individual 65-Acre Property, and obviously, no subsequent application for a variance, reduced density, or alternate project. As such, Developer has provided City with no individual 65-Acre Property application to consider and the City cannot be said to have reached a "clear, complete, and unambiguous" decision and that the City has "drawn the line, clearly and emphatically, as to the sole use to which [the 65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533.

25. It can certainly be said that Developer may have very well been frustrated with what had occurred. Its first application was approved, only to then find itself being sued by a group of homeowners, thereafter receiving an unfavorable District Court ruling necessitating a Nevada Supreme Court appeal and the perceived need to file multiple lawsuits. That frustration does not, however, excuse the necessity of first making application to develop the 65-Acre Property before filing the instant case against the City alleging a taking of that property. This is especially true where, as here, Developer chose to file four separate court actions specifically directed at each individual parcel of property that Developer alleged was taken.

26. It must also be noted that fifty percent (50%) of Developer's applications directed to the individual properties were approved. Their first application for the 17-Acre Property was approved by the city. The application for the 35-Acre Property was denied. The application for the 133-Acre Property was deemed incomplete because of the then controlling Crockett Order and it was never resubmitted. And, as stated above, no application was ever submitted for the 65-Acre Property at issue in the instant case.

27. This court holds that any argument that proffering a development proposal for the 65-Acre Property would be futile is without merit as the City approved fifty percent (50%) of the individual applications it received, and felt it had legal authority to consider. This court would be engaging in inappropriate speculation were it to try and guess at what type of proposal Developer would have made for the 65-Acre Property and what type of response the City would have provided.

28. The Developer argued that the denial of the Master Development Agreement (MDA) also plays into the futility argument but the court finds that stance to be unpersuasive. To begin, the MDA was made after the individual 17-Acre Property proposal was made (which was approved) and after there was an application pending before the City for the development of the individual 35-Acre Property. Any denial of the MDA proposal while multiple individual proposals were pending and/or already approved cannot be said to be at all unreasonable. Moreover, even if the MDA denial was considered as part of the futility argument, the City would still have granted one-third (1/3) of the Developer's three proposals with the fourth proposal being deemed incomplete. As such, Developer's argument still places this court in the position of having to speculate about a possible 65-Acre Property proposal and the possible response by the City. Lastly, Developer made its 133-Acre Property application after the City denied the MDA. As such, it is clear that Developer did not believe that the MDA denial rendered further individual property development applications futile, rather, Developer chose to only proceed with the application for the 133-Acre Property.

29. The City's actions simply cannot be said to have been so "clear, complete, and unambiguous" as to excuse the need for Developer to propose a development plan for the 65-Acre Property before Developer made the choice to seek court intervention for that specific parcel of property.

30. To the extent Developer argues that the approval of the 17-Acre Property was somehow vacated and therefore no applications could be said to have been granted by the

City, the Court finds this position to also be without merit. There is no evidence that the City has taken any action to limit the Developer's proposed use of the 17-Acre Property for 435 luxury housing units. The Developer's contention that the City "nullified" the 435-unit approval is without any support in the evidence. The Developer's contention that the City's declining to extend the 17-Acre approvals after Judge Crockett invalidated the approvals means that the City "nullified" the approvals is frivolous. The City supported Developer and opposed Judge Crockett's Order at the trial court level and in the Nevada Supreme Court, where the City filed an amicus brief requesting that the Supreme Court reverse the Crockett Order and reinstate the 17-Acre Property approvals. Ex. CCC.

31. Prior to the Supreme Court's Order of Reversal, the 17-Acre Property approvals were legally void and there was nothing to extend. If the City had attempted to extend the approvals, the City could arguably have been in contempt of Judge Crockett's Order. *See* NRS 22.010(3) (disobedience or resistance to any lawful writ or order issued by the court shall be deemed contempt); *see also Edwards v. Ghandour*, 123 Nev. 105, 116, 159 P.3d 1086, 1093 (2007) (a judgment has preclusive effect even when it is on appeal), *abrogated on other grounds by Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1053-54, 194 P.3d 709, 712-13 (2008). After the Supreme Court reinstated the approvals, the City had no power to nullify the approvals even if it had intended to do so. And it evidenced no intent to do so. To the contrary, upon reinstatement, the City twice wrote to the Developer extending the approvals for two years after the date of the remittitur. Ex. FFF at 1019; Ex. GGG at 1021. The Court accordingly rejects the Developer's argument that the City "nullified" the City's approval of 435 luxury housing units on the 17-Acre Property. All evidence establishes the opposite. The 17-Acre approvals are valid, and the Developer may proceed to develop 435 luxury housing units on the 17-Acre Property.

32. The Developer argues that it is not subject to the final decision ripeness rule adopted by the United States and Nevada Supreme Courts because the "taking is known." This argument is circular and is rejected. The Court cannot determine whether the City has

"gone too far" unless the City denies specific applications to develop the property.

33. The Developer also argues that the final decision ripeness requirement adopted in *State* and *Kelly* has been eliminated because takings are "self-executing," citing *Knick* and *Alper v. Clark County*, 93 Nev. 569, 572, 571 P.2d 810, 811-12 (1977). *Knick* had nothing to do with final-decision ripeness, nor would it because the claimant in *Knick* alleged a physical taking. A physical taking is not subject to final-decision ripeness. *Knick*, 139 S.Ct. at 2169 ("the validity of [the] finality requirement . . . is not at issue here." The only issue in *Knick* was whether takings claims could be brought in the first instance in federal court. *Id.* at 2179.

34. In *Alper*, the Nevada Supreme Court stated that, "as prohibitions on the state and federal governments," the taking clauses of the state and federal constitutions are "self-executing," meaning that "they give rise to a cause of action regardless of whether the Legislature has provided any statutory procedure authorizing one." 93 Nev. at 572, 571 P.2d at 811-12. Thus, the "self-executing" nature of the taking clauses means only that the taking clauses do not need to be implemented by statute. Being self-executing does not mean, as the Developer asserts, that payment of just compensation is automatically due without first satisfying the requirement to obtain a final agency decision. The Developer further contends that *Alper* proscribes the ripeness requirement as a "barrier[] or precondition[]" to a taking claim. To the contrary, the Nevada Supreme Court in *Alper* did not address the ripeness requirement of taking claims. Instead, it held that the state's Six Months' Claims Statutes codified in NRS 244.245 and NRS 244.250, which require that a claimant presents his or her claim to a County before suing the County, do not apply to actions in inverse condemnation. *Alper*, 93 Nev. at 570, 572.

35. The Developer asserts that its *Penn Central* regulatory taking claim is ripe because the City disapproved the Developer's MDA for the entire Badlands. The MDA, while it included parts of the 65-Acre Property, covered the entire 250-acre Badlands outside of the 17-Acre Property, development on which the City had already approved. Ex. LL at 801. It did not constitute an application to develop the 65-Acre Property standing alone,

which is "the property at issue." *See State*, 131 Nev. at 419. The City's denial of the MDA, therefore, is not considered an application to develop the 65-Acre Property for purposes of ripeness. Even assuming that it was an application to develop the 65-Acre Property standing alone, the Developer's regulatory takings claim would not be ripe until the Developer files at least one additional application. Again, the Developer has presented no evidence that it has done so.

36. The Court also does not consider the MDA to constitute an initial application to develop the 65-Acre Property for purposes of a final decision because the MDA was not the specific and detailed application required for the City to take final action on a development project. *See* Ex. LL at 810-19 (general outline of proposed development in the Badlands). The MDA divided the Badlands into four "Development Areas" and proposed permitted uses, maximum densities, heights, and setbacks for the four areas. *Id.* at 812, 814. For Development Areas 2 and 3, which contained portions of the 65-Acre Property, the MDA proposed a maximum residential density of 1,669 housing units, and the Developer was to have the right to determine the number of units developed on each Area up to the maximum density. *Id.* at 813-14. The indefinite nature of the MDA is also evident from the uncertainty expressed about various uses. For example: "[t]he Community is planned for a mix of single family residential homes and multi-family residential homes including mid-rise tower residential homes"; "[a]ssisted living facilit(ies) . . . may be developed within Development Area 2 or Development Area 3"; and "additional commercial uses that are ancillary to multifamily residential uses shall be permitted." *Id.* at 812. Finally, the MDA provided that [t]he Property shall be developed as the market demands . . . and at the sole discretion of Master Developer." *Id.* at 814. Accordingly, the MDA was not clear as to how many housing units would eventually be built in the 65-Acre Property. Nor was the City Council apprised by the MDA of the types and locations of uses, the dimensions or design of buildings, or the amount and location of access roads, utilities, or flood control on the 65-Acre Property. *See id.* at 813-16.

37. Given the uncertainty in the MDA as to what might be developed on the 65-Acre Property, the Court cannot determine what action the City Council would take on a proposal to develop only the 65-Acre Property. This once again places the court in the untenable position of having to speculate about what the City might have done, said speculation being improper.

38. The MDA also did not constitute a valid set of land use applications for the 65-Acre Property. A development agreement is not a substitute for the required UDC Applications. The UDC states that "all the procedures and requirements of this Title shall apply to the development of property that is the subject of a development agreement." UDC 19.16.150(D). To develop the 65-Acre Property even after an MDA were approved, the Developer would be required to file a Site Development Review application and seek a General Plan Amendment. *See* Ex. LL at 819 (City would process "all applications, including General Plan Amendments, in connection with the Property"); *id.* at 820 ("Master Developer shall satisfy the requirements of the Las Vegas Municipal Code section 19.16.100 for the filing of an application for a Site Development Plan Review").

39. Developer had applied for the required Site Development Review and General Plan Amendment in applying for the original 17-Acre Property application and was therefore clearly aware of the requirements. The version of the MDA the City Council rejected on August 2, 2017 acknowledged that the Developer must comply with all "Applicable Rules," defined as the provisions of the "Code and all other uniformly-applied City rules, policies, regulations, ordinances, laws, general or specific, which were in effect on the Effective Date." *Id.* at 804, 810. Similarly, the MDA indicated that the property would be developed "in conformance with the requirements of NRS Chapter 278, and as otherwise permitted by law." *Id.* at 802. Because the Developer did not submit any of the site-specific development applications related to the 65-Acre Property, the City Council's denial of the MDA did not constitute a final decision by the City Council regarding what development would be permitted on the 65-Acre Property.

40. The Developer contends that following the City's denial of the MDA, it would have been futile to file the UDC Applications to develop the 65-Acre Property. As with the earlier discussion on futility, the court finds Developer's position here to be unpersuasive. The Developer cites no evidence for its statement that the City insisted that the MDA was the only application it would accept to develop the 65-Acre Property. The Developer previously acknowledged that City Councilmembers expressed a preference for a holistic plan addressing the entire Badlands. Ex. WWW at 1323. Such a preference does not indicate a refusal to consider other options. Indeed, the City did consider—and approve—significant development on the 17-Acre Property within the Badlands, indicating that the City is open to considering development of this area.

41. The Developer contends that *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999) supports the claim that it would be futile to file any application to develop the 65-Acre Property. In *Del Monte Dunes*, the City reviewed and denied five separate applications to develop the property, each of which proposed a lower density than the previous application. 526 U.S. at 695-96. The Court affirmed the Ninth Circuit's holding that the plaintiff had satisfied the final decision ripeness requirement. *Id.* at 698-99, 723. Unlike *Del Monte Dunes*, the Developer here has filed no application specific to the 65-Acre Property. Even if the MDA is considered an application, the ripeness rule applied in *Del Monte Dunes* requires at least a second application.

42. The Developer contends that this case is similar to *Del Monte Dunes* because the Developer conducted detailed and lengthy negotiations over the terms of the MDA with City staff and made many concessions and changes to the MDA requested by the staff before the MDA was presented to the City Council with the staff's recommendation of approval. Concessions and changes to the MDA requested by staff and a staff recommendation of approval, however, do not count for ripeness. The City Council, not the staff, is the decision-maker for purposes of a regulatory taking. An application must be made to the City Council, and if denied, at least a second application to the City Council must be made and denied

before a takings claim is ripe.

43. Furthermore, the Developer's reliance on Bills 2018-5 and 2018-24 in support of its claim of futility is misplaced. The bills imposed new requirements that a developer discuss alternatives to the proposed golf course redevelopment project with interested parties and report to the City and other requirements for the application to develop property. They were designed to increase public participation and did not impose substantive requirements for the development project, and did not prevent the Developer from applying to redevelop the 65-Acre Property. Moreover, the second bill was adopted in the Fall of 2018 after the Developer filed this action for a taking. As such, it could not have had any effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were also repealed in January 2020, and are therefore inapplicable to show futility. *See* Exs. LLL, MMM.

44. At the City Council hearing on the MDA, no Councilmember indicated that he/she would not approve development of the Badlands at a reduced density if the Developer submitted a revised development agreement. *See* Ex. WWW at 1365-70. The vote to deny the MDA was 4-3 (*id.* at 1370). Therefore, had a modified proposal been made regarding the MDA, it was only necessary for one of the four members who voted to deny the application to became satisfied with the proposed changes, for it to be approved. And it must be noted that two of the four City Councilmembers who voted against the MDA are no longer members. Indeed, four of the seven members of the City Council that heard the MDA are no longer on the Council.

45. Much of the commentary about the MDA from Councilmembers at the public hearing indicates that they may approve a lower density development. For example, Councilmember Coffin, who voted against the MDA, stated that he would support "some sort of development agreement" for the Badlands. Ex. WWW at 1327; *see also id.* at 1328 (Badlands "still could be developed if you paid attention to [preserving the desert landscape]"). Similarly, Councilmember Seroka, who voted to deny the MDA, noted that

three different drafts of the development agreement had been circulated in the previous week (*id.* at 1362); he had insufficient time to review and understand the version of the agreement before the City Council (*id.*); the proposed residential development was too dense (*id.* at 1361-62); and the development agreement contained no timeline for development of the Badlands (*id.* at 1363). Seroka explained that "a reasonable and equitable development agreement is possible, but this is not it," and that the Developer could resubmit a development agreement for the Council's consideration. *Id.* at 1365-66. Similarly, the majority of citizens testifying at the City Council hearing on the development agreement indicated not that they were opposed to all development of the Badlands, but rather that the density of residential development proposed in the agreement was excessive. *E.g.*, *id.* at 1339, 1344-45, 1350, 1353-55, 1357-60.

46. The City's disapproval of the MDA falls short of the "clear, complete, and unambiguous" proof that the agency has "drawn the line, clearly and emphatically, as to the sole use to which the [65-Acre Property] may ever be put." *Hoehne*, 870 F.2d at 533. Even if the MDA were considered to be an initial application, Nevada law requires that the Developer file at least one additional application and have that denied before its regulatory takings claims are ripe for adjudication.

47. In sum, Developer chose to file applications to develop each of the three other individual properties at issue in the aforementioned cases, while also filing a MDA. Developer chose not to file any application for the individual 65-Acre Property at issue in this case before instituting this court action, which is specific to the individual 65-Acre Property. The City indicated a willingness to reasonably consider the applications and has granted one of the two individual applications that were proposed, while denying a third due to the then controlling Crockett Order. The City was not, however, given an opportunity to evaluate an application for the individual 65-Acre Property. The court does not find that filing an application for the 65-Acre Property would have been futile. Accordingly, the Court concludes that the Developer's categorical and *Penn Central* regulatory takings claims are

unripe and the Court has no jurisdiction over the claims. The Court grants summary judgment to the City on that ground.

III. The Remaining Issues

48. Because the court finds that the failure to have made an application to the City in regard to the development of the individual 65-Acre Property renders the Developer's claims in the instant case unripe, that decision is fatal to Developer's case and renders further court inquiry unnecessary.

49. Moreover, the court believes that addressing the merits of any of the remaining issues would be unwise as there are three companion cases still pending with similar issues and any ruling by this court on the remaining issues could be construed as having preclusive effect in the other pending court actions, much like the then controlling Crockett Order was previously perceived to have had in both the 35-Acre Property case and the 133-Acre Property case.

ORDER

IT IS HEREBY ORDERED THAT the City's Motion for Summary Judgment is **GRANTED** and Developer's Countermotion is **DENIED** as **MOOT.**

Dated this 29 day of December 2020.

Douglas W. Herndon, District Court Judge

FILED UNDER SEAL

EXHIBIT “B”

FILED UNDER SEAL

EXHIBIT “C”

FILED UNDER SEAL

EXHIBIT “D”

FILED UNDER SEAL

EXHIBIT “E”

FILED UNDER SEAL

EXHIBIT “F”

FILED UNDER SEAL

EXHIBIT “G”

EXHIBIT “H”

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,	)	
vs.	)	CASE NO.: A-17-758528-J
	)	DEPT. NO.: XVI
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.	)	

CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF

NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION

WILLIAM BAYNE

LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021

REPORTED BY: JOHANNA VORCE, CCR NO. 913

JOB NO.: 777801

and sale deed, Fore Stars was the fee simple owner of the golf course; is that correct?

A. That is correct.

Q. Let me advance forward a little bit.

You referenced the Queens- -- Queensridge Towers site and -- and identified on one of the exhibits where -- where the towers were located.

Was there an event related to the development of the Queensridge Towers in which there was a dispute relating to the encroachment of the towers' development onto the Badlands Golf Course?

A. There was.

Q. Okay. And was that dispute -- did that dispute arise as a result of the lease of the golf course property to -- you mentioned American Golf or Senior Tour Players?

A. That is correct.

Q. And specifically, could you describe what -- what happened there?

A. My understanding is that we were developing jointly with Mr. Lowie the Queensridge Towers project, and we had allowed him to start construction on golf course leasehold proper- -- property.

At the time, we had made a mistake in thinking that the golf course would have no problems with us doing that. We were wrong. The golf course did. And that became

BY MR. OGILVIE:

Q. Let me direct your attention to what is Bates numbered TDG Rpt 9, 000009. Second-to-last page of Exhibit. Are you with me?

A. Yes. I'm sorry. Yes.

Q. Okay. Underneath the photographs -- well, the photographs -- actually, let me ask you this: Do the photographs depict what we were just discussing, the area in which the --

A. They do.

Q. -- development of Queensridge Towers encroached into the ground lease of -- held by American Golf?

A. Yes.

Q. Okay. Immediately below the photographs, there is the paragraph, "In 2005, the golf course was being leased by American Golf. Mr. Lowie stated that after the above hole conversion was completed, at a cost of approximately $800,000 to Mr. Lowie's company, American Golf informed the Peccole family that they had broken their lease by changing the course and using a portion of it for the development." Are those two -- two sentences generally accurate?

A. Yes.

Q. Then the next sentence says, "American Golf demanded the Peccole Family buy out the lease for $30 million."

Is -- is that accurate?

A. American Golf told us to vacate the property or buy out the lease.

Q. Okay. "At the same time" -- the next sentence says, "At the same time, there was a cash call for the partners in Queensridge Towers, of which the Peccole family had a 30 percent interest. To" --

A. That is my understanding.

Q. Okay. And then it continues on, "To resolve the issues, Mr. Lowie worked a deal with his then partners to borrow money to cover the Peccole family obligation to American Golf and buy them out of their joint ventures."

Is that accurate?

A. That is not my understanding.

Q. Okay. What is your understanding?

A. We borrowed money against the Suncoast Hotel and paid American Golf.

Q. And what is your understanding based on?

A. The fact that we had a loan and we borrowed money from the Suncoast Hotel and wrote a check to American Golf.

Q. Okay. Let me take you to a page immediately preceding where we were in Mr. DiFederico's report. Specifically the paragraph -- second-to-last paragraph on page 3, which is Bates No. 8. It says, "It was in early 2001, while Mr. Lowie's company was building a home that he

they want to bring into individual pieces of property, we didn't really care. We were getting the purchase price we had agreed to, and we just needed to make sure that they all closed. We didn't want to end up getting rid of one piece of property here but then the bigger pieces didn't get sold.

Q. Okay. So if we -- and these were the only three transactions that -- that you were entering into at this time with Yohan Lowie related entities, correct?

A. No. I thought there was one more at Fort Apache Commons. I could be wrong on timing, but I think it was about the same time.

Q. Okay. As it relates to these three transactions -- and when I say "these three transactions," it's the buyout of the Peccole's interest in Sahara Hualapai LLC, Great Wash Park LLC, and Queensridge Towers LLC -- the total purchase price of the Peccole interest in those three entities was $90 million?

A. Yeah. I think you're missing one. I think there's one more for Fort Apache Commons or Fort Apache Park. I can't remember the names. There's a bunch of different Fort Apaches, but --

Q. Okay.

A. -- that Fort Apache Commons shopping center on the corner of Charleston and Fort Apache, that -- our interest got bought out of that at about the same time, in the same

way.

Q. So "in the same way," meaning through a securities redemption agreement?

A. Yeah, it was -- I believe it was through a securities redemption agreement.

Q. And a related securities purchase agreement involving IDB and Lyton?

A. I do not know if IDB was party to that. That's one of the ones I do not think IDB was party to, nor was Lyton, I don't believe.

Q. Okay. What was the purchase -- what was the purchase price of the Peccole --

A. I couldn't tell you offhand. I -- my guess is it rounded us out to the $100 million approximately.

MR. OGILVIE: Okay. So let's look at the three securities redemption agreements that we have been provided with.

And, Elizabeth, I can represent to you that we have not received a securities redemption agreement related to this -- I think you described it Mr. Bayne as Fort Apache Commons. And we would ask that that document be produced. And --

THE WITNESS: And it may not -- it may not be a securities redemption agreement. It might be a purchase and sale agreement, because I don't believe IDB was party to

A. That -- that is my understanding, yes.

Q. So were you privy to the conversations in which Mr. Lowie and/or his attorney were making the request -- making this request in these negotiations?

A. I don't know how to answer that. I was privy to this negotiation at Sam -- Sam Lionel's office. I was in the room when it happened.

Q. Do you have an understanding as to why Mr. Lowie was making this request for a restrictive covenant?

MR. LEAVITT: Just a quick objection, calls for state of mind.

MR. OGILVIE: No, no, it doesn't. The question is: Do you have an understanding? That's a yes or no.

MR. LEAVITT: I'm simply stating an objection. You can move on.

MR. OGILVIE: Okay.

THE COURT REPORTER: And that was Mr. Leavitt?

MR. OGILVIE: That was Mr. Leavitt.

Q (By Mr. Ogilvie) Do you have an understanding of why Mr. Lowie was making this request for a restrictive covenant?

A. I think he was worried about us developing on the golf course and harming his ability to develop the second phase of the towers in a way that would -- that would hurt the sales of those towers. He didn't want anything that

would damage -- damage that situation for -- for him and IDB. That's why -- actually, you'll see later on when he gives us the parameters on what we can develop, they actually do allow us to develop, just not directly behind the towers.

Q. Okay. And what's the basis of your understanding?

A. This document.

Q. Okay. Was -- did Mr. Lowie express that concern?

A. Yeah. If you go back and read the complaint, they express it in the complaint, too, but yes.

Q. Okay.

A. Under 4.2, it -- it tells you what we can build, so they were clearly okay with us building on the golf course. They just didn't want it to hurt the towers, the second . . .

Q. Okay. And you referred to Section 4.2, which says that Fore Stars may construct up to 30 single story, one bedroom, one bathroom casitas to be used solely for short term rental purposes.

Was that last portion "short term rental purposes," did Mr. Lowie express his concern that if they were used for sale purposes that that may harm sales in Queensridge Towers?

A. He did not express that to me.

Q. Okay.

you to 2018, you still had the restrictive covenant in place.

Q. Right. Okay.

Unless -- unless Phase II of Queensridge Towers was completed and sold out before January 2018, correct?

A. Or if Queensridge Towers allowed you to build something different, either way.

Q. Okay. So you either were restricted to building west of Queensridge Towers Phase II or get approval of Queensridge Towers for building casitas, anything east of that demarcation line, or the sunset -- or the restrictive covenant would sunset either upon the completion and sellout of Queensridge Towers Phase II or ten years; is that right?

A. Yep, that's right. That's my understanding.

Q. There's also a right of first refusal that is Section 3. It talks about BGC Holdings LLC will have a right of first refusal to purchase the Badlands Golf Course -- has a right of first refusal to purchase the Badlands Golf Course until 75 percent of Phase II of Queensridge Towers is completed and 75 -- well, I'm sorry, until Phase II is completed and 75 percent of the units are sold or seven years after this document is executed, which is 2015, correct?

A. Yes. Well, no, it was executed in 2008, but seven years post that would have been 2015.

have -- we don't have a subpoena on it, and so just voluntarily producing it makes me a little uneasy.

MR. OGILVIE: Well, okay.

MR. WILLIAMS: But why don't you guys talk about it after the deposition and then see if you can work it out, and then I'll have it in my office, I'm sure, by no later than Monday. Billy gives me stuff pretty quickly.

BY MR. OGILVIE:

Q. Okay. So this appraisal that you believe was conducted on Fore Stars in 2010, I think that's the year you said, do you have a recollection as to the appraised value of Fore Stars?

A. Yes, I do. It's $3.9 million.

Q. And then --

A. That did not -- let me clarify. That did not include the operational assets, nor did that include the water rights.

Q. Okay.

A. That was just for the -- the fee simple property.

Q. Okay. And I think you indicated that the -- your recollection of the operational assets, essentially the equipment, was -- was less than 2- or $300,000?

A. Yeah. I don't -- I don't remember the exact number, but it -- it didn't -- it didn't strike me when we got it that it was very much money.

attached is a redline draft of the PSA. I am currently sending to Yohan prior to his review." And then attached to that is a redlined copy of the purchase and sale agreement.

Do you recall receiving this red lined copy of the purchase and sale agreement?

A. I'm sorry. Say that again.

Q. Do you recall receiving this?

A. Yeah.

Q. Okay. And at this time, it's a redline of the asset sale of the golf course and the water rights and the equipment, correct?

A. Yeah. This -- this was the other reason we thought about going to the securities agreement.

Q. What -- what specifically are you --

A. There's a lot of red.

Q. Okay. Okay. On page 2 of the redline draft, at paragraph 3, evidently Mr. Lowie didn't agree with the $15 million purchase price; is that correct?

A. Yes. That's what it's -- that's what the strike is showing, yes.

Q. Okay. So he went back to the $12 million that was referenced in the June 12th, 2014 letter of intent?

A. Yes.

And if you go back up, there's a stricken portion that describes your $3 million question that you have. You

just skipped it. Right there.

"The remaining $3 million to be paid in the form a deed of trust secured promissory note with full payment due in 14 months from the date of note with annual interest rate of 6 percent with purchaser to deliver" --

THE COURT REPORTER: I'm sorry. I'm sorry. I can't write that fast.

THE WITNESS: I'm sorry. I was just reading it for me. I apologize.

MR. WILLIAMS: Which section are you reading?

BY MR. OGILVIE:

Q. You're at 3.1?

A. 3.2. That's where that 3 million -- you asked me earlier what it was for, and that -- that's telling you. It was just a note. I'm guessing that it was part of making sure the end cap transferred properly or -- or whatever, but I -- I honestly couldn't -- I can't remember.

I apologize to the court reporter. Sometimes when I talk, I talk really fast.

THE COURT REPORTER: Thank you.

BY MR. OGILVIE:

Q. Directing your attention to page 5 of this redlined purchase agreement, specifically Section 7.2.

The redline says "Upon the election of Queensridge Towers LLC under Section 3(a) and 3(b) of the settlement

agreement and mutual release with Fore Stars Limited, executed June 28, 2013 between Queensridge Towers LLC and Fore Stars Limited," open -- defined as a settlement agreement, "one of the following shall apply."

And then it says that if Queensridge Towers elects to satisfy the Improvement Agreement Financial Obligation, that Fore Stars shall pay Mr. Lowie's entity $1 million within five days of seller's -- of Fore Stars' receipt of the funds from Queensridge Towers, or, B, if Queensridge Towers elects the termination option, then the purchaser shall purchase the additional golf -- additional golf property for $3 million.

So if Queensridge Towers gives you cash, you're going to pay --

A. I'm giving some to Yohan.

Q. You're -- the -- this $12 million purchase price gets reduced to $11 million, right?

A. That's how I read it, yes.

And then if -- if we got the property back, he would pay us the additional $3 million that -- that we had asked for.

Q. Which would take it from 12 million to 15 million?

A. Yes.

Q. Okay.

(Defendant's Exhibit 36 was marked for identification.)

BY MR. OGILVIE:

Q. Directing your attention to what has now been marked as Exhibit 36. It is an e-mail exchange between you, Todd Davis, Yohan Lowie, and Harry -- I'm sorry Henry Lichtenberger on August 26th and August 27th, 2014. The last e-mail in this chain is an e-mail from you to your attorney Mr. Lichtenberger with copy to Todd Davis and Yohan Lowie, and it's -- if we look at the first paragraph --

A. I just read --

Q. I'm sorry?

A. I just read it. You don't have to read it.

Q. Okay. What's this about?

A. This letter is just kind of clarifying and trying to not go through all of the Todd's redlines. It's me being lazy.

Q. Okay. Tell me what paragraphs 2 and 3 mean.

A. Two is if IDB gives us the money instead of the property, we're going to give you anything in addition to the $3 million. And paragraph 3 is if we go ahead and get the land, that he'll give us the $3 million for it. And then also paragraph 3 says we don't care how you break up the transactional price between the property and the water rights, provided that it ends up being the full price.

Q. Okay. So is it fair to say that Fore Stars or the Peccoles -- the Peccoles were valuing that clubhouse improvement or the land on which the clubhouse improvement was going to be developed at $3 million?

A. No. I think it's fair to say that Peccole was going back to that original agreement, Item 11. And -- and we were using their math. I think it was 3 1/2 million. So if they gave us $3 1/2 million, we would give Yohan three and -- or we would keep three and then put half a million over to Yohan or whatever the difference was. And -- and depending on how the lot line adjustment was going to happen, we had talked about with IDB at some point they may have to give us a little money to even everything up. And that's -- that's what this is contemplating.

Q. Okay. But rough -- but it's either the property or $3 million, right?

A. Yeah, basically.

MR. OGILVIE: Okay. Let's take a five-minute break, if we could.

(Off the record.)

BY MR. OGILVIE:

Q. So, Mr. Bayne, let me go back to this appraisal that the family had for estate purposes.

You said that there was an appraisal in roughly 2010, and then there was something followed up later.

agreement of the lawsuit by which, as part of that, Fore Stars gave Mr. Lowie's entity, BGC Holdings, a right of first refusal. And this is talking that this representation and warranty by Mr. Lowie's entity, that the -- that Mr. Lowie is not in default and the restrictive covenant would be deemed terminated in full -- terminated in full and of no further force and effect as of closing. The restrict-- is this the restrictive covenant or is this the -- or I guess it applies to both, the restrictive covenant and --

A. It does apply to both.

Q. Pardon me?

THE COURT REPORTER: I'm sorry?

