

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.

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. 84345

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**JOINT APPENDIX,  
VOLUME NO. 116**

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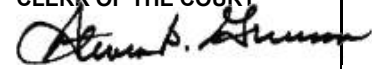
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-17-758528-J

Dept. No.: XVI

**MOTION TO RETAX  
MEMORANDUM OF COSTS**

**(HEARING REQUESTED)**

Pursuant to NRS 18.110(4), the City of Las Vegas ("City"), by and through the undersigned counsel, hereby moves to retax and settle the costs claimed in the Verified Memorandum of Costs ("Memo of Costs") filed by Plaintiffs 180 Land Co LLC and Fore Stars Ltd. (the "Developer"). This Motion is based upon the following Memorandum of Points and Authorities and supporting exhibits attached hereto, the pleadings and papers on file in this action, and any argument of counsel at a hearing on these matters.

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

The Developer is seeking a total of \$312,543.26 in costs without any documentation demonstrating that the costs were reasonable, necessary, or actually incurred in this litigation. Of that amount, \$222,131.41 is claimed as costs for four experts despite the fact that the Developer disclosed only one retained expert pursuant to Rule 16.1. There is no explanation in the affidavit of counsel as to why it was necessary to pay \$107,881.41 to experts the Developer never disclosed and never relied upon. Likewise, there is no explanation as to why it was necessary to pay \$114,250.00 to the Developer's expert appraiser—the only expert disclosed—who never sat for a deposition or testified in court.

With respect to the remaining costs claimed, the documentation submitted is grossly deficient and fails to satisfy the requirements under *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120 (2015). For example, the Developer *estimated* its filing fees by multiplying the number of documents listed on the docket by \$3.50.<sup>1</sup> As another example, the Developer submitted Westlaw account summaries showing the client as “Badlands” or “Yohan” or “180 LLC” without distinguishing which of the four inverse condemnation cases the Developer has filed against the City. Based upon the documentation submitted, the Developer is only entitled to the following costs:

|                                   |                     |
|-----------------------------------|---------------------|
| The DiFederico Group              | \$ 1,500.00         |
| 8th Judicial District Court Clerk | \$ 200.00           |
| Discovery Legal Services          | \$ 481.25           |
| LGM Transcription Service         | \$ 571.14           |
| Litigation Services               | \$ 3,933.49         |
| National Court Reporters Inc.     | \$ 3,293.72         |
| Margaret Isom                     | \$ 6,693.23         |
| Rhonda L. Aquilina                | \$ 1,031.09         |
| AT&T Conference Calls             | \$ 32.52            |
| Capriotti's                       | \$ 84.88            |
| Parking and Lunch                 | \$ 121.27           |
| <b>Total</b>                      | <b>\$ 17,942.59</b> |

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<sup>1</sup> The Developer's estimate is not reliable because multiple documents can be filed simultaneously with only one filing fee of \$3.50.



1     **II.     LEGAL ARGUMENT**

2             **A.     Legal Standard**

3             “NRS 18.020 and NRS 18.050 give district courts wide, but not unlimited, discretion to award  
4 costs to prevailing parties.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049,  
5 1054 (2015). “In order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, a  
6 district court must have before it evidence that the costs were reasonable, necessary, and actually  
7 incurred.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015). “[A]  
8 party must demonstrate how such claimed costs were necessary to and incurred in the present action.”  
9 *Id.* (quoting *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998) (“*PETA*”).

10            **B.     The Declaration of Counsel Does Not “Demonstrate” How The Costs Incurred**  
11            **Were Necessary To and Incurred In the Present Action**

12            The Nevada Supreme Court has repeatedly emphasized that it is not sufficient to simply to “tell”  
13 the Court that costs were reasonable and necessary, parties must submit evidence to “demonstrate” that  
14 the costs were reasonable and necessary. *PETA*, 114 Nev. at 1353, 971 P.2d at 386 (1998); *Cadle Co.*,  
15 131 Nev. at 121, 345 P.3d at 1054; *Matter of DISH Network Derivative Litig.*, 133 Nev. 438, 452, 401  
16 P.3d 1081, 1094 (2017) (“*DISH*”).

17            The Developer submitted the declaration of Autumn Waters in support of its Memo of Costs,  
18 which states as follows:

19                   AUTUMN WATERS, first being duly sworn, states under penalty of  
20 perjury that Declarant is an attorney for the Plaintiff Landowners, 180  
21 LAND CO., LLC and FORE STARS, LTD. and has personal knowledge of  
22 the above costs expended; that the items contained in the above  
memorandum are true and correct to the best of this Declarant’s knowledge  
and belief; and that said costs have been necessarily incurred and paid in  
this action.

23            *See* Memo of Costs at p. 4. This is exactly the type of declaration that was held to be insufficient to  
24 justify an award of costs in *Cadle Co.*, *PETA*, and *DISH*. It merely tells the Court that the claimed costs  
25 were necessary without demonstrating why they were necessary. For this reason alone, the Court would  
26 be well within its discretion to do deny all costs requested by the Developer.

27            ...

28            ...

**C. The Developer is Not Entitled to Costs for Undisclosed Non-Testifying Experts**

The Developer is claiming \$107,881.41 in costs for experts who were never disclosed and who never provided a report. NRS 18.005(5) only allows recovery of fees paid to “expert witnesses.” Undisclosed, non-testifying experts are not “witnesses” and the Developer is not entitled to costs paid to these experts. Even if they were considered witnesses, the Developer made no attempt to explain why their fees were necessary or reasonable. The only documentation provided to support these costs consisted of invoices and checks showing the amounts paid.<sup>2</sup>

In evaluating requests for costs paid to expert witnesses, “district courts should consider the importance of the expert's testimony to the party's case; the degree to which the expert's opinion aided the trier of fact in deciding the case; whether the expert's reports or testimony were repetitive of other expert witnesses; the extent and nature of the work performed by the expert; whether the expert had to conduct independent investigations or testing; the amount of time the expert spent in court, preparing a report, and preparing for trial; the expert's area of expertise; the expert's education and training; the fee actually charged to the party who retained the expert; the fees traditionally charged by the expert on related matters; comparable experts' fees charged in similar cases; and, if an expert is retained from outside the area where the trial is held, the fees and costs that would have been incurred to hire a comparable expert where the trial was held.” *Frazier v. Drake*, 131 Nev. 632, 650–51, 357 P.3d 365, 377–78 (Nev. App. 2015) (cited with approval in *Capanna v. Orth*, 134 Nev. 888, 897, 432 P.3d 726, 735 (2018)). There is no evidence in the record to enable the court to evaluate these costs under the factors described in *Frazier* because these experts were never disclosed. The Developer’s claim for \$107,881.41 in fees paid to undisclosed, non-testifying experts should be denied in its entirety.

**D. Fees Paid to Tio DiFederico Group Were Excessive**

The Developer is seeking \$114,250.00 for fees paid to Tio DiFederico, the only retained expert the Developer actually disclosed pursuant to Rule 16.1. The invoices attached to the Memo of Costs indicate that Mr. DiFederico spent 342.5 hours preparing his expert report and 23 hours preparing for

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<sup>2</sup> The Developer submitted checks showing that some of these costs were paid by Seventy Acres LLC. See Memo of Costs Ex. 3, at p. 4 and 20. Since Seventy Acres LLC is not a party, it cannot be the “prevailing party” for purposes of NRS 18.020 and it is not entitled to recover any of its costs.

trial. *See* Memo of Costs, Ex. 3, p. 19, 22, 24, 26. These costs are excessive and should not be awarded for the following reasons.

*First*, NRS 18.005(5) allows a party to recover expert witness fees for five experts in the amount of \$1,500 per witness. The Court may exceed this limitation only if it determines “that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” NRS 18.005(5). The Developer provided no argument or explanation as to why the “circumstances” of this case necessitated that Mr. DiFederico spend *more than eight 40-hour weeks* to prepare a simple appraisal of raw land. For this reason alone, an award of costs for fees paid to Mr. DiFederico should be limited to \$1,500.

*Second*, to determine the highest and best use of the 35-Acre Property in the “before” condition, Mr. DiFederico relied on several assumptions that made it unnecessary to consider alternative uses of the property. Mr. DiFederico relied almost verbatim on the Court’s October 12, 2020 Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to Determine Property Interest, which stated that the permitted use of the 35 Acre Property is residential. *See* DiFederico Expert Report attached as **Exhibit A**, at p. 49. Mr. DiFederico then determined that “only public park or playground use, and residential use should be given further consideration in determining this site’s highest and best use in the before condition.” *Id.* at 50. Mr. DiFederico also determined that a golf course is not a legally permitted use of the subject property. *Id.* Despite reaching this conclusion, Mr. DiFederico’s report includes a lengthy analysis of the economic feasibility of a golf course use. *Id.* at 55-61. Based on Mr. DiFederico’s own analysis, it was not necessary for Mr. DiFederico to consider the economic feasibility of a golf course use. Because the highest and best use of the 35-Acre Property was determined by others, the only task requiring more than nominal time for this appraisal would be identifying and adjusting comparable sales of vacant land to the 35-Acre Property. Mr. DiFederico provides no justification for spending 342.5 hours on this simple and straightforward task.

*Third*, Mr. DeFederico’s determination of the “after” condition was taken verbatim from the Developer’s legal briefs. Mr. DiFederico did not conduct any independent investigation or analysis of this issue. *Id.* at pp. 3.

*Fourth*, Mr. DiFederico employed a speculative valuation methodology in his appraisal known as

the Subdivision Development Method (SDM). *Id.* at p. 80.<sup>3</sup> “This method values an undeveloped tract by calculating what a developer could expect to realize from sales of individual lots, taking into account the costs of development and discounting future revenues to present value.” *City of Harlingen v. Estate of Sharboneau*, 48 S.W.3d 177, 180 (Tex. 2001). According to Mr. DiFederico’s report, the steps involved in applying the SDM are as follows:

- Estimate the retail values (probable selling prices) for the lots to be sold within the project – finished lots;
- Apply appropriate growth rates, if applicable, to concluded values, construction costs and operating expenses;
- Project a reasonable rate of absorption for unit sales, typically based upon an analysis of similar projects or overall market supply and demand;
- Estimate the direct and indirect construction costs for the lots;
- Estimate the appropriate holding and selling costs for the project (site development costs, marketing/commissions, closing costs, real estate taxes on unsold lots during the holding period, and miscellaneous expenses on sold and unsold lots);
- Estimate the appropriate profit rate and discount rate for the type of project under consideration;
- Discount the net cash flows to arrive at a value indication described.

Ex. A at 81. Mr. DiFederico applied the SDM to three hypothetical development scenarios: sixty-one home lots ranging from 0.22 to 1.08 acres (the Developer’s application in this case), sixteen lots ranging from 1.58 to 2.90 acres, and seven lots ranging from 3.96 to 5.39 acres. Mr. DiFederico’s report contains no explanation as to why it was necessary or appropriate to analyze three different scenarios using the SDM. In fact, Mr. DiFederico ultimately did not base his conclusion of value on the SDM, but rather used it “[a]s a check to reasonableness.” The SDM, however, requires the appraiser to speculate on a variety of inputs, *e.g.*, estimating the sale price of houses that do not exist, and therefore is not sufficiently reliable to be admitted in evidence in legal proceedings. *See, e.g., City & County of San Francisco v.*

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<sup>3</sup> This method is also known as the Land Residual Method (LRM) or Developer’s Method (DM).

1 *Coyne*, 168 Cal.App.4th 1515, 1525-26 (2008); *Contra Costa Water Dist. v. Bar-C Props.*, 5 Cal.App.4th  
2 652, 657 (1992); *San Diego Metropolitan Transit Development Bd. v. Cushman*, 53 Cal.App.4th 918,  
3 929 fn. 4 (1997); *Fruit Growers Exp. Co. v. City of Alexandria*, 216 Va. 602, 607-608 (1976); *Dep't of*  
4 *Transp. v. Benton*, 447 S.E.2d 159, 161 (1994) ; *State ex rel. Price v. 2.7089 Acres of Land, More or*  
5 *Less, in N. Murderkill Hundred, Kent County*, 256 A.2d 275, 278 (Del. Super. Ct. 1969); *Dep't of*  
6 *Highways v. Schulhoff*, 167 Colo. 72, 77 (1968) (citing 4 Nichols, *The Law of Eminent Domain* s  
7 12.3142(1) (3d ed. rev. 1962); *State Highway Comm'n v. Conrad*, 263 N.C. 394, 397 (1965) (holding that  
8 it is “not proper for a jury to consider an undeveloped tract of land as though a subdivision thereon is an  
9 accomplished fact.”) Thus, the work Mr. DiFederico performed in connection with the SDM was not  
10 necessary or reasonable.

11 **E. The Developer Claimed Excessive Costs for Photocopies and Failed to Provide**  
12 **Adequate Supporting Documentation**

13 The Developer is claiming \$6,345.40 for in office copies and \$14,422.77 for copies made by  
14 third-party vendor, Holo Discovery. The Developer failed to submit justifying documentation  
15 demonstrating why these costs were necessary or reasonable. With respect to in office copies, the only  
16 documentation submitted is a piece of paper purporting to show the number of color copies and the  
17 number of black and white copies. For copies made by Holo Discovery, the only documentation  
18 submitted consisted of invoices and checks.

19 In *PETA*, the Nevada Supreme Court reversed the district court’s award of costs for photocopies  
20 for lack of sufficient documentation where the party claiming costs submitted documentation showing  
21 only the date of each copy and the total copying charge. 114 Nev. 1348, 1352-53 (1998). In this case,  
22 the Developer did not even provide the dates for in house copies. The invoices from Holo Discovery  
23 show the dates and charges for copying, but this is exactly the type of documentation that was held to be  
24 insufficient in *PETA*.

25 In *Caddle Co.*, the Nevada Supreme Court confirmed that “[d]ocumentation substantiating the  
26 reason for each copy ‘is precisely what is required under Nevada law.’” 131 Nev. 114, 121 (2015). Such  
27 documentation is necessary “to ensure that the costs awarded are only those costs actually incurred.”  
28 *Vill. Builders 96, L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261, 277–78 (2005). Here, the Developer

made no attempt to substantiate the reason for any copies or demonstrate why they were necessary or reasonable. Accordingly, the Developer should not be awarded \$20,801.37 for unsubstantiated costs for photocopies.<sup>4</sup>

**F. The Developer Inappropriately Estimated Filing Fees and Failed to Provide Receipts**

The Developer is seeking \$1,008.50 for filing fees but provided only one receipt in the amount of \$200. For the remaining \$808.50, the Developer estimated its filing fees by multiplying the number of documents appearing on a printed copy of the docket by \$3.50, the standard filing fee. This is not a reliable estimate because multiple documents can be filed simultaneously on the same filing envelope with only one filing fee. However, whether the estimate is reliable is beside the point because costs cannot be estimated. *See PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385–86 (1998) (stating that costs awarded under NRS 18.005 must be reasonable, and that “reasonable costs must be actual and reasonable,” rather than an estimate, even if the estimate itself is reasonable (internal quotation marks omitted)). Accordingly, only the \$200 filing fee supported with a receipt is recoverable.

**G. The Developer Failed to Provide Documentation Showing that Costs Claimed for Westlaw Research Were Actually Incurred in this Case and Not the Other Inverse Condemnation Cases the Developer has Filed Against the City**

The Developer is claiming \$50,669.02 in costs for Westlaw research. However, as the Court is well aware, this is only one of four inverse condemnation lawsuits the Developer has filed against the City relating to the former Badlands Golf Course. The Westlaw account summaries attached to the Memo of Costs do not identify the case for which the research was performed, they only identify the client as “Badlands” or “Yohan” or “180 LLC.”<sup>5</sup> There is no documentation demonstrating that these Westlaw charges were actually incurred in *this* case and not in one of the other four inverse condemnation cases. NRS Chapter 18 does not allow recovery of costs incurred in other cases. The Developer should not be awarded costs for Westlaw research based upon the documentation submitted.

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<sup>4</sup> This amount includes \$13,646.69 paid to Holo Discovery for copies that were delivered on October 27, 2021, well after date the Developer was required to deliver its trial exhibits to the Court. There is no possible justification for these excessive costs.

<sup>5</sup> More specifically, the Westlaw account summaries indicate that each of the Developer’s attorneys used a different client name. Michael Schneider used “Yohan,” James Leavitt used “Badlands,” and Autumn Water used “180 LLC.”

**H. Other Miscellaneous Costs That Are Not Recoverable**

**1. Research and Certified Copies**

The Developer is seeking \$171.00 in costs for certified copies of documents provided by the Clark County Recorder's Office. These documents appear to relate to the CC&Rs for the Queensridge Community, which have no relevance to this case. The Developer provided no explanation or justification for these costs.

The Developer is seeking \$119.00 for copies of documents provided by the Clerk of the Court. The receipts attached to the Memo of Costs indicate that the documents relate to a case from 1992 between William Peccole and the City. The Developer never produced or used these documents in this case. Moreover, the Developer failed to provide an explanation as to why they were reasonable or necessary.

**2. Process Service**

The Developer is seeking \$290.00 in costs for an application and service of a subpoena under the Utah Uniform Interstate Depositions and Discovery Act. The Developer did not take any depositions in this case and it is not clear who the Developer sought to depose in Utah or why. The fact that the Developer did not take any depositions in this case demonstrates that these costs were not necessary.

**3. Court Reporting/Transcripts**

The City does not dispute the majority of the costs claimed by the Developer for court reporting and transcription services. However, the documentation submitted includes an invoice from Oasis Reporting in the amount of \$1,049.00 for transcribing a recording of an HOA meeting. The Developer provided no explanation or justification for these costs.

**4. Shipping Fees**

The Developer is claiming \$61.33 in shipping fees paid to FedEx. The documentation submitted for this cost includes a FedEx invoice for the amount claimed. The invoice shows the sender as Kermitt Waters and the recipient as Michael Schneider, with an address in Denver, North Carolina. The Developer provided no explanation as to why it was necessary to incur shipping costs to send something to another attorney in the same office.

...

**I. Any costs awarded to the Developer should be offset by costs incurred by the City in defending the petition for judicial review**

The City successfully defended the Developer's petition for judicial review and should be awarded costs as the prevailing party in that proceeding. The City reserves the right to seek costs upon entry of a final judgment denying the petition for judicial review. To the extent that the costs awarded to the Developer exceed the costs incurred by the City in defending the petition for judicial review, the City respectfully requests that the Court offset the costs awarded to the Developer by the amount of costs awarded to the City.

**III. CONCLUSION**

Based upon the foregoing, the City requests that this Court retax the costs in the Developer's Memo of Costs. The Developer has claimed \$312,543.26 in total costs, including the following unrecoverable items:

| <u>Unrecoverable Cost</u>                             | <u>Amount Improperly Claimed</u> |
|---|----------------------------------|
| Photocopy Fees—Holo Discovery                         | \$ 14,422.77                     |
| Photocopy Fees—Nevada Supreme Court Library           | \$ 33.20                         |
| Research and Certified Copies—Clark County Recorder   | \$ 171.00                        |
| Research and Certified Copies—EJDC                    | \$ 119.00                        |
| Experts and Retainers—GGA Partners                    | \$ 11,162.41                     |
| Experts and Retainers—Global Golf Advisors            | \$ 67,094.00                     |
| Experts and Retainers—The DiFederico Group            | \$ 112,750.00                    |
| Experts and Retainers—Jones, Roach & Caringella, Inc. | \$ 29,625.00                     |
| Process Service—Legal Wings                           | \$ 290.00                        |
| Shipping Fees—FedEx                                   | \$ 61.33                         |
| Court Filing Fees—EJDC                                | \$ 808.50                        |
| Court Reporting/Transcripts—Oasis Reporting           | \$ 1,049.00                      |
| Online Research—Westlaw                               | \$ 50,669.02                     |
| In Office Copies                                      | \$ 6,345.40                      |
| <b>Total Unrecoverable Costs</b>                      | <b>\$ 294,539.30</b>             |



DATED this 10th day of December 2021.

McDONALD CARANO LLP

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*Attorneys for City of Las Vegas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 10th day of December, 2021, I caused a true and correct copy of the foregoing **MOTION TO RETAX MEMORANDUM OF COSTS** 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

# **EXHIBIT “A”**

**APPRAISAL OF REAL PROPERTY**

**A 34.07 Acre Vacant Site**

Located at the southeast corner (SEC) of  
Alta Drive & Hualapai Way  
Las Vegas, Clark County, Nevada 89102

**PREPARED FOR:**

180 Land Co., LLC  
c/o Mr. James J. Leavitt, Esq.  
Ms. Autumn Waters, Esq.  
The Law Offices of Kermit Waters  
704 South 9th Street,  
Las Vegas, Nevada 89101

**EFFECTIVE DATE OF THE APPRAISAL:**

Retrospective - September 14, 2017

**REPORT FORMAT:**

Appraisal Report

**PREPARED BY:**

Tio S. DiFederico, MAI  
The DiFederico Group  
7641 W. Post Road  
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**THE DiFEDERICO GROUP**

File Number: 19-035

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# THE DIFEDERICO GROUP

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INTERNATIONAL APPRAISAL & CONSULTING

April 23, 2021

180 Land Co., LLC  
c/o Mr. James J. Leavitt, Esq.  
Ms. Autumn L. Waters, Esq.  
The Law Offices of Kermit Waters  
704 South 9<sup>th</sup> Street  
Las Vegas, NV 89101

SUBJECT: The subject of the attached analysis involves a vacant 34.07-acre site located at the southeast corner (SEC) of Alta Drive and Hualapai Way, Las Vegas, Clark County, NV 89145. Assessor Parcel Number 138-31-201-005.

Dear Mr. Leavitt and Ms. Waters:

The DiFederico Group is pleased to submit the attached appraisal report of the above referenced property. The purpose of the appraisal was to develop an opinion of the just compensation due to the landowner for the City of Las Vegas' taking of the subject property. The effective date of value is September 14, 2017. The client and intended user of the report is the 180 Land Co., LLC, c/o James J. Leavitt, Esq., and Autumn L. Waters, Esq., of the Law Offices of Kermit Waters. The intended use of this appraisal report is for litigation purposes.

The appraisal report is intended to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. To report the assignment results, I used the appraisal report option of Standards Rule 2-2(a) of USPAP. The attached appraisal report contains discussions of the data, reasoning, and analyses used in the appraisal process. The depth of discussion contained in the report is specific to the needs of the client and the intended use of the appraisal.

The attached analysis involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, Clark County, Nevada. As of the effective date of value, the site's Alta and Hualapai frontages were improved with concrete curbs, gutters, sidewalks, and landscaping. The site was reported to have had general access to public roadways along Hualapai Way to the west and Alta Drive to the north. Public sewer easements had been provided to connect the subject property to the City of Las Vegas sanitary sewer system and the drainage study and soils reports indicated that the property was suitable for development.

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**TDG Rpt 000002**

**21119**

The subject property's zoning was recently addressed in a hearing before District Court Judge Timothy C. Williams. In the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners Motion to Determine "Property Interest," Judge Williams stated, "the Court bases its property interest decision on eminent domain law. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. 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
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

Although the site had been zoned R-PD7 since the early 1990's, the property had historically been used as a portion of the Badlands Golf Course. The landowner had leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses.

According to that operator, revenue in 2015 was down 11% from 2014. The 2016 revenue was down another 25% from 2015, and the 2016 net operating income (NOI) was down over 85% from that reported in 2015. The landowner tried to re-lease the property to that operator at a lower rate. The operator refused saying they would still lose money. The landowner then offered it to the operator for a year for free. The operator said that they would still lose money and passed. It is my understanding that two (2) other golf course operators were approached to take over, but both refused. The landowner then offered the golf course operations to the Queensridge Homeowner's Association (HOA) for one (1) year for \$1.00. The HOA did not respond. At that point, December 1, 2016, the golf course was closed.

According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend being experienced in 2016 was referred to as "correction." This was because at that time golf course closures occurring throughout the U.S. indicated there was an oversupply that required market correction. And local market data showed that the Badlands wasn't an outlier struggling in a thriving golf course market. Based on what was happening in the national and local golf course markets, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction."

After looking at the historical operations of the golf course, which were trending downward rapidly, I concluded that operating the golf course was not a financially feasible use of this property as of September 14, 2017. Based on my research, I concluded that the highest and best use of this property was a residential development. This use would be similar to the surrounding uses in the Queensridge and Summerlin communities.

On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated since the subject property had ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was “disqualified for open-space assessment.” The Assessor converted the property to a residential designation for tax purposes and then the deferred taxes were owed as provided in NRS 361A.280. The following explains how they apply deferred taxes.

**NRS 361A.280 Payment of deferred tax when property converted to higher use.** If the county assessor is notified or otherwise becomes aware that a parcel or any portion of a parcel of real property which has received agricultural or open-space use assessment has been converted to a higher use, the county assessor shall add to the tax extended against that portion of the property on the next property tax statement the deferred tax, which is the difference between the taxes that would have been paid or payable on the basis of the agricultural or open-space use valuation and the taxes which would have been paid or payable on the basis of the taxable value calculated pursuant to NRS 361A.277 for each year in which agricultural or open-space use assessment was in effect for the property during the fiscal year in which the property ceased to be used exclusively for agricultural use or approved open-space use and the preceding 6 fiscal years. The county assessor shall assess the property pursuant to NRS 361.227 for the next fiscal year following the date of conversion to a higher use.

While the taxes were being increased, the owner was attempting to develop the property with a residential use. The site was zoned and taxed by the government as residential land, but the City of Las Vegas prevented the legal use of the property as it would not allow the landowner to develop the property with a residential use. Instead, the City of Las Vegas has required that the property remain vacant.

With the City preventing the legally permitted use of property, and requiring the property to remain vacant, I concluded that the property had no value in the “after condition.” That is because there is no market that I can find interested in purchasing property taxed as if it can be used for residential development but restricted to remain vacant.

In this case, the landowner purchased this residentially zoned site and submitted an application to the City of Las Vegas for approval to develop the property with a residential development. The City of Las Vegas denied the landowner’s application.

NRS 37.112 provides that any decrease or increase in the fair market value of a property before the date of valuation which is caused by the public work or public improvement for which the property is acquired; or the likelihood that the property would be acquired for such a purpose, has to be disregarded when estimating the value of the property. Therefore, when valuing this property in the before condition, I must value the property as of September 14, 2017, the effective date of value, disregarding the City’s actions to prevent the legal use of the property. This will be referred to as the “before condition” throughout the attached report. I will then value the property as of September 14, 2017, considering the City’s actions to prevent the legal use of the property. This will be referred to as the “after condition” throughout the report.

For this assignment I first analyzed the property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. After concluding the “before value”, I analyzed the remainder. Due to the effect of the government’s actions, I concluded there was no market to sell this property with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government’s actions, I concluded that the “after value” would be zero.

Based on the analyses and conclusions in the accompanying report and subject to the definitions, assumptions, and limiting conditions expressed in this report, it is my opinion that the retrospective just compensation due to the landowner for the government’s actions, as of September 14, 2017, was as follows:

| <b>Estimated Just Compensation Due to Landowner</b> |                 |
|---|-----------------|
| 1. Value before taking                              | \$ 34,135,000   |
| 2. Less value after the taking                      | - \$ -          |
| 3. Damages to the remainder                         | = \$ 34,135,000 |
| 4. Less special benefits to remainder               | - \$ -          |
| 5. Just compensation due to property owner          | = \$ 34,135,000 |

**The previous values are based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

If you have any questions or comments, please contact the undersigned. Thank you for the opportunity to be of service.

Respectfully submitted,

**THE DiFEDERICO GROUP**



Tio S. DiFederico, MAI  
Certified General Real Estate Appraiser  
Nevada Certificate #A.0000150-CG

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**TDG Rpt 000005**

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## SUMMARY OF SALIENT FACTS AND CONCLUSIONS

|  |   |
|--|---|
| <b>Property Type:</b>                                | Vacant Land   |
| <b>Location:</b>                                     | SEC Alta Drive & Hualapai Way, Las Vegas, Clark County, NV 89145  |
| <b>Assessor Parcel Numbers (APN):</b>                | 138-31-201-005  |
| <b>Owner of Record:</b>                              | 180 Land Co, LLC  |
| <b>Date of value opinion - Retrospective:</b>        | September 14, 2017  |
| <b>Date of inspection:</b>                           | August 12, 2020   |
| <b>Date of report:</b>                               | April 23, 2021  |
| <b>Property rights appraised:</b>                    | Fee Simple estate   |
| <b>Land Area:</b>                                    | 34.07 acres / 1,484,089 square feet   |
| <b>Zoning Designation</b>                            | Residential Planned Development District (R-PD7), under the jurisdiction of the City of Las Vegas.  |
| <b>Flood Panel / Designation / Date</b>              | Panel 2145 and 2150 of 4090 / Zone X / 11/16/11 and 09/27/02, respectively.   |
| <b>Client/Intended user/Intended use:</b>            | The client and intended user is the 180 Land Co., LLC, c/o Mr. James J. Leavitt, Esq., and Autumn Waters, Esq., of the Law Offices of Kermit Waters. The intended use is for litigation purposes. |
| <b>Highest and Best use in the Before Situation:</b> | Residential Development.  |

Based on the analyses and conclusions in this report and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the just compensation due the property owner due to the government actions, as of September 14, 2017, was:

| Estimated Just Compensation Due to Landowner |                 |
|--|-----------------|
| 1. Value before taking                       | \$ 34,135,000   |
| 2. Less value after the taking               | - \$ -          |
| 3. Damages to the remainder                  | = \$ 34,135,000 |
| 4. Less special benefits to remainder        | - \$ -          |
| 5. Just compensation                         | = \$ 34,135,000 |

The above value is based on the following extraordinary assumption and its use might have affected the assignment results:

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## GENERAL INFORMATION

### IDENTIFICATION OF SUBJECT

The subject of this report is a 34.07-acre site located at the southeast corner of Alta Drive and Hualapai Way, Las Vegas, Nevada. The property can also be identified as Clark County Assessor Parcel Number (APN) 138-31-201-005. A brief legal description of the property is as follows:

A PORTION OF THE SOUTH HALF (S ½) OF THE NORTHWEST  
QUARTER (NW ¼) AND THE NORTH HALF (N ½) OF THE SOUTHWEST  
QUARTER (SW ¼) OF SECTION 31, TOWNSHIP 20 SOUTH, RANGE 60  
EAST, M.D.M., CLARK COUNTY, NEVADA

### CURRENT OWNERSHIP AND SALES HISTORY

A guideline of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP) is that any pending or prior sales of the subject property over the last three years must be analyzed.

The subject property was transferred with another 216.85 acres from Fore Stars, LTD., to 180 Land Co. LLC, an affiliated entity, on November 16, 2015. The subject property had been held by Fore Stars, LTD., since April 14, 2005 when it was transferred from the Peccole 1982 Trust (45%) and William Peter and Wanda Ruth Peccole Family L.P. (55%), a business entity of which grantor is the 100% owner. The property had been transferred to the Peccole 1982 Trust and William Peter and Wanda Ruth Peccole Family L.P.; three (3) days prior from the Larry Miller Trust.

In researching the sales history, I interviewed Yohan Lowie, CEO & Founder of EHB Companies. Mr. Lowie's relationship with the Peccole family began in 1996 when he and his partners purchased their first custom home lot in the Queensridge community. They traded that lot but ended up building the new owner's home on that lot. They purchased three (3) additional lots, built homes on them, and sold them. This was followed by the purchase of two additional lots. After these developments, Mr. Lowie's company entered into partnerships with the Peccole family on properties outside of Queensridge, including the office building that EHB Companies currently occupies, land, Tivoli Village and a site at Sahara Avenue and Hualapai Way. By early 2000, Mr. Lowie and his partners had entered into a 25 custom home lot purchase that they would take down in five (5) lot increments every three (3) to five (5) months. Mr. Lowie stated that they ended up purchasing and developing 40 of the 106 custom home lots in the Queensridge community.

It was in early 2001, while Mr. Lowie's company was building a home that he noted dirt being moved behind it on what was known as the Badlands golf course. He stated that was when he learned that the Peccole family was looking to develop homes on what had been the Badlands golf course. Mr. Lowie stated that the Peccole family halted this development due to a waterline easement that ran under that portion of the site.

By 2004 Mr. Lowie had negotiated with the Peccole family to buy the +/- 14.5 acre site to construct four (4) towers at Queensridge, two (2) of which have been built. The Peccole family retained a 30% interest in the Queensridge Towers development. However, to build these Towers, two (2) holes on the Badlands golf course had to be rearranged. This included converting a Par 5 hole that abutted the Tower site to a Par 4 and converting a Par 4 close to the Queensridge Charleston Boulevard entrance to a Par 5. The following aerials from

Google Earth reflect the before and after situation of the land and golf course where the two (2) towers were constructed.



*Photo taken March 30, 2004.*



*Photo taken February 28, 2008.*

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 development. American Golf demanded the Peccole family buy out the lease for \$30 million. At the same time there was a cash call for the partners in the Queensridge Towers, of which the Peccole family had a 30% interest.

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. Mr. Lowie agreed to pay the Peccole family a total of \$90 million for the interests in these ventures, plus give them four (4) units in the Queensridge Towers that he valued at \$10 million. This included the \$30 million for them to buy out the golf course lease. Therefore, the total price agreed upon in 2006 was \$100MM.

It was during this period of 2006, that Troon Golf, LLC., approached the Peccole family about leasing and operating the Badlands golf course. The Peccole family approached Mr. Lowie with the suggestion that he let them lease the golf course to Troon Golf since he was busy with the Towers and Tivoli Village at that time. Mr. Lowie agreed. The Troon Golf lease was approximately three (3) years. Par 4 leased and operated the course thereafter. In March of 2015, Mr. Lowie and his partners, through their entities, purchased Fore Stars, the entity that owned the 250 acres of land that the Badlands Gold Course was operated on. Elite Golf then took over operations until it closed in December of 2016.

According to Mr. Lowie, the property had never been listed for sale and the 2015 transfer of the golf course for \$15 million was just the final payment of the \$100MM buyout and had nothing to do with the property's value. In addition, this was agreed to over ten (10) years prior to the effective date of value in this analysis.

After considering all of the previous information about the subject property's transfer, the fact that market conditions had seen dramatic changes during the ten (10) years prior to the effective date of value, and the values I estimated in this report, it is my opinion that the final payment of \$15 million had no relationship to the subject site's September 14, 2017 market value.

To the best of my knowledge, while the property transferred in November 2015 to a related entity, there had been no market based sale of the subject property within the three (3) years prior to the effective date of value, September 14, 2017, and as of the effective date of this appraisal assignment, the property was not in escrow, subject to an option to buy, nor was it listed for sale.

#### **PURPOSE, PROPERTY RIGHTS AND EFFECTIVE DATE**

The purpose of this appraisal is to develop an opinion of the just compensation due to the property owner due to the government actions that resulted in taking of the landowner's property rights. The effective date of value is September 14, 2017.

#### **CLIENT, INTENDED USER AND INTENDED USE**

The client and intended user of the report is 180 Land Co., LLC, c/o Mr. James J. Leavitt, Esq., and Autumn Waters, Esq., of the Law Offices of Kermit Waters. The intended use of this appraisal report is for litigation purposes.

#### **APPLICABLE REQUIREMENTS**

This appraisal is intended to conform to the requirements of the following:

- Uniform Standards of Professional Appraisal Practice (USPAP)
- Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute

#### **DEFINITION OF CONDEMNATION**

The act or process of enforcing the right of eminent domain. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

**DEFINITION OF EMINENT DOMAIN**

The right of government to take private property for public use upon the payment of just compensation. The Fifth Amendment of the U.S. Constitution, also known as the *takings clause*, guarantees payment of just compensation upon appropriation of private property. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

**DEFINITION OF EXTRAORDINARY ASSUMPTION**

An assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions. Source: USPAP, (*2016-2017 ed*).

**DEFINITION OF HYPOTHETICAL CONDITION**

A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis. Source: USPAP, (*2020-2021 ed*).

**DEFINITION OF INVERSE CONDEMNATION**

An action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings; also termed *constructive condemnation, reverse condemnation*. (*Black's Law Dictionary, tenth edition*).

**DEFINITION OF JUST COMPENSATION**

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position pecuniarily as he or she would have been if the property had not been taken. Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal, 6<sup>th</sup> Edition, 2015*).

The Nevada Constitution has a similar definition:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

**DEFINITION OF MARKET VALUE**

Market value is defined as:

The highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property. (Added to NRS by 1959, 596; A 1989, 548; 1993, 525; 1995, 501; 2007, 331)

The Nevada Constitution has a similar definition:

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

### DEFINITION OF PROPERTY RIGHTS APPRAISED

Fee simple estate is defined as an: “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.” Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal*, 6<sup>th</sup> Edition, 2015).

### DEFINITION OF RETROSPECTIVE VALUE OPINION

Retrospective value opinion is defined as an: “A value opinion effective as of a specified historical date. The term *retrospective* does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date.” Source: Appraisal Institute, (*The Dictionary of Real Estate Appraisal*, 6<sup>th</sup> Edition, 2015).

### SCOPE OF WORK

This analysis involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, Clark County, Nevada. As of the effective date of value, the site’s Alta and Hualapai frontages were improved with concrete curbs, gutters, sidewalks, and landscaping.

According to the City of Las Vegas’ Planning Department, the site has been zoned Residential Planned Development District (R-PD7) since at least 1990. This was recently confirmed after a hearing on September 17, 2020. After that hearing, District Court Judge Timothy C. Williams ordered that:

- 3) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 4) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

The single-family residential dwelling density that is allowed in the R-PD District is reflected by the numerical designation for that district. According to Title 19, R-PD7 allows up to 7.49 dwelling units per gross acre. The development standards for a R-PD project, including minimum front, side and rear yard setbacks, grade changes, maximum building heights, and other design and development criteria, are to be as established by the approved Site Development Plan Review (SDR) for the development.

This appraisal assignment involves estimating the just compensation due to the property owner for the government actions requiring the property to remain in a vacant state and not allow the landowner to develop a residentially zoned property with a residential development. To perform this assignment, I took the following steps to gather, confirm, and analyze relevant data.

- I inspected the subject property and surrounding area on August 12, 2020. The photographs included in this report were taken by Tio S. DiFederico, MAI, during that inspection.
- I collected factual information about the property and the surrounding market and confirmed that information with various sources as of the effective date of value. This included numerous articles in the local newspapers regarding the Las Vegas golf

courses, correspondence between the landowner, Par 4 and then Elite Golf, The National Golf Foundation's "Golf Facilities in the U.S., 2017 Edition," a report on the Badlands Golf Course prepared by Global Golf Advisors (GGA), site development costs (included in my workfile), the City of Las Vegas Unified Development Code, Title 19, and numerous other publications identified within this report.

- I then performed a highest and best use analysis of the subject site as of September 14, 2017, the effective date of value. Based on the highest and best conclusion, I estimated the market value of the fee simple estate in the subject site as if the permitted right to develop the property with single-family residences would have been allowed. (i.e., I excluded the project).
- Appraisers usually consider the use of three approaches to value when developing a market value opinion for real property. These are the cost approach, sales comparison approach and income capitalization approach. For this assignment, I used the Sales Comparison Approach and the Discounted Cash Flow Analysis in Subdivision Development Analysis in the Income Capitalization Approach. These methodologies are considered to offer the best indications of the property's market value.
- Since the Cost Approach is not considered applicable when appraising vacant land, this approach was not used in this analysis.
- The next part of the report involves analyzing and estimating the value of the property in the before and after condition. In this case, the landowner had a residentially zoned site and the legal right to develop it with a residential use. However, when the landowner attempted to get government approval for a residential development, the City of Las Vegas denied the landowner any economic use of the property and instead required the property stay in a vacant state. Therefore, I first analyzed the value of this property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning on September 14, 2017. After concluding that value (the "before value"), I analyzed the value of the property in the after condition, subject to the government actions (the "after value"). I then considered what, if any, damages accrue to the remainder due to the effect of these government actions as of September 14, 2017, the effective date of value for this assignment.

#### REPORT FORMAT

The report has been prepared under the Appraisal Report option of Standards Rule 2-2(a) of USPAP. As such, it contains discussions of the data, reasoning, and analyses that are used in the appraisal process. Supporting documentation is retained in my file. The depth of discussion contained in this report is specific to the needs of the client and the intended use of the appraisal.



## MARKET AREA ANALYSIS

### Nevada Labor Force Summary

| (Estimates in Thousands)                                   |             |             |        |          |        |             |
|--|-------------|-------------|--------|----------|--------|-------------|
| LABOR FORCE SUMMARY  |             |             |        |          |        |             |
|  | Sep-17      | Sep-16      | CHANGE | % CHANGE | Aug-17 |             |
| <b>NEVADA STATEWIDE Seasonally Adjusted</b>                |             |             |        |          |        |             |
| LABOR FORCE  | 1451.4      | 1430.8      | 20.6   | 1.4%     | 1445.6 |             |
| EMPLOYMENT   | 1379.7      | 1353.6      | 26.1   | 1.9%     | 1375.0 |             |
| UNEMPLOYMENT   | 71.7        | 77.2        | -5.5   | -7.1%    | 70.6   |             |
| <b>UNEMPLOYMENT RATE</b>                                   | <b>4.9%</b> | <b>5.4%</b> | -----  | -----    |        | <b>4.9%</b> |
| <b>NEVADA STATEWIDE Non Seasonally Adjusted</b>            |             |             |        |          |        |             |
| LABOR FORCE  | 1457.8      | 1432.3      | 25.4   | 1.8%     | 1449.8 |             |
| EMPLOYMENT   | 1385.5      | 1355.1      | 30.4   | 2.2%     | 1377.5 |             |
| UNEMPLOYMENT   | 72.3        | 77.3        | -5.0   | -6.5%    | 72.3   |             |
| <b>UNEMPLOYMENT RATE</b>                                   | <b>5.0%</b> | <b>5.4%</b> | -----  | -----    |        | <b>5.0%</b> |
| <b>Las Vegas-Paradise MSA Includes Clark County</b>        |             |             |        |          |        |             |
| LABOR FORCE  | 1073.6      | 1050.8      | 22.8   | 2.2%     | 1068.7 |             |
| EMPLOYMENT   | 1017.6      | 992.1       | 25.5   | 2.6%     | 1012.8 |             |
| UNEMPLOYMENT   | 56.0        | 58.7        | -2.7   | -4.6%    | 55.9   |             |
| <b>UNEMPLOYMENT RATE</b>                                   | <b>5.2%</b> | <b>5.6%</b> | -----  | -----    |        | <b>5.2%</b> |
| <b>Reno-Sparks MSA Includes Washoe and Storey Counties</b> |             |             |        |          |        |             |
| LABOR FORCE  | 237.9       | 234.5       | 3.4    | 1.4%     | 234.8  |             |
| EMPLOYMENT   | 228.4       | 223.8       | 4.6    | 2.0%     | 225.3  |             |
| UNEMPLOYMENT   | 9.5         | 10.7        | -1.2   | -11.4%   | 9.5    |             |
| <b>UNEMPLOYMENT RATE</b>                                   | <b>4.0%</b> | <b>4.6%</b> | -----  | -----    |        | <b>4.1%</b> |
| <b>Carson City MSA</b>                                     |             |             |        |          |        |             |
| LABOR FORCE  | 24.8        | 24.7        | 0.1    | 0.3%     | 24.8   |             |
| EMPLOYMENT   | 23.6        | 23.3        | 0.3    | 1.2%     | 23.6   |             |
| UNEMPLOYMENT   | 1.2         | 1.4         | -0.2   | -14.2%   | 1.2    |             |
| <b>UNEMPLOYMENT RATE</b>                                   | <b>4.8%</b> | <b>5.6%</b> | -----  | -----    |        | <b>4.7%</b> |

UNEMPLOYMENT RATES BASED ON UNROUNDED DATA

Employment adjusted by census relationships to reflect number of persons by place of residence.

Information compiled by DETR's Research & Analysis Bureau

Source: Nevada Department of Employment, Training and Rehabilitation.

## ECONOMIC BASE

While overall the number of new jobs increased in September 2017, Nevada's largest population centers saw mixed job growth. The Las Vegas Metropolitan Statistical Area (MSA) lost 500 jobs after only adding 3,900 jobs when 4,400 were expected to be gained, due to seasonal movement. Reno saw a seasonally adjusted increase of 2,000 jobs, the result of a jump of 3,000 jobs when only 1,000 were expected. In the state capital, Carson City, jobs held steady years over year with the seasonal expectations.

The economic base of the Las Vegas area consists of the tourist industry, service industry, military-base, the Nevada Test Site, governmental and municipal agencies, and mining and manufacturing. Nevada Development Authority is one of the area's premier economic development agencies. According to the Nevada Department of Employment, Training & Rehabilitation (DETR), as of September 2017, the statewide unemployment rate was 4.9%, down 0.5% from the same month of 2016. "The metro area economic indicators continue to follow statewide positive trends," Bill Anderson, chief economist for Nevada's Department of Employment, Training and Rehabilitation, said. "As reported last week, the statewide unemployment rate stands at 4.9%. Employers continue to add jobs. Despite a slight uptick in new jobs statewide, Nevada's largest population centers saw mixed job growth in September."

## Non-Seasonally Adjusted Establishment Based Industrial Employment Las Vegas-Paradise MSA

Includes Clark County  
(Estimates In Thousands)

|  | Sep-17       | Sep-16       | CHANGE      | % CHANGE     | Aug-17       |
|--|--------------|--------------|-------------|--------------|--------------|
| <b>Total All Industries</b>                | <b>983.5</b> | <b>960.1</b> | <b>23.4</b> | <b>2.4%</b>  | <b>979.6</b> |
| <b>Goods Producing</b>                     | <b>89.6</b>  | <b>78.8</b>  | <b>10.8</b> | <b>13.7%</b> | <b>89.7</b>  |
| Natural Resources & Mining                 | 0.4          | 0.3          | 0.1         | 33.3%        | 0.4          |
| Construction                               | 66.3         | 56.2         | 10.1        | 18.0%        | 66.4         |
| Construction of Buildings                  | 9.6          | 8.5          | 1.1         | 12.9%        | 9.4          |
| Specialty Trade Contractors                | 51.0         | 42.0         | 9.0         | 21.4%        | 51.4         |
| Building Foundation & Exterior Contractors | 13.1         | 10.7         | 2.4         | 22.4%        | 13.7         |
| Building Finishing Contractors             | 13.9         | 11.5         | 2.4         | 20.9%        | 13.7         |
| Manufacturing                              | 22.9         | 22.3         | 0.6         | 2.7%         | 22.9         |
| Durable Goods                              | 13.0         | 12.7         | 0.3         | 2.4%         | 13.0         |
| Other Miscellaneous Manufacturing          | 4.1          | 4.1          | 0.0         | 0.0%         | 4.1          |
| Non-durable Goods                          | 9.9          | 9.6          | 0.3         | 3.1%         | 9.9          |
| <b>Service Providing</b>                   | <b>893.9</b> | <b>881.3</b> | <b>12.6</b> | <b>1.4%</b>  | <b>889.9</b> |
| <b>Private Service Providing</b>           | <b>790.2</b> | <b>780.2</b> | <b>10.0</b> | <b>1.3%</b>  | <b>791.9</b> |
| Trade, Transportation & Utilities          | 167.1        | 170.7        | -3.6        | -2.1%        | 168.2        |
| Wholesale                                  | 21.2         | 21.8         | -0.6        | -2.8%        | 21.1         |
| Retail                                     | 106.6        | 106.9        | -0.3        | -0.3%        | 107.3        |
| Food & Beverage Stores                     | 17.9         | 17.4         | 0.5         | 2.9%         | 17.8         |
| Health and Personal Care Stores            | 7.8          | 7.7          | 0.1         | 1.3%         | 7.9          |
| Trans, Warehousing & Utilities             | 39.3         | 42.0         | -2.7        | -6.4%        | 39.8         |
| Utilities                                  | 2.6          | 2.6          | 0.0         | 0.0%         | 2.6          |
| Transportation & Warehousing               | 36.7         | 39.4         | -2.7        | -6.9%        | 37.2         |
| Air  | 6.5          | 6.4          | 0.1         | 1.6%         | 6.5          |
| Transit and Ground Passenger               | 12.8         | 13.4         | -0.6        | -4.5%        | 13.0         |
| Taxi and Limousine Service                 | 9.7          | 9.8          | -0.1        | -1.0%        | 9.7          |
| Information                                | 10.7         | 10.8         | -0.1        | -0.9%        | 10.8         |
| Telecommunications                         | 2.8          | 2.9          | -0.1        | -3.4%        | 2.8          |
| Financial Activities                       | 49.9         | 48.4         | 1.5         | 3.1%         | 50.5         |
| Finance and Insurance                      | 27.2         | 26.8         | 0.4         | 1.5%         | 27.8         |
| Credit Intermediation & Related            | 15.8         | 14.9         | 0.9         | 6.0%         | 15.7         |
| Real Estate and Rental and Leasing         | 22.7         | 21.6         | 1.1         | 5.1%         | 22.7         |
| Professional & Business Services           | 141.5        | 136.4        | 5.1         | 3.7%         | 141.7        |
| Professional, Scientific and Technical     | 39.5         | 39.4         | 0.1         | 0.3%         | 40.2         |
| Management of Companies                    | 20.5         | 19.8         | 0.7         | 3.5%         | 20.5         |
| Administrative & Support and Waste Mgt.    | 81.5         | 77.2         | 4.3         | 5.6%         | 81.0         |
| Administrative and Support Services        | 79.4         | 74.6         | 4.8         | 6.4%         | 79.0         |
| Employment Services                        | 15.3         | 14.2         | 1.1         | 7.7%         | 15.3         |
| Other Support Services                     | 12.1         | 11.8         | 0.3         | 2.5%         | 11.1         |
| Education and Health Services              | 96.7         | 92.8         | 3.9         | 4.2%         | 96.4         |
| Health Care and Social Assistance          | 86.0         | 82.9         | 3.1         | 3.7%         | 86.7         |
| Ambulatory Health Care Services            | 39.9         | 37.6         | 2.3         | 6.1%         | 40.1         |
| Hospitals                                  | 20.9         | 20.4         | 0.5         | 2.5%         | 20.9         |
| Leisure and Hospitality                    | 291.6        | 289.3        | 2.3         | 0.8%         | 291.4        |
| Arts, Entertainment and Recreation         | 21.6         | 21.0         | 0.6         | 2.9%         | 21.8         |
| Accommodation and Food Service             | 270.0        | 268.3        | 1.7         | 0.6%         | 269.6        |
| Accommodation                              | 168.7        | 167.0        | 1.7         | 1.0%         | 168.5        |
| Casino Hotels and Gaming                   | 159.9        | 158.4        | 1.5         | 0.9%         | 159.5        |
| Casino Hotels                              | 154.8        | 153.5        | 1.3         | 0.8%         | 154.4        |
| Gaming Industries                          | 5.1          | 4.9          | 0.2         | 4.1%         | 5.1          |
| Food Services and Drinking Places          | 101.3        | 101.3        | 0.0         | 0.0%         | 101.1        |
| Full-Service Restaurants                   | 49.9         | 50.3         | -0.4        | -0.8%        | 49.7         |
| Limited-Service Restaurants                | 36.6         | 37.7         | -1.1        | -2.9%        | 36.6         |
| Other Services                             | 32.7         | 31.8         | 0.9         | 2.8%         | 32.9         |
| Government                                 | 103.7        | 101.1        | 2.6         | 2.6%         | 98.0         |
| Federal                                    | 13.0         | 12.9         | 0.1         | 0.8%         | 13.0         |
| State                                      | 18.3         | 19.1         | -0.8        | -4.2%        | 16.8         |
| Local                                      | 72.4         | 69.1         | 3.3         | 4.8%         | 68.2         |

Non-Seasonally Adjusted Data.

Data may not add due to rounding. Employment by place of work. Does not coincide with labor force concept. Includes multiple job holders.

Source: Nevada Department of Employment, Training and Rehabilitation.

**Key Points:**

- In Las Vegas, the unemployment rate stayed the same from August, at 5.2%. But it is down 40 basis points from the same time last year.
- Reno's unemployment rate is at 4.0%, down 10 basis points from August and down 60 basis points from last year.
- The unemployment rate in Carson City is up 10 basis points over the month, to 4.8%, but is down 80 basis points from September 2016.

**Job Growth since September 2016**

- Statewide: 32,300 jobs were added over the year (2.5% growth rate)
- Reno: added 5,500 jobs (2.5% growth rate)
- Las Vegas: added 21,600 jobs over the year (2.3% growth rate)
- Carson City: unemployment unchanged year-over-year

Over the year, job growth increased in the State as a whole and in all major population centers this month. Statewide, 32,300 more jobs have been added since September of 2016, a growth rate of 2.5%. Reno had the highest year-over-year growth rate at 2.5%. The Reno area saw payrolls gain 5,500 jobs, with 2,000 goods-producing and 2,300 service-providing jobs. Las Vegas realized the largest nominal growth of 21,600 jobs, an increase of 2.3%. Of the Las Vegas area's total nominal gain, service providing industries saw the addition of 12,600 jobs and goods-producing industries increased by 10,800 jobs. Carson City was flat year-over-year, with both service-providers and goods-producers adding 100 jobs in the area before adjustments were made for seasonality.

The latest information from Current Employment Statistics (CES) monthly estimates show as the recession unfolded, Statewide employment fell 14.3%, from a pre-recession peak of 1,297,200 to a low of 1,111,500 jobs in September 2010. Seven years later, the Silver State has surpassed the pre-recession peak by 3.9%, or 50,800 more jobs. Las Vegas lost 134,400 jobs during the recession, a decline of 14.4%. Since bottoming out, the region has added 183,900 jobs, an increase of 23.1%. Employment currently stands 49,500 higher than the previous peak.

Tourism has historically been one of Nevada's major economic drivers, and continues to account for a larger share of employment than any other sector in the State. Monthly visitor volumes for the State's two largest metro areas are important indicators for the health of the many industries supported by tourism.

Another indicator of the area's economic health is provided by UNLV's Center for Business & Economic Research (CBER) Southern Nevada Coincident and Leading Indexes. This is put out by the Nevada Department of Employment, Training & Rehabilitation Research and Analysis Bureau and UNLV's Center for Business and Economic Research.

The CBER Nevada coincident and leading indexes use the Department of Commerce index construction method. The CBER Nevada coincident index measures the ups and downs of the Nevada economy, while the CBER Nevada leading index provides an indication for the future direction of the coincident index.

The coincident index provides the benchmark series that defines the business cycle or reference cycle in Nevada. The leading index then tracks the economy relative to that reference cycle. The coincident index peaked in February 2007 and then fell dramatically

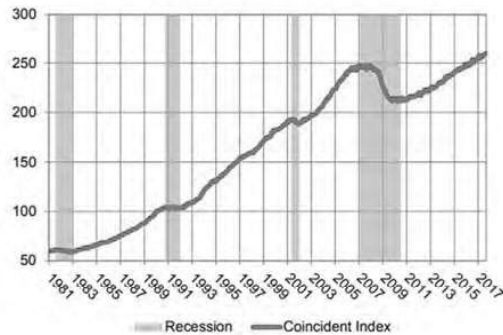
through June 2010. Prior to the Great Recession, identified by the benchmark Nevada coincident index, the Nevada leading index peaked in November 2005, 14 months before the Nevada coincident index peaked. Then the Nevada leading index bottomed out in May 2009, 13 months before the Nevada coincident index troughed. All series are seasonally adjusted (SA).

- CBER's Southern Nevada Coincident Index increased 0.4% in August 2017 relative to the prior month and a significant 3.7% increase year-over-year.
- CBER's Southern Nevada Leading Index decreased 1.3% in August 2017 relative to the prior month and was up 1.0% compared to last year.
- CBER's Clark County Construction Index increased 0.1% in August 2017 relative to the prior month; and is up a healthy 4.3% over last year.
- CBER's Southern Nevada Tourism Index dropped 0.1% in August 2017 relative to the prior month; but is up 1.5% over last year.



## Southern Nevada Coincident Index

The CBER Southern Nevada coincident index advanced in August on a monthly and yearly basis.



| Series                  | Date   | Latest Period | Month-Over-Month | Year-Over-Year |
|-------------------------|--------|---------------|------------------|----------------|
| Taxable Sales (SA)      | Aug-17 | 3,484,358,509 | 0.7%             | 3.6%           |
| Gaming Revenue (SA)     | Aug-17 | 855,812,043   | 2.4%             | 16.4%          |
| Nonfarm Employment (SA) | Aug-17 | 983,439       | 0.1%             | 3.2%           |
| Overall Index Change    | Aug-17 | 259.8         | 0.4%             | 3.7%           |

Source: The Center for Business and Economic Research – UNLV

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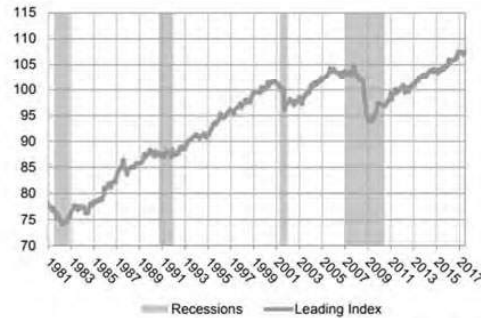
The CBER Southern Nevada coincident index rose 0.4% in August 2017 from the previous month. Gaming revenue (2.4%), taxable sales (0.7%) and nonfarm employment (0.1%) all rose compared to July 2017. On a yearly basis, all three components also rose this month. Year-over-year, Clark County taxable sales were up by 3.6% and gaming revenue, strongly supported by higher gaming activity due to the Mayweather-McGregor boxing match, was up 16.4%. Nonfarm employment was up 3.2% since last year. Overall, the index was up 3.7% year-over-year.



