

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

Electronically Filed
Aug 25 2022 08:25 p.m.
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No. 84640

**JOINT APPENDIX,
VOLUME NO. 128, Pt. 11**

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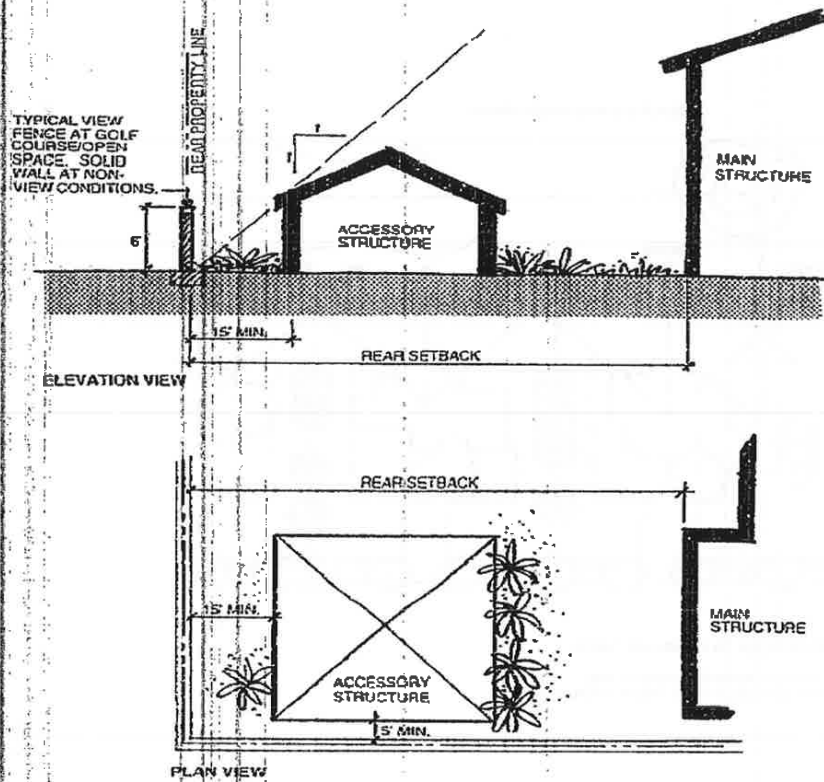


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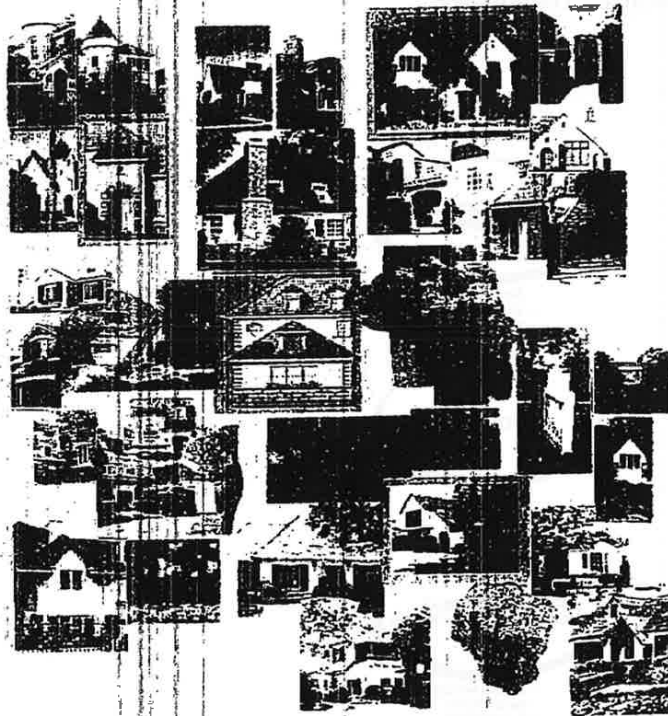


EXHIBIT C-5

ARCHITECTURAL COMPONENTS**BUILDING
FACADES**

- Form/Mass
- Corners/Porches
- Shadow Openings
- Materials/Texture

ROOFS

- Roof Pitch
- Overhangs
- Materials

**ARCHITECTURAL
FEATURES/ACCENTS**

- Accent Windows/Doors
- Decks/Patios
- Fences/Walls
- Accent Color/Treatment

EXHIBIT C-9



EXHIBIT C-10

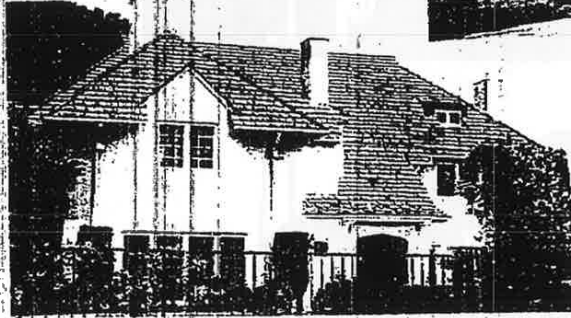
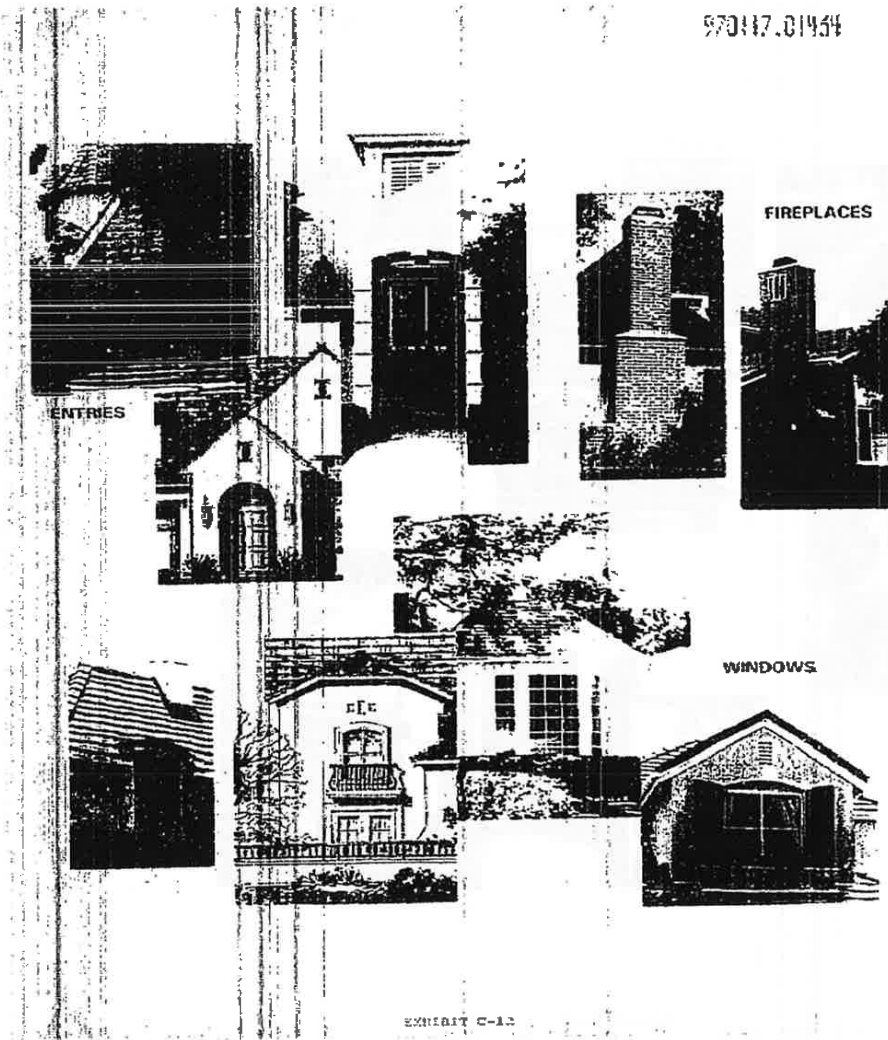