THE WITNESS: It does apply to both.

BY MR. OGILVIE:

Q. Okay. And it says "Henry to revise."

What does that mean?

A. I think that I kept asking -- I was confused because it was weird to me that we were talking about Mr. Lowie having a first right of refusal when IDB became the owner of Queensridge Towers. And so in some of my negotiations with Noam Ziv, when I was getting back the units and settling up with IDB on the transfer back of the property, it became evident that they did not have the first right of refusal. And that was confusing to me. And so I wanted us to make sure that was all cleaned up and done

before we did this document. And so I brought that up in a meeting, and that's -- that's what this is referencing, we need to clean up that and make sure that that's all put to rest, put to bed, IDB doesn't have those documents, how did Yohan get those documents from IDB, how did IDB not have part of BGC Holdings, blah, blah, blah.

I don't know. Can you the court reporter type blah, blah, blah?

MR. WILLIAMS: Yep.

THE WITNESS: Sorry.

MR. LEAVITT: She can.

BY MR. OGILVIE:

Q. Did you learn who ultimately had that right of first refusal?

A. It came out in another meeting that I had with Yohan. I had gone up to his office. We were trying to get this resolved. And we went to lunch at Leone Cafe. And at Leone Cafe, it came out that that had been transferred to a man named Assaf Lang or Yang or Lang or something. I can't remember his last name. I'd have to go find it. But that caused us to kind of hit -- we had to hit the pause button while we tried to extinguish the first right of refusal because I was under the impression up to that point that that was Mr. Lowie's.

(Defendant's Exhibit 38 was marked

Q. Don't -- don't worry about it. It's fine.

In any event, it was your understanding that the -- that Mr. Lang had terminated his right to -- right to first refusal?

A. That was my understanding, yes.

Q. Okay.

A. Here. I got the waiver letter. Hold on.

It looks just like you -- you're showing it.

Q. Okay.

A. Not signed. It's just a Word doc.

I -- I have on there an e-mail, a subsequent e-mail, from Todd that says, "Looks good to me. Send to Yohan to send to BCG requesting signature." So whatever that's worth.

Q. Okay. Were you having telephone conversations with Yohan Lowie at this point in time regarding this right of first refusal?

A. By November, no. We had kind of just -- we were just finishing this. Once we converted over to a securities purchase agreement, I was less stressed about it.

Q. Okay. Let me direct your attention to Exhibit 42.

(Defendant's Exhibit 42 was marked for identification.)

BY MR. OGILVIE:

Q. "Lot Line Adjustment Agreement" between

Queensridge Towers and Fore Stars. And this is the document that finalized the transfer back to Fore Stars of the two-point-something acres that was the subject of the election for -- to conclude the clubhouse improvements agreement, correct?

A. Yep.

Q. So you -- is it true and accurate to say that as of the date of this document, November 14th, 2014, that you had resolved that Golf Course Clubhouse Improvements Agreement?

A. Yes. And that's -- the purchase price went from 12 to 15.

Q. When you say "the purchase price," you're talking about the purchase price of Fore Stars --

A. Fore Stars.

Q. -- and the water rights?

A. That is correct.

(Defendant's Exhibit 43 was marked for identification.)

BY MR. OGILVIE:

Q. Directing your attention to what's been marked as Exhibit 43. It is an e-mail exchange and "Membership Interest Purchase and Sale Agreement" from -- the e-mail is from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis dated -- what did I say -- November 26th, 2014. The

getting it.

Q. Okay. And so if we go back to Exhibit 43, the feasibility period of 30 days, is it your recollection that that would have expired on or about December 30th or 31st, 2014?

A. Yep, that's my recollection.

Q. Let me direct your attention to what's been marked as Exhibit 46. It's an e-mail exchange between Todd Davis, Henry Lichtenberger, you eventually are included, Kerry Walters, Billy Bayne.

The first e-mail on the second page says, "Henry."

Go to the second page.

A. This is just where they wanted to split the transactions up into two transactions, one for the water rights and one for the golf course.

Q. Okay. And so -- so prior to December 23rd, 2014, it was your understanding you were proceeding with the single membership interest purchase and sale agreement that was executed on or about December 1st, 2014?

A. Yep.

(Defendant's Exhibit 47 was marked for identification.)

BY MR. OGILVIE:

Q. Directing your attention to what's been marked as Exhibit 47. It's an e-mail exchange, again, between

the water rights.

BY MR. LEAVITT:

Q. Okay. Mr. Ogilvie is right, the golf course property, which included the water rights, correct?

A. For those two documents, those two agreements, it was $15 million total, 7 1/2 million for each one.

Q. Okay. I want to take a step back. Okay.

Before the price was separated out, you and Mr. -- the Peccoles and Mr. Lowie had agreed upon $15 million for that global asset, which would be all of the assets that Fore Star owned, including the property, correct?

A. That's correct.

Q. That's what the initial agreement was, correct?

A. Well, the initial agreement was 12 million from the LOI -- yes, we got to 15 million.

Q. Got it.

And then at some later date, that 15 million was separated out into 7.5 million for the land and 7.5 million for the water, correct?

A. That's correct.

Q. Do you know why that was done?

A. They had to put a -- a price -- I don't know why. They had to put a price on the water rights, and -- and it's somewhat arbitrary. Water rights go for various prices based on the types of water rights they are. And so they --

that's the price they ascribed to them.

Q. Okay. And you didn't care how they did that, correct?

A. I didn't even get involved. You saw my e-mail. "Sounds great."

Q. So you wanted -- you just wanted to make sure you got paid your $15 million for the Fore Stars entity, which included the land with the water rights, correct?

A. We needed $15 million for the whole thing, yes.

Q. And did you ever do an analysis to determine how much would be attributed to the land versus how much would be attributed to the water rights?

A. No. Never cared.

MR. LEAVITT: Okay. And, George, you're right. I apologize. George, I was reading from the declaration of Chris Molin- -- Molina. That was -- that was page 1, lines 16 to 17.

THE COURT REPORTER: How do you spell Molina?

MR. MOLINA: M-o-l-i-n-a.

THE COURT REPORTER: Thank you. You.

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. That is my belief.

Q. Mr. Leavitt asked you some questions about valuation, and you said you -- your knowledge is that the value was $15 million total as of December 1st, 2014.

That $15 million total, that's for the -- the -- what ultimately became the purchase agreement for WRL and the purchase agreement of Fore Stars, correct?

A. And the business interest, yes.

Q. Okay. And the business interest.

And then Mr. -- addressing -- addressing Mr. Leavitt's quote of Mr. Molina's declaration, which I'm paraphrasing, Lowie paid -- Mr. Lowie paid less than $4 1/2 million for the golf course.

You know how he came to that, that valuation, right? He took the $7 1/2 million and reduced it by the value of the equipment that you testified was worth no more than 2- or $300,000, so let's -- let's call it $100,000, just for sake of the question. So it reduces the $7 1/2 million purchase price of Fore Stars to 7.4 for the real property. And then the -- the 250 acres that's at issue in these lawsuits doesn't include the property -- the two-point-something acres that you valued at $3 million that you got in the -- in the election by Queensridge Towers on the Clubhouse Improvements Agreement. So reducing that -- call it 7.4 by $3 million, that would be less than $4 1/2

million for the 250-acre golf course, correct?

MS. HAM: I'll make an objection on the record to the form of the question.

MR. LEAVITT: Yeah. And it lacks foundation and assumes evidence not in -- or assumes facts not in evidence. It's speculative, conjectural, and confusing.

Do you have another one?

MR. WILLIAMS: Objection; vague and ambiguous.

BY MR. OGILVIE:

Q. You can answer.

A. I got to learn how this objection stuff works.

I mean, based on what you said, I don't have an argument.

MR. OGILVIE: Okay. I don't have anything further.

FURTHER EXAMINATION

BY MR. LEAVITT:

Q. Okay. Let me ask a question here, though. Because previously I asked you if it was true that Mr. Lowie paid less than $4.5 million for the land, and you said that was not true, correct?

A. It was not. The purchase and sales securities agreement was for 7.5 million.

Q. Okay.

A. But if you want to do the math that way --

Q. Yeah.

A. -- I guess you could elect to do the math that way.

Q. But you -- you don't necessarily agree with that math?

A. When -- when you asked the question: Did he pay me less than $4 1/2 million, I got $7.5 million --

Q. Okay.

A. -- on my end.

MR. OGILVIE: Is that it?

MR. LEAVITT: That's it.

MR. OGILVIE: Thank you, Mr. Bayne. Appreciate it.

THE WITNESS: Thanks guys.

MR. WILLIAMS: Hold on. Let's figure out about this reading and signing little thing that we have to figure out.

MR. OGILVIE: Oh, and -- and there was Exhibit 53. How is that going to get transmitted to the court reporter?

MR. LEAVITT: Elizabeth, does your office want to handle that, transmitting that to the court reporter?

MS. HAM: Yes. Remind me, I'm sorry, what Exhibit No. 53 was.

MR. LEAVITT: That's the -- Jennifer knows which one it is.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, Johanna Vorce, Certified Court Reporter, do hereby certify:

That I reported the taking of the deposition of the witness, WILLIAM BAYNE, commencing on Friday, July 16, 2021, at 9:10 a.m.

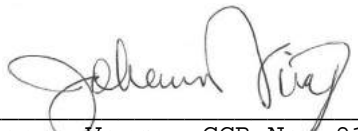
That prior to being examined, the witness was by me duly sworn to testify to the truth.

That I thereafter transcribed my shorthand notes, and the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes.

That a request has been made to review the transcript.

I further certify that I am not a relative or employee of an attorney or counsel of any party involved in said action, nor a relative or employee of the parties involved, nor a person financially interested in said action.

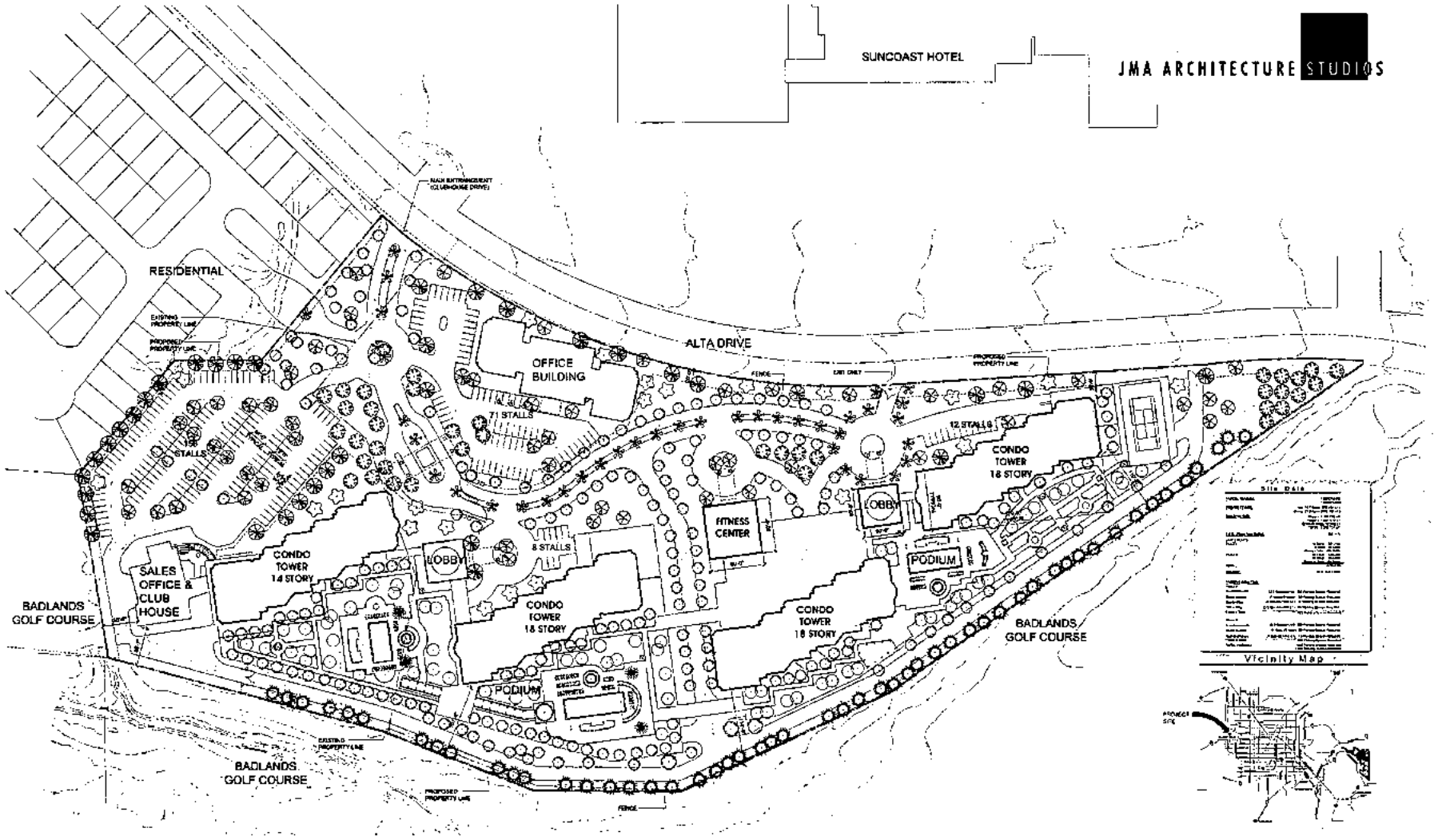
Dated this 27th day of July, 2021.



Johanna Vorce, CCR No. 913

EXHIBIT “I”

JMA ARCHITECTURE STUDIOS



SITE PLAN

QUEENSRIDGE TOWERS

REVISED 5.21.04

PROJECT NO 2003305

DATE: MAY 20, 2004

SCALE: 1" = 60'-0" NORTH

ZON-4205

5-27-04 PC

192

CLV119660

16421

APEN
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov
(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

APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 1: TO EXCLUDE 2005 PURCHASE PRICE

VOLUME 2

The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's Opposition to Plaintiff's Motion in Limine No. 1: To Exclude 2005 Purchase Price.

Exhibit	Exhibit Description	Vol. No.	Bates No.
A	Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in *180 Land Co. LLC v. City of Las Vegas*, Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020)	1	001-038
B	2005 Securities Redemption Agreement (QT)	1	039-056
C	2005 Securities Redemption Agreement (GW)	1	057-069

Exhibit	Exhibit Description	Vol. No.	Bates No.
D	2005 Securities Redemption Agreement (SH)	1	070-077
E	2005 Securities Purchase Agreement (QT)	1	078-115
F	2005 Securities Purchase Agreement (GW)	1	116-141
G	2005 Securities Purchase Agreement (SH)	1	142-165
H	Deposition transcript excerpts of the NRCP 30(b)(6) Designee of Peccole-Nevada Corporation - William Bayne	1	166-191
I	ZON 4205 Site Plan	1	192
J	2005 Badlands Golf Court Improvements Agreement	2	193-230
K	Record of Survey Boundary Line Adjustment	2	231-235
L	Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing	2	236-260
M	Letter of Intent	2	261-263
N	February 27, 2015 email	2	264-265
O	Assessor's Stipulation	2	266-268

DATED this 21st day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of September, 2021, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS TO CITY'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE NO. 2: TO EXCLUDE 2005 PURCHASE PRICE VOLUME 1** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

EXHIBIT “J”

BADLANDS GOLF COURSE CLUBHOUSE
IMPROVEMENTS AGREEMENT

This BADLANDS GOLF COURSE CLUBHOUSE IMPROVEMENTS AGREEMENT (this *"Agreement"*) is made as of the 6th day of September, 2005, by and between **FORE STARS, LTD.**, a Nevada limited liability company with a mailing address c/o Peccole-Nevada Corporation, 851 South Rampart Boulevard, Suite 200, Las Vegas, Nevada 89145 (the *"Company"*) and **QUEENSRIDGE TOWERS LLC**, a Nevada limited-liability company (the *"Towers"*) with a mailing address of 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 with respect to the following facts and circumstances:

RECITALS

A. This Agreement is being made in advance of the Closing of that certain Securities Redemption Agreement (the *"Redemption Agreement"*) by and among the Towers and Queensridge Highrise LLC, a Nevada limited liability company (*"Highrise"*). A draft of the Redemption Agreement is attached hereto as Exhibit "A." The Company and Highrise are affiliated entities. Capitalized terms used but not otherwise defined herein shall have those meanings ascribed to them in the attached draft of the Redemption Agreement.

B. The Company is the owner of the Badlands Golf Course located in Las Vegas, Nevada, which is on land located adjacent to the proposed Queensridge Towers project.

C. Highrise has agreed to have its Securities redeemed by the Towers, in exchange for the items and consideration listed in Article 1 of the Redemption Agreement, including, the agreement that the Company and Towers, prior to the Closing, agree to execute such necessary documentation needed to cause a boundary line adjustment to be recorded with the Office of the Recorder, Clark County, Nevada resulting in the transfer of approximately 5.13 acres from the Company to the Towers, with a portion of such land including the Current Golf Course Clubhouse;

D. Pursuant to this Agreement and independent of any other obligation contained in the Redemption Agreement, Towers shall pay an amount not to exceed $4,000,000 with such monies to be allocated as follows: (i) for the costs and expenses related to the construction of the New Golf Course Clubhouse pursuant to the Plans (defined later), by an entity affiliated with or contracted by Towers, in an amount not to exceed $3,150,000; and (ii) the payment of the Reconfiguration Costs in an amount not to exceed $850,000 (collectively, the *"New Golf Course Clubhouse Costs"*).

NOW, THEREFORE, for and in consideration of the mutual promises, representations and warranties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and Towers agree as follows:

1. Construction of the New Golf Course Clubhouse. The Towers shall, at its sole cost and expense, in an amount not to exceed $3,150,000, construct or cause to be constructed the New Golf Course Clubhouse, in a good and workmanlike manner and substantially in compliance with the Plans (defined later) and all applicable building codes (such obligations, the Towers' *"Construction Obligations"*). The Towers shall endeavor to cause the Construction Obligations to be substantially completed on or before August 1, 2015 (the actual date of such substantial completion of the New Golf Course Clubhouse and Tower's dispatch to the Company of the *"Substantial Completion Notice"* as provided for hereinbelow, the *"Substantial Completion Date"*); provided, however, that the failure of the Towers to do so shall not give rise to any claim of the Company, but rather the

Company's sole remedy resulting therefrom shall be that the term of the Lease (defined later) shall continue until such date that is the later of: (i) thirty (30) days after the Substantial Completion Date; or (ii) the date in which the Company receives a certificate of occupancy for the New Golf Course Clubhouse by all necessary governmental and regulatory authorities and all required licenses (with the exception of the receipt of any gaming licenses for any gaming activities that may be conducted in the new clubhouse) are obtained by the Company to operate the New Golf Course Clubhouse (collectively, *"Substantially Completed"*). In connection with the Tower's discharge of its Construction Obligations: (i) the Company hereby grants to the Towers, its contractors and their subcontractors an easement to enter on to and utilize that portion of the Golf Course for the purpose of constructing the New Golf Course Clubhouse and completing any punch-list items relating thereto with prior notice and consent by the Company, which consent shall not be unreasonably withheld, delayed or conditioned if such activities will not materially affect the Golf Course or its operations; (ii) the Company shall at its sole cost and expense designate an individual who shall have the authority to approve any matter and act for the Company with respect to the New Golf Course Clubhouse and any issue relating to the Construction Obligations (such person as may be changed from time to time by the Company in its discretion, *"Operator's Representative"*); and (iii) Operator's Representative shall make himself or herself reasonably available to the Towers and/or its contractors to facilitate regular communication with the Tower's and/or its contractors relative to the New Golf Course Clubhouse and the Construction Obligations. For purposes of this Agreement, the term *"Plans"* shall mean the actual plans (construction or otherwise), square footage and costs for the New Golf Course Clubhouse as jointly determined by good faith discussions between the Company and Towers after the date of this Agreement, with the express understanding that the proposed costs for the New Golf Course Clubhouse of $3,150,000 are based on the condition that the Company receive an operational and functional clubhouse (with such amenities comparable to what exists in the Current Golf Course Clubhouse as of the date of this Agreement) with similar aesthetics to the Current Golf Course Clubhouse; however, in the event that the Towers desires to cause the New Golf Course Clubhouse to be built following the architectural design of the Queensridge Towers project, then all such costs over and above the $3,150,000 amount shall be at the sole and absolute expense and obligation of the Towers (the *"Additional Payment Requirement"*). In the event that the Substantial Completion Date is not met, then the parties agree that the Towers has the option to deliver the full amount of the New Golf Course Clubhouse Costs and permit the Company to proceed as provided for in the last sentence of Section 3 hereof.

2. Lease. Simultaneously with the execution of this Agreement, Towers shall execute a lease with the Company for the sum of $1 per year to permit the Company to continue to operate the Current Golf Course Clubhouse that is located on a portion of the land included in the Lot Line Adjustment (the *"Lease"*), a form of which is attached hereto as Exhibit 2(a) and incorporated by referenced herein. The Lease will be for an initial term of ten (10) years, with five additional ten (10) year options. However, both parties agree that the Lease will be automatically terminated on the date, which is 30 days after the new clubhouse is completed and a certificate of occupancy and all required licenses (with the exception of the receipt of any gaming licenses for any gaming activities that may be conducted in the new clubhouse) are obtained by Fore Stars to operate the new clubhouse. All parties agree that a Memorandum of Lease, a form of which is attached hereto as Exhibit 2(b) and incorporated by reference herein, regarding the Lease will be recorded, immediately after the Closing, with the Office of the Recorder, Clark County, Nevada simultaneously with the recordation of the Lot Line Adjustment and receipt of written evidence of all approvals, including from HSBC Commercial, Inc., the current lien holder for the property owned by the Company with such lien to be modified to cover all such lands transferred under the Lot Line Adjustment.

3. Pledge of Office Collateral. A condition to the execution of this Agreement and to cause the Lot Line Adjustment to be recorded is the receipt of the Office Collateral as described in

this Section 3. The Towers agrees that simultaneously with the execution of this Agreement, that the Company will received a pledge by Executive Home Builders, Inc., a Nevada corporation (*"EHB"*), an entity affiliated with the Towers, of collateral being identified as Executive's current corporate offices located at 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 which location is subject to a purchase option as outlined in the lease for this location with Hualapai Commons Ltd., LLC, an entity affiliated with Fore Stars (the *"Office Collateral"*) in the form of a letter agreement attached hereto as Exhibit 3 hereof and incorporated by reference herein. The Company agrees that it will terminate the pledge of the Office Collateral upon the earlier of: (i) the completion and payment of such amounts by Towers for the New Golf Course Clubhouse Costs; or (ii) if Towers elects to escrow the then remaining funds required for the New Golf Course Clubhouse Costs or deliver an irrevocable letter of credit covering such amount for a period of time that will end when the new clubhouse is completed and is ready for occupancy. Notwithstanding anything to the contrary in this Agreement, all parties agree that the entire New Golf Course Clubhouse Costs shall become due and immediately payable to the Company upon: (i) a Sale or Transfer Provision; or (ii) a Change of Control in the Company which may occur after the Closing. Should such payments become due and payable resulting from a Sale or Transfer Provision or Change of Control, the pledge of the Office Collateral shall terminate and the Lease will remain in effect until such time as the New Golf Course Clubhouse is completed is constructed and completed with such construction and design of the New Golf Course Clubhouse to be at the sole and absolute discretion of the Company with a date of completion no later than 18 months from receipt of the proceeds of the New Golf Course Clubhouse Costs.

4. Turnover of the New Golf Course Clubhouse and Payment of Construction Obligations. When the New Golf Course Clubhouse has been Substantially Completed, the Towers shall send the Substantial Completion Notice to the Company and the Company shall promptly thereafter inspect the New Golf Course Clubhouse jointly with the Towers and furnish to the Towers and/or the contractor a punch-list of items to be corrected to substantially conform to the Plans. The Towers and/or contractor shall thereafter promptly and diligently cause all such punch-list items as are required to be corrected to substantially conform to the agreed upon Plans. On the Substantial Completion Date: (i) the Company shall take possession of the New Golf Course Clubhouse, subject to any continued use of the New Golf Course Clubhouse and surrounding property by Towers, its contractors, and/or their subcontractors for purposes of completing the punch-list items; (ii) upon such acceptance of possession of the New Golf Course Clubhouse by the Company, Towers shall pay 100 percent (100%) of the costs for the New Clubhouse in an amount not to exceed $3,150,000 to the contractor retained by the Company and Towers to build the New Golf Course Clubhouse plus the Additional Payment Requirement, if applicable; and (iii) the Lease shall terminated in accordance with the terms contained therein.

5. Golf Course Reconfiguration Costs. Prior to the date of this Agreement, the Company, with the consent and approval of the Towers, undertook the obligation to commence certain renovations to the Golf Course to reconfigure certain portions of the Golf Course pursuant to that certain Agreement with Ranger Golf dated July 15, 2005, a copy of which is attached hereto as Exhibit "B" and incorporated by referenced herein. The Company agreed to commence such activities in order to minimize hazards between the Golf Course and the pre-construction and ongoing activities occurring on or about the Queensridge Towers project. Accordingly, Towers agrees to reimburse the Company in an amount not to exceed $850,000 for the Reconfiguration Costs with such payments due and payable to the Company upon the earlier of: (i) completion of Phase II of the Queensridge Towers project; or (ii) the decision by the Towers to not proceed with the completion of Phase II.

6. Miscellaneous. Each of the parties hereto represents and warrants that it has all requisite authority to enter into this Agreement, that this Agreement and its performance hereunder will not violate any order that it is aware of or any agreement or instrument that it is subject to, and that it is not aware of any restriction with respect to the New Golf Course Clubhouse or condition of the property underlying the New Golf Course Clubhouse that would preclude and/or materially inhibit any party's performance under this Agreement. Each of the parties hereto covenants to cooperate (but at no cost to such cooperating party except to the extent expressly provided for herein) with the other party hereto in order to assist such other party in the satisfaction of its obligations under this Agreement. Any notices sent pursuant to this Agreement shall be sent by certified mail, return receipt requested, to the other party at the address set forth above, or to such other address as any party may from time to time advise the other party of, and any such notice shall be deemed to be dispatched as of the postmark date thereof and shall be deemed to be received as of the date three days after such date of dispatch. This Agreement together with the Redemption Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and writings with respect thereto. Each party to this Agreement has reviewed this Agreement and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement. In the event of a conflict between the provisions of this Agreement and the Redemption Agreement, the provisions of this Agreement shall control. Additionally, in the event that all parties do not execute the Redemption Agreement and a Closing does not occur, this Agreement shall nonetheless remain in full force and effect. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Nevada, without regard to its principles of conflict of laws, and the exclusive forum for adjudication of any dispute with respect hereto shall be the federal and state courts located in Clark County, Nevada.

[signatures on next page]

IN WITNESS WHEREOF, the Company and the Seller have caused this Agreement to be signed as of the date first above written.

COMPANY:

FORE STARS, LTD.,
a Nevada limited liability company

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

[redacted]

TOWERS:

QUEENSRIDGE TOWERS LLC
a Nevada limited liability company

By: Executive Homes, Inc., a Nevada corporation, Operations Manager

Yohan Lowie, Chief Executive Officer

EXHIBIT A

Exhibit A

SECURITIES REDEMPTION AGREEMENT

This SECURITIES REDEMPTION AGREEMENT (the *"Agreement"*) dated as of September __, 2005 (the *"Agreement"*) between **QUEENSRIDGE TOWERS, LLC**, a Nevada limited liability company with a mailing address of 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 (the *"Company"*), and **QUEENSRIDGE HIGHRISE LLC**, a Nevada limited liability company with a mailing address c/o Peccole-Nevada Corporation, 851 South Rampart Boulevard, Suite 200, Las Vegas, Nevada 89145 (the *"Seller"*).

WHEREAS, the Company is the owner of approximately 14.5 acres of land on Alta Drive located in Clark County, Nevada and plans to develop a high-rise condominium community to be known as *"One Queensridge Place"* (the *"Queensridge Towers project"*);

WHEREAS, Seller is the owner of 40 Shares (the *"Securities"*) of the Company, pursuant to that certain Operating Agreement of Queensridge Towers LLC, as amended (the "Operating Agreement") which equals 40% of the issued and outstand capital of the Company;

WHEREAS, Seller is owned 55% by the William Peter and Wanda Ruth Peccole Family Limited Partnership, a Nevada limited partnership (the *"FLP"*) and 45% by the Peccole 1982 Trust under Declaration of Trust dated February 15, 1982 (the *"1982 Trust"*) and Peccole-Nevada Corporation, a Nevada corporation (*"PNC"*) serves as the Manager of the Seller, General Partner of the FLP and Trustee of the 1982 Trust;

WHEREAS, Seller wishes to sell, and the Company wishes to purchase the Securities from Seller for the terms and conditions contained in this Agreement;

WHEREAS, Fore Stars Ltd., a Nevada limited liability company (*"Fore Stars"*) is an entity that is affiliated with the Seller and is the owner of the Badlands Golf Course (the *"Golf Course"*), which is on land located adjacent to the property that will become Queensridge Towers;

WHEREAS, the Company and Fore Stars, prior to the date of this Agreement, entered into that certain Improvements Agreement (the *"Improvements Agreement"*) causing a boundary line adjustment to be recorded with the Office of the Recorder, Clark County, Nevada before the Closing resulting in the transfer of approximately 5.13 acres from Fore Stars to the Company (the *"Lot Line Adjustment"*) which land included the current clubhouse of the Golf Course (the *"Current Golf Course Clubhouse"*);

WHEREAS, Fore Stars, the owner of the federally trademarked name "Queensridge" pursuant to the U.S. Patent and Trademark Office, Serial Number 78389732 and Registration Number 2959710, Registration Date June 7, 2005, has agreed to grant the Company a license to use this name for the Queensridge Towers project (the *" License Agreement"*);

WHEREAS, the parties hereto wish to provide for the implementation of their respective rights and obligations in connection with the redemption of the Securities by the Company, the Lot Line Adjustment and License Agreement each as contemplated hereby.