## Southern Nevada Leading Index

The CBER Southern Nevada leading index continued its yearly upward trend.

| Date   | Index | Month-Over-Month | Year-Over-Year |
|--------|-------|------------------|----------------|
| Aug-16 | 103.9 | 1.3%             | 6.8%           |
| Sep-16 | 101.7 | -2.1%            | 3.3%           |
| Oct-16 | 102.3 | 0.6%             | 2.7%           |
| Nov-16 | 105.3 | 2.9%             | 7.1%           |
| Dec-16 | 105.5 | 0.1%             | 5.0%           |
| Jan-17 | 103.3 | -2.0%            | 4.6%           |
| Feb-17 | 102.4 | -0.9%            | -0.2%          |
| Mar-17 | 104.5 | 2.1%             | 2.5%           |
| Apr-17 | 103.6 | -0.9%            | 2.5%           |
| May-17 | 105.0 | 1.3%             | 2.6%           |
| Jun-17 | 104.7 | -0.3%            | 2.2%           |
| Jul-17 | 106.2 | 1.5%             | 3.5%           |
| Aug-17 | 104.9 | -1.3%            | 1.0%           |



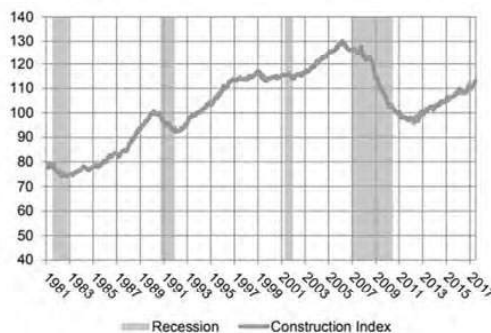
Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada leading index posted a slight monthly increase in August of 0.2%, mainly due to mixed results. On the positive side, there was a 35.0% increase in housing permits in Clark County. In addition, the S&P 500 index was up 2.1% and the 10-year Treasury bond yield (inverted) inched up 0.2%. In contrast, initial claims for unemployment insurance (inverted) and passenger volume at McCarran International Airport declined 0.8% and 0.1%, respectively. Also, construction permits for commercial building posted the largest monthly decline, down 27.6%. The overall index, however, posted a 1.7% increase compared to August of last year. This gain resulted from a robust annual increase of 92.7% in housing permits, which was partially offset by a 16.6% fall in commercial construction permits. On the national level, the S&P 500 index advanced 15.5% in August compared to August 2016, which highlighted favorable growth of the U.S. economy.



## Southern Nevada Construction Index

The CBER Southern Nevada construction index rose strongly in August compared to last year.



| Series                       | Date   | Latest Period | Month-Over-Month | Year-Over-Year |
|------------------------------|--------|---------------|------------------|----------------|
| Construction Employment (SA) | Aug-17 | 65,611        | 1.0%             | 19.1%          |
| Housing Permits (SA)         | Aug-17 | 1,303         | 35.0%            | 92.7%          |
| Commercial Permits (SA)      | Aug-17 | 31            | -27.6%           | -16.6%         |
| Overall Index Change         | Aug-17 | 113.2         | 0.1%             | 4.3%           |

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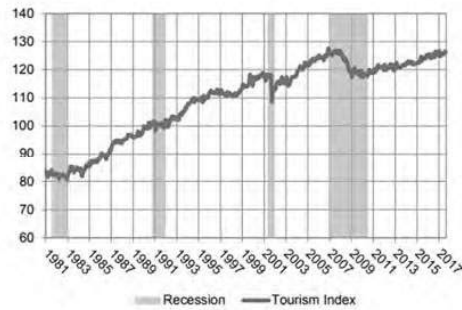
Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada construction index peaked in August at its highest value since the end of the housing crisis. The index increased by 0.1% and 4.3% in August compared to the previous month and year, respectively. On a monthly basis, the index was supported by higher housing permits and construction employment, up by 35.0% and 1.0%, respectively. Construction permits for commercial buildings, however, dropped 27.6% in August compared to July. Although commercial building permits fell significantly on a monthly basis, the overall index registered a monthly gain. Housing permits and construction employment fueled a push upwards year-over-year in August. Residential permits were up 92.7% and close to 10,500 new workers in the construction industry were added (seasonally adjusted data). As a result, the overall index was up strongly by 4.3% from a year ago.



## Southern Nevada Tourism Index

The CBER Southern Nevada tourism index increased in August due to higher gaming activity.



| Series                             | Date   | Latest Period | Month-Over-Month | Year-Over-Year |
|------------------------------------|--------|---------------|------------------|----------------|
| McCarran Passengers (SA)           | Aug-17 | 4,071,634     | -0.1%            | 3.6%           |
| Gaming Revenue (SA)                | Aug-17 | 855,812,043   | 2.4%             | 16.4%          |
| LV Hotel/Motel Occupancy Rate (SA) | Aug-17 | 0.890         | -1.5%            | -0.7%          |
| <b>Overall Index Change</b>        | Aug-17 | 126.3         | -0.1%            | 1.5%           |

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Source: The Center for Business and Economic Research – UNLV

The CBER Southern Nevada tourism index fell slightly by 0.1% in August compared to the previous month. This loss was mainly due to a decrease of 1.5% in the Las Vegas hotel/motel occupancy rate. Passenger volume at McCarran fell by 0.1%, relative to the a month ago. Although gaming revenue increased by 2.4%, it did not completely offset losses in the other two components. On a yearly basis, however, the index grew 1.5% in August. Two of the three components (McCarran passengers and gaming revenue) increased 3.6% and 16.4%, respectively, compared to August 2016. The increase in gaming revenue was the direct result of the Mayweather-McGregor fight in Las Vegas. Hotel/motel occupancy rate declined 0.7% year-over-year.

## HOUSING

Through the first ten (10) months of 2017, statistics from GLVAR and its Multiple Listing Service showed that homes sold so far in 2017 continue to run about 10% ahead of the pace from 2016, when 41,720 total properties were sold in Southern Nevada. At the current sales pace, 2017 sales would surpass the total number of properties sold in 2013, 2014 and 2015 and might approach the total from 2012 — when GLVAR tracked 45,698 sales.

The GLVAR reported a total of 3,633 sales in October 2017, which is up from 3,225 total sales in October of 2016. Compared to the previous year, October sales were up 13.3% for homes and up 16.1% for condos and townhomes. Strong demand and a very tight housing supply are driving this surge. Over the past few months, the inventory of local homes available for sale has dropped to less than a two-month supply when a six-month supply is ideal.

At the same time, homes and condos continue to sell faster each month. In October, GLVAR reported that 81.9% of existing local homes and 89.0% of existing local condos and townhomes sold within 60 days. That was faster than a year ago when 75.2% of

existing local homes and 76.2% of existing local condos and townhomes sold within 60 days. GLVAR reported that the median price of existing single-family homes sold during October was up 13.4% from a year ago.

## THE STRIP MARKET AREA

The Strip is a major tourist attraction, and houses some of the most famous hotel casinos in the world. There has been continuous building and renovation along the Strip. For years, Nevada was the only state in which casino gambling was legally allowed. Then, in 1976, New Jersey approved legislation to allow gaming in Atlantic City. From 1989 to 1998, nine additional states authorized casino gambling. And, by the beginning of 2004 various levels of gambling was legal in 48 of our states, with Hawaii and Utah being the exceptions.

While it is recognized that a recession began in the US around March 2001, the Las Vegas market was mostly unaffected until September 11, 2001. However, the impact of closing McCarran International Airport in September was a blow since over 45% of tourists arrived by air. The highest recorded gaming revenue through the first three quarters of any given year up to then was in 2001 at \$5.838 billion, when the US was in a recession. The 4<sup>th</sup> quarter 2001 gaming revenue dropped by over 7.3% from that reported in 2000. Even with that drop, Nevada casinos won 2.2% more from gamblers in fiscal year 2001 than 2000.

Las Vegas' gaming revenue recovered and reached another all-time high for the 2003 calendar year, which it then surpassed in 2004, 2005, 2006 and 2007. The 2004 win marked the first time the total cracked the \$10 billion barrier. Nevada casinos closed fiscal 2007 with a record \$12.74 billion win. However, expenses were also up, which resulted in a decline in the reported EBITDA (Earnings Before Interest Taxes Depreciation & Amortization). The result was a net decline of 4.0% when comparing 2007 to 2006.

This indicated that the Las Vegas Gaming market was not immune to the national problems that the economy was experiencing. The plan to combat this was to build more resorts. And history had shown that the Las Vegas economy rebounded from economic slumps when the Strip went through a building boom. But there were major concerns in 2008. This included problems at resorts under construction as well those that were still planned.

## GAMING & TOURISM

Nevada's gaming revenues for non-restricted licensees peaked in 2007 but dropped in 2008 and then hit bottom in 2009. Revenues then increased each year through 2013. In 2014, seven months reported a decline in revenues and five an increase, with the year-end revenue down 1.13%. In 2015, gaming revenues were up six of the 12 months, with the year-over-year revenues being up 0.57% for the State of Nevada. Gaming revenue in 2016 reflected an increase of 3.49% increase over 2015.

For January 2017, statistics released by the state Gaming Control Board reflected a statewide gaming win of \$1.04 billion, up 12% over January 2016, a Clark County win total up 14.3% to \$926.2 million, and downtown up 32.1% to \$55.5 million. It was the 35<sup>th</sup> time the state has recorded more than \$1 billion in win, a level first achieved in March 2005. The highest win ever came in October 2007 when the state recorded \$1.165 billion.

Analysts cautioned that the January percentage increases were high because of the timing of reporting, but the three-month running average shows significant growth in casino win. For November, December and January, state and Clark County win was up 2.5% from the comparable period in 2015-16, the Strip climbed 2.9% and downtown Las Vegas was up



7%. “This was obviously a strong month for Clark County but not any kind of record,” Michael Lawton, senior research analyst for the Gaming Control Board’s Tax and License Division, said of January’s numbers. Lawton indicated January’s county win total was just outside of the top 10 highest recorded for the county.

The February 2017 gaming win for the State, \$945,597,573, was down 4.48% compared to February 2016. Clark County reported \$825,864,681, a 4.35% decrease compared to last year and the Strip reported \$541,900,719, which was down 4.98% from last year. Based on February’s gambling win, the state collected \$51,986,240 in percentage fees during March 2017. This represented a 2.87% increase compared to the prior year’s February, when percentage fee collections were \$50,536,977.

In March 2017, the State gaming win was \$991,023,123, which was up 7.45% compared to March 2016. Clark County reported \$857,351,888, a 7.60% increase compared to last year and the Strip reported \$526,092,942, which is up 8.07% from last year. For the fiscal year-to-date, July 1, 2016 through March 31, 2017, the State is up 3.23%, Clark County is up 3.34%, and the Strip is up 3.68%. The state’s March statistics show more increases than decreases, with only three (3) of the sixteen (16) areas reporting throughout the state reporting decreases.

In the most recent report, June 2017, the win was up just 0.3% in Clark County. Statewide, the win was up 0.9% to \$895.4 million for the month over last year while the Las Vegas Strip’s win increased over June 2016 by 1.6% to \$497 million. The heated-up downtown Las Vegas market that had been reporting double-digit percentage increases in win over the past year increased 8.7% to \$46 million. The three-month win average, which is considered a more reliable gauge of performance, showed the state win up 1.9% for April, May and June. The three-month averages also showed Clark County up 1.8%, the Strip up 0.5% and downtown up 13.2%.

The Control Board also announced 12-month totals showing the state’s casino win was up 2.9% to \$11.4 billion. Clark County win was up 3% to \$9.9 billion for the year, the Strip went up 2.9% to \$6.5 billion and downtown Las Vegas ended 10.7% higher than the previous year with \$608.7 million in winnings.

Of the state’s 15 studied markets, only two had win declines for the fiscal year compared with the previous year. North Shore Lake Tahoe was off 2.5% to \$25.3 million while the Boulder Strip declined 0.5% to \$793.9 million. The Boulder Strip downturn was attributed to an 8.4% decline in table-game win that was somewhat offset by a 0.7% increase in slot-machine win. Table win was off in nine of the 15 markets statewide during the 2016-17 fiscal year, but slot win was up in every market except North Shore Lake Tahoe. The following data was compiled by the DiFederico Group from the Nevada Gaming Control Board’s monthly releases through July of 2017.

## NEVADA, CLARK COUNTY &amp; LAS VEGAS STRIP GAMING REVENUES 2011 THROUGH JUNE 2017 (RELEASED JULY 27, 2017)

| Nevada Gaming Revenue |                  |          |                   |          |                   |          |                   |          |                   |          |                   |          |                   |          |
|-----------------------|------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|-------------------|----------|
| Month                 | 2017             | % Change | 2016              | % Change | 2015              | % Change | 2014              | % Change | 2013              | % Change | 2012              | % Change | 2011              | % Change |
| January               | \$ 1,056,265,398 | 12.02%   | \$ 925,066,268    | -2.90%   | \$ 952,665,050    | 7.74%    | \$ 884,919,833    | -2.76%   | \$ 900,267,893    | -12.43%  | \$ 1,038,359,335  | 18.34%   | \$ 877,412,566    | -0.67%   |
| February              | \$ 945,597,573   | -4.48%   | \$ 989,909,589    | 8.00%    | \$ 916,087,062    | -1.08%   | \$ 926,086,897    | -13.71%  | \$ 1,073,261,160  | 15.14%   | \$ 932,755,507    | 5.72%    | \$ 881,758,357    | -6.85%   |
| March                 | \$ 991,023,123   | 7.45%    | \$ 922,329,184    | -3.03%   | \$ 951,187,038    | -3.16%   | \$ 982,175,517    | 7.60%    | \$ 912,784,688    | 6.81%    | \$ 854,900,337    | -10.86%  | \$ 958,694,504    | 5.12%    |
| April                 | \$ 886,528,810   | 1.19%    | \$ 876,135,199    | -2.43%   | \$ 897,974,105    | 5.40%    | \$ 851,977,865    | -0.27%   | \$ 854,287,264    | -0.16%   | \$ 855,674,603    | 6.15%    | \$ 806,072,327    | -6.54%   |
| May                   | \$ 991,604,782   | 3.51%    | \$ 957,957,998    | -4.54%   | \$ 1,003,479,007  | 3.32%    | \$ 971,220,551    | 8.22%    | \$ 897,438,790    | 1.40%    | \$ 885,086,491    | -10.05%  | \$ 984,006,380    | 16.15%   |
| June                  | \$ 895,427,384   | 0.90%    | \$ 887,464,756    | 6.81%    | \$ 830,908,905    | -8.37%   | \$ 906,851,820    | 14.35%   | \$ 793,058,748    | -4.74%   | \$ 832,534,319    | -6.01%   | \$ 885,745,934    | 15.98%   |
| July                  |                  |          | \$ 1,015,014,676  | 9.96%    | \$ 923,035,888    | -0.95%   | \$ 931,875,946    | 0.66%    | \$ 925,763,611    | -7.96%   | \$ 1,005,877,250  | 16.95%   | \$ 860,076,138    | 3.66%    |
| August                |                  |          | \$ 860,696,184    | -5.23%   | \$ 908,240,162    | -1.39%   | \$ 921,016,033    | -3.58%   | \$ 955,231,126    | 11.17%   | \$ 899,261,683    | -3.11%   | \$ 886,835,278    | -6.10%   |
| September             |                  |          | \$ 948,961,678    | 3.55%    | \$ 916,466,663    | 1.54%    | \$ 902,607,141    | -5.87%   | \$ 958,894,854    | 7.42%    | \$ 892,698,404    | 3.33%    | \$ 863,971,309    | -5.87%   |
| October               |                  |          | \$ 986,203,125    | 11.12%   | \$ 887,510,784    | -2.86%   | \$ 913,642,221    | -4.26%   | \$ 954,319,750    | -2.58%   | \$ 979,596,839    | 1.96%    | \$ 960,719,191    | 8.12%    |
| November              |                  |          | \$ 930,424,600    | -1.47%   | \$ 944,346,453    | 7.77%    | \$ 876,244,082    | 0.03%    | \$ 875,941,506    | 11.90%   | \$ 782,701,511    | -11.06%  | \$ 880,127,660    | 7.06%    |
| December              |                  |          | \$ 956,095,364    | -2.73%   | \$ 982,971,649    | 3.41%    | \$ 980,994,006    | -8.07%   | \$ 1,034,017,068  | 9.61%    | \$ 943,559,499    | 10.25%   | \$ 855,660,242    | 2.05%    |
| Year to Date          | \$ 5,746,447,070 | 3.37%    | \$ 11,256,238,021 | 3.37%    | \$ 11,114,872,766 | 3.37%    | \$ 11,018,483,012 | -1.13%   | \$ 11,144,266,458 | 2.60%    | \$ 10,861,984,778 | 1.50%    | \$ 10,701,079,686 | 2.85%    |

Source: Nevada Gaming Control Board, compiled by The DIFederico Group

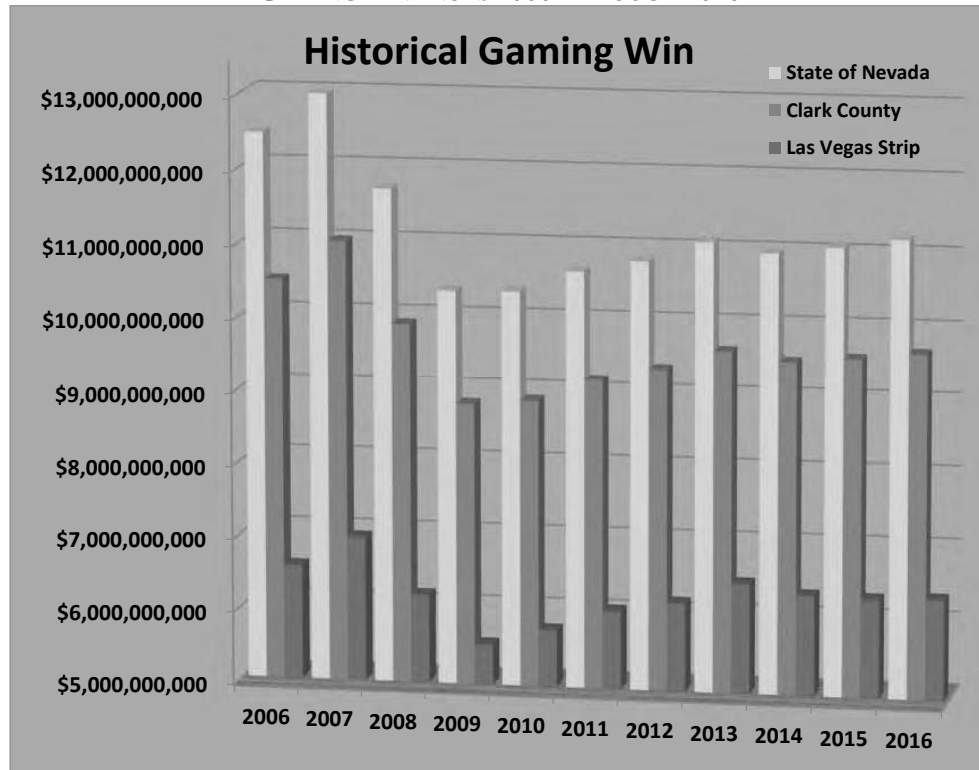
| Clark County Gaming Revenue |                  |          |                  |          |                  |          |                  |          |                  |          |                  |          |                  |          |
|-----------------------------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|
| Month                       | 2016             | % Change | 2016             | % Change | 2015             | % Change | 2014             | % Change | 2013             | % Change | 2012             | % Change | 2011             | % Change |
| January                     | \$ 926,169,328   | 14.30%   | \$ 810,285,924   | -3.33%   | \$ 838,161,351   | 7.84%    | \$ 777,198,392   | -3.15%   | \$ 802,503,904   | -13.28%  | \$ 925,439,857   | 21.57%   | \$ 761,222,824   | -0.41%   |
| February                    | \$ 825,864,681   | -4.35%   | \$ 863,403,371   | 8.35%    | \$ 796,862,585   | -1.71%   | \$ 810,733,520   | -15.24%  | \$ 956,464,461   | 17.77%   | \$ 812,138,236   | 5.55%    | \$ 769,459,750   | -7.05%   |
| March                       | \$ 857,351,888   | 7.60%    | \$ 796,765,997   | -3.58%   | \$ 826,553,937   | -3.96%   | \$ 810,456,893   | 9.49%    | \$ 785,912,248   | 7.15%    | \$ 733,941,157   | -12.23%  | \$ 835,682,725   | 7.21%    |
| April                       | \$ 763,200,286   | 1.37%    | \$ 752,884,541   | -4.25%   | \$ 786,282,727   | 5.87%    | \$ 742,701,785   | 0.87%    | \$ 736,312,721   | -0.99%   | \$ 743,642,956   | 8.89%    | \$ 682,947,680   | -1.02%   |
| May                         | \$ 860,706,072   | 3.48%    | \$ 831,721,218   | -4.40%   | \$ 870,044,892   | 3.38%    | \$ 841,600,419   | 8.93%    | \$ 772,619,685   | 0.86%    | \$ 760,054,024   | -10.24%  | \$ 853,491,149   | 19.43%   |
| June                        | \$ 764,317,815   | 0.35%    | \$ 761,673,524   | 7.33%    | \$ 709,629,802   | -10.21%  | \$ 790,355,849   | 17.33%   | \$ 673,640,327   | -4.76%   | \$ 707,328,411   | -7.87%   | \$ 767,718,004   | 19.94%   |
| July                        |                  |          | \$ 867,204,278   | 10.22%   | \$ 786,792,140   | -1.70%   | \$ 800,383,799   | 2.20%    | \$ 783,179,933   | -9.67%   | \$ 866,984,158   | 21.17%   | \$ 715,533,451   | 3.19%    |
| August                      |                  |          | \$ 724,286,387   | -6.76%   | \$ 776,797,233   | 0.27%    | \$ 774,708,317   | -5.15%   | \$ 816,753,285   | 12.34%   | \$ 727,052,083   | -3.35%   | \$ 752,241,866   | -6.68%   |
| September                   |                  |          | \$ 808,829,349   | 3.63%    | \$ 780,486,667   | 1.30%    | \$ 770,437,448   | -6.85%   | \$ 827,052,173   | 8.74%    | \$ 760,554,185   | 3.67%    | \$ 733,652,647   | -6.63%   |
| October                     |                  |          | \$ 856,941,011   | 13.37%   | \$ 755,886,405   | -4.01%   | \$ 767,457,297   | -6.23%   | \$ 839,739,768   | -2.34%   | \$ 859,878,780   | 2.79%    | \$ 836,511,582   | 10.43%   |
| November                    |                  |          | \$ 811,140,859   | -2.05%   | \$ 828,092,842   | 8.39%    | \$ 763,976,569   | 0.93%    | \$ 756,931,128   | 12.70%   | \$ 671,610,384   | -12.99%  | \$ 771,876,435   | 7.83%    |
| December                    |                  |          | \$ 827,707,084   | -4.34%   | \$ 865,259,976   | 3.77%    | \$ 833,854,494   | -9.69%   | \$ 923,295,369   | 11.82%   | \$ 825,668,815   | 11.22%   | \$ 742,363,872   | 1.21%    |
| Year to Date                | \$ 4,997,610,070 | 3.76%    | \$ 9,712,843,503 | 3.76%    | \$ 9,620,670,557 | 3.76%    | \$ 9,553,864,782 | -1.25%   | \$ 9,674,405,602 | 2.92%    | \$ 9,399,846,046 | 1.92%    | \$ 9,222,701,985 | 3.53%    |

Source: Nevada Gaming Control Board, compiled by The DIFederico Group

| Las Vegas Strip Gaming Revenue |                  |          |                  |          |                  |          |                  |          |                  |          |                  |          |                  |          |
|--------------------------------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|------------------|----------|
| Month                          | 2016             | % Change | 2016             | % Change | 2015             | % Change | 2014             | % Change | 2013             | % Change | 2012             | % Change | 2011             | % Change |
| January                        | \$ 608,927,565   | 14.40%   | \$ 532,275,993   | -7.72%   | \$ 576,811,306   | 15.40%   | \$ 499,833,094   | -1.41%   | \$ 507,001,515   | -18.69%  | \$ 623,512,323   | 29.16%   | \$ 482,732,006   | -2.49%   |
| February                       | \$ 541,900,719   | -4.98%   | \$ 570,303,264   | 7.32%    | \$ 531,381,708   | -4.37%   | \$ 555,674,971   | -20.17%  | \$ 696,102,184   | 31.17%   | \$ 530,689,743   | 3.31%    | \$ 513,707,187   | -9.56%   |
| March                          | \$ 526,092,942   | 8.07%    | \$ 486,819,711   | -3.96%   | \$ 506,867,800   | -9.61%   | \$ 560,770,697   | 10.91%   | \$ 505,601,948   | 12.69%   | \$ 448,883,420   | -14.91%  | \$ 527,297,151   | 12.89%   |
| April                          | \$ 475,375,212   | -3.25%   | \$ 491,369,187   | -1.50%   | \$ 498,866,485   | 7.77%    | \$ 462,916,539   | 3.19%    | \$ 448,589,857   | -2.34%   | \$ 459,536,130   | 7.44%    | \$ 427,530,165   | -2.23%   |
| May                            | \$ 546,791,525   | 2.97%    | \$ 531,003,569   | -11.68%  | \$ 601,198,083   | 1.39%    | \$ 592,963,057   | 17.32%   | \$ 505,444,951   | 6.39%    | \$ 475,068,431   | -18.15%  | \$ 580,412,680   | 28.93%   |
| June                           | \$ 496,989,362   | 1.65%    | \$ 488,928,905   | 9.75%    | \$ 445,510,980   | -16.31%  | \$ 532,362,928   | 22.45%   | \$ 434,747,965   | -10.13%  | \$ 483,237,953   | -4.53%   | \$ 506,706,925   | 32.31%   |
| July                           |                  |          | \$ 613,018,688   | 16.77%   | \$ 524,960,570   | -2.09%   | \$ 536,158,717   | 4.83%    | \$ 511,448,358   | -14.40%  | \$ 597,455,491   | 27.51%   | \$ 468,540,294   | 1.56%    |
| August                         |                  |          | \$ 440,560,957   | -14.76%  | \$ 527,382,779   | -4.66%   | \$ 553,185,699   | -6.08%   | \$ 589,021,971   | 19.98%   | \$ 490,941,203   | -1.19%   | \$ 496,868,291   | -8.72%   |
| September                      |                  |          | \$ 542,540,638   | 7.46%    | \$ 504,864,095   | 2.02%    | \$ 494,850,592   | -12.13%  | \$ 563,134,277   | 13.35%   | \$ 496,822,754   | 1.20%    | \$ 490,939,768   | -5.69%   |
| October                        |                  |          | \$ 562,747,074   | 14.00%   | \$ 493,628,774   | -5.12%   | \$ 520,287,756   | -5.63%   | \$ 551,321,768   | -5.07%   | \$ 531,328,708   | 3.60%    | \$ 560,535,216   | 13.28%   |
| November                       |                  |          | \$ 516,992,327   | -3.48%   | \$ 535,615,075   | 5.38%    | \$ 508,256,276   | -4.00%   | \$ 529,427,120   | 22.59%   | \$ 431,863,654   | -12.80%  | \$ 495,281,895   | 9.02%    |
| December                       |                  |          | \$ 590,707,123   | -1.67%   | \$ 600,750,793   | 8.20%    | \$ 555,236,453   | -16.41%  | \$ 664,216,285   | 12.90%   | \$ 588,445,305   | 13.49%   | \$ 518,432,562   | 3.61%    |
| Year to Date                   | \$ 3,196,077,325 | 3.08%    | \$ 6,376,267,456 | 3.08%    | \$ 6,347,845,448 | 3.08%    | \$ 6,372,496,579 | -2.05%   | \$ 6,506,058,199 | 4.81%    | \$ 6,207,215,111 | 2.28%    | \$ 6,068,984,140 | 5.07%    |

Source: Nevada Gaming Control Board, compiled by The DIFederico Group

## GAMING REVENUES 2006 THROUGH 2016



Source: Nevada Gaming Control Board, compiled by The DiFederico Group


The Las Vegas Convention and Visitors Authority (LVCVA) has been reporting increases in other tourism related categories. In 2013, visitation down slightly by 0.1% to 39.7 million people. Room inventory was less in 2013 than it was the previous year in 10 out of 12 months. So, even though Las Vegas maintained an 84.3% occupancy rate for the year, the fewer available room nights led to a visitation decline. Even so, 2013 was the second best year for visitor volume in the city's history. One of the reasons it fell behind 2012 was because that leap year had an additional day. Had the 2013 calendar had the extra day, Las Vegas would have set a record for the year based on average daily visitation. This trend carried over to 2014 as Las Vegas set a record with more than 41.1 million tourists, surpassing 40 million for the first time in the city's history; the previous record was 2012's 39.7 million.

And 2015 broke records in terms of visitor volume, surpassing 42.3 million visitors. The LVCVA predicted that 2016 would surpass the 2015 record with 42.5 million visitors. And they were right, as there were 42.9 million visitors, which was up 1.5% over 2015.

As of September 2017, citywide occupancy was 90.2% for the year, which is up 0.1% from that of 2016. Hotel occupancy was slightly higher at 91.9%, up 0.2% from a year ago. The Strip's Average Daily Room Rate (ADR) in September was up 1.4% to \$150.41, and \$140.90 for the year, up 4.0%. Of the 25 statistical categories in the authority's report, 19 showed an upswing for the nine months of 2017. The following data was compiled by the DiFederico Group from the LVCVA's releases for visitor statistics for year-end 2011 through 2016.

| Visitor Statistics      |            |       |            |      |            |       |            |      |            |       |            |       |
|-------------------------|------------|-------|------------|------|------------|-------|------------|------|------------|-------|------------|-------|
| Year                    | 2011       | Δ%    | 2012       | Δ%   | 2013       | Δ%    | 2014       | Δ%   | 2015       | Δ%    | 2016       | Δ%    |
| Visitor Volume          | 38,928,708 | 4.3%  | 39,727,022 | 2.1% | 39,668,221 | -0.1% | 41,126,512 | 3.5% | 42,312,216 | 6.7%  | 42,936,109 | 4.4%  |
| Room Inventory          | 150,161    | 0.8%  | 150,481    | 0.2% | 150,593    | 0.1%  | 150,544    | 0.0% | 149,213    | -0.9% | 149,339    | -0.8% |
| Citywide Occupancy      | 83.8%      | 4.2%  | 84.4%      | 0.7% | 84.3%      | -0.1% | 86.8%      | 2.8% | 87.7%      | 4.0%  | 89.1%      | 2.6%  |
| Average Daily Room Rate | \$ 105.11  | 10.7% | \$ 108.08  | 2.8% | \$ 110.72  | 2.4%  | \$ 116.73  | 8.0% | \$ 119.94  | 8.3%  | \$ 125.96  | 7.9%  |
| Convention Attendance   | 4,865,272  | 8.8%  | 4,944,014  | 1.6% | 5,107,416  | 3.3%  | 5,169,054  | 4.6% | 5,891,151  | 15.3% | 6,310,616  | 22.1% |
| Total Air Passengers    | 41,479,814 | 4.3%  | 41,667,596 | 0.5% | 41,857,059 | 0.5%  | 42,869,517 | 2.9% | 45,389,074 | 8.4%  | 47,435,640 | 10.7% |
| Avg. Daily Auto Traffic | 99,844     | 15.1% | 100,774    | 0.9% | 102,244    | 1.5%  | 102,823    | 2.0% | 109,204    | 6.8%  | 115,229    | 12.1% |

Source: Las Vegas Convention and Visitors Authority, compiled by The DiFederico Group.

|  |   | LVCVA EXECUTIVE SUMMARY                                    |               |        |                   |                 |        |
|---|---|--|---------------|--------|-------------------|-----------------|--------|
|   |   | of Las Vegas, Laughlin and Mesquite, NV Tourism Indicators |               |        |                   |                 |        |
|   |   | September  |               |        | September YTD     |                 |        |
| LAS VEGAS   |   | 2016   | 2017          | Change | 2016              | 2017            | Change |
|   |   |  |               |        |                   |                 |        |
|   | Visitor Volume                                | 3,657,797  | 3,566,685     | -2.5%  | 32,469,130        | 32,108,552      | -1.1%  |
|   | Room Inventory (as of Sep 30)                 | 149,273  | 148,532       | -0.5%  | 149,273           | 148,532         | -0.5%  |
|   | Citywide Occupancy                            | 92.9%  | 91.1%         | -1.8   | 90.1%             | 90.2%           | 0.1    |
|   | Hotel Occupancy                               | 94.2%  | 92.7%         | -1.5   | 91.7%             | 91.9%           | 0.2    |
|   | Motel Occupancy                               | 80.1%  | 75.2%         | -4.9   | 74.2%             | 73.6%           | -0.6   |
|   | Weekend Occupancy                             | 96.5%  | 96.0%         | -0.5   | 95.4%             | 95.5%           | 0.2    |
|   | Midweek Occupancy                             | 91.1%  | 88.3%         | -2.8   | 87.8%             | 87.8%           | 0.1    |
|   | Strip Occupancy                               | 93.9%  | 92.3%         | -1.6   | 91.5%             | 91.6%           | 0.1    |
|   | Downtown Occupancy                            | 86.1%  | 85.2%         | -0.9   | 83.2%             | 83.9%           | 0.6    |
|   | Average Daily Room Rate (ADR)                 | \$137.11   | \$139.57      | 1.8%   | \$125.69          | \$130.56        | 3.9%   |
|   | Strip ADR                                     | \$148.29   | \$150.41      | 1.4%   | \$135.53          | \$140.90        | 4.0%   |
|   | Downtown ADR                                  | \$72.58  | \$80.58       | 11.0%  | \$65.38           | \$69.69         | 6.6%   |
|   | Revenue Per Available Room (RevPAR)           | \$127.38   | \$127.15      | -0.2%  | \$113.25          | \$117.61        | 3.9%   |
|   | Strip RevPAR                                  | \$139.24   | \$138.83      | -0.3%  | \$124.04          | \$128.94        | 3.9%   |
|   | Downtown RevPAR                               | \$62.49  | \$68.65       | 9.9%   | \$54.40           | \$58.36         | 7.3%   |
|   | Total Room Nights Occupied                    | 4,137,860  | 4,013,338     | -3.0%  | 36,699,459        | 36,331,468      | -1.0%  |
|   | Convention Attendance                         | 614,924  | 463,565       | -24.6% | 5,035,625         | 5,139,247       | 2.1%   |
|   | Conventions & Meetings Held                   | 1,866  | 1,938         | 3.9%   | 15,975            | 15,166          | -5.1%  |
|   | Total En/Deplaned Air Passengers              | 4,053,362  | 4,071,128     | 0.4%   | 35,585,107        | 36,418,754      | 2.3%   |
|   | Avg. Daily Auto Traffic: All Major Highways   | 114,244  | 114,687 e     | 0.4%   | 115,928           | 117,582 e       | 1.4%   |
|   | Avg. Daily Auto Traffic: I-15 at NV/CA Border | 43,788   | 43,774        | 0.0%   | 45,681            | 45,272          | -0.9%  |
|   | Gaming Revenue: Clark County                  | \$808,861,000 r  | \$831,713,000 | 2.8%   | \$7,218,091,000 r | \$7,519,482,000 | 4.2%   |
|   | Gaming Revenue: Las Vegas Strip               | \$542,541,000  | \$567,890,000 | 4.7%   | \$4,705,817,000 r | \$4,875,112,000 | 3.6%   |
|   | Gaming Revenue: Downtown                      | \$49,247,000   | \$49,255,000  | 0.0%   | \$413,519,000 r   | \$466,638,000   | 12.8%  |
|   | Gaming Revenue: Boulder Strip                 | \$56,477,000   | \$52,993,000  | -6.2%  | \$400,536,000 r   | \$614,383,000   | 2.3%   |

Source: Las Vegas Convention and Visitors Authority

## McCARRAN INTERNATIONAL AIRPORT

McCarran International Airport is one of the most modern airports in the country. According to the Federal Aviation Administration, it is also one of the fastest growing facilities in the United States. McCarran had been ranked the nation's fifth-busiest passenger airport on the Airports Council International-North America's annual traffic ranking of 2006. And it held the 7<sup>th</sup> position in their 2007 and 2008 reports.

Passenger activity at McCarran increased 76% during the 1990s. Based on a projected growth rate, McCarran was forecast to reach capacity by 2012. However, passenger activity decreased three straight years after peaking in 2007. This was a drop of 16.7% and the lowest figure reported since 2003. Since 2010, the trend has been up. McCarran welcomed 42.8 million arriving and departing passengers in 2014, making that year McCarran's busiest since 2008 when the airport served slightly more than 44 million passengers. The 2014 total marked a 2.4% increase from 2013. McCarran reported 45.4 million arriving and departing passengers in 2015. Passenger traffic was up 5.8%, extending the recent trend of year-over-year increases for the fifth consecutive year. It was also the busiest year at the airport since the economic downturn. In 2016, the number of passengers served was 47.4 million, the second busiest year in the airport's 68-year history and the sixth consecutive year of the upward trend.

McCarran International Airport saw another busy month in September 2017. In its most recent report, the number of passengers was up from September 2016 by 0.4%. September also marked the seventh consecutive month that the nation's eighth-busiest airport logged more than four million passengers. And the year-to-date total was up, with 2017 seeing 2.3% more passengers than the same time period of 2016. County aviation director Rosemary Vassiliadis said that year that she believed McCarran was on track to break its annual record of 47.8 million passengers, set in 2007. The following reflects the most current data of arriving and departing passengers.

**ARRIVING & DEPARTING PASSENGERS MONTHLY TOTAL**

| SEPTEMBER 2017 | SEPTEMBER 2016 | PERCENT CHANGE |
|----------------|----------------|----------------|
| 4,071,128      | 4,053,362      | 0.4%           |

**ARRIVING & DEPARTING PASSENGERS YEAR-TO-DATE (YTD) TOTAL**

| 2017 YTD   | 2016 YTD   | PERCENT CHANGE |
|------------|------------|----------------|
| 36,418,754 | 35,585,107 | 2.3%           |

*Source: McCarran International Airport Web site (<http://www.mccarran.com/>)*

Looking forward, McCarran officials continue to evaluate the airport's infrastructure and operations for ways to improve efficiencies and increase capacity in anticipation of the air traffic growth expected as new hotel rooms come online over the next several years. Additionally, airport leadership has been working with partner agencies such as U.S. Customs and Border Protection and the Transportation Security Administration to improve the customer experience by reducing wait times at the port of entry and security checkpoints.

The County Aviation Department was developing a plan for a second international airport on 6,500 acres of land owned by the Bureau of Land Management in the Ivanpah Valley, south of Las Vegas. They were anticipating a 2019 opening. However, due to the Great Recession, this has been pushed back until the demand returns.

In addition to McCarran, there are the Boulder City, Henderson, and North Las Vegas Airports. The North Las Vegas Airport, which is the general aviation reliever airport for McCarran, recently extended and resurfaced the runways.

## SUMMARY AND CONCLUSIONS

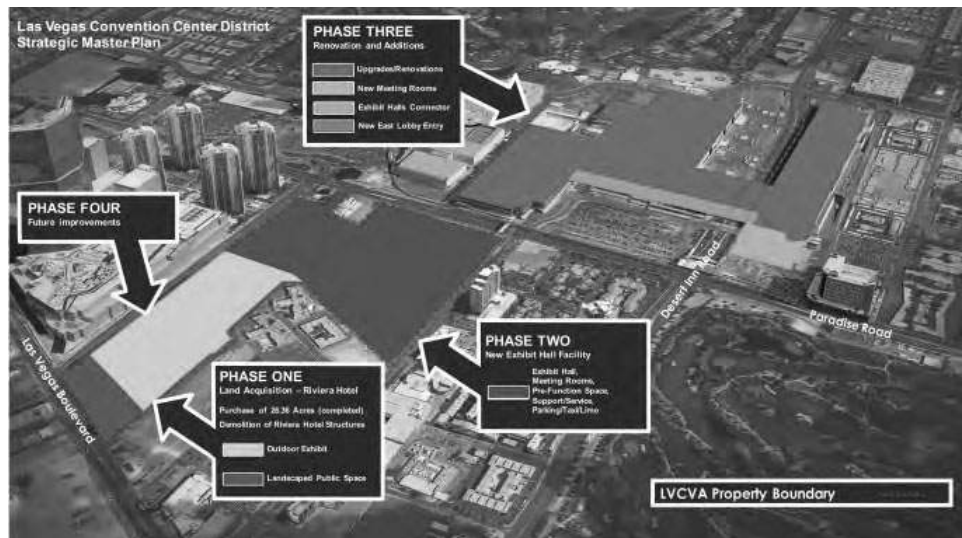
The four forces (social, economic, political, and environmental) that influence market values have been discussed. The various governing bodies have sponsored growth with their pro-development attitudes. The administrations also promote funding and infrastructure necessary for growth.

The area is also benefiting from strong national growth. U.S. gross domestic product expanded and increased economic diversification helped the comeback. However, the Southern Nevada economic recovery is still strongly tied to the tourism sector and since the national economy is doing well, Las Vegas' core sector also benefits. Leisure and hospitality will stay the city's most important jobs sector for the foreseeable future, but Brookings' best are now education, health care and business services. Contrary to Las Vegas' history, population growth is likely to be moderate

and not the driver of economic growth in the coming years. But tourism and gaming will remain the driving force behind the region's economic growth.

There have been several announcements involving major projects planned or under construction. These include:

- The Fontainebleau, Las Vegas' towering monument to the recession, was sold on August 29, 2017 for \$600 million. Billionaire Carl Icahn, who purchased the property on February 18, 2010 for \$150 million, announced that he sold the partially built, mothballed hotel tower on the north Strip to real estate investment firms Witkoff and New Valley. In a news release, New York-based Witkoff, led by founder Steven Witkoff, called the never-finished project "significantly undervalued" and said the new ownership paid a "substantial discount" to the cost of building it from scratch. The release said that they had "identified numerous ways to unlock the significant underlying value of the property," only referring to the property by its address and calling it "formerly known as the Fontainebleau." Miami-based New Valley is a subsidiary of the Vector Group. John Knott, global head of gaming for brokerage CBRE Group, and a former listing broker for the Fontainebleau, said it would cost \$900 million to \$1.6 billion to complete, depending on the vision for the property. The hotel had been slated to open in 2009. But the project went bankrupt in 2009, and Icahn acquired it in 2010.
- MGM Resorts International and AEG's 20,000-seat arena on the Las Vegas Strip between New York-New York and Monte Carlo resorts opened April 2016. The \$375 million, privately financed arena is poised to host Las Vegas' first major league franchise. On June 22, 2016, Gary Bettman, commissioner of the NHL, announced that Las Vegas would be home to the NHL's 31<sup>st</sup> team. The NHL's executive committee recommended expanding the league to Las Vegas, with all owners approving the move. The Golden Knights begin playing in the 2017-2018 season. Following this announcement, Bill Foley, the owner of the Las Vegas expansion team, broke ground on a \$24 million, 120,000 square foot practice facility in Downtown Summerlin. This facility, which was recently named the City National Arena, was completed in August of 2017, with the team's inaugural training camp starting in September of 2017.
- The Las Vegas Convention and Visitors Authority plans for the Las Vegas Global Business District, an overarching vision for the Las Vegas Convention Center and the surrounding area. The preliminary cost for the project is \$2.5 billion and will be completed in phases. This will be the first major expansion of the 54-year-old Las Vegas Convention Center in more than a decade. As part of that development, they acquired the 60-year-old Riviera for \$182.5 million on May 4, 2015. This is to be a phased development to accommodate current customer needs and capture future tradeshow opportunities. Phase One consists of the acquisition of the 26-acre Riviera Hotel property, demolition of the existing Riviera structures and construction of outdoor exhibit space. The acquisition and demolition are complete. Phase Two will include the development of a new exhibit hall and its ancillary spaces on the existing LVCC Gold Lot and the Riviera Hotel property. Phase Three will be the renovation and alteration of the existing Convention Center.



- The Malaysia-based Genting Group announced a multi-billion dollar Asian-themed resort complex, Resorts World Las Vegas. Resorts World Las Vegas will include 3,500 rooms, luxury dining and shopping and a half million square feet of convention space on the 87-acre site. A replica of the Great Wall of China and more than 300,000 feet of pool and water features are also planned. The company held a groundbreaking ceremony on May 5, 2015 with an anticipated 2019 opening. On October 23, 2017, Genting announced its appointment of W.A. Richardson Builders as the construction manager. The estimated completion time on the project is late 2020. In a press release, Edward Farrell, president of Resorts World Las Vegas, said that more than \$400 million in contracts had been awarded to vendors.
- The University of Nevada, Las Vegas has completed overhauling the Thomas & Mack Center, the on-campus facility that hosts events from the UNLV Rebels basketball to the National Finals Rodeo. The university spent \$72.5 million on mechanical upgrades, a new electrical system, 8,000 new seats and major upgrades to the concourse with rebranded signs and new equipment for concession stands. This included a 36,000 square foot addition with an observation deck overlooking the Strip.
- Another project that's been in the works for several years is ex-NBA player Jackie Robinson's arena on the site of the former Wet 'n Wild water park, just south of the SLS Las Vegas. Excavation began around March of 2017, but nothing vertical has been built on the 27-acre site. The development is to include a 22,000-seat arena with a retractable roof, a hotel, a conference center and other offerings. The arena project, which was being called the All Net Arena and Resort, was announced at the end of 2013. Its estimated cost was \$1.3 billion. On Oct. 18, 2017, Mr. Robinson gained approval from the Clark County Commission on expanded plans for the site that equate to \$2.7 billion, more than double the original. Some of the expanded plans include a 63-story, 2,000-room hotel, a 240,000-square-foot conference center and other amenities. On the day of the county meeting, Oct. 18, 2017, the Las Vegas Review-Journal quoted Mr. Robinson as saying that the financing is "signed, done, sealed, delivered." He also stated that he expects the project to be completed by spring 2020.

- On October 24, 2017, Caesars Entertainment announced plans to build a new convention center behind the Flamingo and Harrah's. "The convention center is going to be 300,000 square feet," said Caesars Entertainment President and Chief Executive Officer Mark Frissora. They stated that the center would cost \$300 million-\$350 million and should be built in two years, depending on permitting and coordination with Caesars' new board of directors.
- The Strip property that had previously been known as the Frontier Hotel Casino, which was demolished to make room for a new development to be called Alon, was listed for sale in 2017 at \$400 million. In August 2014, Australian casino mogul James Packer acquired the Frontier site. Packer teamed with former Wynn Resorts Ltd. executive Andrew Pascal and investment giant Oaktree Capital Management to acquire 18.39 acres in fee of the 34.6-acre vacant property, just north of Fashion Show mall. The remaining 16.17 acres of this site is owned by the Elardi family and leased to the Packer group. This is a long-term ground lease that expires on July 31, 2097. Plans filed with the county showed a two-tower, 1,100-room project that was expected to employ 4,500 workers. However, in late 2016 Packer pulled out and put the site up for sale in 2017 at \$400 million. It has been reported that Steve Wynn is buying the site for \$336 million.
- The MGM company is in the middle of a \$450 million make-over of the 3,000-room Monte Carlo. It will create a new luxury brand for MGM Resorts International and bring the NoMad Hotel concept to the Strip. The property will be transformed into two resorts within one property: the NoMad and Park MGM. The Park MGM will be 2,700 of those rooms and part of MGM's holdings while the NoMad will be an independently operated hotel, with a dedicated drop-off lobby and swimming pools, gaming, drinking and dining.
- Other gaming companies are also upgrading facilities. The two-tower, high-rise casino and hotel, The Cosmopolitan of Las Vegas is undergoing \$100 million in renovations. That translates into more than \$34,500 per room. The Cosmopolitan launched the upgrade of the Boulevard Tower in June 2017 and aims to complete it before the year end. It will start on the Chelsey Tower next year and finish by December 2018. In addition to new furniture and fixtures, the hotel will add 64-inch TVs as well as iPads to every room.
- And local's gaming giant Station Casinos plans a \$337 million investment in the Palace Station and Palms. The Palace Station investment totals \$76 million, and includes restaurants, casino bar, race and sports book and poker room. The new investment is in addition to a completed \$115 million renovation and expansion that includes a new low-rise exterior façade, two restaurants, porte-cochere, casino valet, bingo room and parking. In the Palms, Stations is investing \$146 million into two restaurants, movie theaters, meeting and convention space, rooftop ultra-lounge, high-limit area, hotel registration and VIP check-in.
- In March 2016, Caesars Entertainment announced they would upgrade more than 4,800 hotel rooms. That came after the November 2015 announcement that they would renovate rooms at five of their properties. Last year, Planet Hollywood started transforming 150 rooms, followed by 1,294 rooms and suites this year. After renovating the suites at Paris Las Vegas, they plan on renovating 1,320 rooms. All of the rooms in the 948-room Augustus Tower at Caesars Palace will be renovated and 672 rooms at Harrah's will also be refurbished. Caesars Entertainment announced in August 2017 a \$90 million upgrade to its Flamingo Hotel Casino; Caesars also plans to upgrade Bally's. These upgrades include modern room designs,



enhanced in-room electronics, new furnishings and bedding. Upon completion, Caesars will have renovated more than 10,000 hotel rooms in the last three years.

- In May 2016, Madison Square Garden executives announced a partnership with the Las Vegas Sands Corp. to build a music venue, taking aim at competitors including MGM Resorts. The companies said the venue will be a 17,500-seat arena just east of the Las Vegas Strip, behind the Sands-owned Venetian and Palazzo hotel casinos. The facility, as yet unnamed, will compete with the 20,000-capacity T-Mobile Arena and the 16,800-seat MGM Grand Garden Arena. The new venue is a partnership among Madison Square Garden Co., Sands Corp., Azoff MSG Entertainment, concert promoter Live Nation and Oak View Group, an entertainment advisory firm. The room will be designed for music, rather than the multipurpose model used in most sports arenas. Pre-application project documents were submitted to Clark County on October 20, 2017, showing a 585,000 square foot music venue. The next step is for the developers to submit a formal application, which may occur in December, thus beginning the entitlement process.
- Nearly two decades in the making, Project Neon is the largest public works project in Nevada history. Project Neon will widen 3.7 miles of Interstate 15 between Sahara Avenue and the “Spaghetti Bowl” interchange in downtown Las Vegas. It is currently the busiest stretch of highway in Nevada with 300,000 vehicles daily, or one-tenth of the state population, seeing 25,000 lane changes an hour. Traffic through this corridor is expected to double by 2035. The \$1 billion project is nearly 40% complete and divided into three phases. An HOV flyover bridge is being added and will create 22 consecutive miles of carpool lanes from I-15 to US 95. The project is in the middle of the second phase, with the third phase beginning in spring 2018. Completion is scheduled for 2019.
- During an October 26, 2017 conference call to investors, Steve Wynn announced that construction on Paradise Park, the lagoon development with a new hotel planned for behind the Wynn and Encore, will begin January 3, 2018. The Wynn Golf Club will close December 22, 2017 to make way for the project. “We’re in the very final stages of getting building permits, and hard construction should start by March and April,” he said. The carnival-themed new development will have a 103-foot diameter carousel rotating over the man-made lagoon, electric bumper cars that light up when bumped and a nighttime parade with 10-12 floats that guests can pay to join. The development will also have a new 47-story, 1,500-room hotel with its own convention space, casino and restaurants. It will sit roughly between the Encore and the Wynn Las Vegas. In addition, he said, there will be regular fireworks, zip lines and other attractions on the boardwalk that surrounds the lagoon.
- The biggest announcement involves the Oakland Raiders move to Las Vegas. On October 17, 2016 Nevada Governor Brian Sandoval signed a bill into law that cleared the way for a Las Vegas stadium that will be home to both UNLV and the NFL’s Oakland Raiders. The signed bill provides \$750 million in tax money towards a 65,000-seat domed stadium, with an estimated total cost of \$1.7 to \$1.9 billion. The last two obstacles for the Raider’s owner was to get 24 of the NFL’s 31 other owners to agree to the move and then approve their stadium lease. The first vote was held in Phoenix, Arizona on March 27, 2017 with 30 of the 31 owners approving the move. The second, for the lease, was approved at the owner’s May of 2017 meeting. A 62-acre site on Russell, west of the I-15 basically behind the Mandalay Bay Hotel Casino was purchased in May 2017 for this stadium. Groundbreaking for the new stadium was held November 13, 2017, with Nevada Governor Brian Sandoval, Oakland Raiders owner

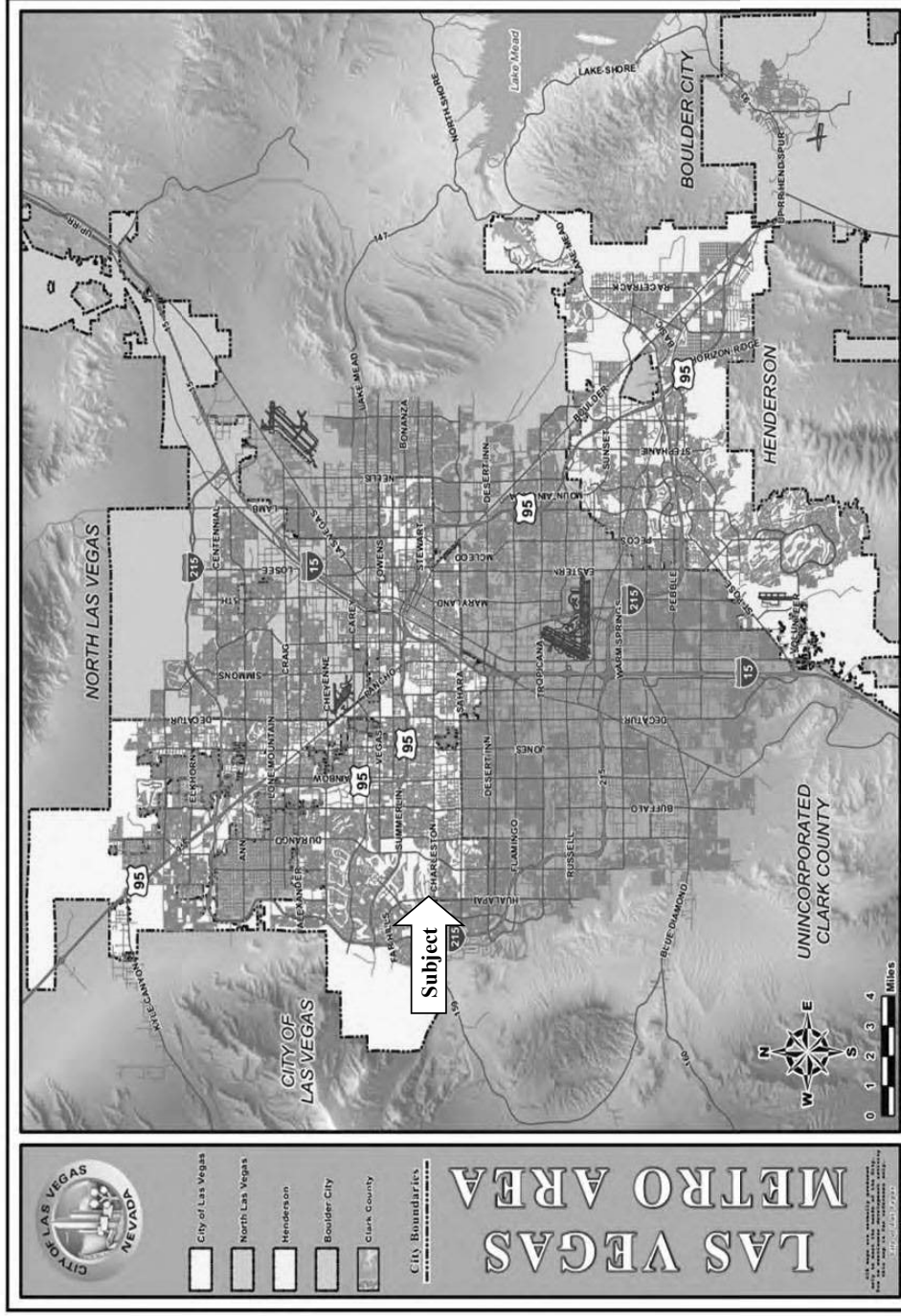
Mark Davis and NFL Commissioner Roger Goodell turning the first earth at the ceremony. The stadium is expected to be ready for the 2020 NFL season. This project is expected to generate approximately 19,000 construction jobs for the next three years.