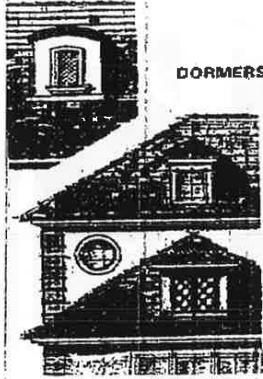
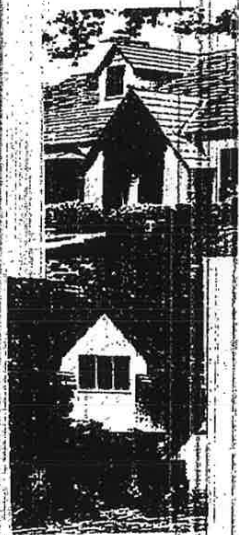
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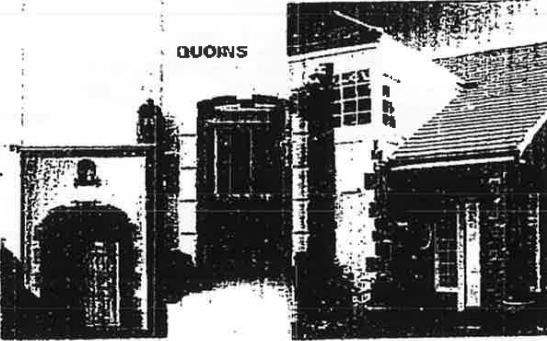
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DORMERS



QUONSET

EXHIBIT C-13

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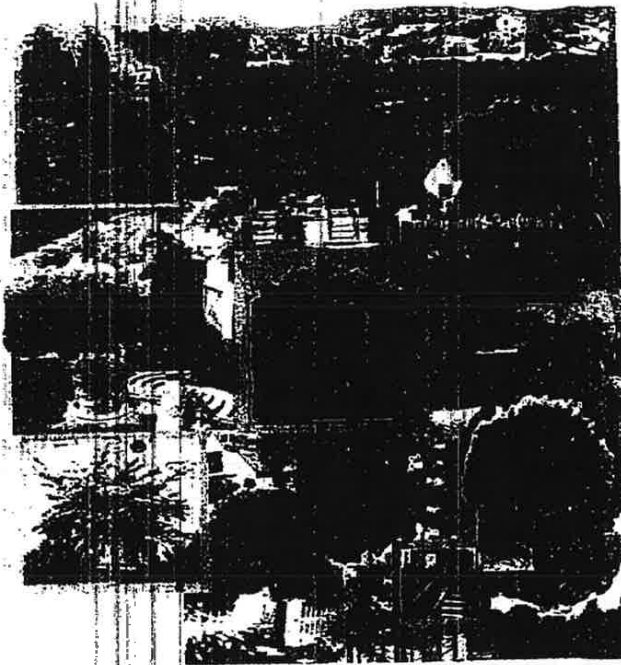


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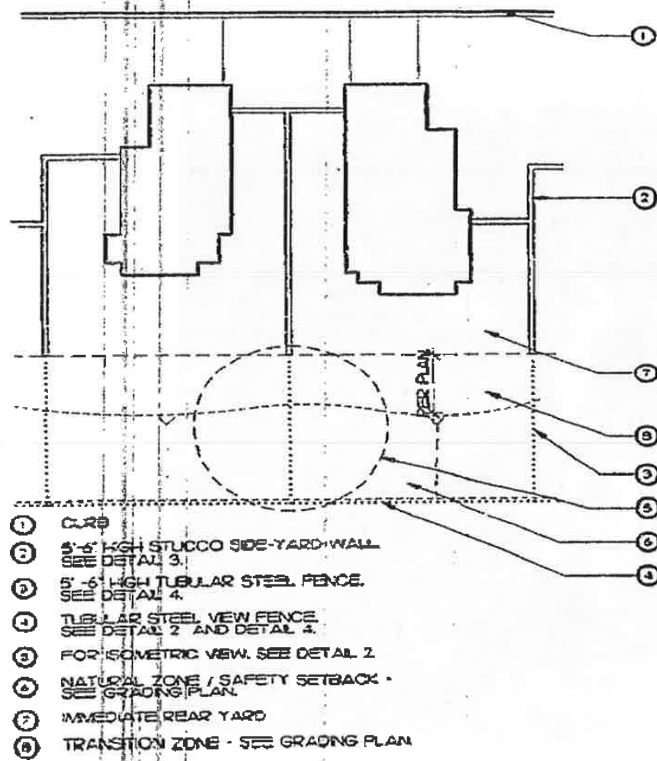
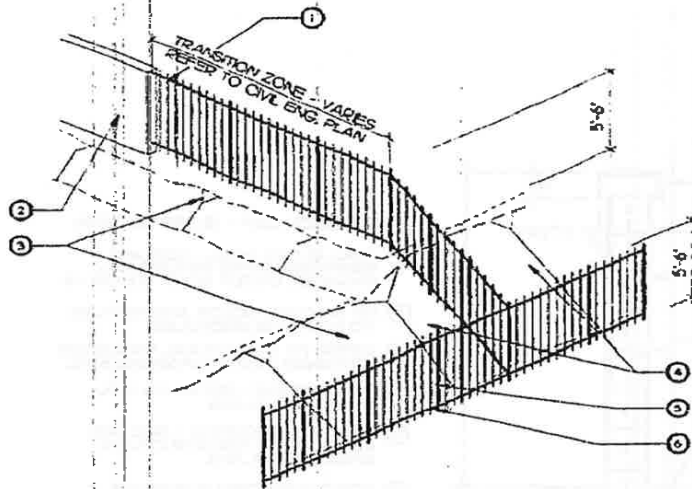


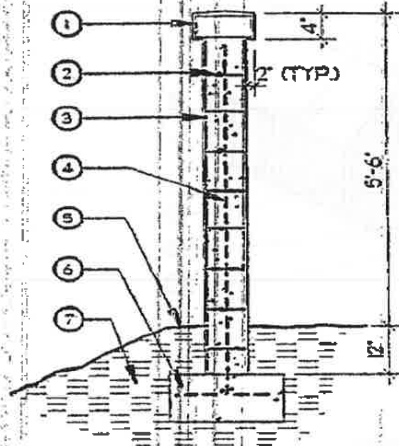
EXHIBIT C-15



- ① TUBULAR STEEL SIDE YARD FENCE. SEE DETAIL A
- ② STUCCO SIDEYARD WALL, 5'-6" HIGH. SEE DETAIL A
- ③ SLOPE PER CIVIL ENGINEER'S PLANS.
- ④ NATURAL ZONE - LENGTH/DEPTH OF LOT VARIES
- ⑤ TUBULAR STEEL NATURAL ZONE REAR FENCE. SEE DETAIL A
- ⑥ TOP OF SLOPE - PER CIVIL ENGINEER'S PLANS

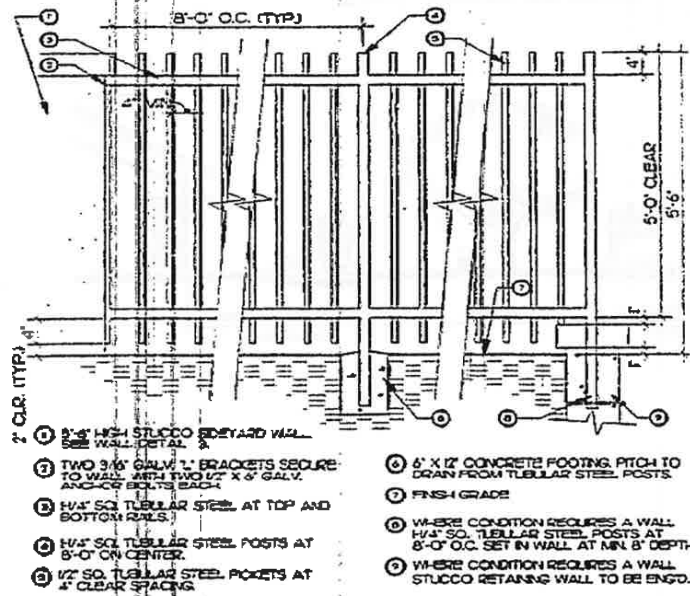
LARGER LOTS THAT HAVE A POOL ARE REQUIRED TO CONSTRUCT A 5'-6" FENCE. THERE MUST BE A 5'-0" CONTINUOUS BARRIER WITH NO TOE HOLD ON THE OUTSIDE OF THE PROPERTY AS REQUIRED BY HEALTH SAFETY AND WELFARE DEPARTMENT CODES.