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, warranties, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
PURCHASE OF THE SECURITIES

1.1 Agreement to Purchase and Sell. The Company hereby agrees to purchase the Securities and Seller hereby agrees to sell the Securities to the Company for an aggregate purchase price of $28,387,167 (the *"Purchase Amount"*). The Purchase Amount includes deferred consideration equaling the value of the four (4) condominium units in Queensridge Towers project being delivered pursuant to this Agreement as described in Section 1.3 (with such value being set at $5,387,167 and allocated $2,962,941.85 to the FLP and $2,424,225.15 to the 1982 Trust) along with a cash payment of $23,000,000 (the *"Cash Purchase Amount"*). The Cash Purchase Amount is payable at closing and shall be allocated and paid as follows:

(a) $4,400,000 in cash at the Closing (defined later) via wire transfer of immediately available funds as follows:

Receiving Bank:	Nevada State Bank
Branch:	230 Las Vegas Boulevard, South Las Vegas, Nevada 89101
Routing (ABA Number)	[redacted]
Account Number:	
Account Name:	Peccole Family Limited Partnership

(b) $3,600,000 in cash at the Closing (defined later) via wire transfer of immediately available funds as follows:

Receiving Bank:	Nevada State Bank
Branch:	230 Las Vegas Boulevard, South Las Vegas, Nevada 89101
Routing (ABA Number)	[redacted]
Account Number:	
Account Name:	Peccole 1982 Trust

(c) $12,000,000 in cash at the Closing (defined later) via wire transfer of immediately available funds as follows:

Receiving Bank:	Nevada State Bank
Branch:	230 Las Vegas Boulevard, South Las Vegas, Nevada 89101
Routing (ABA Number)	[redacted]
Account Number:	
Account Name:	Fore Stars, Ltd.

(d) Seller and Company agree that the remaining $3,000,000 of the Cash Purchase Amount shall be simultaneously deposited into an Escrow Account (the *"Escrow Account"*) with First American Title Company of Nevada, 900 South Pavilion Center Drive, Suite 160, Las Vegas, Nevada 89144, Attention: [redacted] (the *"Escrow Agent"*) and as further described in Section 1.3 hereof;

1.2 Escrow Account. While the monies remain in the Escrow Account, the Seller (including certain officers and directors of PNC) agrees to, among other things: (i) submit and process for entitlements, plans (with all such costs and expenses to be paid by the Company) to the

City of Las Vegas, Nevada for the development of a townhouse community to be constructed on the southwest corner of South Rampart Boulevard and Alta Drive which site will be east of the Queensridge Towers project (the *"Townhouse Project"*); and (ii) assist the Company to reasonably oppose any proposed developments that would affect or impact the Queensridge Towers project, including a development that has been proposed by affiliates of Triple 5 Group, Ltd. that is proposed to be located on the southeast corner of South Rampart Boulevard and Alta Drive. The Company and Seller agree that that the amounts deposited into the Escrow Account shall be released to the Seller (or its designee) upon the receipt of written notice from both the Company and the Seller delivered to Escrow Agent, with the Escrow Agent hereby being irrevocable instructed, without any further action or writing on the part of either party to this Agreement, to release the entire balance of the Escrow Account, plus all earnings thereon, to the Seller on the earlier of: (i) the dates in which both all of the approvals are obtained for the proposed townhouse community and the proposed Triple 5 condominium project does not receive the necessary approvals of the City of Las Vegas, Nevada; or (ii) the closing of a transaction which results in either: (y) a sale or transfer of any portion of the property (with the exception of the transfer of title for individual condominium units from the Company to unit owners at the Queensridge Towers project or as it relates to matters of governmental or regulatory requests as well as utility easements) owned by the Company to unrelated third parties or to then members of the Company that are not deemed to be members of the Company existing as of the date of this Agreement, including the entities comprising the Israeli Transaction (defined later) (the *"Sale or Transfer Provision"*); or (z) a Change of Control of the Company which may occur after the Closing. Assuming that the Escrow Account was not closed pursuant to the provisions of the previous sentence, then both parties agree and consent that the amounts deposited into the Escrow Account shall be released to the Seller (or its designee) upon receipt of written notice from the Seller delivered to Escrow Agent with the Escrow Agent hereby being irrevocable instructed, without the need for any joint written instructions or any further action or writing on the part of any of the parties, to release the entire balance of the Escrow Account, plus all earnings thereon on May 1, 2007. For purposes of this Agreement, a *"Change of Control"* shall mean, after the Closing, if the Company causes the issuance of any additional equity interests and/or allows or consents to the transfer, assignment or hypothecation of any ownership interest by a member in the Company in the aggregate in excess of thirty-five percent (35%) of such interests, as the same may be constituted as of the date of this Agreement, but shall not be triggered upon the occurrence of any of the following events: (i) the making by the Company of any general assignment for the benefit of creditors; (ii) the filing by or against the Company as being adjudged bankrupt or of a petition being filed for reorganization or arrangement under any law relating to bankruptcy; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Company's assets; (iv) the attachment, execution or other judicial seizure of substantially all of the Company's assets, (v) any hypothecation by a member of the Company of its interest in the Company, in connection with any financing transaction related to the Queensridge Towers development; or (vi) any transfer or purchase of interests by members of the Company existing as of the date of this Agreement, including the entities comprising the Israeli Transaction, by Yohan Lowie or entities affiliated with Mr. Lowie , provided, however, that any party assuming control of the Company resulting from the items described in (i) - (v) of this sentence agrees to be bound to the provisions of this Agreement. In the event that the Company does not advance the costs and expenses for the Townhouse Project, then the Seller shall be immediately relieved of it obligations and the entire balance of the Escrow Account shall be immediately released to the Seller.

1.3. Condominium Units. At Closing, the Company shall deliver binding and fully executed purchase agreements (a form of the Purchase Agreement is attached hereto as Exhibit 1.3 and incorporated by reference herein) by all necessary parties of the Company (the *"Condominium Purchase Agreement"*) in order to cause the transfer and sale of the units identified in this Section 1.3, in a fully complete and built-out condition (with the standard finishes being

offered in similar units) with no costs to be paid by the Unit Owners identified in this Section 1.3 herein (other than pre-paid association fees and applicable sales taxes, if any from such association fees, insurance payments and property taxes related to such units that may be required to be paid at the closings by other purchasers of units in Queensridge Towers). The actual closing date for the transfer of ownership of these units from the Company to the unit owners identified below shall be simultaneously on the date of closing for the last unit in Phase I in the Queensridge Towers project from the Company to the purchaser of such condominium unit. The Condominium Purchase Agreement shall be completed showing that the entire sales price as being paid in full be each Unit Owner listed below. Once issued, the Condominium Purchase Agreements are binding obligations of the Company and will treated like all other purchase agreements issued by the Company to other purchasers of units in the Queensridge Towers project and in the event of Change of Control or sale of the Company, the Company will specifically cause that each Condominium Purchase Agreement will be remain in full force and effect and not subject to revocation, revision and/or adjustment. The Seller and each party identified as a Unit Owner agree that the right to receive their selected unit is expressly subject to the construction, by the Company or any other party assuming or purchasing its rights to construct Phase I of the Queensridge Towers project. In the event that construction for the Queensridge Towers project is not completed by any such party, or in the event any party has personal recourse against Yohan Lowie, Vickie DeHart, Paul DeHart or their affiliated entities, arising from any guaranty or letter of credit or bond or similar instrument relating to the project which is reduced to an entered judgment or order in excess of $15 million, after any construction has commenced on the Queensridge Towers project, then the Condominium Purchase Agreements shall be deemed terminated in full and of no further force or effect.

Unit Owner	**Selected Unit**	**Approximate Square Footage**
Bruce and Laurie Bayne	Unit T Garden Level	3,933 total square footage inclusive of an approximate 626 square foot casita
Larry and Lisa Miller	Unit H, 14th Floor, Tower 1	4,792 square footage
Wanda L. Peccole	Unit E-1 2nd floor, Tower 1	2,638 square footage
Leann P. Goorjian	Unit E-1, 8th Floor, Tower 1	2,638 square footage

1.4 Lot Line Adjustment. Prior to the Closing, both parties executed the Improvements Agreement causing Fore Stars to execute all such necessary documentation requested by the Company in order to cause the Lot Line Adjustment in exchange for a commitment by the Company to build a new clubhouse for the Golf Course on land owned by the Golf Course (the *"New Golf Course Clubhouse"*) on the conditions outlined in the Improvements Agreement. Pursuant to the Improvements Agreement, Fore Stars received a pledge by Executive Home Builders, Inc., a Nevada corporation (*"EHB"*), an entity affiliated with the Company, of collateral being identified as Executive's current corporate offices located at 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 which location is subject to a purchase option as outlined in the lease for this location with Hualapai Commons Ltd., LLC, an entity affiliated with Fore Stars (the *"Office Collateral"*); and (ii) the requirement under the Improvements Agreement that obligated the Company, in an amount not to exceed $4,000,000, of which a maximum of $3,150,000 (unless the Additional Payment Requirement (as defined in the Improvements Agreement applies) shall be used to cover the construction costs for the New Golf Course Clubhouse (the *"New Golf Course Clubhouse Payment"*) and the remaining $850,000 payable to Fore Stars for all costs and expenses related to the reconfiguration of certain of the holes on the Badlands Golf Course due to the construction of the

Queensridge Towers project (the *"Reconfiguration Costs"* along with the New Golf Course Clubhouse Payment, collectively, the *"Golf Course Payments"*) and (iii) an executed and approved Lease (as defined in the Improvements Agreement). Notwithstanding anything to the contrary in this Agreement, all parties agree that the entire New Golf Course Clubhouse Payment will be become due and immediately payable to Fore Stars upon: (i) the occurrence of a Sale and Transfer Provision; or (ii) a Change of Control. Should such payments become due and payable resulting from a sale, transfer or Change of Control, the Office Collateral will be released and the Lease will remain in effect until such time as the New Golf Course Clubhouse is constructed and completed with such construction and design to be at the sole and absolute discretion of Fore Stars with a date of completion no later than 18 months from receipt of the proceeds of the Golf Course Clubhouse Payment.

1.5 License Agreement to Use the Queensridge Name. At Closing, Fore Stars will enter into the License Agreement granting the Company the right to use the "One Queensridge Place" name, at no cost to the Company, a form of which is attached hereto as Exhibit 1.5 and incorporated by reference herein. However, the License Agreement is subject to revocation by Fore Stars, if prior to transfer of title to purchasers of the condominium units in Queensridge Towers project (the *"Event"*), there is a Change of Control in the Company, to entities or individuals that are deemed to be unacceptable to the Fore Stars in their reasonable discretion. Seller agrees that upon the occurrence of the Event, the License Agreement shall become irrevocable. It is agreed that any transaction with Triple Five Group, Ltd., its affiliates or shareholders, except as it relates the purchase of units in Queensridge Towers, shall be deemed to be in the reasonable discretion of the Seller to terminate the License Agreement before the Event.

1.6 Services of Robert Wallace, Director of Special Projects, Peccole-Nevada Corporation. The Company, along with Great Wash Park LLC (the *"Wash"*) and Sahara Hualapai LLC (*"SH"* along with the Wash, collectively, the *"Affiliated Entities"*) shall collectively pay to PNC (or a related entity) a sum equal to $200,000 per year for the use, not to exceed 40 hours per week, of the services of Bob Wallace related to projects being developed by the Company and the Affiliated Entities for a period not to exceed four (4) years from the Closing or September 14, 2009. It is agreed by all parties that the provisions of this Section 1.6 does not create an employment contract between PNC, the Company or the Affiliated Entities (or related entities of such parties) and Mr. Wallace, but rather Mr. Wallace will continue to serve as an at-will employee of PNC (or a related entity). In the event that Mr. Wallace's employment with PNC (or a related entity) shall terminate (whether by agreement of the parties or upon the death or disability of Mr. Wallace) or resulting from the decision of the Company and Affiliate Entities to no longer request the services of Mr. Wallace, then the yearly payment due and payable under this Section 1.6 shall be adjusted to reflect the period of time during the year in which Mr. Wallace provided such services to the Company and Affiliated Entities and overpayment to PNC by the Company and Affiliated Entities shall be refunded. The Company, along with the Affiliated Entities shall deliver a payment equal to the first year at the Closing and will deliver the subsequent payments as follows: (i) September 14, 2006; (ii) September 14, 2007; and (iii) September 14, 2008. If such payment is not received within five (5) days after the scheduled payment date, then the provisions of this Section 1.6 shall terminate and be of no further force or effect. While the provisions of this Section 1.6 remain in place, the Company and Affiliated Entities agrees to indemnify and hold harmless both Mr. Wallace and PNC (and all officers, directors, affiliates, heirs and assigns), except for the intentional acts of either Mr. Wallace or PNC, its officers, directors, affiliates, heirs and assigns, in full for any and all services received by it hereunder.

1.7 Closing. The closing of the purchase and sale of the Securities (the *"Closing"*) shall take place on September ___, 2005 at 4:00 p.m. at the offices of Sklar Warren Conway & Williams, LLP, 8363 West Sunset Road, Suite 300, Las Vegas, Nevada 89113 or such other place and at a

time as the parties mutually agree. At the Closing: (i) the Company shall cause the Cash Purchase Amount to be paid as provided for in Section 1.1; (ii) the Escrow Account has been established and funded by the Company; (iii) the Condominium Purchase Agreements have been executed and delivered by the Company; (iv) the payment for the first year of services for Bob Wallace is funded and ready to be paid to PNC; and (v) such other documents and/or agreements required under this Agreement to be delivered at the Closing. Once the terms and conditions outlined in Article I of this Agreement are satisfied, Seller shall have no right to vote any or a portion of the Securities. The term *"Closing"* as used in this Agreement shall assume that the proposed transaction by and among the Company, IDB Group USA Investments, Inc., a Delaware corporation and Lyton US Partnership, a Delaware general partnership (the *"Israeli Transaction"*) is deemed to have occurred simultaneously with the transactions contemplated herein and shall not trigger the rights granted to the Seller as it relates to a Change of Control.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrant to the Company as follows:

2.1 Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

2.2 Authority Relative to this Agreement. The Seller has full power (legal and otherwise) and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The Board of Managers of the Seller has duly and validly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. No other proceedings on the part of the Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Seller and, assuming due and valid execution by the Company, constitutes a valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms.

2.3 Ownership. Seller is the sole record holder and beneficial owner of the Securities. The Securities are free and clear of any lien, pledge, mortgage, charge, security interest or encumbrance of any kind. The Seller is not a party to any agreement or arrangement that will impose any such encumbrance upon the Securities as a result of the transaction contemplated hereby.

2.4 Conflicts, etc. Neither the execution, delivery nor performance of this Agreement by the Seller will (a) conflict with, or result in a breach of, or constitute a default under, or result in violation of, any agreement or instrument to which the Seller is a party or by which the property of the Seller is bound or (b) result in the violation of any applicable law or order, judgment, writ, injunction, decree or award of any court, administrative agency or governmental authority.

2.5 Resignations. The Seller shall cause to be delivered to the Company at the Closing written resignations from Larry A. Miller and J. Bruce Bayne, both of whom serve on the Company's Board of Managers as the designees of the Seller as provided for in the Operating Agreement.

2.6 No Disparagement; Press Releases and Public Announcements. The Seller agrees that it will not engage in any conduct that is injurious to the Company's reputation and interests, including, but not limited to, publicly disparaging (or inducing or encouraging others to publicly disparage) the Company or any of the Company's managers, officers, employees or agents. In addition, Seller shall not issue any press release or make any public announcements relating to the

subject matter of this Agreement without the prior written approval of the Company, which approval shall not be unreasonably withheld or delayed unless required pursuant to federal, state or local laws or regulations.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Seller as follows:

3.1 Organization. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

3.2 Authority Relative to this Agreement. The Company has full power (legal and otherwise) and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The Board of Managers of the Company has duly and validly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. No other proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming due and valid execution by the Seller, constitutes a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

3.3 Conflicts, etc. Neither the execution, delivery nor performance of this Agreement by the Company will (a) conflict with, or result in a breach of, or constitute a default under, or result in violation of, any agreement or instrument to which the Company is a party or by which the property of the Company is bound or (b) result in the violation of any applicable law or order, judgment, writ, injunction, decree or award of any court, administrative agency or governmental authority.

3.4 Israeli Transaction. As of the date of this Agreement, the Company, to the best of its knowledge, does not believe or have reasons to believe that Triple 5 Group, Ltd. or any of its shareholders or affiliates are deemed to be a majority owner, controlling shareholder or partner of any entity included within the definition of the Israeli Transaction.

3.5 No Disparagement; Press Releases and Public Announcements. The Company agree that they will not engage in any conduct that is injurious to either Seller's reputation and interest, including, but not limited to, publicly disparaging (or inducing or encouraging others to publicly disparage) the Seller, or any of the Seller's affiliated entities, managers, members, officers, employees or agents. In addition, the Company shall not issue any press release or make any public announcements relating to the subject matter of this Agreement without the prior written approval of the Seller, which approval shall not be unreasonably withheld or delayed unless required pursuant to federal, state or local laws or regulations.

ARVICLE IV
RELEASE

Upon the full and complete satisfaction of this conditions outlined in Article I hereof, the Company and Seller hereby remise, release, acquit, satisfy and forever discharge each other from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, liens, damages, judgments, executions, claims, for settling all past accounts (except for any and all obligations (financial or otherwise) of the Company or Seller and

their respective affiliates discussed in this Agreement) and demand whatsoever, in law or in equity, which either party ever had, now has, or which any personal representatives, successor, heir or assign of either party, hereafter can, shall or may have, against each other, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world up to and including the date of this Agreement, whether known or unknown, liquidated or unliquidated, contingent or noncontingent, except for the obligations and conditions to be performed pursuant to this Agreement.

In addition, the Seller acknowledges that the amounts to be paid to them, including the condominium units described in Section 1.3 and the Golf Course Payments, for the Securities are the full payments due to them and that they are not entitled to any back-end profits, participation or other additional consideration as a result of this transaction or for future transactions of the Company and/or its projects, including the Israeli Transaction. The Seller further acknowledges that this transaction is separate from any concurrent or subsequent transaction regarding the Company, its members and/or its projects and the Seller shall have no right to any information with respect to such transactions, given that such transactions may be different, and in certain respects materially superior to the Company and its members and in other respects materially inferior for the Company and/or its members.

ARVICLE V
INDEMNIFICATION

5.1 Survival of Representations. Article V (to the extent not otherwise cancelled as provided therein) and all representations and warranties made by the parties pursuant to this Agreement shall survive the execution and delivery of this Agreement. All agreements and covenants contained in this Agreement shall survive as set forth in Section 5.3 hereof.

5.2 Agreement to Indemnify. Subject to the terms and conditions of this Article V:

(a) The Company hereby agrees to indemnify, defend and hold harmless Seller and its managers, members, officers, directors, shareholders, agents, representatives, successors and assigns (each, a *"Company Indemnified Party"*) from and against all demands, claims, actions, causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties and reasonable attorneys' fees and expenses (collectively, *"Damages"*), directly asserted against, resulting to, imposed upon or incurred by a Company Indemnified Party at any time after the date hereof, by reason of, resulting from or in connection with any breach of any representation of the Company contained in Article III hereof or with respect to the business of the Company, including the construction, development and sale of units in the Queensridge Towers project from the date of formation of the Company as well relating to the services being provided to the Company from PNC and/or Bob Wallace as described in Article 1 hereof (collectively, the *"Company Claims"*), except for the intentional acts of either Mr. Wallace or PNC, its officers, directors, affiliates, heirs and assigns, related thereto.

(b) The Seller hereby agrees to indemnify, defend and hold harmless the Company and its managers, officers, directors, shareholders, agents, representatives, successors and assigns (each, a *"Seller Indemnified Party"*) from and against all Damages, directly asserted against, resulting to, imposed upon or incurred by a Seller Indemnified Party at any time after the date hereof, by reason of, resulting from or in connection with any breach of any representation of the Seller contained in Article II hereof (the *"Seller Claims"*).

5.3 Conditions of Indemnification. The obligations and liabilities of the Seller Indemnifying Party or the Company Indemnifying Party, as the case may be (the *"Indemnifying*

Party"), under Section 5.2 with respect to the Company Claims or the Seller Claims, as the case may be (the "*Claims*"), made by third parties shall be subject to the following terms and conditions:

(a) The Company Indemnified Party or the Seller Indemnified Party, as the case may be (the "Indemnified Party"), will give the Indemnifying Party prompt notice of such Claim, and the Indemnifying Party will assume the defense thereof by representatives chosen by it and reasonably satisfactory to the Indemnified Party; provided, however, that the failure to provide prompt notice shall not relieve the Indemnifying Party of its obligations hereunder unless, and only to the extent, such failure shall have materially and adversely prejudiced the defense any Claim.

(b) If the Indemnifying Party, within a reasonable time after notice of any such Claim, fails to assume the defense thereof, the Indemnified Party shall (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Claim at any time prior to the settlement, compromise or final determination thereof.

(c) Anything in this Section 5.3 to the contrary notwithstanding, (i) if there is a reasonable probability that a Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, at its own cost and expense, and to compromise or settle such Claim with the consent of the Indemnifying Party and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect of such Claim.

5.4 Remedies. The remedies provided herein shall be cumulative and shall not preclude assertion by any party hereto of any other rights or the seeking of any other remedies against any other party hereto.

ARTICLE VI
MISCELLANEOUS PROVISIONS

6.1 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of Seller and the Company at any time with respect to any of the terms contained herein.

6.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 6.2.

6.3 Survival. All of the agreements and covenants contained in this Agreement shall survive for the period indicated in any such covenant or agreement or, if no period is indicated, forever until satisfied.

6.4 Investigations. The respective representations and warranties of Seller and the Company contained herein shall not be deemed waived or otherwise affected by any investigation made by any party hereto.

6.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses listed above (or at such other address for a party as shall be specified by like notice, provided that notices of a change of address shall be effective only upon receipt thereof):

6.6 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, nor is this Agreement intended to confer upon any other person except the parties hereto any rights or remedies hereunder.

6.7 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Nevada (regardless of the laws that might otherwise govern under applicable Nevada principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be initiated and tried exclusively in the state and federal courts located in the Clark County, Nevada.

6.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed via facsimile.

6.9 Neutral Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. As used in this Agreement, the term "person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, a limited liability company, an unincorporated organization and a government or any department or agency thereof. Each party to this Agreement agrees that the provisions contained herein shall not be construed in favor of or against any party because that party or its counsel drafted this Agreement, but shall be construed as if all parties prepared this Agreement, and any rules of construction to the contrary are hereby specifically waived. The terms of this Agreement were negotiated by the parties hereto and each party has read and reviewed the provisions of this Agreement and has had, or has had the opportunity to have, separate counsel read and review this Agreement.

6.10 Entire Agreement. This Agreement, including the documents referred to herein, embodies the entire agreement and understanding of the parties hereto in respect of the purchase of the Membership Interest. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Company and the Seller have caused this Agreement to be signed as of the date first above written.

COMPANY:

QUEENSRIDGE TOWERS LLC
a Nevada limited liability company

By: Executive Homes, Inc., a Nevada corporation, Operations Manager

Yohan Lowie, Chief Executive Officer

SELLER:

QUEENSRIDGE HIGHRISE LLC
a Nevada limited liability company

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

[redacted]

The undersigned hereby joins in the execution of this Agreement for the provisions outlined in Section 1.4 hereof.

Executive Home Builders, Inc.,
a Nevada corporation

Yohan Lowie, Chief Executive Officer

The undersigned hereby joins in the execution of this Agreement for the granting of the License Agreement described in Section 1.5 hereof.

FORE STARS, LTD.
a Nevada limited liability company

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

[redacted]

The undersigned hereby joins in the execution of this Agreement for the provisions outlined in Section 1.6 hereof.

Peccole-Nevada Corporation,
a Nevada corporation

[redacted]

The undersigned hereby joins in the execution of this Agreement to consent to and approve the purchase of the Securities by the Company.

QUEENSRIDGE TOWERS INVESTMENTS LP
a Nevada limited partnership

By: _____
Its: _____

EXECUTIVE QT HOLDINGS LLC
a Nevada limited liability company

By: _____
Its: _____

EXHIBIT 1.3

EXHIBIT 1.5

Exhibit 1.5

EXHIBIT 2(a)

Exhibit 2(a)

FORM OF LEASE

THIS LEASE (the *"Lease"*) made and entered into this ____ day of September, 2005 by and between the **QUEENSRIDGE TOWERS LLC**, a Nevada limited liability company, having an address c/o Executive Homes Builders, Inc., 9755 West Charleston Blvd., Las Vegas, Nevada 89117 (*"Landlord"*), and **FORE STARS LTD.**, a Nevada limited liability company having an address at c/o Peccole-Nevada Corporation, 851 S. Rampart Blvd., Suite 220, Las Vegas, Nevada 89145 (*"Tenant"*).

W I T N E S S E T H

WHEREAS, Tenant is the owner and operator of the Badlands Golf Course (the *"Golf Course"*);

WHEREAS, Tenant executed that certain Lot Line Adjustment for 5.13 acres of even date herewith (the *"Parcel"*) with Landlord which caused the transfer of the property, a portion of such land includes the existing clubhouse for the Golf Course (the *"Current Clubhouse"*) to the Landlord; and

WHEREAS, Landlord and Tenant (or entities affiliated with such parties) entered into that certain Badlands Golf Course Improvements Agreement, which will among other things, cause the Landlord to pay for the construction of a new clubhouse (the *"Improvements Agreement"*) on property entirely owned by the Tenant and located on the Golf Course (the *"New Clubhouse"*).

NOW, THEREFORE, for and in consideration of the premises, of the mutual promises and covenants contained herein, and for good and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agrees as follows:

ARTICLE 1
BASIC PROVISIONS

SECTION 1.1. Leased Premises. Landlord does hereby demise and lease unto Tenant and Tenant does hereby lease from Landlord, subject to and with the benefit of the terms, conditions, covenants and provisions of this Lease, the Current Clubhouse. Landlord further grants Tenant, subject to the provision of this Lease, the exclusive right to operate, maintain, receive and retain all of the income and profits from the Current Clubhouse. As used herein, the term *"Leasehold Estate"* means Tenant's interest under this Lease. The Parcel, including the Current Clubhouse is leased to Tenant in the condition existing on the date hereof, subject to all matters of record, including all regulations and other restrictions of governmental bodies having jurisdiction over the Parcel, all taxes, assessments, water and other charges.

SECTION 1.2. Term. The term of this Lease (the *"Initial Term"*) shall commence on the date that the Lot Line Adjustment and a Memorandum of Lease covering this Lease are both recorded with the Office of the Recorder, Clark County, Nevada (the *"Commencement Date"*) and end ten (10) years after the Commencement Date, plus five (5) ten (10) year options as provided for in Section 1.3. However, both parties agree that the Lease will be automatically terminated on the date, which is thirty (30) days after the New Clubhouse is completed with funds resulting from the Improvements Agreement, a certificate of occupancy is issued to the Tenant by the City of Las Vegas, Nevada to operate and conduct activities in the New Clubhouse and all required licenses are obtained (with the exception of the receipt of any

gaming licenses for any gaming activities that may be conducted in the new clubhouse) by Fore Stars which Fore Stars agrees that it will diligently pursue when needed in order to commence operations of the New Clubhouse.

SECTION 1.3. Option to Extend. Unless the Lease is terminated earlier as provided in Section 1.2 hereof, Tenant is granted five (5) successive options (each, an *"Extension Option"*) to renew and extend the Initial Term for additional consecutive periods of ten (10) years (each, an *"Extension Term"*). An Extension Option shall be exercised by Tenant giving Landlord written notice thereof at least sixty (60) days prior to the end of a Term under this Lease (the *"Extension Notice"*). During an Extension Term, except as expressly provided in this Lease, all terms and conditions of this Lease shall remain unchanged and in full force and effect. The Initial Term, as extended by the Extension Terms, is referred to herein as the *"Term"*.

SECTION 1.4. Permitted Uses; Exclusive Use. Tenant shall use the Parcel for the operation of the Current Clubhouse and for all other uses or purposes arising from the ownership and operation of the Golf Course.

ARTICLE 2
MAINTENANCE AND REPAIR OF IMPROVEMENTS

SECTION 2.1. Maintenance and Repairs. Tenant shall keep the Current Clubhouse in good order, repair and condition and shall make such alterations and improvements as may from time to time be necessary to maintain the existing operational standards of the Current Clubhouse. Tenant shall make any and all repairs, alterations, and replacements thereto which are necessary to maintain the Current Clubhouse in such order, repair and condition or in such better order, repair and condition as may be required by any statute, law ordinance, by-law, regulation, code or requirement of any regulatory authority (collectively, *"Regulations"*).

SECTION 2.2. Compliance with Law. Tenant shall maintain in full force and effect all licenses, permits, and approvals appropriate to or required under any Regulation for the use (including the commencement of gaming activities in certain portions of the Current Clubhouse), operation and maintenance of the Current Clubhouse. Tenant shall ensure that the Current Clubhouse, and all work thereon and use thereof shall conform to applicable Regulations.

SECTION 2.3. Signage. Tenant may establish appropriate signage for purposes of identifying and promoting the Current Clubhouse. Signage shall not exceed the maximum allowed by the City of Las Vegas, Nevada and shall be approved by Landlord; such approval shall not be unreasonably withheld. For purpose of this Section 2.3, all current signage located on or about the Current Clubhouse is deemed approved by the Landlord.

ARTICLE 3
RENT

SECTION 3.1. Rent. Tenant shall pay to the Landlord rent for the Parcel of $1.00 annually. Tenant shall deliver the rent payment for the first year of this Lease upon the mutual execution of this Lease and shall deliver the annual rent payment within or before the five (5) days before the anniversary date of this Lease for the remainder of the Term of this Lease.

SECTION 3.2. Rights to Cure and Enforcement Costs. If either party fails to timely perform any of its obligations or pay any monies to third parties required hereunder, the other party may, but need not, perform or pay the same and the non-performing party shall reimburse

the cost thereof within ten (10) days after demand. The non-performing party shall also pay all costs incurred by the performing party, including reasonable attorney's fees, in enforcing such obligations.

SECTION 3.3. Method of Payment. Rent shall be payable without demand, notice, set-off or counterclaim at Landlord's address first set forth above or at such other address as may from time to time be established by notice from Landlord to Tenant on the date(s) identified in Section 3.1.

SECTION 3.4. Net Lease. This Lease shall be deemed and construed to be a "triple net lease" and except as herein otherwise expressly set forth, Tenant shall pay to Landlord, absolutely net throughout the Term, the Rent, free of any charges, assessments, impositions or deduction of any kind and without abatement, deduction or set off.