In summary, the Las Vegas MSA economy has been showing steady signs of recovery. The state is seeing increased population growth, increased tourism spending and increased jobs in growing industries. And, Southern Nevada is on the cusp of reaching peak employment levels with 50,000 fewer construction jobs. The population of Las Vegas grew by 2.21% in 2015, leading the U.S. Census Bureau to rank Las Vegas as the fifth-fastest growing of 382 metropolitan areas in the country. Population growth creates new demand and signals a healthy economy. Forecasters were projecting 1.5% to 2.0% population growth in 2016, which it exceeded. Average household income is also up.

A record number of tourists visited Southern Nevada in 2016, and at the current pace, 2017 will break that record. Some 42.9 million people visited Southern Nevada in 2016, spending \$35.5 billion, 16.3% more than in 2015. Per person, Las Vegas visitors spent an average of \$827, up from \$721 in 2015. And convention attendees made up 14.7% of all visitors to Southern Nevada last year, up 7.1% from 2015. Based on the past and current indicators, we anticipated continued improvement in Southern Nevada's economy through 2017, which was still one of the premier tourist destinations in the world that had added the NHL and NFL.

AREA MAP



LEGEND OF PHOTOGRAPHS – (PHOTOS TAKEN DURING AUGUST 12, 2020 SITE INSPECTION)



SUBJECT PHOTOGRAPHS



*View 1*  
(Photo taken on August 12, 2020)



*View 2*  
(Photo taken on August 12, 2020)

SUBJECT PHOTOGRAPHS, CONTINUED



*View 3*  
*(Photo taken on August 12, 2020)*



*View 4*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 5*  
*(Photo taken on August 12, 2020)*



*View 6*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 7*  
*(Photo taken on August 12, 2020)*



*View 8*  
*(Photo taken on August 12, 2020)*



SUBJECT PHOTOGRAPHS, CONTINUED



*View 9*  
*(Photo taken on August 12, 2020)*



*View 10*  
*(Photo taken on August 12, 2020)*

SUBJECT PHOTOGRAPHS, CONTINUED



*View 11*  
*(Photo taken on August 12, 2020)*

## PROPERTY ANALYSIS – IN THE BEFORE CONDITION

### PHYSICAL DESCRIPTION AND ANALYSIS OF THE SITE

#### LOCATION

The subject of this analysis is located at the southeast corner of Alta Drive and Hualapai Way, Las Vegas, Clark County, Nevada. The site also has frontage along Verlaine Court, Regents Park Road, and Orient Express Court.

#### SIZE

The subject site consists of one (1) assessor parcel number (APN), 138-31-201-005. The following is a summary of that parcel's size.

| Land Area      |              |                  |
|----------------|--------------|------------------|
| APN            | Acres        | Sq. Ft.          |
| 138-31-201-005 | 34.07        | 1,484,089        |
| <b>Total</b>   | <b>34.07</b> | <b>1,484,089</b> |

#### CONFIGURATION

The subject site was irregular. The reader is referred to the following Parcel Map and aerial photograph for a visual illustration of the subject site's shape.

#### TOPOGRAPHY

The subject site's topography is undulating and slopes from its high point at its western boundary, to the east as it follows the natural terrain in the area. The property was historically part of a golf course with home sites bordering the course. My inspection indicated that the subject property was left in its original ungraded state for use as a portion of the golf course.

#### GROUND STABILITY

The subject site has single family residences to its north and south, with a row of houses and a road running down the middle of its eastern section. I was also provided a soils report prepared by Construction Testing Services, LLC (CTS). CTS concluded that the subject site was suited for development provided they follow the recommendations in their soils report. Gia D. Nguyen, P. E., Senior VP for GCW Engineers/Surveyors, reviewed the CTS report and also concluded that the subject site was suitable for development. Based on the CTS report and GCW review, and considering the surrounding development, I used the general assumption that the subject's soil bearing capacity was sufficient to support development of this site to its highest and best use.

#### DRAINAGE/FLOOD PLAIN

No drainage problems were apparent during the property inspection. I reviewed Flood Insurance Rate Map. According to Community Panels #2145 and #2150 of 4090, this site is located within an area designated as a Zone X. Flood insurance is not typically required within Zone X. I have included a copy of flood insurance maps #2145 and #2150 in the Addendum.

I was also provided information about drainage prepared by GCW. Their report stated that due to the existing FEMA designated Special Flood Hazard Area present downstream, the subject must match existing drainage patterns or provide mitigation. The report states that they assume the downstream impacts are insignificant; however, a technical drainage study will be required to demonstrate the insignificance with downstream analysis.

### HAZARDOUS CONDITIONS

An environmental assessment report was not provided for review and environmental issues are beyond my scope of expertise. The inspection of the subject did not reveal any obvious signs that there are contaminants on or near the property. Therefore, I used the general assumption that the site is not adversely affected by environmental hazards.

### UTILITIES

Utilities in this portion of the metropolitan area are provided by the following agencies.

| Utility      | Provider                             |
|--------------|--------------------------------------|
| Sewer:       | City of Las Vegas                    |
| Water:       | Las Vegas Valley Water District      |
| Solid Waste: | Republic Services of Southern Nevada |
| Electricity: | NV Energy                            |
| Telephone:   | Century Link                         |
| Gas:         | Southwest Gas Corporation            |

### STREET FRONTAGE & ACCESS,

The site has frontage along the south side of Alta Drive and Verlaine Court, the eastern side of Hualapai Way, the western side of Regents Park Road, and the northern side of Orient Express Court. According to the City of Las Vegas Interrogatory Response No. 8 the Subject Property has general legal access to public roadway along Hualapai Way and Alta Drive. More specific data regarding the subject's street frontage and access is in the following table.

| Street   | Alta Drive   | Hualapai Way                                       |
|--|--|--|
| Frontage Feet  | +/- 250 Linear Feet                                | +/- 995 Linear Feet                                |
| Surface  | Asphalt paving                                     | Asphalt paving                                     |
| On-Site Improvements   | Concrete curb, gutter, sidewalk & Landscape buffer | Concrete curb, gutter, sidewalk & Landscape buffer |
| Direction of Traffic   | East / West  | North / South                                      |
| Ingress/Egress   | Yes  | Yes  |
| Visibility   | Good   | Good   |
| Street   | Verlaine Court                                     | Regents Park Road                                  |
| Frontage Feet  | +/- 1,150 Linear Feet                              | +/- 825 Linear Feet*                               |
| Surface  | Asphalt paving                                     | Asphalt paving                                     |
| On-Site Improvements   | Concrete curb, gutter & Landscape Buffer           | Concrete curb, gutter, sidewalk & Landscape buffer |
| Direction of Traffic   | East / West  | North / South                                      |
| Ingress/Egress   | No Access  | No Access  |
| Visibility   | Good   | Good   |
| <i>*Interrupted mid-way by Verlaine Court and a residence.</i> |  |  |
| Street   | Orient Express Court                               |  |
| Frontage Feet  | +/- 1,600 Linear Feet                              |  |
| Surface  | Asphalt paving                                     |  |
| On-Site Improvements   | Concrete curb, gutter & Landscape Buffer           |  |
| Direction of Traffic   | East / West  |  |
| Ingress/Egress   | No Access  |  |
| Visibility   | Good   |  |

**LEGAL INFORMATION (ZONING)**

The subject property's zoning was recently addressed in a hearing before District Court Judge Timothy C. Williams. In the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners Motion to Determine "Property Interest," Judge Williams stated;

"the Court bases its property interest decision on eminent domain law. Nevada eminent domain law provides that zoning must be relied upon to determine a landowners' property interest in an eminent domain case. The Court concludes that the 35 Acre Property has been hard zoned R-PD7 since at least 1990. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. 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
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

The purpose and development standards for the City's Residential Planned Development District are summarized below.

|                              |   |
|------------------------------|---|
| Designation:                 | Residential Planned Development District (R-PD7)  |
| Purpose:                     | 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, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. Historically, the R-PD District has represented an exercise of the City Council's general zoning power as set forth in NRS Chapter 278. The density allowed in the R-PD District has been reflected by a numerical designation for that district. (Example: R-PD4 allows up to four units per gross acre.) However, the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts, which provide a more predictable form of development while remaining sufficiently flexible to accommodate innovative residential development. Therefore, new development under the R-PD District is not favored and will not be available under this Code. |
| <b>Development Standards</b> | The development standards for a project, including minimum yard setbacks, grade changes, building and fence heights and fence design, parking standards, standards for any guest houses/casitas and other design and development criteria, shall be as established by the approved Site Development Plan Review for the development. With regard to any issue of development standards that may arise in connection with a Residential Planned Development District and that is not addressed or provided for specifically in Section 19.10.050 or in the approved Site Development Plan Review for that District, the Director may apply by analogy the general definitions, principles, standards and procedures set forth in Title 19, taking into consideration the intent of the approved Site Development Plan Review.  |
| Zoning Jurisdiction:         | City of Las Vegas   |

The following aerial reflects the zoning in the immediate area of the subject property.



### **SURROUNDING USES**

The subject site is largely bordered by custom and semi-custom homes within the guard gated Queensridge development. Queensridge is bound by Alta Drive to the north, Charleston Boulevard to the south, Rampart Boulevard to the east and Hualapai Way to the west. Custom homes in the Summerlin master planned community are located at the northwest and southwest corners of Alta and Hualapai, while the northeast corner is developed with an office building, Merryhill Preschool and the Mountain Course of Angel Park Golf Course. It is my understanding that the site immediately east of the Merryhill Preschool is being rezoned from Civic District (C-V) to Limited Commercial (C-1), and is proposed to be developed with a 70,000 square foot medial facility.

The intersection of Alta Drive and Rampart Boulevard includes the Suncoast Hotel Casino at the northwest corner, Tivoli Village at the northeast corner and Boca Park's Fashion Village just south of the southeast corner. The 7.66-acre vacant site at the southeast corner of Alta Drive and Rampart was sold in 2019 to a medical user for \$18,980,000 or \$56.88 per square foot (\$2,477,693/Acre). Summerlin Parkway is located just north of this intersection. The reader is referred to the following aerial photograph for a visual of the surrounding uses.

### **OTHER LEGAL AND REGULATORY CONSTRAINTS**

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#### **Easements, Encumbrances, and Restrictions**

Based on my review of the title report and public records, I am not aware of any easements, encumbrances, or restrictions that would have adversely affect the highest and best use of the subject site. Therefore, this valuation is based on the general assumption that there were no adverse easements, encumbrances or restrictions and that the subject site had a clear and marketable title.

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#### **Encroachments**

My inspection of the site revealed no apparent encroachments. It is assumed that the site was free and clear of encroachments.

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#### **Other Land Use Regulations; Development Moratoriums**

I am not aware of any land use regulations other than zoning that would affect this property, nor am I aware of any moratoriums on development in this area in the before condition.

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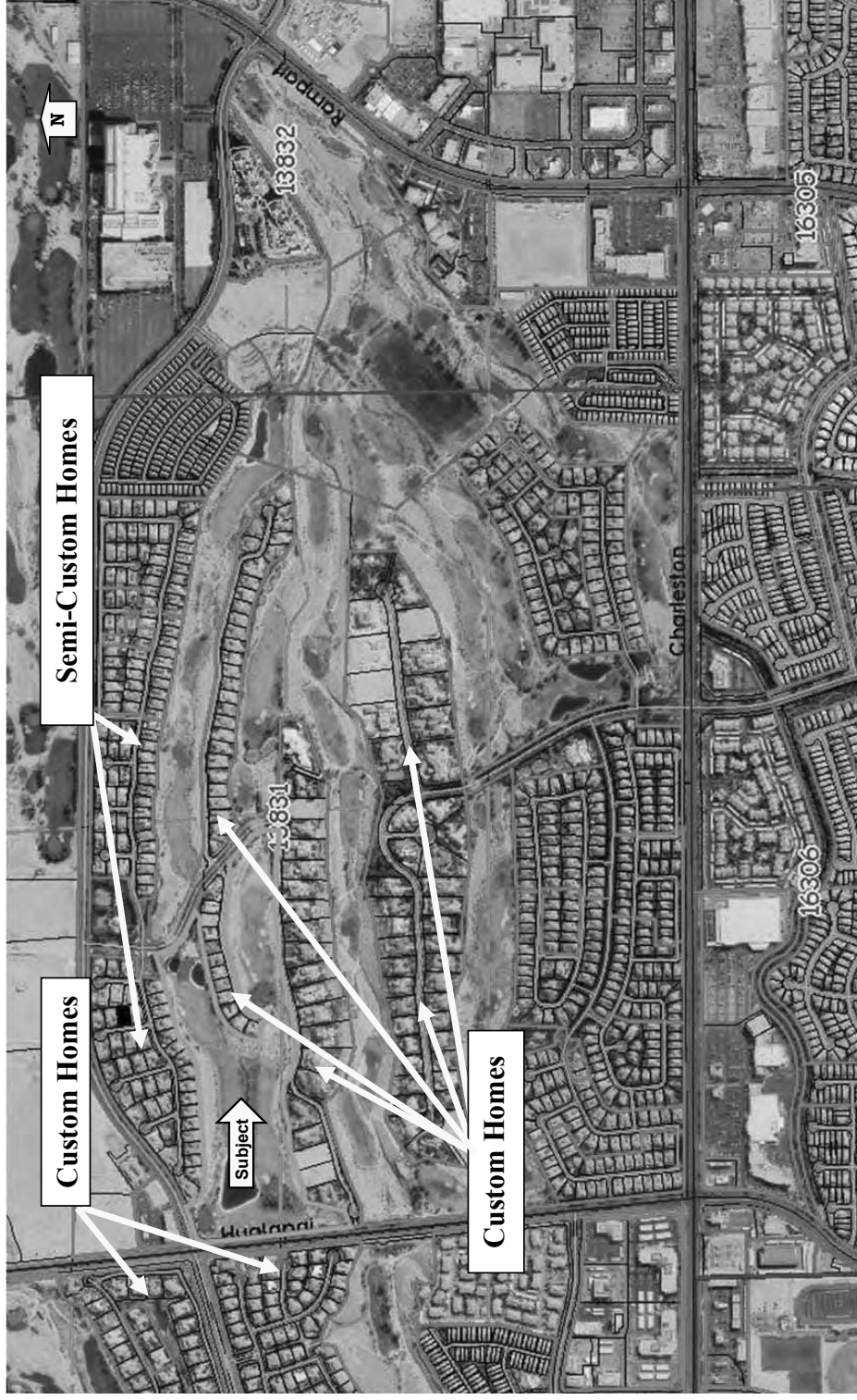
**CONCLUSION OF LAND ANALYSIS IN THE BEFORE CONDITION**

The subject of this analysis is a vacant parcel of land located at the southeast corner of Alta Drive and Hualapai Way. This site is bordered by custom homes in the guard gated Queensridge development.

In the before situation, this site was zoned for residential development with a maximum of 7.49 dwelling units per gross acre. In the before condition, the site had access to Hualapai Way and Alta Drive, and public utilities were located in Hualapai and Alta. And while the topography was undulating, it would be a positive attribute for large custom home sites, as it would provide the future residences additional privacy from abutting properties.

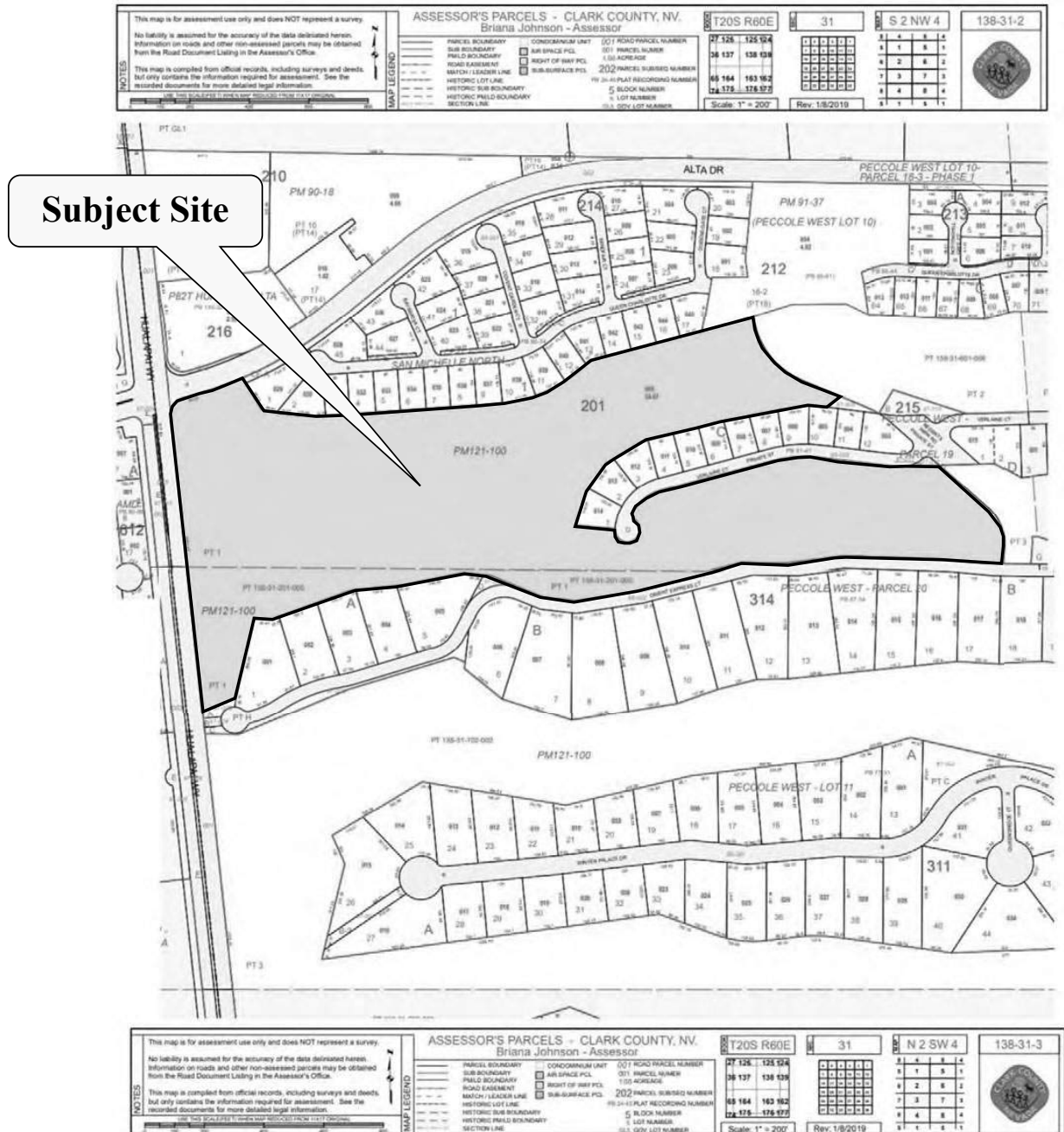
Overall, the site's R-PD7 zoning and physical characteristics were suitable for residential development that was prevalent in this area and bordered the subject site. On the following pages, I have included copies of an aerial photograph of the site, the Assessor's Parcel Maps and copies of site plans under three (3) scenarios; 61-lots, 16-lots, and 7 lots.

CLARK COUNTY ASSESSOR'S AERIAL PHOTOGRAPH (PHOTO REPORTED TO HAVE BEEN TAKEN SPRING OF 2017)





**ASSESSOR'S PARCEL MAPS 138-31-2 & 138-31-3**



## 21164

Subject Site

**ASSESSOR'S PARCELS - CLARK COUNTY, NV.**  
**Briana Johnson - Assessor**

This map is for assessment use only and does NOT represent a survey.  
 No liability is assumed for the accuracy of the data delineated herein.  
 The boundaries of parcels and other non-assessed parcels may be obtained from the Record Document Listing in the Assessor's Office.  
 This map is compiled from official records, including surveys and deeds, and only contains the information required for assessment. See the Record Document Listing for more information.  
 USE THIS SCALE IF YOU WANT TO REDUCE FROM TEXT ORIGINAL.

**MAP LEGEND**

- PARCEL BOUNDARY
- SUB-BOUNDARY
- PAVED BOUNDARY
- LOT BOUNDARY
- HISTORIC PAVED BOUNDARY
- SECTION LINE
- CONDOMINIUM UNIT
- AIR SPACE PCL
- RIGHT OF WAY PCL
- SUB-SURFACE PCL
- MATCHING LEADER LINE
- HISTORIC LOT LINE
- HISTORIC PAVED BOUNDARY
- SECTION LINE

**2017 ROAD PARCEL NUMBER**

|    |     |     |     |
|----|-----|-----|-----|
| 27 | 126 | 125 | 124 |
| 01 | 01  | 01  | 01  |

**2017 PARCEL NUMBER**

|    |     |     |     |
|----|-----|-----|-----|
| 36 | 137 | 138 | 139 |
| 01 | 01  | 01  | 01  |

**2012 PARCEL SUB-SECT NUMBER**

|    |     |     |     |
|----|-----|-----|-----|
| 65 | 164 | 163 | 162 |
| 01 | 01  | 01  | 01  |

**2012 24-41 PCL**

|    |     |     |     |
|----|-----|-----|-----|
| 17 | 176 | 175 | 177 |
| 01 | 01  | 01  | 01  |

**5 BLOCK NUMBER**

|   |   |   |   |
|---|---|---|---|
| 8 | 4 | 5 | 1 |
| 1 | 1 | 1 | 1 |

**0.15 BLOCK NUMBER**

|   |   |   |   |
|---|---|---|---|
| 8 | 4 | 5 | 1 |
| 1 | 1 | 1 | 1 |

**Scale: 1" = 200'**

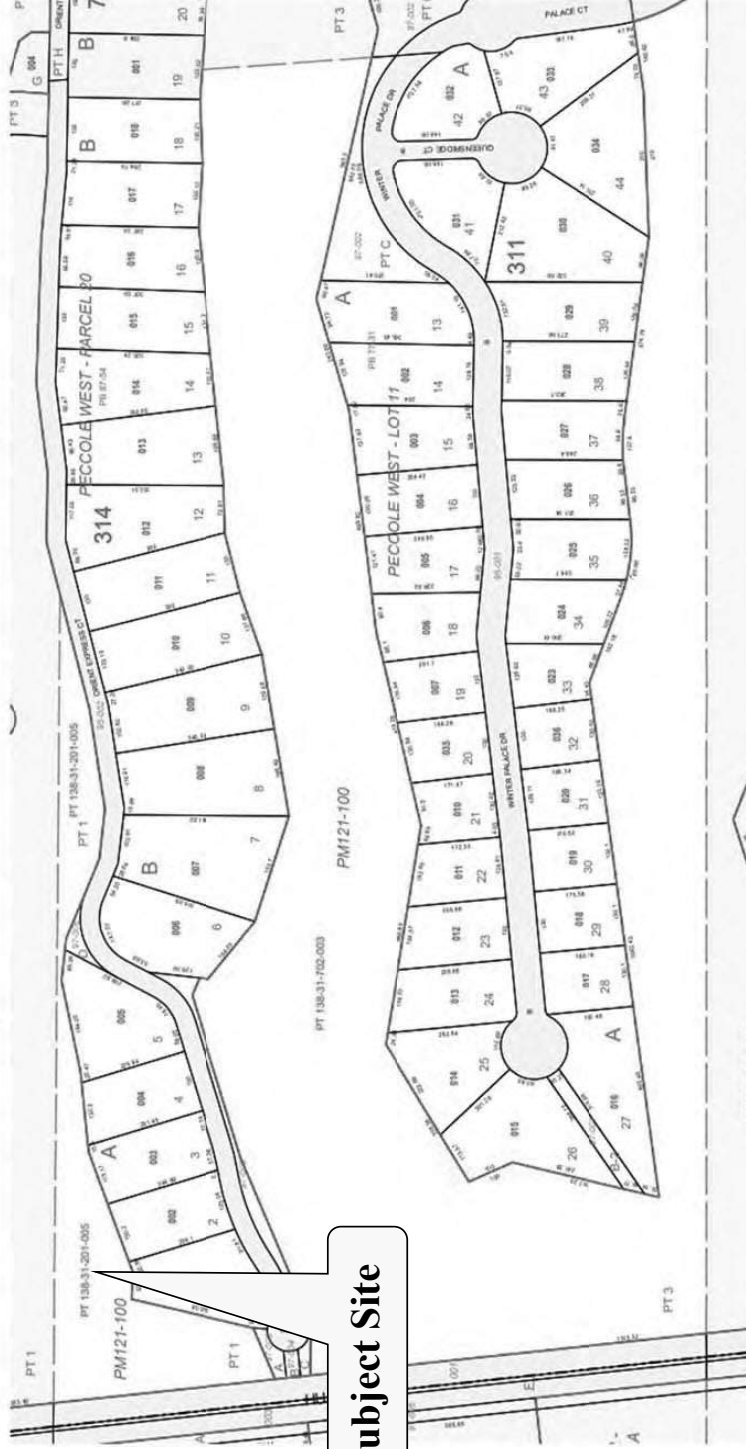
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**138-31-3**

**N 2 SW 4**

**31**

**T20S R60E**



**File#19-035**

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**TDG Rpt 000049**

21166

PRJ-67184  
01/25/17

MATCHLINE - SEE SHEET SDR-2

MATCHLINE - SEE SHEET SDR-4

NOT A PART

NOT A PART

NOT A PART

FEMA FLOOD PLAIN

NOTE:  
ALL DIMENSIONS, OFFSETS, ELEVATIONS, AND SHOWN DRIVE  
ARE PRELIMINARY DESIGN DATA.

1" = 40' SCALE

NORTH

KEY MAP

1" = 40' SCALE

180 LAND COMPANY, LLC  
PARCEL 1 @ THE 180  
SITE DEVELOPMENT REVIEW 2  
ENGINEERS' SURVEYORS  
6CW  
100 N. HANCOCK BLVD.  
LA JOLLA, CA 92037  
TEL: 858.592.1000  
WWW.6CW.COM

**File# 19-035**

**TDG Rpt 000050**

21167

SITE PLAN FOR 16 CUSTOM HOME LOTS (PREPARED BY GCW 10/13/2020)



SITE PLAN FOR 7 CUSTOM HOME LOTS (PREPARED BY GCW 10/12/2020)



**REAL ESTATE TAX ANALYSIS**

Real estate tax assessments are administered by Clark County and are estimated by jurisdiction on a county basis for the subject. In Nevada, the appropriate method under current law is that of using the replacement cost. Using this method, the Assessor must calculate the amount and cost of materials and labor it would take to replace the subject improvements. A depreciation factor of 1½% per year is applied to the effective age of the property, up to a maximum of 50 years. Land values are derived from market sales and are added to improvement values. The Assessor updates the property value each year.

Real estate taxes in this state and this jurisdiction represent ad valorem taxes, meaning a tax applied in proportion to value. The real estate taxes for an individual property may be determined by dividing the assessed value for a property by 100, then multiplying the estimate by the composite rate. The composite rate is based on a consistent state tax rate throughout this state, in addition to one or more local taxing district rates. The assessed values are based upon the current conversion assessment rate of 35.00% of Assessor's market value.

The subject property was previously operated as a portion of a 27-hole golf course known as the Badlands. The course stopped operating on December 1, 2016. On September 21, 2017, the Clark County Assessor sent the landowner a letter that stated the since the property ceased being used as a golf course on December 1, 2016, the land no longer met the definition of open space and was "disqualified for open-space assessment." The Assessor recognized the property as a higher use and the deferred taxes were owed as provided in NRS 361A.280.

I contacted the Clark County Treasurer's Office regarding the property's tax liability as of September 14, 2017. The following reflects the subject's real estate taxes for the 2018 fiscal year, which runs July 1, 2017 through June 30, 2018.

| <b>AD VALOREM TAX INFORMATION</b>                           |                   |                     |               |
|---|-------------------|---------------------|---------------|
| <b>Assessor's 2018 Fiscal Year Assessed Property Values</b> |                   |                     |               |
| <b>APN</b>  | <b>Land Value</b> | <b>Improvements</b> | <b>Total</b>  |
| 138-31-201-005  | \$ 17,886,751     | \$ -                | \$ 17,886,751 |
| Subtotal  |                   |                     | \$ 17,886,751 |
| Assessed Value @  |                   |                     | 35%           |
| Taxable Value   |                   |                     | \$ 6,260,363  |
| Tax Rate/\$100 AV   |                   |                     | 3.2782        |
| Taxes as Assessed   |                   |                     | \$ 205,227    |
| Less Cap Reduction  |                   |                     | \$ -          |
| 2018 Fiscal Year Taxes                                      |                   |                     | \$ 205,227    |
| <i>Source: Clark County Treasurer's Office</i>              |                   |                     |               |

The assessed value was based on the Assessor's estimated market value of \$17,886,751, which is equal to a value of \$525,000 per acre or \$12.05 per square foot for the subject property. Based on the concluded market value of the subject, the assessed value is low. However, this is typical as the assessor's office has historically been on the conservative side of value. Therefore, in the before condition the subject's assessed value and real estate taxes should not have negatively affected its value.



## HIGHEST AND BEST USE ANALYSIS – IN THE BEFORE CONDITION

The purpose of the highest and best use analysis is to determine the optimal use of the subject property. The purpose of the "as vacant" analysis is to determine if the property should be developed, and if so, what use the property should be developed with.

Highest and best use is often looked upon as a sifting out process. Many uses can be eliminated from reasonably probable consideration by investigating legal permissibility, physical possibility, financial feasibility, and maximum profitability of a site. Typically one is left with one or several reasonably probable uses for a site before determination of which use may be maximally productive.

### PROCESS

Before a property can be valued, an opinion of highest and best use must be developed for the subject site, both as if vacant, and as improved or proposed. By definition, the highest and best use must be:

- Legally permissible under the zoning regulations and other restrictions that apply to the site.
- Physically possible.
- Financially feasible.
- Maximally productive, i.e., capable of producing the highest value from among the permissible, possible, and financially feasible uses.

### HIGHEST AND BEST USE AS IF VACANT IN THE BEFORE CONDITION

The following analysis presents my analysis of the legally permissible, physically possible, financially feasible, and maximally productive use of the subject property as if vacant.

### LEGALLY PERMISSIBLE

In the before condition, the subject site consisted of an irregular-shaped 34.07-acre site located at the southeast corner of Hualapai Way and Alta Drive. The site is bordered by custom and semi-custom homes which are in the guard gated Queensridge development. The northwest and southwest corners of Alta and Hualapai are improved with similar custom homes in the Summerlin master planned community.

The property's zoning was addressed in a hearing before District Court Judge Timothy C. Williams. The Court concluded that the subject property had been hard zoned R-PD7 since at least 1990 and the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi-family residential as the legally permissible uses on R-PD7 zoned properties. The Court Ordered that:

- 1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and
- 2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential."

This is consistent with my investigation as well.

The density allowed in the R-PD District is reflected by a numerical designation for that district. (Example: R-PD7 allows up to 7.49 dwelling units per gross acre.) However, the types of development permitted within the R-PD District can be more consistently achieved using the standard residential districts, which provide a more predictable form of development while remaining sufficiently flexible to accommodate innovative residential development. New development under the R-PD District is not favored and will not be available under this Code. The R-PD7 zoning standards would be analogous to the LVMC 19.06.100 for the R-2 District, which allows 6-to-12 dwelling units per gross.

Given that the subject was zoned residential and bordered by custom homes within the Queensridge community, and that the northwest and southwest corners of Hualapai and Alta were improved with custom homes, both industrial and commercial uses have been ruled out from further consideration. I am also aware that the subject property was historically used as part of a golf course. However, a golf course is not a permitted use in the R-2 zoning district.

After considering the site's R-PD7 zoning designation, the allowable uses, and recognizing the principle of conformity, only public park or playground use, and residential use should be given further consideration in determining this site's highest and best use in the before condition. However, since the site was historically used as part of a golf course, I will also analyze a golf course use of the subject property.

### **Physically Possible**

What uses were physically possible in the site's before condition? In the previous section of this report, I discussed the physical characteristics of the subject site. Physically, the site consisted of a 34.07 acre or 1,484,089 square foot irregularly-shaped site that enjoyed approximately 995-feet of frontage along Hualapai Way, the site's western boundary, and 248 feet of frontage along Alta Drive, the site's northern boundary.

The property's Hualapai and Alta frontages were fully improved with concrete curbs, gutters, and sidewalks, as well as landscape buffers. The site's topography is undulating and slopes from its high point at its western boundary, Hualapai Way, to the east as it follows the natural terrain in the area. My inspection indicated that the property had been left in its original ungraded state for use as a portion of the golf course. As for ground stability, the subject site has single family residences to its north and south, with a row of homes and a road running down the middle of its eastern section. I was also provided a soils report prepared by Construction Testing Services, LLC (CTS). CTS concluded that the subject site was suited for development provided they follow the recommendations in their soils report. Gia D. Nguyen, P. E., Senior VP for GCW Engineers\Surveyors, reviewed the CTS report and also concluded that the subject site was suitable for development.

As for drainage, no problems were apparent during the property inspection. According to the Flood Insurance Rate Map, Community Panels #2145 and #2150 of 4090, this site is located within an area designated as a Zone X. Flood insurance is not typically required within Zone X. Copies of flood insurance maps #2145 and #2150 are located within the Addendum. I was also provided information about drainage prepared by GCW. Their report stated that due to the existing FEMA designated Special Flood Hazard Area present downstream, the subject must match existing drainage patterns or

provide mitigation. The report states that they assume the downstream impacts are insignificant; however, a technical drainage study will be required to demonstrate the insignificance with downstream analysis. There were no environmental hazards known on the site that I am aware of and all necessary utilities were available.

The location of the property, which is bordered by multi-million dollar homes, provides support for a residential development. However, community recreational uses and public parks were also legally permissible and physically possible uses of this site in September 2017. Therefore, while the legally permissible and physically possible attributes of the site suggest the most likely use of the property would be a residential development, community recreational uses or public park use, and golf course uses will still be considered.

### **Financially Feasible**

As for feasible uses, I looked at the residential market, and community recreational or public park uses that have emerged as legally permissible and physically possible uses of this site. I also considered the financial feasibility of a golf course use as the property had historically been used as a portion of a golf course.

I first looked at the residential market. In reviewing historical data, I found that the high-end or luxury housing market in Las Vegas 2017 reported its strongest year since the Great Recession approximately ten (10) years prior and was showing no signs of slowing down. Whether it was the new-home market or the resale market, sales were strong for homes priced at \$1 million and above. Home Builders Research reported that even homes priced around \$750,000 were having strong sales.

Applied Analysis reported 376 home sales priced at \$1 million and above in the existing single-family home market in 2017. That was 39% higher than the 270 home sales in 2016. Sales had been as low as 152 in 2012. Applied Analysis reported that in the new single-family home market, there were 129 closings in 2017, which was a 34% increase over the 96 sales in 2016. That market appeared to have recovered from the three (3) closings of \$1 million and above in 2013. Home Builders Research, in tracking closings of luxury condos and homes, reported 470 existing home sales in 2017 of \$1 million and above, a gain of 44% from 326 in 2016. There were such 875 closings of \$750,000 and above, a gain of 55% from 566 in 2016. In the new-home market, Home Builders Research reported 141 sales of \$1 million or more, a gain of 45% from 97 in 2016. There were 374 sales of \$750,000 and above, a gain of 37% from 274 in 2016.

In the custom home market, there were 198 custom home permits issued in Clark County in 2017, that was an increase of over 21% percent over the 163 issued in 2016.

These sentiments were stated in the following article in the Las Vegas Business Press, August 21, 2017.

## LAS VEGAS LUXURY MARKET ON THE RISE

By Buck Wargo Real Estate Millions  
August 21, 2017



The luxury home market in Las Vegas is on track to have its best year since the onset of the Great Recession.

Whether it's new home sales or sales of existing homes, there's a market for properties of \$1 million and above as well for those priced between \$750,000 and \$1 million.

During the first six months of 2017, there was a total of 184 existing homes that sold for more than \$1 million, according to SalesTraq, the residential research firm of Applied Analysis. During the same six-month period in 2016, there was a total of 139 homes sold, meaning an increase of 45 units or a 32.4 percent increase in the number of high-end home sales. Assuming the current pace holds, the market could have more than 360 high-end home sales for the year — by far the highest since the economic downturn, according to SalesTraq.

Luxury home resales have fallen between a range of 243 and 281 since a post-recession low of 152 in 2011 and 2012. There were 270 such sales in 2016, SalesTraq reported.

When factoring in existing home sales of \$750,000 and above, Home Builders Research said the 363 sales between January and June are 82 percent higher than the 199 closings through the same period in 2016.

The luxury new-home market has seen its share of increased sales as well. Home Builders Research reported 130 sales of \$750,000 and above through the first six months of 2017, 33 percent higher than the 98 sales through the same period in 2016. For homes priced \$1 million and above, the firm said there were 51 sales during the first six months of this year, a gain of 46 percent over the 35 sales through June 2016, the firm's president, Dennis Smith.

None of those figures include custom-built luxury homes, which can't be readily tracked, according to Smith. There were 113 custom-home permits issued through June, up from 105 for the first six months of 2016, he said.

SalesTraq figures show the 51 new-home closings of \$1 million or more during the first six months of 2017 are the most since the housing downturn.

There were 10 such luxury homes built in 2010, and that number fell to three in 2013. It grew to 33 in 2014, 50 in 2015 and 96 in 2016, according to SalesTraq. The totals, however, are still below the 141 sales of new homes of \$1 million for all of 2007.

The increased activity at the high-end of the market is a function of an improving economy as well as broader increases in overall home values, said Applied Analysis Principal Brian Gordon. In addition, for existing homes, the appreciating home market has resulted in more homes reaching the \$1 million threshold, he said.

“We have more residents than ever, job counts at an all-time high and incomes continuing to rise,” Gordon said. “The overall fundamentals of the economy are in a better position than they were previously. All of that has resulted in continued demand in the housing market, including the higher-end spectrum.”

Southern Nevadans are selling their existing homes and moving up and the influx of Californians to the state looking for second homes is creating opportunities for builders as well, according to Realtors and analysts. Some out-of-staters are moving to start a business or relocate their business here.

Smith added that the gains in the stock market have boosted confidence and sales are up because baby boomers are retiring and moving to Las Vegas.

“I think we’re seeing a good cross-section of buyers in the higher-end of the market,” Gordon said. “We have some folks who are moving up and at the same time, people migrating in from other parts of the country, including California. On a relative basis, Southern Nevada remains affordable for many of those transplants acquiring homes.”

Smith said the demand for the higher-priced homes is a boon for builders who can make more money for them rather than lower-priced ones. They’re also located on higher-priced lots with better views on hillsides or abutting Red Rock.

“You have the move-up buyer who already owns a house here and is looking to buy something new because technology has increased in recent years,” Smith said. “You might see people downsize and still buy a more expensive house.”

Most of the luxury home construction is taking place in Summerlin, Southern Highlands and Henderson gated communities such as MacDonald Highlands, Smith said. William Lyon Homes has been one of the builders benefiting from that demand in its Sterling Ridge and Silver Ridge subdivisions in The Ridges in Summerlin. Sterling Ridge sells homes for just under \$1 million and Silver Ridge homes sell for between \$1.3 and 1.5 million. More than one-third of the 82-lot Silver Ridge has been sold out and about 30 of 199 lots remain at Sterling Ridge.

“There has been an uptick in the luxury market with a lot of local move-up buyers and people coming from (out of state),” said William Lyon Homes sales agent Julia Giordani. “They are moving from other luxury communities in Las Vegas to get a modern contemporary style (as opposed to Mediterranean and Tuscan).”

The next big development in Las Vegas will be at The Summit Club in Summerlin where the majority of 146 lots have been sold with an average price exceeding \$3 million. When custom homes are built on the new exclusive golf course development for the uber-wealthy, some homes will cost more than \$10 million to build.

The project is a joint-venture between the Howard Hughes Corp. and Discovery Land Co. Membership in the club costs \$150,000 and its dues are \$27,000 a year.

Damien Bauman, area residential mortgage production manager with Nevada State Bank, said he’s “seeing a lot more activity in the luxury housing market as a testament to how healthy it is.” The “sweet spot” for new home construction is projects between \$2.5 million to \$3 million and borrowers can qualify for a little as 10 percent down for interest rates of 3.5 to 4 percent.

Many of those are business owners and executives who have a favorable outlook on the economy. Their businesses are improving, and they have more liquidity to upgrade their homes, Bauman said.

“It seems like a lot of people were sitting on the sidelines because the time wasn’t right to build, but they’re changing their mind and jumping in the market,” Bauman said. “There’s a buzz in new construction. They see the possibility with labor shortages and commodity prices going up. They want to jump in to build now and beat the prices increase coming down in the future.”

Forrest Barbee, a corporate broker with Berkshire Hathaway HomeServices Nevada Properties, said he was worried about the luxury market in early 2017 but it has taken off since then. He said the resale market is benefiting from problems with construction that doubled the time to build a home in some cases.

“Construction workers are in short supply and the length of time to buy land and build a new home may be pushing some people back into the resale market a little bit,” Barbee said.

Barbee credits the Golden Knights NHL franchise starting play this fall and planned relocation of the Oakland Raiders in 2020 as contributing to the luxury housing market gains.

“It gives us diversification from the other industries, but sports reinforces the existing industries,” Barbee said. “It reinforces gaming. It reinforces conventions. It reinforces hotel rooms. I think the luxury housing market may have benefited more than anybody from the sports side with people moving here.”

Kenneth Lowman, broker and owner of Luxury Homes of Las Vegas, said he’s seeing “some of the sales numbers they haven’t seen since the glory days of 2007.” He said he counted 39 closed sales of \$1 million or more on the Multiple Listing Service in July after there were 48 sales in May and 38 in June. Buyers are even gravitating to newer homes built in the last two to three years and willing to pay a premium for a more modern-style home that’s more energy-efficient.

“Those are months we have not seen for 10 years, and they are almost double what we used to four to five years ago,” Lowman said of recent sales. “Vegas is back in so far as gaming is doing well, visitor volume is back, people are retiring here, and we have these two professional sports teams coming here. The stock market has done well, and we have a lot of wealthy people here that if the stock market does well the more likely they are to put some of their money in real estate. I think it’s going to continue for another one to three years. The economy is healthy. Interest rates are down, and these houses are very affordable to people moving here.”

The Summit Club in Summerlin entered the market 2016. This is one of the more recent developments to enter the market selling finished custom home sites. Of the 130 custom home lots in this development, 60 sold between its opening in May of 2016 and the effective date of value in this analysis. The unit prices ranged from a low of \$31.82 per square foot (psf) for a 4.689 acre lot (\$6,500,000 total or \$1,386,223 per acre) in August of 2016, to a high of \$158.32 psf for a 0.580 acre lot (\$4,000,000 total or \$6,896,552 per acre) in June of 2016. The average price paid for these custom home lots was \$67.10 psf.

In the Ridges during the same period (May 2016 through September 2017), there were 16 custom home lot sales. The unit prices ranged from a low of \$29.63 psf for a 0.756 acre lot (\$975,000 total or \$1,290,536 per acre) in October of 2016, to a high of \$85.49 psf for a 0.290 acre lot (\$1,080,000 total or \$3,724,138 per acre) in January of 2017. The average price paid for these 16 custom home lots was \$52.72 psf.

The owner of the subject property has three (3) configurations for the subject property; 1) Sixty-one (61) home lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) home lots ranging from 3.96 acres to 5.39 acres. In a following section of this report, I used the Sales Comparison

Approach to estimate the value of the subject property. Based on my analysis, I concluded a unit value of \$23.00 psf or a total value of \$34,135,000.

As a check to the reasonableness of the value concluded by the Sales Comparison Approach, I completed the Subdivision Development Method, which is an application of the Income Capitalization Approach. The reason that it is categorized as an income approach to value is that it is based on converting the projected cash flow from lot sales, less expenses and profit into an indication of value. The subdivision method is used by developers to determine the price they can afford to pay for a property assuming certain costs, gross sales, and return considerations.

In a following section of this report, I completed a DCF for each of the three (3) lot mix configurations. Based on that analysis, I concluded that the “retrospective” market value of the Fee Simple Estate in the subject property in the before condition, for each lot configuration, as follows:

| <b>Subdivision Approach</b> |                    |               |  |
|-----------------------------|--------------------|---------------|--|
|                             | <b>Total Value</b> | <b>Per SF</b> |  |
| 61-Lots                     | \$ 32,820,000      | \$22.11       |  |
| 16-Lots                     | \$ 35,700,000      | \$24.06       |  |
| 7-Lots                      | \$ 34,400,000      | \$23.18       |  |

My analysis indicates that a residential development was feasible on the effective date of value.

Next, I considered the property’s potential as part of a golf course. For this, I first looked at the overall health of the golf course industry on a national and local basis. I then considered the subject’s historical operations and what would be necessary to start back up the Badlands Golf Course. First, I looked at The National Golf Foundation’s “Golf Facilities in the U.S., 2017 Edition.” The NGF was founded in 1936 to provide golf-business research and consulting services.

According to the National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend being experienced throughout 2016 was referred to as “correction.” This was because at that time golf course closures occurring throughout the U.S. indicated we had an oversupply that required market correction.

The NGF 2017 Facilities Study reported, “The golf course industry continues to go through a period of natural correction, as expected, following a 20-year period of the most dramatic growth in the game’s history. By the end of 2016, there were 15,014 golf courses in the United States. This included a net reduction of 171 courses that year. The NGF reported that from 2006 to 2017, the golf course industry experienced a cumulative decline of 1,045 golf courses, with an average net loss of 87 per year ( $1,045 \div 12 = 87.08$ ). As of March 2017, which is when the report was released, the NGF report stated that the golf course market was still oversupplied, and more course closings were expected. Closings were “projected to fall in the 150 to 175 range as the natural contraction continues gradually, extending incrementally into its second decade following a two-decade run of golf course growth.”

I found this to be a common theme when researching the health of the golf course market in 2017. It was addressed in a Bloomberg Magazine article titled “Dead Golf Courses Are the New NIMBY Battlefield” and again in their March 24, 2021 article titled “Old Golf Courses are being Turned into E-Commerce Warehouses.” The first article began with “Golf is dying, many experts say. According to one study by the golf industry group Pellucid Corp., the number of regular golfers fell from 30 to 20.9 million between 2002 and 2016. Ratings are down, equipment sales are lagging, and the number of rounds played annually has fallen.”

Their March 2021 article begins with “The surge in online shopping has developers looking for acreage, and the links-to-logistics conversion is proving to be a winning move.” The March 2021 article included aerials showing these conversions occurring.

I also found this discussed in National Recreation and Park Association (NRPA) monthly magazine. Under the heading “Why Has Golf Declined?” they discussed the decline in play being experienced throughout the U.S. This article referenced a 1987 report by McKinsey & Company consulting firm that had projected substantial increases in the number of golfers and called for “A Course a Day” to be built to accommodate it. This plan was embraced by many in the development community and reinforced the momentum to build new courses. This article stated that McKinsey & Company was still optimistic in their 1999 update to that 1987 report, but their forecast was wrong.

The NRPA report stated that since 2003, there has been a consistent decline in the number of golf players each year. They reported there were 6.8 million fewer golfers in 2018 compared to 2003, which is a loss of over 20%. This led to “a net reduction of 1,243 18-Hole courses between 2005 and 2018.” The NRPA stated that this decline was “a function of the high cost of playing, difficulty of courses, and the game’s incompatibility with contemporary lifestyles.”

I also looked at a report on the Badlands Golf Course that was prepared by Global Golf Advisors (GGA). GGA stated that they reviewed 2017 annual financial reports for the municipalities of Las Vegas, North Las Vegas and Henderson for the profitability reported by their public golf courses.

GGA stated; “While municipal courses often do not serve as an ‘apples-to-apples’ comparison due to the potential for labor unions, it is worth noting that none of the municipal courses observed were profitable during the year of reference.”

These municipalities reported the net operating income for the Durango Hills (City of Las Vegas), Wildhorse (City of Henderson), and Aliante (City of North Las Vegas) public golf courses. Therefore, I looked at their 2017 Financial Reports:

1. The City of Las Vegas 2017 Financial Report –  
(<https://files.lasvegasnevada.gov/finance/CLV-CAFR-FY2017.pdf>);
2. The City of Henderson 2017 Financial Report -  
(<https://www.cityofhenderson.com/home/showpublisheddocument?id=1650>); and
3. The City of North Las Vegas Financial Report -  
([http://www.cityofnorthlasvegas.com/docs/Finance/CAFR/CAFR\\_FY2017.pdf](http://www.cityofnorthlasvegas.com/docs/Finance/CAFR/CAFR_FY2017.pdf))



According to these 2017 Financial Reports, Durango Hills, Wildhorse and Aliante were losing money. The GGA report also stated that Spanish Trail Country Club, a private club, was losing money.

In addition to looking at the historical operations at the Badlands Golf Course, I looked at the reported operations at other courses in the Las Vegas area that would compete with the subject. Between 2016 and 2017, there were numerous articles about golf courses having problems and potential conversions. It was reported that Dragon Ridge, Black Mountain, Siena, Silverstone, Rhodes Ranch and South Shore were all losing money.

The data shows the Badlands wasn't an outlier that was struggling in a thriving golf course market. Based on what was happening in the local golf course market, Las Vegas was also experiencing this market "correction" and the Badlands golf course was part of that "correction."

Next, I analyzed what if any effect the national and local "correction" was having on the subject property. For that, I looked at the historical operations of the Badlands. According to the supplied information, the Badlands had nearly 35,000 rounds played in 2016. The NGF estimated Course Rounds (in-market supply) in 2016 at 35,300 per facility for the 30-minute drive radius from the Badlands. This suggests that the course generated comparable demand.

In looking at the number of visitors to Las Vegas, I found that visitation numbers hit an all-time high in 2016. However, the Badlands Golf Course experienced its lowest level of financial performance in 2016, which indicates that an increase in visitors did not benefit the Badlands Golf Course and growth in tourism would not lead to sustainable financial performance for this course.

Elite Golf Management was operating the course. The use of a management company was discussed in the NGF 2017 Facilities Study. The report stated: *"Driven in part by escalating competition and rising costs, independently-owned courses are increasingly hiring professional management companies to run operations. This trend is part of an ongoing effort to improve customer service levels, enhance course conditions, and add technology and amenities while implementing best practice initiatives."*

This option was also being used in the Las Vegas golf market. The GGA report identified a number of management companies operating in the Las Vegas market in 2017. These were as follows:

- Pacific Links was managing TPC Summerlin, Painted Desert Golf Club, Desert Pines Golf Club, Dragon Ridge Country Club;
- ClubCorp is managing Bear's Best Las Vegas, Canyon Gate Country Club;
- OB Sports is managing Angel Park Golf Club, The Legacy Golf Club (prior to Elite Management taking over), Durango Hills Golf Club; and
- Troon is managing Aliante Golf Club.

The operators leading up to the time of closing the Badlands Golf Course, Elite Golf Management, were also experienced operators in the local market. Elite was managing the following golf courses:

- Primm Valley Golf Course (Two (2) 18-hole golf courses)
- Spanish Trail Country Club (27 holes)

- Legacy Golf Club, Henderson (18 holes)
- Wildhorse Golf Club, Henderson (18 holes)
- Mountain Falls Golf Club, Pahrump (18 holes)

Prior to Elite Golf Management, the Badlands Golf Course was managed by Par 4 Golf Management. Par 4 Golf Management was founded in 2008. Par 4 Golf Management was a partnership between Paul Jaramillo and Keith Flatt. Mr. Jaramillo was the President & Co-founder of Par 3 Landscape & Maintenance. Par 3 Landscape & Maintenance was successful landscape company in the Las Vegas market. Mr. Flatt's experience covered most aspects of the golf industry, including being a professional player, caddy, credentialed instructor, head golf professional and course owner.

Par 4 managed five (5) local courses including the Badlands Golf Course prior to their transition to Elite Golf Management. Prior to Par 4 Golf Management, Badlands was managed by Troon, which was considered to be one of the largest golf management companies in the U.S. and an industry leader.

To analyze the facilities historic operations, I was provided the income and expenses for 2014, 2015 and 2016 up to the facilities December 1, 2016 closing. The supplied historical income and expense statements reflected that revenue declined 11% in 2015. In comparing the 2015 revenues to 2016, an adjustment is required for the eleven (11) months used in 2016 statement versus twelve (12) months used in 2015. Therefore, I annualized the property's 2016 revenues to reflect a similar twelve (12) month period. While the actual 2016 revenues through November reflected a decrease of 31.2% from 2015, annualizing 2016 revenues indicates that the decline in revenues would be 24.9%.

During this period (2014 to 2016), cost of sales percentage was slowly increasing. This expense was 14.1% of revenues in 2014, increased 80 basis points to 14.9% in 2015 and then increased another 100 basis points to 15.9% in 2016. This resulted in the effective gross income (EGI) being \$3,038,330 in 2014, \$2,679,318 in 2015 (down 11.8%), and \$1,819,789 through the first eleven months of 2016 (down another 32.1%). Annualized, the 2016 EGI would be \$1,985,224, which was still down 25.9% from 2015.

Next, I looked at the property's expenses. According to the supplied information, expenses went from 82.7% of EGI in 2014 to 75.4% of EGI in 2015. However, the expenses then increased to 95.0% of the EGI in 2016. And 2016 reflects the expenses without the annual cost of overseeding the facility. The operator estimated that this saved \$60k in hard costs plus the course gained additional revenue from not being closed for overseeding in 2016. It is my understanding that these decisions were made out of necessity to save cash but are not good for the long-term sustainability of the course.

The historical net operating income (NOI) for the subject property is calculated by deducting the operating expenses from the EGI. The reported NOI was \$524,892 in 2014, \$659,516 in 2015 and \$90,368 for the first eleven months of 2016. Annualized, the 2016 NOI is \$98,583. Therefore, the NOI increased 25.6% in 2015 and decreased 86.3% for the first eleven (11) months of 2016. Annualized, the 2016 NOI was down 85.1% from 2015. The following is a summary of the previous data.

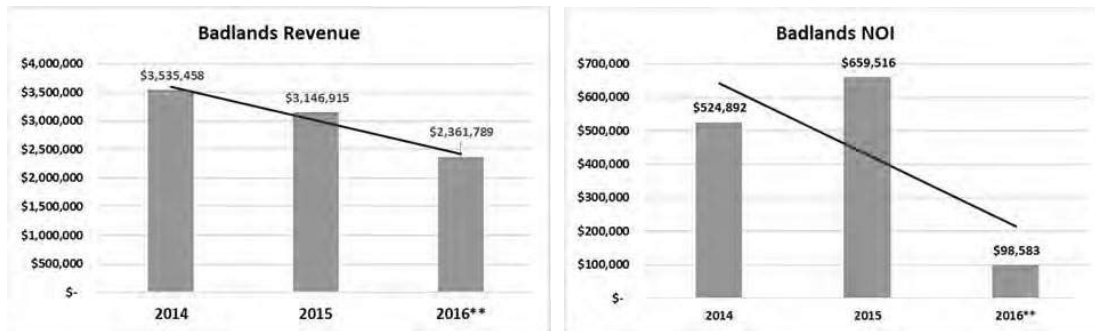
## RECONSTRUCTED INCOME &amp; EXPENSE STATEMENTS

| YEAR                       | 2014           | 2015           | % Chg. | 2016*          | % Chg. | 2016**         | % Chg. |
|----------------------------|----------------|----------------|--------|----------------|--------|----------------|--------|
| Revenue                    | \$ 3,535,458   | \$ 3,146,915   | -11.0% | \$ 2,164,973   | -31.2% | \$ 2,361,789   | -24.9% |
| Less Cost of Sales         | \$ (497,128)   | \$ (467,597)   | -5.9%  | \$ (345,184)   | -26.2% | \$ (376,564)   | -19.5% |
| Gross Profit               | \$ 3,038,330   | \$ 2,679,318   | -11.8% | \$ 1,819,789   | -32.1% | \$ 1,985,224   | -25.9% |
| Less Operating Expenses    | \$ (2,513,438) | \$ (2,019,802) | -19.6% | \$ (1,729,421) | -14.4% | \$ (1,886,641) | -6.6%  |
| Net Operating Income (NOI) | \$ 524,892     | \$ 659,516     | 25.6%  | \$ 90,368      | -86.3% | \$ 98,583      | -85.1% |

\*Based on the Eleven (11) Months the property was operating.

\*\*Annualized 2016 Data Assuming the average over the Eleven Month Period is Maintained in December of 2016.

For the reader's perspective, I broke out the trends in revenues and NOI in the following charts.



While there was an 81.2% decline in NOI over the prior three (3) years it was operating, the true picture of this property's viability is incomplete without including the deferred maintenance that had been ignored. It is not like the owner could have just decided on September 14, 2017, "let's open the course for play today." For the reader's perspective of the course's overall condition in the later part of 2017, I included the following photograph of the course. This photo was reportedly taken in November of 2017 (Source: Google Earth).



It is obvious that the property was not ready for play in the later part of 2017 as the turf was dead and the ponds were empty and exposed. Therefore, I looked at the cost to cure the property's deferred maintenance to see if it was economically feasible to return to operations on the effective date of value.