EXHIBIT C-14



- ① PRECISION CAP - SLOPE TO DRAIN.
- ② CMU BLOCK WALL - SIZE AND REINFORCING PER STRUCTURAL ENGINEER. GROUT SOLID ALL CELLS.
- ③ 1/2" STUCCO. COLOR AND TEXTURE TO MATCH GUARDHOUSE.
- ④ REFER TO STRUCTURAL ENGINEER'S DRAWINGS FOR REINFORCING INFO.
- ⑤ FINISH GRADE - REFER TO CIVIL ENGINEER'S PLANS.
- ⑥ CONCRETE FOOTING - SIZE AND REINFORCING PER STRUCTURAL ENGINEER'S PLANS.
- ⑦ 90% COMPACTED SUB-GRADE.

EXHIBIT C-17



NOTES:
 ALL METAL SURFACES TO BE HOT-DIPPED GALVANIZED WITH TWO (2) COATS RUST PREVENTATIVE PRIMER AND TWO (2) COATS OF ENAMEL. ENAMEL COLOR TO MATCH PATINA FINISH ON ENTRY GATES. COLOR TO BE APPROVED BY LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION.
 ALL METAL TO BE WELDED 360 DEGREES, BUTT & GRIND SMOOTH.
 CONTRACTOR TO SUBMIT SHOP DRAWINGS TO LANDSCAPE ARCHITECT FOR APPROVAL.

EXHIBIT C-18

LANDSCAPE LIGHTING ZONES

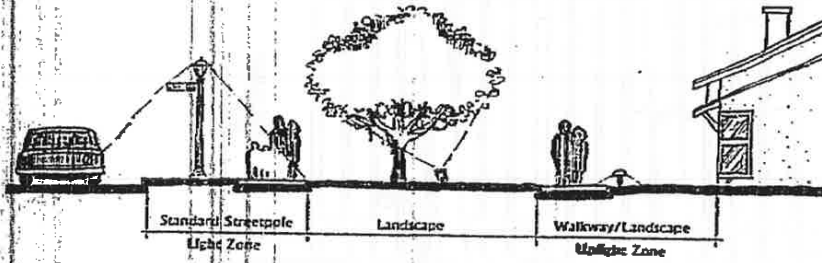


EXHIBIT C-19

LIGHTING PROFILES

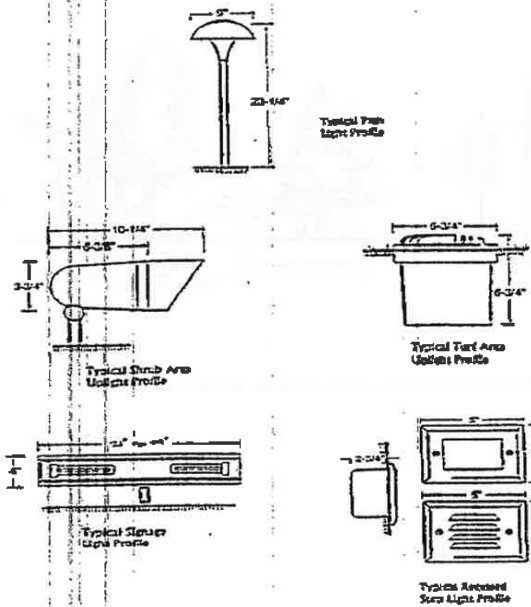
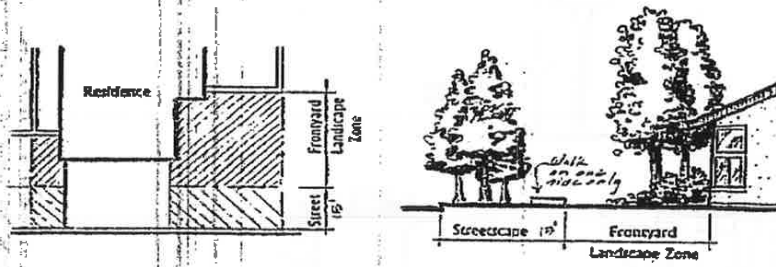


EXHIBIT C-20

STREET LANDSCAPE AREA & FRONT YARD LOT LANDSCAPE ZONE



REFER TO NEXT EXHIBIT FOR TRANSITION & NATURAL ZONE LOCATIONS.

EXHIBIT C-21

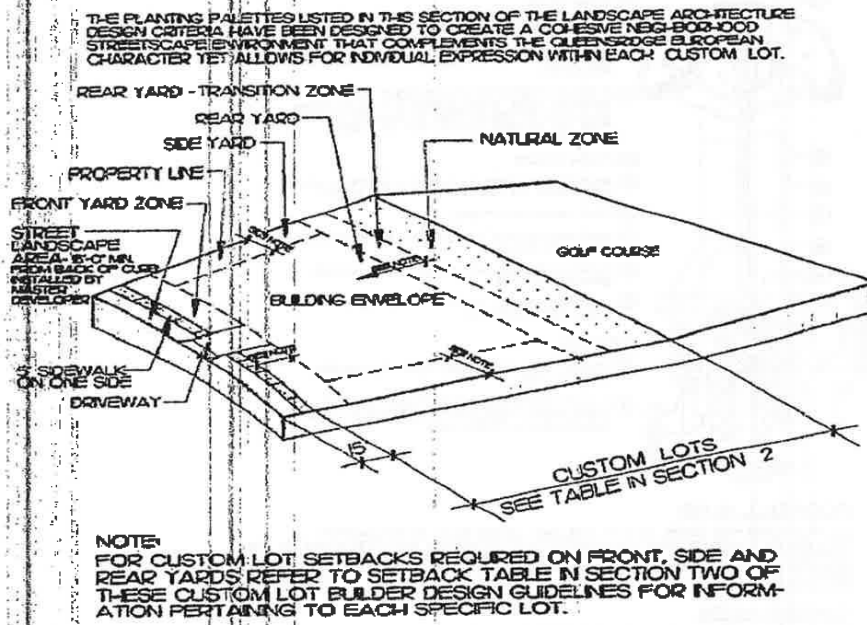
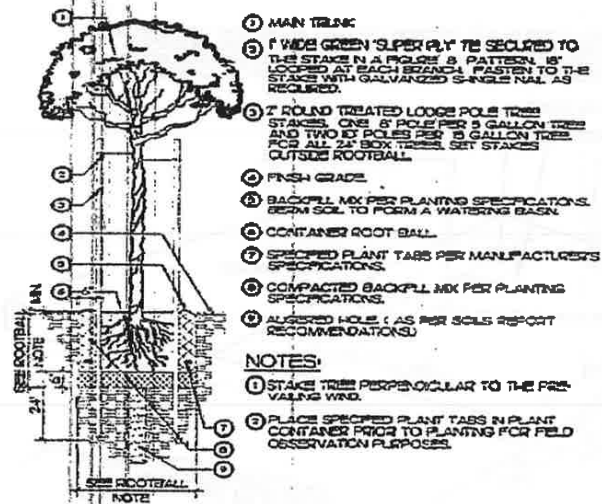