ARTICLE 4
TAXES AND UTILITIES

SECTION 4.1. Taxes and Assessments. As used herein, *"Property Taxes"* shall mean all real estate taxes, personal property taxes, sewer and water charges, assessments, any tax upon or measured by or based in whole or in part upon, the Current Clubhouse, rent therefrom, or activities thereon, and other similar governmental charges, and impositions, general and special, ordinary and extraordinary, foreseen or unforeseen, whether in force on the date hereof or becoming applicable during the Term, and penalties and interest, if any, which shall be levied, assessed, or imposed with respect to, or become liens upon, the Current Clubhouse, the Lease or the rent due and payable herein.

Tenant shall pay to Landlord and Landlord shall, in turn pay the Property Taxes that are directly allocated and attributable to the Current Clubhouse. The foregoing shall not require Tenant to pay any income, excise, excess profits, sales, business, or other tax of general application assessed against Landlord (or such additional taxes resulting from the intended use or activities occurring on the remaining portion of the property that is owned by the Landlord), except to the extent such tax is in whole or in part considered to be in substitution for or in addition to taxes upon real estate or the rents from real estate, in which case such tax shall be paid by Tenant. Tenant shall be entitled to the benefit of any right granted by public authorities to pay Property Taxes in installments. For the fiscal periods of public authorities assessing or imposing Property Taxes in installments. For the fiscal periods of public authorities assessing or imposing Property Taxes in which the Term begins and ends, Property Taxes, and any abatements or reductions allocable thereto, shall be apportioned between Landlord and Tenant so that Tenant shall be liable only for such proportion thereof as the part of the fiscal period in question which is included in the Term bears to the whole of such fiscal period.

SECTION 4.2. Utilities and Services. Tenant shall be responsible for the continuation of all arrangements with governmental authorities and public utilities for the utilities and other like services, including, without limitation, electricity, telephone, water, sewage and gas, used on the Parcel and otherwise in connection with the Current Clubhouse, the expense, including maintenance, use and servicing, of all utilities and services shall be the direct and sole responsibility of Tenant. Landlord during the Term of this Lease shall take all necessary steps to cause all utilities and services to be made available to Tenant in order to operate the Current Clubhouse.

ARTICLE 5
INSURANCE AND INDEMNITY

SECTION 5.1. Coverage for Fire and Casualty. Tenant shall keep the Current Clubhouse, insured against loss or damage by fire and such other hazards as are included in a standard form "all risk" endorsement as from time to time available in an amount not less than its Full Insurable Value (as hereinafter defined) or such lesser amount as is required to prevent Landlord or Tenant from becoming a co-insurer under the terms of the policy or policies providing such coverage. As used herein, *"Full Insurable Value"* means the actual replacement cost (excluding foundation and excavation costs), with no deduction for physical depreciation, and shall be determined from time to time (but not more often than annually) by the insurer or by an appraiser. Tenant shall pay the cost of such determination or appraisal.

Tenant shall also obtain and maintain such other insurance on the Current Clubhouse or insurance in such amounts against other insurable hazards, which, at the time, are being customarily insured against for similar properties in the area of the Parcel, including, without limitation, insurance against flood, tornado and earthquake.

SECTION 5.2. Personal Liability Coverage. Tenant shall maintain comprehensive broad-form general public liability insurance against claims or bodily injury or death and damage to personal property occurring on or about the Parcel with limits reasonable approved by Landlord every two (2) years to protect against judgments from time to time being awarded in Nevada for injury, death and property damage. At the date hereof, the limit for injury and death shall be $2,000,000 and the limit for property damage shall be $1,000,000.

SECTION 5.3. Provisions to be in Policies. All insurance provided for in this Lease shall be affected with insurers of recognized responsibility, qualified in the State of Nevada. A certificate or duplicate of all insurance shall at all times be furnished Landlord and other insured parties as evidence that such insurance is maintained by Tenant and in force. No such insurance shall be subject to cancellation and reduction without at least thirty (30) days prior written notice given by the insurance carrier to Landlord and other insured parties. Except as otherwise herein set forth, all such policies shall be issued in favor of Tenant, Landlord and such other parties as are designated by Landlord or Tenant, or as their respective interests may appear.

SECTION 5.4. Waiver of Subrogation. Landlord and Tenant each releases the other from any and all liability or responsibility (to such party or any one claiming through or under such party by way of subrogation or otherwise) for any loss or damage to the extent covered by the insurance policies maintained by, or for the benefit of, such party even if such casualty shall have been caused by the fault or negligence of the other party or its agents. Each party shall notify their respective insurers of the foregoing release and shall endeavor to have included in all policies of insurance maintained by either party relating to the Parcel provisions pursuant to which the insurer waives all rights subrogation against the other party.

SECTION 5.5. Indemnification.

(A) By Tenant. Subject to the provisions of Section 5.4 above, Tenant shall indemnify and hold Landlord harmless from any claim, liability, cost or expense incurred by Landlord by reason of any injury to persons or property occurring in or about the Current Clubhouse, or arising out of the condition thereof or any construction, repairs, alterations or additions thereon, or the failure of Tenant to put or keep the same in reasonable order or repair,

and from and against all costs, expenses and liabilities, including reasonable attorney's fees, incurred in connection with any such claim or action or proceeding brought thereon, provided the same is not caused by or resulting from the act or mission of Landlord. If any action or proceeding is brought or threatened against Landlord by reason of any such claim, Tenant shall, at Landlord's election by notice to Tenant, defend or assume the defense of such action or proceeding and pay final judgment entered in any court against Landlord.

(B) By Landlord. Subject to the provisions of Section 5.4 above, Landlord shall indemnify and hold Tenant harmless from any claim, liability, cost or expense incurred by Tenant by reason of any injury to persons or property occurring in or about the Parcel or other portions of the property owned by the Landlord, or arising out of the condition thereof or any construction, repairs, alterations or additions thereon, or the failure of Landlord to put or keep the same in reasonable order or repair, and from and against all costs, expenses and liabilities, including reasonable attorney's fees, incurred in connection with any such claim or action or proceeding brought thereon, provided the same is not caused by or resulting from the act or mission of Tenant. If any action or proceeding is brought or threatened against Tenant by reason of any such claim, Landlord shall, at Tenant's election by notice to Landlord, defend or assume the defense of such action or proceeding and pay final judgment entered in any court against Tenant.

ARTICLE 6
TRANSFERS OF TENANT'S INTEREST

SECTION 6.1. Assignment. Tenant shall not assign all or any portion of its interest in this Lease without the prior written consent of Landlord, such consent shall not be unreasonably withheld or delayed so long as such use is to operate the Current Clubhouse for the Golf Course. Any assignment made by Tenant contrary to the terms of this Section 6.1 shall be void ab-initio. In the event of proposed assignment by Tenant, Tenant shall furnish to Landlord, in advance, an original copy of the instrument of assignment pursuant to which the assignee shall assume the obligations of Tenant hereunder. Notwithstanding the foregoing, the consent of the Landlord shall not be required in the event of: (i) the sale of all or substantially all of the assets or membership interests of the Tenant; or (ii) an assignment of this Lease by Tenant to a entity affiliated with the Landlord.

SECTION 6.2. Subletting. Tenant shall not sublet all or any portion of the Current Clubhouse without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed so long as such use is to operate the Current Clubhouse for the Golf Course. In all such cases of subletting, Tenant shall, when the request to sublet is made, provide a copy of the proposed sublease to Landlord.

ARTICLE 7
INTENTIONALLY OMITTED

ARTICLE 8
CASUALTY BY FIRE OR OTHER PERIL

SECTION 8.1. Insured Casualty. In case of minor damage to the Current Clubhouse by fire or other casualty or any other cause whatsoever, Tenant shall, as promptly as possible, subject to Unavoidable Delays, upon the receipt of available insurance proceeds or any deductibles elect to either restore, repair, replace or rebuild the Current Clubhouse to as nearly as possible its condition immediately prior to such damage or destruction. In the event that the

Current Clubhouse shall be totally destroyed, the Tenant and Landlord shall jointly proceed with the construction of the New Clubhouse (if such construction has not commenced) or completion of the New Clubhouse (if construction has commenced) with such funds to be paid as provided for in the Improvements Agreement. It is agreed that all insurance proceeds received under this Section 8.1 shall become the sole and absolute property of the Tenant.

ARTICLE 9
EMINENT DOMAIN

SECTION 9.1. Complete Taking. If, during the Term, the Current Clubhouse is taken by eminent domain or destroyed or rendered unusable by the action of any public or quasi-public authority or in the event of a conveyance in lieu thereof (collectively, a *"Taking"*), this Lease shall terminate as of the date possession shall be taken by or under such authority.

SECTION 9.2. Partial Taking. If only a part of the New Clubhouse is the subject of a Taking, and the portion remaining will, after restoration, permit the Current Clubhouse to be operated satisfactorily in the manner contemplated under this Lease, then this Lease shall continue in full force and effect with no abatement of rent and the net proceeds of the damages awarded shall be distributed to the Tenant, in an amount equal to the value of the portion of the Current Clubhouse so taken, plus consequential damages (if any) and the balance to the Landlord, and a just proportion of any Rent payable thereafter shall be abated taking into account the amount so distributed to Landlord and Tenant.

SECTION 9.3. Temporary Taking. If there is a temporary Taking of all or any portion of the Current Clubhouse, this Lease shall continue in full force and effect without any adjustments in rent. If the Current Clubhouse cannot be satisfactorily operated during the period of temporary Taking, then an abatement of rent may occur in keeping with the terms and conditions of Section 9.2.

SECTION 9.4. Cooperation Between Landlord and Tenant. Landlord and Tenant shall cooperate in all respects in connection with any Taking and any proceedings in connection therewith, and Tenant and Landlord shall jointly endeavor to mutually obtain common counsel to represent their mutual interests. Tenant may not agree to any award or settlement (except in connection with a temporary Taking) without Landlord's prior consent, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, Tenant shall institute and prosecute such proceedings as may be reasonably required to obtain an adequate award for damages to the Current Clubhouse resulting from any taking, such proceedings to be brought in the name of Landlord and Tenant. The cost of such proceedings shall be paid by Tenant, and upon receipt of the award, Tenant shall be reimbursed for such cost out of the award before the application and payment thereof as provided in this Article IX. All rights to damages to the Current Clubhouse Complex and the leasehold occurring hereunder in connection with a Taking shall be included in the award and the Landlord and Tenant hereby agree that Landlord's and Tenant's rights to such damages and awards shall be exclusively as set out herein. Each party shall execute and deliver such further instruments of assignment thereof as the other may from time to time request, to the end that such damages and awards may be allocated as hereinabove provided.

ARTICLE 10
SURRENDER; DEFAULT AND TERMINATION

SECTION 10.1. Termination for Default. If Tenant shall neglect or fail to pay rent or other sums to be paid by it within thirty (30) days after the same is due or shall neglect or fail to perform any other of Tenant's covenants, agreements or obligations hereunder for thirty (30) days after receipt of notice specifying the same (provided that such period shall be extended if the matters complained of in such notice may be corrected but cannot reasonably be expected to be corrected within thirty (30) days and Tenant begins promptly to correct such matters within thirty (30) days and thereafter prosecutes the correction to completion with reasonable diligence); then, in any of such cases, Landlord may, if it so elects, terminate this Lease if and only if, the New Clubhouse is completed and a certificate of occupancy has been issued to the Tenant to commence activities..

SECTION 10.2. Intentionally Deleted.

SECTION 10.3. Remedies Not Exclusive. The specific remedies to which either party may resort hereunder are not intended to be exclusive of any remedies or means of redress to which either party may at any time be entitled lawfully and each party may invoke any remedy allowed at law or in equity as if specific remedies were not herein provided. Each party shall have the right to specific performance of the party's covenants and obligations arising during the Term, which right shall survive the expiration or earlier termination of this Lease.

ARTICLE 11
MISCELLANEOUS PROVISIONS

SECTION 11.1. Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying all rents, other payments and observing and keeping the covenants, agreements and stipulations of this Lease on its part to be kept, shall lawfully, peaceably and quietly hold, occupy and enjoy the Parcel during the Term subject to the terms and conditions hereof.

SECTION 11.2. Surrender of Current Clubhouse. At the expiration or earlier termination of the Term for whatever cause, Tenant shall surrender to Landlord the Current Clubhouse in a broom clean and swept condition.

SECTION 11.3. Security Deposit. Tenant shall not be required to deposit with Landlord any security deposit.

SECTION 11.4. No Waste: Etc. Tenant shall not overload, deface or otherwise harm the Current Clubhouse; nor commit any nuisance; nor permit the emission of any objectionable noise or odor; nor make, allow or suffer any waster; nor make any use of the Current Clubhouse, which is contrary to any law or ordinance.

SECTION 11.5. Notices. Any notices and other communications hereunder shall be in writing and shall be deemed given if mailed by registered or certified mail, return receipt requested, addressed to the parties at their respective addresses first set forth above or such other addresses as shall have been last designated by notice in writing from one party to the other. Any such notice shall be deemed given when mailed, except that if any time period under this Lease commences with notice, such time period shall be deemed to commence, and such notice shall be deemed given, when postal records indicate delivery was made or first attempted.

SECTION 11.6. Recordation. Landlord and Tenant agree that they will record a

memorandum of lease in form sufficient for recording and at the termination of this Lease, for whatever cause, a recordable notice of termination of lease.

SECTION 11.7. Estoppel Certificates. Landlord and Tenant each agree at any time and from time to time upon not less than ten (10) days prior notice to execute, acknowledge and deliver without charge to the requesting party or to any other party designated by the requesting party, a statement in writing certifying that: this Lease is in full force and effect and unmodified (or if there have been modifications, identifying the same by the date thereof); whether, to the best of the knowledge of the certifying party, any condition exists or event has occurred which, with the giving of notice or the passage of time, would constitute a default by either party hereunder; the date to which the rents to be paid hereunder by Tenant have been paid; and such other matters as either party may reasonably specify.

SECTION 11.8. Unavoidable Delays. If Tenant, as the result of any (i) strikes, lockouts, or labor disputes; (ii) inability to obtain labor or materials, or reasonable substitutes therefor; (iii) acts of God, governmental action, civil commotion, fire or other casualty; (*"Unavoidable Delays"*), fails punctually to perform any obligation on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by Tenant, but only to the extent occasioned by such event. If any right or option of Tenant to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a particular date, then such prescribed period of time and such named date shall be deemed to be extended or delayed, as the case may be, for a period equal to the period of the delay occasioned by any event described above. Notwithstanding the foregoing, this Section shall not excuse the failure to timely pay any sums coming due under this Lease.

SECTION 11.9. Intentionally Omitted.

SECTION 11.10. Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture between Landlord and Tenant, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto other than the relationship of Landlord and Tenant. Nothing herein shall prevent Landlord from conveying, mortgaging, or otherwise transferring all or any part of its interest in the Parcel, in each case, subject to this Leasehold Estate.

SECTION 11.11. Applicable Law: Interpretation. This Lease shall be governed by and construed in accordance with the laws of the State of Nevada. If any provisions of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby. This Lease may be amended only by Instruments in writing executed by both Landlord and Tenant. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered in construing this Lease. Unless repugnant to the context, the words *"Landlord"* and *"Tenant"* appearing in this Lease shall be construed to mean the parties hereto and their respective successors and assigns, and those claiming though or under them respectively.

SECTION 11.12. No Waiver. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option unless this Lease specifies otherwise. A receipt by Landlord of rent with knowledge of the breach of any covenant herein shall not be deemed a waiver of such

breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

SECTION 11.13. Intentionally Omitted.

SECTION 11.14. Attorney's Fees. In the event it become necessary to seek the services of an attorney to enforce the tenure and conditions of this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, together with costs expended.

SECTION 11.15. Certain Representations by the Parties. Each party represents and warrants to the other that (i) each party has all necessary authority and approvals to enter into this Lease, and (ii) this Lease constitutes the valid, binding and enforceable obligation of each party in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the date first set forth above.

QUEENSRIDGE TOWERS LLC
a Nevada limited liability company

By: Executive Home Builders, Inc., a Nevada corporation, Operations Manager

_____
Yohan Lowie, Chief Executive Officer

FORE STARS LTD.
a Nevada limited liability company

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

[redacted]

CONSENTED TO AND APPROVED
THIS __ DAY OF _____ 2005:

HSBC REALTY CREDIT CORPORATION (USA)
a Delaware corporation

By: _____
Name: _____
Its: _____

EXHIBIT 2(b)

Exhibit 2(b)

A portion of APN Number _____

When recorded return to:

Henry E. Lichtenberger, Esq.
Sklar Warren Conway & Williams LLP
8363 West Sunset Road, Suite 300
Las Vegas, Nevada 89113

Space above this line
for recorder's use only

FORM OF MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "*Memorandum*"), made and entered into as of the ___ day of September, 2005, by and between **QUEENSRIDGE TOWERS LLC**, a Nevada limited liability company, having an office at 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 (hereinafter called *"Lessor"*), and **FORESTARS LTD.**, a Nevada limited liability company having an office c/o Peccole-Nevada Corporation, 851 South Rampart Boulevard, Suite 200, Las Vegas, Nevada 89145 (hereinafter called *"Lessee"*),

WITNESSETH:

1. This Memorandum of Lease is entered into as of September 14, 2005 between Lessor and Lessee pursuant to and subject to the terms and conditions of that certain Lease of even date hereof (the *"Lease"*) under which Lessee has the right to occupy the real estate identified in Exhibit "A" attached hereto and incorporated by reference herein in the City of Las Vegas, Clark County, Nevada, which is commonly known as the "Badlands Golf Course Clubhouse" together with all improvements located therein and rights appertaining thereto (hereinafter called the *"Premises"*), for an original 10 year term beginning on September 14, 2005 and ending on September 13, 2015.

2. The Lessee has five (5) successive options to extend the term of the Lease for successive terms of ten (10) years each, by giving notice of such exercise to Lessor not less than ninety (90) days prior to the expiration of the term then in effect. However, Lessor and Lessee both agree that the Lease will be automatically terminated on the date, which is 30 days after the completion of a new clubhouse located entirely on land owned by the Lessee (the *"New Clubhouse"*) is completed and a certificate of occupancy and all required licenses are obtained by Lessee by the City of Las Vegas, Nevada in order to operate and conduct activities in the New Clubhouse.

3. The annual rent payable by the Lessee to the Lessor under the Lease shall equal the sum of $1 per year. In addition, the Lease provides that Lessee shall pay all costs of maintenance and repair; all taxes, assessments, and charges of any and all natures with respect to the Premises, and shall protect and defend the same against all liens and claims of lien.

4. The Lease and Lessee's right, title, and interest therein and in the Premises, the easements, and appurtenances, if any, and in the options to extend the term of the Lease, shall be completely prior to each and every mortgage, and each and every mortgage, whether heretofore, now, or hereafter in existence, shall in all respects be subject and subordinate to the Lease and Lessee's right, title, and interest therein and in the Premises, the easements, and appurtenances, if any, and in the options to extend the term of the Lease.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Lease to be executed and their respective seals hereto affixed the day and year first above written.

LESSOR:

QUEENSRIDGE TOWERS LLC
a Nevada limited liability company

By: Executive Homes, Inc., a Nevada corporation, Operations Manager

Yohan Lowie, Chief Executive Officer

LESSEE:

FORESTARS, LTD.
a Nevada limited liability company

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

[redacted]

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On September __, 2005, before the undersigned, appeared Yohan Lowie, Chief Executive Officers of Executive Homes, Inc., a Nevada corporation which is the Operations Manager of Queensridge Towers, LLC, a Nevada limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument is the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On September ___, 2005, before the undersigned, appeared Larry A. Miller, Chief Executive Officer of Peccole-Nevada Corporation, a Nevada corporation and the Manager of ForeStars, Ltd., a Nevada limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument is the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

Exhibit "A"

Legal Description

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.

ALSO THAT CERTAIN PARCEL OF LAND DESCRIBED AS FOLLOWS:

BEING A PORTION OF LOT FOUR (4) OF PECCOLE WEST, RECORDED AS SHOWN BY RECORD OF SURVEY BOUNDARY LINE ADJUSTMENT THEREOF IN FILE _____ OF RECORD OF SURVEY, PAGE _____, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF SAID LOT FOUR (4); THENCE SOUTH 14°19'15" WEST A DISTANCE OF 305.05 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 29°03'32" EAST A DISTANCE OF 87.69 FEET; THENCE SOUTH 43°23'20" WEST A DISTANCE OF 126.26 FEET; THENCE SOUTHWESTERLY 12.52 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 26°04'44" WITH A RADIUS OF 27.50 FEET; THENCE SOUTH 69°28'04" WEST A DISTANCE OF 166.21 FEET; THENCE SOUTHWESTERLY 8.73 FEET ALONG A CURVE CONCAVE NORTHWEST HAVING A CENTRAL ANGLE OF 18°11'42" WITH A RADIUS OF 27.50 FEET TO A POINT OF A REVERSE CURVE; THENCE SOUTHEASTERLY 87.18 FEET ALONG A CURVE CONCAVE SOUTHEAST HAVING A CENTRAL ANGLE OF 95°08'30" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 7°28'45" EAST A DISTANCE OF 75.09 FEET; THENCE SOUTHEASTERLY 31.24 FEET ALONG A CURVE CONCAVE NORTHEAST HAVING A CENTRAL ANGLE OF 34°05'44" WITH A RADIUS OF 52.50 FEET; THENCE SOUTH 41°34'29" EAST A DISTANCE OF 28.68 FEET; THENCE SOUTH 59°09'33" EAST A DISTANCE OF 67.35 FEET; THENCE SOUTH 74°29'49" EAST A DISTANCE OF 38.97 FEET; THENCE SOUTH 74°45'44" EAST A DISTANCE OF 208.90 FEET; THENCE SOUTH 68°22'14" EAST A DISTANCE OF 10.42 FEET; THENCE NORTH 15°24'15" EAST A DISTANCE OF 44.73 FEET; THENCE NORTH 10°17'23" EAST A DISTANCE OF 227.70 FEET; THENCE NORTH 19°42'37" WEST A DISTANCE OF 220.00 FEET; THENCE NORTH 50°26'37" WEST A DISTANCE OF 75.24 FEET TO THE POINT OF BEGINNING.

CONTAINING 113,684 SQUARE FEET (2.61 ACRES)

Exhibit "A"

EXHIBIT 3

Exhibit 3

PUT ON EXECUTIVE HOME BUILDERS, INC. LETTERHEAD

September 14, 2005

HAND DELIVERED

[redacted]
Peccole-Nevada Corporation
851 South Rampart Boulevard, Suite 220
Las Vegas, Nevada 89145

Dear [redacted]

As agreed to in that certain Badlands Golf Course Clubhouse Improvements Agreement dated September 14, 2005, this letter will confirm that Executive Home Builders, Inc. agrees to pledge as collateral all of its rights to purchase its current corporate offices located at 9755 West Charleston Boulevard, Las Vegas, Nevada 89117 on the terms and conditions as outlined in the lease with Hualapai Commons Ltd., LLC dated on or about June 1, 2004. Both parties agree that the pledge of this collateral shall terminate in accordance with the provisions of the Improvements Agreement and the rights to purchase this office space shall be reinstated in full.

Sincerely,

Yohan Lowie
Chief Executive Officer

EXHIBIT “K”

20050915-0002577

20050915-0002577

SV 151 C009

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 31 AND 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.

OWNER'S CERTIFICATE

YOHAN LOWIE 3.31.05

BY: EXECUTIVE HOMES INC. ITS OPERATIONS MANAGER BY: YOHAN LOWIE ITS CEO

LARRY A. MILLER 4/8/05

FORE STARS, LTD

By: Peccole Nevada Corporation, CEO, Larry A. Miller CFO

ACKNOWLEDGMENT

MARCH 31, 2005

YOHAN LOWIE OPERATING MANAGER

Rebecca A. Byrd

REBECCA A. BYRD

MAY 29, 2005

ACKNOWLEDGMENT

April 8, 2005

Larry A. Miller, CFO

FORE STARS, LTD

Joanne Baldassare

JOANNE BALDASSARE

June 2, 2006

APPROVALS

13TH SEPTEMBER

9/13/05

APPROVALS

5TH APRIL

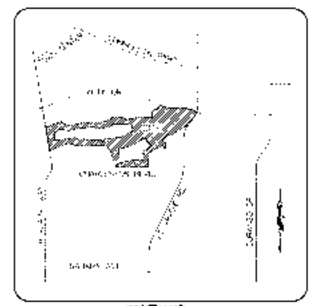
4/5/05

BASIS OF BEARINGS

SURVEYOR'S CERTIFICATE

FORE STARS, LTD

5-4-05



VICINITY MAP

NOT TO SCALE

NOTES

BLA-5979

SHEET 1 OF 5

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

BRENNER & ASSOCIATES, INC.

9-15-05 AT 11:36

151 0009

20050915

$61.00 KGF

CLV305596

231

16465

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 31 AND 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.

LEGAL DESCRIPTION

LEGAL DESCRIPTION CONTINUED

TRANSFER AREA DESCRIPTION

BLA-5879 SHEET 2 OF 5

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

BRENNER & ASSOCIATES, INC.

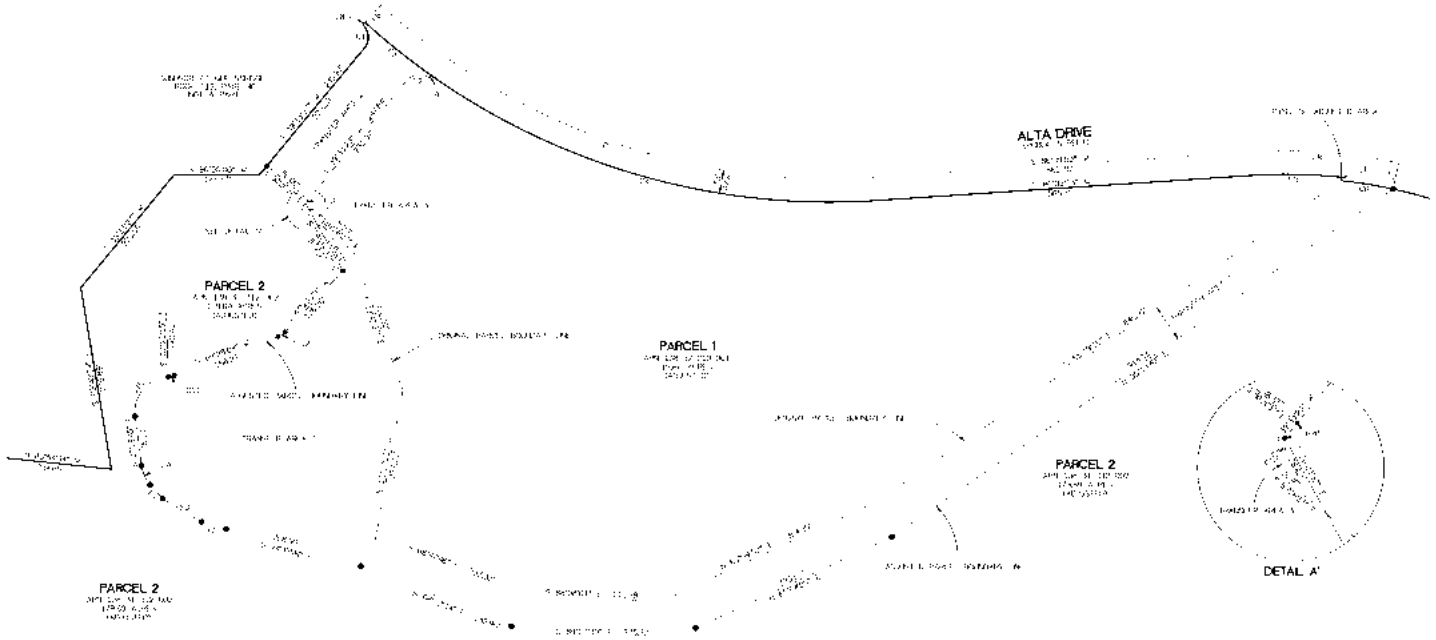
CLV305597

232

16466

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 31 AND 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



CURVE TABLE

LINE TABLE

LEGEND

BLA-5979 SHEET 3 OF 5

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

BRENNER & ASSOCIATES, INC.

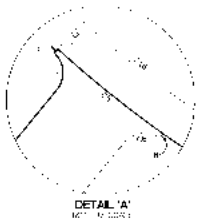
CLV305598

233

16467

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 31 AND 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.



CURVE TABLE

LINE TABLE

LEGEND

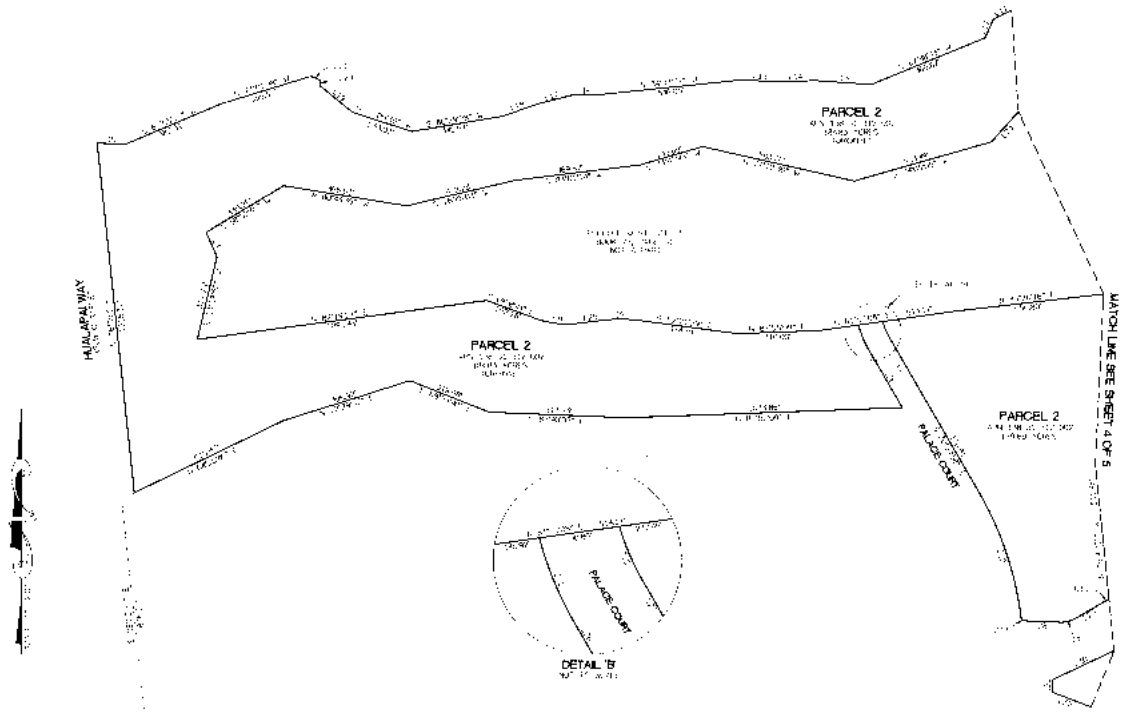
BLA-5979 SHEET 4 OF 5

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

BRENNER & ASSOCIATES, INC.