According to GGA's report, estimates to cure the deferred maintenance provided by Elite Management, were as follows:

- Clubhouse Renovation/Update - \$1M (to update) to \$8M (full renovation to stay competitive)
- Cart Path Replacement - \$1.7M
- Irrigation System Replacement - \$800k
- Maintenance Equipment - \$800k
- Golf Carts - \$600k
- Pond Liner Replacement - \$350k
- Sod, Seed and Bring Back Turf - \$1.5M

The previous items are a summary of the major capital expenditures required but does not include any unforeseen issues such as problems with the pumps, wells or any other existing infrastructure. For example, if the irrigation system needs to be replaced, the cost adds another \$2+M to the cost to reopen. The previous costs, without the irrigation system, total a minimum of \$6.75M with a refresh for the club house, and a maximum of \$13.75M if the club house is to be completed redone.

The GGA report also referenced additional estimates that indicated the restoration costs for the golf course could be between \$3.65M and \$4.7M as of the effective date of value. In the following table I applied the cost to cure the deferred maintenance to the previous three years of income and expenses to ascertain how the balance sheet would look if the property had been maintained at a minimum level.

| Year  | NOI                    |
|---|------------------------|
| 2014  | \$ 524,892             |
| 2015  | \$ 659,516             |
| 2016**                                      | \$ 98,583              |
| Total Three (3) Years NOI                   | \$ 1,282,991           |
| Deferred Maintenance - Minimum              | \$ (3,650,000)         |
| <b>Net Income/Loss Over Three (3) Years</b> | <b>\$ (2,367,009)</b>  |
| <b>Net Income/Loss per Year</b>             | <b>\$ (789,003)</b>    |
|   |                        |
| Total Three (3) Years NOI                   | \$ 1,282,991           |
| Deferred Maintenance - Maximum              | \$ (13,750,000)        |
| <b>Net Income/Loss Over Three (3) Years</b> | <b>\$ (12,467,009)</b> |
| <b>Net Income/Loss per Year</b>             | <b>\$ (4,155,670)</b>  |

**The above figures are based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The above calculations are based on the extraordinary assumption that the provided costs to cure the deferred maintenance were accurate as of September 14, 2017, the effective date of value for this assignment.

While the previous Reconstructed Income & Expenses Statement reflected a positive NOI for 2014, 2015 and 2016, the NOI did not reflect the true cost of operations as the operator had not addressed the deferred maintenance. The NOI would have been significantly less (and actually reflects a substantial net loss) if the deferred maintenance costs at the time of operation had been addressed.

The GGA report stated that their Director, Tommy Sasser, validated the previous cost estimates provided by Elite Management. They stated that Mr. Sasser has expertise in golf course renovation and construction management with over three decades of experience directing land development activities and has been involved in the design

and/or construction of over 75 golf courses around the globe. The GGA report states that Mr. Sasser solicited a second expert opinion on the restoration costs from Heritage Links (a division of Lexicon Inc.), a Houston based restoration company with knowledge of the golf course. The total estimate provided by Heritage Links projects a cost of more than \$3.74M as of September 2017, not including contingencies.

Even in years prior, operators of the facility expressed the opinion that the operation was no longer profitable. On September 18, 2015, Paul Jaramillo (CEO of Par 4 Golf Management, Inc.) expressed the following sentiment in a ‘Notice of Cancellation’ memo to the owners: *“We have operated the course for a number of years with little or no profit in hopes that the golf industry would recover, and we would be able to recapture our investment. Given the ever increasing water costs, operating costs and a golf market that cannot support increased green fees, we have determined that we are no longer willing [to] assume the risk.”*

On December 1st, 2016, Keith Flatt (CEO of Elite Golf Management), expressed the following opinion in another memo to ownership: *“Unfortunately, it no longer makes sense for Elite Golf to remain at the facility under our lease agreement. The golf world continues to struggle, and Badlands revenues have continued to decrease over the years. This year we will finish 40% less in revenue than 2015 and 2015 was already 20% down from 2014. At that rate, we cannot continue to sustain the property where it makes financial sense for us to stay. Even with your generosity of the possibility of staying with no rent, we do not see how we can continue forward without losing a substantial sum of money over the next year. The possibility of staying rent free was enticing and we apologize if our email to customers about staying may have caused any issues for you, but after full consideration of our current financial status at Badlands, we came to the conclusion that we just could not afford to stay any longer.”*

In addition to the previously discussed data, the fact that the two prior golf course management companies could not operate the Badlands at a profit sufficient to justify remaining on the Subject Property in the preceding years, even with free rent while ignoring the deferred maintenance, demonstrates operating the Badlands was not financially feasible as of December 2016 when it was closed or September 2017, the effective date of value. Therefore, golf course use is ruled out from further consideration as to being the highest and best use of the subject property.

I also researched the market for sales of public parks. For a public park use, the value of the subject would need to exceed \$23.00 per square foot or \$1,000,000 per acre. I used CoStar to search but did not find any park sales I could compare to the subject. And when considering this park would be subject to annual property taxes of over \$200,000, the possibility of this type of use being more productive than a residential use is not a reasonably probable conclusion. Therefore, golf course and public park uses have been eliminated from consideration as being the highest and best use of this site.

Given the previous information, it is my opinion that the legally permissible, physically possible, and financially feasible use of this site, as of the effective date of value, was a residential use. This type of development would be similar to the surrounding uses in the Queensridge and Summerlin communities and would confirm to the site’s R-PD7 zoning designation.

**Maximally Productive**

Based on the reasonably probable development scenarios and the potential values that could be created, I have concluded that a developing the site with a residential use that conformed with the surrounding residential developments was the maximally productive use of the subject property, as of September 14, 2017.

**CONCLUSION**

Based on my research, I concluded that a residential use best met the four tests of highest and best use of the effective date of value, September 14, 2017.

**MOST PROBABLE BUYER**

Based on the characteristics of the property, the likely buyer is a local or regional developer.

## VALUATION ANALYSIS

### VALUATION METHODOLOGY

Appraisers usually consider three approaches to estimating the market value of real property. These are the cost approach, sales comparison approach and the income capitalization approach.

The **cost approach** assumes that the informed purchaser would pay no more than the cost of producing a substitute property with the same utility. This approach is particularly applicable when the improvements being appraised are relatively new and represent the highest and best use of the land, or when the property has unique or specialized improvements for which there is little or no sales data from comparable properties.

The **sales comparison approach** assumes that an informed purchaser would pay no more for a property than the cost of acquiring another existing property with the same utility. This approach is especially appropriate when an active market provides sufficient reliable data. The sales comparison approach is less reliable in an inactive market, or when estimating the value of properties for which no directly comparable sales data is available. The sales comparison approach is often relied upon for owner-user properties.

The **income capitalization approach** reflects the market's perception of a relationship between a property's potential income and its market value. This approach converts the anticipated net income from ownership of a property into a value indication through capitalization. The primary methods are direct capitalization and discounted cash flow analysis, with one or both methods applied, as appropriate. This approach is widely used in appraising income-producing properties.

The Cost Approach is not considered applicable when appraising land like the subject of this analysis. In this area the Sales Comparison Approach is typically used to estimate the value of vacant land. Therefore, I will first research recent sales of superpads. After applying market supported adjustments, I will conclude a supportable before condition value indication for the property as of the effective date of value.

As a check for reasonableness, I will use what is referred to in the Income Approach as the Discounted Cash Flow Analysis in Subdivision Development Analysis. This involves a discounted cash flow analysis with the value being estimated by researching the market for what the property could sell for on a per custom home lot basis, the indicated absorption rate, the costs related to finishing the custom home lots and the cost of sales (marketing) and entrepreneurial profit. The indicated income from selling the lots, less expenses, will then be discounted to its present value for an indication of value to one buyer as of the effective date of value.

The reconciliation that follows the "before condition" value discusses the relative strengths and weaknesses of each approach and concludes the property's before condition value as of the September 14, 2017 the effective date of value. This will be followed by my analysis of the value of the remainder in the "after condition." I will then conclude the just compensation due to the property owners as of September 14, 2017.

**SALES COMPARISON APPROACH – BEFORE CONDITION**

The Sales Comparison Approach is based upon the principle that the value of a property tends to be set by the price at which comparable properties had been sold or the price for which comparable properties could have been acquired. This approach requires analysis of vacant land sales comparable to the subject property. I acquired accurate information regarding price, terms, property description, and use for the comparable sales. This was part of my primary research in the preparation of this report.

For this analysis, I included five (5) vacant land sales that closed escrow between February 2015 and September 2017. The first four (4) are considered to be “superpads” that were sold to home developers for detached single-family residential developments. The Dictionary of Real Estate defines a superpad as “a parcel of land, usually in a planned development, that is undeveloped and planned for subdivision into smaller lots. All off-site infrastructure is in place and connected to the boundary of the parcel. A superpad is typically purchased by a home builder that will install the streets and necessary utility infrastructure to make the lots suitable for home development and sale to individual buyers.” The fifth sale was the sale of 63 finished home lots to a home builder that has since completed the vertical construction and sold those homes.

In analyzing these sales, I selected the price per square foot of land as the operative unit of comparison as of the effective date of value. This is the unit of comparison most commonly quoted by brokers, sellers, and purchasers when discussing these sales transactions and is considered the most relevant for the subject. In the following section of this report, I will compare the attributes of these sales to the subject site in the before condition.

The following Comparable Land Sales table displays the data pertinent to this analysis. A map identifying the location of each sale in respect to the location of the subject property is on the following page. Abstracts with additional information and aerial photographs of each sale taken near its date of sale follow the map.

| <b>COMPARABLE LAND SALES</b> |  |                      |                       |                       |                      |               |
|------------------------------|--|----------------------|-----------------------|-----------------------|----------------------|---------------|
| <b>#</b>                     | <b>LOCATION/<br/>APN</b>   | <b>SALE<br/>DATE</b> | <b>SALE<br/>PRICE</b> | <b>LAND<br/>SF/AC</b> | <b>PRICE/<br/>SF</b> | <b>ZONING</b> |
| <b>1</b>                     | <b>Sky Vista Drive &amp; Desert Moon Road</b><br>137-33-810-001 (Portion of)     | 09/15/17             | \$ 17,745,080         | 1,426,154<br>32.74    | \$ 12.44             | P-C           |
| <b>2</b>                     | <b>Russell Road &amp; Bonitsa Vista Street</b><br>Five (5) Contiguous Parcels    | 08/07/17             | \$ 12,794,150         | 938,282<br>21.54      | \$ 13.64             | R-2           |
| <b>3</b>                     | <b>Sky Vista Drive &amp; Charleston Boulevard</b><br>164-03-111-006 (Portion of) | 03/14/17             | \$ 24,084,350         | 1,623,046<br>37.26    | \$ 14.84             | P-C           |
| <b>4</b>                     | <b>Olympia Ridge Drive &amp; Oakland Hills Drive</b><br>191-07-501-011           | 07/07/16             | \$ 17,000,000         | 1,263,240<br>29.00    | \$ 13.46             | R-2           |
| <b>5</b>                     | <b>Granite Ridge Drive &amp; Grey Feather Drive</b><br>63 Separate APN's         | 02/26/15             | \$ 13,650,000         | 653,400<br>15.00      | \$ 20.89             | R-2           |
|                              | <b>Subject Property</b><br>138-31-201-005  | N/A                  | N/A                   | 1,484,089<br>34.07    | N/A                  | R-PD7         |



## COMPARABLE LAND SALES MAP



**COMPARABLE LAND SALE 1**

|                  |                                    |                       |               |
|------------------|------------------------------------|-----------------------|---------------|
| <b>Location</b>  | Sky Vista Drive & Desert Moon Road | <b>Close Date</b>     | 9/15/2017     |
| <b>APN(s)</b>    | 137-33-810-001 (Portion of)        | <b>Sale Price</b>     | \$ 17,745,080 |
| <b>Grantor</b>   | Howard Hughes Properties, Inc.     | <b>Cash Equqlancy</b> | \$ 17,745,080 |
| <b>Grantee</b>   | Lennar Homes                       | <b>Acres</b>          | 32.74         |
| <b>Confirmed</b> | Broker/Co-Star/County Records/Deed | <b>Price/AC</b>       | \$ 542,000    |
| <b>Zoning</b>    | P-C, City of Las Vegas             | <b>Square Feet</b>    | 1,426,154     |
| <b>Doc. No.</b>  | 20170915:00793                     | <b>Price/SF</b>       | \$ 12.44      |



Photo date: 11/2017

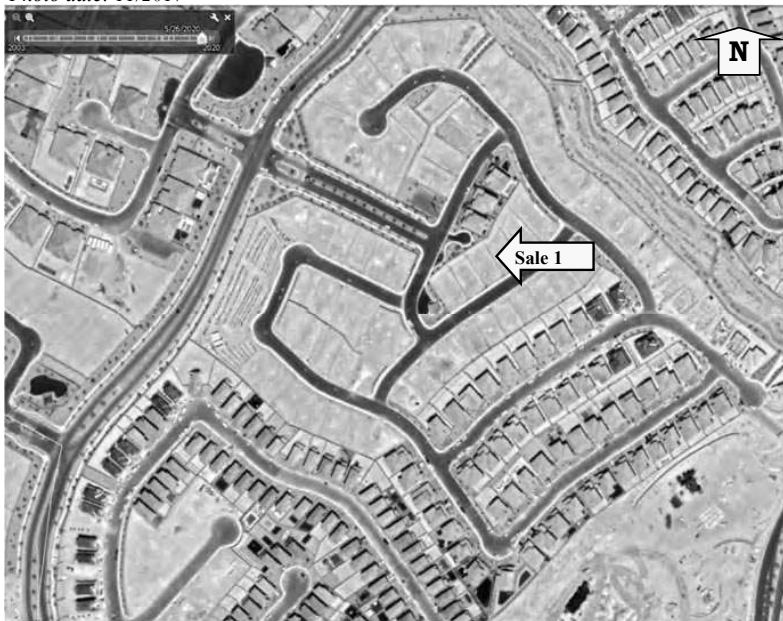


Photo date: 05/2020

**COMPARABLE LAND SALE 2**

|                  |                                     |                       |               |
|------------------|-------------------------------------|-----------------------|---------------|
| <b>Location</b>  | Russell Road & Bonitsa Vista Street | <b>Close Date</b>     | 8/7/2017      |
| <b>APN(s)</b>    | Five (5) Contiguous Parcels         | <b>Sale Price</b>     | \$ 12,794,150 |
| <b>Grantor</b>   | Clark County                        | <b>Cash Equqlancy</b> | \$ 12,794,150 |
| <b>Grantee</b>   | KB Home LV Amizade, LLC             | <b>Acres</b>          | 21.54         |
| <b>Confirmed</b> | Seller/Co-Star/County Records/Deed  | <b>Price/AC</b>       | \$ 593,972    |
| <b>Zoning</b>    | R-2, Clark County                   | <b>Square Feet</b>    | 938,282       |
| <b>Doc. No.</b>  | 20170807:02243                      | <b>Price/SF</b>       | \$ 13.64      |

Assessor Parcel Numbers: 163-32-501-010, 163-32-501-011, 163-32-501-017, 163-32-501-018, 163-32-501-020



Photo date: 11/2017



Photo date: 5/2020

**COMPARABLE LAND SALE 3**

|                  |  |                       |               |
|------------------|--|-----------------------|---------------|
| <b>Location</b>  | Sky Vista Drive & Charleston Boulevard | <b>Close Date</b>     | 3/14/2017     |
| <b>APN(s)</b>    | 164-03-111-006 (Portion of)            | <b>Sale Price</b>     | \$ 24,084,350 |
| <b>Grantor</b>   | Howard Hughes Properties, Inc.         | <b>Cash Equqlancy</b> | \$ 24,084,350 |
| <b>Grantee</b>   | KB Home LV Caledonia, LLC              | <b>Acres</b>          | 37.26         |
| <b>Confirmed</b> | Buyer/Co-Star/County Records/Deed      | <b>Price/AC</b>       | \$ 646,386    |
| <b>Zoning</b>    | P-C, City of Las Vegas                 | <b>Square Feet</b>    | 1,623,046     |
| <b>Doc. No.</b>  | 20170314:00291                         | <b>Price/SF</b>       | \$ 14.84      |



Photo date: 11/2016



Photo date: 5/2020

**COMPARABLE LAND SALE 4**

|                  |   |                       |               |
|------------------|---|-----------------------|---------------|
| <b>Location</b>  | Olympia Ridge Drive & Oakland Hills Drive   | <b>Close Date</b>     | 7/7/2016      |
| <b>APN(s)</b>    | 191-07-501-011                              | <b>Sale Price</b>     | \$ 17,000,000 |
| <b>Grantor</b>   | Southern Highlands Investment Partners, LLC | <b>Cash Equqlancy</b> | \$ 17,000,000 |
| <b>Grantee</b>   | Greystone Nevada, LLC                       | <b>Acres</b>          | 29.00         |
| <b>Confirmed</b> | Broker/Co-Star/County Records/Deed          | <b>Price/AC</b>       | \$ 586,207    |
| <b>Zoning</b>    | R-2, Clark County                           | <b>Square Feet</b>    | 1,263,240     |
| <b>Doc. No.</b>  | 20160707:01060                              | <b>Price/SF</b>       | \$ 13.46      |



Photo date: 3/2016



Photo date: 5/2020

**COMPARABLE LAND SALE 5**

|                  |  |                       |               |
|------------------|--|-----------------------|---------------|
| <b>Location</b>  | Granite Ridge Drive & Grey Feather Drive | <b>Close Date</b>     | 2/26/2015     |
| <b>APN(s)</b>    | 63 Separate APN's                        | <b>Sale Price</b>     | \$ 13,650,000 |
| <b>Grantor</b>   | Howard Hughes Properties, Inc.           | <b>Cash Equqlancy</b> | \$ 13,650,000 |
| <b>Grantee</b>   | William Lyon Homes                       | <b>Acres</b>          | 15.00         |
| <b>Confirmed</b> | Broker/Co-Star/County Records/Deed       | <b>Price/AC</b>       | \$ 910,000    |
| <b>Zoning</b>    | R-2, Clark County                        | <b>Square Feet</b>    | 653,400       |
| <b>Doc. No.</b>  | 20150226:03174                           | <b>Price/SF</b>       | \$ 20.89      |

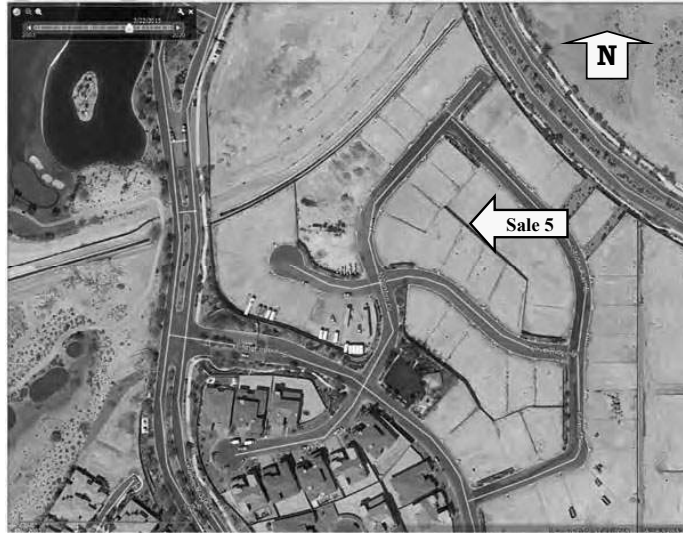


Photo date: 3/2015



Photo date: 5/2020

**ANALYSIS AND ADJUSTMENT OF SALES**

The adjustment process is typically applied through either quantitative or qualitative analysis. Quantitative adjustments are often developed as dollar or percentage amounts, while qualitative adjustments are simply expressed through relative comparison (i.e. significantly inferior).

Quantitative adjustments are most applicable when the quality and quantity of data allows paired sales or statistical analysis. Oftentimes, the paired-sale information is widely divergent. Due to the difficulty involved in adequately supporting adjustments for differences, I will use qualitative adjustments for those attributes clearly inferior or superior to the subject. Based on my experience and investigations of the marketplace, this approach reflects local market reality. Market participants can often identify superior or inferior characteristics when comparing properties. However, few buyers or sellers apply specific percentage or dollar-amount adjustments for particular differences. In contrast, they view a property overall and form an opinion as to whether one is worth more or less than another. A similar method of practical adjustment was discussed in an article in The Appraisal Journal, published by the Appraisal Institute.

Adjustments will be based on my rating of each comparable sale in relation to the subject. If the comparable is rated superior to the subject, the unit price of that sale is adjusted downward to reflect the subject's relative inferiority; if the comparable is rated inferior, its unit price is adjusted upward.

**ADJUSTMENTS**

Potential adjustments include the following categories, which typically affect sale prices. If a comparable sale significantly differs from the subject, an adjustment compensates for that difference.

**REAL PROPERTY RIGHTS CONVEYED**

This adjustment is generally applied to reflect the transfer of property rights different from those being appraised. A ground lease is an example of a restriction affecting vacant land. However, since all of the comparable sales analyzed in this report were conveyed in fee simple, no adjustment will be necessary for property rights conveyed in these sales.

**FINANCING TERMS**

This adjustment is generally applied to a property that transfers with atypical financing, such as having assumed an existing mortgage at a favorable interest rate. Conversely, a property may be encumbered with an above-market mortgage, which has no prepayment clause or a very costly prepayment clause. All of the comparable sales were stated to be cash equivalent transactions.

**CONDITIONS OF SALE**

This category reflects extraordinary motivations of the buyer or the seller to complete the sale. Examples can include a purchase for assemblage involving anticipated incremental value, or a quick sale for cash. Sale 2 in this analysis involved a County auction. Therefore, I compared the unit price paid for this site as compared to that commanded by similar sites during this period. My research suggests that there was no discount or premium paid. None of the other sales in this analysis were indicated to be affected by conditions of sale either. Therefore, no adjustments are required for conditions of sale.

**TIME - MARKET CONDITIONS**

Real estate values normally change over time. The rate of this change fluctuates due to investors' perceptions of prevailing market conditions. This adjustment category reflects market differences occurring between the effective date of the appraisal and the sales date of a comparable when values have appreciated or declined. To analyze the market conditions, I looked at a number of sales in the market area over the last several years and the prices per square foot that were being commanded. For this analysis, I researched residential land sales between the first quarter of 2015 and the third quarter of 2017.

I learned that the average price per square foot was \$9.00 in the first quarter of 2015. This increased to \$11.00 per square foot by the first quarter of 2016, \$12.00 by the first quarter of 2017 and \$13.00 by the third quarter of 2017. This reflects that market conditions steadily increased during the 2015-to-2017 time period. The effective date of value for this analysis is September 14, 2017. Sale 1 closed within one (1) day of that date and Sale 2 about one (1) month prior. Therefore, I have not applied a market conditions adjustment to those two (2) sales. As for Sales 3, 4 and 5, these sales closed between February of 2015 and March of 2017. Based on the increased market conditions between then and September 14, 2017, upward adjustments are warranted for Sales 3, 4 and 5.

**LOCATION**

Location has a great impact on property values. In researching these sales, I noted that Sales 1 and 3 are located very near each other within the larger Summerlin master planned community, which abuts the subject property. In analyzing these sales, I noted that they both were purchased for mid-range residential subdivisions with small lot sizes and prices ranging from around \$400,000 to over \$675,000. This is inferior to the larger custom homes on large lots surrounding the subject site.

Sale 2 is not located in a master planned community. This site abuts a concrete flood channel, which forms its western boundary and lower-priced homes and apartments. This site has small lots in the 3,500 to 4,500 square foot range and homes sell for around \$350,000. This location is substantially inferior to that of the subject property.

Sale 4 is located in the Southern Highlands master planned community, approximately ten (10) miles south of Tropicana Avenue. This community offers track home subdivisions, and larger lots with custom homes in the \$1 million to \$10 million range. However, Southern Highlands does not offer the services and amenities similar to Tivoli Village and Downtown Summerlin near the subject site. Therefore, an upward adjustment for this site's inferior location is warranted.

Sale 5 is located in Summerlin adjacent to the Ridges and Summit communities. This area also offers large lots and sell homes in the \$1 million to \$10 million range. This site also enjoys the same access to services and amenities that the subject enjoys. This site is considered to have a similar location to that of the subject with no location adjustment required.

**PHYSICAL CHARACTERISTICS**

This adjustment category generally reflects differences between a comparable and the subject in such areas as size, topography and level of off-site improvements installed at the time of sale.



As for size, the subject contains 34.07 acres, and is bracketed by the sizes of the comparable sales. In analyzing these sales, which range from 15.00 acres to 37.26 acres, I did not find that a size adjustment would be warranted. Sales 1 through 4 range from 22.53 acres to 37.74 acres commanded unit prices ranging from \$12.44 to \$14.84 per square foot, with the high end of the range being commanded by the largest site. Therefore, I have not applied any adjustments for size differences.

Topography differences deal with differences in the surface of the site. Based on the supplied information, the cost to level and grade the subject site, including demolishing the cart paths and ponds, is \$1,167,715. This reflects a cost of \$0.79 per square foot ( $\$1,167,715 \div 34.07 \div 43,560 = \$0.79$ ). In this analysis, Sales 3 and 4 were graded prior to the sale and Sale 5 was the sale of 63 finished lots with streets installed and utilities stubbed to each lot. The remaining sales with were basically raw land like the subject with offsite improvements completed. Therefore, Sales 3 and 4 each require a downward adjustment for being graded and Sale 5 requires a more substantial downward adjustment for being finished lots.

The subject and all but Sale 2 had a similar level of off-site improvements along their respective perimeters. Therefore, no adjustments for off-sites are warranted for those sales. Sale 2 lacked any offsite improvements along Russell Road at the time of sale. Therefore, I applied an upward adjustment to Sale 2 for lack this attribute at the time of sale.

In researching these sales, I also found that the buyers of Sales 1, 3 and 5 had to pay Special Improvements District (SID) costs while the homes on these respective sites were constructed. The SID for Sales 1 and 5 were then passed onto the eventual home buyers on a prorated basis. The buyer of sale 3 paid the entire SID when they closed on the land and did not pass that onto the homeowners. This was an additional cost to the buyer of these sites. Therefore, I applied an upward adjustment for this additional cost to the land buyer for Sales 1, 3 and 5.

I also considered that home developers buying residential land in Summerlin are required to pay the seller an additional fee after selling the completed homes. This is a percentage that is separately negotiated by each home builder before they purchase the land from Howard Hughes Properties, Inc. This is an additional expense for home builders in Summerlin that would not be a cost for a developer of the subject property. Therefore, I applied an upward adjustment for this additional cost to Sales 1, 3 and 5.

#### **ZONING / POTENTIAL USE**

This adjustment category generally reflects differences between a comparable and the subject's zoning designation and potential use. The subject has R-PD7 zoning, which is most similar to the R-2 zoning designations reflected by Sales 2, 4 and 5.

As for Sales 1 and 3, they had the P-C zoning, which is the predominate zoning in Summerlin. Sale 1 was developed at a density of 4.3 dwelling units per acre and Sale 3 is being developed at a density of 6.4 dwelling units per acre. I was unable to find any support for an adjustment between the R-PD7, R-2 and P-C zonings. Therefore, no adjustments for zoning have been applied.

## COMPARABLE SALES DISCUSSION

The following is a discussion of each sale and its comparison to the subject property as of September 14, 2017.

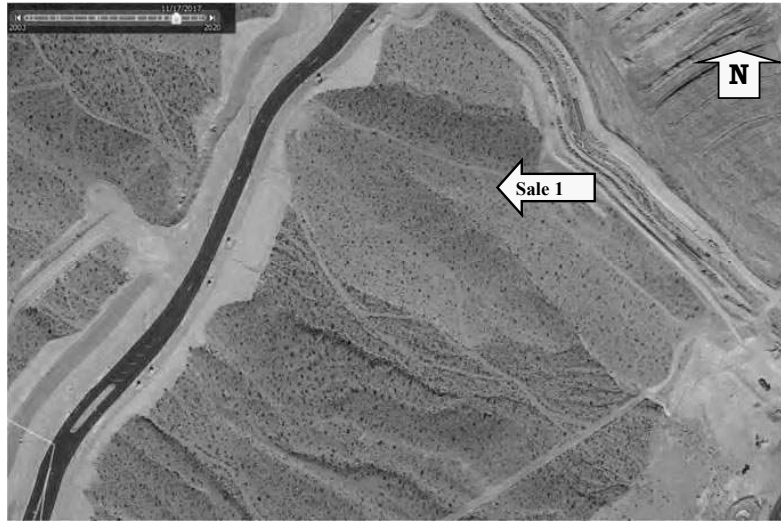


Photo date: 11/2017

**Sale 1** consisted of a portion of one (1) parcel (APN 137-33-810-001) located west of the intersection of Sky Vista Drive and Desert Moon Drive in Summerlin. This site, which contained 32.74 acres or 1,426,154 square feet, sold on September 15, 2017 for \$17,745,080 or \$12.44 per square foot. This property, which was later subdivided into 141 detached single-family home lots, included offsites along its boundaries. The zoning was P-C (Planned Community) at the time of sale and the build-out density was 4.3 dwellings per acre.

In comparing Sale 1 to the subject, I first considered that it closed within one (1) day of the effective date of value in this analysis. Therefore, no adjustment for any change in market conditions is warranted. Next, I considered the location differences. Sale 1 was purchased for a mid-range residential subdivision with typical lots being 6,000 square feet and home prices ranging from the low \$500,000's to almost \$700,000. This is inferior to subject's location, which is surrounded by much larger custom homes that have commanded up to \$10,000,000. Therefore, I applied an upward adjustment for the location difference. As for size and topography, these attributes were similar to those of the subject. However, I also learned that the buyer had to pay for the SID expenses during construction of the homes on this site. While this cost was eventually passed on to the home buyers when the homes are sold, this additional cost to the land buyer requires another upward adjustment. The last adjustment was also upward for the additional cost that developers pay Howard Hughes Properties, Inc., for sales in the Summerlin community. In this comparison, the only adjustments are upward for the location difference, SID carry cost and additional price paid to the seller after the homes are sold. This indicates that the unit price of \$12.44 per square foot commanded by this site in September of 2017 would have been substantially below what the subject could have commanded on the effective date of value.



Photo date: 11/2017

**Sale 2** consisted of five (5) contiguous parcels (APN's 163-32-501-010, 011, 017, 018 and 020) located on the south side of Russell Road, between Durango Drive and I-215. This site, which contained 21.54 acres or 938,282 square feet, sold on August 7, 2017 for \$12,794,150 or \$13.64 per square foot. This property, which was later subdivided into 72 detached single-family home lots, did not include offsites along its Russell Road boundary. The zoning was R-2 (Medium Density Residential [8 Units per Acre]) and the build-out density was 7.6 dwellings per acre.

In comparing Sale 2 to the subject, I first considered that it closed within about a month of the effective date of value in this analysis. Therefore, no adjustment for any change in market conditions is warranted. Next, I considered the location differences. Sale 2 was purchased for a lower-end residential subdivision with typical lots being 3,500 square feet and home prices around \$350,000. Its location, between I-215 Beltway, Russell Road and a flood wash is substantially inferior to the subject's location. Therefore, I applied a substantial upward adjustment for the location difference. The topography was raw land, which was similar to that of the subject and no adjustment is required. However, another upward adjustment is required for this site's lack of offsites along Russell Road at the time of sale. Again, all of the adjustments are upward. This indicates that the unit price of \$13.64 per square foot commanded by this site in August of 2017 would be substantially below what the subject could have commanded on the effective date of value.



Photo date: 11/2016

**Sale 3** consisted of a parcel located at the northwest corner of Charleston Boulevard and Sky Vista Drive in Summerlin. This site, which contained 37.26 acres or 1,623,046 square feet, sold on March 14, 2017 for \$24,084,350 or \$14.84 per square foot. This property, which was later subdivided into 237 detached single-family home lots, included offsites along its boundaries. The zoning was P-C (Planned Community) at the time of sale and the build-out density was 6.4 dwellings per acre.

In comparing Sale 3 to the subject, I first considered that it closed about six (6) months prior to the effective date of value in this analysis. Therefore, a slight upward adjustment for increased market conditions is warranted. Next, I considered the location differences. Sale 3 was purchased for a mid-range residential subdivision with typical lots being 5,000 square feet and home prices ranging from the upper \$300,000's to \$500,000. This is inferior to subject's location. Therefore, I applied an upward adjustment for the location difference. And while the size is similar, this site had been graded, which requires a downward adjustment when compared to the subject's raw state. The last two (2) adjustment were also upward for the SID cost and the additional cost that developers paid the seller, Howard Hughes Properties, Inc., after the homes were sold. In this comparison, the predominance of the adjustments is upward. This indicates that the unit price of \$14.84 per square foot commanded by this site in March of 2017 would be below what the subject could have commanded on the effective date of value.



Photo date: 3/2016

**Sale 4** consisted of a parcel located at the intersection of Olympia Ridge Drive and Oakland Hills Drive in Southern Highlands. This site, which contained 29.00 acres or 1,263,240 square feet, sold on July 7, 2016 for \$17,000,000 or \$13.46 per square foot. This property, which was later subdivided into 41 detached single-family home lots, included offsites along its boundaries. The zoning was R-2 at the time of sale and the build-out density was 1.4 dwellings per acre. According to the broker, there was no LID or SID.

In comparing Sale 4 to the subject, I first considered that it closed over a year prior to the effective date of value in this analysis. Therefore, an upward adjustment for increased market conditions since this site sold is warranted. Next, I considered the location differences. Sale 4 was purchased for a high-end residential subdivision with typical lots being at least one-half acre and home prices ranging from about \$1,900,000 to over \$2,200,000. However, the outlying Southern Highlands community does not offer the services and amenities available to the subject site. Therefore, an upward adjustment for this site's inferior location is also warranted. And while the size is similar, this site had been graded, which requires a downward adjustment when compared to the subject's raw state. Again, the predominance of the adjustments is upward, which indicates that the unit price of \$13.46 per square foot commanded by this site in July of 2016 would also be below what the subject could have commanded on the effective date of value.

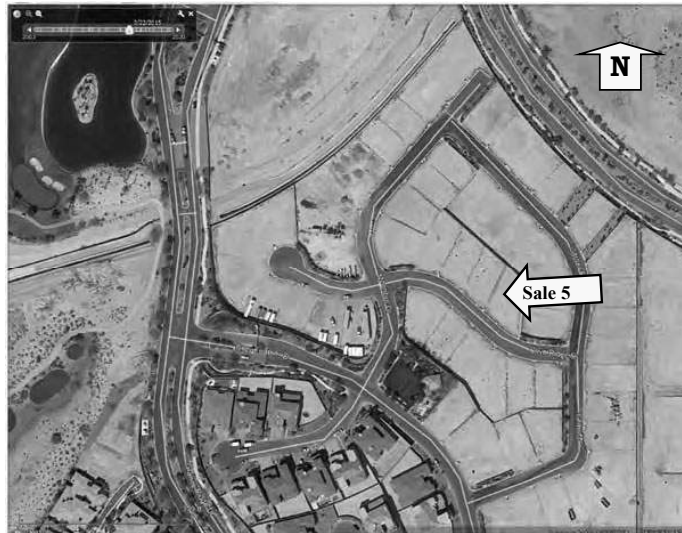


Photo date: 3/2015

**Sale 5** consisted of 63 finished home lots at the intersection of Granite Ridge Drive and Grey Feather Drive in Summerlin. This site, which contained 15.00 acres or 653,400 square feet, sold on February 26, 2015 for \$13,650,000 or \$20.89 per square foot. This property, which abuts the Ridges and is just northwest of the developing Summit community in Summerlin, included offsites along its boundaries and full streets installed. The property's zoning was R-2 at the time of sale and the build-out density was 4.2 dwellings per acre.

In comparing Sale 5 to the subject, I first considered that it closed in early 2015, over two (2) years prior to the effective date of value in this analysis. Therefore, an upward adjustment for increased market conditions is warranted. Next, I considered the location differences. Sale 5 was purchased for a high-end residential subdivision with typical lots being at least 7,500 square feet and home prices ranging from about \$1,000,000 to over \$1,500,000. This location abuts larger lots with higher priced homes, which is similar overall to that of the subject. Therefore, no adjustment for location is warranted. I then considered that these lots were finished with streets installed and utilities stubbed to each lot. This warrants a substantial downward adjustment as compared to the subject. I also learned that the buyer had to pay for the SID expenses during construction of the homes on this site, which requires another upward adjustment. The last adjustment was also upward for the additional cost that developers have to pay Howard Hughes Properties, Inc., for sales in the Summerlin community after the homes are sold. In this comparison, the predominance of the adjustments are slightly upward. This indicates that the unit price of \$20.89 per square foot commanded by this site in February of 2015 would have been slightly below what the subject could have commanded on the effective date of value.

**LAND VALUE CONCLUSION**

I analyzed five (5) land sales that closed escrow between February 2015 and September of 2017. The first four (4) are considered to be superpads that were sold to home developers for detached single-family residential developments. The fifth sale involved a site that had been subdivided into 63 parcels. These finished home lots were then sold to a home builder that has since completed the vertical construction and sold the homes.

The four (4) superpad sales commanded unit prices ranging from \$12.15 to \$14.84 per square foot (psf). After comparing each of these sales to the subject, I have concluded that the subject's unit value, as of September 14, 2017, would have been above that commanded by these four (4) superpad sales. I then compared Sale 5 to the subject. This site also required predominately upward adjustments.

In this analysis, the estimated market value is to be based on the highest price that the property could have commanded on September 14, 2017. After considering all of the previous information, I have estimated the unit value of the subject at \$23.00 per square foot by the Sales Comparison Approach. This value is 10% above the unit price for Sale 5, which was an early 2015 sale with a similar location, finished lots, and had the additional requirement that the buyer carry the SID during construction and pay the required premium to Howard Hughes Properties, Inc., after selling the completed homes. Based on my research and the previous comparison analysis, I have estimated the market value of the subject property in the before condition by the Sales Comparison Approach, as of September 14, 2017, as follows:

| <b>Sales Comparison Approach</b>      |               |
|---------------------------------------|---------------|
| Estimated Value per SF                | \$ 23.00      |
| Subject's Square Feet Before the Take | 1,484,089     |
| Indicated Value                       | \$ 34,134,052 |
| Rounded to                            | \$ 34,135,000 |

**The above value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## INCOME APPROACH – SUBDIVISION METHOD

As a check to the reasonableness of the value concluded by the Sales Comparison Approach, I completed a discounted cash flow analysis. I completed this analysis for the subject property based on three (3) scenarios; 1) Sixty-one (61) home lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) home lots ranging from 3.96 acres to 5.39 acres.

The sixty-one (61) lot scenario, which had already been approved by City Staff, was heard by the Planning Commission at their February 14, 2017 Planning Commission Meeting. The following summarizes the results of that meeting where the Planning Commission discussed a Waiver (WVR-68480) to allow 32-foot streets with a sidewalk on one side where 47-foot private streets with sidewalks on both sides are required within a gated residential development, the Site Development Plan Review (SDR-68481) for a proposed 61-lot single family residential development subject to conditions, and the Tentative Map (TMP-68482) for a proposed 61-lot single family residential subdivision. Peter Lowenstein, Planning Section Manager, presented the Staff report at that meeting. Mr. Lowenstein stated:

“Mr. Chairman, the proposed 61-lot residential development would have a net density of 1.79 dwelling units per acre. The proposed Lo general plan designation, which allows up to 5.40 units per acre, allows for less intense development than the surrounding established residential areas, which allow up to 8.49 units per acre. The densities and average lot size of the proposed development are compatible to the adjacent residential lots. Staff therefore recommends approval of the General Plan Amendment to low density residential.

The Applicant is requesting interior streets that do not meet Title 19 standards. However, the proposed private interior streets will provide roadways, sidewalks, and landscaping in a configuration similar and compatible with that of the surrounding development. The 30-foot wide streets will allow for emergency access and limited on street parking, while the adjacent sidewalk and landscaping will provide safe pedestrian movement and enhance aesthetics within the subdivision. Staff therefore recommends approval of the requested waiver. The development standards proposed by the Applicant fall into two categories, those containing 20,000 square feet or less, and those containing greater than 20,000 square feet. Standards for a lot 20,000 square feet or less are generally consistent with the RD zoning properties, and lots greater than 20,000 square feet are generally consistent with RE zoned properties.

If applied, these standards would allow for development that is compatible with that of the surrounding gated neighborhoods. In addition, the proposed plan includes usable open space areas that exceed the requirements of Title 19. Staff therefore recommends approval of the Site Development Plan Review and Tentative Map.”

Motions were then made by Glenn Trowbridge to approve a WVR-68480, SDR-68481, and TMP-68482. All three (3) of those motions passed.

For the purpose of the following discounted cash flow analysis under Scenario 2 and Scenario 3, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The estimated values indicated by the Income Approach for the sixteen (16) lot and seven (7) lot scenarios are based on the hypothetical condition that similar Waiver, SDR and TMP approvals were given to these development plans.

The discussion that follows presents an analysis of the As Is, Bulk Discounted Value of the subject. It is based on the Subdivision Development Method, which is an application of the Income Capitalization Approach. The reason that it is categorized as an income approach to value is that it is based on converting a projected cash flow into an indication of value.



The subdivision method is used by developers to determine the price they can afford to pay for a property assuming certain costs, gross sales, and return considerations. The steps required to complete this analysis are as follows:

- Estimate the retail values (probable selling prices) for the lots to be sold within the project – finished lots;
- Apply appropriate growth rates, if applicable, to concluded values, construction costs and operating expenses;
- Project a reasonable rate of absorption for unit sales, typically based upon an analysis of similar projects or overall market supply and demand;
- Estimate the direct and indirect construction costs for the lots;
- Estimate the appropriate holding and selling costs for the project (site development costs, marketing/commissions, closing costs, real estate taxes on unsold lots during the holding period, and miscellaneous expenses on sold and unsold lots);
- Estimate the appropriate profit rate and discount rate for the type of project under consideration;
- Discount the net cash flows to arrive at a value indication.

The DCF model allows for an analysis of the subject's financial performance throughout the projection period, modeling the anticipated revenues and expenses for the project based on assumptions derived from the market. The first step in the process is to estimate the aggregate retail lot values.

#### RETAIL CUSTOM HOME LOT VALUE ANALYSIS

I researched the market for recent bulk custom home lot sales; however, no comparable bulk custom home lot sales were found. This is not unusual as custom home lots are typically not sold in bulk. Therefore, I researched the market for individual custom home lot sales that could provide an indication of the retail lot value of the subject lots "as if finished."

The subject site is located in an area predominately improved with high-end custom homes. Homes in the developments at the northwest and southwest corners of Hualapai and Alta have sold for more than \$4 million. Within the Queensridge development, there are 106 custom home lots. Of those 106, all were sold and all but nine (9) have since been improved with multi-million dollar homes. Since 2000, I found that 72 of these homes have sold for an average price of \$3.5 million. Over the last five (5) years, the average price paid increased to \$4.0 million. It is my understanding that the owner of the subject property built 40 of those 106 custom homes, along with both of the Queensridge Towers.

To estimate the subject's average "finished" lot value, I researched custom home lot sales in Queensridge, the Ridges, and the Summit. Queensridge began development in 1997 and is almost built-out. I found two lot sales between 2013 and the effective date of value. One (1) sale in 2013 and one (1) sale 2016. The 2013 sale was for \$25.91 per square foot and the 2016 sale was at \$30.02 per square foot. This reflects an increase of 15.9% over 31 months or just over 6.15% per year. I also noted a lot sale in 2018 that resold just over a year later. The resale reflected annualized increase of about 8.4% per year.

In the Ridges, I noted fourteen (14) lot sales in 2016. The unit prices ranged from a low of \$29.63 per square foot, to a high of \$81.62 per square foot. In 2017, there were another fourteen (14) lot sales. The unit prices for these lot sales ranged from a low of \$30.63 per

square foot (+ 3.4%), to a high of \$85.49 per square foot (+ 4.7%). The average unit price in 2016 was \$43.43 per square foot, which increased to \$49.28 per square foot in 2017 (+ 13.5%). One (1) of the 2016 lot sales was resold in 2017. The unit price in November of 2016 was \$29.97 per square foot. This lot resold in October of 2017 for \$35.07 per square foot. This reflects an annualized increase of 17.7%.

I also researched lot sales in the Summit. The Summit closed on 50 sales lot sales in the eight months it operated in 2016. The unit prices ranged from a low of \$31.82 per square foot, to a high of \$158.32 per square foot. In 2017, there were fifteen (15) lot sales. The unit prices for these lot sales ranged from a low of \$40.17 per square foot (+ 26.2%), to a high of \$161.27 per square foot (+ 1.9%). The average unit price in 2016 was \$66.59 per square foot, which increased to \$71.84 per square foot in 2017 (+ 7.9%). One (1) of the 2016 lot sales was resold in 2017. The unit price in September of 2016 was \$53.61 per square foot. This lot resold in June of 2019 for \$90.16 per square foot. This reflects an annualized increase of about 24.8%. The seller stated that he just received an offer one day; the lot had not been listed for sale.

The highest per square foot lot sale in 2017 in the Summit, which was the sale of a 1.21 acre lot for \$8,500,000 or \$161.27 per square foot, was resold in 2020 for \$10,500,000 or \$199.21 per square foot. This reflected an annualized increase of about 9.2%.

To summarize, the most recent custom lot sale in Queensridge, which was about a year and a half before the effective date of value in this analysis commanded over \$30 per square foot, while sales in the Ridges and Summit were averaging \$49.28 per square foot and \$71.84 per square foot, respectively, in 2017.

After considering this information, I have estimated the average lot value of the 61 proposed subject lots at \$40.00 per square foot. Similar to the comparable developments, I am estimating a slightly lower unit value for the larger sixteen (16) and seven (7) lot configurations. Based on the sales occurring during 2017, I am estimating the average lot value at \$35.00 per square foot for the 16 lot configuration, and \$32.00 per square foot for the larger lots in the seven (7) lot configuration.

As for market conditions, or price increases, I found that between 2016 and 2017 unit prices for custom home lots were increasing. The highest increases were being experienced in the Summit development. I noted four sale resales in the Summit that reflected annualized increases ranging from 5.4% to 24.9%. There were also six (6) lots that the developer bought back for what they were sold for and then resold those lots for higher prices.

I also reviewed Sales Traq's historic percent change in home values. Sales Traq has been doing residential real estate research for more than two decades in this area. They research home pricing, sales, appreciation rates and development data. Sales Traq breaks down home price appreciation rates based on zip code.

The subject is located in zip code 89145. Beginning in 2012, which was following the Great Recession, the appreciation rates in this zip code increased each year. These increases ranged from 6.2% in 2015, to 45.9% in 2013. They reported the 2016, 2017, 2018 increases at 11.8%, 10.5% and 21.2%, respectively. From 2012 to 2018, the average increase was 16.9%. Removing the high (+45.9%) and low (6.2%), reflects an average of 13.4%, and looking only at the last three (3) years reflects an average of 14.5%. This area reflects that it experienced a strong and steady recovery following the Great Recession.

Based on the market conditions in the third quarter of 2017, and after considering the increases being experienced in the 2016, 2017 time period, I will apply annual increases of 8% to the estimated retail lot values.

### **ABSORPTION**

For absorption rates I looked at historical sales from Queensridge, the Ridges and the Summit. Unfortunately, the developer of the custom homes lots within Queensridge sold-out many years ago. In researching lot sales at the Ridges, I found that there were 14 lot sales in 2016 and 14 lot sales in 2017. This reflects an average absorption rate of 3.5 lots per quarter. These lots ranged in size from 0.27 acres (11,761 SF) to 0.90 acres (49,204 SF). Of those 28 sales, 18 were less than 18,000 SF.

As for the Summit, there were 50 lot sales in 2016 and 15 lot sales in 2017. This development began selling lots in May of 2016. The sale of 50 lots represented 34% the total lots available. Over 20 months, this reflected an average absorption rate of 9.75 lots per quarter ( $65 \text{ lots} \div 20 \text{ Months} = 3.25/\text{Month} \times 3 \text{ Months} = 9.75/\text{Quarter}$ ). These lots ranged in size from 0.57 acres (24,768 SF) to 4.69 acres (204,253 SF).

Absorption rates for the competitive set reflected lot sales between 3.5 per month for a development that has been selling lots since the early 2000's, to almost 10 sales per month for at the Summit, that opened in 2016. Based on size and value differences of the subject lots under the different scenarios, I estimated different absorption rates for the subject's 61 lots versus the 16 lot scenario versus the 7 lot scenario.

I also must consider that the subject lots need to be graded, and streets and utilities need to be installed. I spoke to Jerry Englehart, Estimating Manager for Aggregate Industries SWR, Inc. Mr. Englehart provided the estimate for grading, demolition of cart paths and ponds. Mr. Englehart told me that he did this type of work for Howard Hughes Properties Summerlin Development, most recently in Summerlin's Village 30, which is near the far western Red Rock area. Mr. Englehart estimated that getting these lots to a finished state would take approximately 13-to-15 months, with the 13-month period related to the seven (7) lot scenario and the 15-month timeline related to the 61 lot scenario.

After considering the market activity for custom home lots in the 2016 and 2017 time frame, and the fact that the developer would have over a year to presell lots, for the 61-lot scenario I estimated 30 presales and then three (3) sales per quarter through the holding period. For Scenario 2 (16 lots), I estimated eight (8) presales and then two (2) sales per quarter through the holding period. As for Scenario 3 (7 lots), which would offer the largest lots, I estimated five (5) presales and then one (1) sale per quarter through the holding period.

### **EXPENSES**

#### **DEVELOPMENT COSTS**

Development costs are the costs the landowner would have had to pay to bring the subject lots to a finished state. This would include all of the grading and site work, installing interior streets, stubbing utilities to each lot, installing landscaping and an entrance off Hualapai, and all other expenses that would have been incurred by the developer to bring these lots to a finished state.

To estimate these costs, the landowner contracted with GCW, previously known as GC Wallace, to prepare the grading plans and quantity take-offs, which were then provided to Aggregate Industries for a cost estimate for the development of the site based on the

previously discussed scenarios; 1) Sixty-one (61) home lots; 2) Sixteen (16) home lots, and; 3) Seven (7) homes lots. This cost breakdown includes the demolition, grading and interior streets. It also includes cost estimates for utilities, landscaping the entryway, bonds, and other fees that would be incurred.

This cost breakdown was prepared in 2020 but adjusted by Aggregate to reflect what the costs would have been in September of 2017. Aggregate did not include contingencies in the estimates. They stated that the contingencies were built into the cost estimates since there were no negotiations to reduce these bids. Typically, they would negotiate on a project such as this and stated that they could have gotten a reduction of around 10% on the bids, which would offset the typical contingencies. The following is the cost estimates provided by Aggregate.

**COST COMPARISON - 61, 16, 7 LOTS**  
**180 LAND COMPANY LLC**

| DESCRIPTION OF SCOPE  | 61           | Per Lot    | 16           | Per Lot    | 7            | Per Lot    |
|---|--------------|------------|--------------|------------|--------------|------------|
| DEMOLITION, GRADING, CONCRETE & ROADWAY, WET UTILITIES & FEES | \$ 5,016,573 | \$ 82,239  | \$ 4,057,660 | \$ 253,604 | \$ 3,984,732 | \$ 569,247 |
| TELEPHONE/CABLE, NVE CONDUIT & RELATED FACILITIES             | \$ 364,505   | \$ 5,975   | \$ 248,575   | \$ 15,536  | \$ 175,348   | \$ 25,050  |
| NATURAL GAS   | \$ 142,588   | \$ 2,338   | \$ 142,588   | \$ 8,912   | \$ 142,588   | \$ 20,370  |
| NVE ELECTRICAL  | \$ 134,394   | \$ 2,203   | \$ 134,394   | \$ 8,400   | \$ 134,394   | \$ 19,199  |
| LANDSCAPING & ENTRYWAY  | \$ 846,738   | \$ 13,881  | \$ 751,509   | \$ 46,969  | \$ 675,786   | \$ 96,541  |
| IMPROVEMENT PLANS (ENGINEERING/MAPPING                        | \$ 132,700   | \$ 2,175   | \$ 145,925   | \$ 9,120   | \$ 143,260   | \$ 20,466  |
| BOND ESTIMATE: PLAN CHECK & INSPECTION FEE                    | \$ 85,825    | \$ 1,407   | \$ 63,251    | \$ 3,953   | \$ 54,326    | \$ 7,761   |
| BOND FEE  | \$ 25,528    | \$ 418     | \$ 18,570    | \$ 1,161   | \$ 15,785    | \$ 2,255   |
| FEES  | \$ 1,155,578 | \$ 18,944  | \$ 455,148   | \$ 28,447  | \$ 260,314   | \$ 37,188  |
| TOTAL COST  | \$ 7,904,429 | \$ 129,581 | \$ 6,017,620 | \$ 376,101 | \$ 5,586,533 | \$ 798,076 |
| TOTAL COST PER SQUARE FOOT                                    | \$ 5.33      |            | \$ 4.05      |            | \$ 3.76      |            |

\* Contingency: No separate contingency amount was added to the cost estimates as it is believed that it is built into the cost estimate amounts, which were not negotiated nor derived from a bidding process, which negotiation and bidding would have resulted in an approximate 10% reduction of the above provided cost estimates.

## OTHER EXPENSES

I estimated sales commission and marketing at 4% of the gross sales. I have found these expenses have historically ranged from 3% to 5%. With all that is involved in the process, it is common for the builder to pay the buyer's agent a percentage of the sales price. Therefore, I applied a 4% figure to the gross sales. Closing costs (per lot) were then included at \$2,500. This expense takes into account any normal escrow fees to be incurred at the time of closing. Real estate taxes for the lots are estimated by dividing the annual tax expense by the number of lots in each scenario. For example, with the real estate tax expense at \$205,227, the expenses for the 61 lot scenario would be \$841.09 per quarter ( $\$205,227 \div 61 \div 4 = \$841.09$ ). This expense is based on the real estate taxes provided by the Clark County Treasurer for the 2018 fiscal year. I also included a miscellaneous expense line item that would include all other additional costs that might be incurred during this period. A figure of \$2,500 per lot per has been used.

## PROFIT & DISCOUNT RATE

For information on expected profit and discount rates, I looked to the National Development Land Market section of the PwC Real Estate Investor Survey. The land analysis was not included in their third quarter 2017 report; however, it was included in their fourth quarter 2017 report. They reported that "discount rates (including developer's profit) for the national development land market range from 10.0% to 20.00% and average 15.40% this quarter – 60 basis points below the average six months ago. Thus, the average rate in second quarter of 2017 was 16.0% ( $15.40\% + 0.60\% = 16.00\%$ ).

In the PwC selected survey responses, there are two (2) residential developer responses. The first, which was stated to be currently active in the Nevada market, stated that the combination of profit and discount rate was in the 18.00% to 20.00% range. The second respondent stated that the combined profit and discount rate were in the 16.00% to 18.00% range. I estimated the profit at 10.00% and the discount rate at 10.00%, for a total of 20.00%, which is at the upper-end of the indicated range for the 16-lot and 7-lot scenarios. These scenarios have sell-out periods of 2.25 years and 1.50 years. For the 61-lot scenario, I added 100 basis points to the discount rate for the increased risk of a development with a longer sell-out period of four (4) years from the effective date of value to the final lot sale.

Using the previous data, I have prepared cash flows for each scenario. The tables on the following pages summarize the present value of the cash flows under each of the three (3) scenarios.