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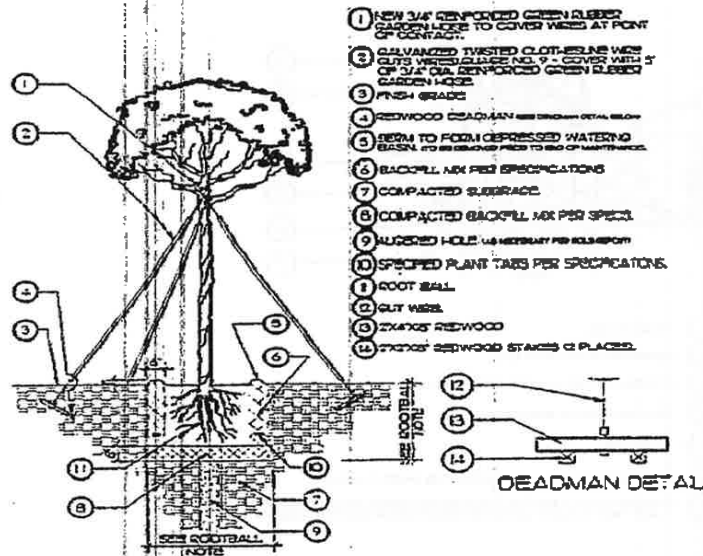
ROOTBALL NOTE

ALL PLANT PITS FOR TREES, 24" BOX SIZE AND LARGER SHALL BE EXCAVATED TO A MIN OF 2' LARGER THAN THE DIAMETER AND 1'-0" DEEPER THAN THE HEIGHT OF THE CONTAINER TO PERMIT HANDLING. PLANT PITS FOR 1 GALLON TO 15 GALLON PLANT MATERIAL SHALL BE 14" WIDE OR 4" DEEPER THAN THE HEIGHT OF THE CONTAINER. EXCAVATE PITS WITH VERTICAL SIDES FOR ALL PLANTS. PLANTS SHALL NOT BE PLANTED IN OAT SOIL. SOIL SHALL BE MOIST AT LEAST 18" DEEP.

CAUTION NOTE

IT SHOULD BE NOTED THAT ALL CONTRACTORS INCLUDE AN ALLOWANCE IN THEIR BID FOR PENETRATING THROUGH CAUTION SOIL WHEN IT IS ENCOUNTERED UNDER TREE PLANTING PITS. CONTRACTOR TO ENSURE PROPER DRAINAGE FOR THESE PLANTING PITS.

EXHIBIT C-23

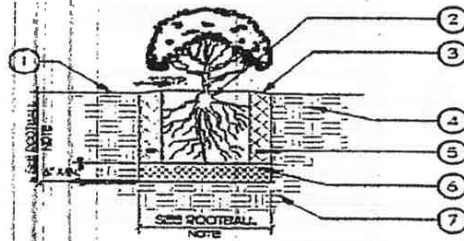
**ROOTBALL NOTE**

ALL PLANT PITS FOR TREES 24" BOX SIZE AND LARGER SHALL BE EXCAVATED
TO A MIN. OF 7' DEEPER THAN THE DIAMETER AND NOT DEEPER THAN THE HEIGHT OF THE
CONTAINER TO PROMPT HANDLING PLANT PITS FOR 1 GALLON TO 5 GALLON PLANT MATERIAL
SHALL BE A MIN. OF 5' DEEPER THAN THE HEIGHT OF THE CONTAINER. EXCAVATE PITS WITH
VERTICAL SIDES FOR ALL PLANTS. PLANTS SHALL NOT BE PLANTED IN HOT SOIL. SOIL
SHALL BE MOIST AT LEAST 18" DEEP.

CALICHE NOTE

IT SHOULD BE NOTED THAT ALL CONTRACTORS INCLUDE AN ALLOWANCE IN THEIR BID
FOR PENETRATING THROUGH CALICHE SOIL WHEN IT IS ENCOUNTERED UNDER THESE
PLANTING PITS. CONTRACTORS TO ENSURE PROPER DRAINAGE FOR THESE PLANTING PITS.

EXHIBIT C-24

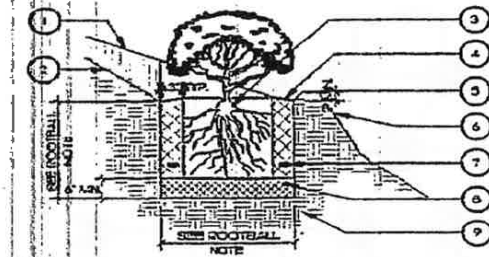


- 1 FRESH GRADE
- 2 CONTAINER PLANT ROOT BALL
- 3 BACKFILL MIX PER PLANTING SPECIFICATIONS
- 4 PO 3, COMPACTED SUBGRADE
- 5 NATIVE SOIL
- 6 COMPACTED BACKFILL MIX PER PLANTING SPECIFICATIONS
- 7 COMPACTED PLANT TABS PER THE MANUFACTURER'S RECOMMENDATIONS. PLACE TABS IN PLANT CONTAINER PRIOR TO PLANTING FOR OBSERVATION.

ROOTBALL NOTE

ALL PLANT PITS FOR TREES 24" BOX SIZE AND LARGER SHALL BE EXCAVATED TO A MIN OF 2' DEEPER THAN THE DIAMETER AND 1'-0" DEEPER THAN THE HEIGHT OF THE CONTAINER TO PERMIT LANDING PLANT PITS FOR 1 GALLON TO 8 GALLON PLANT MATERIAL SHALL BE MIN OF 3' DEEPER THAN THE HEIGHT OF THE CONTAINER. EXCAVATE PITS WITH VERTICAL SIDES FOR ALL PLANTS. PLANTS SHALL NOT BE PLANTED IN DRY SOIL. SOIL SHALL BE MOIST AT LEAST 16" DEEP.

EXHIBIT C-25

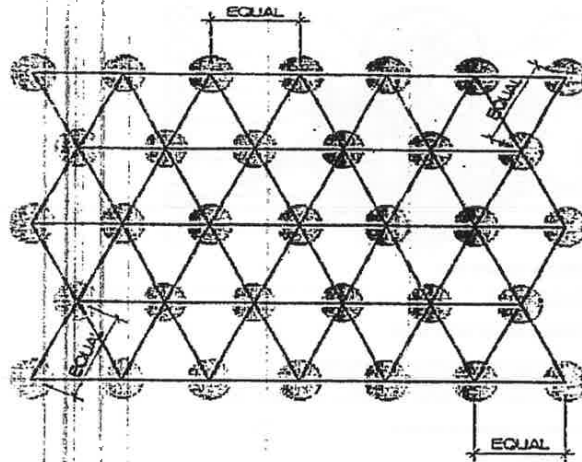


- 1 MAXIMUM 1:1 SLOPE CLT.
- 2 ORIGINAL GRADE
- 3 CONTAINER PLANT ROOT BALL
- 4 BACKFILL MIX PER PLANTING SPECIFICATIONS
- 5 TIGHTLY COMPACTED EERN TO FORM A WATERING BASIN
- 6 1:1 MAXIMUM SLOPE SURFACE
- 7 NATIVE SOL
- 8 COMPACTED BACKFILL MIX PER PLANTING SPECIFICATIONS
- 9 SPECIFIED PLANT TABS PER THE MANUFACTURER'S RECOMMENDATIONS. PLACE TABS IN PLANT CONTAINER PRIOR TO PLANTING FOR OBSERVATION.

ROOTBALL NOTE

ALL PLANT PITS FOR TREES 24 BOX SIZE AND LARGER SHALL BE EXCAVATED TO A MIN. OF 2' LARGER THAN THE DIAMETER AND 1'-0" DEEPER THAN THE HEIGHT OF THE CONTAINER TO PERMIT HANDLING PLANT PITS FOR 1 GALLON TO 15 GALLON PLANT MATERIAL SHALL BE A MIN. OF 3' DEEPER THAN THE HEIGHT OF THE CONTAINER. EXCAVATE PITS WITH VERTICAL SIDES FOR ALL PLANTS. PLANTS SHALL NOT BE PLANTED IN CUT SOIL. SOIL SHALL BE MOIST AT LEAST 24 HOURS.

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**NOTE**

ALL SHRUBS AND GROUNDCOVER TO BE PLANTED AT EQUAL TRIANGULATED SPACING AS ILLUSTRATED ABOVE.