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

A PORTION OF THE SOUTH HALF (S 1/2) OF SECTION 31 AND 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.



CURVE TABLE

LINE TABLE

LEGEND

BLA-5979 SHEET 5 OF 5

RECORD OF SURVEY
BOUNDARY LINE ADJUSTMENT

BRENNER & ASSOCIATES, INC.

CLV305600

16469

EXHIBIT “L”

20050415-0002273

Fee: $38.00
N/C Fee: $0.00

04/15/2005 12:42:36
T20050068768
Requestor:
STEWART TITLE OF NEVADA

Frances Deane DGI
Clark County Recorder Pgs: 25

Assessor's Parcel No. 138-31-201-003

Mail Tax Statements to:
21 Stars, Ltd.
851 South Rampart Boulevard, Suite 220
Las Vegas, Nevada 89145

WHEN RECORDED, RETURN TO:

Nevada State Bank
Real Estate Loan Department
750 East Warm Springs Road, 4th Floor
Las Vegas, Nevada 89119
Attention: Michael Cunningham

TERM LOAN TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

(Including provision for future advances at the option of Beneficiary as governed by NRS 106.300 through 106.400, et seq.)

This Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Trust Deed") is made and executed this 15th day of April, 2005 (the "Closing Date"), by 21 Stars, Ltd., a Nevada limited liability company, whose address is 851 South Rampart Boulevard, Suite 220, Las Vegas, Nevada 89145 ("Trustor"), to Stewart Title of Nevada, whose address is 3773 Howard Hughes Parkway, Suite 160 N, Las Vegas, Nevada 89109 ("Trustee"), in favor of Nevada State Bank, a Nevada banking corporation, whose address is 750 East Warm Springs Road, 4th Floor, Las Vegas, Nevada 89119 ("Beneficiary").

Beneficiary is making a loan to Trustor and Fore Stars, Ltd., a Nevada limited liability company (collectively "Borrower") in the amount of Thirty Million Six Hundred Thousand Dollars ($30,600,000.00) (the "Loan"). The Loan is evidenced by the Promissory Note dated the Closing Date in the original principal amount of the Loan (the "Note"). The Loan will be advanced under a Term Loan Agreement between Borrower and Beneficiary dated the Closing Date (the "Loan Agreement").

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 GRANT AND CONVEYANCE

1.1 General Grant. Trustor hereby assigns, grants, bargains, sells, conveys, warrants, and transfers to Trustee in trust, for the benefit of Beneficiary, with power of sale, and right of entry and possession, the following described real property (the "Real Property"):

1.1.1 Real Property. All of the right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to the real property located in Clark County, State of Nevada (the "Property") as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

1.1.2 Buildings, Improvements and Interests. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) All buildings, improvements, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments now or hereafter constructed upon, and all renewals and replacements of, any of the foregoing, which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property (the "Improvements"); (b) if any portion of the Property comprises all or a portion of a planned or restricted development or a condominium project ("Development") and Trustor is the "declarant", "developer", "owner", or other similarly designated controlling party ("Developer") under the restrictive covenants, declaration of condominium owner, planned unit development, or other controlling document who, as such, now has or will hereafter have special rights and privileges with respect to the Development and/or the related owner's association which are not enjoyed by all other owners (collectively, "Developer's Rights"), then (i) the Developer's Rights shall be deemed to be a part of the Property, and (ii) Trustor hereby appoints and designates Beneficiary as the successor Developer to replace Trustor; provided, however, that such appointment shall not take effect unless and until (A) Beneficiary becomes the fee simple owner of all or a portion of the Development by reason of the public or judicial foreclosure of this Trust Deed (or by means of a deed in lieu thereof), and (B) Beneficiary accepts such appointment in a writing which is recorded in the public records of the county in which the Development is located; (c) All easements, licenses, streets, ways, alleys, roads, streets, passages, rights-of-way, minerals, oil, gas and other hydrocarbon substances, development rights, air rights, water, water courses, water rights, and water stock (whether now owned or hereafter acquired by Trustor and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Property or to any portion of the Property.

1.1.3 Tenements, Hereditaments. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all of the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to any of the Property or the Improvements, or any portion of the Property or the Improvements, or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests,

possessions, claims, and demands of every nature whatsoever, at law or in equity, which Trustor may have or may hereafter acquire in and to the Property, the Improvements, or any portion thereof.

1.1.4 Leases, Rents, Issues, Etc. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all leases and subleases of all or any portion of the Property or the Improvements now or hereafter existing or entered into, and all lease agreements and documents evidencing the same; and all right, title and interest of Trustor thereunder, including without, limitation, all rents, subrents, room rents and other amounts received for use of any rooms in the Property, including the Improvements, and any and all room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such leases, rents, subrents, room rents, issues, royalties, security deposits, income and profits of and from the Property, the Project, the Improvements, or any portion thereof.

1.2 Security Interest. Trustor hereby assigns and grants to Beneficiary a security interest in the following described property (collectively the "Personalty"), whether now or hereafter existing, and in which Trustor now has or hereafter obtains any right, title, estate or interest, but only to the extent of Trustor's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof:

1.2.1 Tangible Personal Property. All right, title, interest, and estate of Trustor, now owned or hereafter acquired, in and to: (a) All goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Property, delivered to the Property for incorporation or use in any construction, renovation, operation or maintenance of the Property or the Improvements, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Property or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Property; (b) All furniture, fixtures and equipment as equipment is defined in the Uniform Commercial Code, as enacted in the State of Nevada pursuant to NRS 104.9101, et seq., and as it may be amended or recodified from time to time (the "Uniform Commercial Code"), wherever located, and all related right, title and interest of Trustor, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein, (c) All architectural, engineering, development, construction and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and architect thereunder, relating to the construction, development, ownership or maintenance of the Property or the Improvements; (d) All engineering reports, surveys, soil reports and other documents relating to the Property; (e) All modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; and (f) All proceeds of each of the foregoing.

1.2.2 Permits, Names, Rights, Etc. All right, title interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) All contracts, permits, franchises, privileges, grants, consents, licenses, authorizations, and approvals heretofore or hereafter granted by the United States, by the State of Nevada or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Trustor and utilized in connection with the Property and the Improvements thereon or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law; (b) All names under or by which the Property or any of the Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Trustor's ownership and operation of the Property; (c) All contracts, contract rights, rights to payment, general intangibles, documents, instructions, accounts, water stock arising in connection with Trustor's ownership, general intangibles, legal or equitable claims, judgments, and awards now or hereafter accruing to the benefit of Trustor respecting the Property and the Improvements, specifically including, without limitation, all architectural, development and construction contracts, and all construction cost guarantee contracts relating to the Property or the Improvements; (d) All shares of stock, partnership interests, or other evidence of ownership of any part of the Property or the Improvements that is owned by Trustor in common with others; (e) All documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and (f) All amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

1.2.3 Awards. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: (a) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property, the Improvements or any portion of the Improvements, or of any other Improvements now or hereafter situate thereon or any estate or easement in the Property (including any awards for change of grade of streets); (b) All insurance policies and all proceeds of insurance paid on account of any partial or total destruction of the Improvements or any portion thereof; (c) All causes of action and recoveries for any loss or diminution in the value of the Property or the Improvements; and (d) All proceeds of each of the foregoing.

1.2.4 Plans and Utility Taps. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to: All Plans and any and all replacements, modifications, and amendments thereto and any and all contracts, agreements or commitments between Trustor and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Property and the Improvements thereon. Trustor hereby irrevocably appoints Beneficiary as Trustor's true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Trustor necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Property and the Improvements thereon.

1.2.5 Loan Proceeds. All right, title, interest and estate of Trustor, now owned or hereafter acquired, in and to all proceeds of the Loan made by Beneficiary to Trustor for construction of the Improvements which proceeds are held by Beneficiary, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements to secure any and all of Trustor's obligations to Beneficiary.

1.2.6 Contracts. All right, title, interest and estate of Trustor, now owned or hereafter acquired, under any other contract, subcontract or agreement, for the construction and completion of the Improvements and all contracts and agreements which have been or shall hereinafter be entered into relating to the construction, development, sale, lease, operation or use of all or a portion of the Property or the Improvements, and all governmental licenses or permits obtained for the lawful construction of the Improvements.

1.2.7 Accounts. All accounts of Trustor, presently existing or hereafter arising, including all accounts as defined in the Nevada Uniform Commercial Code, as amended, established in connection with or by reason of Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.8 Documents. All documents of Trustor, presently existing or hereafter arising, including all documents as defined in the Nevada Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.9 Instruments. All instruments of Trustor, presently existing or hereafter arising, including all instruments as defined in the Nevada Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Trustor's ownership, construction, development, sale, lease, operation or use of the Property or the Improvements, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.2.10 General Intangibles. All general intangibles of Trustor, presently existing or hereafter arising, including general intangibles as defined in the Uniform Commercial Code, choses in action, proceeds, contracts, distributions, dividends, refunds, security deposits, judgments, insurance claims, any right to payment of any nature, intellectual property rights or licenses, any other rights or assets of Trustor customarily or for accounting purposes classified as general intangibles, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

1.3 Security Agreement. This Trust Deed constitutes a Security Agreement with respect to the Personalty, and Beneficiary shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of Nevada as well as all other rights and remedies available at law or in equity. Trustor and Beneficiary acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Trustor, regardless of when advances to Trustor are actually made or when the Trust Estate is acquired.

1.4 Fixture Filing. This Trust Deed is intended to be a fixture filing under Nevada Revised Statutes, Section 104.9502. The addresses of the Secured Party (Beneficiary) and the debtor (Trustor) from which information may be obtained concerning this security interest granted hereunder are set forth in Section 9.1 of this Trust Deed. This Trust Deed is to be recorded in the real estate records in the County Recorder's office of the county in which the Real Property is located. Trustor is the record owner of the Real Property.

1.5 Trust Estate. The Real Property and the Personalty are sometimes hereinafter collectively referred to as the "Trust Estate".

ARTICLE 2 OBLIGATION SECURED

2.1 Obligations. This Trust Deed is given for the purpose of securing the following obligations (collectively the "Obligations") of Borrower:

2.1.1 Note. The payment and performance of each and every agreement and obligation under the Note, including without limitation, the payment of principal and interest under the Note.

2.1.2 Other Loan Documents. The payment and performance of each and every agreement and obligation of Trustor and/or Borrower under this Trust Deed, the Note, the Loan Agreement, and any other Loan Document.

2.1.3 Advances by Trustee or Beneficiary. The payment of all sums expended and advanced by Trustee or Beneficiary pursuant to the terms of this Trust Deed, the Loan Agreement, or any other Loan Document, together with interest thereon as provided in this Trust Deed.

2.1.4 Extensions, Etc. The payment and performance of any extensions of, renewals of, modifications of, or additional advances under the Note, or any of the obligations evidenced by the Note, regardless of the extent of or the subject matter of any such extension, renewal, modification or additional advance.

2.1.5 Other Obligations. The payment and performance of any other note or obligation reciting that it is secured by this Trust Deed. Trustor expressly acknowledges its mutual intent with Beneficiary that the security interest created by this Trust Deed secure any and all present and future debts, obligations, and liabilities of Trustor to Beneficiary without any limitation whatsoever.

2.1.6 Future Advances. It is the intention of Trustor and Beneficiary that: (i) this Trust Deed shall constitute an "instrument" (as defined in NRS 106.330 as amended and recodified from time to time) which secures "future advances" (as defined in NRS 106.320 as amended and recodified from time to time) and which is governed pursuant to NRS 106.300 through 106.400 as amended and recodified from time to time; (ii) the obligations secured hereby shall include the obligation of Trustor to repay "future advances" of "principal" (as defined in NRS 106.345 as amended and recodified from time to time) in an aggregate amount not to exceed $30,600,000.00 outstanding at any one time; and (iii) the lien of this Trust Deed shall secure the obligation of Trustor to repay all such "future advances" with the priority set forth in NRS 106.370(1) as amended and recodified from time to time. Trustor acknowledges and agrees that the obligations of Beneficiary to advance funds under the Loan in accordance with the terms and conditions of the Loan Agreement, are obligatory in nature and not subject to the provisions of NRS 106.300, et seq. Notwithstanding the foregoing, however, in the event that the advance of any funds under the Loan is deemed to be optional, then the maximum "principal" amount of such advances under the Loan, which are to be secured hereunder as "future advances" under NRS 106.320, shall be an aggregate amount not to exceed $30,600,000.00 outstanding at any one time.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Property. Trustor represents and warrants to Beneficiary as follows:

3.1.1 Fee Title. Trustor is the owner of fee simple marketable title in and to the Real Property.

3.1.2 Defense of Title. Trustor shall defend title to the Property and the Improvements against all claims and demands whatsoever.

3.1.3 Exceptions to Title. With the exception of such exceptions to title as are identified in the Loan Agreement as Permitted Encumbrances, if any (the "Permitted Encumbrances"), the Property and the Improvements are free and clear of all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever in favor of any third party.

3.1.4 Lien Priority. With the exception of the Permitted Encumbrances, the lien created by this Trust Deed upon the Property and the Improvements is a good and valid lien, free and clear of all liens, encumbrances and exceptions.

3.1.5 Hazardous Material. To the best of Trustor's knowledge without investigation, no Hazardous Materials have been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Property or the Improvements in violation of any Environmental Laws.

3.1.6 Trustor Representations. Trustor's principal place of business as well as its main office are located in the state of Nevada. Trustor's state of organization is Nevada. Trustor's exact legal name is as set forth in the first paragraph of this Trust Deed.

3.2 Personalty. Trustor further represents and warrants to Beneficiary as follows:

3.2.1 Owner of Personalty. Trustor is the owner, or upon acquisition thereof, will be the owner of the Personalty.

3.2.2 No Prior Liens. The Personalty is, or upon acquisition thereof by Trustor, will be free and clear of all liens, claims, encumbrances, restrictions, charges, and security interests in favor of any third party except for the Permitted Encumbrances.

3.2.3 Location of Personalty. The Personalty will be located in the State of Nevada, and other than temporary (not to exceed three (3) months) uses outside that state in the ordinary course of Trustor's business, will not be removed from that state without the prior written consent of Beneficiary.

3.3 Enforcement of Suncoast Lease. Trustor shall use its commercially reasonable efforts to enforce all provisions of the Suncoast Lease, including, without limitation, provisions pertaining to maintenance of the Property, payment of taxes and utilities, and Suncoast's compliance with all applicable law..

3.4 Notice of Casualty. In the event of loss or damage to the Trust Estate exceeding $100,000.00, or any portion of the Trust Estate, Trustor shall immediately give notice thereof to Beneficiary.

ARTICLE 4 INDEMNIFICATION AND OFF-SET

4.1 Indemnification. Trustor hereby indemnifies and holds Beneficiary harmless in accordance with the following:

4.1.1 General Indemnification. Trustor shall indemnify and hold Beneficiary harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, or liabilities which arise from or are related to, the Note, the Loan Agreement, this Trust Deed, any other Loan Documents evidencing or securing the Note, or the construction, use or occupation of the Trust Estate, or any part thereof, or the Property, but excluding any such claims based upon breach or default by Beneficiary or gross negligence or wilful misconduct of Beneficiary. If Beneficiary commences an action against Trustor to enforce any of the terms, covenants or conditions of this Trust Deed or because of the breach by Trustor of any of the terms, covenants, or conditions, or for the recovery of any sum secured hereby, Trustor shall pay to Beneficiary reasonable attorneys fees and costs actually incurred by Beneficiary. The right to such attorneys fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Trustor breaches any term, covenant or condition of this Trust Deed, Beneficiary may employ an attorney or attorneys to protect Beneficiary's rights hereunder and in the event of such employment following any breach of Trustor, Trustor shall pay Beneficiary reasonable attorneys fees and costs actually incurred by Beneficiary, whether or not action is actually commenced against Trustor by reason of such material breach.

4.1.2 Mechanics Liens. If Beneficiary or the Property is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture and improvements, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability or expense arising therefrom including reasonable attorneys fees and costs.

4.1.3 Hazardous Materials. Trustor hereby agrees to indemnify, hold harmless and defend (by counsel of Beneficiary's choice) Beneficiary, its directors, officers, employees, agent, successors and assigns from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Property, or (b) any activity carried on or undertaken on or off the Property, whether prior to or during the term of the Loan, and whether by Trustor or any predecessor in title or any employees, agents, contractors or subcontractors of Trustor or any predecessor in title, or any third persons at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. Trustor hereby acknowledges and agrees that, notwithstanding any other provision of this Trust Deed or any of the other Loan Documents to the contrary, the obligations of Trustor under this Section 4.1.3 shall be unlimited personal obligations of Trustor and shall survive any foreclosure under this Trust Deed, any transfer in lieu thereof, and any satisfaction of the obligations of Trustor in connection with the Loan. Trustor acknowledges that Beneficiary's appraisal of the Property is such that Beneficiary would not extend the Loan but for the personal liability undertaken by Trustor for the obligations under this Section 4.1.3.

4.2 Off-Set. All sums payable by Trustor under the Note and this Trust Deed shall be paid without notices, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The Obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Trust Estate or any part thereof; (b) any destruction or prevention of or interference with any use of the Trust Estate or any part thereof; (c) any title defect or encumbrance or any eviction from the Trust Estate or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Trust Deed by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (e) any claim which Trustor has or might have

against Beneficiary; (f) the occurrence of an Event of Default or any default or failure on the part of Beneficiary to perform or comply with any of the terms, covenants or conditions of this Trust Deed or of any other agreement with Trustor; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

ARTICLE 5 ADDITIONAL COVENANTS

5.1 Defense of Title. Trustor has and shall preserve good and marketable fee title to the Trust Estate free of all liens, claims, charges, security interests, encumbrances, easements or restrictions other than the Permitted Encumbrances. With the exception of the Permitted Encumbrances, Trustor shall promptly discharge and remove any lien or security interest which has, or may have, priority over or equality with the lien and security interest created by this Trust Deed. Trustor shall furnish to Beneficiary written notice of any litigation, default, lien, security interest or notice of default affecting the Trust Estate or title thereto, within ten (10) days of initial receipt of notice of such lien, security interest, litigation or default. Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof, the Trust Estate, or the rights or powers of Beneficiary or Trustee. Should Beneficiary elect to appear in or defend any such action or proceeding, Trustor shall pay all costs and expenses, including costs of evidence of title and reasonable attorney fees and costs, incurred by Beneficiary or Trustee. Trustor shall, at its cost, do, execute, acknowledge, and deliver all further deeds, conveyances, trust deeds, assignments, notices of assignments, security agreements, financing statements, transfers, acts and assurances as Beneficiary shall from time to time require, for the better perfecting, continuing, assuring, granting, conveying, assigning, transferring, and confirming unto Trustee and Beneficiary the Trust Estate, and all rights hereby granted, conveyed or assigned or intended now or hereafter so to be, or which Trustor may be or may hereafter become bound to grant, convey or assign to Trustee or Beneficiary, or for carrying out the intention or facilitating the performance of the terms of the Note or the other Loan Documents.

5.2 Performance in Trustor's Stead. Should Trustor fail to make any payment or to do any act as provided in this Trust Deed, then Beneficiary or Trustee, but without any obligation to do so, and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes); commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Trust Deed; and in exercising any such powers, incur any liability, or expend such reasonable amounts as Beneficiary may deem necessary therefor, including costs of evidence of title, employment of attorneys, and payment of reasonable attorney fees and costs. All such amounts expended by either or both Trustee or Beneficiary shall, at the election of Beneficiary, be added to the principal indebtedness secured by this Trust Deed and shall accrue interest in accordance with the terms of the Note. Trustor hereby waives and releases all claims or causes of action which may hereafter arise in favor of Trustor against Beneficiary by reason of any

action taken by Beneficiary pursuant to any power or authority granted in this Section 5.2, except for Beneficiary's negligence or wilful misconduct.

5.3 Repayment of Advances. Trustor shall immediately repay to Beneficiary sums, with interest thereon as provided in the Note, which at any time may be paid or advanced by Beneficiary for the payment of insurance premiums, Impositions, title searches, title reports or abstracts, and any other advances made by Beneficiary which are reasonably necessary or desirable to maintain this Trust Deed as a prior, valid, and subsisting lien upon the Trust Estate, to preserve and protect Beneficiary's interest in this Trust Deed, or to preserve, repair, or maintain the Trust Estate. All such advances shall be wholly optional on the part of Beneficiary, and Trustor's obligation to repay the same, with interest, to Beneficiary shall be secured by the lien of this Trust Deed.

5.4 No Removal of Fixtures. Trustor shall not, during the existence of this Trust Deed and without the written consent of Beneficiary, remove from the Real Property or the Improvements, any fixture, structure, or other improvement at any time affixed or constructively affixed to the Real Property or the Improvements or any portion thereof, or any Personalty, except in the ordinary course of Trustor's business.

5.5 Further Assurance. Trustor authorizes Beneficiary to file or record, as appropriate, such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required by Beneficiary to carry out more effectively the purposes of this Trust Deed and to subject to the lien, security interest and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Trust Deed. Trustor authorizes (to the extent such authorization is valid under applicable law) Beneficiary to file such Uniform Commercial Code Financing Statements and Continuation Statements as Beneficiary may deem necessary in order to perfect, or continue the perfection of, the security interests created by this Trust Deed. Trustor agrees not to change Trustor's name, location or state of organization from that set forth in Section 3.1.6 of this Trust Deed without thirty (30) days prior written notice to Beneficiary.

5.6 Attornment. Trustor shall assign to Beneficiary, as additional security for Trustor's performance of the Obligations, any and all existing or future lease agreements entered into by Trustor, as landlord, which pertain to the Property or the Improvements, or any portion thereof, and all such leases shall contain a covenant on the part of the tenant thereunder, enforceable by Beneficiary, obligating such tenant upon request of Beneficiary, to attorn to and become a tenant of Beneficiary, or any purchaser from Trustee or through foreclosure of this Trust Deed, for the unexpired term, and subject to the terms and conditions of such future lease agreements. The assignments of lease shall be in form and content satisfactory to Beneficiary.

5.7 No Further Encumbrances. As an express condition of Beneficiary making the loan secured by this Trust Deed, Trustor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Trust Estate or any interest therein nor cause or allow by operation of law the encumbrance of the Trust Estate or any interest therein

without the written consent of Beneficiary even though such encumbrance may be junior to the encumbrance created by this Trust Deed. Encumbrance of the Trust Estate contrary to the provisions of this Section 5.7 without the express written consent of Beneficiary, shall constitute an Event of Default and at Beneficiary's option, Beneficiary may declare the entire balance of principal and interest immediately due and payable, whether the same be created by Trustor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect.

5.8 Due on Sale. Other than (a) a transfer by devise, descent or by operation of law upon the death of a joint tenant; (b) a transfer of Personalty in the ordinary course of Trustor's business; or (c) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Trustor shall not sell, convey or otherwise transfer the Trust Estate or any part thereof or interest therein, without the prior written consent of Beneficiary. If the Trust Estate, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Beneficiary, or if Trustor be divested of title to the Trust Estate, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full principal indebtedness of the Note and the other Obligations, at the option of Beneficiary and without demand or notice, shall immediately become due and payable. It is expressly acknowledged and agreed that any transfer of more than forty-nine percent (49%) of the capital stock, partnership or member interests of Trustor, as the case may be, shall constitute a transfer of the entire Trust Estate within the meaning of this Section 5.8.

5.9 Evidence of Title. Trustor shall deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

5.10 Financial Statements. Trustor shall keep adequate books and records of account of the Trust Estate and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Beneficiary shall have the right to examine, copy and audit Trustor's records and books of account at all reasonable times. Trustor shall furnish to Beneficiary copies of its financial statements and other financial information satisfactory to Beneficiary at the time and in the manner provided in the Loan Agreement.

5.11 No Merger. If the Trust Estate is under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Trust Deed and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Trust Deed on the Trust Estate pursuant to the provisions of this Trust Deed, any leases or subleases then existing and created by Trustor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of

Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

ARTICLE 6 CONDEMNATION AWARDS

If the Trust Estate or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor to which Trustor is entitled under the Suncoast Lease. Trustor shall promptly give notice to Beneficiary of any condemnation proceeding or any taking for public improvement. All compensation, awards, damages, causes of action, proceeds, or other payments which Trustor is entitled under the Suncoast Lease are hereby assigned to Beneficiary, which may, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, incurred by Beneficiary in connection with such compensation, awards, damages, rights of action, proceeds, or other payments, release any and all moneys so received by Beneficiary or apply the same, or any portion thereof, on any of the Obligations (whether or not then due) secured by this Trust Deed. Beneficiary shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Trust Estate regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Trust Estate. Trustor shall execute and deliver to Beneficiary such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Beneficiary may from time to time require.

ARTICLE 7 ASSIGNMENT OF LEASES, RENTS AND INCOME

7.1 Assignment. Trustor hereby absolutely assigns to Trustee all right, title and interest of Trustor in and to all leases now existing or hereafter entered into by Trustor and demising the whole or any part of the Trust Estate, and does hereby further assign any and all rents, subrents, room rents and other amounts received for the use of any rooms in the Trust Estate, including the Improvements, and any and all room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such room rents, covering the Trust Estate or any portion thereof, now or hereafter existing or entered into, together with issues, royalties, income, profits and security deposits of and from the Trust Estate. Until the occurrence of an Event of Default, Trustor may, under a temporary revocable license granted hereby, collect and use all such rents, subrents, room rents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default, Trustor's license to collect and use any of such proceeds shall immediately cease without further action by or on behalf of any party, and Beneficiary shall have the right, with or without taking possession of the Trust Estate, and either in person, by agent, or through a court-appointed receiver (Trustor hereby consents to the appointment of Beneficiary or Beneficiary's designee as such receiver), to sue for or otherwise collect all such rents, subrents, room rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorney fees, shall be applied toward the payment of the Obligations. Such right of collection and use of such proceeds by Beneficiary shall obtain both before and after the

exercise of the power of sale provisions of this Trust Deed, the foreclosure of this Trust Deed and throughout any period of redemption. The rights granted under this Section 7.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Trust Estate is in danger of being lost, removed, or materially injured, or whether the Trust Estate or any other security is adequate to discharge the obligations secured by this Trust Deed. Beneficiary's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Beneficiary thereafter to collect the same. Neither any provision contained herein, nor the Beneficiary's exercise of Beneficiary's right to collect such proceeds, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease, sublease, option, or other interest in the Trust Estate, or an assumption of liability under, or a subordination of the lien or charge of this Trust Deed to, any tenancy, lease, sublease, option, or other interest in the Trust Estate. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Trustor in connection with the Trust Estate or any portion thereof are hereby authorized and directed to pay the rents, subrents, room rents, issues, royalties, income, and profits payable by them with respect to the Trust Estate, or any part thereof, directly to Beneficiary on the demand of Beneficiary. Beneficiary's receipt of such rents, subrents, room rents, issues, royalties, income, and profits shall be a good and sufficient discharge of the obligation of the tenant, lessee, sublessee, or other person concerned to make the payment connected with the amount so received by the Trustee.

7.2 Application of Payments. If at any time during the term of this Trust Deed Beneficiary receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Trust Deed and under all other instruments further evidencing or securing the Obligations, then Beneficiary shall, except as provided otherwise in the Note and notwithstanding any instructions which may be given by Trustor, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Trustor or to Beneficiary as Beneficiary may in Beneficiary's sole discretion determine.

7.3 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Trust Estate or any portion of the Trust Estate or the collection of rents, subrents, room rents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Trust Estate, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of any scheduled installments provided for in any of the Obligations secured by this Trust Deed.

7.4 Indemnification. Trustor shall indemnify, pay, protect, defend and hold Beneficiary harmless from and against all claims, demands, judgments, liabilities, actions, costs, and fees (including reasonable attorney fees) arising from or related to receipt by Beneficiary of the rents, subrents, room rents, issues, royalties, income and profit from the Trust Estate or any portion of the Trust Estate, except those liabilities arising from Beneficiary's own gross negligence and wilful misconduct.

ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default. Fifteen (15) days after written notice from Beneficiary to Trustor for monetary defaults and thirty (30) days after written notice from Beneficiary to Trustor for non-monetary defaults, if such defaults are not cured within such fifteen (15) day or thirty (30) day periods, respectively, each of the following shall constitute an event of default under this Trust Deed (an "Event of Default"):

8.1.1 Failure to Make Payment. If Trustor shall fail to make any payment due and payable under the terms of the Note, this Trust Deed, or any other Loan Document.

8.1.2 Non-Monetary Default. Except as provided otherwise in Section 8.1.1 of this Trust Deed, Trustor's failure to observe and perform any of the terms, covenants, or conditions to be observed or performed in the Note, this Trust Deed or any other Loan Document.

8.1.3 Loan Agreement. Any Event of Default occurs under the Loan Agreement.

8.1.4 False Warranty. Any material representation or warranty of Trustor contained in the Note, this Trust Deed or any other Loan Document was untrue when made.

8.1.5 Insolvency, Etc. If a petition in bankruptcy is filed against Trustor, and such petition is not dismissed within ninety (90) days of filing, a petition in bankruptcy is filed by Trustor or a receiver or trustee of the property of Trustor is appointed; or if Trustor files a petition for reorganization under any of the provisions of the Bankruptcy Act or any law, State or Federal, or makes an assignment for the benefit of creditors or is adjudged insolvent by any State or Federal Court of competent jurisdiction.

8.1.6 Failure to Pay Debts. Trustor fails to pay Trustor's debts as they become due, admits in writing Trustor's inability to pay Trustor's debts, or makes a general assignment for the benefit of creditors.

8.1.7 Failure to Perform Other Obligations. A default by Trustor under the terms of any other promissory note, deed of trust, security agreement, undertaking or arrangement between Trustor and Beneficiary now existing or entered into hereafter.

8.1.8 Cross Default. A default by Trustor under any other agreement or arrangement between the parties to the Note now existing or entered into hereafter.

8.2 Acceleration; Notice. Time is of the essence hereof. Upon the occurrence of any Event of Default under this Trust Deed and following the expiration of any cure period provided for herein, at Beneficiary's option and in addition to any other remedy Beneficiary may have under the Note, Beneficiary may declare all sums secured hereby immediately due and payable and elect to have the Trust Estate sold in the manner provided herein. In the event Beneficiary elects to sell the Trust Estate, Beneficiary may execute or cause Trustee to execute a written notice of default and of

election to cause the Trust Estate to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Trust Estate is located. Beneficiary shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Trust Deed.