## SCENARIO 1 – 61 CUSTOM HOME LOTS

|                                 |             |
|---------------------------------|-------------|
| Total Number of Units           | 61          |
| # of Presales                   | 30          |
| # Units Sold per Quarter        | 3           |
| Average Unit Size (SF)          | 19,773      |
| Initial Selling Price (\$/Unit) | \$ 40.00    |
| Price Increases per Quarter     | 2.00%       |
| Development Costs per Unit      | \$ 122,480  |
| Sales & Marketing (%)           | 4.00%       |
| Closing Costs/Unit Sold         | \$ 2,500    |
| Taxes per Quarter (\$/Unit)     | \$ 841.09   |
| Misc. Exp. (\$/Unit)            | \$ 2,500.00 |
| Misc. Exp. Unsold (\$/Unit)     | \$ 2,500.00 |
| Discount Rate (%)               | 11.00%      |
| Profit Based on Retail (%)      | 10.00%      |

| DISCOUNTED CASH FLOW MODEL  |               |              |              |              |              |               |              |              |              |              |  |
|-----------------------------|---------------|--------------|--------------|--------------|--------------|---------------|--------------|--------------|--------------|--------------|--|
| Month                       | 09/14/17      | 12/14/17     | 03/14/18     | 06/14/18     | 09/14/18     | 12/14/18      | 03/14/19     | 06/14/19     | 09/14/19     | 12/14/19     |  |
| Total Units Sold            | 0             | 0            | 0            | 0            | 0            | 30            | 33           | 36           | 39           | 42           |  |
| Units Sold/Quarter          | 0             | 0            | 0            | 0            | 0            | 30            | 3            | 3            | 3            | 3            |  |
| Total Units Remaining       | 61            | 61           | 61           | 61           | 61           | 31            | 28           | 25           | 22           | 19           |  |
| Price Per Unit              | \$ 790,934    | \$ 806,753   | \$ 822,888   | \$ 839,346   | \$ 856,132   | \$ 873,255    | \$ 890,720   | \$ 908,535   | \$ 926,705   | \$ 945,239   |  |
| Total Sales                 | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 26,197,654 | \$ 2,672,161 | \$ 2,725,604 | \$ 2,780,116 | \$ 2,835,718 |  |
| Expenses:                   |               |              |              |              |              |               |              |              |              |              |  |
| Development Costs           | \$ -          | \$ 612,398   | \$ 612,398   | \$ 612,398   | \$ 612,398   | \$ 367,439    | \$ 367,439   | \$ 367,439   | \$ 367,439   | \$ 367,439   |  |
| Sales & Marketing           | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 1,047,906  | \$ 106,886   | \$ 109,024   | \$ 111,205   | \$ 113,429   |  |
| Closing Costs               | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 75,000     | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500     |  |
| Real Estate Taxes           | \$ 51,307     | \$ 51,307    | \$ 51,307    | \$ 51,307    | \$ 51,307    | \$ 26,074     | \$ 23,551    | \$ 21,027    | \$ 18,504    | \$ 15,981    |  |
| Misc. Expenses Sold Units   | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 75,000     | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500     |  |
| Misc. Expenses Unsold Units | \$ 152,500    | \$ 152,500   | \$ 152,500   | \$ 152,500   | \$ 152,500   | \$ 77,500     | \$ 70,000    | \$ 62,500    | \$ 55,000    | \$ 47,500    |  |
| Total Expenses              | \$ 203,807    | \$ 816,204   | \$ 816,204   | \$ 816,204   | \$ 816,204   | \$ 1,668,919  | \$ 582,876   | \$ 574,990   | \$ 567,147   | \$ 559,348   |  |
| Net Income Before Profit    | \$ (203,807)  | \$ (816,204) | \$ (816,204) | \$ (816,204) | \$ (816,204) | \$ 24,528,736 | \$ 2,089,285 | \$ 2,150,614 | \$ 2,212,969 | \$ 2,276,370 |  |
| Less Profit @ 10%           | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 2,452,874  | \$ 208,929   | \$ 215,061   | \$ 221,297   | \$ 227,637   |  |
| Net Income After Profit     | \$ (203,807)  | \$ (816,204) | \$ (816,204) | \$ (816,204) | \$ (816,204) | \$ 22,075,862 | \$ 1,880,357 | \$ 1,935,552 | \$ 1,991,672 | \$ 2,048,733 |  |
| Present Value Factor @ 11%  | 1.0000        | 0.9732       | 0.9472       | 0.9218       | 0.8972       | 0.8732        | 0.8498       | 0.8270       | 0.8049       | 0.7834       |  |
| Total Present Value         | \$ (203,807)  | \$ (794,359) | \$ (773,099) | \$ (752,408) | \$ (732,271) | \$ 19,275,627 | \$ 1,597,899 | \$ 1,600,782 | \$ 1,603,109 | \$ 1,604,904 |  |
| Month                       | 03/14/20      | 06/14/20     | 09/14/20     | 12/14/20     | 03/14/21     | 06/14/21      | 09/14/21     |              |              |              |  |
| Total Units Sold            | 45            | 48           | 51           | 54           | 57           | 60            | 61           |              |              |              |  |
| Units Sold/Quarter          | 3             | 3            | 3            | 3            | 3            | 3             | 1            |              |              |              |  |
| Total Units Remaining       | 16            | 13           | 10           | 7            | 4            | 1             | 0            |              |              |              |  |
| Price Per Unit              | \$ 964,144    | \$ 983,427   | \$ 1,003,096 | \$ 1,023,158 | \$ 1,043,621 | \$ 1,064,493  | \$ 1,085,783 |              |              |              |  |
| Total Sales                 | \$ 2,892,433  | \$ 2,950,281 | \$ 3,009,287 | \$ 3,069,473 | \$ 3,130,862 | \$ 3,193,479  | \$ 1,085,783 |              |              |              |  |
| Expenses:                   |               |              |              |              |              |               |              |              |              |              |  |
| Development Costs           | \$ 367,439    | \$ 367,439   | \$ 367,439   | \$ 367,439   | \$ 367,439   | \$ 122,480    | \$ -         |              |              |              |  |
| Sales & Marketing           | \$ 115,697    | \$ 118,011   | \$ 120,371   | \$ 122,779   | \$ 125,234   | \$ 127,739    | \$ 43,431    |              |              |              |  |
| Closing Costs               | \$ 7,500      | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500      | \$ 2,500     |              |              |              |  |
| Real Estate Taxes           | \$ 13,458     | \$ 10,934    | \$ 8,411     | \$ 5,888     | \$ 3,364     | \$ 841        | \$ -         |              |              |              |  |
| Misc. Expenses Sold Units   | \$ 7,500      | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500     | \$ 7,500      | \$ 2,500     |              |              |              |  |
| Misc. Expenses Unsold Units | \$ 40,000     | \$ 32,500    | \$ 25,000    | \$ 17,500    | \$ 10,000    | \$ 2,500      | \$ -         |              |              |              |  |
| Total Expenses              | \$ 551,593    | \$ 543,884   | \$ 536,221   | \$ 528,605   | \$ 521,037   | \$ 268,560    | \$ 48,431    |              |              |              |  |
| Net Income Before Profit    | \$ 2,340,839  | \$ 2,406,397 | \$ 2,473,066 | \$ 2,540,868 | \$ 2,609,825 | \$ 2,924,920  | \$ 1,037,352 |              |              |              |  |
| Less Profit @ 10%           | \$ 234,084    | \$ 240,640   | \$ 247,307   | \$ 254,087   | \$ 260,982   | \$ 292,492    | \$ 103,735   |              |              |              |  |
| Net Income After Profit     | \$ 2,106,755  | \$ 2,165,758 | \$ 2,225,759 | \$ 2,286,781 | \$ 2,348,842 | \$ 2,632,428  | \$ 933,617   |              |              |              |  |
| Present Value Factor @ 11%  | 0.7624        | 0.7420       | 0.7221       | 0.7028       | 0.6840       | 0.6657        | 0.6479       |              |              |              |  |
| Total Present Value         | \$ 1,606,186  | \$ 1,606,977 | \$ 1,607,297 | \$ 1,607,166 | \$ 1,606,602 | \$ 1,752,383  | \$ 604,866   |              |              |              |  |
| Total Present Value         | \$ 32,817,854 |              |              |              |              |               |              |              |              |              |  |
| Rounded to:                 | \$ 32,820,000 |              |              |              |              |               |              |              |              |              |  |

**SCENARIO 2 – 16 CUSTOM HOME LOTS**

|                             |             |
|-----------------------------|-------------|
| Total Number of Units       | 16          |
| # of Presales               | 8           |
| # Units Sold per Quarter    | 2           |
| Average Unit Size (SF)      | 87,736      |
| Initial Selling Price (\$F) | \$ 35.00    |
| Price Increases per Quarter | 2.00%       |
| Development Costs per Unit  | \$ 357,727  |
| Sales & Marketing (%)       | 4.00%       |
| Closing Costs/Unit Sold     | \$ 2,500    |
| Taxes per Quarter (\$/Unit) | \$ 3,206.67 |
| Misc. Exp. (\$/Unit)        | \$ 2,500.00 |
| Misc. Exp. Unsold (\$/Unit) | \$ 2,500.00 |
| Discount Rate (%)           | 10.00%      |
| Profit Based on Retail (%)  | 10.00%      |

| DISCOUNTED CASH FLOW MODEL  |               |              |              |              |              |               |              |              |              |              |  |
|-----------------------------|---------------|--------------|--------------|--------------|--------------|---------------|--------------|--------------|--------------|--------------|--|
| Month                       | 09/14/17      | 12/14/17     | 03/14/18     | 06/14/18     | 09/14/18     | 12/14/18      | 03/14/19     | 06/14/19     | 09/14/19     | 12/14/19     |  |
| Total Units Sold            | 0             | 0            | 0            | 0            | 0            | 8             | 10           | 12           | 14           | 16           |  |
| Units Sold/Quarter          | 0             | 0            | 0            | 0            | 0            | 8             | 2            | 2            | 2            | 2            |  |
| Total Units Remaining       | 16            | 16           | 16           | 16           | 16           | 8             | 6            | 4            | 2            | 0            |  |
| Price Per Unit              | \$ 3,070,743  | \$ 3,132,157 | \$ 3,194,800 | \$ 3,258,697 | \$ 3,323,870 | \$ 3,390,348  | \$ 3,458,155 | \$ 3,527,318 | \$ 3,597,864 | \$ 3,669,822 |  |
| Total Sales                 | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 27,122,783 | \$ 6,916,310 | \$ 7,054,636 | \$ 7,195,729 | \$ 7,339,643 |  |
| Expenses:                   |               |              |              |              |              |               |              |              |              |              |  |
| Development Costs           | \$ -          | \$ 715,453   | \$ 715,453   | \$ 715,453   | \$ 715,453   | \$ 715,453    | \$ 715,453   | \$ 715,453   | \$ 715,453   | \$ -         |  |
| Sales & Marketing           | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 1,084,911  | \$ 276,652   | \$ 282,185   | \$ 287,829   | \$ 293,586   |  |
| Closing Costs               | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 20,000     | \$ 5,000     | \$ 5,000     | \$ 5,000     | \$ 5,000     |  |
| Real Estate Taxes           | \$ 51,307     | \$ 51,307    | \$ 51,307    | \$ 51,307    | \$ 51,307    | \$ 25,653     | \$ 19,240    | \$ 12,827    | \$ 6,413     | \$ -         |  |
| Misc. Expenses Sold Units   | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 20,000     | \$ 5,000     | \$ 5,000     | \$ 5,000     | \$ 5,000     |  |
| Misc. Expenses Unsold Units | \$ 40,000     | \$ 40,000    | \$ 40,000    | \$ 40,000    | \$ 40,000    | \$ 20,000     | \$ 15,000    | \$ 10,000    | \$ 5,000     | \$ -         |  |
| Total Expenses              | \$ 91,307     | \$ 806,760   | \$ 806,760   | \$ 806,760   | \$ 806,760   | \$ 1,886,018  | \$ 1,036,346 | \$ 1,030,465 | \$ 1,024,696 | \$ 303,586   |  |
| Net Income Before Profit    | \$ (91,307)   | \$ (806,760) | \$ (806,760) | \$ (806,760) | \$ (806,760) | \$ 25,236,765 | \$ 5,879,964 | \$ 6,024,170 | \$ 6,171,033 | \$ 7,036,057 |  |
| Less Profit @ 10%           | \$ -          | \$ -         | \$ -         | \$ -         | \$ -         | \$ 2,523,676  | \$ 587,996   | \$ 602,417   | \$ 617,103   | \$ 703,606   |  |
| Net Income After Profit     | \$ (91,307)   | \$ (806,760) | \$ (806,760) | \$ (806,760) | \$ (806,760) | \$ 22,713,088 | \$ 5,291,968 | \$ 5,421,753 | \$ 5,553,930 | \$ 6,332,452 |  |
| Present Value Factor @ 10%  | 1.0000        | 0.9756       | 0.9518       | 0.9286       | 0.9060       | 0.8839        | 0.8623       | 0.8413       | 0.8207       | 0.8007       |  |
| Total Present Value         | \$ (91,307)   | \$ (787,083) | \$ (767,886) | \$ (749,157) | \$ (730,885) | \$ 20,075,061 | \$ 4,563,247 | \$ 4,561,133 | \$ 4,558,369 | \$ 5,070,574 |  |
| Total Present Value         | \$ 35,702,065 |              |              |              |              |               |              |              |              |              |  |
| Rounded to:                 | \$ 35,700,000 |              |              |              |              |               |              |              |              |              |  |

For the purpose of the above analysis, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The above value for the 16-lot scenario is based on the hypothetical condition that a Waiver, SDR and TMP approvals, similar to those approved for the 61-lot scenario, was given to this development plan of sixteen (16) lots.

**SCENARIO 3 – 7 CUSTOM HOME LOTS**

|                             |            |
|-----------------------------|------------|
| Total Number of Units       | 7          |
| # of Presales               | 5          |
| # Units Sold per Quarter    | 1          |
| Average Unit Size (SF)      | 208,982    |
| Initial Selling Price (SF)  | \$ 32.00   |
| Price Increases per Quarter | 2.00%      |
| Development Costs per Unit  | \$ 763,752 |
| Sales & Marketing (%)       | 4.00%      |
| Closing Costs/Unit Sold     | \$ 2,500   |
| Taxes per Quarter (\$/Unit) | \$ 7,330   |
| Misc. Exp. (\$/Unit)        | \$ 2,500   |
| Misc. Exp. Unsold (\$/Unit) | \$ 2,500   |
| Discount Rate (%)           | 10.00%     |
| Profit Based on Retail (%)  | 10.00%     |

| DISCOUNTED CASH FLOW MODEL      |               |                |                |                |               |              |              |  |
|---------------------------------|---------------|----------------|----------------|----------------|---------------|--------------|--------------|--|
| Month                           | 09/14/17      | 12/14/17       | 03/14/18       | 06/14/18       | 09/14/18      | 12/14/18     | 03/14/19     |  |
| Total Units Sold                | 0             | 0              | 0              | 0              | 5             | 6            | 7            |  |
| Units Sold/Quarter              | 0             | 0              | 0              | 0              | 5             | 1            | 1            |  |
| Total Units Remaining           | 7             | 7              | 7              | 7              | 2             | 1            | 0            |  |
| Price Per Unit                  | \$ 6,687,415  | \$ 6,821,163   | \$ 6,957,586   | \$ 7,096,738   | \$ 7,238,673  | \$ 7,383,446 | \$ 7,531,115 |  |
| <b>Total Sales</b>              | \$ -          | \$ -           | \$ -           | \$ -           | \$ 36,193,365 | \$ 7,383,446 | \$ 7,531,115 |  |
| <b>Expenses:</b>                |               |                |                |                |               |              |              |  |
| Development Costs               | \$ -          | \$ 1,272,920   | \$ 1,272,920   | \$ 1,272,920   | \$ 763,752    | \$ 763,752   | \$ -         |  |
| Sales & Marketing               | \$ -          | \$ -           | \$ -           | \$ -           | \$ 1,447,735  | \$ 295,338   | \$ 301,245   |  |
| Closing Costs                   | \$ -          | \$ -           | \$ -           | \$ -           | \$ 12,500     | \$ 2,500     | \$ 2,500     |  |
| Real Estate Taxes               | \$ 51,307     | \$ 51,307      | \$ 51,307      | \$ 51,307      | \$ 14,659     | \$ 7,330     | \$ -         |  |
| Misc. Expenses Sold Units       | \$ -          | \$ -           | \$ -           | \$ -           | \$ 12,500     | \$ 2,500     | \$ 2,500     |  |
| Misc. Expenses Unsold Units     | \$ 17,500     | \$ 17,500      | \$ 17,500      | \$ 17,500      | \$ 5,000      | \$ 2,500     | \$ -         |  |
| <b>Total Expenses</b>           | \$ 68,807     | \$ 1,341,727   | \$ 1,341,727   | \$ 1,341,727   | \$ 2,256,145  | \$ 1,073,919 | \$ 306,245   |  |
| <b>Net Income Before Profit</b> | \$ (68,807)   | \$ (1,341,727) | \$ (1,341,727) | \$ (1,341,727) | \$ 33,937,219 | \$ 6,309,527 | \$ 7,224,871 |  |
| Less Profit @ 10%               | \$ -          | \$ -           | \$ -           | \$ -           | \$ 3,393,722  | \$ 630,953   | \$ 722,487   |  |
| <b>Net Income After Profit</b>  | \$ (68,807)   | \$ (1,341,727) | \$ (1,341,727) | \$ (1,341,727) | \$ 30,543,497 | \$ 5,678,574 | \$ 6,502,384 |  |
| Present Value Factor @ 10%      | 1.0000        | 0.9756         | 0.9518         | 0.9286         | 0.9060        | 0.8839       | 0.8623       |  |
| <b>Total Present Value</b>      | \$ (68,807)   | \$ (1,309,002) | \$ (1,277,075) | \$ (1,245,927) | \$ 27,670,901 | \$ 5,019,032 | \$ 5,606,985 |  |
| <b>Total Present Value</b>      | \$ 34,396,108 |                |                |                |               |              |              |  |
| <b>Rounded to:</b>              | \$ 34,400,000 |                |                |                |               |              |              |  |

For the purpose of the above analysis, I used the following hypothetical condition, and its use might have affected the assignment results:

1. The above value for the 7-lot scenario is based on the hypothetical condition that a Waiver, SDR and TMP approvals, similar to those approved for the 61-lot scenario, was given to this development plan of seven (7) lots.



**CONCLUSION OF THE INCOME APPROACH – BEFORE CONDITION**

As a check to the reasonableness to the value concluded by the Sales Comparison Approach, I completed a discounted cash flow analysis for the subject property based on three (3) scenarios; 1) Sixty-one (61) homes lots ranging from 0.22 acres to 1.08 acres; 2) Sixteen (16) home lots ranging from 1.58 acres to 2.90 acres, and; 3) Seven (7) homes lots ranging from 3.96 acres to 5.39 acres. The following is a summary of the values indicated for each scenario.

| <b>Subdivision Approach</b> |                    |               |  |
|-----------------------------|--------------------|---------------|--|
|                             | <b>Total Value</b> | <b>Per SF</b> |  |
| 61-Lots                     | \$ 32,820,000      | \$22.11       |  |
| 16-Lots                     | \$ 35,700,000      | \$24.06       |  |
| 7-Lots                      | \$ 34,400,000      | \$23.18       |  |

In this section of the analysis, the values for the three (3) scenarios indicate that a residential development that conforms to the surrounding uses is the highest and best use of the site. Therefore, based on the preceding analysis and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the “retrospective” market value of the Fee Simple Estate in the subject property in the before condition by the Income Approach, as of the effective date of value, September 14, 2017, was:

**THIRTY-FIVE MILLION SEVEN HUNDRED THOUSAND DOLLARS**  
**(\$35,700,000)**

**The above values are based on the following extraordinary assumption and hypothetical conditions, and their use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.
2. The values for the sixteen (16) lot and seven (7) lot scenarios are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the sixty-one (61) lot scenario, were given to the development plans of sixteen (16) lots and seven (7) lots.

**VALUE CONCLUSION – BEFORE CONDITION**

The values indicated by my analyses are as follows:

| <b>Reconciliation</b>               |                 | <b>Total Value</b>   | <b>Per SF</b>   |
|-------------------------------------|-----------------|----------------------|-----------------|
| Sales Comparison Approach to Value  |                 | \$ 34,135,000        | \$ 23.00        |
| Subdivision Approach (DCF) to Value | 61-Lot Scenario | \$ 32,820,000        | \$ 22.11        |
|                                     | 16-Lot Scenario | \$ 35,700,000        | \$ 24.06        |
|                                     | 7-Lot Scenario  | \$ 34,400,000        | \$ 23.18        |
| <b>Concluded Value</b>              |                 | <b>\$ 34,135,000</b> | <b>\$ 23.00</b> |

The subject of this report consists of one (1) parcel of land containing 34.07 acres or 1,484,089 square feet. The property is bordered by custom home lots and multi-million dollar homes in the master planned community of Queensridge. The site also abuts custom home lots and multi-million dollar homes in the masterplan community of Summerlin to the west and northwest. The property is and has been zoned for residential use for over 20 years.

In this analysis, I used the Sales Comparison Approach to estimate the value of this 34.07 acre site. The Sales Comparison Approach concluded a value of \$34,135,000, which is equal to \$23.00 square foot. As a check to reasonableness, I used the Income Approach and concluded that the highest and best use was to develop the site with residential home lots.

Therefore, based on the analyses and conclusions indicated by the Sales Comparison Approach in this report, and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the market value of the fee simple estate in this property in the before condition, as of September 14, 2017, was:

**THIRTY-FOUR MILLION ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS  
(\$34,135,000)**

**The above value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

**In addition, the values for the 16-lot and 7-lot scenarios at the top of this page are based on the following hypothetical condition and its use might have affected the assignment results:**

1. The values for the sixteen (16) lot and seven (7) lot scenarios stated at the top of the page are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the 61-lot scenario, were given to the development plans of sixteen (16) lots and seven (7) lots.

## DESCRIPTION OF THE GOVERNMENT ACTIONS

I have been provided with the Landowners' Motion to Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief and have reviewed the relevant facts section of that motion and have also reviewed the supporting documents. Based on that motion and other information I have been provided, the City's actions toward the property are set forth in summary format as follows:

The landowner applied to the City of Las Vegas to develop the subject property with a residential use. The landowner looked at developing the property with 61-custom home lots, which would reflect a density of 1.79 dwelling units per acre. This would have been over 75% below the permitted density of 7.49 dwelling units per acre permitted under the R-PD7 zoning. The City Planning Staff reviewed the applications and recommended approval. The City Planning Director, Tom Perrigo, stated at the hearing on the landowner's applications that the proposed development met all City requirements and should be approved. The City Council denied the 35 Acre Property applications, stating as the basis for denial was their desire to see the entire 250 acre residential zoned land developed under one Master Development Agreement (MDA).

Following that denial, the landowner worked with the City on development of the 35 acre subject property along with all other parcels that made up the entire 250 acre residentially zoned land. The landowners complied with the City's demands and made numerous concessions. A partial list of the landowners' concessions, as part of this MDA, included:

- 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas;
- 2) building brand new driveways and security gates and gate houses for the existing security entry ways for the Queensridge development;
- 3) building two new parks, one with a vineyard; and,
- 4) reducing the number of units, increasing the minimum lot size, and reducing the number and height of the towers.

In total, the City required at least 16 new and revised versions of the MDA. When completed, the City's Planning Staff, who participated at in preparing the MDA, recommended approval. In fact, they stated the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan." The following occurred in June through August period of 2017.

On June 27, 2017, Lauren Storia, a Senior Permit Technician in Building and Safety for the City of Las Vegas sent what appears to be an internal email with the subject – Badlands. The email stated: "If anyone sees a permit for grading or clear and grub at the **Badlands** Golf Course, please see Kevin, Rod, or me. Do Not Permit without approval from one of these three."

In August 2017, the Landowners filed with the City a request for three access points to streets the entire 250 acre residential zoned land abuts – one (1) on Rampart Boulevard and two (2) on Hualapai Way. This was a routine request. It is my understanding that the Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways and that this is a recognized property right in Nevada. The City denied this access application citing as the basis for the denial, “any development on this site has the potential to have significant impact on the surrounding properties....”

Also, in August 2017, the Landowners filed with the City a request to install chain link fencing to enclose two water features/ponds that are located on the 250 acre residential zoned land. City Code states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review. The City denied the application, citing as the basis for denial, “any development on this site has the potential to have significant impact on the surrounding properties....”

The City then required that these matters be presented to the City Council through a “Major Review” pursuant to LVMC 19.16.100(G)(1)(b). The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/ requirements, and publicly noticed Planning Commission and City Council hearings. The City required all of that to install a chain link fence to enclose and protect two water features/ponds on the landowners property.

On August 2, 2017, the MDA was presented to the City Council. The City denied the entire MDA. The City did not ask the landowner to make more concessions, like increasing the setbacks or reducing the units per acre, it just denied the MDA altogether.

The City then adopted two Bills that appeared to target the entire 250 acre residential zoned land to create additional barriers to this site’s development. The first was Bill No. 2018-5, which Councilwomen Fiore acknowledged “[t]his bill is for one development and one development only. The bill is only about Badlands Golf Course . . . I call it the Yohan Lowie Bill.”

The second Bill was Bill No. 2018-24. Bill 2018-24 defines the “requirements pertaining to the Development Review and Approval Process, Development Standards, and the Closure Maintenance Plan” for Repurposing Certain Golf Courses and Open Spaces.

This Bill required approval of master drainage, traffic, and sewer studies before any applications are submitted; ecological studies; 3D topographic development models; providing ongoing public access to the private land; and requiring the Landowner to hire security and monitoring details. Additionally, Bill 2018-24 included;

G. Closure Maintenance Plan, 2. Maintenance Plan Requirements . . . the maintenance plan must, at a minimum and with respect to the property; (d) Provide documentation regarding ongoing public access, access to utility easements, and plans to ensure that such access is maintained.

“5. Failure to comply with the provisions of this Subsection (G) or with the terms of an approved maintenance plan: a) Shall be grounds for denial of any development application under this Title that would be required for a repurposing project subject to this Section; b) Is unlawful and may be enforced by means of a misdemeanor prosecution; and c) In addition to and independent of any enforcement authority or remedy described in this Title, may be enforced as in the case of a violation of Title 6 by means of a civil proceeding pursuant to LVMC 6.02.400 and 6.02.460.”

This Bill would make it a misdemeanor subject to a \$1,000 a day fine or “imprisonment for a term of not more than six months” or any combination of the two for an owner of a discontinued golf course who fails to allow ongoing public access to their property.

When asked if this Bill would be retroactive at the September 4, 2018 Recommending Committee Meeting, Planning Director Robert Summerfield stated; “Now, I do want to be clear that there are provisions under the – closure the area that would allow for the City to require some level of maintenance on a closed facility, because the language does say something along the lines of once we’ve been made aware that – a location has closed or – may close.”

At the October 15, 2018 Recommending Committee Meeting, Stephanie Allen, an attorney representing the landowner stated that at the last meeting that it was asked how many properties would fall under this ordinance. Staff stated there 292 properties that would be subject to this ordinance. Ms. Allen informed the Committee that of those 292 properties, only two (2) properties out of the 292 parcels that the city provided would actually be subject to this Bill and one of those was in the process of trying to get it converted to the HOA’s ownership. If that were converted to the HOA, it too, would be exempt under this ordinance. This left only one (1) property that this ordinance would actually apply to with all the exemptions that the City put into the ordinance. She told the Committee that this was a significant concern because “it’s unconstitutional to pass laws that are targeted at one particular property owner, and there are serious ramifications for the City if it were to impose such a law.”

The landowner submitted an application for a Technical Drainage Study, which should have been routine, because the City and the Landowners already executed an On-Site Drainage Improvements Maintenance Agreement allowing the Landowners to remove and replace the flood control facilities on the property. In addition, the City’s Bill 2018-5, referenced previously, requires a technical drainage study in order to grant entitlements. The City, however, was mandating an impossible scenario - that there can be no drainage study without entitlements while requiring a drainage study to get entitlements. How could that have been accomplished?

As part of the numerous development applications filed by the Landowners over the prior three (3) years to develop all or portions of the 250 acre residential zoned land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property consistent with the R-PD7 hard zoning. The City Planning Staff reviewed the applications and determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval.

City Council set the hearing for May 16, 2018 – the same day it was to consider Bill 2018-5. Bill 2018-5 was on the morning agenda and the 133 Acre Property applications were on the afternoon agenda. The City approved Bill 2018-5 in the morning session. In the afternoon session, Councilman Seroka stated that Bill 2018 - 5 applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 acre property filed by the landowner. This apparently surprised the City Manager and other Council members as the following statements were made after Councilman Seroka's announcement.

Scott Adams (City Manager): "I would say we are not aware of the action. ... So we're not really in a position to respond technically on the merits of the motion, cause it, it's something that I was not aware of."

Councilwoman Fiore: "none of us had any briefing on what just occurred."

Councilman Anthony: 95 percent of what Councilman Seroka said was, I heard it for the first time. So I – don't know what it means. I don't understand it."

The City then voted to strike the applications.

According to documents obtained from the City pursuant to a Nevada Public Records Request, it was discovered that the City had allocated \$15 million to acquire the Landowners' property - "\$15 Million Purchase Badlands and operate." It is also of note that Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the landowners' private property into a "fitness park." In an interview with KNPR Seroka stated that he would "turn (the landowners' private property) over to the City." Councilman Coffin apparently agreed, his intent in an email as follows: "I think your third way is the only quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green." Councilmen Coffin and Seroka also exchanged emails wherein they stated they would not compromise one inch and that they "need an approach to accomplish the desired outcome."

Councilman Seroka testified at the Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could use their private property for which they have a right to develop. In reference to development on the landowners' property, Councilman Coffin stated, "I am voting against the whole thing," and called the landowners' representative a vulgar name, and expressed that he will continue voting against any development.

Councilman Seroka, at a public meeting on June 21, 2018, told all of the Landowners' neighbors that the Landowners' Property belonged to the neighbors and the neighbors had the right to use the Landowners' Property as recreation and open space.

"So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres] is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres] is the open space. Every community that was built around here, that [250 Acres] is the open space. The development across the street, across Rampart, that [250 Acres] is the open space....it is also documented as part recreation, open space...That is part recreation and open space..." *LO Appx., Ex. 136, 17:23-18:15, HOA meeting page*

“Now that we have the documentation clear, that is open space for this part of our community. It is the recreation space for this part of it. It is not me, it is what the law says. It is what the contracts say between the city and the community, and that is what you all are living on right now.” LO Appx., Ex. 136, 20:23-21:3, HOA meeting.

Donald Richards the Superintendent of the 250 Acre Residentially zoned land has stated that the neighbors are using the Landowners’ Property and that they have told him “it is our open space.”

It is important to again note: 1) the landowners’ own private property; 2) the 35 Acre Property was hard zoned R-PD7 and the permitted uses by right of the 35 Acre Property are single-family and multi-family residential; 3) the landowners’ property was not for sale; and 4) the Clark County Assessor had placed a residential value of almost \$89 million on the property. Based on my 20 + years as a member of the Clark County Board of Equalization, the assessed value is typically well below a property’s market value in this area. Which based on my analysis in this report, is true for the subject property.

Based on these facts, it appears that the City is treating this landowner differently than it has treated all other units in the area and all other landowners in the area for the purpose of denying the landowner’s property rights so the subject property will remain in a vacant condition to be used by the surrounding neighbors as recreation, open space and viewshed.

#### **EFFECT OF THE GOVERNMENT ACTIONS ON THE VALUE OF THE SITE – AFTER CONDITION**

In the before condition, I analyzed the property as if it were available to be developed with a residential use in compliance with its R-PD7 zoning as of September 14, 2017. In the before condition, the legally permissible, physically possible, financially feasible and maximally productive use, (the highest and best use in the before condition) was a residential development.

In the after condition, the City’s actions have taken the landowners property. The City’s actions removed the possibility of residential development; however, the landowner is still required to pay property taxes as if the property could be developed with a residential use. This immediately added an annual expense that was over \$205,000 and that amount would be expected to increase over time.

Due to the effect of the government’s actions, I concluded there is no market to sell this property with these development restrictions along with extraordinarily high annual expenses. You would be paying for a property with no economic benefit that has annual expenses in excess of \$205,000.

#### **VALUE OF THE REMAINDER - AFTER CONDITION**

In the previous section of this report, I researched comparable superpad and custom lot sales to arrive at a supportable opinion of the subject’s value in the before condition. Based on my research, I concluded that the value of the property in the after condition would be nominal at best and possibly negative. In researching “nominal” value, I found no definition that provided an actual dollar amount. Therefore, I researched what is the “nominal” value figure used by the Clark County Assessor as well as nominal values that are used by my peers.

The Assessor's office informed me that Nevada State Law used to have a minimal figure that the Assessor could put on properties with what was concluded to be a nominal value. The Assessor had been subject to a State law that set the minimum or nominal value at \$1.25 per acre. In this case, that would reflect the nominal value at \$42.59 (34.07 Acres x \$1.25/Acre = \$42.59). That law is no longer in effect and the Assessor can now put \$0.00 on a nominal use parcel.

I also learned from the Assessor's office that the Nevada State Board of Equalization had used \$100 for parcels with nominal value. As for my peers, I have seen appraisers use \$100 and \$100 per acre as a nominal value when looking at patent easements. However, even an "after value" of \$100 lacks any market support.

Based on my research, an informed buyer would not be interested in a property under these conditions; no economic benefits but annual an annual expense of over \$200,000 that would be expected to increase. Due to the government actions, it is my opinion that there would have been no interest for the subject property in the after condition.

## CONCLUSION

I previously estimated the value of the subject property in the before condition at \$34,135,000. Based on my analysis of the property in the after condition, the City's actions result in catastrophic damages to this property. This is based on the value of the property in the after condition being zero. The following is a summary of the calculation and the resulting damages due to the City's actions.

## SUMMARY OF JUST COMPENSATION DUE TO THE CITY' ACTIONS

| <b>Just Compensation Due to Property Owner Due to City's Actions</b> |               |
|--|---------------|
| Indicated Value in the Before Condition                              | \$ 34,135,000 |
| Less: Indicated Value in the After Condition                         | \$ -          |
| Damages Due to the Government Actions                                | \$ 34,135,000 |
| Rounded to:  | \$ 34,135,000 |



**SPECIAL BENEFITS**

When part of a landowner's property is condemned, the landowner is entitled to compensation for the part taken, in addition to any damage caused to the remaining property as a result of the taking. These damages are called severance damages. However, the appraiser must also analyze what benefits, if any, are due to the project.

It is my understanding that the government wants the subject property to remain vacant and possibly what they have referred to as a "fitness park." I searched the Unified Development Code Title 19 for a description of what a fitness park would include but I did not find that fitness park was a term used in that document.

In this situation, the government actions do not appear to have had a beneficial effect on the surrounding area, nor can I identify any Special Benefit specifically for the subject property. Therefore, I have concluded that there would be no Special Benefits accruing directly and solely to the advantage of this property in the after condition.

## CONCLUSION TO JUST COMPENSATION

Based on the analyses and conclusions in this report and subject to the definitions, assumptions, and limiting conditions expressed herein, it is my opinion that the retrospective just compensation due to the landowner for the government's actions, as of September 14, 2017, was:

| Estimated Just Compensation Due to Landowner |                 |
|--|-----------------|
| 1. Value before taking                       | \$ 34,135,000   |
| 2. Less value after the taking               | - \$ -          |
| 3. Damages to the remainder                  | = \$ 34,135,000 |
| 4. Less special benefits to remainder        | - \$ -          |
| 5. Just compensation due to property owner   | = \$ 34,135,000 |

**The value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

## CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- I have performed no services, as an appraiser or any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding the agreement to perform this assignment.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- Tio S. DiFederico, MAI, made an inspection of the property that is the subject of this report on August 12, 2020. The photographs in the body of this report were taken during that inspection.
- No one provided significant real property appraisal assistance to the person signing this certification.

- As of the date of this report, Tio S. DiFederico, MAI, has completed the continuing education program of the Appraisal Institute.



Tio S. DiFederico, MAI  
Certified General Real Estate Appraiser  
Nevada Certificate # A.0000150-CG

## ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is based on the following assumptions, except as otherwise noted in the report.

1. The title is marketable and free and clear of all liens, encumbrances, encroachments, easements and restrictions. The property is under responsible ownership and competent management and is available for its highest and best use.
2. There are no existing judgments or pending or threatened litigation that could affect the value of the property.
3. There are no hidden or undisclosed conditions of the land that would render the property more or less valuable.
4. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.

This appraisal is subject to the following limiting conditions, except as otherwise noted in the report.

1. An appraisal is inherently subjective and represents our opinion as to the value of the property appraised.
2. The conclusions stated in our appraisal apply only as of the effective date of the appraisal, and no representation is made as to the effect of subsequent events.
3. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated.
4. No environmental impact studies were either requested or made in conjunction with this appraisal, and we reserve the right to revise or rescind any of the value opinions based upon any subsequent environmental impact studies. If any environmental impact statement is required by law, the appraisal assumes that such statement will be favorable and will be approved by the appropriate regulatory bodies.
5. Unless otherwise agreed to in writing, we are not required to give testimony, respond to any subpoena or attend any court, governmental or other hearing with reference to the property without compensation relative to such additional employment.
6. We have made no survey of the property and assume no responsibility in connection with such matters. Any sketch or survey of the property included in this report is for illustrative purposes only and should not be considered to be scaled accurately for size. The appraisal covers the property as described in this report, and the areas and dimensions set forth are assumed to be correct.
7. We accept no responsibility for considerations requiring expertise in other fields; including, but are not limited to, legal descriptions and other legal matters such as legal title, geologic considerations such as soils and seismic stability, and civil, mechanical, electrical, structural and other engineering and environmental matters.
8. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or any reference to the Appraisal Institute) shall be disseminated through advertising media, public relations media, news media or any

- other means of communication (including without limitation prospectuses, private offering memoranda and other offering material provided to prospective investors) without the prior written consent of the person signing the report.
9. Information, estimates and opinions contained in the report, obtained from third-party sources are assumed to be reliable and have not been independently verified.
  10. The current purchasing power of the dollar is the basis for the value stated in our appraisal; we assumed that no extreme fluctuations in economic cycles will occur.
  11. The value found herein is subject to these and to any other assumptions or conditions set forth in the body of this report but which may have been omitted from this list of Assumptions and Limiting Conditions.
  12. The analyses contained in the report necessarily incorporate numerous estimates and assumptions regarding property performance, general and local business and economic conditions, the absence of material changes in the competitive environment and other matters. Some estimates or assumptions, however, inevitably will not materialize, and unanticipated events and circumstances may occur; therefore, actual results achieved during the period covered by our analysis will vary from our estimates, and the variations may be material.
  13. The *Americans with Disabilities Act (ADA)* became effective January 26, 1992. We have not made a specific survey or analysis of any property to determine whether the physical aspects of the improvements meet the *ADA* accessibility guidelines. Given that compliance can change with each owner's financial ability to cure non-accessibility, the value of the subject does not consider possible non-compliance. A specific study of both the owner's financial ability and the cost to cure any deficiencies would be needed for the Department of Justice to determine compliance.
  14. The appraisal report is prepared for the exclusive benefit of the Client, its subsidiaries and/or affiliates. It may not be used or relied upon by any other party. All parties who use or rely upon any information in the report without our written consent do so at their own risk.
  15. No studies have been provided to us indicating the presence or absence of hazardous materials on the subject property, and our valuation is predicated upon the assumption that the subject property is free and clear of any environment hazards. No representations or warranties are made regarding the environmental condition of the subject property and the person signing the report shall not be responsible for any such environmental conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because we are not experts in the field of environmental conditions, the appraisal report cannot be considered as an environmental assessment of the subject property.
  16. The person signing the report may have reviewed available flood maps and may have noted in the appraisal report whether the subject property is located in an identified Special Flood Hazard Area. We are not qualified to detect such areas and therefore do not guarantee such determinations. The presence of flood plain areas and/or wetlands may affect the value of the property, and the value conclusion is predicated on the assumption that wetlands are non-existent or minimal.

17. It is expressly acknowledged that in any action which may be brought against The DiFederico Group, The DiFederico Group, Inc. or their respective officers, owners, managers, directors, agents, subcontractors or employees, arising out of, relating to, or in any way pertaining to this engagement, the appraisal reports, or any estimates or information contained therein, the DiFederico Group Parties shall not be responsible or liable for an incidental or consequential damages or losses, unless the appraisal was fraudulent or prepared with gross negligence. It is further acknowledged that the collective liability of the DiFederico Group Parties in any such action shall not exceed the fees paid for the preparation of the appraisal report unless the appraisal was fraudulent or prepared with gross negligence. Finally, it is acknowledged that the fees charged herein are in reliance upon the foregoing limitations of liability.
18. The DiFederico Group, an independently owned and operated company, has prepared the appraisal for the specific purpose stated elsewhere in the report. The intended use of the appraisal is stated in the General Information section of the report. The use of the appraisal report by anyone other than the Client is prohibited except as otherwise provided. Accordingly, the appraisal report is addressed to and shall be solely for the Client's use and benefit unless we provide our prior written consent. We expressly reserve the unrestricted right to withhold our consent to your disclosure of the appraisal report (or any part thereof including, without limitation, conclusions of value and our identity), to any third parties. Stated again for clarification, unless our prior written consent is obtained, no third party may rely on the appraisal report (even if their reliance was foreseeable).
19. The conclusions of this report are estimates based on known current trends and reasonably foreseeable future occurrences. These estimates are based partly on property information, data obtained in public records, interviews, existing trends, buyer-seller decision criteria in the current market, and research conducted by third parties, and such data are not always completely reliable. The DiFederico Group, Inc. and the undersigned are not responsible for these and other future occurrences that could not have reasonably been foreseen on the effective date of this assignment. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance. While we are of the opinion that our findings are reasonable based on current market conditions, we do not represent that these estimates will actually be achieved, as they are subject to considerable risk and uncertainty. Moreover, we assume competent and effective marketing for the duration of the projected holding period of this property.

**The value is based on the following extraordinary assumption and its use might have affected the assignment results:**

1. The value estimated in this appraisal is based on the extraordinary assumption that the condition of the site noted during my August 12, 2020 property inspection was similar to its condition on September 14, 2017, the effective date of value for this assignment.

**The values of the 16-lot and 7-lot scenarios in this report are based on the following hypothetical condition, and its use might have affected the assignment results:**

2. The values for the 16-lot and 7-lot scenarios are based on the hypothetical condition that a Waiver, SDR and TMP approval, similar to those approved for the 61-lot scenario, were given to the development plans of 16-lots and 7-lots.

## JURISDICTIONAL EXCEPTION

This appraisal report has been made with the following jurisdictional exception:

The Uniform Standards of Professional Practice (USPAP) Standards Rule 1-2(c) Comment states:

When reasonable exposure time is a component of the definition for the value opinion being developed, the appraiser must also develop an opinion of reasonable exposure time linked to that value opinion.

The Uniform Standards of Professional Practice (USPAP) Standards Rule 2-2(b)(v) Comment states:

When an opinion of reasonable exposure time has been developed in compliance with Standards Rule 1-2(c), the opinion must be stated in the report.

It is imperative that the appraiser utilize the correct definition of market value. For appraisals prepared for eminent domain proceedings in Nevada, appraisers shall use the following definition of market value:

The highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available. In determining value, except as otherwise provided in this subsection, the property sought to be condemned must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If the property is condemned primarily for a profit-making purpose, the property sought to be condemned must be valued at the use to which the entity that is condemning the property intends to put the property, if such use results in a higher value for the property. (Added to NRS by 1959, 596; A 1989, 548; 1993, 525; 1995, 501; 2007, 331)

The Nevada Constitution has a similar definition:

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

Contrary to USPAP Standards Rule 1-2(c), this definition of market value does not call for the estimate of value to be *linked* to a specific *exposure time* estimate, but merely that the property be exposed on the open market for a *reasonable* length of time, given the character of the property and its market. Therefore, the appraiser's estimate of market value shall not be *linked* to a specific exposure time when conducting appraisals for eminent domain acquisition purposes in Nevada under these Standards.

In this report I have not linked the value estimate to a specific exposure time estimate. This is a jurisdictional exception requiring non-compliance of Standards Rule 1-2(c) and 2-2(b)(v).



**ADDENDUM A**

**APPRAISER QUALIFICATIONS**

## PROFESSIONAL QUALIFICATIONS OF TIO S. DIFEDERICO, MAI

### EXPERIENCE:

I am a life-long resident of Las Vegas. I graduated from the University of Nevada, Las Vegas (UNLV) with a Bachelor of Science in Business Administration as a Finance Major. I obtained a real estate license in the 1984 and began appraising real estate in 1986 with Shelli L. Lowe & Associates. In 1999 Shelli L. Lowe & Associates joined several other premier appraisal firms across the country to form a network of appraisal expertise to serve national and international clients; Integra Realty Resources (IRR). This national exposure provided me an opportunity to appraise a full range of properties and to interact with leaders in the appraisal and business community. I was typically entrusted with the most complex assignments and became qualified by the courts to testify in litigation as an expert in the appraisal of vacant land, residential, apartment, office, retail, industrial and hotel casino properties. In 2009 I formed The DiFederico Group.

I am a Certified General Appraiser in the State of Nevada (Certificate Number A.0000150-CG) and earned the MAI designation from the Appraisal Institute (MAI No. 12567). I am an appointed member of the Clark County Board of Equalization (BOE) and have served as the President and Vice President for the Las Vegas Chapter of the Appraisal Institute. In 2017 I was selected by the State of Nevada's Real Estate Division to be a member of their Appraisal Advisory Review Committee. My function on this committee is to review appraisal reports that are being considered by the State for disciplinary actions.

I have extensive litigation experience involving fee and partial takings, as well as permanent and temporary construction easements. I have also completed numerous assignments involving air rights takings and ground leases. I completed these assignments for both property-owners and government agencies. In addition, I have completed assignments involving partnership disputes, bankruptcies, estate valuations and partial interests.

I have appraised office buildings, business parks, apartment complexes, shopping malls, taverns, restaurants, night clubs, cell sites, billboard sites, water rights and special use properties. These include the +/- 400 Acre Groom Mine overlooking Area 51, the Las Vegas Motor Speedway, and the Henderson Executive Airport. I have appraised the Summerlin, Kyle Canyon and Tuscany Master-Planned Communities and the site of the proposed Ivanpah Airport.

I have also been hired by both Clark County and lenders to analyze leasehold and sandwich leasehold positions involving Clark County's ground leases in the area referred to as the Co-operative Management Area (CMA). I was also selected by Clark County to analyze the value of modifying the CMA restrictions.

My appraisal experience also includes appraisals of hotel casinos. These include: The Riviera Hotel Casino, The LVH – Las Vegas Hotel & Casino, Horseshoe, Lady Luck, Dukes, Golden Phoenix and Lucky Dragon in Nevada. I have also been hired to analyze the ground leases for the Texas Hotel Casino, Eastside Cannery, Buffalo Bills, Primm Valley and Whiskey Pete's in Nevada. Outside of Nevada, I have appraised the Isle of Capri in Louisiana, the Aztar Casino in Missouri, and the Twin River in Rhode Island, as well as proposed hotel casinos in Macau and Puerto Rico. And, while serving on the BOE, I have analyzed and valued well over a hundred hotel casinos in Clark County.

In October of 2002, I was a guest speaker at the Southern California Chapter of the Appraisal Institute's "Appraising Special Purpose Properties Seminar." My portion of the program addressed "Appraising Casino's." I was also a guest speaker at the December 2017 National Eminent Domain Conference in Las Vegas that was sponsored by CLE International. I was asked to discuss how to appraise casino's in the "Business Valuations: When and How" portion of the conference.

**PROFESSIONAL/COMMUNITY AFFILIATIONS:**

Professional Designation: MAI- Member of the Appraisal Institute (MAI No. 12567)  
 Licensed Appraiser: A.0000150-CG (Certificate Number in Nevada)  
 Member: Clark County Board of Equalization (BOE) (Since 1998)  
 Elected Member: President - Las Vegas Chapter - Appraisal Institute – 2012  
 Elected Member: Vice President - Las Vegas Chapter - Appraisal Institute – 2011  
 Elected Member: 2<sup>nd</sup> Vice President – Las Vegas Chapter – Appraisal Institute - 2010  
 Member: Appraisal Institute - Region VII Nominating Committee – 2013  
 Chair: LV Chapter of the Appraisal Institute Nominating Committee – 2013  
 Member: LV Chapter of the Appraisal Institute Nominating Committee - 1999  
 Member: Appraisal Institute Education Committee - 1991  
 Member: Bishop Gorman High School - Alumni Representative (1977)  
 Elected Member: Summerlin's Willow Creek HOA 2004-2006  
 Elected Member: Summerlin's Willow Creek Design & Review Committee – 2004  
 Board Member (Past Chair): Lance Burton Foundation for Crippled and Burned Children

**EDUCATION:**

Tio S. DiFederico received a Bachelor of Science in Business Administration from the University of Nevada, Las Vegas. The following is a partial list of the appraisal courses sponsored by the Appraisal Institute that he has completed:

|  |                                    |
|--|------------------------------------|
| 550 Advanced Applications                                  | General Comprehensive Exam         |
| 540 Report Writing and Valuation Analysis                  | Forecasting Revenue                |
| 530 Advanced Sales Comparison and Cost Approaches          | Analyzing Operating Expenses       |
| 520 Highest & Best Use and Market Analysis                 | Nevada Law                         |
| 510 Advanced Income Capitalization                         | Nevada Statues                     |
| 420 Business Practices and Ethics                          | Appraising Apartments              |
| 310 Basic Income Capitalization                            | Market Analysis                    |
| Standard of Professional Practice, Part A                  | Accrued Depreciation               |
| Standard of Professional Practice, Part B                  | Residential Valuation              |
| Standard of Professional Practice, Part C                  | Supervising Appraisal Trainees     |
| Condemnation Appraising: Principles & Applications         | Ethics - USPAP Statements          |
| Litigation Appraisal & Expert Testimony                    | 1A-2 Basic Valuation Procedures    |
| Eminent Domain and Condemnation                            | 1A-1 Basic Appraisal Principles    |
| Litigation Appraising: Specialized Topics and Applications | The Appraiser as an Expert Witness |
| Appraising the Appraisal: Appraisal Review - General       |                                    |

In addition to the above, I have successfully completed numerous other real estate related Clinics, Conferences, Courses, and Seminars sponsored by the Appraisal Institute over the last 34 years.

**QUALIFIED BEFORE COURTS AND ADMINISTRATIVE BODIES:**

United States Federal Court  
United States Bankruptcy Court – District of Nevada  
Clark County District Court  
Clark County Board of Equalization  
Various Arbitration Courts


**PROFESSIONAL DEVELOPMENT PROGRAMS:**

Tio S. DiFederico, MAI, has completed the Appraisal Institute's Litigation Professional Development Program curriculum; passed the exams and is listed on the Appraisal Institute's Litigation Professional Registry.

**PUBLICATIONS:**

Tio S. DiFederico, MAI, co-authored the Gaming Overview articles in the IRR-Viewpoint, published by Integra Realty Resources (IRR), from 2003 through 2009.

| APPRAISER CERTIFICATE   |   |
|---|---|
| STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY   |   |
| NOT TRANSFERABLE  | REAL ESTATE DIVISION  |
| NOT TRANSFERABLE  |   |
| This is to Certify That : TIO S DIFEDERICO  |   |
| Certificate Number: A.0000150-CG  |   |
| Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.   |   |
| Issue Date: May 23, 2019  | Expire Date: May 31, 2021   |
| In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business. |   |
| FOR: TIO S DIFEDERICO REAL ESTATE<br>APPRAISAL INC<br>3030 S DURANGO DR<br>LAS VEGAS, NV 89117  | REAL ESTATE DIVISION<br><br>SHARATH CHANDRA<br><i>Administrator</i> |



## TESTIMONY AND DEPOSITIONS

### TIO S. DIFEDERICO, MAI

**2020:**

September City of Las Vegas vs. Charleston Land, LLC, – District Court Case – A-19-801822-C – Deposition – September 29, 2020 – (Condemnation)

September Peter Eliades vs. Sterling Entertainment – United States District Court – District of Nevada- Case No, A-17-752951 – Trial – September 16, 2020 (Deficiency Judgment)

February United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No, 215-CV-01743-MMD-NJK – Trial – February 11 & 12, 2020 (Condemnation)

**2019:**

November First Presbyterian Church of Las Vegas Nevada d/b/a Grace Presbyterian v. The State of Nevada – United States District Court – District of Nevada- Case No, A-18-777836-C – Deposition – November 4, 2019 (Inverse Condemnation)

March United States of America v. County of Clark and Nevada Links, Inc., – United States District Court – District of Nevada- Case No, 217-cv-02303-MMD-PAL – Deposition – March 14, 2019 (Breach of Contract)

**2018:**

September United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No, 215-CV-01743-MMD-NJK – Deposition – September 12, 2018 (Condemnation)

May Lucky Dragon Hotel & Casino (Debtor), Lucky Dragon, L.P. (Debtor) – United States Bankruptcy Court - District of Nevada – Lead Case No. 18-10792-leb – May 30, 2018 – Trial (Deficiency Judgment)

May Lucky Dragon Hotel & Casino (Debtor), Lucky Dragon, L.P. (Debtor) – United States Bankruptcy Court - District of Nevada – Lead Case No. 18-10792-leb – May 25, 2018 – Deposition (Deficiency Judgment)

April FP Holdings et. al. v. Nevada Department of Transportation (NDOT) – District Court Case – A-12-666482-C – Deposition - April 26, 2018 – (Condemnation)

March Bishop Gorman Development Corporation vs. J.A. Tiberti Construction, Inc. – United States Bankruptcy Court – District of Nevada- Case No, BK-S-17-11942-abl – Trial – March 20, 2018 (Deficiency Judgment)

March United States of America v. 400 Acres of Land, More or Less Situate in Lincoln County, State of Nevada; and Jessie J. Cox, et al., – United States District Court – District of Nevada- Case No, 215-CV-01743-MMD-NJK – Deposition – March 9, 2018 (Condemnation)

**2017:**

September Bishop Gorman Development Corporation vs. J.A. Tiberti Construction, Inc. – United States Bankruptcy Court – District of Nevada- Case No, BK-S-17-11942-abl – Deposition – September 27, 2017 (Deficiency Judgment)

April State of Nevada vs. Darrell E. Jackson, Thomas M. Strawn, Jr., and Andrew S. Levy, et Al - District Court Case – A-14-707519-C – Deposition - April 11, 2017 – (Condemnation)

**2016:**

April State of Nevada vs. MLK Spur, LLC, et. Al - District Court Case – A-14-707519-C – Deposition - April 18, 2016 – (Condemnation)

April State of Nevada vs. John Sharples, et. Al - District Court Case – A-14-710382-C – Deposition - April 11, 2016 – (Condemnation)

April State of Nevada vs. MLK Spur, LLC, et. Al - District Court Case – A-14-707519-C – Deposition - April 1, 2016 – (Condemnation)

February Village Pub Maule, Inc. vs. LSPG Holdings, LLC, and BB&T - District Court Case – A-14-700706-C – Deposition - February 25, 2016 – (Civil Matter)

**PUBLICATIONS**

I co-authored the Gaming Overview articles in the 2003 through 2009 editions of IRR - Viewpoint, published by Integra Realty Resources (IRR). Provided in this publication are the analyses and opinions derived from the available data of the members of IRR and other reputable services. As of the beginning of 2009, there were 58 Integra Offices located within the United States.

**HOURLY RATE**

Review, trial preparation and conferences (if applicable), are billed at \$500 per hour. Deposition and/or trial testimony (if applicable), is billed at \$750 per hour. Videotaped depositions are billed at \$1,000 per hour.

## **ADDENDUM B**

## **DEFINITIONS**



## ADDITIONAL DEFINITIONS

Unless otherwise noted, the source of the following definitions is as follows: Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 6th ed. (Chicago: Appraisal Institute, 2015).

### Appraisal

(noun) the act or process of developing an opinion of value; an opinion of value. adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services. Comment: An appraisal must be numerically expressed a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., assessed value, collateral value). (USPAP, 2020-2021 ed.)

### Client

The party or parties (i.e., individual, group, or entity) who engage an appraiser by employment or contract in a specific assignment, whether directly or through an agent. (USPAP, 2020-2021 ed.)

### Comparable

A shortened term for similar property sales, rentals, or operating expenses used for comparison in the valuation process. In best usage, the thing being compared should be specified, e.g., comparable sales, comparable properties, comparable rents.

### Effective Date

In a lease document, the date upon which the lease goes into effect.

### Exposure Time

An opinion, based on supporting market data, of the length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at the market value on the effective date of value of the appraisal. (USPAP, 2020-2021 ed.)

### Highest and Best Use

1. The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.
2. [The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions)

### Intended Use

The manner in which the intended users expect to employ the information contained in a report.

**Intended User**

The client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser on the basis of communication with the client at the time of the assignment. (USPAP, 2020-2021 ed.)

**Land-to-Building Ratio.**

The proportion of land area to gross building area; one of the factors determining comparability of properties.

**Legal Description**

A description of land that identifies the real estate according to a system established or approved by law; an exact description that enables the real estate to be located and identified.

**Legally Nonconforming Use**

A use that was lawfully established and maintained, but no longer conforms to the use regulations of its current zoning; also known as a *grandfathered use*.

**Management Fee**

The amount charged by a management firm to manage property for an owner. In income and expense analysis, a management fee is typically treated as a variable operating expense, usually expressed as a percentage of effective gross income.

**Market Participants**

Individuals actively engaged in transactions. In real property markets, *primary market participants* are those who invest equity in real property or use real estate, e.g., buyers, sellers, owners, lenders, tenants. *Secondary market participants* include those who advise primary market participants, e.g., advisors, counselors, underwriters, appraisers.

**Net Net Net Lease (Triple Net Lease)**

An alternative term for a type of net lease. In some markets, a net net net lease is defined as a lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management; also called *NNN lease*, *triple net lease*, or *fully net lease*.

**Net Operating Income (NOI or Io)**

The actual or anticipated net income that remains after all operating expenses are deducted from effective gross income but before mortgage debt service and book depreciation are deducted. Note: This definition mirrors the convention used in corporate finance and business valuation for EBITDA (earnings before interest, taxes, depreciation, and amortization).