1 GALLON SHRUBS TO BE A MINIMUM OF 3'-0" ON CENTER.

5 GALLON SHRUBS TO BE A MINIMUM OF 5'-0" ON CENTER.

15 GALLON SHRUBS TO BE A MINIMUM OF 6'-0" ON CENTER.

PLANTS OF GROUNDCOVER PLANTED A MINIMUM OF 12" ON CENTER.

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
01-17-97 15:08 8.18 82
BOOK: 970117 INST: 01434
PAGE: 88.00 PART: .00

EXHIBIT C-27

SECTION 1

INTRODUCTION

1.1 INTRODUCTION

1.1.1 PLANNING AND DESIGN CONCEPTS

Introduction

Nevada Legacy 14, LLC, is the master developer of Queensridge ("Master Developer"). The Master Developer's vision for Queensridge is to create a truly unique and distinctive community on this final piece of the Peccole family's land. In order to assist Custom Lot Homeowners in achieving the goals and objectives of the development, this Section C of the Master Planned Community Standards (herein sometimes referred to as "Custom Lot Design Guidelines") which articulates the Master Developer's vision of the overall community image, architecture, landscape and signage applies to all of the Custom Lots within Queensridge. Please refer to Exhibit C-1 for the location of the Custom Lot neighborhoods in Queensridge.

Community Image

The overall community image envisioned for Queensridge is characterized as "European". This image will be created through the comprehensive and careful integration of architecture, landscape and signage elements throughout the entire project. As a result of this fresh approach to the luxury community design theme, Queensridge promises to possess a distinctive character which is unlike any other community in the Las Vegas market.

Among the neighborhoods within Queensridge, the custom home enclaves are set within the spectacular environment of the Badlands golf course, and provide distinct choices for every lifestyle. The custom home neighborhoods include:

- An enclave of 1/2 to 1 acre lots completely surrounded by the golf course, providing an impressive amenity for each homesite. This custom home neighborhood is accessed from Charleston Blvd. via a guard gated entry at Palace Court.
- An exclusive enclave offering custom homesites of 1 1/4 + acres. This enclave is completely surrounded by the golf course creating a distinct exclusivity to the neighborhood. It is accessed from Charleston Blvd. via a guard gated entry at Palace Court.

QUEENSRIDGE

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C-1

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SECTION 1

INTRODUCTION

Architecture

Because of its broad range, the European character of Queensridge will enable the creation of a compatible yet diverse look throughout the neighborhoods. This style draws its inspiration from the built environment throughout Europe including French Country, Normandy, English, and Italian.

Landscape

The landscape treatment of streets, open space and individual yards is a key element of the overall European community image. This image will be enhanced through a "garden" style approach to the landscape program. The plant palette will consist of a variety of deciduous and evergreen plant materials for variety in color, texture, and the broad opportunity for design theming. Hardscape elements will feature the use of stone, brick and other textured materials for a traditional look.

Signage

The signage program will enhance the European image through the choice of traditional materials and craftsmanship. Entry signage will be of a low profile and convey a solid, high quality image, accentuated by the use of annual plant material for color accents.

Golf Course

The Badlands 18-hole championship golf course (with a planned addition of 9 holes) which is a daily fee course, designed by Johnny Miller, meanders through the arroyos and neighborhoods of the village. Significant view corridors are provided at key locations throughout Queensridge to enhance the open character of the community.

Parks

Complementing the golf course orientation of Queensridge, the first phase of development features a ± 3 acre neighborhood recreation area which is planned to include a $\pm 3,500$ square foot recreational facility, swimming pool and spa, and tennis courts. In addition, a series of small parks enhance the neighborhood environment including a "view" park providing passive open space overlooking the golf course, a children's park, and a poet's park. Many of the individual lots within the custom home neighborhood are also sized to accommodate a tennis court, subject to approval by the Queensridge Design Review Committee ("DRC").

QUEENSRIDGE

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SECTION 1

INTRODUCTION

1.1.2 DESIGN CRITERIA ROLE

Purpose and Applicability

The purpose of the Custom Lot Design Guidelines is to establish the concepts and provide the direction for the expression of the built environment within the custom home neighborhoods of Queensridge. They are intended to provide an overall framework for future development, achieving a sense of neighborhood identity, land use character, scale and sensitivity in the development of the neighborhoods.

Equally important, an extraordinary expenditure of time, resources, and capital has been used for the development of infrastructure, landscaping and other site improvements which are integral to the creation of a strong sense of identity for each of the custom home neighborhoods. The Custom Lot Design Guidelines provide the vehicle to protect and maintain the long term quality and value invested in the community. Accordingly, the Custom Lot Design Guidelines apply to construction on all lots within the Custom Lot neighborhoods of Queensridge.

The sketches and graphic representations contained herein are for conceptual purposes only and are to be used as general visual aids in understanding the basic intent of the guidelines. They are not meant to depict any actual lot or building design. In an effort to encourage creativity and innovation, the guidelines express "intent" rather than "absolute", thereby allowing a certain flexibility in fulfilling the intended design goals and objectives.

Supporting Documents

The Custom Lot Design Guidelines supplement the following documents which must also be consulted during the design and development of individual homesites:

- Las Vegas Building Codes
- Parcel Packages
- Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge ("Master Declaration")
- Master Planned Community Standards (Exhibit "D" to the Master Declaration)
- Other Applicable Declarations affecting the Custom Lots

The Custom Lot Design Guidelines are subject to interpretation by the DRC. The DRC may amend or augment the Custom Lot Design Guidelines to meet specific site or functional requirements of Custom Lots within Queensridge, consistent with the basic objectives of the DRC.

QUEENSRIDGE

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SECTION 1

INTRODUCTION

Notwithstanding this, the Master Declaration contains legal restrictions regulating the construction and maintenance of Improvements within the Custom Lot neighborhoods.

Responsibility of Review

Neither the Board of Directors of Queensridge Owners Association (the "Association"), the Master Developer nor the DRC assume responsibility for plan review of local codes or ordinances. The DRC's purpose in plan review is to ensure that each construction project meets the intent of the Custom Lot Design Guidelines and Applicable Declarations. All construction activities (defined in the Master Declaration) on the Custom Lots require review by the DRC and the City of Las Vegas. The City will require a review approval letter from the DRC prior to reviewing any documents, or issuing any permits for work performed on the Custom Lots within Queensridge.

Queensridge

CUSTOM

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APNs: 138-32-301-004

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2700 West Sahara Avenue
Las Vegas, Nevada 89102
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Requestor:
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Recorded By: RNS Pgs: 32
DEBBIE CONWAY
CLARK COUNTY RECORDER

15540174 SCS

Recorder's Use

DEED OF TRUST AND FIXTURE FILING
(With Assignment of Rents and Security Agreement)

THIS DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (as it may be amended and modified from time to time, the "Deed of Trust") is made as of November 10, 2015, by and among SEVENTY ACRES LLC, a Nevada limited liability company, whose mailing address is 1215 South Fort Apache, Suite 120, Las Vegas Nevada, 89117 ("Trustor"), TICOR TITLE OF NEVADA, INC., a Nevada corporation, whose mailing address is 8379 W. Sunset Road, Suite 220, Las Vegas, Nevada 89113 ("Trustee"), and ~~WESTERN ALLIANCE BANK~~, an Arizona corporation ("Beneficiary"), whose mailing address is 2700 West Sahara Avenue, Las Vegas, Nevada 89102.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth in that certain real property located in the County of Clark, State of Nevada, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Premises, including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the "Rents"), subject to the terms and provisions of Article II of this Deed of Trust with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into, or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

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Submitted at City Council

Date 4/21/17 Item 131-134

By: BOB PECCOLK

CLARK,NV

Document: DOT 2015.1116.240

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TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any trackage agreement and ~~all rights to the nonexclusive use of common-drive entries, and all tenements, hereditaments and appurtenances thereof and thereto~~) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all rights of Trustor under any covenants, conditions, and restrictions affecting the Premises, the Improvements, or the master planned community of which the Premises and the Improvements are a part, whether now existing or hereafter arising, including, without limitation, all voting rights, declarant's rights, developer rights, developmental rights, and similar rights arising under any such covenants, conditions, and restrictions (collectively, the "CC&R's");

TOGETHER WITH all rights (but none of the obligations) of Trustor under any agreements affecting the Premises, the Improvements, or the master planned community of which the Premises and the Improvements are a part, whether now existing or hereafter arising (collectively, the "Other Agreements");

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, and (v) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property");

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

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TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, ~~without limitation, any awards resulting from a change of grade of streets and awards for severance damages~~);

TOGETHER WITH all proceeds of the foregoing.