8.3 Exercise of Power of Sale. Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor and each Guarantor such Notice of Default and Election to Sell as then required by Chapter 107 of the Nevada Revised Statutes. Trustee shall, without demand on Trustor, after lapse of such time as may be required by law and after recordation of such Notice of Default and Election to Sell first give notice of the time and place of such sale, in the manner provided by the laws of the State of Nevada for the sale of real property under execution, and may from time to time postpone such sale by such advertisement as it may deem reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, Trustee may sell the Property so advertised, at public auction, at the time and place specified in the notice, either in the county in which the Property, or any part thereof, to be sold, is situated, or at the principal office of Trustee located in Clark County, State of Nevada, in its discretion, to the highest cash bidder. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees and costs; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the rate then provided for in the Note; (d) all sums then secured by this Trust Deed, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Trust Estate is located.

8.4 Surrender of Possession. Trustor shall surrender possession of the Trust Estate to the purchaser immediately after the sale of the Trust Estate as provided in Section 8.3 of this Trust Deed, in the event such possession has not previously been surrendered by Trustor.

8.5 UCC Remedies. Notwithstanding anything to the contrary in Sections 8.3 and 8.4 of this Trust Deed, Beneficiary, with regard to all the Personalty, shall have the right to exercise, from time to time, any and all rights and remedies available to Beneficiary, as a secured party under the Uniform Commercial Code of Nevada, and any and all rights and remedies available to Beneficiary under any other applicable law. Upon written demand from Beneficiary, Trustor shall, at Trustor's expense, assemble the Personalty and make them available to Beneficiary at a reasonably convenient place designated by Beneficiary. Beneficiary shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of the Personalty and records relating to the Personalty. Beneficiary may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out of pocket

expenses incurred by Beneficiary, including, without limitation, (a) reasonable attorneys fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Personalty, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Personalty, and (g) costs for preservation and protection of the Personalty, apply the remainder to pay, or to hold as a reserve against, the Obligations.

The rights and remedies of Beneficiary upon the occurrence of one or more Events of Default (whether such rights and remedies are conferred by statute, by rule of law, by this Trust Deed, the Loan Agreement or otherwise) may be exercised by Beneficiary, either alternatively, concurrently, or consecutively in any order. The exercise by Beneficiary or Trustee at the express direction of Beneficiary of any one or more of such rights and remedies shall not be construed to be an election of remedies nor waiver of any other rights and remedies Beneficiary might have unless, and limited to the extent that, Beneficiary shall elect or so waive by an instrument in writing delivered to Trustee. Without limiting the generality of the foregoing, to the extent that this Trust Deed covers both the Real Property and the Personalty, Beneficiary may, in the sole discretion of Beneficiary, either alternatively, concurrently or consecutively in any order:

8.5.1 Proceed as to the Real Property, Improvements and the Personalty in accordance with Beneficiary's rights and remedies in respect to real property.

8.5.2 Proceed as to the Real Property and Improvements in accordance with Beneficiary's rights and remedies in respect to real property and proceed as to the Personalty in accordance with Beneficiary's rights and remedies in respect to the personal property.

Beneficiary may, in the sole discretion of Beneficiary, appoint Trustee as the agent of Beneficiary for the purpose of disposition of the Personalty in accordance with the Nevada Uniform Commercial Code -- Secured Transactions.

If Beneficiary should elect to proceed as to the Real Property, Improvements and the Personalty in accordance with Beneficiary's rights and remedies in respect to real property:

(a) All the Personalty may be sold, in the manner and at the time and place provided in this Trust Deed, in one lot, or in separate lots consisting of any combination or combinations of the Real Property, Improvements and Personalty, as the Beneficiary may elect, in the sole discretion of Beneficiary.

(b) Trustor acknowledges and agrees that a disposition of the Personalty in accordance with Beneficiary's rights and remedies in respect to real property, as hereinabove provided, is a commercially reasonable disposition of the Personalty.

If Beneficiary should elect to proceed as to the Personalty in accordance with Beneficiary's rights and remedies in respect to personal property, Beneficiary shall have all the rights and remedies conferred on a secured party by NRS 104.9601 to NRS 104.9628, both inclusive.

8.6 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Beneficiary shall have the option to foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys fees and costs in such amounts as shall be fixed by the court.

8.7 Receiver. If an Event of Default occurs, Beneficiary, as a matter of right and without regard to the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Trust Estate or the foreclosure proceeding, unless the receivership is sooner terminated.

8.8 No Remedy Exclusive. No remedy conferred upon or reserved to Beneficiary under this Trust Deed shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Deed or any other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

8.9 Rights upon Default. In making the Loan, Beneficiary has relied upon the rights available to Beneficiary under this Trust Deed upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Trust Deed, to sell the Property encumbered by this Trust Deed pursuant to the power of sale granted hereunder, the right to foreclose this Trust Deed as a mortgage, and the right to have a receiver appointed. In addition to any other damages that might be recoverable by Beneficiary under the terms of this Trust Deed, Trustor shall be liable for any damages incurred by Beneficiary because Beneficiary is, for any reason, denied the opportunity to exercise Beneficiary's rights upon the occurrence of an Event of Default, including, but not limited to, such damages as are occasioned by depreciation of the Trust Estate, loss of use of the Trust Estate by Beneficiary, and all opportunity costs incurred through the loss of use of any funds as would have been received by Beneficiary through exercise of the power of sale or foreclosure, or the appointment of a receiver.

8.10 Incorporation of Certain Nevada Covenants. The following covenants, Nos. 3, 4 (at the Default Rate described in the Loan Agreement and/or Note), 6, 7 (reasonable), 8 and 9 of NRS 107.030, where not in conflict with the provisions of the Loan Documents, are hereby adopted and made a part of this Trust Deed. Upon any Event of Default by Trustor hereunder, Beneficiary may (a) declare all sums secured immediately due and payable without demand or notice or (b) have a receiver appointed as a matter of right without regard to the sufficiency of said property or any other security or guaranty and without any showing as required by NRS § 107.100. All remedies provided in this Trust Deed are distinct and cumulative to any other right or remedy under this Trust Deed or afforded by law or equity and may be exercised concurrently, independently or successively. The

sale of said property conducted pursuant to Covenants Nos. 6, 7 and 8 of NRS § 107.030 may be conducted either as to the whole of said property or in separate parcels and in such order as Trustee may determine.

ARTICLE 9 GENERAL PROVISIONS

9.1 Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when personally delivered, deposited in the United States mail, by registered or certified mail, or deposited with a reputable overnight mail carrier which provides delivery of such mail to be traced, addressed as follows:

Beneficiary:	Nevada State Bank Real Estate Loan Department 750 East Warm Springs Road, 4th Floor Las Vegas, Nevada 89119 Attention: Michael Cunningham
With copies to:	Callister Nebeker & McCullough Gateway Tower East, Suite 900 10 East South Temple Salt Lake City, Utah 84133 Attention: John B. Lindsay
Trustee:	Stewart Title of Nevada 3773 Howard Hughes Parkway, Suite 160N Las Vegas, Nevada 89109
Trustor:	21 Stars, Ltd. 851 South Rampart Boulevard, Suite 220 Las Vegas, Nevada 89145 Attn: Larry A. Miller
With copies to	Sklar Warren Conway & Williams LLP 8363 West Sunset Road, Suite 300 Las Vegas, Nevada 89113 Attn: Bryan Williams, Esq.

Such addresses may be changed by notice to the other party given in the same manner provided in this Section 9.1.

9.2 Severability. If any provision of this Trust Deed shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Trust Deed or render the same invalid, inoperative, or unenforceable to any extent whatever.

9.3 Amendments, Changes, and Modifications. This Trust Deed may not be amended, changed, modified, altered, or terminated without the written consent of Beneficiary.

9.4 Governing Law. This Trust Deed shall be governed exclusively by and construed in accordance with the applicable laws of the State of Nevada.

9.5 Interpretation. Whenever the context shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Trust Deed are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

9.6 Binding Effect. This Trust Deed shall be binding upon Trustor and Trustor's successors and assigns. This Trust Deed shall inure to the benefit of Beneficiary, and Beneficiary's successors and assigns, and the holders of any of the Obligations secured hereby.

9.7 Waivers. Beneficiary's failure at any time or times hereafter to require strict performance by Trustor of any of undertakings, agreements, or covenants contained in this Trust Deed shall not waive, affect, or diminish any right of Beneficiary hereunder to demand strict compliance and performance therewith. Any waiver by Beneficiary of any Event of Default under this Trust Deed shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Trustor under this Trust Deed, shall be deemed to have been waived by Beneficiary, unless such waiver is evidenced by an instrument in writing signed by an officer of Beneficiary and directed to Trustor specifying such waiver.

9.8 Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county wherein the Property is located, a substitution of trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

9.9 Heirs, Successors, Etc., Definitions. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder, if more than one party, are joint and several as between them. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note secured hereby. In this Trust Deed, whenever the context so requires, the masculine gender includes both the feminine and neuter, and the singular number includes the plural.

9.10 Acceptance of Trust. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

9.11 Attorneys' Fees and Expenses. Trustor agrees to reimburse Beneficiary for any reasonable attorneys' fees and costs actually incurred by Beneficiary with respect to any bankruptcy or insolvency proceeding, or other action involving Trustor or any guarantor as a debtor.

Trustor additionally agrees to pay all reasonable costs and out of pocket expenses, including, without limitation, (a) reasonable attorneys fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Trust Estate, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Trust Estate, and (g) costs for preservation and protection of the Trust Estate, incurred by Beneficiary in obtaining possession of Trust Estate, storage and preparation for sale, sale or other disposition, and otherwise incurred in foreclosing upon the Trust Estate. Any and all such costs and out of pocket expenses shall be payable by Trustor upon demand, together with interest thereon from the date of the advance until repaid, both before and after judgment, at the rate provided in the Note.

Regardless of any breach or default, Trustor agrees to pay all expenses, including reasonable attorneys fees and legal expenses incurred by Beneficiary in any bankruptcy proceedings of any type involving Trustor, the Trust Estate, or this Trust Deed, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

9.12 Request for Notice. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at the address for Trustor specified in Section 9.1 of this Trust Deed.

9.13 Limitation on Damages. Beneficiary and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Trustor or any Guarantor for consequential, special, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Trust Deed or the Trust Estate regardless of whether Beneficiary may have been advised of the possibility of such damages.

9.14 Suncoast Lease. Notwithstanding any provision of this Trust Deed to the contrary, no action by Suncoast that is permitted under the Suncoast Lease existing as of the Closing Date shall constitute a default by Borrower under this Trust Deed.

9.15 Preferential Transfers. If the incurring of any debt by Trustor or the payment of any money or transfer of property to Beneficiary by or on behalf of Trustor or any Guarantor should for any reason subsequently be determined to be "voidable" or "avoidable" in whole or in part within the meaning of any state or federal law (collectively "voidable transfers"), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Beneficiary is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Beneficiary's counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys fees of Beneficiary related thereto, the liability of Trustor and Guarantor,

and each of them, and this Trust Deed, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

9.16 Survival. All agreements, representations, warranties and covenants made by Trustor shall survive the execution and delivery of this Trust Deed, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Beneficiary contemplated by this Trust Deed is outstanding and unpaid, notwithstanding any termination of this Trust Deed. All agreements, representations, warranties and covenants in this Trust Deed shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

[SIGNATURE PAGE(S) AND EXHIBIT(S), IF ANY, FOLLOW THIS PAGE]

9.17 Defined Terms. Unless otherwise defined in this Trust Deed, capitalized terms used herein have the meanings given them in the Loan Agreement.

DATED: April 15, 2005.

TRUSTOR

21 STARS, LTD.,
a Nevada limited liability company

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

By: _____
Laurie Peccole Bayne, Secretary

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 14th day of April, 2005, by Laurie Peccole Bayne, Secretary of Peccole-Nevada Corporation, a Nevada corporation, Manager of 21 Stars, Ltd., a Nevada limited liability company.

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

Joanne Baldassare
NOTARY PUBLIC

My Commission Expires:
June 2, 2006

Residing At:
Las Vegas, Nevada

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property located in Clark County, State of Nevada, and more particularly described as follows:

THOSE PORTIONS OF SECTIONS 31 AND 32 IN TOWNSHIP 20 SOUTH, RANGE 60 EAST, MORE PARTICULARLY DESCRIBED AS PARCEL ONE (1) OF THAT CERTAIN PARCEL MAP ON FILE IN FILE 83 OF PARCEL MAPS, PAGE 86, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM that portion of said land as conveyed to the City of Las Vegas by Deed recorded August 13, 1997, in Book 970813, as Document No. 01191, Official Records.

FURTHER EXCEPTING that portion of said land as conveyed to the City of Las Vegas by Deed recorded November 12, 1999 in Book 971112, as Document No. 00765, Official Records.

TOGETHER WITH that portion of said land as Vacated by that certain Order of Vacation recorded April 3, 2000 in Book 20000403, as Document No. 01171, Official Records.

EXCEPTING THEREFROM that portion of said land as conveyed to the City of Las Vegas by Deed recorded September 11, 2000 in Book 20000911, as Document No. 00935, Official Records.

TOGETHER WITH that portion of said land as vacated by the certain Order of Vacation recorded September 19, 2001, in Book 20010919, as Document No. 00217, Official Records.

EXHIBIT “M”

June 12, 2014

Mr. Billy Bayne
Fore Stars, Ltd.
851 South Rampart, Suite 150
Las Vegas, NV 89145

Re: Badlands Golf Course, Las Vegas, Nevada

Dear Billy:

This non-binding letter of intent ("Letter of Intent"), between Fore Stars, Ltd. (the "Seller"), the owner of the real estate and business operation known as the "Badlands Golf Course", and Yohan Lowie, or such other nominee as may be named (the "Purchaser"), is intended to provide a basis upon which the parties would be interested in negotiating the sale and purchase of the Badlands Golf Course:

1. THE PROPERTY. The property and assets to be purchased by Purchaser (the "Property") shall mean:

(a) Seller's fee interest in the Badlands Golf Course land, including the existing clubhouse and parking lot, and all of Seller's right, title and interest in and to all improvements on the land together with all easements, covenants, water rights, and all other rights pertaining to the premises; and

(b) Seller's right, title and interest in the business, personal property, intellectual property, and assets comprising the Badlands Golf Course operations; and

(c) All right, title and interest to the water rights under GWMP-999999051 (399 acre-feet) and GWMP-999999016 (21.7 acre-feet), and assignment of the water rights leased from Allen Nel (217.35 acre-feet).

2. PURCHASE PRICE. The purchase price (the "Purchase Price") for the Property shall be Twelve Million Dollars ($12,000,000), subject to the following:

(a) The Purchase Price shall be paid at closing in cash.

(b) The drafting, execution, and delivery of a definitive purchase agreement (the "Purchase Agreement") and related agreements satisfactory in form and substance to Purchaser and Seller shall complete within thirty (30) days of the execution of this non-binding LOI ("Negotiation Period"). The Purchase Agreement shall contain such representations, covenants, conditions, and other provisions as are standard for such an agreement and are mutually agreed to by Seller and Purchaser.

(c) Within two (2) business days of the execution of this LOI, Purchaser will deposit, in an interest-bearing escrow account with a mutually acceptable escrow agent, a deposit in the amount of Two Hundred Thousand Dollars ($200,000) (the "Earnest Money Deposit"), to be credited to the Purchase Price upon closing.

(d) Upon execution of the Purchase Agreement, the Earnest Money Deposit shall no longer be refundable and shall then be released to Seller.

(e) Within ten (10) days of execution of the Purchase Agreement, Purchaser shall deposit an additional Three Hundred Thousand Dollars ($300,000) ("Additional Earnest Money Deposit") with escrow agent to be released immediately to Seller and credited to the Purchase Price.

(f) The closing shall occur within thirty (30) days after the expiration of the Review Period (as defined below).

3. REVIEW PERIOD. The transaction contemplated herein shall be subject to completion of Purchaser's review, to the reasonable satisfaction and at the sole expense of Purchaser (the "Review Period"). The Review Period shall start upon execution of this Letter of Intent by Seller and be completed within sixty (60) days following the execution of the Purchase Agreement.

4. EXCLUSIVE & STAND STILL. In consideration of the agreements contained herein, from the date hereof until the expiration of the Negotiation Period, Seller shall not deal or negotiate with any other person during such period.

5. ACCESS TO PROPERTY AND RECORDS. Seller shall provide Purchaser access to the Property at all reasonable times during the escrow period so that Purchaser (or its agents and consultants) can conduct such document review, site inspections, testing and sampling as it may deem necessary. Purchaser shall indemnify Seller for any expenses, claims or liens incurred by Seller as a result of any entry by Purchaser and/or its agents. Seller shall deliver to Purchaser the items relating to the Property which are in Seller's possession as may be reasonably requested by Purchaser, within five (5) days after such request is made.

6. COOPERATION. Seller, through its principals, shall cooperate and support Buyer through its entitlement process.

7. DAYS. All days are calendar days, unless otherwise indicated. If a final day falls on a day which is not a weekday (Monday through Friday) or is a federal or Nevada State holiday, the day of performance is the preceding weekday.

8. CONFIDENTIALITY. The parties agree that the terms and conditions of this LOI, and the Purchase Agreement, shall remain strictly confidential and shall only be disclosed to the extent, and to parties, necessary to proceed with and close the transaction.

//
//

If this non-binding Letter of Intent is acceptable to you, please countersign where indicated and return to me.

Very truly yours,

By:_____
Yohan Lowie

FORE STARS, LTD

Date:_____ By:_____

Its:_____

EXHIBIT “N”

From: "Henry Lichtenberger" <hlichtenberger@sklar-law.com>
Sent: Fri, 27 Feb 2015 14:24:29 -0800
To: "Todd Davis" <tdavis@ehbcompanies.com>;"Billy Bayne(william.bayne@gmail.com)" <william.bayne@gmail.com>
Cc: "Kerry Walters" <kerrylwalters@gmail.com>;"Frank Pankratz" <frank@ehbcompanies.com>;"Alan Mikal" <AMikal@ehbcompanies.com>
Subject: RE: Revised WRL and Fore Stars Agreement along with the License Agreement
Attachments: Fore Stars Purchase Agreement-3.doc, WRL Purchase Agreement-3.doc

Revised – each document now $7,500,000. No marked version given only one change in each document.

From: Todd Davis [mailto:tdavis@ehbcompanies.com]
Sent: Friday, February 27, 2015 1:54 PM
To: Henry Lichtenberger; Billy Bayne (william.bayne@gmail.com)
Cc: Kerry Walters; Frank Pankratz; Alan Mikal
Subject: RE: Revised WRL and Fore Stars Agreement along with the License Agreement

Yes, that is the only comment. I will wait for your updates. Thx!

From: Henry Lichtenberger [mailto:hlichtenberger@sklar-law.com]
Sent: Friday, February 27, 2015 1:48 PM
To: Todd Davis; Billy Bayne (william.bayne@gmail.com)
Cc: Kerry Walters; Frank Pankratz; Alan Mikal
Subject: RE: Revised WRL and Fore Stars Agreement along with the License Agreement

Is that the only comment? If so, I will revise and circulate updated copies.

From: Todd Davis [mailto:tdavis@ehbcompanies.com]
Sent: Friday, February 27, 2015 1:46 PM
To: Henry Lichtenberger; Billy Bayne (william.bayne@gmail.com)
Cc: Kerry Walters; Frank Pankratz; Alan Mikal
Subject: RE: Revised WRL and Fore Stars Agreement along with the License Agreement

Henry,

The allocation between Fore Stars and WRL is $7.5 million each. I will send revised docs shortly.

Thanks, td

From: Henry Lichtenberger [mailto:hlichtenberger@sklar-law.com]
Sent: Thursday, February 26, 2015 12:19 PM
To: Billy Bayne (william.bayne@gmail.com); Todd Davis
Cc: Kerry Walters; Frank Pankratz; Alan Mikal
Subject: Revised WRL and Fore Stars Agreement along with the License Agreement

Attached are clean and marked versions of the WRL and Fore Stars agreement plus the license agreement for the Queensridge name as referenced in the Fore Stars Agreement. In the interest of time, I am circulating to all parties simultaneously which may result in further changes from my client. The current executed agreement remains in full force and effect until the WRL and Fore Stars agreements are finalized and signed at the closing.

For the most part, the changes are clean up in nature and removes all references to any IRS forms.

Please call with comments/questions.

Thanks

Henry Lichtenberger

SKLAR WILLIAMS

— PLLC —

LAW OFFICES

410 South Rampart Boulevard, Suite 350

Las Vegas, Nevada 89145

(702) 360-6000 Fax: (702) 360-0000

E-Mail: hlichtenberger@sklar-law.com

EXHIBIT “O”

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

180 Land Co LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-176
Parcel No(s). 138-31-801-002; 138-31-201-005; 138-31-601-008;
138-31-702-003; 138-31-702-004; 138-31-712-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Petitioner reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

Fore Stars, Ltd ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-175
Parcel No(s). 138-32-202-001; 138-32-210-008; 138-31-212-002;
138-31-610-002; 138-31-713-002; 138-32-210-005 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Fore Stars Ltd.

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

Seventy Acres LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-177
Parcel No(s). 138-31-801-003; 138-32-301-005; 138-32-301-007; 138-32-301-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Seventy Acres LLC

OML
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov

(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 **CITY'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: TO EXCLUDE SOURCE OF FUNDS** Hearing Date: October 26, 2021 Hearing Time: 9:05 AM

The City of Las Vegas ("City") hereby opposes the Plaintiff Landowners' 180 Land Co, LLC and Fore Stars Ltd. (collectively, the "Developer") Motion in Limine No. 2: To Exclude Source of Funds ("Motion"). The Motion requests an order excluding all evidence of the source of funds which would be used to pay a verdict of just compensation.

. . .

. . .

The City does not intend to refer to the taxpayers as the source of funds which would be used to pay any verdict of just compensation. However, the City reserves the right to argue that just compensation should be fair to the public. *U.S. v. Commodities Trading Corp.* (1950) 339 U.S. 121, 123 (just compensation must be just "both to an owner whose property is taken and to the public that must pay the bill[.]"; *see also In re City of Stockton, California* (2018) 909 F.3d 1256, 1268 (just compensation requires consideration of "whether the contemplated compensation 'would result in manifest injustice to owner or public.'") (quoting *Commodities Trading Corp.*, 339 U.S. at 123); *Sacramento Area Flood Control Agency v. Dhaliwal* (2015) 236 Cal.App.4th 1315, 1339 ("[t]he term 'just compensation' means 'just' not only to the party whose property is taken for public use but also 'just' to the public which is to pay for it."); *Emeryville Redevelopment v. Harcros Pigments, Inc.* (2002) 101 Cal.App.4th 1083, 1094 ("The constitutional guarantee of 'just compensation' is obviously intended to protect the landowner, but it also protects the public by limiting its liability to losses that can be fairly attributed to the taking.); *San Diego County Water Authority v. Mireiter* (1993) 18 Cal.App.4th 1808, 1817 ("Just as the landowner should not be shortchanged, the public should not be burdened with paying a king's ransom for a squire."); *City of Fresno v. Cloud* (1972) 26 Cal.App.3d 113, 123 ("the constitutional requirement for the payment of 'just compensation' is not only for the benefit of the landowner, but also for the benefit of the public.").

It is permissible for public agencies to refer to this constitutional principle during trial. In *People By and Through Department of Public Works v. Pera* (1961) 190 Cal.App.2d 497, 499, the court upheld a jury instruction which stated that "'just compensation' means 'just' not only to the party whose property is taken for public use but also 'just' to the public which is to pay for it," holding that the instruction was "fair and accurate." Similarly, in *Sacramento Area Flood Control Agency*, it was permissible for government's counsel to refer to the government's inability to pay above-market value for the condemned property because the remark "[was] consistent" with the principle that compensation should be just to both the landowner and the public. 236 Cal.App.4th at 1339.

Based on the foregoing, the City requests that the Court deny the Developer's Motion to the extent it would prohibit the City from arguing that any verdict of just compensation must be fair to the public.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Dated this 21st day of September, 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, and that on the 21st day of September, 2021, a true and correct copy of the foregoing **CITY'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 2: TO EXCLUDE SOURCE OF FUNDS** 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

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

OML
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

(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'S OPPOSITION TO PLAINTIFF LANDOWNER'S MOTION IN LIMINE NO. 3 TO PRECLUDE CITY'S ARGUMENTS THAT LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT

Hearing Date: October 26, 2021
Hearing Time: 9:00 a.m.

INTRODUCTION

The City of Las Vegas ("City") hereby opposes the Plaintiff Landowners' 180 Land Co, LLC and Fore Stars Ltd. (collectively, the "Developer") Motion in Limine No. 3 to preclude the City from "presenting arguments that the Landowners dedicated the 250 acres of Land as the '20%

requirement[’] for the Peccole Ranch Master Plan approval” (the “Motion”). Motion at 1-2. The City has never stated or argued that there was a “20 percent” requirement for land dedication that applied to the Developer. To the contrary, the Developer picked up this notion from a stray comment made by a former Councilmember who does not speak for the City. Because there is no “20 percent” requirement, the City has not and will not present this argument.

However, the Developer’s Motion in fact has a more nefarious intent, as evidenced by the fact that elsewhere in the Motion, the Developer makes far more expansive assertions and requests that are inappropriate for a motion in limine. For example, the Developer asserts that its Motion “is brought to prohibit the City from continuing to argue that the 250 Acre Land . . . was set aside as Parks Recreation and Open Space (‘PROS’) in the Peccole Ranch Conceptual Plan (‘PRMP’).” Motion at 2. Later, the Developer complains that “the City continues to argue that the 250 Acre Land was set aside and the PROS land use designation is superior to zoning.” *Id.* at 2-3. These statements refer to legal arguments based on well-established law (the PR-OS land use designation in the City’s General Plan and Nevada state law establishing the hierarchy of general plan designations over zoning). These statements are far different from, and far more expansive than, complaining about whether the 250-Acre Land satisfied a non-existent “20 percent” requirement.

The Developer is purposefully conflating the legitimate PR-OS designation in the General Plan, which was adopted via ordinance in 1992 and repeatedly readopted in every subsequent General Plan update, with the false “20% requirement” asserted by a single former Councilmember. At best, the Developer’s Motion is vague and ambiguous as to what, exactly, it wants excluded. *See, e.g.* Motion at 5 (the City should be prevented “from presenting its PROS/PRMP 20 percent dedication argument do a jury.”). To the extent the Developer is seeking to reject evidence of a 20% requirement, it is improper to seek to exclude evidence that does not exist.

However, to the extent the Developer seeks to exclude the PR-OS designation, state law establishing the hierarchy of general plan designations over zoning, or any City legal arguments based on these laws, such an effort is improper. Although the City has never made the bogus “20 percent” argument, it plainly has relied on the validly adopted PR-OS land use designation and the law reinforcing that zoning must conform to general plan designations. The Developer may not seek, by

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

way of motion in limine, to reject laws and legal arguments it simply does not like. A motion in limine is used "to exclude or admit *evidence*," not to preclude a party from making a legal argument based on law. *See* EDCR 2.47 (emphasis added). The Court must deny this Motion to reject the Developer's intentional conflation of the "20 percent" argument with the PR-OS designation, and to reject the Developer's attempt to preclude legal arguments based on the PR-OS land use designation.

ARGUMENT

I. The City Council Designated the Badlands PR-OS in its General Plan in 1992 via validly adopted ordinance, and it has repeatedly confirmed the designation.

The Developer asks the Court to "prohibit the City from continuing to argue that the 250 Acre Land (of which the 35 Acre Property is a part) was set aside as Parks Recreation and Open Space ('PROS') in the Peccole Ranch Conceptual Master Plan ('PRMP')." Motion at 2. The Developer contends that "the City has been unable and outright refused to produce any evidence" supporting the fact that the Badlands was designated PROS in the General Plan, and that general plan designations are superior to zoning. *Id.* at 3. This request is asking the Court to ignore a validly adopted law, as supported by a mountain of evidence showing that the City Council adopted the PROS designation and repeatedly readopted the designation through validly adopted ordinances. *See, e.g.*, Exs. E, G, H, I, J, K, L, M, N, O, P, and Q.[1] The Developer's frustration with the state of the law and with the mountain of evidence supporting the City's General Plan designations does not constitute reason to ignore the City's General Plan and the PR-OS designation for the Badlands therein.

As the City has shown, in 1988, the Peccole Ranch Partnership ("Peccole") submitted a revised master plan known as the Peccole Ranch Master Plan ("PRMP") and an application to rezone 448.8 acres for the first phase of development ("Phase I"). Ex. E at 62-93. In 1989, the City approved the PRMP and Phase I rezoning application, after Peccole agreed to limit the overall density in Phase I and reserve 207.1 acres for a golf course and drainage in the second phase of development ("Phase II") of the PRMP. *Id*. at 96-97. In 1990, Peccole applied to amend the PRMP for Phase II. Ex. H at 138-161. The revised PRMP highlighted an "extensive 253-acre golf course and linear open space system

[1] All references to exhibits herein are to the Appendix of Exhibits in Support of the City's Opposition to Plaintiff's Motion to Determine take and for Summary Judgment on the First, Third, and Fourth Claims for Relief and Countermotion for Summary Judgement.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

winding throughout the community [that] provides a positive focal point while creating a mechanism to handle drainage flows." *Id*. at 145. The City approved the Phase II rezoning application under a resolution of intent subject to all conditions of approval for the revised PRMP. *Id*. at 183-94.

Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. On April 1, 1992, the City Council adopted a new Las Vegas General Plan, including revisions approved by the Planning Commission. Ex. I at 195-204, 212-18. The 1992 General Plan included maps showing the existing land uses and proposed future land uses. *Id.* at 246. The future land use map for the Southwest Sector designated the area set aside by Peccole for an 18-hole golf course as "Parks/Schools/ Recreation/Open Space." *Id.* at 248. That designation allowed "large public parks and recreation areas such as public and private golf courses, trails and easements, drainage ways and detention basins, and any other large areas of permanent open land." *Id.* at 234-35.

From 1992 to 1996, Peccole developed the 18-hole golf course in the location depicted in the 1992 General Plan, and a 9-hole course to the north of the 18-hole course. *Compare id.* at 248 *with* Ex. TT; *see also* Ex. J, UU. The 9-hole course was also designated "P" for "Parks" in the City's General Plan as early as 1998. *See* Ex. K. The Badlands 18-hole and 9-hole golf courses, totaling 250 acres, remain in the same configuration today. When the City Council adopted a new General Plan in 2000 to project growth over the following 20 years ("2020 Master Plan"), it retained the "parks, recreation, and open space" [PR-OS] designation. Ex. L at 265; compare *id.* at 269 with Ex. I at 234-35, 248. Beginning in 2002, the City's General Plan maps for the Southwest Sector show the entire Badlands designated as PR-OS. Ex. M at 274-77.