**Off-Site Improvements**

Improvements located off the property itself but necessary to facilitate its development, e.g., streets, sidewalks, curbing, traffic signals, water and sewer mains, parking and water retention ponds.

**On-Premise Sign**

A sign that advertises products or services that are sold, produced, manufactured, or furnished on the property where the sign is located. (Outdoor Advertising Association of America)

**On-Site Improvements**

Improvements on a site exclusive of buildings. Examples of on-site improvements include grading, landscaping, fences, gutters, paving, drainage and irrigation systems, walkways, and other physical enhancements to the land.

**Parking Ratio**

A ratio of parking area or parking spaces to an economic or physical unit of comparison. Minimum required parking ratios for parkway various land uses are often stated in zoning ordinances.

**Present Value (PV)**

The value of a future payment or series of future payments discounted to the current date or to time period zero.

**Qualitative Adjustment**

An indication that one property is superior, inferior, or the same as another property. Note that the common usage of the term is a misnomer in that an adjustment to the sale price of a comparable property is not made. Rather, the indication of a property's superiority or inferiority to another is used in relative comparison analysis, bracketing, and other forms of qualitative analysis.

**Qualitative Analysis**

The process of accounting for differences (such as between comparable properties and the subject property) that are not quantified; may be combined with quantitative techniques.

**Quantitative Adjustment**

A numerical (dollar or percentage) adjustment to the indicated value of a comparable property to account for the effect of a difference between two properties on value.

**Quantitative Techniques.**

Techniques used to derive quantitative adjustments to comparable sale prices in the sales comparison approach; also used in the development of adjustments in other valuation approaches and techniques. Quantitative techniques include data analysis techniques (paired data analysis, grouped data analysis, and secondary data analysis), statistical analysis, graphic analysis, trend analysis, cost analysis (cost-to-cure, depreciated cost), and capitalization of rent differences.

**Real Estate Owned (REO)**

In common usage, real property that has been acquired by a lending institution through foreclosure or deed in lieu of mortgage loans, i.e., what is more correctly called *other real estate owned (OREO)*. In best usage, the terms *owned real estate (ORE)* and *real estate owned (REO)* describe bank premises used for banking operations, and the term *other real estate owned (OREO)* describes foreclosed real property held for liquidation.

**Reimbursable Expenses.**

Real estate operating expenses that are subject to recovery from tenants; may include common area maintenance (CAM) charges, real property taxes, and property and casualty insurance.

**Rentable Area**

For office or retail buildings, the tenant's pro rata portion of the entire office floor, excluding elements of the building that penetrate through the floor to the areas below. The rentable area of a floor is computed by measuring to the inside finished surface of the dominant portion of the permanent building walls, excluding any major vertical penetrations of the floor. Alternatively, the amount of space on which the rent is based; calculated according to local practice.

**Rent-Up Period**

A period of time during which a rental property is in the process of initial leasing; may begin before or after construction and lasts until stabilized occupancy is achieved.

**Scope of Work**

The type and extent of research and analyses in an appraisal or appraisal review assignment. (USPAP, 2020- 2021 ed.)

**Setback**

Zoning regulations that designate the distance that improvements must be set back from the front, rear, and sides of the property lines.

**Subject Property**

The property that is appraised in an assignment.

## **ADDENDUM C**

## **PROPERTY INFORMATION**



The MAPS and DATA are provided without warranty of any kind, expressed or implied.  
Date Created: 08/04/2020

#### Property Information

Parcel: 13831201005  
Owner Name(s): 180 LAND COLL C  
Site Address:  
Jurisdiction: Las Vegas - null  
Zoning Classification: Residential Planned Deveopment District (R-PD7)

#### Planned Landuse:

#### Misc Information

Subdivision Name: PARCEL MAP FILE 121 PAGE 100  
Lot Block: Lot:1 Block:  
Sale Date: Not Available  
Sale Price: Not Available

Recorded Doc Number: 20151116 00000238

Flight Date: Mar.16.2019

#### Elected Officials

Commission: C - Larry Brown (D)  
US Senate: Dean Heller, Catherine Cortez-Masto  
State Senate: 8 - Marilyn Dondero Loop (D)  
School District: E - Lola Brooks  
Board of Education: 3 - Felicia Ortiz

Construction Year:  
T-R-S: 20-60-31  
Census tract: 3226  
Estimated Lot  
Size: 34.07

City Ward: 2 - Victoria Seaman(3 Year  
Unexpired)  
US Congress: 3 - Susie Lee (D)  
State Assembly: 2 - John Hambrick (R)  
University Regent: 7 - Mark Doubrava  
Minor Civil  
Division: Las Vegas

File#19-035

**TDG Rpt 000123**

21240

| GENERAL INFORMATION                          |   |
|--|---|
| PARCEL NO.                                   | 138-31-201-005  |
| OWNER AND MAILING ADDRESS                    | 180 LAND CO L L C<br>C/O V DEHART<br>1215 S FORT APACHE RD # 120<br>LAS VEGAS<br>NV 89117 |
| LOCATION ADDRESS<br>CITY/UNINCORPORATED TOWN | LAS VEGAS   |
| ASSESSOR DESCRIPTION                         | PARCEL MAP FILE 121 PAGE 100<br>LOT 1   |
| RECORDED DOCUMENT NO.                        | * 20151116:00238  |
| RECORDED DATE                                | Nov 16 2015   |
| VESTING                                      | NS  |

\*Note: Only documents from September 15, 1999 through present are available for viewing.

| ASSESSMENT INFORMATION AND VALUE EXCLUDED FROM PARTIAL ABATEMENT |         |
|--|---------|
| TAX DISTRICT   | 200     |
| APPRAISAL YEAR   | 2019    |
| FISCAL YEAR  | 2020-21 |
| SUPPLEMENTAL IMPROVEMENT VALUE                                   | 0       |
| INCREMENTAL LAND   | 0       |
| INCREMENTAL IMPROVEMENTS   | 0       |

| REAL PROPERTY ASSESSED VALUE   |          |          |
|--------------------------------|----------|----------|
| FISCAL YEAR                    | 2019-20  | 2020-21  |
| LAND                           | 6260363  | 6260363  |
| IMPROVEMENTS                   | 0        | 0        |
| PERSONAL PROPERTY              | 0        | 0        |
| EXEMPT                         | 0        | 0        |
| GROSS ASSESSED (SUBTOTAL)      | 6260363  | 6260363  |
| TAXABLE LAND+IMP (SUBTOTAL)    | 17886751 | 17886751 |
| COMMON ELEMENT ALLOCATION ASSD | 0        | 0        |
| TOTAL ASSESSED VALUE           | 6260363  | 6260363  |
| TOTAL TAXABLE VALUE            | 17886751 | 17886751 |

| ESTIMATED LOT SIZE AND APPRAISAL INFORMATION |   |
|--|---|
| ESTIMATED SIZE                               | 34.07 Acres                                 |
| ORIGINAL CONST. YEAR                         | 0   |
| LAST SALE PRICE<br>MONTH/YEAR<br>SALE TYPE   | 0   |
| LAND USE                                     | 12.000 - Vacant - Single Family Residential |
| DWELLING UNITS                               | 0   |

**Briana Johnson, Assessor****PARCEL OWNERSHIP HISTORY**

Assessor Map

Aerial View

Comment Codes

Current Ownership

New Search

**ASSESSOR DESCRIPTION**

PARCEL MAP FILE 121 PAGE 100 LOT 1

| CURRENT<br>PARCEL NO. | CURRENT OWNER     | % | RECORDED<br>DOCUMENT NO. | RECORDED<br>DATE | VESTING | TAX<br>DIST | EST<br>SIZE | COMMENTS |
|-----------------------|-------------------|---|--------------------------|------------------|---------|-------------|-------------|----------|
| 138-31-201-005        | 180 LAND CO L L C |   | 20151116:00238           | 11/16/2015       | NS      | 200         | 34.07 AC    |          |

| PARCEL NO. | PRIOR OWNER(S) | % | RECORDED<br>DOCUMENT NO. | RECORDED<br>DATE | VESTING | TAX<br>DIST | EST<br>SIZE | COMMENTS |
|------------|----------------|---|--------------------------|------------------|---------|-------------|-------------|----------|
|------------|----------------|---|--------------------------|------------------|---------|-------------|-------------|----------|

Click the following link to view the parcel genealogy

[Parcel Tree](#)

Note: Only documents from September 15, 1999 through present are available for viewing.

**NOTE:** THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED  
AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.



| Property Account Inquiry - Summary Screen             |  |   |  |                                  |         |                        |                    |                   |              |
|---|--|---|--|----------------------------------|---------|------------------------|--------------------|-------------------|--------------|
| New Search  |  | Recorder  |  | Treasurer                        |         | Assessor               |                    | Clark County Home |              |
| Parcel ID   | 138-31-201-005   |   |  | Tax Year                         | 2021    |                        | District           | 200               |              |
| Rate  | 3.2782   |   |  |                                  |         |                        |                    |                   |              |
| Situs Address:  | UNASSIGNED SITUS LAS VEGAS                               |   |  |                                  |         |                        |                    |                   |              |
| Legal Description:                                    | ASSESSOR DESCRIPTION: PARCEL MAP FILE 121 PAGE 100 LOT 1 |   |  |                                  |         |                        |                    |                   |              |
| Status:   | Property Characteristics                                 |   |  | Property Values                  |         |                        | Property Documents |                   |              |
| Active  | Tax Cap Increase Pct.                                    | 6.7   |  | Land                             | 6260363 |                        | 2015111600238      | 11/16/2015        |              |
| Taxable   | Tax Cap Limit Amount                                     | 218977.44   |  | Total Assessed Value             | 6260363 |                        |                    |                   |              |
|   | Tax Cap Reduction  | 0.00  |  | Net Assessed Value               | 6260363 |                        |                    |                   |              |
|   | Land Use   | 0-00 Vacant - Single Family Re  |  | Exemption Value New Construction | 0       |                        |                    |                   |              |
|   | Cap Type   | OTHER   |  | New Construction - Supp Value    | 0       |                        |                    |                   |              |
|   | Acreage  | 34.0700   |  |                                  |         |                        |                    |                   |              |
|   | Exemption Amount   | 0.00  |  |                                  |         |                        |                    |                   |              |
| Role  | Name   | Address   |  |                                  |         |                        | Since              | To                |              |
| Owner   | 180 LAND CO L LC   | C/O V DEHART 1215 S FORT APACHE RD #120 , LAS VEGAS, NV 89117 UNITED STATES |  |                                  |         |                        | 6/14/2019          | Current           |              |
| <b>Summary</b>  |  |   |  |                                  |         |                        |                    |                   |              |
| Item  |  |   |  |                                  |         |                        |                    |                   | Amount       |
| Taxes as Assessed                                     |  |   |  |                                  |         |                        |                    |                   | \$205,227.22 |
| Less Cap Reduction                                    |  |   |  |                                  |         |                        |                    |                   | \$0.00       |
| Net Taxes   |  |   |  |                                  |         |                        |                    |                   | \$205,227.22 |
| <b>PAST AND CURRENT CHARGES DUE TODAY</b>             |  |   |  |                                  |         |                        |                    |                   |              |
| Tax Year  | Charge Category  |   |  |                                  |         | Amount Due Today       |                    |                   |              |
| THERE IS NO PAST OR CURRENT AMOUNT DUE as of 8/4/2020 |  |   |  |                                  |         | \$0.00                 |                    |                   |              |
| <b>NEXT INSTALLMENT AMOUNTS</b>                       |  |   |  |                                  |         |                        |                    |                   |              |
| Tax Year  | Charge Category  |   |  |                                  |         | Installment Amount Due |                    |                   |              |
| 2021  | Property Tax Principal                                   |   |  |                                  |         | \$51,306.79            |                    |                   |              |
| 2021  | Las Vegas Artesian Basin                                 |   |  |                                  |         | \$2.42                 |                    |                   |              |
| NEXT INSTALLMENT DUE AMOUNT due on 8/17/2020          |  |   |  |                                  |         | \$51,309.21            |                    |                   |              |
| <b>TOTAL AMOUNTS DUE FOR ENTIRE TAX YEAR</b>          |  |   |  |                                  |         |                        |                    |                   |              |
| Tax Year  | Charge Category  |   |  |                                  |         | Remaining Balance Due  |                    |                   |              |
| 2021  | Property Tax Principal                                   |   |  |                                  |         | \$205,227.22           |                    |                   |              |
| 2021  | Las Vegas Artesian Basin                                 |   |  |                                  |         | \$2.42                 |                    |                   |              |
| TAX YEAR TOTAL AMOUNTS DUE as of 8/4/2020             |  |   |  |                                  |         | \$205,229.64           |                    |                   |              |
| <b>PAYMENT HISTORY</b>                                |  |   |  |                                  |         |                        |                    |                   |              |
| Last Payment Amount                                   |  | \$51,306.81   |  |                                  |         |                        |                    |                   |              |
| Last Payment Date                                     |  | 3/16/2020   |  |                                  |         |                        |                    |                   |              |
| Fiscal Tax Year Payments                              |  | \$0.00  |  |                                  |         |                        |                    |                   |              |
| Prior Calendar Year Payments                          |  | \$205,228.98  |  |                                  |         |                        |                    |                   |              |
| Current Calendar Year Payments                        |  | \$102,613.62  |  |                                  |         |                        |                    |                   |              |



The District makes no warranties concerning the accuracy of this data.

**This parcel IS NOT in a 100-year flood zone.**

Parcel 13831201005

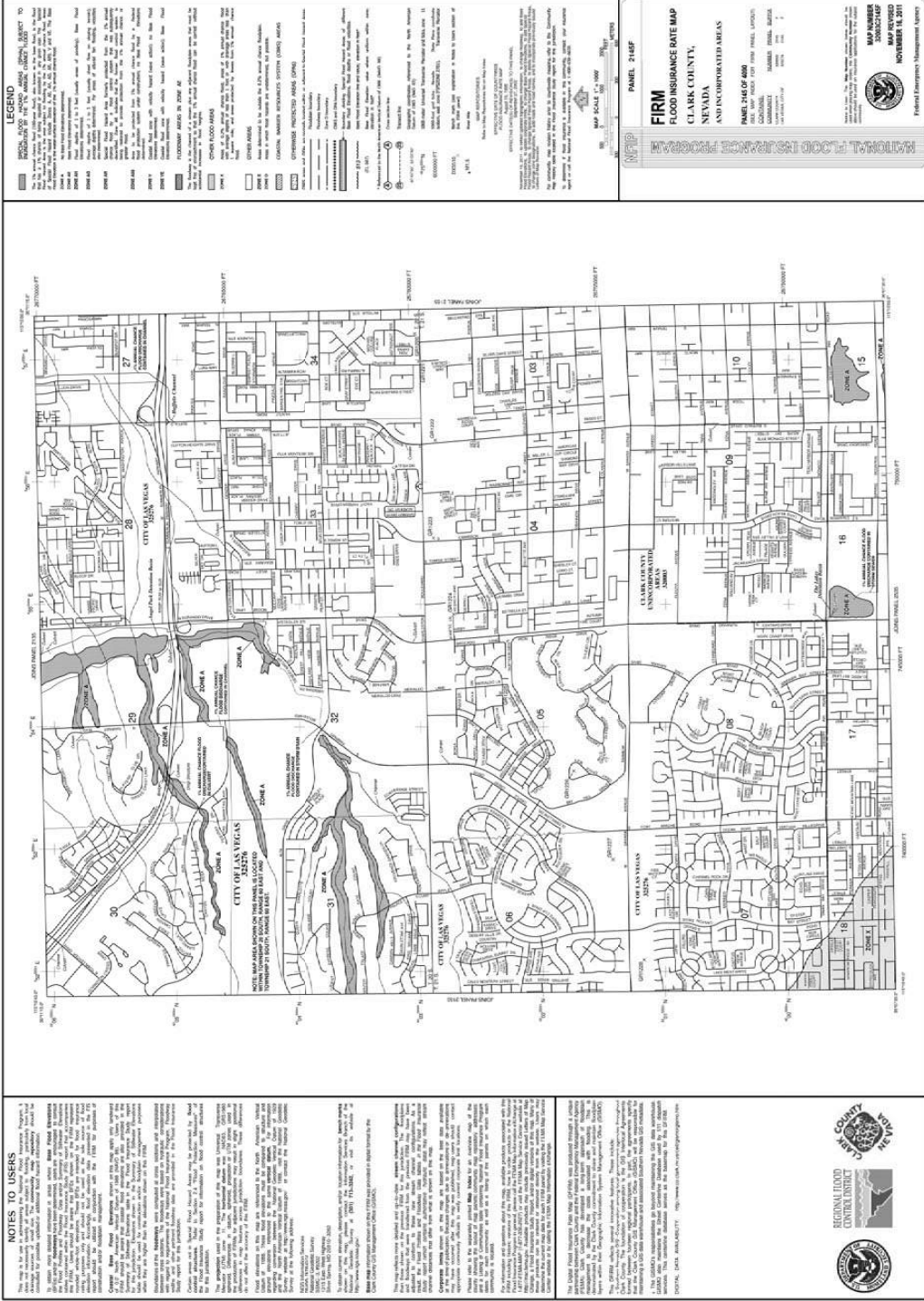
Owner 180 LAND CO L L C

Address

Entity Las Vegas

Contact 702-229-6541

Flood Zone This parcel IS NOT in a 100-year flood zone.





## **ADDENDUM D**

### **GOLF COURSE LEASE CANCELLATION LETTERS**



Your Partner in Golf

#### TERMINATION OF LEASE

May 23, 2016

Fore Stars, Ltd  
c/o Todd Davis  
1215 South Fort Apache Road, Suite 120  
Las Vegas, Nevada 89117

Dear Todd,

We received your letter dated May 16, 2016 in which you referenced and attached the Second Amendment to the Golf Course Ground Lease ("Lease") dated April 28, 2015. Based on the language in the Lease, Fore Stars, Ltd. indicated the final date of the lease should be July 31, 2016 rather than closing date of May 31, 2016 that we previously indicated our Notice of Dissolution dated April 26, 2016.

The discrepancy in the final date of the lease is based on the Notice of Cancellation we provided in September 2015 (attached), in which we indicated we wanted to terminate the lease on December 21, 2015. After we sent the cancellation, we met with representatives from EHB and agreed that we would continue operating the course until May 31, 2016. We recognize that we did not formalize that agreement with a subsequent writing and that the written Notice of Dissolution we provided on April 26 was technically not within the 90 day cancellation period required by the contract for a May 31 closing.

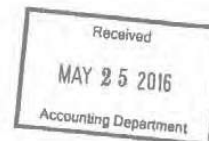
As you aware, by not closing on May 31 we will incur a significant financial loss due to the high cost of operation and low revenue during the summer months. However, based on the facts outlined above, we will agree to operate the course until July 31 as you have requested. In exchange, we request that Fore Stars, Ltd reduce the rent by half for the months of June and July.

Thank you in advance for your consideration. Please don't hesitate to contact me directly if you'd like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Kam Brian".

Kam Brian, Esq.  
General Counsel  
Par 4 Golf Management, Inc.





## NOTICE OF CANCELLATION

September 18, 2015

Fore Stars, Ltd  
c/o Mr. Yohan Lowie  
9755 W. Charleston Blvd.  
Las Vegas, NV 89117

Dear Mr. Lowie,

As you are aware, our lease with Fore Stars, Ltd. to operate the Badlands Golf Club allows us to provide 90 days written notice of termination. We have operated the course for a number of years with little or no profit in hopes that the golf industry would recover and we would be able to recapture our investment. Given the ever increasing water costs, operating costs and a golf market that cannot support increased green fees, we have determined that we are no longer willing assume the risk.

We hereby provide our 90 day notice of cancellation effective December 21, 2015. It has been a pleasure working for you. Please contact me should you wish to discuss any details with respect to the end of our lease.

Sincerely,

  
Paul Jaramillo  
CEO  
Par 4 Golf Management, Inc.

cc: Peccole Nevada Corporation, 851 S. Rampart, Las Vegas, NV 89145

## **ADDENDUM E**

## **CITY LETTERS**



**To:** alejandro.garcia[agarcia@LasVegasNevada.GOV]; Crystal H. Makridis[cmakridis@LasVegasNevada.GOV]; Nashira Ling[nling@LasVegasNevada.GOV]; rafiq ali[rali@LasVegasNevada.GOV]; Sandy Gravseth[sgravseth@LasVegasNevada.GOV]; Victor Ravelo[vavelo@LasVegasNevada.GOV]  
**From:** Lauren E. Storla  
**Sent:** Tue 6/27/2017 8:47:09 PM  
**Subject:** Badlands

If anyone sees a permit for grading or clear and grub at the **Badlands** Golf Course, please see Kevin, Rod, or me. Do Not Permit without approval from one of these three.



**Lauren Storla** | Senior Permit Technician  
Building & Safety  
333 N. Rancho Drive, Las Vegas, NV 89106  
702-229-5460

lasvegasnevada.gov



City of Las Vegas Building & Safety

Your opinion is important! Click [here](#) to take a short survey.

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CLV006185



Las Vegas  
City Council  
Carolyn G. Goodman  
Mayor

Lois Tarkanian  
Mayor Pro Tem

Ricki Y. Barlow  
Stavros S. Anthony  
Bob Colfin

Steven G. Seroka  
Michele Fiore

City of Las Vegas  
City Manager

Scott D. Adams  
City Manager

VIA CERTIFIED MAIL

August 24, 2017

Seventy Acres, LLC  
Attn: Ms. Vickie Dehart  
120 S. Fort Apache Rd., Suite 120  
Las Vegas, NV 89117

Re: L17-00198

Dear Ms. Dehart:

Through the various public hearings and subsequent debates concerning development on the subject site I have determined, pursuant to Las Vegas Municipal Code (LVMC) 19.16.100(C)(1)(b), that any development on this site has the potential to have significant impact on the surrounding properties and as such may require a Major Review.

After reviewing the permit submitted (L17-00198) for perimeter wall modifications and controlled access gates on the subject site, I have determined that the proximity to adjacent properties has the potential to have significant impact on the surrounding properties. As such, the Minor Development Review (Building Permit Level Review) is denied and an application for a Major Review will be required pursuant to LVMC 19.16.100(G)(1)(b).

Please coordinate with the Department of Planning for the submittal of a Major Site Review.

Thank you.

Robert Summerfield, AICP  
Acting Director  
Department of Planning

RS:me

COPY

DEPARTMENT OF PLANNING

1333 N. Rancho Drive | 3rd Floor | Las Vegas, NV 89106 | 702.229.6301 | FAX 702.474.0352 | TTY 7 1 1

LO 00002365



City of Las Vegas  
Carolyn G. Goodman  
Mayor

Lois Tarkanian  
Mayor Pro Tem

Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Steven G. Seroka  
Michele Fiore

Scott D. Adams  
City Manager

VIA CERTIFIED MAIL

August 24, 2017

American Fence Company, Inc.  
Attn: Ms. Laurie Peters  
4230 Losee Rd.  
North Las Vegas, NV 89030

Re: C17-01047

Dear Ms. Peters:

Through the various public hearings and subsequent debates concerning development on the subject site, I have determined, pursuant to Las Vegas Municipal Code (LVMC) 19.16.100(C)(1)(b), that any development on this site has the potential to have significant impact on the surrounding properties and as such may require a Major Review.

After reviewing the permit submitted (C17-01047) for chain link fencing to enclose two water features/ponds on the subject site, I have determined that the proximity to adjacent properties has the potential to have significant impact on the surrounding properties. As such, the Minor Development Review (Building Permit Level Review) is denied and an application for a Major Review will be required pursuant to LVMC 19.16.100(G)(1)(b).

Please coordinate with the Department of Planning for the submittal of a Major Site Review.

Thank you.

Robert Summerfield, AICP  
Acting Director  
Department of Planning

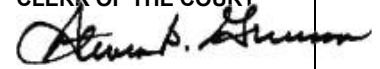
RS:ma

cc: 180 Land Co., LLC  
Attn: Vickie Dehart  
1215 S. Fort Apache Rd, Suite 120  
Las Vegas, NV 89117

DEPARTMENT OF PLANNING

1333 N. Rancho Drive | 3rd Floor | Las Vegas, NV 89106 | 702.229.6301 | FAX 702.474.0352 | TTY 711

LO 00002353



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(Additional Counsel Identified on Signature Page)

*Attorneys for Defendant City of Las Vegas*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No. A-17-758528-J

DEPT. NO.: XVI

**CITY'S OPPOSITION TO  
DEVELOPER'S MOTION FOR  
REIMBURSEMENT OF  
PROPERTY TAXES**

**Hearing Date: January 18, 2022  
Hearing Time: 9:05 a.m.**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**Introduction**

The Developer's motion for reimbursement of property taxes ("Motion") should be denied. The Motion is based on the claim that the Developer should not have to pay property taxes for the 35-Acre Property where the City "dispossessed" the Developer from the Property. At no time did the City "dispossess" the Developer from the 35-Acre Property. There is no evidence that the City took physical possession of any part of the Badlands. To the contrary, this is a regulatory taking case in which the Developer alleges that the City improperly denied the Developer's proposed *use* of the property for development of housing. In denying that use, the City merely declined to change the zoning and General Plan restrictions on the *use* of the Property in effect at the time the Developer bought the Badlands. The City's action had no effect on the Developer's possession of the Property.

The Motion is also based on the contention that the Nevada Constitution requires that the City reimburse the Developer for property taxes to make the Developer "whole" as a result of the taking. The Developer bought the 35-Acre Property for \$630,000. Assuming a taking, the Developer would be made whole if the Court required the City to reimburse the Developer for \$630,000. Instead, the Court awarded the Developer damages of \$34,135,000, a sum that is 54 times the Developer's investment in the 35-Acre Property. Accordingly, requiring the City to reimburse the Developer for less than \$1 million in property taxes is not necessary to make the Developer whole.

Finally, the Developer's alleged harm from having to pay property taxes of \$925,582.57 is largely self-inflicted. Most of this sum is due to an increase in property taxes assessed by the Clark County Tax Assessor after the Developer voluntarily closed the Badlands golf course in December 2016. The Developer appealed the determination, but ultimately stipulated with the Assessor that the Badlands would be valued assuming that the legal use is residential rather than open space, resulting in a far higher tax assessment. In the assessment appeal, the Developer could have, but did not, argue that the Badlands should continue to be valued as open space because the City's General Plan designated the property PR-OS, which does not permit residential use. The Developer's strategy is transparent: better to pay a small sum in additional property taxes and preserve the Developer's argument that the PR-OS designation is a nullity and have the opportunity for an award of \$386

1 million the Developer claims in the four takings cases against the City. So far, the Developer's gamble  
2 paid off. In the instant case, the Court has awarded the Developer \$34,1345,000 based on a finding  
3 that the PR-OS designation is a nullity. There is no authority, logic, or justice in requiring the City to  
4 reimburse the Developer's property tax payments.

### Argument

#### **I. The Developer was in full possession of the Property before and after the City's alleged regulatory taking**

5  
6  
7  
8 In reliance on *Clark County v. Alper*, 100 Nev. 382 685, P.2d 943 (1984), the Developer  
9 claims entitlement to reimbursement of its property taxes because it should not be required to pay  
10 taxes on property from which it has been "dispossessed." *Alper* is nothing like the instant case. In  
11 *Alper*, the county physically took possession of property for and started construction of a road-  
12 widening project, but failed to initiate formal eminent domain proceedings. 100 Nev. at 391, 685 P.2d  
13 at 949. The property owner then filed an inverse condemnation action, at which point the parties  
14 stipulated to the county's liability for physically taking the property. *Id.* The Court held that "[a]n  
15 owner who is dispossessed from his or her land when it is taken for public use is no longer obligated  
16 to pay taxes." The Court required the County to reimburse the property taxes the owner paid after the  
17 City physically dispossessed the owner. *Id.* *Alper* applies narrowly to the small subset of cases where  
18 the government physically takes property but fails to initiate eminent domain proceedings, thereby  
19 forcing the property owner to file an inverse condemnation action.

20 No such circumstances exist here. This is a regulatory taking action. The City has not  
21 exercised its eminent domain powers. More important, the Developer does not claim that the City  
22 took physical possession of the property. Nor does the Developer claim any damages for the alleged  
23 public trespass on its property. In sharp contrast to *Alper*, the Developer claims that the City prevented  
24 the Developer's *development* of the property for its desired use. This is not a case where the City took  
25 physical possession of the property to build a public facility, yet failed to file an eminent domain  
26 action. Unlike eminent domain actions where the public agency requires title and possession to build  
27 a public project, such as a road or a wastewater treatment plant, and in many cases has already taken  
28 possession of the property and started the project (*see* NRS 37.100 providing for condemning

agency's possession of property prior to judgment to avoid delay in implementing public project), here the City does not need or want the 35-Acre Property for a public facility. Accordingly, it would be a manifest error of law to require the City to reimburse the Developer for physically dispossessing the Developer where that never happened. There was no difference in the Developer's rights either to possess the 35-Acre Property before or after the City's alleged taking. The City did not change any of the land use regulations applicable to the 35-Acre Property either before or after the alleged regulatory taking in June 2017 and the Developer retained the rights to use the Property for any purpose allowed by the existing regulations. Under these facts, the Developer is not entitled to be reimbursed for its property tax payments.

The Developer also erroneously contends that regulatory takings are subject to the same procedural and substantive rules as eminent domain actions. NRS 37.120(3) of the Nevada Eminent Domain Law states: "Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest computed pursuant to NRS 37.175 and reasonable costs and expenses, except attorney s fees, incurred by the owner . . . ." Property taxes are conspicuously absent from the list. Thus, even if the Developer is correct that the eminent domain law applies to the determination of just compensation in a regulatory taking case, that compensation would not include property taxes.

*City of North Las Vegas v. 5th & Centennial, LLC*, 130 Nev. 619, 331 P.3d 896 (2014) is no aid to the Developer. In that case, the property owner claimed damages in addition to the value of the property for the city's delay in filing an eminent domain action to acquire the property for a public road. The Court held that prejudgment interest began to accrue not on the date the city served the summons and complaint in eminent domain, but rather on the date of commencement of the City's unreasonable delay in filing the eminent domain action. The instant case, in contrast, does not involve a condemnation action or precondemnation damages. Nor does it involve interest on damages. The only issue before the Court is whether a property owner who remains in full possession of its property during a regulatory taking action is entitled to reimbursement of its property tax payments. *City of North Las Vegas* has nothing to say on that question.

. . .

**II. Reimbursement of property taxes is not necessary to make the Developer whole**

The Developer also claims that reimbursement of property taxes is required to make the Developer “whole” *i.e.*, putting it in the same position monetarily as before the alleged taking, under Nevada Constitution Article 1, Section 22(4), which provides:

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

By its own terms, Section 22(4) applies to eminent domain actions, not inverse condemnation actions, and therefore has no application.

Even if Section 22(4) applied, the Developer has already been made more than whole by the award of just compensation of \$34,135,000, which is 54 times the amount the Developer paid for the 35-Acre Property ( $35 \times \$18,000/\text{acre} = \$630,000$ ;  $\$34,135,000/\$630,000 = 54$ ).<sup>1</sup> This windfall is on top of the City’s lifting the PR-OS designation and upzoning the 17-Acre Property to allow the construction of 435 luxury housing units, which, by the Developer’s own evidence, increased the value of the Badlands by \$26 million. Ex. CCCC at 1496. Accordingly, requiring the City to reimburse the Developer for \$952,582.57 in property taxes would only compound the injustice of the \$34,135,000 award and is not required to make the Developer whole. The Developer has already been made whole many times over.

---

<sup>1</sup> 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. Ex. AAA at 966. The City established from the Developer’s own records and from the deposition of the representative of the Peccoles who sold the Badlands to the Developer that \$3,000,000 of that purchase price was consideration for other real estate interests, putting the price paid for the Badlands at less than \$4,500,000, or less than \$18,000 per acre. Ex. FFFF at 1591-95; Ex. SSSS at 3787-88. This price is not surprising given that both the Developer and the seller knew that the Badlands was subject to the PR-OS designation. Ex. Y at 420; Ex. SSSS at 3780. Although the Developer alleges that the purchase price was \$45 million (Ex. 12 at 456; Ex. 57 at 2-3), it concedes that it has no documents or other objective evidence to support that claim. Ex. UUU at 1300; Ex. FFFF at 1595-97; Ex. FFFF-34 at 1998 (“[T]here are no documents within the Plaintiffs custody and control that state that the aggregate of consideration given to the Peccole family for the former Badlands golf course property was \$45 million.”). In sum, the Developer has no evidence to refute the very clear documentation and the seller’s testimony under oath that the purchase price for the entire 250-acre Badlands was less than \$4.5 million, putting the purchase price of the 35-Acre Property at less than \$630,000.



1 The Developer's claim that reimbursement of property taxes is necessary to put it in the same  
2 position before the City's alleged taking fails not only because the City has changed the law to the  
3 Developer's significant benefit with regard to the 17-Acre Property, but also because the Developer's  
4 remaining 233 acres has potential for additional development. In 2018, adhering to Judge Crockett's  
5 Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications  
6 because the Developer had not filed a Major Modification Application. After the Supreme Court  
7 reversed the Crockett Order, the City notified the Developer that it was free to refile the 133-Acre  
8 Applications to allow the City Council to consider the applications on the merits for the first time.  
9 Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the  
10 133-Acre Property on the merits and the City invited the Developer to resubmit the applications for  
11 a decision on the merits, the Developer declined to refile the applications or do anything to attempt  
12 to develop the 133-Acre Property, and even vigorously opposed the City's request, made after the  
13 Nevada Supreme Court overturned the Crockett Order, that Judge Sturman remand the 133-Acre  
14 Applications to the City Council for consideration of the applications for the first time on the merits.  
15 Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre  
16 Applications to the Las Vegas City Council filed 8/24/2021).

17 After the Supreme Court's decision reversing Judge Crockett, the City also invited the  
18 Developer to file a first application for the 65-Acre Property (the Developer had not filed any  
19 applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs.  
20 OOO, PPP.<sup>2</sup> The Developer ignored all four City requests. It is clear, therefore, that not only has the  
21 Developer been placed in a significantly better position than it was in prior to the City's alleged  
22 taking, but it has the potential to be put in a still better position merely by applying for additional  
23 development.

24  
25 \_\_\_\_\_  
26 <sup>2</sup> The Developer filed only one application to develop the individual 35-Acre Property. After the City  
27 denied that application, the Developer failed to file a second application to develop the 35-Acre  
28 Property standing alone. See City's Supp. App. Vol. 24, Ex. DDDDD [City Council Denial Letters].  
Accordingly, the Developer's categorical and Penn Central regulatory taking claims are unripe and  
the City should have had judgment on those claims.

1 Thus, the Developer's claim that it is harmed because it incurred property taxes on property  
2 the use of which the City has denied during this litigation rings hollow. The City has given the  
3 Developer ample opportunity to develop the Badlands, including approving the 17-Acre applications  
4 and inviting the Developer to file an application for the first time to develop the 65-Acre Property,  
5 re-file its 133-Acre Applications for decision for the first time on the merits, and file a second  
6 application for the 35-Acre Property. Although the City handed the Developer a permit for 435 luxury  
7 units on a silver platter, the Developer has elected instead to attempt to try to extort \$386 million—  
8 the Developer's total damages claim—from the taxpayers. If the Developer had elected to develop  
9 the Badlands instead of filing these regulatory taking actions, it would have no complaint that it had  
10 to pay property taxes.

11 **III. The vast majority of the taxes for which the Developer claims reimbursement were**  
12 **imposed as a result of the Developer's strategic decision to suppress the PR-OS**  
13 **designation in its assessment appeal**

14 The Developer's award of \$34,135,000 for the alleged taking depends entirely on the Court's  
15 finding that the PR-OS General Plan designation of the Badlands, which does not permit housing, is  
16 a nullity. *See* Findings of Fact and Conclusions of Law filed 10/25/21 ¶ 39 at 10 (“[T]he Court rejects  
17 the City's defenses that . . . a City of Las Vegas Master Plan/land use designation of PR-OS that  
18 affects this Court's property interest determination.”). By failing to argue to the Assessor that the  
19 Badlands should retain its tax break for open space due to the PR-OS designation of the Badlands,  
20 the Developer made the strategic decision to accept a relatively small increase in property taxes in  
21 exchange for the opportunity to win a much larger award of just compensation for a taking that  
22 depended on the Court accepting the Developer's argument that the PR-OS designation is a nullity.  
23 The Developer's property tax “injury” is therefore self-inflicted.

24 As a golf course, the Badlands automatically qualified as “open-space use” and was entitled  
25 to valuation for tax purposes at only 35 percent of the property's “value for open-space use.” NRS  
26 361A.220(1). The value of golf courses qualifying as open-space use is capped at \$2,860 per acre  
27 escalated by changes in the Consumer Price Index since 2004. NRS 361A.225(2)(b). Accordingly,  
28 the Badlands golf course was assessed at a very low property tax rate.

...

1 In December 2016, the Developer voluntarily shut down the golf course. Ex. HHHH at 2181.  
2 As a result, the Assessor informed the Developer that the Badlands no longer qualified for a tax break  
3 for open space. *Id.* The Developer appealed that determination, arguing that the Badlands could still  
4 be used for a golf course and therefore should retain its open space tax reduction. Ex. LLLL at 2209-  
5 11. Curiously, the Developer never cited or relied on NRS 361A.170 in its appeal. *See* Ex. LLLL.  
6 NRS 361A.170 provides that golf courses are not the only uses that could qualify for the open-space  
7 tax break:

8 In addition to the designation and classification of property as open-space  
9 real property pursuant to subsections 1 [golf courses] and 2 [agricultural  
10 uses], the governing body of each city or county shall, from time to time,  
11 specify by resolution additional designations or classifications under its  
master plan that are designed to promote the conservation of open space,  
the maintenance of natural features for control of floods and the protection  
of other natural and scenic resources from unreasonable impairment.”

12 The Peccoles, the developers of the PRMP and the seller of the Badlands to the Developer,  
13 were fully aware that the Badlands were designated PR-OS and invoked that designation in obtaining  
14 a property tax reduction from the Assessor. Ex. SSSS at 3780. Accordingly, the Developer could have  
15 but *did not* argue in its assessment appeal that the City’s PR-OS General Plan designation required  
16 that the Badlands remain in park, recreation, or open space use and, therefore, the Badlands should  
17 retain its low tax rate. The Developer went so far as to *stipulate* with the Assessor that the highest  
18 and best use of the Badlands is residential and that the property can be assessed at the higher rate. Ex.  
19 HHHH at 2179.

20 The Developer’s motivation for avoiding this obvious argument to reduce its taxes is  
21 transparent. At the time the Developer filed its assessment appeal on July 17, 2017 (Ex. LLLL at  
22 2207), it was preparing to sue the City for a regulatory taking for the City’s June 21, 2017 denial of  
23 the 35-Acre Applications. In that suit, the Developer intended to claim that the zoning of the Badlands  
24 conferred a constitutionally protected property right to build housing. The PR-OS designation,  
25 however, demolished that claim. Hence, the Developer elected against raising the argument that the  
26 General Plan required the Assessor to continue to assess the Badlands as open space under state law,  
27 opting for the chance at a far larger judgment for a taking over the prospect of a far smaller payoff in  
28 a reduction in property taxes. The Developer cannot have it both ways: it cannot agree with the

1 Assessor to an incorrect—indeed illegal—highest and best use of the property, and then claim that it  
2 should be reimbursed for tax payments based on that agreement. Therefore, even if the Court requires  
3 the City to reimburse the Developer’s property tax payments, the reimbursement should be based on  
4 the tax rate that would have been assessed for open space under NRS 361A.220(1).

5 **Conclusion**

6 The Developer’s Motion for Reimbursement of Property Taxes should be denied for the  
7 reasons set forth above.

8 Dated this 20th day of December, 2021.

9 McDONALD CARANO LLP

10 By: /s/ George F. Ogilvie III

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12 Christopher Molina (NV Bar No. 14092)  
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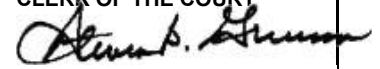
*Attorneys for City of Las Vegas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 20th day of December, 2021, I caused a true and correct copy of the foregoing **CITY'S OPPOSITION TO DEVELOPER'S MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** 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



1 **APEN**

2 Bryan K. Scott (NV Bar No. 4381)  
3 Philip R. Byrnes (NV Bar No. 166)  
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12 rwolfson@lasvegasnevada.gov

13 (Additional Counsel Identified on Signature Page)

14 *Attorneys for City of Las Vegas*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 180 LAND CO LLC, a Nevada limited liability  
18 company, FORE STARS, LTD., a Nevada  
19 limited liability company and SEVENTY  
20 ACRES, LLC, a Nevada limited liability  
21 company, DOE INDIVIDUALS I-X, DOE  
22 CORPORATIONS I-X, and DOE LIMITED  
23 LIABILITY COMPANIES I-X,

24 Plaintiffs,

25 v.

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

32 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**SUPPLEMENTAL APPENDIX OF  
EXHIBITS IN SUPPORT OF  
CITY'S POST-TRIAL MOTIONS**

**VOLUME 24**

33 The City of Las Vegas ("City") submits this Supplemental Appendix of Exhibits in Support of  
34 the City's Counter-motion for Summary Judgment and Opposition to Developer's Motion for Summary  
35 Judgment.

| Exhibit | Exhibit Description  | Vol. | Bates No. |
|---------|--|------|-----------|
| A       | City records regarding Ordinance No. 2136<br>(Annexing 2,246 acres to the City of Las Vegas) | 1    | 0001-0011 |
| B       | City records regarding Peccole Land Use Plan and<br>Z-34-81 rezoning application             | 1    | 0012-0030 |

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| Exhibit | Exhibit Description  | Vol. | Bates No. |
|---------|--|------|-----------|
| C       | City records regarding Venetian Foothills Master Plan and Z-30-86 rezoning application                               | 1    | 0031-0050 |
| D       | Excerpts of the 1985 City of Las Vegas General Plan  | 1    | 0051-0061 |
| E       | City records regarding Peccole Ranch Master Plan and Z-139-88 phase I rezoning application                           | 1    | 0062-0106 |
| F       | City records regarding Z-40-89 rezoning application  | 1    | 0107-0113 |
| G       | Ordinance No. 3472 and related records   | 1    | 0114-0137 |
| H       | City records regarding Amendment to Peccole Ranch Master Plan and Z-17-90 phase II rezoning application              | 1    | 0138-0194 |
| I       | Excerpts of 1992 City of Las Vegas General Plan  | 2    | 0195-0248 |
| J       | City records related to Badlands Golf Course expansion   | 2    | 0249-0254 |
| K       | Excerpt of land use case files for GPA-24-98 and GPA-6199  | 2    | 0255-0257 |
| L       | Ordinance No. 5250 and Excerpts of Las Vegas 2020 Master Plan  | 2    | 0258-0273 |
| M       | Miscellaneous Southwest Sector Land Use Maps from 2002-2005  | 2    | 0274-0277 |
| N       | Ordinance No. 5787 and Excerpts of 2005 Land Use Element   | 2    | 0278-0291 |
| O       | Ordinance No. 6056 and Excerpts of 2009 Land Use & Rural Neighborhoods Preservation Element                          | 2    | 0292-0301 |
| P       | Ordinance No. 6152 and Excerpts of 2012 Land Use & Rural Neighborhoods Preservation Element                          | 2    | 0302-0317 |
| Q       | Ordinance No. 6622 and Excerpts of 2018 Land Use & Rural Neighborhoods Preservation Element                          | 2    | 0318-0332 |
| R       | Ordinance No. 1582   | 2    | 0333-0339 |
| S       | Ordinance No. 4073 and Excerpt of the 1997 City of Las Vegas Zoning Code   | 2    | 0340-0341 |
| T       | Ordinance No. 5353   | 2    | 0342-0361 |
| U       | Ordinance No. 6135 and Excerpts of City of Las Vegas Unified Development Code adopted March 16, 2011                 | 2    | 0362-0364 |
| V       | Deeds transferring ownership of the Badlands Golf Course   | 2    | 0365-0377 |
| W       | Third Revised Justification Letter regarding the Major Modification to the 1990 Conceptual Peccole Ranch Master Plan | 2    | 0378-0381 |
| X       | Parcel maps recorded by the Developer subdividing the Badlands Golf Course   | 3    | 0382-0410 |
| Y       | EHB Companies promotional materials  | 3    | 0411-0445 |
| Z       | General Plan Amendment (GPA-62387), Rezoning (ZON-62392) and Site Development Plan Review (SDR-62393) applications   | 3    | 0446-0466 |
| AA      | Staff Report regarding 17-Acre Applications  | 3    | 0467-0482 |

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| BB      | Major Modification (MOD-63600), Rezoning (ZON-63601), General Plan Amendment (GPA-63599), and Development Agreement (DIR-63602) applications                                 | 3    | 0483-0582 |
| CC      | Letter requesting withdrawal of MOD-63600, GPA-63599, ZON-63601, DIR-63602 applications  | 4    | 0583      |
| DD      | Transcript of February 15, 2017 City Council meeting   | 4    | 0584-0597 |
| EE      | Judge Crockett's March 5, 2018 order granting Queensridge homeowners' petition for judicial review, Case No. A-17-752344-J   | 4    | 0598-0611 |
| FF      | Docket for NSC Case No. 75481  | 4    | 0612-0623 |
| GG      | Complaint filed by Fore Stars Ltd. and Seventy Acres LLC, Case No. A-18-773268-C   | 4    | 0624-0643 |
| HH      | General Plan Amendment (GPA-68385), Site Development Plan Review (SDR-68481), Tentative Map (TMP-68482), and Waiver (68480) applications                                     | 4    | 0644-0671 |
| II      | June 21, 2017 City Council meeting minutes and transcript excerpt regarding GPA-68385, SDR-68481, TMP-68482, and 68480.  | 4    | 0672-0679 |
| JJ      | Docket for Case No. A-17-758528-J  | 4    | 0680-0768 |
| KK      | Judge Williams' Findings of Fact and Conclusions of Law, Case No. A-17-758528-J  | 5    | 0769-0793 |
| LL      | Development Agreement (DIR-70539) application  | 5    | 0794-0879 |
| MM      | August 2, 2017 City Council minutes regarding DIR-70539  | 5    | 0880-0882 |
| NN      | Judge Sturman's February 15, 2019 minute order granting City's motion to dismiss, Case No. A-18-775804-J   | 5    | 0883      |
| OO      | Excerpts of August 2, 2017 City Council meeting transcript   | 5    | 0884-0932 |
| PP      | Final maps for Amended Peccole West and Peccole West Lot 10  | 5    | 0933-0941 |
| QQ      | Excerpt of the 1983 Edition of the Las Vegas Municipal Code  | 5    | 0942-0951 |
| RR      | Ordinance No. 2185   | 5    | 0952-0956 |
| SS      | 1990 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS) | 5    | 0957      |
| TT      | 1996 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS) | 5    | 0958      |
| UU      | 1998 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS) | 5    | 0959      |



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| VV      | 2015 aerial photograph identifying Phase I and Phase II boundaries, retail development, hotel/casino, and Developer projects, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)      | 5    | 0960      |
| WW      | 2015 aerial photograph identifying Phase I and Phase II boundaries, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)  | 5    | 0961      |
| XX      | 2019 aerial photograph identifying Phase I and Phase II boundaries, and current assessor parcel numbers for the Badlands property, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS) | 5    | 0962      |
| YY      | 2019 aerial photograph identifying Phase I and Phase II boundaries, and areas subject to inverse condemnation litigation, produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)          | 5    | 0963      |
| ZZ      | 2019 aerial photograph identifying areas subject to proposed development agreement (DIR-70539), produced by the City's Planning & Development Department, Office of Geographic Information Systems (GIS)                                    | 5    | 0964      |
| AAA     | Membership Interest Purchase and Sale Agreement   | 6    | 0965-0981 |
| BBB     | Transcript of May 16, 2018 City Council meeting   | 6    | 0982-0998 |
| CCC     | City of Las Vegas' Amicus Curiae Brief, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481   | 6    | 0999-1009 |
| DDD     | Nevada Supreme Court March 5, 2020 Order of Reversal, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481   | 6    | 1010-1016 |
| EEE     | Nevada Supreme Court August 24, 2020 Remittitur, <i>Seventy Acres, LLC v. Binion</i> , Nevada Supreme Court Case No. 75481  | 6    | 1017-1018 |
| FFF     | March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlements on 17 Acres  | 6    | 1019-1020 |
| GGG     | September 1, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Final Entitlements for 435-Unit Housing Development Project in Badlands  | 6    | 1021-1026 |
| HHH     | Complaint Pursuant to 42 U.S.C. § 1983, <i>180 Land Co. LLC et al. v. City of Las Vegas, et al.</i> , 18-cv-00547 (2018)  | 6    | 1027-1122 |
| III     | 9th Circuit Order in <i>180 Land Co. LLC; et al v. City of Las Vegas, et al.</i> , 18-cv-0547 (Oct. 19, 2020)   | 6    | 1123-1127 |
| JJJ     | Plaintiff Landowners' Second Supplement to Initial Disclosures Pursuant to NRCP 16.1 in 65-Acre case  | 6    | 1128-1137 |
| LLL     | Bill No. 2019-48: Ordinance No. 6720  | 7    | 1138-1142 |

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| MMM     | Bill No. 2019-51: Ordinance No. 6722   | 7    | 1143-1150 |
| NNN     | March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 65 Acres  | 7    | 1151-1152 |
| OOO     | March 26, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 133 Acres   | 7    | 1153-1155 |
| PPP     | April 15, 2020 Letter from City of Las Vegas Office of the City Attorney to Counsel for the Developer Re: Entitlement Requests for 35 Acres  | 7    | 1156-1157 |
| QQQ     | Valbridge Property Advisors, Lubawy & Associates Inc., Appraisal Report (Aug. 26, 2015)  | 7    | 1158-1247 |
| RRR     | Notice of Entry of Order Adopting the Order of the Nevada Supreme Court and Denying Petition for Judicial Review   | 7    | 1248-1281 |
| SSS     | Letters from City of Las Vegas Approval Letters for 17-Acre Property (Feb. 16, 2017)   | 8    | 1282-1287 |
| TTT     | Reply Brief of Appellants 180 Land Co. LLC, Fore Stars, LTD, Seventy Acres LLC, and Yohan Lowie in <i>180 Land Co LLC et al v. City of Las Vegas</i> , Court of Appeals for the Ninth Circuit Case No. 19-16114 (June 23, 2020)  | 8    | 1288-1294 |
| UUU     | Excerpt of Reporter's Transcript of Hearing on City of Las Vegas' Motion to Compel Discovery Responses, Documents and Damages Calculation and Related Documents on Order Shortening Time in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 17, 2020) | 8    | 1295-1306 |
| VVV     | Plaintiff Landowners' Sixteenth Supplement to Initial Disclosures in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 10, 2020)   | 8    | 1307-1321 |
| WWW     | Excerpt of Transcript of Las Vegas City Council Meeting (Aug. 2, 2017)   | 8    | 1322-1371 |
| XXX     | Notice of Entry of Findings of Facts and Conclusions of Law on Petition for Judicial Review in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Nov. 26, 2018)  | 8    | 1372-1399 |
| YYY     | Notice of Entry of Order <i>Nunc Pro Tunc</i> Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019 in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528 (Feb. 6, 2019)  | 8    | 1400-1405 |
| ZZZ     | City of Las Vegas Agenda Memo – Planning, for City Council Meeting June 21, 2017, Re: GPA-68385, WVR-68480, SDR-68481, and TMP-68482 [PRJ-67184]   | 8    | 1406-1432 |

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| AAAA    | Excerpts from the Land Use and Rural Neighborhoods Preservation Element of the City's 2020 Master Plan adopted by the City Council of the City on September 2, 2009   | 8    | 1433-1439 |
| BBBB    | Summons and Complaint for Declaratory Relief and Injunctive Relief, and Verified Claims in Inverse Condemnation in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C                    | 8    | 1440-1477 |
| CCCC    | Notice of Entry of Findings of Fact and Conclusions of Law Granting City of Las Vegas' Motion for Summary Judgment in <i>180 Land Co. LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No.A-18-780184-C (Dec. 30, 2020) | 8    | 1478-1515 |
| DDDD    | Peter Lowenstein Declaration  | 9    | 1516-1522 |
| DDDD-1  | Exhibit 1 to Peter Lowenstein Declaration: Diagram of Existing Access Points  | 9    | 1523-1526 |
| DDDD-2  | Exhibit 2 to Peter Lowenstein Declaration: July 5, 2017 Email from Mark Colloton  | 9    | 1527-1531 |
| DDDD-3  | Exhibit 3 to Peter Lowenstein Declaration: June 28, 2017 Permit application   | 9    | 1532-1533 |
| DDDD-4  | Exhibit 4 to Peter Lowenstein Declaration: June 29, 2017 Email from Mark Colloton re Rampart and Hualapai   | 9    | 1534-1536 |
| DDDD-5  | Exhibit 5 to Peter Lowenstein Declaration: August 24, 2017 Letter from City Department of Planning  | 9    | 1537      |
| DDDD-6  | Exhibit 6 to Peter Lowenstein Declaration: July 26, 2017 Email from Peter Lowenstein re Wall Fence  | 9    | 1538      |
| DDDD-7  | Exhibit 7 to Peter Lowenstein Declaration: August 10, 2017 Application for Walls, Fences, or Retaining Walls; related materials   | 9    | 1539-1546 |
| DDDD-8  | Exhibit 8 to Peter Lowenstein Declaration: August 24, 2017 Email from Steve Gebeke  | 9    | 1547-1553 |
| DDDD-9  | Exhibit 9 to Peter Lowenstein Declaration: Bill No. 2018-24   | 9    | 1554-1569 |
| DDDD-10 | Exhibit 10 to Peter Lowenstein Declaration: Las Vegas City Council Ordinance No. 6056 and excerpts from Land Use & Rural Neighborhoods Preservation Element   | 9    | 1570-1577 |
| DDDD-11 | Exhibit 11 to Peter Lowenstein Declaration: documents submitted to Las Vegas Planning Commission by Jim Jimmerson at February 14, 2017 Planning Commission meeting  | 9    | 1578-1587 |
| EEEE    | GPA-72220 application form  | 9    | 1588-1590 |
| FFFF    | Chris Molina Declaration  | 9    | 1591-1605 |
| FFFF-1  | Fully Executed Copy of Membership Interest Purchase and Sale Agreement for Fore Stars Ltd.  | 9    | 1606-1622 |

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| FFFF-2  | Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property          | 9    | 1623-1629 |
| FFFF-3  | Reference map of properties involved in transactions between Developer and Peccole family                          | 9    | 1630      |
| FFFF-4  | Excerpt of appraisal for One Queensridge place dated October 13, 2005  | 9    | 1631-1632 |
| FFFF-5  | Site Plan Approval for One Queensridge Place (SDR-4206)  | 9    | 1633-1636 |
| FFFF-6  | Securities Redemption Agreement dated September 14, 2005   | 9    | 1637-1654 |
| FFFF-7  | Securities Purchase Agreement dated September 14, 2005   | 9    | 1655-1692 |
| FFFF-8  | Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005                                       | 9    | 1693-1730 |
| FFFF-9  | Settlement Agreement and Mutual Release dated June 28, 2013  | 10   | 1731-1782 |
| FFFF-10 | June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course                                       | 10   | 1783-1786 |
| FFFF-11 | July 25, 2014 email and initial draft of Golf Course Purchase Agreement  | 10   | 1787-1813 |
| FFFF-12 | August 26, 2014 email from Todd Davis and revised purchase agreement   | 10   | 1814-1843 |
| FFFF-13 | August 27, 2014 email from Billy Bayne regarding purchase agreement  | 10   | 1844-1846 |
| FFFF-14 | September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal                     | 10   | 1847-1848 |
| FFFF-15 | November 3, 2014 email regarding BGC Holdings LLC  | 10   | 1849-1851 |
| FFFF-16 | November 26, 2014 email and initial draft of stock purchase and sale agreement                                     | 10   | 1852-1870 |
| FFFF-17 | December 1, 2015 emails regarding stock purchase agreement   | 10   | 1871-1872 |
| FFFF-18 | December 1, 2015 email and fully executed signature page for stock purchase agreement                              | 10   | 1873-1874 |
| FFFF-19 | December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements | 10   | 1875-1876 |
| FFFF-20 | February 19, 2015 emails regarding notes and clarifications to purchase agreement                                  | 10   | 1877-1879 |
| FFFF-21 | February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC                      | 10   | 1880      |
| FFFF-22 | February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC                     | 10   | 1881-1882 |
| FFFF-23 | Fully executed Membership Interest Purchase Agreement for WRL LLC  | 10   | 1883-1890 |