The Premises, the Improvements, the Rents, the Leases, the Personal Property, and the entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "Obligations"):

- (a) The Loan. Payment of indebtedness in the total principal amount of up to Fifteen Million Eight Hundred Thousand Dollars (\$15,800,000) ("Loan"), with interest thereon, evidenced by that certain Promissory Note dated February 26, 2015 (as amended, modified, extended, and renewed from time to time, the "Note"), executed by MS Northwest Land Company LLC, a Nevada limited liability company ("MS Northwest"), as Borrower, and payable to the Beneficiary, as Lender, as assumed by Trustor, as successor Borrower, by the Assumption Agreement by and between Lender and Trustor of even date herewith (the "Assumption Agreement"). The Loan is governed by that certain Term Loan Agreement February 26, 2015, by MS Northwest, as Borrower, and Beneficiary, as Lender, as assumed by Trustor, as successor Borrower, by the Assumption Agreement (as amended, modified, extended and renewed from time to time, the "Loan Agreement").
- (b) Other Obligations Secured.
- (i) Payment of all sums advanced by Beneficiary to protect the Trust Estate, with interest thereon equal to the Interest Rate (as defined in the Loan Agreement) plus five percent (5.00%) per annum (which rate of interest is hereinafter referred to as the "Agreed Rate");
- (ii) Payment of all other sums, with interest thereon, that may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust;
- (iii) Performance of every obligation of Trustor contained in the Loan Documents (as defined below);

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(iv) Performance of every obligation of Trustor contained in any agreement, document, or instrument now or hereafter executed by Trustor reciting that the obligations thereunder are secured by this Deed of Trust, including, without limitation, all other obligations, agreements or indebtedness between Trustor and any affiliate of Beneficiary; and

(v) For the benefit of Beneficiary, compliance with and performance of each and every provision of any declaration of covenants, conditions and restrictions, any maintenance, easement and party wall agreement, or any other agreement, document, or instrument by which the Trust Estate is bound or may be affected.

This Deed of Trust, the Note, the Loan Agreement, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents". Capitalized terms as used in this Deed of Trust and not otherwise defined are used with the meanings set forth in the Loan Agreement and other Loan Documents. Any term used or defined in the Uniform Commercial Code of Nevada (Nevada Revised Statutes ("NRS") Chapters 104 and 104A, as amended from time to time ("Uniform Commercial Code of Nevada"), and not defined in this Deed of Trust, has the meaning given to the term in the Uniform Commercial Code of Nevada, when used in this Deed of Trust. Notwithstanding anything to the contrary herein or in any other Loan Document, in no event shall this Deed of Trust be deemed given to secure the obligations of Borrower, or any other "Indemnitor" thereunder, arising under any environmental indemnity agreement made in respect of the Premises, or the obligations of any "Guarantor" under any guaranty given in support of the Obligations, or any other obligor under an instrument given to further secure the Obligations, notwithstanding the fact that such indemnity, guaranty or instrument shall constitute Loan Documents as herein defined.

This Deed of Trust is governed by NRS Sections 106.300 to 106.400 and secures future advances as provided in such Sections. The maximum amount of principal (as defined in NRS Section 106.345) secured hereby (including disbursements that Beneficiary may, but shall not be obligated to, make under this Deed of Trust, the Loan Agreement or any other document with respect thereto) shall not exceed \$15,800,000. This Deed of Trust shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises given priority by law.

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

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ARTICLE I
COVENANTS AND AGREEMENTS OF TRUSTOR

1.01 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or perform each of the Obligations. Without limiting the application of NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete the Improvements or to protect Beneficiary's security are to be deemed obligatory advances hereunder and will be added to the total indebtedness evidenced by the Note and secured by this Deed of Trust and this indebtedness shall be increased accordingly.

1.02 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent required by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease, the CC&R's and the Other Agreements. "Requirement" and "Requirements" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation, (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Trust Estate, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected (including, without limitation, the CC&R's and the Other Agreements), and (E) any order, writ, judgment, injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.03 Required Insurance. Trustor shall comply with the insurance requirements set forth in the Loan Agreement.

1.04 Delivery of Policies, Payment of Premiums. Trustor shall comply with the insurance requirements set forth in the Loan Agreement.

1.05 Casualties; Insurance Proceeds. Trustor shall comply with the casualty and insurance proceeds requirements set forth in the Loan Agreement.

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1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance required by the Loan Agreement shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.07 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any Event of Default, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against by Trustor or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of

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any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.08 Impositions. Trustor shall pay all Impositions (as defined in the Loan Agreement) as provided in the Loan Agreement.

1.09 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

1.11 Actions By Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

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1.12 Transfer of Trust Estate by Trustor. Trustor shall not allow any Transfer (as defined in the Loan Agreement) to occur. Trustor agrees that, in the event of any Transfer without the prior written consent of Beneficiary, in its sole and absolute discretion, Beneficiary shall have the absolute right, without prior demand or notice, to declare all of the Obligations immediately due and payable. Consent to one Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers. Trustor acknowledges that ~~Beneficiary has no obligation to consent to any Transfer and that if Beneficiary grants such~~ consent, Beneficiary may impose such conditions as Beneficiary may deem appropriate in Beneficiary's sole and absolute discretion, including, without limitation, the payment and performance in full of all of the Obligations or the delivery to Beneficiary of all net sales proceeds from any Transfer for application to the Obligations.

1.13 Eminent Domain. Trustor shall comply with the eminent domain requirements set forth in the Loan Agreement.

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor. Such written instrument, upon recordation, shall be conclusive proof of proper substitution of such substitute or successor Trustee, and no further documentation, including any corporate resolution or other authorization shall be required to appoint a substitute or successor to any Trustee named herein.

1.16 Inspections. Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

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1.17 Ownership and Liens and Encumbrances. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "Lien or Encumbrance" and "Liens and Encumbrances" mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or

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reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.20 Financial Statements. Trustor shall deliver to Beneficiary such financial statements, balance sheets, profit and loss statements, operating statements, income and expense statements and other financial information in such detail and at the times required by the Loan Agreement. All such statements shall be prepared in accordance with the requirements of the Loan Agreement. Beneficiary shall have the right to audit, inspect and copy all of Trustor's books and records, relating thereto.

1.21 Trade Names. At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, authorize any additional financing statements and execute any certificates necessary to reflect the change in trade names or fictitious business names.

ARTICLE II ASSIGNMENT OF RENTS

2.01 Assignment of Rents. Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this Article II is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

2.02 Collection Upon an Event of Default. Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents

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(including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, collectively, the "Leases," to cancel, surrender, alter or amend the terms of, and/or renew existing leases and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

2.03 Application of Rents. Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

2.04 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Premises under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

2.05 Indemnity. Trustor hereby agrees to indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

2.06 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party

defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

2.07 Uniform Assignment of Rents Act. The assignment of rents pursuant to this Article II is subject to the Uniform Assignment of Rents Act (the "Rents Act") codified as NRS Chapter 107A, as amended or recodified from time to time, and in the event of any conflict or inconsistency between the provisions of this Article II and the provisions of the Rents Act, the provisions of the Rents Act shall control.

ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Trustor hereby grants to Beneficiary, a security interest in and to all the Personal Property.

3.02 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought for personal, family or household purposes.