In 2005, the City Council incorporated an updated Land Use Element in the 2020 Master Plan. Ex. N at 278-82. This 2005 Land Use Element designated all 27 holes of the Badlands golf course as PR-OS for "Park/Recreation/Open Space." *Id.* at 291. Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged. *See* Ex. O at 292, 300-01 (Ordinance #6056 9/2/2009); Ex. P at 302-04, 316-17 (Ordinance #6152 5/8/2011); Ex. Q at 318, 331-32 (Ordinance #6622 6/26/2018).

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Despite all this evidence showing that the PR-OS land use designation was validly adopted via city ordinance, the Developer asks the Court to preclude the City "from continuing to argue that the 250 Acre Land . . . was set aside as Parks Recreation and Open Space ('PROS') in the [PRMP]." Motion at 2. As demonstrated, the PR-OS designation is validly adopted law. A law is not evidence. Therefore, the Developer cannot be allowed to exclude a law or to preclude legal argument based on that law. *See* EDCR 2.47 (exclusion of evidence).

II. The City approved the R-PD7 zoning based on the Golf Course/Open Space amenities Peccole included in the PRMP, and the golf course was required to be included in the Gaming Enterprise District

The Developer misunderstands the City's open space requirements. It states that "the Land was set aside as a dedication requirement to the Peccole Ranch Master Plan." Motion at 5. Not so. The open space/golf course requirement imposed on the PRMP did not come from the PRMP, nor was it a condition of approval for the PR-OS land use designation, but instead it was part of the R-PD7 zoning approval, and it was requirement to be included in the Gaming Enterprise District ("GED").

In 1972, the City established R-PD zoning (Residential-Planned Development). Ex. R. "The purpose of a Planned Unit Development [was] to allow a maximum flexibility for imaginative and innovative residential design and land utilization *in accordance with the General Plan*." *Id*. at 333 (emphasis added). The "PD" in R-PD stands for "Planned Development." Planned Development zoning, generally applicable to larger development sites, "permits planned-unit development by allowing a modification in lot size and frontage requirements *under the condition that other land in the development be set aside for parks, schools, or other public need*s." *Zoning*, *Black's Law Dictionary* (11th ed. 2019) (emphasis added). The R-PD district in the City's Code was intended "to promote an enhancement of residential amenities by means of an efficient consolidation and utilization of *open space*, separation of pedestrian and vehicular traffic and a homogeneity of use patterns." Ex. R at 333 (emphasis added). "As a[n R-PD7] Residential Planned Development, density may be concentrated in some areas while other areas remain less dense, as long as the overall density for this site does not exceed 7.49 dwelling units per acre. Therefore, portions of the subject area can be restricted in density by various General Plan designations." Ex. ZZZ at 1414-15.

. . .

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

The City's discretion to require open space in zoning the property R-PD7 is confirmed by state law. *See* NRS 278.250(2)(b), (e) (stating that zoning regulations must be adopted in accordance with the master plan for land use and be designed "[t]o promote the conservation of open space and the protection of other natural and scenic resources from unreasonable impairment," and "[t]o provide for recreational needs"). The City Council exercised its discretion to include open space in an R-PD7 zoned area when it rezoned phase II of the PRMP. *See* Ex. H at 187. In 1990, the City adopted a resolution of intent to rezone the 996.4 acres in Phase II in accordance with the amended PRMP. *Id.* at 189-94. To obtain the City Council's approval of tentative R-PD7 zoning for housing lining the fairways of a golf course, Peccole set aside 211.6 acres for a golf course and drainage. *Id*. at 159, 163-165, 167-168, 171-172, 187-188. Accordingly, the requirement to set aside land for a golf course and open space was the basis for the approval of R-PD7 zoning on the PRMP.

Developing the golf course was also required for the PRMP to be included in a Gaming Enterprise District ("GED"). This GED was established via Ordinance No. 3472. Ex. G. Attached to this ordinance was a definition of a "Destination Resort" which was defined as a hotel with at least 200 rooms, within a master planned community at least 500 acres large, which included amenities such as "[a]n 18-hole golf course." *Id.* at 123, 130. In 1989, the City included Peccole Ranch in the GED, which allowed Peccole to develop a resort hotel in the PRMP so long as Peccole provided a recreational amenity such as an 18-hole golf course. Ex. G at 114-124, 130, 135-37. The PRMP was recommended for inclusion in the GED "with the qualification that" it "be limited to one 'destination resort' as defined in the attachment." *Id.* at 129, *see also id.* at 136. Peccole reserved 207 acres for a golf course to satisfy this requirement. Ex. E at 96, 98; Ex. G at 123-124. The Suncoast Hotel and Casino would not exist today but for the fact that Peccole set aside the land for the golf course.

Neither the discretion to require open space in the R-PD zoning district nor the GED requirement were based on a percentage of the overall development area. Accordingly, neither of these was the source of a nonexistent "20 percent" requirement. Instead, Peccole included the open space and golf course in the PRPM in order to obtain approval of the R-PD zoning designation and a resort hotel and casino.

. . .

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

III. There is no "20% requirement" for open space, and the City has never asserted otherwise.

The Developer contends that the City must be prevented from introducing evidence of a 20% open space requirement, and it complains about the City's failure to respond to an interrogatory "to provide a list of all properties in the City upon which this 20 percent dedication requirement was imposed." Motion at 5. However, as noted, the City has never argued that such a requirement exists because it doesn't.

Instead, the Developer developed the notion of such a requirement from a stray remark by former Councilmember Seroka from a homeowners association meeting in 2018, in which he stated that "[a]t that time, it was generally accepted accounting principals [sp] and generally accepted percentage of acreage that is open space/recreational. It is 20 percent. What we have up here is the agreed upon roughly 20 percent." Landowner's Exhibit at 2 (Transcript of HOA Meeting at 19:10-14) to Motion to Compel Interrogatory Responses (Jan. 8, 2021). Despite the fact that former Councilmember Seroka did not speak for the City and his comment is not relevant to any factual or legal issue in this case, the Developer asked the City in interrogatories to "[s]tate what City code, ordinance or regulation and/or Nevada statute required a '20 percent' open space dedication between 1985-2005 as referenced by Councilman Seroka." 2020-06-11 Developer's First Set of Interrogatories to the City, Interrogatory No. 2. However, the City has *never* argued that such a requirement exists.

As the City has pointed out, former City Councilmember Seroka was not sitting on the Council at the time that the City denied the 35-Acre Applications, and he did not participate in that vote. *See* City Motion for Reconsideration of Order to Compel, at 4 (April 8, 2021). Even if Mr. Seroka had participated, his comments about a decision of a majority of the City Council are completely irrelevant to the *economic effect* of that decision on the Developer's property, which is the only legal issue in a regulatory taking case. *State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder*

City v. Cinnamon Hills Assocs., 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994) (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").

Furthermore, even if Councilmember Seroka had been a sitting member of the City Council at the relevant time period and the intent of the City Council's action were relevant (it's not), courts may not consider a single decision maker's statement of opinion or motives to divine legislative intent. *A-NLV-Cab Co. v. State, Taxicab Auth.*, 108 Nev. 92, 95, 825 P.2d 585, 587 (1992). The subjective considerations and motivations of individual decision makers is irrelevant and evaluating decisions on the basis of such motivations would be a "hazardous task." *City of Las Vegas v. Foley*, 747 F.2d 1294, 1297(9th Cir. 1984). Indeed, courts hold that "[s]tray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted on the bill. The opposite inference is far more likely." *In re Kelly*, 841 F.2d 908, 912 n.3 (9th Cir. 1988). As these authorities reinforce, Councilmember Seroka simply did not speak for the City when he described a "20 percent" open space requirement.

Because the City has never purported to have, or to have imposed a "20 percent" open space requirement, the Developer's request to preclude such argument is irrelevant.

IV. The open space in the PRMP was set aside for a golf course and drainage, but was not dedicated to the City

The City's R-PD zoning regulations never required "dedication" of open space amenities. A dedication is a gift of land by the owner for an appropriate public use, such as a street. *Carson City v. Capital City Entm't, Inc.*, 118 Nev. 415, 421, 49 P.3d 632, 635 (2002). A statutory dedication operates by way of grant, vesting in the municipality the fee for public use. *Id.* In other words, if the City had required "dedication" of the Badlands, the City would own the property in fee. The only dedication requirements that applied to the Badlands property were for flood control, drainage, and utility easements and related improvements.

The City "designated" the Badlands for parks, recreation, and open space in the City's general plan, consistent with the intended use for which the property was approved. The Developer conflates the designation of land in the City's general plan—regulation of use—with a dedication transferring an interest in property. If the designation of property for a particular use in the City's general plan

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

constituted a dedication, that would mean that by designating the surrounding neighborhood for medium density housing, the City required transfer of title of every house so designated to the City. This is an absurd argument.

V. This Court has not rejected the PR-OS designation or related legal arguments.

The Developer asserts that there are "10 orders rejecting the 'PROS/PRMP 20% argument, including this Courts [sic] multiple orders." Motion at 2-3. It also contends that this Court has "rejected" the argument that "the land was governed by the land use designation of PROS, and that the land was dedicated or 'set aside' as a condition of approval of the [PRMP]." Motion at 4 (citing Exhibit 1, FFCL re Motion to Determine Property Interest). The Developer is not only misstating the City's arguments, but it is misstating this Court's and other courts' decisions.

First, the Developer does not cite the alleged "10 orders" that reject the "PROS/PRMP 20% argument," because there are no such orders. Because the City has never argued that there is a 20 percent requirement, there is no court order rejecting the argument.

Similarly, this Court's Order granting the Developer's Property Interest Motion does not even *mention, let alone "reject"* the fact that the Badlands is designated PR-OS in the General Plan. *See* Order (Oct. 9, 2020). Furthermore, the City did not argue that the Badlands was set aside or dedicated as a condition of approval of the PRMP, contrary to the Developer's contention that this Court "rejected" such an argument. Motion at 4. Instead, as described above, the golf, course, open space, and drainage were made part of the R-PD7 zoning district when the City approved the rezoning of Phase II of the PRMP to R-PD7, and also as a condition of being included in the GED. However, even if the City had made such an argument, the Court's own order shows that there is no discussion, let alone rejection, of such a dedication or set-aside argument. *See* Order (Oct. 9, 2020). The Developer is improperly rewriting history in support of its vague request to preclude any mention whatsoever of the PR-OS designation.

VI. It is improper to use a motion in limine to omit reference to, or argument based on, the law.

As explained herein, the Developer is using its Motion to prevent the City from relying on validly adopted laws, including the PR-OS land use designation and Nevada law stating unequivocally

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

that the general plan is superior to a zoning designation. *See* Motion at 3 (asking the Court to preclude the City from arguing that "the PROS land use designation is superior to zoning"). However, the law is unequivocal on these issues. *See* NRS 278.250(2) ("The zoning regulations must be adopted in accordance with the master plan"); *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 ("municipal entities must adopt zoning regulations that are in substantial agreement with the master plan"); *Nova Horizon, Inc. v. City Council of Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989) (same); UDC 19.00.040 ("It is the intent of the City Council that all regulatory decisions made pursuant to this Title be consistent with the General Plan"). A motion in limine cannot be used to strike laws that one party finds objectionable. Instead, the purpose of a motion in limine is to exclude *evidence* that is inappropriate in a trial. *See* EDCR 2.47 The existence of City law establishing the PROS designation, like the existence of unanimous Nevada authorities establishing that land use designations are superior to zoning, is not evidence that can be excluded by the Developer's Motion.

CONCLUSION

For the reasons stated herein, the City respectfully requests that the Court deny the Developer's Motion.

DATED this 21st day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of September, 2021, I caused a true and correct copy of the foregoing **CITY'S OPPOSITION TO PLAINTIFF LANDOWNER'S MOTION IN LIMINE NO. 3 TO PRECLUDE CITY'S ARGUMENTS THAT LAND WAS DEDICATED AS OPEN SPACE/CITY'S PRMP AND PROS ARGUMENT** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

RIS

Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
LAS VEGAS CITY ATTORNEY'S OFFICE
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101
Telephone: (702) 229-6629
Facsimile: (702) 386-1749
bscott@lasvegasnevada.gov
pbyrnes@lasvegasnevada.gov
rwolfson@lasvegasnevada.gov

(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'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT

Hearing date: September 23, 2021
Hearing time: 1:30 pm

INTRODUCTION

The Developer alleges five taking claims: (1) categorical, (2) *Penn Central* [*Transp. Co. v. City of New York*, 438 U.S. 104 (1978)], (3) regulatory per se, (4) nonregulatory, and (5) temporary.[1] The Developer's categorical and *Penn Central* claims allege that the City's regulation imposed excessive limits on the *Developer's use* of its 35-Acre Property.[2] In contrast, the regulatory per se claim alleges that the City limited the Developer's ability to *prevent the public from invading the property*, a physical taking claim.[3] Because the Developer has no chance of prevailing on its *use* taking claims (categorical and *Penn Central*) under the standards established by the United States and Nevada Supreme Courts, the Developer's strategy is to conflate the tests for the City's liability for these *use* taking claims with those for *physical* taking claims. Under well-established law, however, the test for a physical taking is very different from the test for a denial of the owner's use. The Court should reject the Developer's application of the test for physical takings to the categorical and *Penn Central* claims.

To prevail on a regulation of *use* taking claim (categorical and *Penn Central*), the City must wipe out or nearly wipe out the economic value of the 35-Acre Property or interfere with the Developer's objective investment-backed expectations as of the time the owner bought the property. In sharp contrast, to show a physical taking, the Developer must prove that a City regulation required the Developer to allow the public to physically invade the property; whether the regulation effects a physical taking is not part of the test to determine the economic impact of regulatory restrictions on the *owner's use*, and vice versa. If the Court applies the proper test to the categorical and *Penn Central* claims, the claims are unripe, and even if unripe, are without merit because the City did not wipe out

---

[1] Developer's Second Amendment and First Supplement to Complaint for Severed Alternative Verified Claims in Inverse Condemnation filed 5/15/2019 ("Compl.") ¶¶ 162-223. The Developer added a sixth claim for a judicial taking contingent on this Court's following the Crockett Order. Compl. ¶¶ 224-26. Because the Crockett Order was reversed, this cause of action is moot.

[2] Categorical claim, Compl. ¶ 165 ("As a result of the City's actions, the Landowner has been unable to develop the 35 Acre and any and all value in the 35 Acres has been entirely eliminated."); Penn Central claim, Compl. ¶177 (" The City . . . will not allow development of the Landowner's 35 Acres."); Compl. ¶ 181, 187 ("The City's actions have resulted in the loss of the Landowner's investment backed expectations in the 35 Acres").

[3] Physical taking claim, Compl. ¶ 199 ("The City's actions permanently reserve the 35 Acres for a public use and the public is using the 35 Acres . . . .").

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

the value of the 35-Acre Property or interfere with reasonable investment-backed expectations, and even if the Court disagrees, the City has not taken the parcel as a whole.

The Developer also attempts a strained comparison of the City's Bill 2018-24 with the laws requiring property owners to allow the public to physically invade their property. Bill 2018-24 did nothing of the sort. The City should thus have judgment on the Developer's physical taking claim, denominated by the Developer as a "regulatory per se taking."

The Developer also alleges that the City effected a "non-regulatory taking" that rendered the 35-Acre Property "useless and valueless." Yet, the only City action the Developer cites for a non-regulatory taking is the City's *regulatory* restriction on development of housing in the 35-Acre Property, a *regulatory taking* claim that duplicates the Developer's categorical and *Penn Central* claims. The Developer fails to cite any non-regulatory action of the City that had any effect on the use or value of the 35-Acre Property.

Finally, a temporary taking requires that the Court first find the City liable for a permanent regulatory taking. If liability is established, the City would then have a choice to leave the offending regulation in place and pay the Developer for the value of the property, or rescind the regulation and pay damages for the temporary period during which the regulation was in effect. Because the Developer's permanent taking claims lack merit, the Developer cannot show a temporary taking.

ARGUMENT

I. The City should have summary judgment on the Developer's categorical and *Penn Central* taking claims

A. The categorical and *Penn Central* taking claims are not ripe

1. Rules for physical takings, where regulation forces a property owner to submit to the *public's physical occupation* of its property, do not apply to claims alleging deprivation of the *owner's use* of the property

A categorical or per se taking occurs either when a regulation results in a permanent physical invasion of property, or when a regulation "completely deprive[s] an owner of 'all economically beneficial us[e]' of her property." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005) (quoting *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992). The majority in *Lucas* classified economic wipeouts and physical takings resulting from government regulation as "categorical" takings, while the

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

dissent characterized the same test as a "per se" standard. 505 U.S. at 1015, 1052 (Blackmun, J., dissenting). A unanimous Supreme Court in *Lingle* also uses the terms interchangeably. 544 U.S. at 538. Similarly, the Nevada Supreme Court in *Sisolak* refers to physical takings interchangeably as "categorical" and "per se." 122 Nev. at 662-63, 137 P.3d at 1122-23. If the Court finds a categorical or per se taking, compensation must be paid without an analysis of the three *Penn Central* factors. *Lucas*, 505 U.S. at 1019. If the facts do not show an economic wipeout or a physical invasion, then taking claims are analyzed under *Penn Central*. *Lingle*, 544 U.S. at 538-39. Thus, the word "categorical" is used to refer to a taking that results from a regulation that causes a total economic wipeout, or from a regulation that results in a physical invasion. Here, the Developer's categorical claim refers to the first type: an alleged taking that results from a regulation that causes a total economic wipeout.

Under unanimous Nevada authority, the Developer's categorical and *Penn Central* claims require a showing that a City regulation denied the Developer's use of its property. *State v. Eighth Judicial. Dist. Ct*., 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must "'completely deprive an owner of all economically beneficial use of her property'") (quoting *Lingle*, 544 U.S. at 538); *Kelly v. Tahoe Reg'l Planning Agency*, 109 Nev. 638, 649-50, 855 P.2d 1027, 1034 (1993) (regulation must deny "all economically viable use of [] property" to constitute a taking under either categorical or *Penn Central* tests); *Boulder City v. Cinnamon Hills Assocs*., 110 Nev. 238, 245-46, 871 P.2d 320, 324-35 (1994) (taking requires agency action that "destroy[s] all viable economic value of the prospective development property").[4] Because the Developer cannot meet the test for liability for a denial of all economically beneficial use of the 35-Acre Property under this Nevada authority, the Developer instead relies entirely on physical taking cases, primarily *Sisolak*. These cases, however, have no application to taking claims for denial of the owner's use.

[4] The Developer ignores this unanimous Nevada authority directly on point. Ironically, the Developer claims that the City improperly relies on federal cases, and then proceeds to cite a slew of federal cases, none of which are relevant to the categorical and *Penn Central* claims, however.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

In *Sisolak*, the Court found that the ordinances required Sisolak to allow the public to use his airspace, which the Court found was an "overflight easement exacted by the County," was a physical invasion of Sisolak's property. 122 Nev. at 660, 137 P.3d at 1120-21. The Court held:

> Categorical rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical beneficial use of her property. . . The second type of per se taking, complete deprivation of value, is *not at issue in this case* because Sisolak never argued that the Ordinances completely deprived him of all beneficial use of his property.

122 Nev. 662-63, 137 P.3d at 1122 (emphasis added). The *Sisolak* Court explained the origins of the physical taking doctrine:

> In *Loretto* [*v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419 (1982)], a New York statute required landlords to permit a cable television company to install cables and junction boxes in their buildings. The Supreme Court held that the New York statute authorized a permanent physical occupation of the landowners' property that required compensation.

122 Nev. 666-67, 137 P.3d at 1124-25. The Court then found that "the Ordinances authorize a physical invasion of Sisolak's property and require Sisolak to acquiesce to a permanent physical invasion. Thus, the County has appropriated private property for public use without compensating Sisolak and has effectuated a *Loretto*-type per se regulatory taking." 122 Nev. at 667, 137 P.3d at 1125.

Sisolak is solely concerned with an owner's right to *exclude the public from the owner's property*, while categorical and *Penn Central* claims concern government regulatory restrictions on *the owner's use* of its property. An alleged government action on applications for permits allowing the owner to *use* its property is entirely different from an ordinance exacting an easement requiring owners to submit to public occupation of their airspace in *Sisolak*, an ordinance exacting an easement requiring property owners to allow the public to physically enter their property to view human remains in *Knick v. Township of Scott, Pa.*, 139 S.Ct. 2162 (2019), or a state agency regulation exacting an easement requiring property owners to allow labor union organizers to physically enter their property in *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063 (2021). *Sisolak*, 122 Nev. 662-63, 137 P.3d at 1122 (deprivation of economically beneficial use due to denial of a use permit is "not at issue"). Moreover, the cases other than *Sisolak* on which the Developer relies, *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007), *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23 (2012), and *ASAP*

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Storage v. City of Sparks, 123 Nev. 639 (2008), are physical invasion taking cases like *Sisolak* and have no bearing on the Developer's categorical and *Penn Central* claims. Judge Herndon agreed:

> The Developer also relies on *Tien Fu Hsu v. County of Clark*, 173 P.3d 724 (Nev. 2007); *Sisolak*, 137 P.3d 1110; *Arkansas Game & Fish Comm. v. United States*, 568 U.S. 23 (2012); *ASAP Storage v. City of Sparks*, 123 Nev. 639 (2008); and *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327 (9th Cir. Ct. App. 1977) for the contention that regulation that "substantially impairs" or "direct[ly] interfere[s] with or disturb[s]" the owner's property can give rise to a regulatory taking. These cases are physical takings cases (*Tien*, *Sisolak*, *Arkansas*, and *ASAP*) or precondemnation cases (*Richmond*) and are inapplicable. The Developer also contends that takings are defined more broadly in Nevada than in federal law, citing *Vacation Village, Inc. v. Clark County*, 497 F.3d 902 (9th Cir. 2007). *Vacation Village*, however, concludes only that physical takings are broader in Nevada, not regulatory takings, citing *Sisolak*. *Id*. at 915-16. The scope of agency liability for regulatory takings [meaning denial of use permit] in Nevada is identical to the federal standard. *See State*, 131 Nev. at 419, 351 P.3d at 741 (2015); *Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034; *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35.

Ex. CCCC at 1503-04.[5]

2. The rules for ripeness and liability applicable to physical taking cases do not apply to regulation of use taking cases

A taking claim alleging excessive regulation of the owner's use of the property is ripe only when the landowner has filed at least one application to develop the property that is denied and a second application for a reduced density or a variance that is also denied. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 191 (1985). This final decision ripeness rule applies with full force in Nevada:

> Generally, courts only consider ripe regulatory takings claims, and "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. . . .

State v. Eighth Jud. Dist. Ct., 131 Nev. at 419-20, 351 P.3d at 742 (quoting *Williamson County*, 473 U.S. at 186). Because the Nevada Supreme Court follows *Williamson County*, the courts of this state require that at least two applications be denied before finding that a regulatory takings claim is ripe. In

[5] The Developer wrongly contends that Judge Trujillo "set aside" Judge Herndon's conclusion of law that the Developer's categorical and *Penn Central* claims are unripe. Judge Trujillo has not issued any orders setting aside or modifying Judge Herndon's well-supported and well-reasoned opinion.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

granting summary judgment for the City in the 65-Acre case, Judge Herndon found that the Developer's categorical and *Penn Central* taking claims were both subject to the final decision ripeness requirement and that neither claim was ripe. Similarly, because the Developer filed and had denied only one application to develop the 35-Acre Property, rather than the two applications required by *Williamson County* and *State*, the Developer's categorical and *Penn Central* claims are not ripe.

Contrary to the Developer's argument, *Sisolak* plainly holds that the final decision ripeness requirement applies to categorical and *Penn Central* claims where the owner seeks a discretionary permit to develop their property. Because physical taking claims do not involve a governmental decision to grant or deny a permit application, the final decision ripeness requirement, as a matter of unanimous law and logic, does not apply to physical taking claims. Once the government adopts a law requiring that the owner submit to a physical occupation, there is no discretion left to exercise. The taking is final at the time the easement is exacted by the legislation. *Sisolak*, 122 Nev. at 664, 137 P.3d at 1123 (final decision requirement applies to taking claims regarding denial of the owner's use, where the Court "[insists] on knowing the nature and extent of permitted development before adjudicating the constitutionality of the regulations that purport to limit it." [internal quotes and cites omitted]); *id*. (final decision ripeness does not apply to "cases involving a physical occupation of private property"). The Developer argues that a dissenting Justice in *Sisolak* found that final decision ripeness does not apply to categorical taking claims based on denial of the owner's use. Wrong. The dissenting Justice agreed with the majority that the ripeness doctrine applies to such claims. 122 Nev. at 684, 137 P.3d at 1136 (Maupin, J., dissenting).

The Developer attempts to confuse the Court by exploiting the fact that regulation of the owner's use and physical taking claims are both classified as "categorical" and "per se" taking claims. The Developer's argument goes like this: because (a) a physical taking is a "categorical" or "per se" taking, (b) a regulation of *use* that wipes out of value is also a "categorical" or "per se" taking, and (c) final decision ripeness does not apply to categorical *physical* takings, the ripeness rule therefore does not apply to categorical *use* taking claims. The argument is a classic fallacy and ignores the clear distinction made in *Sisolak* between the two different types of categorical taking claims and the different application of the ripeness doctrine to the two claims. The Court should reject this wordplay

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

and apply *State*, which held that *Williamson County* final decision ripeness applies to any claim alleging a deprivation of economically beneficial use.[6]

Judge Herndon also rejected the Developer's specious argument that the categorical claim is ripe because takings are "self-executing":

> The Developer also argues that the final decision ripeness requirement adopted in *State* and *Kelly* has been eliminated because takings are "self-executing," citing *Knick* and *Alper v. Clark County*, *Knick* had nothing to do with final-decision ripeness, nor would it because the claimant in *Knick* alleged a physical taking. A physical taking is not subject to final-decision ripeness. . . [T]he "self-executing" nature of the taking clauses means only that the taking clauses do not need to be implemented by statute. Being self-executing does not mean, as the Developer asserts, that payment of just compensation is automatically due without first satisfying the requirement to obtain a final agency decision.

Ex. CCCC at 1509.

3. The final decision ripeness requirement of *Williamson County* and *State* applies to both categorical and *Penn Central* claims

The Developer contends that the *Williamson County* final decision requirement as adopted by the Nevada Supreme Court in *State* applies only to its *Penn Central* claim and not to its categorical taking claim.[7] Judge Herndon correctly found that the final decision requirement applies to both the Developer's categorical and *Penn Central* claims and granted summary judgment to the City. Ex. CCCC at 1504-15. Moreover, it is illogical to suggest that the final decision requirement of *Williamson County* applies to *Penn Central* claims (near wipe-outs) but not categorical claims (total wipe-outs). In both instances, if a property owner rests its claim on only one government denial of an application for development, doubt will remain as to whether the government might permit some lesser—but still economically beneficial—use of the property. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 618-19 (2001). Indeed, even where an initial government decision arguably denies the owner all economically beneficial use of its property, unless the owner takes "reasonable and necessary steps" to allow the government to "exercise [its] full discretion in considering development plans for

---

[6] Doubling down on its attempt to confuse and obfuscate its claims and the applicable standard of judicial review, the Developer uses the redundant term "categorical per se taking," which is the equivalent of saying "wipe out wipe out taking" or "physical physical taking."

[7] In one of many straw man arguments, the Developer contends that the City contends that the ripeness requirement applies to the Developer's physical and non-regulatory taking claims. The City makes no such contention.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

the property, including the opportunity to grant variances or waivers . . . the extent of the restriction on [the] property is not known." *Id.* at 620-21.

In *Palazzolo*, the Court applied the *Williamson County* ripeness analysis to a categorical claim, in which the landowner alleged that the government's denial of a development proposal "deprived him of 'economically, beneficial use' of his property […], resulting in a total taking requiring compensation" under *Lucas*. 533 U.S. at 616, 618-26. The court held:

> 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, *see Lucas*, or defeated the reasonable investment-backed expectations of the landowner to the extent that a taking has occurred, *see Penn Central*. These matters cannot be resolved in definitive terms until a court knows the extent of permitted development on the land in question.

Id. at 618 (internal quotations and citations omitted); *see also*, *Barlow & Haun, Inc. v. U.S.*, 805 F.3d 1049, 1057-59 (Fed. Cir. 2015) (applying *Williamson County* to claim alleging categorical taking of oil and gas leasing rights); *Seiber v. U.S.*, 364 F.3d 1356, 1365-66, 1368 (Fed. Cir. 2004) (same to claim alleging that denial of logging permit effected temporary categorical taking of landowner's property).

4. The Developer filed only one application to develop the 35-Acre Property, not four

The Developer falsely claims that the City has denied four applications to develop the 35-Acre Property. The City denied only the 35-Acre Applications. The Developer argues that the Major Development Agreement ("MDA") was a second application to develop the 35-Acre Property. Judge Herndon rejected the same argument in the 65-Acre case, finding that the MDA did not constitute an application to develop the 65-Acre Property for purposes of final decision ripeness because that application was for property other than the 65-Acre Property standing alone, the MDA was not the site specific, detailed application required by the City's UDC to test the City Council's discretion, the MDA conflicted with other of the Developer's applications, and the MDA was too vague and uncertain for the City Council to know what it was voting on. Ex. CCCC at 1507, 1509-12.

The Developer further claims that the City denied the third and fourth applications for access and fencing. In fact, the Developer failed to file complete appropriate applications for access or

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

fencing, so there was nothing for the City to deny. Ex. DDDD at 1518-19. Although the Developer contends that the City wrongly required the applications, the statute of limitations to challenge the City's decision to require the applications is 25 days and has long since expired. NRS 278.0235. Moreover, the Badlands had street access when the Developer bought the property. *See* Ex. DDDD at 1518. Even if the City had denied the non-existent applications for additional access and fencing, the hypothetical applications were apparently unconnected to any applications to develop housing on the 35-Acre Property as required by the UDC. *Id*. at 1518-19. Accordingly, denial of the hypothetical applications for access and fencing would tell the Court nothing about the density of housing development the City would allow on the 35-Acre Property and thus would not ripen a taking claim requiring the Developer to show denial of all beneficial economic use of the property.