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| FFFF-24 | June 12, 2015 email regarding clubhouse parcel and recorded parcel map  | 10   | 1891-1895 |
| FFFF-25 | Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.  | 10   | 1896-1900 |
| FFFF-26 | Record of Survey for Hualapai Commons Ltd.  | 10   | 1901      |
| FFFF-27 | Deed from Hualapai Commons Ltd. to EHC Hualapai LLC   | 10   | 1902-1914 |
| FFFF-28 | Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC   | 10   | 1915-1931 |
| FFFF-29 | City of Las Vegas' First Set of Interrogatories to Plaintiff  | 10   | 1932-1945 |
| FFFF-30 | Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3 <sup>rd</sup> Supplement  | 10   | 1946-1973 |
| FFFF-31 | City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff  | 11   | 1974-1981 |
| FFFF-32 | Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff   | 11   | 1982-1989 |
| FFFF-33 | September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents   | 11   | 1990-1994 |
| FFFF-34 | First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff   | 11   | 1995-2002 |
| FFFF-35 | Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time   | 11   | 2003-2032 |
| FFFF-36 | Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time            | 11   | 2033-2109 |
| FFFF-37 | February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time | 11   | 2110-2118 |
| FFFF-38 | April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order   | 11   | 2119-2120 |
| FFFF-39 | April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021  | 11   | 2121-2123 |
| FFFF-40 | Hydrologic Criteria and Drainage Design Manual, Section 200   | 11   | 2124-2142 |
| FFFF-41 | Hydrologic Criteria and Drainage Design Manual, Standard Form 1   | 11   | 2143      |
| FFFF-42 | Hydrologic Criteria and Drainage Design Manual, Standard Form 2   | 11   | 2144-2148 |
| FFFF-43 | Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study   | 11   | 2149-2152 |

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| FFFF-44 | Excerpts from Peccole Ranch Master Plan Phase II regarding drainage and open space  | 11   | 2153-2159 |
| FFFF-45 | Aerial photos and demonstrative aids showing Badlands open space and drainage system  | 11   | 2160-2163 |
| FFFF-46 | August 16, 2016 letter from City Streets & Sanitation Manager regarding Badlands Golf Course Drainage Maintenance   | 11   | 2164-2166 |
| FFFF-47 | Excerpt from EHB Companies promotional materials regarding security concerns and drainage culverts  | 11   | 2167      |
| GGGG    | Landowners' Reply in Support of Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims Etc. in <i>180 Land Co., LLC v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (March 21, 2019) | 11   | 2168-2178 |
| HHHH    | State of Nevada State Board of Equalization Notice of Decision, <i>In the Matter of Fore Star Ltd., et al.</i> (Nov. 30, 2017)  | 11   | 2179-2183 |
| IIII    | Clark County Real Property Tax Values   | 11   | 2184-2199 |
| JJJJ    | Clark County Tax Assessor's Property Account Inquiry - Summary Screen   | 11   | 2200-2201 |
| KKKK    | February 22, 2017 Clark County Assessor Letter to 180 Land Co. LLC, re Assessor's Golf Course Assessment  | 11   | 2202      |
| LLLL    | Petitioner's Opening Brief, <i>In the matter of 180 Land Co. LLC</i> (Aug. 29, 2017), State Board of Equalization   | 12   | 2203-2240 |
| MMMM    | September 21, 2017 Clark County Assessor Stipulation for the State Board of Equalization  | 12   | 2241      |
| NNNN    | Excerpt of Reporter's Transcript of Hearing in <i>180 Land Co. v. City of Las Vegas</i> , Eighth Judicial District Court Case No. A-17-758528-J (Feb. 16, 2021)   | 12   | 2242-2293 |
| OOOO    | June 28, 2016 Letter from Mark Colloton re: Reasons for Access Points Off Hualapai Way and Rampart Blvd.  | 12   | 2294-2299 |
| PPPP    | Transcript of City Council Meeting (May 16, 2018)   | 12   | 2300-2375 |
| QQQQ    | Supplemental Declaration of Seth T. Floyd   | 13   | 2376-2379 |
| QQQQ-1  | 1981 Peccole Property Land Use Plan   | 13   | 2380      |
| QQQQ-2  | 1985 Las Vegas General Plan   | 13   | 2381-2462 |
| QQQQ-3  | 1975 General Plan   | 13   | 2463-2558 |
| QQQQ-4  | Planning Commission meeting records regarding 1985 General Plan   | 14   | 2559-2786 |
| QQQQ-5  | 1986 Venetian Foothills Master Plan   | 14   | 2787      |
| QQQQ-6  | 1989 Peccole Ranch Master Plan  | 14   | 2788      |
| QQQQ-7  | 1990 Master Development Plan Amendment  | 14   | 2789      |
| QQQQ-8  | Citizen's Advisory Committee records regarding 1992 General Plan  | 14   | 2790-2807 |

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| QQQQ-9  | 1992 Las Vegas General Plan   | 15-16 | 2808-3257 |
| QQQQ-10 | 1992 Southwest Sector Map   | 17    | 3258      |
| QQQQ-11 | Ordinance No. 5250 (Adopting 2020 Master Plan)  | 17    | 3259-3266 |
| QQQQ-12 | Las Vegas 2020 Master Plan  | 17    | 3267-3349 |
| QQQQ-13 | Ordinance No. 5787 (Adopting 2005 Land Use Element)   | 17    | 3350-3416 |
| QQQQ-14 | 2005 Land Use Element   | 17    | 3417-3474 |
| QQQQ-15 | Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)              | 17    | 3475-3479 |
| QQQQ-16 | 2009 Land Use and Rural Neighborhoods Preservation Element  | 18    | 3480-3579 |
| QQQQ-17 | Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element) | 18    | 3580-3589 |
| QQQQ-18 | Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)              | 18    | 3590-3600 |
| QQQQ-19 | 2018 Land Use & Rural Neighborhoods Preservation Element  | 18    | 3601-3700 |
| RRRR    | Supplemental declaration of Seth Floyd  | 19    | 3701-3703 |
| RRRR-1  | Southwest Sector Land Use Map (1992)  | 19    | 3704      |
| RRRR-2  | 10/10/1991 Planning Commission Minutes  | 19    | 3705-3707 |
| RRRR-3  | 10/22/1991 Planning Commission Minutes  | 19    | 3708-3712 |
| RRRR-4  | 11/14/1991 Planning Commission Minutes  | 19    | 3713-3715 |
| RRRR-5  | 11/26/1991 Planning Commission Minutes  | 19    | 3716-3718 |
| RRRR-6  | 12/12/1991 Planning Commission Minutes  | 19    | 3719-3726 |
| RRRR-7  | 12/12/1991 Planning Commission Resolution adopting 1992 General Plan                                  | 19    | 3727-3728 |
| RRRR-8  | 2/5/1992 City Council Meeting Minutes   | 19    | 3729      |
| RRRR-9  | 2/18/1992 Recommending Committee Meeting Minutes  | 19    | 3730-3750 |
| RRRR-10 | 2/19/1992 City Council Meeting Minutes  | 19    | 3751-3752 |
| RRRR-11 | 3/12/1992 Planning Commission Meeting Minutes   | 19    | 3753-3754 |
| RRRR-12 | 3/16/1992 Recommending Committee Meeting Minute   | 19    | 3755      |
| RRRR-13 | 4/1/1992 City Council Meeting Minutes   | 19    | 3756-3758 |
| RRRR-14 | Ordinance No. 3636 (adopting new general plan)  | 19    | 3759-3761 |
| RRRR-15 | 2/13/1992 Citizens Advisory Committee Meeting Minutes   | 19    | 3762-3765 |
| RRRR-16 | 3/27/1991 Citizens Advisory Committee Mailout   | 19    | 3766-3775 |
| SSSS    | Excerpts of NRCP 30(b)(6) Designee of Peccole Nevada Corporation – William Bayne                      | 19    | 3776-3789 |

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| TTTT    | Findings of Facts, Conclusions of Law and Order Regarding Motion to Dismiss and Countermotion to Allow More Definite Statement if Necessary and Countermotion to Stay Litigation of Inverse Condemnation Claims Until Resolution of the Petition for Judicial Review and Countermotion for NRCP Rule 56(F) Continuance  | 19       | 3790-3801 |
| UUUU    | Declaration of Christopher Molina in Support of the City's Countermotion for Summary Judgment and Opposition to Motion to Determine Property Interest   | 19       | 3802-3803 |
| VVVV    | Declaration of Seth Floyd   | 19       | 3804-3805 |
| VVVV-1  | Master planned communities with R-PD Zoning   | 19       | 3806-3810 |
| VVVV-2  | General Plan Maps for Master Planned Communities with R-PD zoning   | 19       | 3811-3815 |
| WWWW    | Plaintiff Landowners' Motion on Order Shortening Time to 1) Apply Issue Preclusion to the Property Interest Issue; and 2) Set a Short Hearing to Allow the Court to Consider: a) Judge Williams' Findings of Fact and Conclusions of Law on the Take Issue; b) Evidence that was Presented in the 35 Acre Case on the Take Issue; and c) Very Recent Nevada and United States Supreme Court Precedent on the Take Issue | 20       | 3816-3877 |
| XXXX    | Newspaper Articles  | 20       | 3878-3897 |
| YYYY    | City Council Meeting of October 6, 2021 Verbatim Transcript – Agenda Item 63  | 20       | 3898-3901 |
| ZZZZ    | Transcripts of September 13 & 17, 2021 Hearing in the 133-Acre Case (Case No. A-18-775804-J)  | 21<br>22 | 3902-4280 |
| AAAAA   | Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021   | 22       | 4281-4310 |
| BBBBB   | 2005 land use applications filed by the Peccole family  | 23       | 4311-4316 |
| CCCCC   | <b>Supplement to Plaintiff Landowners' Opposition to City's Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 56(d) filed 11/15/2021</b>   | 24       | 4317-4382 |
| DDDDD   | <b>June 28, 2017 letters to 180 Land Co LLC re Denial of the 35-Acre Applications</b>   | 24       | 4383-4386 |



DATED this 20<sup>th</sup> day of December, 2021.

McDONALD CARANO LLP

By: /s/ George F. Ogilvie III

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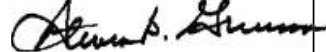
*Attorneys for City of Las Vegas*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 20<sup>th</sup> day of December, 2021, I caused a true and correct copy of the foregoing **SUPPLEMENTAL APPENDIX OF EXHIBITS IN SUPPORT OF CITY'S POST-TRIAL MOTIONS** 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

# **EXHIBIT “CCCCC”**



**SUPP**  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; DOE  
INDIVIDUALS I through X, DOE  
CORPORATIONS I through X, and DOE  
LIMITED LIABILITIES COMPANIES I  
through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision  
of the State of Nevada; ROE government  
entities I though X, ROE LIMITED  
LIABILITY COMPANIES I though X, ROE  
quasi-governmental I through X,

Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

**SUPPLEMENT TO:**

**PLAINTIFF LANDOWNERS'  
OPPOSITION TO CITY'S MOTION FOR  
SUMMARY JUDGMENT AND  
COUNTERMOTION FOR DISCOVERY  
PURSUANT TO NRCP 56(d)**

**Date of Hearing: November 17, 2021**

**Time of Hearing: 9:00 a.m.**

This Court and Judge Williams have both entered Findings of Fact and Conclusions of Law  
granting "in its entirety" the Landowners' motions to determine the property interest issue in the  
17 and 35 Acre Cases (hereinafter "FFCLs Re: Property Interest"). This Supplement is filed to

1 provide this Court two additional orders by Judge Williams in the 35 Acre Case. First, Judge  
2 Williams has entered Findings of Fact and Conclusions of Law Granting Plaintiff Landowners’  
3 Motion to Determine Take (hereinafter “Judge Williams FFCL Re: Take”). *See attached Exhibit*  
4 *– Judge Williams FFCL Re: Take*. Second, Judge Williams also held a bench trial and entered a  
5 “Decision of the Court” on the issue of just compensation in the 35 Acre Case. *See attached*  
6 *Exhibit – Judge Williams Decision of the Court on Just Compensation*.

7 **The following shows that in Judge Williams FFCL Re: Take, he confirms his property**  
8 **interest FFCL and finds a taking:**

- 9 • Judge Williams, again, “confirms” his FFCL Re: Property Interest; that the Landowners  
10 had hard R-PD7 zoning which granted them the legally permissible right to build single family  
11 and multi-family residential units on the 35 Acre Property (finding 33), citing six Nevada  
12 Supreme Court opinions directly on point (finding 34) and a very recent June 23, 2021, United  
13 States Supreme Court opinion on point (finding 38). *See attached Exhibit, FFCL Re: Take, pp.*  
14 *8-10.*
- 15 • Judge Williams, again, flatly rejected the City’s argument there is no property interest,  
16 citing extensively to the evidence obtained during discovery. *Id.* pp. 3-8.
- 17 • Judge Williams also, again, “rejects” the City’s master plan PR-OS and Peccole Ranch  
18 Master Plan open space arguments. *Id.*, p. 10, finding 39.
- 19 • Judge Williams then enters 19 pages of findings, detailing the City’s actions that amount  
20 to a taking - based on the completed discovery in the 35 Acre Case. *Id.*, pp. 10-29.
- 21 • Judge Williams found that the denial of the MDA is one of those taking actions. *Id.*, pp.  
22 11-19 (findings 46-86). The MDA denial also applies to this 17 Acre property.
- 23 • Judge Williams entered detailed findings that City Bill Nos. 2018-5 and 2018-24: “1) target  
24 only the Landowners’ 250 Acres; 2) make it impracticable or impossible to develop the 250

1 Acres; and 3) preserve the 250 Acres for use by the public and authorize the public to use the 250  
2 Acres.” Id., pp. 21-25 (specifically finding 122).

3 • Judge Williams then entered a conclusion of law that “[t]hese Bills alone, are a per se  
4 regulatory taking” of the 35 Acre property. Id., p. 33, finding 166. Bill Nos. 2018-5 and 2018-  
5 24 apply also to this 17 Acre property.

6 • Judge Williams made factual findings in regard to the fence denial (pp. 19-20) and  
7 concludes that this fence denial “is a taking in and of itself” (p. 35, finding 173). See attached  
8 Exhibit, FFCL Re: Take. The fence denial also applies to this 17 Acre Property.

9 • Judge Williams made factual findings in regard to the access denial (pp. 20-21) and  
10 concludes that this access denial “is a taking in and of itself” (p. 35, finding 174). See attached  
11 Exhibit, FFCL Re: Take. The access denial also applies to this 17 Acre Property.

12 • Judge Williams then addressed several other facts that show a taking, including the  
13 uncontested expert opinion that: 1) prior to the City’s actions, the 35 Acre property had a value  
14 of \$34,135,000, but, 2) after the City’s actions, the value of the 35 Acre property “would be zero.”  
15 Id., pp. 26-29, specifically findings 145 and 146.

16 • Judge Williams then found that the aggregate of the City’s systematic and aggressive  
17 actions toward the 35 Acre Property met all four of Nevada’s taking standards - per se regulatory  
18 taking, per se categorical taking, non-regulatory/de facto taking, and Penn Central regulatory  
19 taking. Id., pp. 31-37, 44-45.

20 • Judge Williams held that the City’s ripeness / futility defense does not apply to three of the  
21 Landowners’ taking claims – per se regulatory taking claim, per se categorical taking claim, and  
22 non-regulatory/de facto taking claim. Id., pp. 37-38, findings 183-187.

1 • Judge Williams held that ripeness / futility does apply to the Penn Central regulatory taking  
2 claim, provided the ripeness analysis for this claim, and held the claim was ripe. Id., pp. 44-45,  
3 findings 215-217.

4 • Judge Williams rejected the City’s segmentation defense to the taking. Id., pp. 38-40.

5 • Judge Williams rejected all of the City’s petition for judicial review arguments and case  
6 law as inapplicable to the 35 Acre property inverse condemnation case, citing to his numerous  
7 prior orders, the City’s own arguments in the petition for judicial review side of the 35 Acre case,  
8 and a recent Nevada Supreme Court recent decision - City of Henderson v. Eighth Judicial District  
9 Court, 137 Nev., Adv. Op. 26 (June 24, 2021). Id., pp. 41-43.

10 • Judge Williams also rejected the City’s defense to the taking based on the alleged 2005  
11 purchase price for the 250 Acres. Id., p. 43.

12 **The following shows that in Judge Williams’ “Decision of the Court,” he awarded**  
13 **just compensation to the Landowners and against the City:**

14 • Judge Williams, again, confirmed his property interest holding, and found, “the 34.07-acre  
15 property is hard zoned R-PD7 at all relevant times herein, and the permitted uses of the subject  
16 property are single-family and multi-family residential.” See attached Exhibit, Judge Williams  
17 Decision of the Court on Just Compensation, p. 2, finding 3.

18 • Judge Williams, again, confirmed his take holding, and found, “the City of Las Vegas  
19 prevented the legally permitted use of the property and required the property to remain vacant.”  
20 Id., p. 4, finding 8.

21 • Judge Williams held that the Landowners’ appraisal report conforms to the Uniform  
22 Standards of Professional Appraisal Practice and the Code of Professional Ethics and Standards  
23 of Professional Appraisal Practice Institute. Id., p. 1, finding 1.

1 • Judge Williams then entered an award of \$34,135,000 for the taking of the 35 Acre  
2 Property, based on the Landowners' appraisal analysis. Id., p. 4.

3 **Conclusion and Request of the Court**

4 The City's request to grant summary judgment without discovery is unprecedented.  
5 Especially in light of the fact that Judge Williams in the 35 Acre Case has held the City's actions  
6 (that apply equally to this 17 Acre Case) amount to a taking. Judge Bixler already denied the  
7 City's motion to dismiss in this very case, thereby finding discovery is necessary. Therefore, the  
8 City's request should be denied and discovery should move forward in this case.

9 DATED this 15<sup>th</sup> day of November, 2021.

10 **LAW OFFICES OF KERMIT L. WATERS**

11 BY: /s/ James Leavitt  
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19 Nevada Bar No. 8917  
20 *Attorneys for Plaintiffs Landowners*  
21  
22  
23  
24



1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and  
3 that on the 15<sup>th</sup> day of November, 2021, pursuant to NRCP (5)(b) a true and correct copy of the  
4 foregoing **SUPPLEMENT TO: PLAINTIFF LANDOWNERS' OPPOSITION TO CITY'S**  
5 **MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISCOVERY**  
6 **PURSUANT TO NRCP 56(d)** was made by electronic means, to be electronically served through  
7 the Eighth Judicial District Court's filing system, with the date and time of the electronic service  
8 substituted for the date and place of deposit in the mail and addressed to each of the following:

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21 /s/ Sandy Guerra

22 an employee of the Law Offices of Kermitt L. Waters  
23  
24

Judge Williams FFCL  
Re: Take

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15 ***Attorneys for Plaintiffs Landowners***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 180 LAND CO., LLC, a Nevada limited liability  
12 company, FORE STARS Ltd., DOE  
13 INDIVIDUALS I through X, ROE  
14 CORPORATIONS I through X, and ROE  
15 LIMITED LIABILITY COMPANIES I through  
16 X,  
17  
18 Plaintiffs,  
19  
20 vs.  
21  
22 CITY OF LAS VEGAS, political subdivision of  
23 the State of Nevada, ROE government entities I  
24 through X, ROE CORPORATIONS I through X,  
ROE INDIVIDUALS I through X, ROE  
LIMITED LIABILITY COMPANIES I through  
X, ROE quasi-governmental entities I through X,  
Defendant.

Case No.: A-17-758528-J  
Dept. No.: XVI

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**GRANTING PLAINTIFFS  
LANDOWNERS' MOTION TO  
DETERMINE TAKE  
AND FOR SUMMARY JUDGMENT ON  
THE FIRST, THIRD AND FOURTH  
CLAIMS FOR RELIEF;**

**AND**

**DENYING THE CITY OF LAS VEGAS'  
COUNTERMOTION FOR SUMMARY  
JUDGMENT ON THE SECOND CLAIM  
FOR RELIEF**

**Hearing Dates and Times:**

September 23, 2021 at 1:30 p.m.;  
September 24, 2021 at 9:30 a.m.; and  
September 27 & 28, 2021 at 9:15 a.m.

1 Plaintiffs, 180 LAND COMPANY, LLC and FORE STARS, Ltd. (hereinafter  
2 “Landowners”) brought Plaintiffs Landowners’ Motion to Determine Take and for Summary  
3 Judgment on the First, Third, and Fourth Claims for Relief, with Kermitt L. Waters, Esq., Autumn  
4 L. Waters, Esq., James Jack Leavitt, Esq., of the Law Offices of Kermitt L. Waters, along with in-  
5 house counsel Elizabeth Ghanem Ham, Esq. appearing for and on behalf of the Landowners, and  
6 George F. Ogilvie III, Esq., Christopher Molina, Esq. of McDonald Carrano, LLP along with  
7 Andrew Schwartz, Esq., of Shute, Mihaly and Weinberger, LLP with Philip R. Byrnes, Esq. and  
8 Rebecca Wolfson, Esq., with the City Attorney’s Office, appearing for and on behalf of the City  
9 of Las Vegas (hereinafter “the City”). The City brought a Countermotion for Summary Judgment  
10 on the Landowners’ Second Claim for Relief.

11 The Court has allowed a full and fair opportunity to brief the matters before the Court by  
12 entering orders that have allowed both the Landowners and the City to submit extensive briefs to  
13 the Court in excess of the EDCR 2.20(a) page limit. The Court has also allowed both parties a full  
14 and fair opportunity to present their evidence and provide extensive oral argument to the Court on  
15 all pending issues during hearings held on September 23, September 24, September 27, and  
16 September 28, 2021. Having reviewed all of the pleadings, including the submitted exhibits, and  
17 having heard extensive arguments and presentation of evidence, the Court hereby enters the  
18 following Findings of Fact and Conclusions of Law:

19  
20 **I.**

21 **INVERSE CONDEMNATION PROCEDURE AND POSTURE OF THE CASE**

22 1. The Nevada Supreme Court has held that, when analyzing an inverse condemnation  
23 claim, the court must “undertake two distinct sub-inquiries: “the court must first determine” the  
24 property rights “before proceeding to determine whether the governmental action constituted a  
taking.” ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran International

1 Airport v. Sisolak, 122 Nev 645, 658 (Nev. 2006). The Nevada Supreme Court has held that  
2 “whether the Government has inversely condemned private property is a question of law that we  
3 review de novo.” Sisolak, at 661. Therefore, this Court decides the property interest issue and the  
4 taking issue. To resolve the four taking claims at issue, the Court relies on United States Supreme  
5 Court and Nevada Supreme Court inverse condemnation and eminent domain precedent. *See*  
6 County of Clark v. Alper, 100 Nev. 382, 391 (1984) (“[I]nverse condemnation proceedings are the  
7 constitutional equivalent to eminent domain actions and are governed by the same rules and  
8 principles that are applied to formal condemnation proceedings.”).

9         2. This court entertained extensive argument on the first sub-inquiry, the property  
10 rights issue, on September 17, 2020, and entered Findings of Fact and Conclusions of Law  
11 Regarding Plaintiff Landowners’ Motion to Determine “Property Interest,” on October 12, 2020  
12 (hereinafter “FFCL Re: Property Interest”).

13         3. In the FFCL Re: Property Interest, this Court held: 1) Nevada eminent domain law  
14 provides that zoning must be relied upon to determine a landowners’ property interest in an  
15 eminent domain case; 2) the 35 Acre Property at issue in this matter has been hard zoned R-PD7  
16 at all relevant times; 3) the Las Vegas Municipal Code lists single-family and multi-family as the  
17 legally permissible uses on R-PD7 zoned properties; and, 4) the permitted uses by right of the 35  
18 Acre Property are single-family and multi-family residential. Exhibit 1.

19         4. The City did not file a timely Eighth Judicial District Court Rule 2.24 motion for  
20 reconsideration of the FFCL Re: Property Interest.

21         5. On March 26, 2021, the Landowners filed Plaintiff Landowners’ Motion to  
22 Determine Take and for Summary Judgment on the First, Third and Fourth Claims for Relief,  
23 requesting that the Court decide the second sub-inquiry, the take issue, referenced in the Sisolak,  
24 *supra*, case.

6. On April 8, 2021, the City filed a Rule 56(d) motion, requesting that the Court delay hearing the Plaintiff Landowners' Motion to Determine Take until such time as discovery closes and the Court granted the City's request. The City specifically requested additional time to conduct discovery on the economic impact analysis, namely, the potential economic impact of the City's actions on the 35 Acre Property.

7. Discovery closed on July 26, 2021, and the Court set the Landowners' Motion for Summary Judgment on the Landowners' First, Third, and Fourth Claims for Relief and the City's Countermotion for Summary Judgment on the Landowners' Second Claim for Relief for September 23 and September 24, 2021.

8. The Court, in order to allow the City additional time for presentation of evidence and oral argument, added two more days – September 27 and September 28, 2021, to the hearing.

9. Therefore, the Court allowed both parties substantial time to present any and all facts and law they determined were necessary to fully and fairly present their cases to the Court.

## II.

**FINDINGS OF FACT IN REGARD TO THE LANDOWNERS' MOTION FOR  
SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR  
RELIEF**

**A.**

## THE PROPERTY INTEREST ISSUE

10. Because the City extensively re-presented facts regarding the property interest the Landowners have in the 35 Acre Property during the four days of hearings, the Court will address some of these property interest facts.

111

1 **The Landowners' 35 Acre Property.**

2 11. The Landowners acquired all of the assets and liabilities of Fore Stars Ltd., which  
3 owned five parcels of property, consisting of 250 acres of land ("250 Acres"), of which the  
4 property at issue in this case was a part. Exhibit 44.

5 12. The property at issue in this case is a 34.07 acre parcel of property generally located  
6 near the southeast corner of Hualapai Way and Alta Drive within the geographic boundaries of the  
7 City of Las Vegas, more particularly described as Clark County Assessor Parcel 138-31-201-005  
8 (hereinafter "35 Acre Property"). At the time of the summary judgment hearing of this matter, the  
9 35 Acre Property was and remains vacant.

10 **The Landowners presented uncontested evidence of the due diligence conducted prior to**  
11 **acquiring ownership of the 35 Acre Property.**

12 13. In 2001, the Landowners principals were advised by the William Peccole Family,  
13 original owners of the 35 Acre Property, that at all times, it was zoned R-PD7, it had rights to  
14 develop, the property was intended for residential development, and the Peccole Family did not  
15 and would never place a deed restriction on the property. Exhibit 34, p. 000734, paras. 4-5.

16 14. Also in 2001, the Landowners confirmed that the CC&Rs for the Queensridge  
17 Community, the community adjacent to the 35 Acre Property, and the disclosures related to the  
18 acquisition of surrounding properties, disclosed that the 35 Acre Property is not a part of the  
19 Queensridge Community, there is no requirement that the 35 Acre Property be used as open space  
20 or a golf course as an amenity for the Queensridge Community, and the 35 Acre Property is  
21 available for "future development." Exhibit 34, 000734, paras. 4-5; Exhibit 38

22 15. In 2006, the Landowners met with Robert Ginzer, a City Planning official, and  
23 confirmed that the 35 Acre Property was zoned R-PD7 and there were no restrictions that could  
24 prevent development of the property. Exhibit 34, p. 000734, para. 6.

1           16.     In 2014, the Landowners met with Tom Perrigo and Peter Lowenstein, the highest  
2 ranking City Planners at that time, and they agreed to perform a study that took three weeks. At  
3 the end of this three week study, the City Planning Department reported that: 1) the 35 Acre  
4 Property is zoned for a residential use, R-PD7, and had vested rights to develop up to 7 residential  
5 units per acre; 2) the zoning trumps everything; and, 3) the owner of the 35 Acre Property can  
6 develop the property. Exhibit 34, p. 000735, para. 8.

7           17.     The City then issued, at the Landowners request, a Zoning Verification Letter, on  
8 December 30, 2014, which states, in part, that: 1) the 35 Acre Property is “zoned R-PD7  
9 (Residential Planned Development District – 7 units per acre;” 2) the “R-PD District is intended  
10 to provide for flexibility and innovation in residential development;” 3) the residential density  
11 allowed in the R-PD District shall be reflected by a numerical designation for that district,  
12 (Example, R-PD4 allows up to four units per gross acre);” and, 4) a “detailed listing of the  
13 permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 (“Las  
14 Vegas Zoning Code”) of the Las Vegas Municipal Code.” Exhibit 134.

15           18.     After obtaining the City’s Zoning Verification Letter, the Landowners closed on  
16 the acquisition of the 35 Acre Property via purchase of the entity Fore Stars, Ltd.. Exhibit 44.

17           19.     The Landowners also presented uncontested evidence of the City’s position of the  
18 validity and application of the R-PD7 zoning to the 35 Acre Property.

19           20.     During the development application process, veteran City Attorney Brad Jerbic  
20 stated, “Council gave hard zoning to this golf course, R-PD7, which allows somebody to come in  
21 and develop.” Exhibit 163, 10.18.16 Special Planning Commission Meeting, p. 005023:3444-  
22 3445.

23           21.     Peter Lowenstein, head City Planner, testified during deposition that “a zone district  
24 gives a property owner property rights.” Exhibit 160, p. 005002:5-6.



1           22.     The City Planning Department provided a recommendation on the Master  
2 Development Agreement (“MDA”) application for the development of the entire 250 Acres,  
3 discussed below, that further confirmed the residential use of the 35 Acre Property. The MDA  
4 application provided for residential development on the 35 Acre Property and the City Planning  
5 Department issued a recommendation of approval for the MDA, finding it “conforms to the  
6 existing zoning district requirements.” Exhibit 77, p. 002671.

7           23.     The City Planning Department provided a recommendation on the 35 Acre Property  
8 stand-alone applications, discussed below, that further confirmed the residential use of the 35 Acre  
9 Property. The 35 Acre applications provided for a 61-lot residential development on the 35 Acre  
10 Property and the City Planning Department issued a recommendation of approval for the  
11 applications, as they were “in conformation with all Title 19 [City Zoning Code] and NRS  
12 requirements for tentative maps.” Exhibit 74, p. 002553.

13           24.     The Clark County Tax Assessor (“Tax Assessor”) confirmed the residential use of  
14 the 35 Acre Property based on R-PD7 zoning. NRS 361.227(1) requires that the tax assessor,  
15 when determining the taxable value of real property, shall appraise the full cash value of vacant  
16 land “by considering the uses to which it may lawfully be put” and “any legal restrictions upon  
17 those uses.” In 2016, the Clark County Tax Assessor (Tax Assessor) applied NRS 361.227(1) to  
18 the 35 Acre Property. Exhibit 120, p. 004222. The Tax Assessor determined the “lawful” use of  
19 the 250 Acres, including the 35 Acre Property, by relying upon the “Zoning Designation ... R-  
20 PD7” and identifying the use of the 250 Acres under this “R-PD7” zoning as “RESIDENTIAL.”  
21 Exhibit 52, p. 001185; Exhibit 51, p. 001182. The Tax Assessor imposed a real estate tax on the  
22 35 Acre Property, based on a residential use, of \$205,227.22 per year. Exhibit 50, p. 001180. It  
23 was undisputed that the Landowners have dutifully paid these annual real estate taxes. The City  
24

1 of Las Vegas City Charter states that, “t[h]e County Assessor of the County is, ex officio, the City  
2 Assessor of the City.” Las Vegas City Charter, sections 3.120(1).

3 **The Landowners also presented uncontested evidence that the City has taken the position**  
4 **that the R-PD7 zoning is of the highest order and supersedes any City Master Plan or**  
5 **General Plan land use designations.**

6 25. On February 14, 2017, City Attorney Brad Jerbic stated at a Planning Commission  
7 meeting, “the rule is the hard zoning, in my opinion, does trump the General Plan designation.”  
8 Exhibit 75, 2.14.17 Planning Commission minutes, p. 002629:1787-1789.

9 26. The City Attorney’s Office submitted pleadings to Nevada District Courts, stating  
10 the City Master Plan “was a routine planning activity that had no legal effect on the use and  
11 development” of properties and “in the hierarchy, the land use designation [on the City Master  
12 Plan] is subordinate to the zoning designation.” Exhibit 156, p. 004925-4926; Exhibit 42, p.  
13 000992:8-12.

14 27. Two City Attorneys submitted affidavits to a Nevada District Court, stating “the  
15 Office of the City Attorney has consistently advised the City Council and the City staff that the  
16 City’s Master Plan is a planning document only.” Exhibits 157 and 158.

17 28. Tom Perrigo, head City Planner, testified in deposition that “if the land use [Master  
18 Plan] and the zoning aren’t in conformance, then the zoning would be the higher order  
19 entitlement.” Exhibit 159, p. 004936, 53:1-4.

20 29. The Landowners further submitted the Declaration of Stephanie Allen, a 17-year  
21 land use attorney in the City of Las Vegas, stating, “During by 17 years of work in the area of land  
22 use, it has always been the practice that zoning governs the determination of how land may be  
23 used. The master plan land use designation has always been considered a general plan document.  
24 I do not recall any government agency or employee ever making the argument that a master plan  
land use designation trumps zoning.” Exhibit 195, p. 006088, para 16.

1           30.     Additionally, during discovery, the Landowners requested that the City “[i]dentify  
2 and produce a complete copy of every City of Las Vegas Zoning Atlas Map from 1983 to present  
3 for the area within which the Subject Property is located or which includes the Subject Property  
4 and any drafts thereto, including the entire and complete file in the possession of the City of Las  
5 Vegas, the applications, minutes from the meetings, any and all communications, correspondence,  
6 letters, minutes, memos, ordinances, and drafts related directly or indirectly to these City of Las  
7 Vegas Zoning Atlas Maps from 1983 to present.” The City of Las Vegas’ Fourth Supplement to  
8 its Responses to Requests for Production of Documents, Set One, electronically served, 2.26.20,  
9 11:41 AM, p. 8, Request for Production No. 5.

10           31.     The City did not identify or produce the requested documents on the basis that,  
11 “such records are not proportionate to the needs of the case as the City does not dispute that the  
12 Subject Property is zoned R-PD7.” Id., p. 9.

13 **There is No Basis for This Court to Reconsider its FFCL Re: Property Interest.**

14           32.     The City never requested an appropriate EDCR 2.24 motion to reconsider this  
15 Court’s FFCL Re: Property Interest.

16           33.     Moreover, the facts above confirm this Court’s FFCL Re: Property Interest and the  
17 City failed to present any evidence during the four days of hearings that would persuade the Court  
18 to reconsider its FFCL Re: Property Interest.

19           34.     There are six Nevada Supreme Court cases, three inverse condemnation cases and  
20 three direct eminent domain cases, wherein the Nevada Supreme Court made it clear that the R-  
21 PD7 zoning must be relied upon to determine the Landowners’ property interest in this matter.  
22 McCarran Intl. Airport v. Sisolak, 122 Nev. 645 (2006); Clark County v. Alper, 100 Nev. 382, 390  
23 (1984); City of Las Vegas v. C. Bustos, 119 Nev. 360 (2003); County of Clark v. Buckwalter, 974  
24 P.2d 1162 (Nev. 1999); Alper v. State, Dept. of Highways, 603 P.2d 1085 (Nev. 1979), on reh’g

1 sub nom. Alper v. State, 621 P.2d 492, 878 (Nev. 1980); Andrews v. Kingsbury Gen. Imp. Dist.  
2 No. 2, 436 P.2d 813 (Nev. 1968).

3 35. NRS 278.349(3)(e ) further supports the use of the R-PD7 zoning to determine  
4 the property interest issue in this matter, providing, “if any existing zoning ordinance is  
5 inconsistent with the master plan, the zoning ordinance takes precedence.”

6 36. NRS 40.005 also provides that “[i]n any proceeding involving the disposition of  
7 land the court shall consider the lot size and other applicable zoning requirements before ordering  
8 a physical division of the land.” Although not directly on point, this statute shows the Legislature’s  
9 intent to rely on zoning when addressing property rights in the State of Nevada.

10 37. Moreover, in the Sisolak, *supra*, case, the Nevada Supreme Court held “the first  
11 right established in the Nevada Constitution’s declaration of rights is the protection of a  
12 landowner’s inalienable rights to acquire, possess and protect private property,” that “the Nevada  
13 Constitution contemplates expansive property rights in the context of takings claims through  
14 eminent domain,” and “our state enjoys a rich history of protecting private property owners against  
15 government takings.” Sisolak, *supra*, 669-670. The Court held that “[t]he term ‘property’ includes  
16 all rights inherent in ownership, including the right to possess, use, and enjoy the property.” Id.,  
17 at 658.

18 38. And, in the very recent United States Supreme Court inverse condemnation case  
19 Cedar Point Nursery v. Hassid, 141 S.Ct. 2063, 2071 (June 23, 2021), the United States Supreme  
20 Court held that “protection of property rights is ‘necessary to preserve freedom’ and ‘empowers  
21 persons to shape and to plan their own destiny in a world where governments are eager to do so  
22 for them.”

39. Finally, the Court rejects the City's defenses that there is a Peccole Ranch Master Plan that governs the 35 Acre Property and a City of Las Vegas Master Plan/ land use designation of PR-OS that affects this Court's property interest determination.

40. Moreover, the City did not present any evidence of deed restrictions or property encumbrances. Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004) (landowners cannot be bound by “secret intentions” and documents not noticed).

### B.

## THE TAKE ISSUE

41. Having already resolved the property interest issue, the Court will now move to the take issues.

### The Surrounding Property Owners.

42. After acquiring the 35 Acre Property, the Landowners began the process to develop the property for single family and multi-family uses.

43. Vickie DeHart, a Landowner representative, provided an uncontested declaration that on or about December 29, 2015, a representative of the surrounding property owners met with her, bragged that his group is “politically connected” and stated that he wanted 180 acres, with water rights, deeded to him for free and only then would his group “allow” the Landowners to develop the 250 Acres. Exhibit 94, p. 002836.

44. Then City Councilman Bob Beers testified in deposition that he was contacted by a representative of the surrounding property owners and asked “to get in the way of the landowners’ rights.” Exhibit 142, pp. 004586-4587.

45. Yohan Lowie, a Landowner representative, provided an uncontested declaration that within months of acquiring the 250 Acres, a City Councilman contacted him and advised him that a few surrounding homeowners were “demanding that no development occur on the 250 Acre

1 Land,” but if the Landowners handed over 180 acres of their 250 Acres to those homeowners, the  
2 City Councilman “would ‘allow’ me to build ‘anything I wanted’ on 70 of the 250 acres.” Exhibit  
3 35, p. 000741, paras. 5-6.

4 **The City’s Actions to Prevent the Landowners from Using the 35 Acre Property.**

5 **The Landowners’ Development Applications.**

6 46. Immediately after closing on the 250 Acres in early 2015, the Landowners retained  
7 veteran land use attorney, Christopher Kaempfer, to assist with making the applications to the City  
8 for the development of the 250 Acres, including the 35 Acre Property. Exhibit 48, p. 001160,  
9 paras. 6-8. Before Mr. Kaempfer would agree to represent the Landowners on their applications  
10 to develop, he confirmed the development rights as he and his wife live in the adjoining  
11 Queensridge Community. Id. Mr. Kaempfer’s research confirmed the R-PD7 zoning and he was  
12 provided a copy of the City’s Zoning Verification Letter (Exhibit 134). Mr. Kaempfer then met  
13 with Peter Lowenstein of the City of Las Vegas Planning Department “who advised me that the  
14 [250 Acres] could be developed in accordance with the R-PD7 zoning.” Id, para. 7. Mr. Kaempfer  
15 later had a meeting with then City Attorney, Brad Jerbic, and “was informed that the City of Las  
16 Vegas would ‘honor the zoning letter’ provided to the Landowner by the City of Las Vegas.” Id.  
17 The City did not contest this evidence.

18 47. The City also did not contest that, while the Landowners had a vision of how to  
19 develop the Land, the City directed the type of applications necessary for approval of development.  
20 Exhibit 34, p. 000736, para. 11.

21 48. The Landowners submitted uncontested evidence that the City would accept only  
22 one application to develop the 35 Acre Property - a Master Development Agreement that included  
23 all parts of the 250 Acres (“MDA”). Exhibit 34, p. 000737, para. 19; Exhibit 48, pp. 001161-1162,  
24 para. 11-13.

1           49.     Landowner representative, Yohan Lowie’s uncontested declaration provides,  
2     “Mayor Goodman informed [the Landowners during a December 16, 2015, meeting] that due to  
3     neighbors’ concerns the City would not allow ‘piecemeal development’ of the Land and that one  
4     application for the entirety of the 250 Acre Residential Zoned Land was necessary by way of a  
5     Master Development Agreement (“MDA”)” and that during the MDA process, “the City continued  
6     to make it clear to [the Landowners] that it would not allow development of individual parcels, but  
7     demanded that development only occur by way of the MDA.” Exhibit 34, p. 000538, para. 19, p.  
8     000539, para. 24:25-27.

9           50.     Mr. Kaempfer’s uncontested Declaration states: 1) that he had “no less than  
10    seventeen (17) meetings with the [City] Planning Department” regarding the “creation of a  
11    Development Agreement” which were necessitated by “public and private comments made to me  
12    by both elected and non-elected officials that they wanted to see a plan – via a Development  
13    Agreement – for the development of the entire Badlands and not just portions of it;” and, 2) the  
14    City advised him that “[the Landowners] either get an approved Development Agreement for the  
15    entirety of the Badlands or we get nothing.” Exhibit 48, pp. 001161-1162, paras. 11-13.

16          51.     The Landowners opposed the City mandated MDA, arguing that it is not required  
17    by law or code and would increase the time and cost to develop. Exhibit 34, para. 20.

18          52.     Nevertheless, with the City providing only one avenue to development, the  
19    Landowners moved forward with the City’s proposed MDA concept, that included development  
20    of the 35 Acre Property, along with the 17, 65, and 133 Acre properties. Exhibit 34, p. 000737,  
21    para. 20.

22          53.     The MDA process started in or about Spring of 2015 and the uncontested  
23    Declaration of Yohan Lowie states that through this process the City told the Landowners how the  
24    City wanted the 250 Acres developed, which included how the 35 Acre Property would be

1 developed, and the information and documents the City wanted as part of the MDA application  
2 process. Exhibit 34, pp. 000737-738, paras. 20-21.

3 54. The uncontested Declaration of Yohan Lowie further states that the MDA was  
4 drafted almost entirely by the City of Las Vegas and included all of the requirements the City  
5 wanted and required. Exhibit 34, p. 000738, para 22.

6 55. The City of Las Vegas Mayor stated on the record in a City Council meeting that  
7 the City Staff dedicated “an excess of hundreds of hours beyond the full day” working on the  
8 MDA. Exhibit 54, 8.2.17 City Council Meeting, p. 001343:697-701.

9 56. The City also did not contest the Declaration of Yohan Lowie, which states that the  
10 City’s MDA requirements cost the Landowners more than \$1 million over and above the normal  
11 costs for a development application of this type. Exhibit 34, p. 000738, para 21:4-6.

12 57. The uncontested evidence showed that the Landowners agreed to every City  
13 requirement in the MDA, spending an additional \$1 million in extra costs. Exhibit 34, p. 000737,  
14 para. 20:26-27; Exhibit 55, City required MDA concessions signed by Landowners; Exhibit 56,  
15 MDA memos and emails regarding MDA changes.

16 58. The City of Las Vegas Mayor also stated publicly, to the Landowners in a City  
17 Council hearing, “you did bend so much. And I know you are a developer, and developers are not  
18 in it to donate property. And you have been donating and putting back... And it’s costing you  
19 money every single day it delays.” Exhibit 53, 6.21.17 City Council Meeting, p. 001281:2462-  
20 2465. City Councilwoman Tarkanian also commented publicly at that same City Council hearing  
21 that she had never seen anybody give as many concessions as the Landowners as part of the MDA  
22 stating, “I’ve never seen that much given before.” Exhibit 53, p. 001293:2785-2787; p.  
23 001294:2810-2811.



1           59.     Landowner representative, Yohan Lowie, provided testimony that prior to the  
2 MDA being submitted for approval the City required, without limitation, detailed architectural  
3 drawings including 3D digital models for topography, elevations, etc., regional traffic studies,  
4 complete civil engineering packages, master detailed sewer studies, drainage studies, school  
5 district studies. Exhibit 34, p. 000738, para. 21. Mr. Lowie's Declaration further provides, "[i]n  
6 all my years of development and experience such costly and timely requirements are never required  
7 prior to the application approval because no developer would make such an extraordinary  
8 investment prior to entitlements, ie. approval of the application by the City." Id. The City did not  
9 contest this Declaration testimony.

10           60.     The Landowners provided further uncontested evidence that additional, non-  
11 exhaustive City demands / concessions made of the Landowners, as part of the MDA, included: 1)  
12 donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas;  
13 2) building brand new driveways and security gates and gate houses for the Queensridge  
14 Community; 3) building two new parks, one with a vineyard; and, 4) reducing the number of units,  
15 increasing the minimum acreage lot size, and reducing the number and height of the towers.  
16 Exhibit 60, pp. 00001836-1837; Exhibit 54, 8.2.17 City Council Meeting, p. 001339, lines 599-  
17 601; Exhibit 53, 6.21.17 City Council Meeting, p. 001266:2060-2070; Exhibit 55.

18           61.     Further uncontested evidence showed that, during the MDA process the City  
19 required approximately 700 changes and 16 new and revised versions of the MDA.<sup>1</sup>

20           62.     The evidence showed that the Landowners communicated their frustration with  
21 how long the MDA process was taking, stating: "[w]e [the Landowners] have done that through  
22 many iterations, and those changes were not changes that were requested by the developer. They  
23

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24 <sup>1</sup> Exhibits 58 and 59, final page of exhibits shows the over 700 changes. Exhibit 61, 16 versions  
of the MDA generated from January, 2016 to July, 2017.

1 were changes requested by the City and/or through homeowners [surrounding neighbors] to the  
2 City.” Exhibit 54, 8.2.17 City Council Meeting, p. 001331:378-380. The City Attorney also  
3 recognized the “frustration” of the Landowners due to the length of time negotiating the MDA.<sup>2</sup>

4 63. The uncontested evidence showed the Landowners expressed their concern that the  
5 time, resources, and effort it was taking to negotiate the MDA may cause them to lose the property.  
6 Exhibit 53, 6.21.17 City Council Meeting, p. 001310:3234-3236.

7 64. While the MDA was pending resolution, the Landowners approached the City’s  
8 Planning Department to inquire about developing the 35 Acre Property as a stand-alone  
9 development, rather than as part of the MDA, and asked the City’s Planning Department to set  
10 forth all requirements the City could impose on the Landowners to develop the 35 Acre Property  
11 by itself. Exhibit 34, p. 000738, para 23.

12 65. The uncontested evidence submitted showed that the City’s Planning Department  
13 worked with the Landowners to prepare the stand-alone residential development applications for  
14 the 35 Acre Property and the applications were completed with the City’s Planning Department’s  
15 assistance. Exhibit 34, p. 000738, para 24; Exhibits 62-72, 35 Acre applications.

16 66. The City Planning Department then issued Staff Reports detailing the City Planning  
17 Department’s opinion on whether the 35 Acre stand-alone applications met all of the City  
18 development code requirements and standards and whether the applications should be approved.  
19 Exhibit 74.  
20

21  
22  
23 <sup>2</sup> “But I do not like the tactics that look like we’re working, we’re working, we’re working and, by  
24 the way, here’s something you didn’t think of I could have been told about six months ago. I  
understand Mr. Lowie’s frustration. There’s some of that going on. There really is. And that’s  
unfortunate. I don’t consider that good faith, and I don’t consider it productive.” City Attorney  
Brad Jerbic. Exhibit 53, 6.21.17 City Council Meeting, p. 001301:2990-2993.

1           67.     The City Planning Department’s analysis of the 35 Acre stand-alone applications  
2 confirmed that the “[s]ite access from Hualapai Way through a gate meets Uniform Standard  
3 Drawing specifications.” Exhibit 74, p. 002552.

4           68.     The City Planning Department’s analysis of the 35 Acre applications also stated  
5 that, “[t]he proposed residential lots throughout the subject site are comparable in size to the  
6 existing residential lots directly adjacent to the proposed lots” and “[t]he development standards  
7 proposed are compatible with those imposed on the adjacent lots.” Exhibit 74, p. 002552.

8           69.     The City Planning Department’s analysis of the 35 Acre Applications further stated  
9 that, “[t]he submitted Tentative Map is in conformance with all Title 19 and NRS requirements for  
10 tentative maps.” Exhibit 74, p. 002553.

11           70.     The City Planning Department and the City Planning Commission recommended  
12 approval of the 35 Acre applications. Exhibit 74, pg. 02551 and 002557.

13           71.     The 35 Acre Property as a stand-alone development was presented to the City  
14 Council for approval on June 21, 2017. Exhibit 53, 6.21.17 City Council Meeting.

15           72.     Tom Perrigo, the City’s Planning Director appeared at the hearing on the  
16 Landowners’ 35 Acre applications and stated that the Landowners’ proposed development on the  
17 35 Acres, which the City Planning Department assisted with preparing, met all City requirements  
18 and should be approved. Exhibit 53, 6.21.17 City Council Meeting, p. 001211-1212:566-587.

19           73.     One City Council member acknowledged at the hearing that the 35 Acre Property  
20 applications met all City requirements, stating the proposed development was “so far inside the  
21 existing lines [the Las Vegas Code requirements].” Exhibit 53, 6.21.17 City Council Meeting, p.  
22 001286:2588-2590.  
23  
24

1           74.     The City Council Members, however, stated the City's firm position that the City  
2 opposed individual development applications for parts of the 250 Acres, and, again, insisted on  
3 one MDA for the entire 250 Acres: 1) "I have to oppose this, because it's piecemeal approach  
4 (Councilman Coffin);" 2) "I don't like this piecemeal stuff. I don't think it works (Councilwoman  
5 Tarkanian); and, 3) "I made a commitment that I didn't want piecemeal," there is a need to move  
6 forward, "but not on a piecemeal level. I said that from the onset," "Out of total respect, I did say  
7 that I did not want to move forward piecemeal." (Mayor Goodman). Exhibit 53, 6.21.17 City  
8 Council Meeting, pp. 001287:2618; 001293:2781-2782; 001307:3161; 001237:1304-1305;  
9 001281:2460-2461.

10           75.     On June 21, 2017, the City Council, contrary to the City Planning Department's  
11 recommendation, and the City Planning Commission's recommendation denied the 35 Acre  
12 applications. Exhibit 93; Exhibit 53, 6.21.17 City Council Meeting, p. 001298:2906-2911.

13           76.     The City's official position for denial of the 35 Acre applications was the impact  
14 on "surrounding residents" and the City required an MDA for the entire 250 Acres, not  
15 "piecemeal" development. Exhibits 53 and 93.

16           77.     The Landowners' representative provided an uncontested Declaration, stating, that  
17 after the denial of the 35 Acre Applications, "[t]he City continued to make it clear to [the  
18 Landowners] that it would not allow development of individual parcels but demanded that  
19 development only occur by way of the MDA." Exhibit 34, p. 000738, para 24:25-27.

20           78.     The uncontested evidence showed that the Landowners then continued to work with  
21 the City to obtain approval to develop through the MDA applications process, which the City stated  
22 was the only way development may be allowed.  
23  
24

1           79.     The uncontested evidence further showed that the Landowners worked with the  
2 City for 2 ½ years on the MDA (between Spring, 2015, and August 2, 2017) and accepted all  
3 changes, additions, and conditions requested by the City.

4           80.     The City produced no evidence to contest that the Landowners agreed to every  
5 request and condition the City required in the MDA application.

6           81.     The MDA application, along with the MDA and all necessary supporting  
7 documents, was presented to the City Council for approval on August 2, 2017, approximately 40  
8 days after the City denied the stand-alone applications to develop the 35 Acre Property on the basis  
9 that the City wanted the MDA. Exhibits 54, 8.2.17 City Council Meeting; Exhibits 79-87.

10          82.     The City Planning Department issued a recommendation to the City Council that  
11 the MDA applications met all City requirements and that the MDA applications should be  
12 approved as follows:

13           The proposed Development Agreement conforms to the requirements of NRS 278  
14 regarding the content of development agreements. The proposed density and intensity of  
15 development conforms to the existing zoning district requirements for each specified  
16 development area. Through additional development and design controls, the proposed  
17 development demonstrates sensitivity to and compatibility with the existing single-  
18 family uses on the adjacent parcels. Furthermore, the development as proposed would be  
19 consistent with goals, objectives and policies of the Las Vegas 2020 Master Plan that call  
20 for walkable communities, access to transit options, access to recreational opportunities  
21 and dense urban hubs at the intersection of primary roads. Staff therefore recommends  
22 approval of the proposed Development Agreement. Exhibit 77, p. 002671.

23           83.     The uncontested evidence showed that, despite the City including all City  
24 requirements to develop in the MDA and the City's Planning Department recommending approval  
as the MDA met all City codes and standards, on August 2, 2017, the City Council denied the  
MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-  
4275.

          84.     The Landowners' representative, Yohan Lowie, provided an uncontested  
declaration that the City did not ask the Landowners to make more concessions, like increasing

1 setbacks or reducing units per acre, but rather, the City denied the MDA which denied the  
2 development of the entire 250 Acres, including the 35 Acre Property. Exhibit 34, p. 000739, para.  
3 26.

4 85. The minutes from the hearing on the MDA and the MDA denial letter further  
5 confirm that the City did not ask for more concessions, but rather, the City simply denied the  
6 MDA. Exhibit 78; Exhibit 54, 8.2.17 City Council Meeting, pp. 001466:4154-4156; 001470:4273-  
7 4275.

8 86. Therefore, the City denied an application to develop the 35 Acre Property as a  
9 stand-alone property and the MDA to develop the entire 250 Acres. Both of these denials were  
10 contrary to the recommendation of the City's Planning Department.

11 **The Landowners' Fence Application.**

12 87. The Landowners presented uncontested evidence of their attempts to secure the 250  
13 Acres and the City's denial of those attempts, contrary to the City Code, disregarding life safety  
14 concerns.

15 88. The Landowners submitted routine over the counter applications for a chain link  
16 fence around the perimeter of the 250 Acres, including the 35 Acre Property, and the Landowners  
17 submitted routine over the counter applications to fence the large ponds, one of which is located  
18 on the 35 Acre Property. Exhibit 91.

19 89. The Landowners provided argument that the chain link fences were necessary to  
20 secure the entire 250 Acres and to enclose the ponds on the property to exclude others from  
21 entering onto their privately owned property and to protect the life and safety of others.

22 90. Las Vegas Unified Development Code 19.16.100 F (2)(a) provides that a "fence"  
23 application is subject to a "Minor Review Process" and section 19.16.100 (F) (3) specifically  
24 exempts fences from a "Major Review Process." The Major Review Process . . . shall not apply  
to building permit level reviews described in Paragraph 2(a) of this Subsection (F).

1           91.     It was uncontested that the Major Review Process is significantly more involved  
2 than a Minor Review Process. Las Vegas Unified Development Code 19.16.100 (G).

3           92.     On August 24, 2017, the City sent the Landowners a letter of denial for the proposed  
4 chain link fences, stating it has “determined that the proximity to adjacent properties has the  
5 potential to have a significant impact on the surrounding properties,” explained the fence  
6 application was “denied” and, in violation of its own City Code, stated a “major review” would be  
7 required for the chain link fence application. Exhibit 92.

8           93.     The City’s attorney responded at the hearing on September 24, 2021, that perhaps  
9 the City succumbed to “political pressure” in denying the fence application.

10          94.     The Landowners presented uncontested evidence of three properties in the City of  
11 Las Vegas near the 35 Acre Property that received approval for fencing - New Horizon Academy  
12 on West Charleston, the closed Leslie’s Pool Supply on West Charleston, and vacant land on West  
13 Charleston. They also presented evidence that the vacant lot adjacent to the Nevada Supreme  
14 Court building, also in the City of Las Vegas jurisdiction, has an approved fence around it.

15          95.     The Landowners presented an interoffice City email wherein it is stated – “Follow  
16 up with CM Seroka regarding the Badlands fence permit. Want to take action on the Monday after  
17 find out cm’s conversations went over the weekend regarding the permit.” CLV06391 – Public  
18 Records Request. The email is dated August 21, 2017, three days prior to the City’s fence denial  
19 letter to the Landowners. Exhibit 92.

20 **The Landowners’ Access Application.**

21          96.     The Landowners presented uncontested evidence that they also submitted an  
22 application to the City to approve access to their 250 Acres, including specific access to the 35  
23 Acre Property and the City denied the access.

24          97.     The Landowners submitted routine over the counter applications to the City to  
provide access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit 88. The 35 Acre

1 Property abuts Hualapai Way and approval of the access from Hualapai Way would allow direct  
2 access to the 35 Acre Property.

3 98. The Landowners explained in their access application to the City that the access  
4 was needed “for the tree and plant cutting, removal of related debris and soil testing equipment.”  
5 Exhibit 88, 002810.

6 99. As detailed above, the City Planning Department stated, in its Staff  
7 Recommendation on the 35 Acre Property stand-alone applications that, “[s]ite access from  
8 Hualapai Way through a gate meets Uniform Standard Drawing specifications.” Exhibit 74, p.  
9 002552.

10 100. During discovery, the City stated that, “[t]he Badlands [250 Acres] had general  
11 legal access to public roadways along Hualapai Way, Alta Drive, and Rampart Blvd.” City Third  
12 Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-5.

13 101. On August 24, 2017, the City denied the application for access, stating as the reason  
14 for denial, “the potential to have significant impact on the surrounding properties.” Exhibit 89,  
15 002816.