(b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of greater value.

(c) At the request of Beneficiary, Trustor will authorize Beneficiary to file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of Nevada, in form satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

(d) Trustor's principal place of business is set forth above. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any change in its place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Beneficiary, authorize any additional

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financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Trustor will also promptly notify Beneficiary (i) of any change of Trustor's organizational identification number, or (ii) if Trustor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(c) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

3.03 Use of Personal Property by Trustor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.04 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 4.02 hereof, upon the occurrence of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

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(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

~~(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;~~

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of Nevada or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 5.05. If Beneficiary fails to comply with this Section 3.04(b) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code of Nevada.

(c) The proceeds of any sale under Section 3.04(a)(iv) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Beneficiary shall determine; and

(iii) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from

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pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

(d) Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and ~~such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.~~

(e) Beneficiary may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property.

(f) Trustor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Trustor acknowledges that the Personal Property may be sold at a loss to Trustor and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

3.05 Security Agreement. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code of Nevada and Beneficiary shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code of Nevada.

3.06 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. This Deed of Trust shall also be effective as a financing statement covering as extracted collateral (including oil and gas), accounts and general intangibles under the Uniform Commercial Code of Nevada and the Uniform Commercial Code as in effect from time to time in any other state where the Property is situated. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

3.07 Authorization to File Financing Statements; Power of Attorney. Trustor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Trustor as authorized by applicable law, as applicable to the Trust Estate. For purposes of such filing, Trustor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior

to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Trustor's own name to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section 3.07, to the extent that Trustor's authorization above is not sufficient. To the extent permitted by law, Trustor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Each of the following shall constitute an event of default ("Event of Default");

(a) The occurrence of any Event of Default, as such term is defined in the Loan Agreement or any other Loan Document.

(b) The occurrence of any Transfer, unless prior to such Transfer the Beneficiary has delivered to Trustor its written consent to such Transfer.

(c) If Trustor or any other "borrower" (as that term is defined in NRS Section 106.310, as amended or recodified from time to time) who may send a notice pursuant to NRS Section 106.380(1), as amended or recodified from time to time, with respect to this Deed of Trust; (i) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give to Beneficiary: (A) any notice of an election to terminate the operation of this Deed of Trust as security for any Obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS Section 106.320, as amended or recodified from time to time) of "principal" (as defined in NRS Section 106.345, as amended or recodified from time to time), or (B) any other notice pursuant to NRS Section 106.380(3), as amended or recodified from time to time, (ii) records a statement pursuant to NRS Section 106.380(3), as amended or recodified from time to time, or (iii) causes this Deed of Trust, any Obligation, or Beneficiary to be subject to NRS Sections 106.380(2), 106.380(3) or 106.400, as amended or recodified from time to time.

4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in Section 3.04:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of

its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Obligations, all in such order as Beneficiary may determine. The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.03 Exercise of Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. To the extent the obligation secured hereby arises from a commitment of Beneficiary to make future advances either to Trustor or a third party or extend credit subsequent to the recordation of a notice of default hereunder, the sums secured hereby shall also include the amount of such commitment to make future advances or extend credit, and subject to acceleration as provided in the previous paragraph. The Trustee shall pay such amount at such time as it pays all other sums secured hereby and the Beneficiary shall hold same as additional collateral for the obligation secured hereby, at such interest as is available to Beneficiary's customers in an insured deposit account with no restrictions on withdrawal.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, mailed or delivered to Trustor such notice of default and election to sell as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of

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such notice of default and after notice of sale has been given as required by law, sell the Trust Estate at time and place of sale, in the County in which the Premises is located, fixed by it in such notice of sale, either as a whole, or in separate lots or parcels, and in such order as it may determine, at public auction, to the highest bidder for cash in lawful money of the United States payable at the time of sale. If the Premises consists of more than one lot or parcel, the lots or parcels may be sold separately, together or in any combination, and in such order as Beneficiary determines, at the sole discretion of the Beneficiary. Trustor waives the right to direct the order in which the Premises may be sold when it consists of more than one lot or parcel. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Trustor or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. If allowed by law, Beneficiary, if it is the purchaser, may turn in the Note at the amount owing thereon toward payment of the purchase price (or for endorsement of the purchase price as a payment on the Note if the amount owing thereon exceeds the purchase price). Trustor hereby expressly waives any right of redemption after sale that Trustor may have at the time of sale or that may apply to the sale.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to NRS 107.080, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or by subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any such notice of default at any time before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of the indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default and demand for sale, or notices of default and of election to cause the Premises to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations or remedies of Beneficiary or Trustee hereunder.

(d) To the extent that such rights may then be lawfully waived, Trustor hereby covenants that it will not at any time insist upon or plead or in any manner whatever claim or take any benefit or advantage of: (1) any stay or extension or moratorium law

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now or at any time hereafter in force; (ii) any law now or hereinafter in force providing for the valuation or appraisal of the Trust Estate or any part thereof prior to any sales thereof to be made pursuant to any provisions herein contained or pursuant to the decree, judgment, or order of any court of competent jurisdiction; and (iii) any law now or at any time hereafter made or enacted granting a right to redeem the Trust Estate so sold or any part thereof. To the extent permitted by law, Trustor expressly waives for itself and on behalf of each and every person acquiring any interest in or title to the Trust Estate or any part thereof, subsequent to the date of this Deed of Trust, all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize and such law or laws or otherwise hinder, delay, or impede the execution of any power herein granted and delegated to Beneficiary, but will suffer and permit the execution of every such power as though no such law or laws have been made or enacted.

4.04 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Uniform Commercial Code of Nevada, Beneficiary, upon an Event of Default, may proceed under such Uniform Commercial Code of Nevada or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under NRS Section 105.9604, and treat both real and personal property interests as one parcel or package of security.

4.05 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period unless such receivership is sooner terminated. Without limiting the generality of above, the receiver shall have the power to (i) enter on and take immediate possession of the Premises; (ii) protect and preserve the Trust Estate; (iii) operate the Premises prior to and during any foreclosure proceedings; (iv) collect the Rents and apply the proceeds, over and above the costs of the receivership, to the indebtedness secured hereby; (v) in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due; (vi) enter into, enforce, modify or cancel leases on such terms and conditions as Beneficiary may consider proper; (vii) obtain and evict tenants; (viii) fix or modify Rents; (ix) complete any unfinished construction and contract for and make repairs and alterations; (x) perform such acts of cultivation or irrigation as necessary to conserve the value of the Premises; (xi) advance funds to keep current any liens, if any, taxes and assessments encumbering the Premises which are senior to any lien arising under this Deed of Trust; (xii) apply, obtain and pay any reasonable fees for any lawful license, permit or other governmental approval relating to the Premises or the operation thereof; (xiii) take possession and control of all the records, correspondence, insurance policies, books and accounts of Trustor and the

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Trust Estate; (xiv) open all mail and other correspondence received in connection with the Premises whether addressed to Trustor or otherwise; (xv) access all office equipment used by Trustor in connection with the development, construction, improvement, leasing, sales, marketing and/or conveyance of the Premises, including all computer equipment, all software programs and passwords, and any other information, data, equipment or items necessary for the operation of Trustor's business with respect to the Premises, whether in the possession and control of Trustor or its agents, servants or employees; (xvi) hire, employ, pay and terminate servants, agents, employees, clerks and accountants, purchase materials, supplies advertising and other services at ordinary and usual rates and prices; (xvii) market, sell and/or convey the Premises, including the right and power to execute and deliver any and all necessary documents to consummate any sale of the Premises including, but not limited to, any contracts, deeds and, if the Premises is sold with the Loan in place to a party assuming the Loan on terms satisfactory to Beneficiary, Loan assumption and modification documents; and (xviii) engage one or more third parties or affiliates to act as broker in marketing or selling the Premises with the costs of such broker(s) being paid on a commercially reasonable leasing commission basis as may be approved by the sole discretion of Beneficiary. Any proposed sale of the Premises in connection with (xvii) and (xviii) above which would provide to Beneficiary less than the full amount of the indebtedness owed by Trustor shall be subject to Beneficiary's prior written approval in its sole and absolute discretion.