The Developer further contends that "the City" would only consider an MDA application covering the entire Badlands before it would allow any development in the Badlands. The Developer contends that after the City Council denied the MDA, further application to develop the 35-Acre Property would be futile, citing *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999). Judge Herndon rejected the same argument in the 65-Acre case:

> The Developer contends that this case is similar to *Del Monte Dunes* because the Developer conducted detailed and lengthy negotiations over the terms of the MDA with City staff and made many concessions and changes to the MDA requested by the staff before the MDA was presented to the City Council with the staff's recommendation of approval. Concessions and changes to the MDA requested by staff and a staff recommendation of approval, however, do not count for ripeness. The City Council, not the staff, is the decision-maker for purposes of a regulatory taking. An application must be made to the City Council, and if denied, at least a second application to the City Council must be made and denied before a takings claim is ripe.

Ex. CCCC at 1512-13.

Judge Herndon further concluded that the City's adoption of Bills 2018-05 and 2018-24 do not show futility:

> [T]he Developer's reliance on Bills 2018-5 and 2018-24 in support of its claim of futility is misplaced. The bills imposed new requirements that a developer discuss alternatives to the proposed golf course redevelopment project with interested parties and report to the City and other requirements for the application to develop property. They were designed to increase public participation and did not impose substantive requirements for the development project, and did not prevent the Developer from applying to redevelop the 65-Acre Property. Moreover, the second bill was adopted in the Fall of 2018 after the Developer filed this action

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> for a taking, so could have had no effect on the 65-Acre Property. The bill could not have taken property that was allegedly already taken. Both bills were repealed in January 2020, and are therefore inapplicable to show futility.

Ex. CCCC at 1513.

Judge Herndon found that before the Developer can sue the City for a taking of the 35-Acre Property, it is incumbent on the Developer to file and have denied at least two applications to develop *the individual 35-Acre Property*. Judge Herndon held: "The Developer has failed to meet its burden to show that its regulatory takings claims are ripe. The Nevada Supreme Court requires that a regulatory takings claimant file at least two applications to develop "the property at issue." *State*, 131 Nev. at 419-20, 351 P.3d." Ex. CCCC at 1506; *id*. at 1505 ("A regulatory takings claim is not ripe unless it is "clear, complete, and unambiguous" that the agency has "drawn the line, clearly and emphatically, as to the sole use to which [the property] may ever be put." *Hoehne v. County of San Benito*, 870 F.2d 529, 533 (9th Cir. 1989). *The property owner* bears a heavy burden to show that a public agency's decision to restrict development of property is final. *Id*." [emphasis added]). Like the 65-Acre case, the Developer clearly has not met that burden.

B. Even if the categorical and *Penn Central* claims were ripe, the City took no action that diminished the value of the 35-Acre Property

1. By simply maintaining the status quo when the Developer bought the Badlands, the City cannot be liable for a taking

The Developer cannot meet either the categorical or *Penn Central* tests because the Badlands has been designated PR-OS in the City's General Plan since 1992, including when the Developer bought the Badlands in 2015. Exs. I, L, N, O, P, Q. The PR-OS designation does not permit residential use. *E.g*., Ex. N at 290. Even if the City had declined to lift the PR-OS designation in denying two applications to build housing on the 35-Acre Property, that action could not have wiped out the value of the 35-Acre Property. The 35-Acre Property would have the same use (golf course and drainage) and value as when the Developer bought the property. The City's hypothetical action (not changing the law, thereby maintaining the status quo) would have no economic impact on the property. Thus, the Developer cannot show the economic impact required to show a categorical or *Penn Central* taking.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Nor could the City's hypothetical refusal to amend the PR-OS designation in response to two applications interfere with the Developer's investment-backed expectations as required for a *Penn Central* claim. The Developer bought a golf course and drainage property designated PR-OS in the City's General Plan at the time of purchase, meaning the Developer acquired property whose legal use was limited. Having bought the Badlands subject to the PR-OS designation, the Developer cannot allege a taking where the City merely declined to change the law and permitted the property to continue in its historic use as a golf course and drainage. *See Kelly*, 109 Nev. at 651, 855 P.2d at 1035 (rejecting takings claim where at time developer purchased property "he had adequate notice that his development plans might be frustrated"); *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120-21 (9th Cir. 2010) (takings claimants "bought a trailer park burdened by rent control, and had no concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had"). There is no evidence that the City's denial of the Developer's applications to build houses destroyed the value of the property for continued use as a golf course and drainage serving the surrounding properties. The PR-OS designation is thus fatal to the Developer's categorical and *Penn Central* claims.[8]

2. The PR-OS designation is valid

The Developer attempts to salvage its taking claims by arguing that the PR-OS designation is invalid. This contention, however, is contrary to all evidence and authority, and has been rejected by every court that has adjudicated the issue, except Judge Jones.[9] In its Order of Reversal in the 17-Acre case, the Nevada Supreme Court confirmed that the Developer is required to obtain an amendment of

[8] The Developer relies on its appraisal to contend that the 35-Acre Property was worth $35 million when the Developer bought it based on its potential for development of housing, and following the City's denial of an application to develop housing on the property, the City rendered the property worthless. The Developer's appraisal, however, fails to mention that the 35-Acre Property was subject to the PR-OS designation at the time the Developer bought the property, which does not allow housing development, or that the Developer paid only $4.5 million for the entire Badlands ($630,000 for the 35-Acre portion), reflecting that fact that it could not be developed with housing. The appraiser's conclusion that the Developer bought property worth $35 million for only $630,000 is not credible.

[9] In a recent order granting the Developer's Motion to Determine Property Interest, Judge Jones found that the PR-OS designation was not valid, which finding is contradicted by the evidence and by all courts, including the Nevada Supreme Court. In making this finding, Judge Jones was simply led into error by the Developer.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

the PR-OS designation to build housing in the Badlands: "The governing ordinances require the City to make specific findings *to approve a general plan amendment*, LVMC 19.16.030(1), a rezoning application, LVMC 19.16.090(L), and a site development plan amendment, LVMC 19.16.100(E)." Ex. DDD at 1014 (emphasis added). This Court follows the Supreme Court:

> The Developer purchased its interest in the Badlands Golf Course knowing that the City's General Plan showed the property as designated for Parks Recreation and Open Space (PR-OS) and that the Peccole Ranch Master Development Plan identified the property as being for open space and drainage, as sought and obtained by the Developer's predecessor. . . . The City's General Plan provides the benchmarks to ensure orderly development. A city's master plan is the "standard that commands deference and presumption of applicability." . . . [T]the City properly required that the Developer obtain approval of a General Plan Amendment in order to proceed with any development.

Judge Williams FFCL Denying Developer's PJR, Ex. XXX at 1392-94. Judge Herndon also agreed with the Nevada Supreme Court:

> Since 1992, the City's General Plan has designated the Badlands for parks, recreation, and open space, a designation that does not permit residential development. . . . Each ordinance of the City Council updating the Land Use Element of the General Plan since 2005 has approved the designation of the Badlands as PR-OS, and the description of the PR-OS land use designation has remained unchanged.

Ex. CCCC at 1485-86. Judge Sturman held the same: "The open space designation for the Badlands Property sought by the Developer's predecessor and approved by the City in 1990 was subsequently incorporated into the City's General Plan starting in 1992. The Badlands Property is identified in the City's General Plan as Parks, Recreation, and Open Space ("PR-OS")." Findings of Fact and Conclusions of Law Etc. filed 7/29/21 in 133-Acre case No. A-18-775804-J at 3.

Undaunted by the law and facts, the Developer contends that the PR-OS designation of the 35-Acre Property is invalid. The difficulty with the Developer's arguments for the invalidity of the PR-OS designation is that any challenge to the legislation adopting the PR-OS designation would have to have been brought within 25 days after the adoption of the legislation. NRS 278.0235; *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 93 Nev. 270, 275, 563 P.2d 582, 585 (1977), overruled on other grounds by *Cty. of Clark v. Doumani*, 114 Nev. 46, 952 P.2d 113 (1998). It is simply too late to challenge the PR-OS designation. The City refuted each of the Developer's other attacks on the PR-OS designation in the City's opening brief supporting this motion, filed 8/25/21, at pp. 50-60.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

If the Court were to find that the PR-OS designation is invalid, however, the categorical and *Penn Central* taking claims, which request damages, would still lack merit and the City should be awarded summary judgment. A taking claim assumes that the challenged regulation is valid. Because the regulation goes too far and wipes out the value of the property, compensation is owed. *Lingle*, 544 U.S. at 543. If the regulation in question is invalid, however, the remedy is not compensation for a taking, but rather an order in equity under a due process theory that the regulation is unenforceable. *Id*.

3. The Developer cites no authority that zoning confers a constitutional right to build whatever the Developer desires, and all authority is to the contrary

The Developer also contends that even if the PR-OS designation is valid, the R-PD7 zoning of the 35-Acre Property grants the Developer a constitutionally protected property or vested right to build whatever it wants as long as the use is a "permitted" use in an R-PD7 zone, and regardless of the PR-OS designation. This claim is contrary to unanimous authority. The Developer fails to cite any state or Las Vegas statute or any court decision that even remotely supports its zoning rights theory. Nor could it. Zoning *limits* the use of property to protect the community; it does not confer rights on property owners. Property rights, such as the right to be free of a regulatory wipe out of value under the Takings Clause, arise from simply *owning* the property, in this case a fee simple interest.[10]

Under regulatory powers delegated by the state, Nevada cities are *required* to exercise discretion in adopting, amending, and applying General Plans and zoning ordinances. NRS 278.150, NRS 278.250. The R-PD7 zoning ordinance that the Developer falsely claims confers a "right" to develop housing is in fact infused with discretion that is inconsistent with the alleged "right to develop":

> The R-PD District has been to provide for *flexibility and innovation* in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, . . . Single-family and multi-family residential and supporting uses are permitted in the R-PD District *to the extent they are determined by the Director to be consistent with the density approved for the District and are compatible with surrounding uses*. . . . The approving body may attach to the amendment to an approved Site Development Plan Review *whatever conditions are deemed*

[10] The Developer misrepresents *Sisolak* as holding that zoning confers vested rights on property owners to use their airspace. The *Sisolak* Court held that Sisolak has a right to use his airspace simply because he owns the underlying land; i.e., title to the airspace was "vested" in Sisolak. 122 Nev. 658, 137 P.3d at 1119.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> *necessary to ensure the proper amenities and to assure that the proposed development will be compatible with surrounding existing and proposed land uses*.

Las Vegas Municipal Code (Unified Development Code ["UDC"]) 19.10.050 (emphasis added). UDC 19.18.020 defines the term "Permitted Use" as "Any use allowed in a zoning district as a matter of right *if it is conducted in accordance with the restrictions applicable to that district*." (Emphasis added). This broad discretion to approve development generally and in particular in an R-PD-7 zone is not compatible with a constitutional right to build whatever the owner wants to build. If the Developer were correct, this vast body of state and local land use regulations conferring discretion on the City would be rendered a nullity. The Nevada Supreme Court has repeatedly rejected the Developer's theory. *Stratosphere Gaming*, 120 Nev. 523, 527, 96 P.3d 756, 759-60 (2004); *City of Reno v. Harris*, 111 Nev. 672, 679, 895 P.2d 663, 667 (1995); *Boulder City v. Cinnamon Hills Associates*, 110 Nev. 238, 246, 871 P.2d 320, 325 (1994); *Tighe v. Von Goerken*, 108 Nev. 440, 443, 833 P.2d 1135, 1137 (1992); *Am. W. Dev., Inc. v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110, 112 (1995); *Bd. of Cty. Comm'rs v. CMC of Nev., Inc.*, 99 Nev. 739, 747, 670 P.2d 102, 107 (1983).

The Developer claims that the above authority is irrelevant in light of this Court's Findings of Fact and Conclusions of Law Regarding Plaintiff Landowner's Motion to Determine "Property Interest" filed 10/12/20 at 4-5, where this Court found:

> 15. [T]this Court has previously held that: 1) "it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims;" and, 2) "[a]ny determination of whether the Landowners have a 'property interest' or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law."
>
> 16. Therefore, the Court bases its property interest decision on eminent domain law.
>
> 17. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); Clark County v. Alper, 100 Nev. 382 (1984).
>
> 20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:
>
> 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

This Order, prepared by the Developer, leads the Court into error in several respects. First, this Court held in denying the Developer's Petition for Judicial Review ("PJR") that zoning does not grant any rights to property owners, no less a "property" or "vested" right to approval of a permit application, because the state has delegated to cities broad discretion in determining whether to approve building permit applications:

> The decision of the City Council to grant or deny applications for a general plan amendment, rezoning, and site development plan review is a discretionary act. . . . A zoning designation does not give the developer a vested right to have its development applications approved. . . *Stratosphere Gaming*, 120 Nev. at 527, 96 P.3d at 759-60 [(2004)] (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). . . . In that the Developer asked for exceptions to the rules, its assertion that approval was somehow mandated simply because there is RPD-7 zoning on the property is plainly wrong. It was well within the Council's discretion to determine that the Developer did not meet the criteria for a General Plan Amendment or Waiver found in the Unified Development Code and to reject the Site Development Plan and Tentative Map application, accordingly, ***no matter the zoning designation***. ¶ 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. . . . The Court rejects the Developer's argument that the RPD-7 zoning designation on the Badlands Property somehow required the Council to approve its Applications. ¶ Statements from planning staff or the City Attorney that the Badlands Property has an RPD-7 zoning designation do not alter this conclusion.

Ex. XXX at 1385-86, 1391-92 (emphasis added).

Insofar as the Court rejects the application of the above analysis to the Developer's regulatory taking claims because the Court's conclusions were rendered in the context of a PJR rather than a complaint for a taking, the City respectfully requests that the Court revisit this determination because it is contrary to all law. While PJRs and taking actions provide two different processes and remedies for allegedly excessive government action, they are based on the same underlying Nevada law of property and land use regulation. A PJR is simply a procedure and remedy. *There is no substantive law of PJRs*. Surely, the state cannot maintain two parallel systems of property and land use regulatory

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

law depending on the procedure and remedy chosen by the aggrieved property owner. The Developer thus proposes an absurd rule that the City Council has discretion over development applications if the owner then sues by PJR, but has no discretion if the owner then sues for a taking.

Adding to the difficulty of the Developer's argument, if property owners have a constitutional right to build whatever they choose as long as it is a permitted use under the applicable zoning, there would be no need to apply for a permit because the government would have no discretion to deny it, thus rendering meaningless thousands of state statutes and local ordinances regulating the issuance of building permits, subdivision maps, etc. Moreover, under the Developer's theory, Nevada cities and counties would be liable for taking damages to every property owner in a zone where the agency changes the zoning ordinance to limit any "rights" under the prior ordinance. In one fell swoop, Nevada local agencies would either be liable for massive taking damages, or be forced to forego zoning altogether.

Moreover, *Boulder City*, like this case, was a *constitutional* challenge to regulation, *not a PJR*. There, the Court held: "The grant of a building permit was discretionary. Therefore, under the applicable land use laws, Cinnamon Hills did not have a vested entitlement to a constitutionally protected property interest." 110 Nev. at 246, 871 P.2d at 325. Also, in a decision that is binding on this Court under issue preclusion, the Ninth Circuit held in *180 Land Co. LLC v. City of Las Vegas* ("*180 Land Co*."), involving the same parties, the same issue, and a final decision, that zoning does not confer property rights under Nevada property and land use law. Ex. III. That *Boulder City* and *180 Land Co.* involved due process claims rather than taking claims is irrelevant. Both cases were decided based on Nevada's substantive law of property and land use. Under Nevada law, an owner has no constitutional rights under zoning, whether the owner challenges a government action by PJR, due process, or regulatory taking.

Second, the Court's conclusion that "Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case," citing *City of Las Vegas v. C. Bustos*, 119 Nev. 360 (2003) and *Clark County v. Alper*, 100 Nev. 382 (1984), is also contrary to law. As Judge Herndon explained, inverse condemnation and eminent domain actions are very different:

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

> The Developer conflates eminent domain and inverse condemnation. The two doctrines have little in common. In eminent domain, the government's liability for the taking is established by the filing of the action. The only issue remaining is the valuation of the property taken. In inverse condemnation, by contrast, the government's liability is in dispute and is decided by the court. If the courts finds liability, then a judge or jury determines the amount of compensation.

Ex. CCCC at 1499. Thus, in eminent domain cases, the only issue is the *value* of the condemned property. Eminent domain cases cannot, as a matter of logic, have any bearing on the question in the instant case, which is whether the City has taken the Developer's property by regulation; i.e., whether the City is liable for a taking. Each of the eminent domain cases the Developer cites recognizes that zoning is a limitation on the use of property and that in *valuing* property in eminent domain, an appraiser may not give an opinion of value assuming a use that is not permitted by the zoning. *E.g.*, *Bustos*, 119 Nev. at 362.

The Developer also cites language from *Clark County v. Alper*, 100 Nev. 382, 685 P.2d 943(1984) for the nonsensical proposition that eminent domain caselaw provides the test for government liability for a regulatory taking. The Developer misrepresents the context of the following passage from *Alper*: "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." 100 Nev. at 391, 685 P.2d at 949. The passage in question concerns the date for determining the *value* of property in an inverse condemnation case *after* the court found that the government was liable for a taking. *Id*. There is no reason that the rules for *valuation* of property would be different as between direct condemnation and inverse condemnation actions. As indicated above, because liability for a taking is not at issue in eminent cases, those cases cannot possibly provide the standard of liability for regulatory takings.

Finally, the Developer cites no authority that the denial of a property "right" can constitute a categorical or *Penn Central* taking. The City is liable for a categorical (wipe out) or *Penn Central* taking in Nevada only if a City regulation "completely deprive[s] an owner of all economically beneficial use of her property." *State*, 131 Nev. at 419, 351 P.3d at 741; *see also Kelly*, 109 Nev. at 649-50, 855 P.2d at 1034 (same); *Boulder City*, 110 Nev. at 245-46, 871 P.2d at 324-35 (1994) (same). A taking, therefore, must be of "property," not a "right." If the City takes property by eminent domain,

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

it acquires the fee simple interest. Similarly, if the City is required to pay compensation to the Developer for a regulatory taking, it would be forced to buy a fee simple interest. In contrast, there is no authority that a City can "take" a "right to develop." Rather, it can *deny* a "right to develop." The remedy for that denial is a PJR, not a regulatory taking claim.

C. Even if the categorical and *Penn Central* claims are ripe and the City destroyed the value of the 35-Acre Property, the City did not destroy the value of the parcel as a whole, negating a taking

1. The City allowed substantial development of the PRMP, including development by the Developer

A regulatory taking analysis focuses on development of the parcel as a whole, not on a portion of the property left over after the parcel as a whole has been substantially developed. *Kelly*, 109 Nev. at 641 & n.1, 651, 855 P2d at 1029 & n.1, 1035; *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943-44 (2017); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 327, 331 (2002); *Penn Central*, 438 U.S. at 130-31. Here, the City demonstrated that the entire 1,596 acre Peccole Ranch Master Plan ("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, and thus satisfy the City's open space set-aside requirement. 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 an 18-hole golf course to serve that destination resort. Ex. G at 123-24; Ex. H at 183. The PRMP was developed with thousands of housing units, a hotel, a casino, and retail. In all, 84% of the land area of the PRMP has been developed, including *the Developer's* 219-unit Queensridge Towers, one of the most luxurious condominium buildings in Las Vegas, and the Tivoli Village retail complex. The Badlands is merely a part of the PRMP.

Accordingly, even if the City had made a final decision to deny development of the Badlands for housing (it hasn't), and even if that denial had destroyed all value of the Badlands (it wouldn't), the City could not have taken the Badlands because the City has already allowed development of 84% of the parcel as a whole. In its opposition to this motion, the Developer fails to cite any authority that the

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

City has taken the PRMP (the parcel as a whole), or to present any argument on this issue. Because it is undisputed that the City has not destroyed the value of the parcel as a whole, the City should have judgment on the categorical and *Penn Central* taking claims.

2. Even if the Badlands is deemed the parcel as a whole, the City has permitted substantial development, negating a taking of the 35-Acre Property

In its opening brief, the City proved that even if the Badlands is treated as the parcel as a whole instead of the PRMP, because the City approved development of 435 luxury housing units in the Badlands, the City could not have "taken" another part of the Badlands, such as the 35-Acre Property. It is clear that the Developer segmented the Badlands and cannot now claim that the 35-Acre Property is the parcel as a whole. As Judge Herndon concluded:

> **The Developer's acquisition and segmentation of the Badlands**
>
> . . . At the time the Developer bought the Badlands, the golf course business was in full operation. The Developer operated the golf course for a year and, then, in 2016, voluntarily closed the golf course and recorded parcel maps subdividing the Badlands into nine parcels. The Developer transferred 178.27 acres to 180 Land Co. LLC ("180 Land") and 70.52 acres to Seventy Acres LLC ("Seventy Acres"), leaving Fore Stars with 2.13 acres. . . . Each of these entities is controlled by the Developer's EHB Companies LLC. . . The Developer then segmented the Badlands into 17, 35, 65, and 133-acre parts and began pursuing individual development applications for three of the segments, despite the Developer's intent to develop the entire Badlands.

Ex. CCCC at 1490.

Rather than address the *Murr* test to determine the parcel as a whole, the Developer relies on a declaration by Yohan Lowie that "Fore Stars re-drew the boundaries of the various parcels that comprised the 250 Acre Residentially Zoned Land pursuant to the City's request and direction. The City required the filing of parcel maps to separate the land for every area of development." Ex. 34 at 736.[11] Even if true (it isn't), the determination of the parcel as a whole does not turn on who decided to segment the whole parcel, but rather on application of the *Murr* factors and whether the property owner is claiming compensation for the taking of a segment rather than the parcel as a whole. The

[11] The Developer cites no evidence, oral or written, to support this claim, nor could it because the City is not a developer and is not responsible for formulating proposals to develop property. Indeed, after creating four development sites, the Developer then created new entities under its control to take title to each different development site, which is classic segmentation. *See* CCCC at 1490; Ex. 34 at 736.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Developer segmented the Badlands when it filed four separate actions for a taking of each individual segment, rather than the parcel as a whole. Because the parcel as a whole is, at a minimum, the Badlands, and the City permitted the construction of 435 luxury housing units in the Badlands, the Developer's claim for a taking of the 35-Acre property fails.

Nor is the fact that the four segments of the Badlands each consists of separate assessor's parcels controlling. Application of the *Murr* factors determines the parcel as a whole, and the configuration of the tax parcels constituting the property do not govern the outcome. Indeed, in *Murr*, the Supreme Court disregarded the tax parcel boundaries designated by the assessor to find that two separate tax parcels together constituted the parcel as a whole. 137 S.Ct. 1947-48.

II. Bill 2018-24 did not effect a physical taking of the 35-Acre Property

The Developer contends that Bill 2018-24 exacts an easement in favor of the public to physically invade the 35-Acre Property similar to the easements exacted in *Sisolak*, *Knick*, and *Cedar Point*. The Developer's opposition fails to recognize that Bill 2018-24, which was in effect from November 2018 to January 2020, (a) only applied to "proposals" to redevelop golf courses, and the Developer did not propose to redevelop the 35-Acre Property during that period, (b) requires an owner proposing to redevelop a golf course to "document" "ongoing public access" *only if* the City gives the Developer notice that it must do so, and the City did not give any such notice to the Developer, (c) requires an owner merely to "document" public access rather than requiring the owner to allow such access, and (d) requires an owner to document only "ongoing public access," but the Developer voluntarily shut down the golf course in 2016 so there was no public access to maintain. Accordingly, Bill 2018-24 did not apply to the Developer, and it certainly did not exact a permanent easement for the public to physically occupy the 35-Acre Property.[12]

. . .

. . .

[12] The Developer contends that Bill 2018-24 was enacted solely to prevent development of the Badlands, calling it the "Lowie Bill." The facts are otherwise. Those calling it the "Lowie Bill" were either the Developer's own lawyers or a member of the City Council and citizens who supported the Developer. Moreover, the City cannot have "targeted" the Badlands by adopting the Bill where the City never even applied the Bill to the Badlands.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

The Developer disingenuously attempts to compare Bill 2018-24 to *Knick*, where, the Developer contends, the Township of Scott suspended the ordinance (which the Developer misnames as a "bill" to make it appear similar to the legislation at issue here) and "never applied it" to the property owner. The ordinance at issue in *Knick*, however, exacted an easement in favor of the public from the owner the moment it was enacted, and, moreover, did not apply only if the Township gave notice to the owner. In contrast, Bill 2018-24 did not exact an easement on its face and did not even apply to any property unless the City gave notice. Thus, the comparison with *Knick* is unfair.

The Developer argues, without authority, that Bill 2018-24 is "retroactive" and therefore applies to the Badlands. There is no evidence to support this claim. The ordinance expressly states that it applies to "proposals" to repurpose golf courses. Ex. DDDD-9 at 1554. That language rules out proposals that are no longer pending or approved applications, neither of which are "proposals." Under Nevada law, "statutes are otherwise presumed to operate prospectively 'unless they are so strong, clear and imperative that they can have no other meaning or unless the intent of the [L]egislature cannot be otherwise satisfied.'" *Segovia v. Eighth Judicial District Court in and for County of Clark*, 133 Nev. 910, 915, 407 P.3d 783, 787 (2017). Statements of City staff that Bill 2018-24 is retroactive are thus irrelevant. The City Council decides whether an ordinance is to be retroactive. Here, it adopted an ordinance that was clearly not retroactive.

The Developer's contention that the City is liable for a physical taking because a member of the City Council told members of the public that they could walk on the Badlands is frivolous. Individual legislators or City staff have no legal authority to give such permission, and such conduct would not constitute a regulatory taking, which requires valid regulation by the City Council with the force of law.

The Developer next contends that the City effected a physical taking of the 35-Acre Property because the City is preserving the property as a viewshed for the community. This claim is nonsense. First, the City designated the 35-Acre Property PR-OS in the General Plan in 1992 and maintained that designation through the date the Developer acquired the Badlands and up to the present. The purpose of the PR-OS designation, like all designated open space everywhere, is to preserve land for recreation, light, air, and views *for the surrounding community*. As this Court held, the City was fully

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

within its rights to decline an amendment to the PR-OS designation and retain the status quo. *See Kelly*, 109 Nev. at 651, 855 P.2d at 1035 (rejecting takings claim where at time developer purchased property "he had adequate notice that his development plans might be frustrated"); *Bridge Aina Le'a, LLC v. Land Use Comm'n*, 950 F.3d 610, 634-35 (9th Cir. 2020) (developer could not have reasonably expected the Commission to not enforce conditions in place when it purchased the property); *Guggenheim*, 638 F.3d at 1120-21 (takings claimants "bought a trailer park burdened by rent control, and had no concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had"). Maintaining a regulation that historically was intended to, and did, provide a viewshed for the surrounding community is not a taking under any test.

A regulation does not effect a physical taking unless it permits the government or the public to *physically occupy* the owner's property. Simply limiting the *use* of property to protect community interests is not, by law or logic, a physical taking. *Loretto*, 458 U.S. at 426, 436; *Tahoe-Sierra*, 535 U.S. at 321-22; *Sisolak*, 122 Nev. at 662, 137 P.3d at 1122.

III. The Developer fails to cite any evidence of a non-regulatory taking

A non-regulatory taking can occur "if the government has 'taken steps that substantially interfere[] with [an] owner's property rights to the extent of *rendering the property unusable or valueless to the owner.*'" *State*, 131 Nev. at 421, 351 P.3d at 743 (alteration in original; emphasis added) (quoting *Stueve Bros. Farms, LLC v. United States*, 737 F.3d 750, 759 (Fed. Cir. 2013)). A non-regulatory taking occurs only in "extreme cases" involving either (a) a physical taking or (b) unreasonable actions that interfere with use or diminish the value of property after the agency has officially announced an intent to condemn the property. *See id.*at 421-23.

The Developer fails to cite a scintilla of evidence that the City rendered the 35-Acre Property "useless or valueless to the owner," either through regulation or nonregulatory action. The Developer cites no evidence that the City did anything to prevent the Developer from using the 35-Acre Property for its historic use for golf course and drainage or rendered the 35-Acre Property valueless, or even diminished the value. There is no evidence that the City physically invaded any part of the Badlands. Nor is there any evidence that the City condemned the 35-Acre Property or made an official announcement of an intent to condemn which could give rise to a nonregulatory taking claim.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Indeed, there is a major disconnect between the Developer's claim that the City effected a non-regulatory taking and the City's actions that allegedly caused the nonregulatory taking. By its very name, a "nonregulatory" taking cannot be a "regulatory" taking where the government accomplishes the same ends as eminent domain through excessive regulation. The City has demonstrated above that it did not cause a regulatory taking of the 35-Acre Property. Yet the Developer's allegations purporting to support its nonregulatory taking claim are exactly the same as its regulatory taking claims. Denying the Developer's "*use* of their 35 Acres" is a claim for a regulatory taking. Further, the Developer argues that a non-regulatory taking does not encompass a physical taking, but then cites physical taking cases such as *Sisolak* as authority for its non-regulatory taking claim. In sum, the Developer never states what a non-regulatory taking is, and it never presents evidence of a City non-regulatory action that interfered with its property.

IV. The City cannot be liable for a temporary taking

A temporary taking occurs when a court finds that a regulation effects a permanent taking under *Lucas* or *Penn Central*, and the public agency thereafter rescinds the regulation to avoid paying compensation for a permanent taking. *First English Evangelical Lutheran Church v. Cty. of Los Angeles*, 482 U.S. 304, 318-19, 321 (1987). A temporary taking, therefore, does not arise unless and until the court finds that a permanent regulatory taking has occurred, and the agency rescinds the regulation causing the taking. *See id.* For the reasons outlined above, the City is not liable for a permanent regulatory taking, so the temporary takings claim fails as a matter of law.

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CONCLUSION

The City's Countermotion for Summary Judgment should be granted. The Developer's Motion to Determine Take and for Summary Judgment should be denied.

DATED this 21st day of September 2021.

McDONALD CARANO LLP

By: */s/ George F. Ogilvie III*
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE
Bryan K. Scott (NV Bar No. 4381)
Philip R. Byrnes (NV Bar No. 166)
Rebecca Wolfson (NV Bar No. 14132)
495 South Main Street, 6th Floor
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP
Andrew W. Schwartz (CA Bar No. 87699)
(Admitted *pro hac vice*)
Lauren M. Tarpey (CA Bar No. 321775)
(Admitted *pro hac vice*)
396 Hayes Street
San Francisco, California 94102

Attorneys for City of Las Vegas

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 21st day of September, 2021, I caused a true and correct copy of the foregoing **CITY'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT** 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.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966