16 102. At the summary judgment hearing, the City was unable to provide a reasonable  
17 basis for denying the Landowners’ access application.

18 **The City’s Passage of Bills No. 2018-5 and 2018-24.**

19 103. The evidence established that, after the City denied the stand-alone 35 Acre  
20 applications to build, denied the MDA, denied the fence applications, and denied the access  
21 application, the City adopted two Bills, Bills No. 2018-5 and 2018-24. Exhibits 107 and 108.

22 104. The uncontested evidence presented showed the Bills targeted only the  
23 Landowners’ 250 Acres.

24 105. City Councilwoman Fiore stated on the record, “[f]or the past two years, the Las  
Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Bill 2018-24]



1 is the latest shot in a salvo against one developer” and “This bill is for one development and one  
2 development only. This bill is only about the Badlands Golf Course [250 Acres]” and “I call it the  
3 Yohan Lowie Bill.” Exhibit 114, 5.16.18 City Council Meeting, p. 003848-3849; Exhibit 115, p.  
4 003868; Exhibit 116, 5.14.18 Recommending Committee Meeting, pp. 003879, 003910. Yohan  
5 Lowie is one of the Landowner representatives.

6 106. Stephanie Allen, the Landowners’ land use attorney who represented the  
7 Landowners before the City on the development matters, stated that, “we did the analysis ... Out  
8 of the 292 parcels that the City provided [that the Bills could apply to], two properties remain.  
9 One of them is the former Badlands Golf Course [250 Acres], and if I could direct your attention  
10 to the overhead, the other is actually, interestingly, in Peccole Ranch. It’s this little pink area here.  
11 It’s a wash.” Exhibit 110, p. 003370.

12 107. The Landowners submitted the analysis performed by Ms. Allen establishing that  
13 Bills No. 2018-5 and 2018-24 target only the Landowners’ Property. Exhibits 111 and 112.

14 108. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 target  
15 only the Landowners’ 250 Acres.

16 109. The uncontested evidence presented showed the Bills made it impracticable and  
17 impossible to develop the 250 Acres.

18 110. Bills 2018-5 and 2018-24 included the following requirements before an  
19 application could be submitted to develop the 250 Acres: a master plan (showing areas proposed  
20 to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use,  
21 including acreage, density, unit numbers and type, areas proposed for commercial, including  
22 acreage, density and type, a density or intensity), a full and complete development agreement, an  
23 environmental assessment (showing the project’s impact on wildlife, water, drainage, and  
24 ecology), a phase I environmental assessment report, a master drainage study, a master traffic

1 study, a master sanitary sewer study with total land uses proposes, connecting points, identification  
2 of all connection points, a 3D model of the project with accurate topography to show visual impacts  
3 as well as an edge condition cross section with improvements callouts and maintenance  
4 responsibility, analysis and report of alternatives for development, rationale for development, a  
5 mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how  
6 the property will continue to be maintained as it has in the past (providing security and monitoring).  
7 Exhibits 107 and 108, ad passim.

8 111. The Bills also included vague requirements, such as development review to assure  
9 the development complies with “other” City policies and standards, and a requirement for anything  
10 else “the [City Planning] Department may determine are necessary.” Exhibit 108, p. 003212:12-  
11 13.

12 112. It was uncontested that Bill No. 2018-24 mandated that any development on the  
13 Landowners 250 Acres could only occur through a “development agreement” and, at the time Bill  
14 Nos. 2018-5 and 2018-24 were passed, the City had already denied a development agreement (the  
15 MDA) for the entire 250 Acres. Exhibit 78 (MDA denied on August 2, 2017); Exhibit 108, pp.  
16 003206-003207 (Bill No. 2018-24, passed on November 7, 2018).

17 113. The City presented no evidence to contest that Bills No. 2018-5 and 2018-24 made  
18 it impracticable and impossible to develop the 250 Acres.

19 114. The evidence presented showed the Bills preserved the 250 Acres for use by the  
20 public and authorized the public to use the 250 Acres, including the 35 Acre Property.

21 115. City Councilman Seroka was a vocal opponent to the Landowners building on the  
22 250 Acres.

23  
24

1 116. Councilman Seroka presented to the surrounding property owners at a  
2 homeowner's association meeting that they had the right to use the Landowners' 250 Acres as  
3 recreation and open space.

4 "So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres]  
5 is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres]  
6 is the open space. Every community that was built around here, that [250 Acres] is the  
7 open space. The development across the street, across Rampart, that [250 Acres] is the  
8 open space....it is also documented as part recreation, open space...That is part recreation  
9 and open space..." *LO Appx., Ex. 136, 17:23-18:15, HOA meeting page*

10 "Now that we have the documentation clear, ***that is open space for this part of our***  
11 ***community. It is the recreation space for this part of it.*** It is not me, it is what the law  
12 says. ***It is what the contracts say between the city and the community, and that is what***  
13 ***you all are living on right now.***" *LO Appx., Ex. 136, 20:23-21:3, HOA meeting*  
14 *(emphasis added).*

15 117. Bill No. 2018-24 was "Sponsored by: Councilman Steven G. Seroka," the vocal  
16 opponent to the Landowners developing the 250 Acres. Exhibit 108, p. 003202.

17 118. A provision was written into Bill No. 2018-24 which states under section "G. 2.  
18 Maintenance Plan Requirements," that "the maintenance plan must, at a minimum and with respect  
19 to the property . . . d. Provide documentation regarding ***ongoing public access . . . and plans to***  
20 ***ensure that such access is maintained.***" Exhibit 108, pp. 003211-3212. Emphasis added.

21 119. The section "A. General" to Bill No. 2018-24 states that any proposal to repurpose  
22 the 250 Acres from a golf course "is subject to ... the requirements pertaining to ... the Closure  
23 Maintenance Plan set forth in Subsections (E ) and (G), inclusive," which is where the requirement  
24 to provide "ongoing public" access is mandated in Bill No. 2018-24. Exhibit 108, pp. 003202-  
3203.

120. The Landowners presented uncontested evidence that the neighbors are using the  
250 Acres. Exhibit 150 and pictures attached thereto.

1           121. Don Richards, the superintendent for the 250 Acres, submitted a declaration that  
2 those that entered onto the 35 Acre Property advised him that they were told that “it is our open  
3 space.” Exhibit 150, p. 004669, paras 6-7.

4           122. The effect of Bills No. 2018-5 and 2018-24 was to: 1) target only the Landowners’  
5 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the  
6 250 Acres for use by the public and authorize the public to use the 250 Acres.

7 **There is No Evidence that the 250 Acres is the Open Space or Recreation for the Area.**

8           123. It was uncontested that the 250 Acres, including the 35 Acre Property is privately-  
9 owned property.

10          124. Although Councilman Seroka announced the Queensridge Homeowners could use  
11 the 250 Acres for their open space and recreation, there was no evidence to support this  
12 announcement and contrary evidence showed this authorization was inaccurate. Exhibits 36-39.

13          125. The CC&Rs for the surrounding Queensridge Community state, “[t]he existing 18-  
14 hole golf course commonly known as the “Badlands Golf Course” [250 Acres] is not a part of the  
15 Property or the Annexable Property [Queensridge Community] and the Queensridge Community  
16 “is not required to[] include ... a golf course, parks, recreational areas, open space.” Exhibit 36,  
17 pp. 000761-762.

18          126. The Custom Lot Design Guidelines for the Queensridge Community also informed  
19 that the interim golf course on the 250 Acres was available for “future development.” Exhibit 37,  
20 p. 000896.

21          127. The Queensridge CC&Rs further disclosed to every purchaser of property within  
22 the Queensridge Community that the 250 Acres was “not a part” of the Queensridge Community,  
23 that purchasers in the community “shall not acquire any rights, privileges, interest, or membership”  
24 in the 250 Acres, there are no representations or warranties “concerning the preservation or

1 permanence of any view,” and lists the “Special Benefits Area Amenities” for the surrounding  
2 Queensridge Community, which does not include a golf course or open space or any other  
3 reference to the 250 Acres. Exhibit 38, ad passim.; Exhibit 39, pp. 000908-909, 911.

4 128. The Zoning Verification Letter the City provided the Landowners prior to the  
5 Landowners acquiring the 250 Acres also makes no mention of any open space or recreation  
6 restriction. Exhibit 134.

7 129. The Court was also presented with two findings of fact and conclusions of law  
8 entered in litigation between a Queensridge homeowner and the Landowners wherein the  
9 Queensridge homeowner alleged the 250 Acres was “open space” for the Queensridge Community  
10 and the District Court rejected this argument and entered findings that the 250 Acres is zoned “R-  
11 PD7” and the R-PD7 zoning gives the Landowners the “right to develop.” Exhibit 26, 000493;  
12 Exhibit 27, p. 000520. The matter was affirmed on appeal. Exhibits 28 and 29.

13 130. The caption for that litigation shows the City was a party to that action and,  
14 therefore, aware of the proceedings, however, counsel represented that the City was dismissed out  
15 of the case.

16 **Additional City Communications and Actions.**

17 131. The Landowners also presented evidence of communications and other actions  
18 taken by the City showing the City’s intent toward the 250 Acres after the Landowners acquired  
19 the 250 Acres.

20 132. The City identified \$15 million of potential City funds to purchase the 250 Acres  
21 (notwithstanding the Land was not for sale). Exhibit 144.

22 133. The City identified a “proposal regarding the acquisition and re-zoning of green  
23 space land [250 Acres].” Exhibit 128.

24

1           134. The City proposed / discussed a Bill to force “Open Space” on the 250 Acres,  
2 contrary to its legal zoning. Exhibit 121.

3           135. The City proposed a solution to “Sell off the balance [of the 250 Acres] to be a golf  
4 course with water rights (key). Keep the bulk of Queensridge green.” Exhibit 122.

5           136. The City engaged a golf course architect to “repurpose” the 250 Acres. Exhibit  
6 145.

7           137. One City Councilman referred to the Landowners’ proposal to build large estate  
8 homes on the residentially zoned 250 Acres as the same as “Bibi Netanyahu’s insertion of the  
9 concreted settlements in the West Bank neighborhoods.” Exhibit 123.

10          138. Then-Councilman Seroka testified at the Planning Commission (during his  
11 campaign) that it would be “over his dead body” before the Landowners could build homes on the  
12 250 Acres (Exhibit 124, 2.14.17 Planning Commission Meeting) and issued a statement during his  
13 campaign entitled “The Seroka Badlands Solution” which provides the intent to convert the  
14 Landowners’ private property into a “fitness park,” and in an interview with KNPR, he stated that  
15 he would “turn [the Landowners’ private property] over to the City.” Exhibit 125.

16          139. In reference to development on the 250 Acres, then-Councilman Coffin stated  
17 firmly “I am voting against the whole thing,” and “a majority is standing in his [Landowners] path  
18 [to development] (Exhibits 122 and 126) before the applications were finalized and presented to  
19 the City Council,<sup>3</sup> the councilman refers to the Landowners’ representative as a “sonofab[...],”  
20 “A[... ]hole,” “scum,” “motherf[... ]er,” “greedy developer,” “dirtball,” “clown,” and Narciss[ist]”  
21 with a “mental disorder,” (Exhibit 121) and seeks “intel” against the Landowner through a private  
22 investigator in case he needs to “get rough” with the Landowners (Exhibit 127).

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<sup>3</sup> This statement was made by email on April 6, 2017, and the applications were not presented to  
the City Council until June 21 and August 2 of 2017.

1           140. Then-Councilmen Coffin and Seroka also exchanged emails wherein they stated  
2 they will not compromise one inch and that they “need an approach to accomplish the desired  
3 outcome,” - prevent development on the 250 Acres. Exhibit 122.

4           141. An interoffice City email states, “If any one sees a permit for a grading or clear and  
5 grub at the *Badlands* Golf Course [250 Acres], please see Kevin, Rod, or me. Do Not Permit  
6 without approval from one of these three.” Exhibit 130, June 27, 2017, City email. Italics in  
7 original.

8           142. City Emails were presented that showed City Council members discussing a  
9 strategy to not disclose information related to actions toward the 250 Acres, with instruction given,  
10 in violation of the Nevada Public Records Act,<sup>4</sup> on how to avoid the search terms being used in  
11 the subpoenas: “Also, please pass the word for everyone to not use B...l..nds in title or text of  
12 comms. That is how search works.” and “I am considering only using the phone but awaiting  
13 clarity from court. Please pass word to all your neighbors. In any event tell them to NOT use the  
14 city email address but call or write to our personal addresses. For now...PS. Same crap applies to  
15 Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his personal stuff being  
16 sought. This is no secret so let all your neighbors know.” Exhibit 122, p. 004232.

17 **Expert Opinions.**

18           143. The Landowners introduced an appraisal report by Tio DiFederico of the 35 Acre  
19 Property. Exhibit 183.

20           144. Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser.  
21 Exhibit 183, p. 005216.

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<sup>4</sup> See NRS 239.001(4) (use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services)

145. Mr. DiFederico appraised the “before value” of the 35 Acre Property, which is the value of the 35 Acre Property as if it were available for residential development in compliance with the R-PD7 zoning and the “after value,” which is the value of the 35 Acre Property after all of the City actions toward the property. He concluded that the “before value” is \$34,135,000.00 and the “after value” is zero. Exhibit 183, p. 005216.

146. Mr. DiFederico concluded, “[d]ue to the effect of the government’s actions, I concluded there was no market to sell this property [35 Acre Property] with the substantial tax burden but no potential use or income to offset the tax expense. Based on the government’s actions, I concluded that the ‘after value’ would be zero.” Exhibit 183, p. 005216.

147. Discovery in this matter closed on July 26, 2021.

148. The City did not exchange an initial expert report or a rebuttal expert report to challenge Mr. DiFederico's opinions.

### III.

**CONCLUSIONS OF LAW REGARDING THE LANDOWNERS' MOTION FOR  
SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR  
RELIEF**

## Standard of Review

149. NRCPC 56(c) provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Further, “summary judgment ... may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.” NRCPC 56(c). In Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court eliminated the “slightest doubt standard,” holding that “[w]hile the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to



1 do more than simply show that there is some ‘metaphysical doubt’ as to the operative facts in order  
2 to avoid summary judgment being entered in the moving party's favor” and that “[t]he nonmoving  
3 party “ ‘is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
4 conjecture.’”

5 150. The Nevada Supreme Court has held that this Court decides, as a matter of law,  
6 whether a taking has occurred. McCarran Int’l Airport v. Sisolak, 137 P.3d 1110 (2006) (“whether  
7 the Government has inversely condemned private property is a question of law that we review de  
8 novo.” *Id.*, at 1119). *See also*, Moldon v. County of Clark, 124 Nev. 507, 511, 188 P.3d 76, 79  
9 (2008) (“whether a taking has occurred is a question of law...”).

10 151. This Court has already held that, in deciding the take issue in this case, the Court  
11 must consider all of the City actions in the aggregate toward the 35 Acre Property:

12 In determining whether a taking has occurred, Courts must look at the aggregate of all of  
13 the government actions because “the form, intensity, and the deliberateness of the  
14 government actions toward the property must be examined ... All actions by the  
15 [government], in the aggregate, must be analyzed.” Merkur v. City of Detroit, 680  
16 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d  
17 736 (Nev. 2015) (citing Arkansas Game & Fish Comm’s v. United States, 568 U.S. ---  
18 (2012)) (there is no “magic formula” in every case for determining whether particular  
19 government interference constitutes a taking under the U.S. Constitution; there are  
“nearly infinite variety of ways in which government actions or regulations can effect  
property interests.” *Id.*, at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd.,  
526 U.S. 687 (1999) (inverse condemnation action is an “ad hoc” proceeding that  
requires “complex factual assessments.” *Id.*, at 720.); Lehigh-Northampton Airport  
Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) (“There is no bright  
line test to determine when government action shall be deemed a de facto taking; instead,  
each case must be examined and decided on its own facts.” *Id.*, at 985-86).

20 The City has argued that the Court is limited to the record before the City Council in  
21 considering the Landowners’ applications and cannot consider all the other City action  
22 towards the Subject Property, however, the City cites the standard for petitions for  
23 judicial review, not inverse condemnation claims. A petition for judicial review is one  
24 of legislative grace and limits a court’s review to the record before the administrative  
body, unlike an inverse condemnation, which is of constitutional magnitude and requires  
all government actions against the property at issue to be considered.

1 Exhibit 8, May 15, 2019 Order Denying City’s Motion for Judgment on the Pleadings, pp. 000172-  
2 173.

3 152. The Nevada Supreme Court has also held “there are several invariable rules  
4 applicable to specific circumstances” and this Court will address three of those “invariable rules”  
5 for a taking in Nevada – a per se categorical taking (Landowners’ first claim for relief), a per se  
6 regulatory taking (Landowners’ Third Claim for Relief), and a non-regulatory / de facto taking  
7 (Landowners’ Fourth Claim for Relief). State v. Eighth Judicial District Court, 131 Nev. 411, 419  
8 (2015).

9 153. In addressing the invariable rules that apply to the Landowners’ First, Third, and  
10 Fourth Claims for Relief, the United States and Nevada Supreme Court have held that a Penn  
11 Central analysis, referenced later in this FFCL, does not apply to the Landowners’ First, Third,  
12 and Fourth Claims for Relief. Sisolak (“the *Penn Central*-type takings analysis does not govern  
13 this action [per se regulatory taking].” *Id.*, at 1130); Cedar Point Nursery (“regulations in the first  
14 two categories constitute *per se* takings [per se categorical and per se regulatory]” and are not  
15 subject to a Penn Central analysis. *Id.*, at 2070); State v. Eighth Judicial District Court (identifying  
16 a “Nonregulatory Analysis” separate and apart from a “*Penn Central* analysis” and applying a  
17 different standard to find a taking. *Id.*, at 419 and 421).

18 **The Landowners are Entitled to Summary Judgment on Their First Claim For Relief – a Per**  
19 **Se Categorical Taking.**

20 154. The Nevada Supreme Court holds that a per se categorical taking occurs where  
21 government action “completely deprives an owner of all economical beneficial use of her  
22 property,” and, in these circumstances, just compensation is automatically warranted, meaning  
23 there is no defense to the taking. Sisolak, *supra*, at 662. A categorical taking does not require a  
24 physical invasion.

1           155. As detailed above, the City denied 100% of the Landowners' requests to use the 35  
2 Acre Property. The City denied the 35 Acre stand-alone applications, the MDA application, the  
3 perimeter fence application, the pond fence application, and the access application.

4           156. The City then adopted Bills No. 2018-5 and 2018-24 that: 1) target only the  
5 Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres, including  
6 the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and authorized  
7 "ongoing public access" to the property.

8           157. The Court finds persuasive the expert appraisal report prepared by M.A.I. appraiser,  
9 Tio DiFederico, which concludes, "[d]ue to the effect of the government's actions, I concluded  
10 there was no market to sell this property [35 Acre Property] with the substantial tax burden but no  
11 potential use or income to offset the tax expense. Based on the government's actions, I concluded  
12 that the 'after value' would be zero." Exhibit 183, p. 005216. As detailed above, the City has not  
13 produced an expert report during discovery to challenge Mr. DiFederico's expert opinion.

14           158. The Court also finds that the Landowners presented substantial evidence that the  
15 historical golf course use is not an economical use. Exhibits 45-47. Appraiser, Tio DiFederico  
16 also concluded the golf course is not an economical use and the City presented no expert evidence  
17 to contest this conclusion. Exhibits 183, p. 005214.

18           159. The Court finds the City actions have caused the 35 Acre Property to lie vacant and  
19 useless to the Landowners and "completely deprive[d] [the Landowners] of all economical  
20 beneficial use of [their] property," specifically, the 35 Acre Property.

21           160. In addition to causing the 35 Acre Property to lie vacant and useless to the  
22 Landowners, the tax assessor has imposed, and the Landowners are paying, \$205,227.22 per year  
23 in real estate taxes based on a residential use. The Court also recognizes that there are other  
24 carrying costs for the vacant 35 Acre Property.

1           161. Therefore, summary judgment is granted in favor of the Landowners on the  
2 Landowners' First Claim for Relief – Per Se Categorical Taking.

3 **The Landowners are Entitled to Summary Judgment on Their Third Claim For Relief – a**  
4 **Per Se Regulatory Taking.**

5           162. The Nevada Supreme Court holds that a per se regulatory taking occurs where  
6 government action “authorizes” the public to use private property or “preserves” private property  
7 for public use. Sisolak, supra. See also Tien Fu Hsu v. County of Clark, 123 Nev. 625 (2007).  
8 The Sisolak and Hsu Courts held that the adoption of height restriction ordinance 1221 was a  
9 taking by inverse condemnation, because it preserved the privately-owned airspace for use by the  
10 public and authorized the public to use the privately-owned airspace.

11           163. The United States Supreme Court adopted the same rule in a very recent case,  
12 wherein the Court held that a government authorized invasion of private property is a taking.  
13 Cedar Point Nursery v. Hassid, 141 S.Ct. 2063 (June 23, 2021). The Cedar Point Nursery Court  
14 held that a California statute that authorized labor unions to enter onto private farms 120 days a  
15 year for up to 3 hours at a time, upon proper notice, is a taking by inverse condemnation.

16           164. When the government engages in per se regulatory taking actions, just  
17 compensation is automatically warranted, meaning there is no defense to the taking.

18           165. As detailed above, the City adopted Bills No. 2018-5 and 2018-24 that: 1) target  
19 only the Landowners 250 Acres; 2) made it impractical and impossible to develop the 250 Acres,  
20 including the 35 Acre Property; and 3) preserved the 35 Acre Property for use by the public and  
21 authorized “ongoing public access” to the property.

22           166. These Bills, alone, are a per se regulatory taking of the Landowners' 35 Acre  
23 Property as they are similar to the actions taken by the County in the Sisolak and the Hsu cases  
24 and the actions taken by the State of California in the Cedar Point Nursery case.

1           167. Moreover, the intent of the Bills was evidenced by the sponsor of the Bills,  
2 Councilman Seroka, when he advised the surrounding homeowners that the Landowners' 35 Acre  
3 Property was the surrounding property owners' open space and recreation, as detailed above.

4           168. The City's intent to preserve the 35 Acre Property for use by the surrounding public  
5 and to authorize the public to use the 35 Acre Property is further evidenced in the City's fence  
6 denial and access denial letters wherein the City states as a basis for the denials, the potential to  
7 have significant impact on the "surrounding properties." Exhibit 92, p. 002830; Exhibit 89, p.  
8 002816. The City's 35 Acre application denial letter also states as a basis for the denial, in part,  
9 concerns over the impact of the proposed development on "surrounding residents." Exhibit 93, p.  
10 002831.

11           169. The City's intent to preserve the 35 Acre Property for use by the public was further  
12 evidence by the numerous statements by City Councilmembers and other City employees,  
13 referenced above, that identified the 35 Acre Property for use by the surrounding property owners.

14           170. The Court finds unpersuasive the City's argument that statements by City  
15 Councilmembers and other City employees cannot be considered. In Sisolak, a per se regulatory  
16 taking case, the Court considered statements by Bill Keller, a principal planner with the Clark  
17 County Department of Aviation, in regards to the County height restrictions. Sisolak, supra, at  
18 653. Moreover, many of the City statements were made in judicial or quasi-judicial settings,  
19 meaning the City is judicially estopped from making contrary representations to this Court.  
20 Marcuse v. Del Webb Communities, 123 Nev. 278 (2007).

21           171. The uncontested Declaration of Christopher Kaempfer, the Landowners' land use  
22 attorney, also confirms the City's intent to preserve the 35 Acre Property for use by the surrounding  
23 public - "it became clear that despite our best efforts, and despite the merits of our applications(s),  
24 no Development Agreement was going to be approved by the City of Las Vegas unless virtually

1 all of the Badlands neighborhood supported such a Development Agreement; and it was equally  
2 clear that this neighborhood support was not going to be achieved because, as the lead of the  
3 neighborhood opposition exclaimed to me and other ‘I would rather see the golf course a desert  
4 than a single home built on it.’” Exhibit 48, p. 001161, para. 12.

5 172. The uncontested Declaration of Don Richards, supported by photographic  
6 evidence, confirms that the public was using the 35 Acre Property in conformance with the  
7 direction of the City. Exhibit 150, p. 004669, para. 7.

8 173. Moreover, “[t]he right to exclude is ‘one of the most treasured’ rights of property  
9 ownership” and “is ‘one of the most essential sticks in the bundle of rights that are commonly  
10 characterized as property’” and the City denied the Landowners the right to exclude others from  
11 the 35 Acre Property by denying the Landowners’ fence application, which is a taking in and of  
12 itself and further supports a finding of a per se regulatory taking. Cedar Point Nursery v. Hassid,  
13 141 S.Ct. 2063, 2072 (June 23, 2021).

14 174. Also, under Nevada law an owner of property that abuts a public road “has a special  
15 right of easement in a public road for access purposes” and “[t]his is a property right of easement  
16 which cannot be damaged or taken from the owner without due compensation” and the City denied  
17 the Landowners access to the 35 Acre Property by denying the Landowners’ access application  
18 which is a taking in and of itself and further supports a finding of a per se regulatory taking.  
19 Schwartz v. State, 111 Nev. 998 (1999).

20 175. Therefore, summary judgment is granted in favor of the Landowners on the  
21 Landowners’ Third Claim for Relief – a Per Se Regulatory Taking.

22 **The Landowners are Entitled to Summary Judgment on Their Fourth Claim For Relief – a**  
23 **Non-Regulatory / De Facto Taking.**

24 176. The Nevada Supreme Court holds that a non-regulatory / de facto taking occurs  
where the government has “taken steps that directly and substantially interfere[ ] with [an] owner’s

1 property rights to the extent of rendering the property unusable or valueless to the owner.” State  
2 v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). The Court relied on Richmond Elks  
3 Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9<sup>th</sup> Cir. 1977), where the Ninth  
4 Circuit held that “[t]o constitute a taking under the Fifth Amendment it is not necessary that  
5 property be absolutely ‘taken’ in the narrow sense of that word to come within the protection of  
6 this constitutional provision; it is sufficient if the action by the government involves a direct  
7 interference with or disturbance of property rights.”

8 177. The Nevada Supreme Court has further held in Sloat v. Turner, 93 Nev. 263, 269  
9 (1977), that a taking occurs where there is “some derogation of a right appurtenant to that property  
10 which is compensable” or “if some property right which is directly connected to the ownership or  
11 use of the property is substantially impaired or extinguished.” *See also*, Schwartz v. State, 111  
12 Nev. 998 (1995) (taking where “a property right which is directly connected to the use or  
13 ownership of the property is substantially impaired or extinguished.” Id., at 942).

14 178. Nichols on Eminent Domain further describes this non-regulatory / de facto taking  
15 claim as follows: “[c]ontrary to prevalent earlier views, it is now clear that a de facto taking does  
16 not require a physical invasion or appropriation of property. Rather, a substantial deprivation of a  
17 property owner’s use and enjoyment of his property may, in appropriate circumstances, be found  
18 to constitute a ‘taking’ of that property or of a compensable interest in the property...” 3A Nichols  
19 on Eminent Domain §6.05[2], 6-65 (3<sup>rd</sup> rev. ed. 2002).

20 179. Therefore, a Nevada non-regulatory / de facto taking occurs where government  
21 action renders property unusable or valueless to the owner or substantially impairs or extinguishes  
22 some right directly connected to the property.

23 180. The Court rejects the City’s assertion that a non-regulatory / de facto taking only  
24 applies to physical takings and precondemnation damages claims. First, there is nothing in the

1 case law that restricts non-regulatory / de facto takings to physical takings and Nichols on Eminent  
2 Domain, cited above, expressly rejects this argument. Second, in State v. Eighth Judicial District  
3 Court case, supra, the Court applies the standard for a non-regulatory / de facto taking and states  
4 in footnote 5 that, “[w]e decline to address Ad America’s precondemnation damages claim because  
5 the district court has not decided the issue,” showing the case was not a precondemnation damages  
6 case.

7 181. The Court finds that the aggregate of City actions, set forth above, substantially  
8 interfered with the use and enjoyment of the Landowners’ 35 Acre Property, rendering the 35 Acre  
9 Property unusable or valueless to the Landowners.

10 182. Therefore, summary judgment is granted in favor of the Landowners on the  
11 Landowners’ Fourth Claim for Relief – a Non-Regulatory / De Facto Taking.

12 **The Ripeness / Futility Doctrine do not Apply to the Landowners’ First, Third, and Fourth**  
13 **Claims for Relief.**

14 183. The Court follows Nevada Supreme Court precedent to not apply the ripeness /  
15 futility doctrine to the Landowners’ First, Third, and Fourth Claims for Relief.

16 184. The Nevada Supreme Court has held that a ripeness / futility analysis is inapplicable  
17 to the Landowners’ Per Se Regulatory and Per Se Categorical taking claims, because a “per se”  
18 taking is a taking in and of itself and there is no defense to the taking and no precondition to pass  
19 through a ripeness / futility analysis. The Court held in the Sisolak case that “Sisolak was not  
20 required to exhaust administrative remedies by applying for a variance before bringing his inverse  
21 condemnation action based on a regulatory per se taking of his private property.” Sisolak, supra,  
22 at 664. The Court’s ruling was made clear in Justice Maupin’s dissent in Sisolak, wherein he  
23 stated, “[w]hile I disagree with the majority that a regulatory per se taking has occurred in this  
24 instance, I do agree that Loretto and Lucas takings, like per se physical takings, do not require  
exhaustion of administrative remedies.” Sisolak at 684. And, in the Hsu case, the Court held,



1 “[d]ue to the “per se” nature of this taking, we further conclude that the landowners were not  
2 required to apply for a variance or otherwise exhaust their administrative remedies prior to  
3 bringing suit.” Hsu, 173 P.3d at 732 (2007).

4 185. The ripeness / futility doctrine also does not apply to the Landowners’ non-  
5 regulatory / de facto taking claim. The Nevada Supreme Court lays out the standard for a non-  
6 regulatory / de facto taking in the cases of State v. Eighth Judicial District, Sloat, and Schwartz  
7 and the Court does not impose a ripeness / futility requirement.

8 186. To the extent this is in conflict with federal takings jurisprudence, “...states may  
9 expand the individual rights of their citizens under state law beyond those provided under the  
10 Federal Constitution. Similarly, the United States Supreme Court has emphasized that a state may  
11 place stricter standards on its exercise of the takings power through its state constitution or state  
12 eminent domain statutes.” Sisolak at 669.

13 187. Therefore, under the laws of the State of Nevada, which this Court is bound by, an  
14 owner is not required to file any application with the land use authority to ripen a per se categorical  
15 taking, a per se regulatory taking, or a non-regulatory / de facto taking claim – the Landowners  
16 first, third, and fourth claims for relief.

17 **The City’s Segmentation Argument Does Not Apply.**

18 188. The City asks this Court to find that, since the City initially approved development  
19 on the 17 Acre Property, the City may demand that all remaining 233 acres of the 250 Acre Land,  
20 including the 35 Acre Property, be designated open space. The City calls this its “segmentation”  
21 argument.

22 189. The Nevada Supreme Court has held that the 35 Acre Property must be considered  
23 as a separate and independent parcel in this inverse condemnation proceeding, not as part of the  
24 larger 250 Acres:

1 “A question often arises as to how to determine what areas are portions of the parcel  
2 being condemned, and what areas constitute separate and independent parcels? Typically,  
3 the legal units into which land has been legally divided control the issue. That is, each  
4 legal unit (typically a tax parcel) is treated as a separate parcel....” City of North Las  
Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, \*2, 401 P.3d 211 (table)(May 17,  
2017) 2017 WL 2210130 (unpublished disposition), *citing* 4A Julius L.  
Sackman, *Nichols on Eminent Domain* § 14B.01 (3d ed. 2016).

5 190. It is undisputed that the 35 Acre Property has its own Clark County Assessor Parcel  
6 Number – 138-31-201-005.

7 191. It is also undisputed that the 35 Acre Property has its own independent legal owner  
8 - 180 Land Co., LLC, a Nevada limited liability company.

9 192. The Court finds that it would be impermissible to conclude that Owner A is not  
10 damaged because the government approved a development on an entirely separate parcel owned  
11 by Owner B. Yet, that is what the City is arguing, that the alleged approvals on the 17 Acre  
12 Property negate damages on the 35 Acre property – a separate taxed and owned parcel.

13 193. The Court also finds that there is evidence that the City clawed back the 17 Acre  
14 approvals, which would negate any possible segmentation argument. As explained above, after  
15 the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre  
16 Property), denied the 35 Acre applications, denied the fence application (that would have allowed  
17 the Landowners to fence the 17 Acre Property) and denied the access application (that would have  
18 allowed access to the 17 Acre Property). The City also sent the Landowners an email that  
19 explained the 17 Acre approvals were “vacated, set aside and shall be void.” Exhibit 189.

20 194. The Court also finds that NRS 37.039 rejects the City’s segmentation argument.  
21 NRS 37.039 provides that if the City wants to designate property as open space (as the City is  
22 asking this Court to do), the City must pay just compensation for the property identified as open  
23 space.

1           195.   Additionally, the facts show that when the Landowners acquired the entity that  
2 owned the 250 Acres, it was already divided into five separate parcels. Exhibit 44, Deed.

3           196.   It is undisputed that then-City Planning Section Manager, Peter Lowenstein  
4 testified in a deposition that it was the City that requested further subdivision of the Land. “Q. So  
5 you wanted the developer here to subdivide the property further, correct? A. As part of the  
6 submittal, we were looking for that to be accomplished . . .” Exhibit 160, p. 004962.

7           197.   Therefore, there is no evidence to support the City’s claim that the Landowners  
8 intentionally segmented their property as a “transparent ploy” to “fabricate a takings claim” as the  
9 City argued with no supporting evidence.

10          198.   Accordingly, the Court denies the City’s segmentation argument.

11 **The City Cannot Revoke a Taking that Has Already Occurred.**

12          199.   This Court also denies the City’s request to find that the City revoked the taking  
13 actions by sending the Landowners a letter to invite them to re-apply to develop.

14          200.   The United States Supreme Court held in the case of Knick v Township of Scott,  
15 Pennsylvania, 139 S.Ct. 2162, 2170 (2019), that “[t]he Fifth Amendment right to full  
16 compensation arises at the time of the taking, regardless of post-taking remedies that may be  
17 available to the property owner.” The Knick Court further held “once there is a taking  
18 compensation *must* be awarded because as soon as private property has been taken, whether  
19 through formal condemnation proceedings, occupancy, physical invasion, or regulation, the  
20 landowner has *already* suffered a constitutional violation.” Id., at 2172. Italics in original. The  
21 Knick Court continued, “a property owner acquires an irrevocable right to just compensation  
22 immediately upon a taking” and concluded, “[a] bank robber might give the loot back, but he still  
23 robbed the bank.” Id., at 2172.

**Petition for Judicial Review Law.**

201. The Court declines the City's repeated attempts to apply Petition for Judicial Review (PJR) law and standards and this Court's orders from the PJR side of this case in this inverse condemnation case.

202. This Court has already ordered several times that PJR law cannot be applied in this inverse condemnation case and provided detailed legal and policy reasons for this conclusion as follows:

"Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. (internal citation omitted). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. (internal citation omitted). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council." Exhibit 8 at 22:13-27

"[B]oth the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them 'two disparate sets of claims' ..." Exhibit 8 at 21:15-20.

"The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. . . . As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different facts, different legal standards and different burdens of proof." Id., 22:1-11.

"A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of constitutional magnitude and requires all government actions against the property at issue to be considered." Id., 8:25 – 9:2.

1 “For these reasons, it would be improper to apply the Court’s ruling from the  
2 Landowners’ petition for judicial review to the Landowners’ inverse condemnation  
claims.” Exhibit 8, 23:7-8. See also Exhibit 7, 11:20-22, May 7, 2019, Order

3 “This is an inverse condemnation case. It’s not a petition for judicial review. There’s  
4 clearly a difference in distinction there.” Exhibit 198, 5.13.21 hearing transcript at 39:7-  
9.

5 “And we’ve had a very rigorous discussion in the past in this case, and I think we have a  
6 pretty good record on how I viewed the petition for judicial review and whether or not  
that rises to a level of issue preclusion or claims preclusion vis-à-vis the inverse case.  
And I’ve ruled on that: right?” Exhibit 198, 5.13.21 hearing transcript at 41:6-12.

7 “But you’re not listening to me. I understand all that. I don’t see any need to replot this  
8 ground.” Exhibit 198, 5.13.21 hearing transcript at 43:24-44:1

9 “Wait. Wait. Wait. Wait...the law as it relates to petitions for judicial review are much  
10 different than a civil litigation seeking compensation for inverse condemnation, sir...the  
standards are different. I mean, for example, they got to meet their burden by a  
11 preponderance of the evidence. It’s substantial---I mean, it’s a totally different – it’s an  
administrative process versus a full-blown jury trial in this case. It’s different  
12 completely.” Exhibit 198, 5.13.21 hearing transcript at 69:20-70:7.

13 203. Moreover, when the PJR matter was pending before this Court, the City explained  
14 the deference the Court must give to the City’s decisions and how the Court’s hands were tied in  
15 the PJR matter. The City argued in pleadings in the PJR matter that “[t]he Court may ‘not  
16 substitute its judgment for that of a municipal entity;’ “[i]t is not the business of courts to decide  
17 zoning issues;” and “[a] ‘presumption of propriety’ attaches to governmental action on land use  
18 decisions.” City of Las Vegas’ Points and Authorities in Response to Second Amended Petition  
19 for Judicial Review, pp. 16-17, filed on June 26, 2018, in the PJR side of this case. And, the City’s  
20 counsel provided similar arguments at the hearing on the PJR matter as follows:

21 [This court] must apply a very simple standard, whether or not the city council abused its  
discretion in denying these applications. And in making a determination as to whether or  
22 not the city council abused its discretion, it’s simply a matter of whether or not there’s  
substantial evidence in the record to support the city council’s decision.  
23 This isn’t a matter of the standard of proof in a trial. . . . It’s not even the standard of proof  
in a civil trial, a preponderance of the evidence. It doesn’t even have to be 50-50 such  
24 that there’s - - 50 percent of the record supports the approval of the applications and 50  
percent of the evidence in the record supports the denial of the applications.

1 Its whether or not there's substantial evidence in the record. And substantial evidence  
2 has been defined as whether a reasonable mind could accept sufficient to support a  
3 conclusion. Reporter's Transcript of Petition for Judicial Review, June 29, 2018, p.  
4 144:4-25, PJR side of this matter.

5 204. No such deference is required in this inverse condemnation action. Instead, the  
6 Court is required to consider all of the City's actions in the aggregate to determine whether those  
7 actions amount to a taking.

8 205. Finally, the Nevada Supreme Court recently confirmed this Court's orders and the  
9 reasoning therein, holding "civil actions and judicial review proceedings are fundamentally  
10 different" and recognized that PJR and civil actions are "[l]ike water and oil, the two will not mix."  
11 City of Henderson v. Eighth Judicial District Court, 137 Nev., Adv. Op. 26 at 2 (Jun. 24, 2021).

12 206. Therefore, it would be improper to apply PJR law or this Court's orders from the  
13 PJR matter to this inverse condemnation case.

14 **Purchase Price.**

15 207. The Court also declines to apply any purchase price when deciding the taking  
16 issues.

17 208. First, there is no case law to support consideration of the purchase price paid for  
18 property when determining whether a taking occurred.

19 209. Second, the Landowners presented a pleading at the hearing that was submitted by  
20 the City in the 65 Acre case wherein the City argued, "[t]he Developer's purchase price, however,  
21 is not material to the City's *liability* for a regulatory taking." City's Response to Developer's Sur-  
22 Reply Brief Entitled "Notice of Status of Related Cases ETC.", filed on September 15, 2021, 3:17  
23 pm, Case No. A-18-780184-C (65 Acre Case). Italics in original.

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IV.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN REGARD TO THE CITY'S  
MOTION FOR SUMMARY JUDGMENT ON THE LANDOWNERS' SECOND CLAIM  
FOR RELIEF – PENN CENTRAL TAKING CLAIM**

210. The City moved for summary judgment on the Landowners' Second Claim for Relief – Penn Central Taking Claim.

211. A Penn Central Taking Claim is an inverse condemnation claim separate and distinct from the Per Se Categorical, Per Se Regulatory, and Non-Regulatory / De Facto taking claims and is governed by a different taking standard.

212. The standard for a Penn Central Taking Claim considers, on an ad hoc basis, three guideposts: 1) the regulations impact on the property owner; 2) the regulations interference with investment backed expectations; and, 3) the character of the government action. Sisolak, supra, at 663.

213. The City conceded at the hearing on September 28, 2021, that the Penn Central taking standard is a lower standard than a per se categorical standard and if the per se categorical taking standard has been met, then the Penn Central standard is met.

214. Moreover, as explained above, 1) the impact from the City's actions on the Landowners' 35 Acre Property has been to deny all economic use of the property; 2) the City's actions have interfered with the Landowners attempts to develop residentially, which were the Landowners' investment backed expectations; and, 3) the government provided no justification for denying all economical use of the 35 Acre Property.

215. Insofar as a ripeness / futility analysis applies to a Penn Central claim, the claim is ripe.

216. The Nevada Supreme Court holds that, "a claim that the application of government regulations effects a [Penn Central] taking of a property interest is not ripe until the government

1 entity charged with implementing the regulations has reached a final decision regarding the  
2 application of the regulations to the property at issue. . . . But when exhausting available remedies,  
3 including the filing of a land-use application, is futile, a matter is deemed ripe for review.” State  
4 v. Eighth Judicial Dist., supra, at 419.

5 217. Here, the Landowners’ Penn Central taking claim is ripe, because the City denied  
6 all of the applications the Landowners submitted to use the 35 Acre Property and the City adopted  
7 Bills No. 2018-5 and 2018-24 that: 1) target only the Landowners 250 Acres; 2) made it impractical  
8 and impossible to develop the 250 Acres, including the 35 Acre Property; and 3) preserved the 35  
9 Acre Property for use by the public and authorized “ongoing public access” to the property.

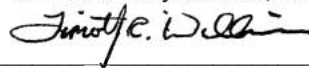
10 218. Therefore, given the City’s concession that the Penn Central taking standard is a  
11 lower standard than a per se categorical taking standard and the uncontested record in this matter,  
12 summary judgment is granted in favor of the Landowners on their second claim for relief – a Penn  
13 Central taking.

14 **V.**

15 **CONCLUSION**

16 **IT IS HEREBY ORDERED THAT** Summary Judgment is granted in favor of the  
17 Landowners on the Landowners’ First Claim for Relief – Per Se Categorical Taking, Second Claim  
18 for Relief – Penn Central Taking, Third Claim for Relief – Per Se Regulatory Taking, and Fourth  
19 Claim for Relief – Non-Regulatory / De Facto Taking. A jury trial is scheduled for November 1,  
20 2021, to determine the just compensation the Landowners are owed for the taking of the 35 Acre  
21 Property.

Dated this 25th day of October, 2021



998 183 8997 1E67  
Timothy C. Williams  
District Court Judge

MH



1 Respectfully Submitted By:  
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2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the  
15 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
16 case as listed below:

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Judge Williams Decision  
of the Court  
Re: Just Compensation

1 DECN

2  
3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5  
6 180 LAND CO., LLC, a Nevada limited liability  
7 Company, FORE STARS LTD, a Nevada  
8 Limited liability company and SEVENTY  
9 ACRES, LLC, a Nevada limited liability  
10 Company, DOE INDIVIDUALS I through X,  
11 DOE CORPORATIONS I-X, and DOE  
12 LIMITED LIABILITY COMPANIES I  
13 through X,

14 Plaintiffs.

15 -vs-

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

16 CITY OF LAS VEGAS, a political subdivision  
17 of the State of Nevada; ROE GOVERNMENT  
18 ENTITIES I-X; ROE CORPORATIONS I-X;  
19 ROE INDIVIDUALS I-XP; ROE LIMITED-  
20 LIABILITY COMPANIES I-X; ROE QUASI-  
21 GOVERNMENTAL ENTITIES I-X,

22 Defendants.

23 **DECISION OF THE COURT**

24 After review and consideration of the points and authorities on file herein, and oral  
25 argument of counsel, the Court's Decision is as follows:

- 26 1. The appraisal report introduced into evidence by Plaintiff conforms to the  
27 Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of  
28 Professional Ethics and Standards of Professional Appraisal Practice Institute.

TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

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- 2. The expert appraisal analysis performed by Tio S. DiFederico, MAI, a Nevada Certified Real Estate Appraiser, involves a 34.07-acre parcel of land located at the southeast corner (SEC) of Alta Drive and Hualapai Way, in Las Vegas, County of Clark, Nevada.
- 3. The 34.07-acre property is hard zoned R-PD7 at all relevant times herein, and the permitted uses of the subject property are single-family and multi-family residential.
- 4. Although the site had been zoned R-PD7 since the early 1990s, the property had historically been used as a portion of the Badlands Golf Course. The landowner had leased the property to Elite Golf, a local operator managing the Badlands and five (5) other local golf courses.
- 5. According to a 2017 National Golf Foundation (NGF) report, from 1986 to 2005, golf course supply increased by 44%, which far outpaced growth in golf participation. The trend experienced in 2016 was referred to as a “correction” as golf course closures occurring throughout the U.S. indicated there was an oversupply that required market correction. The local market data reflects that the Badlands wasn’t an outlier struggling in a thriving golf course market. Based on what was happening in the national and local golf course markets, Las Vegas was also experiencing this market “correction” and the Badlands golf course was part of that “correction.” On December 1, 2016, the Badlands Golf Course closed.
- ...
- ...

- 1 6. After looking at the historical operations of the golf course, which were trending  
2 downward rapidly, Plaintiff's expert, Tio S. DiFederico, MAI, concluded that  
3 operating the golf course was not a financially feasible use of this property as of  
4 September 14, 2017. Based on his research, he concluded that the highest and  
5 best use of this property was a residential development. This use would be similar  
6 to the surrounding uses in the Queensridge and Summerlin communities.  
7  
8 7. On September 21, 2017, the Clark County Assessor sent the landowner a letter  
9 that stated since the subject property had ceased being used as a golf course on  
10 December 1, 2016, the land no longer met the definition of open space and was  
11 "disqualified for open-space assessment." The Assessor converted the property to  
12 a residential designation for tax purposes and then the deferred taxes were owed as  
13 provided in NRS 361A.280. The following explains how they apply deferred  
14 taxes:  
15  
16

17 NRS 361A.280 Payment of deferred tax when property converted to a  
18 higher use. If the county assessor is notified or otherwise becomes aware  
19 that a parcel or any portion of a parcel of real property which has received  
20 agricultural or open-space use assessment has been converted to a higher  
21 use, the county assessor shall add to the tax extended against that portion  
22 of the property on the next property tax statement the deferred tax, which  
23 is the difference between the taxes that would have been paid or payable  
24 on the basis of the agricultural or open-space use valuation and the taxes  
25 which would have been paid or payable on the basis of the taxable value  
26 calculated pursuant to NRS 361A.277 for each year in which agricultural  
27 or open-space use assessment was in effect for the property during the  
28 fiscal year in which the property ceased to be used exclusively for  
agricultural use or approved open-space use and the preceding 6 fiscal  
years. The county assessor shall assess the property pursuant to NRS  
361.227 for the next fiscal year following the date of conversion to a  
higher use.

...

TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155



- 1 8. Due to the property tax increase, the property owner attempted to develop the  
2 property for residential use. Notwithstanding the taxing and zoning of R-PD7  
3 (residential), the City of Las Vegas prevented the legal use of the property as it  
4 would not allow the landowner to develop the property according to its zoning and  
5 residential designation.  
6  
7 9. Consequently, the City of Las Vegas prevented the legally permitted use of the  
8 property and required the property to remain vacant.  
9  
10 10. The Court's Decision is based on a finding that the 34.07-acre Badlands property  
11 could be developed with a residential use in compliance with its R-PD7 zoning on  
12 September 14, 2017. Due to the effect of the government's unlawful taking of the  
13 34.07-acre parcel of the Badlands property, Plaintiff's expert, DiFederico,  
14 concluded there was no market to sell this property with the substantial tax burden  
15 and no potential use or income to offset the tax expense. Based on the  
16 government's actions, this Court hereby determined that just compensation due to  
17 the government's unlawful taking of the 34.07-acre Badlands property is the sum  
18 of \$34,135,000.00.  
19  
20

21 As a result, this Court hereby finds in favor of Plaintiff, 180 Land Company, LLC,  
22 and against Defendant, City of Las Vegas in the sum of \$34,135,000.00, exclusive of  
23 attorney's fees and costs.  
24

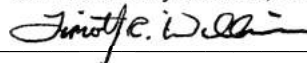
25 ...  
26 ...  
27 ...  
28

TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

1 Counsel for Plaintiff shall prepare a detailed Order, Findings of Facts, and  
2 Conclusions of Law, based not only on the foregoing Decision of the Court, but also on the  
3 record on file herein. This is to be submitted to adverse counsel for review and approval  
4 and/or submission of a competing Order or objections, prior to submitting to the Court for  
5 review and signature.  
6

Dated this 28th day of October, 2021



MH

0AA 6FE F8FF D958  
Timothy C. Williams  
District Court Judge

28  
TIMOTHY C. WILLIAMS  
DISTRICT JUDGE

DEPARTMENT SIXTEEN  
LAS VEGAS NV 89155

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 180 Land Company LLC,  
7 Petitioner(s)

CASE NO: A-17-758528-J

8 vs.

DEPT. NO. Department 16

9 Las Vegas City of,  
10 Respondent(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Decision was served via the court's electronic e' file system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 10/28/2021

16 Jeffry Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 Robert z cCoy

rmccoy@kcnvlaw.com

23 Stephanie Allen

sallen@kcnvlaw.com

24 Adar Bagus

abagus@kcnvlaw.com

25 Christopher Kaempfer

ckaempfer@kcnvlaw.com

|    |                       |                               |
|----|-----------------------|-------------------------------|
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| 2  | addie Carnate-Peralta | mcarnate@hutchlegal.com       |
| 3  | Autumn Maters         | autumn@kermittwaters.com      |
| 4  | Michael Schneider     | michael@kermittwaters.com     |
| 5  | Eliabeth Ham          | EHam@ehbcompanies.com         |
| 6  | Jelena Jovanovic      | jjovanovic@mcdonaldcarano.com |
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| 8  | George Ogilvie III    | gogilvie@mcdonaldcarano.com   |
| 9  | Karen Surowiec        | ksurowiec@mcdonaldcarano.com  |
| 10 | Christopher Molina    | cmolina@mcdonaldcarano.com    |
| 11 | Jennifer Knighton     | jknighton@ehbcompanies.com    |
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| 13 | Stacy Sykora          | stacy@kermittwaters.com       |
| 14 | James Leavitt         | jim@kermittwaters.com         |
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| 17 | Desiree Staggs        | dstaggs@kcnvlaw.com           |
| 18 | Shannon Dinkel        | sd@pisanellibice.com          |
| 19 | Debbie Leonard        | debbie@leonardlawpc.com       |
| 20 | Andrew Schwartz       | Schwartz@smwlaw.com           |
| 21 | Sandy Guerra          | sandy@kermittwaters.com       |
| 22 | Jennifer Knighton     | jknighton@ehbcompanies.com    |
| 23 | Eliabeth Ham          | EHam@ehbcompanies.com         |
| 24 |                       |                               |
| 25 |                       |                               |
| 26 |                       |                               |
| 27 |                       |                               |
| 28 |                       |                               |

1 Lauren Tarpey LTarpey@smwlaw.com  
2 David Meibel weibel@smwlaw.com  
3 Rebecca Molfson rwolfson@lasvegasnevada.gov  
4

5 If indicated below, a copy of the above mentioned filings were also served by mail  
6 via United States Postal Service, postage prepaid, to the parties listed below at their last  
7 known addresses on 11/1/2021

8 EliWbeth Ghanem 8861 M. Sahara Ave  
9 Ste. 120  
Las Vegas, NV, 89117

# **EXHIBIT “DDDDDD”**



June 28, 2017

**LAS VEGAS  
CITY COUNCIL**

Carolyn G. Goodman  
Mayor

Steven D. Ross  
Mayor Pro Tem

Lois Tarkanian  
Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Bob Beers

Elizabeth N. Fretwell  
City Manager

Mr. Yohan Lowie  
180 Land Company, LLC  
1215 South Fort Apache Road, Suite #120  
Las Vegas, NV 89117

**RE: ABEYANCE ITEM – GPA-68385 – GENERAL PLAN AMENDMENT –  
PUBLIC HEARING - CITY COUNCIL MEETING OF JUNE 21, 2017**

Dear Mr. Lowie:

Your request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way (APN 138-31-702-002), Ward 2 (Beers) [PRJ-67184], was considered by the City Council on June 21, 2017.

The City Council voted to **DENY** your request 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.

The Notice of Final Action was filed with the Las Vegas City Clerk on June 22, 2017.

Sincerely,

Thomas A. Perrigo  
Director  
Department of Planning

TAP:clb

**CITY HALL**  
495 S. MAIN ST.  
LAS VEGAS, NV 89101  
702.229.6011  
TTY 711



cc: Ms. Cindie Gee  
GCW, Inc.  
1555 South Rainbow Boulevard  
Las Vegas, Nevada 89146



4383

CLV053778

**21345**



June 28, 2017

**LAS VEGAS  
CITY COUNCIL**

Carolyn G. Goodman  
Mayor

Steven D. Ross  
Mayor Pro Tem

Lois Tarkanian  
Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Bob Beers

Elizabeth N. Fretwell  
City Manager

Mr. Yohan Lowie  
180 Land Company, LLC  
1215 South Fort Apache Road, Suite #120  
Las Vegas, Nevada 89117

**RE: ABEYANCE ITEM – TMP-68482 - TENTATIVE MAP - PUBLIC HEARING  
CITY COUNCIL MEETING OF JUNE 21, 2017**

Dear Mr. Lowie:

Your request for a Tentative Map FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184] , was considered by the City Council on June 21, 2017.

The City Council voted to **DENY** your request 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.

The Notice of Final Action was filed with the Las Vegas City Clerk on June 22, 2017.

Sincerely,

Thomas A. Perrigo  
Director  
Department of Planning

TAP:clb

CITY HALL  
495 S. MAIN ST.  
LAS VEGAS, NV 89101  
702.229.6011  
TTY 711



cityoflasvegas  
lasvegasnevada.gov

cc: Ms. Cindie Gee  
GCW, Inc.  
1555 South Rainbow Boulevard  
Las Vegas, Nevada 89146



4384

CLV053779

**21346**





June 28, 2017

**LAS VEGAS  
CITY COUNCIL**

Carolyn G. Goodman  
Mayor

Steven D. Ross  
Mayor Pro Tem

Lois Tarkanian  
Ricki Y. Barlow  
Stavros S. Anthony  
Bob Coffin  
Bob Beers

Elizabeth N. Fretwell  
City Manager

Mr. Yohan Lowie  
180 Land Company, LLC  
1215 South Fort Apache Road, Suite #120  
Las Vegas, Nevada 89117

**RE: ABEYANCE ITEM – SDR-68481 - SITE DEVELOPMENT PLAN REVIEW  
- PUBLIC HEARING  
CITY COUNCIL MEETING OF JUNE 21, 2017**

Dear Mr. Lowie:

Your request for a Site Development Plan Review FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184], was considered by the City Council on June 21, 2017.

The City Council voted to **DENY** your request 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.

The Notice of Final Action was filed with the Las Vegas City Clerk on June 22, 2017.

Sincerely,

Thomas A. Perrigo  
Director  
Department of Planning

TAP:clb

**CITY HALL**  
495 S. MAIN ST.  
LAS VEGAS, NV 89101  
702.229.6011  
TTY 711



cc: Ms. Cindie Gee  
GCW, Inc.  
1555 South Rainbow Boulevard  
Las Vegas, Nevada 89146



4385

CLV053780

**21347**



June 28, 2017

**LAS VEGAS  
CITY COUNCIL**

Carolyn G. Goodman  
Mayor

Steven D. Ross  
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Lois Tarkanian  
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Bob Coffin  
Bob Beers

Elizabeth N. Fretwell  
City Manager

Mr. Yohan Lowie  
180 Land Company, LLC  
1215 South Fort Apache Road, Suite #120  
Las Vegas, Nevada 89117

**RE: ABEYANCE ITEM – WVR-68480 - WAIVER - PUBLIC HEARING  
CITY COUNCIL MEETING OF JUNE 21, 2017**

Dear Mr. Lowie:

Your request for a Waiver TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184], was considered by the City Council on June 21, 2017.

The City Council voted to DENY your request 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.

The Notice of Final Action was filed with the Las Vegas City Clerk on June 22, 2017.

Sincerely,

Thomas A. Perrigo  
Director  
Department of Planning

TAP:clb

CITY HALL  
495 S. MAIN ST.  
LAS VEGAS, NV 89101  
702.229.6011  
TTY 711



cc: Ms. Cindie Gee  
GCW, Inc.  
1555 South Rainbow Boulevard  
Las Vegas, Nevada 89146



4386

CLV053781

**21348**