4.06 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

4.07 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 5.05.

4.08 Acceptance of Sums After Default. The acceptance by Beneficiary of any sum in payment, or part payment, of the Obligations, after the same is due or after the giving of any

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notice of default, or the giving or recording of any notice of breach, or after giving of any notice of sale, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining Event of Default, except as otherwise provided by applicable law, or invalidate any sale held pursuant to such notice for any such remaining Event of Default, or prejudice any of the rights of Beneficiary under this Deed of Trust. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other agreement securing the Note and without limiting the generality of this Section 4.08, in the case of any Event of Default, Beneficiary may accept payments or performance of any obligations due hereunder without thereby waiving the existence of such Event of Default if the payment or performance is not sufficient to completely cure such Event of Default.

ARTICLE V MISCELLANEOUS

5.01 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

5.02 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of Nevada pertaining to the rights and remedies of sureties.

5.03 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.05 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing)

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and shall be given to such party at its address or facsimile number set forth on the signature pages hereof. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, three (3) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, (iii) if given by reputable overnight delivery service, when delivered, or (iv) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified below.

To Beneficiary: WESTERN ALLIANCE BANK
2700 West Sahara Avenue
Las Vegas, Nevada 89102
Attention: Pam Acosta

To Trustor: Seventy Acres LLC
1215 South Fort Apache, Suite 120
Las Vegas Nevada, 89117

5.06 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

5.08 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

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5.10 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

5.11 GOVERNING LAW; VENUE; JURISDICTION. THIS DEED OF TRUST HAS BEEN DELIVERED IN NEVADA, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES. THE COURTS OF NEVADA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS DEED OF TRUST. BY EXECUTING THIS DEED OF TRUST, TRUSTOR CONSENTS AND SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF NEVADA.

5.12 JURY WAIVER. TRUSTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH TRUSTOR AND BENEFICIARY MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS DEED OF TRUST, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

5.13 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

5.14 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

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5.15 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

5.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

5.17 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.18 Representations and Warranties. Trustor represents and warrants to Beneficiary that:

- (a) Trustor is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate interest in the Premises and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust;
- (b) Trustor's exact legal name is correctly set forth in the introductory paragraph of this Deed of Trust;
- (c) If any Trustor is not an individual, such Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust;
- (d) If any Trustor is an unregistered entity (including, without limitation, a general partnership), such Trustor is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust; and

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(e) Trustor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust.

5.19 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

5.20 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor may not delegate its obligations under the Loan Documents.

5.21 Time of the Essence. Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

5.22 Amendments. This Deed of Trust may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought. No course of dealing or conduct by or among Beneficiary, Trustee and Trustor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents.

5.23 Survival. The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

5.24 Incorporation. To the extent not inconsistent with any other provision of this Deed of Trust or any other Loan Document, the following numbered covenants of NRS Section 107.030 are hereby adopted and made a part of this Deed of Trust by reference, the parenthetical wording following certain covenant numbers representing the wording to be included in the blank area of the respective numbered covenant which is hereby incorporated: 1; 2 (the full replacement value); 3; 4 (the Agreed Rate); 5; 6; 7 (a reasonable); 8; and 9.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

SEVENTY ACRES LLC,
a Nevada limited liability company

By Its Manager:

EHB Companies LLC,
a Nevada limited liability company

By Its Managers:

Yohan Lowie

Vickie DeHart

Frank Pankratz

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 12th day of November, 2015, by Yohan Lowie, as Manager of EHB Companies LLC, a Nevada limited liability company, the Manager of Seventy Acres LLC, a Nevada limited liability company.

Cynthia Callegaro
Notary Public CYNTHIA CALLEGARO
My commission expires: 3-22-2019



Yohan +
Vickie DeHart
Frank Pankratz

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

SEVENTY ACRES LLC,
a Nevada limited liability company

By Its Manager:

EHB Companies LLC,
a Nevada limited liability company

By Its Managers:

Yohan Lowie

CLARIFICATION COPY

Vickie DeHart

Frank Pankratz

STATE OF _____)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of November, 2015, by Yohan Lowie, as Manager of EHB Companies LLC, a Nevada limited liability company, the Manager of Seventy Acres LLC, a Nevada limited liability company.

Notary Public

My commission expires: _____

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 12th day of November, 2015, by Vickie DeHart, as Manager of EHB Companies LLC, a Nevada limited liability company, the Manager of Seventy Acres LLC, a Nevada limited liability company.



Cynthia Callegaro
Notary Public CYNTHIA CALLEGARO
My commission expires: 3-22-2019

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 12th day of November, 2015, by Frank Pankratz, as Manager of EHB Companies LLC, a Nevada limited liability company, the Manager of Seventy Acres LLC, a Nevada limited liability company.



Cynthia Callegaro
Notary Public CYNTHIA CALLEGARO
My commission expires: 3-22-2019

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL I

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

PARCEL II

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

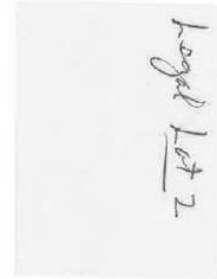


EXHIBIT B**DESCRIPTION OF PERSONAL PROPERTY**

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Trustor's partners or shareholders, amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) Trustor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

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for taxes or premiums of any insurance, equipment, fixtures, furnishings, inventory and supplies, landscaping equipment, tools and supplies, computer or other control systems, accounts receivable for expenditures and any other payments, and related facilities owned by Trustor and located on the Premises, together with all present and future attachments, accessions, replacements, additions, products and proceeds thereof;

(r) ~~All of Trustor's rights as a declarant, developer, or otherwise, including,~~ without limitation, all voting and other rights under all covenants, conditions, and restrictions affecting the Premises, the Improvements, or the master planned community of which the Premises are a part, whether now existing or hereafter arising;

(s) All of Trustor's rights in all plans, specifications, plats, agreements, assessments, reports, and surveys related to the Premises;

(t) All proceeds of any of the foregoing.

As used in this Exhibit B the terms "Obligations," "Note," "Trust Estate," "Premises," "Improvements," "Loan Agreement," and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

Assigned all
to Trust

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APNs: 138-31-713-002
138-31-610-002
138-31-212-002

Recording Requested By
and When Recorded Return To:

NLV LLC
9101 Alta Drive, Unit 107
Las Vegas, NV 89145

Attention: Thomas Spiegel

15540036 565

Inst #: 20150302-0003807

Fees: \$50.00

N/C Fee: \$0.00

03/02/2015 03:02:19 PM

Receipt #: 2332896

Requestor:

TICOR TITLE LAS VEGAS

Recorded By: ANI Pgs: 34

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recorder's Use

DEED OF TRUST AND FIXTURE FILING
(With Assignment of Rents and Security Agreement)

THIS DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (as it may be amended and modified from time to time, the "Deed of Trust") is made as of February 26, 2015, by and among FORE STARS LTD., a Nevada limited liability company, whose mailing address is 9755 W. Charleston Blvd., Las Vegas, Nevada 89117 ("Trustor"), Ticor Title of Nevada, Inc., a Nevada corporation, whose mailing address is 8379 W. Sunset Road, Suite 220, Las Vegas, Nevada 89113 ("Trustee"), and NLV LLC, a Nevada limited liability company ("Beneficiary"), whose mailing address is 9101 Alta Drive #107, Las Vegas, Nevada 89145.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth in that certain real property located in the County of Clark, State of Nevada, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

TOGETHER WITH any and all buildings and other improvements now or hereafter erected on the Premises, including, without limitation, fixtures, attachments, appliances, equipment, machinery, and other personal property attached to such buildings and other improvements (the "Improvements"), all of which shall be deemed and construed to be a part of the real property;

TOGETHER WITH all rents, issues, profits, damages, royalties, income and other benefits now or hereafter derived from the Premises and the Improvements (collectively the "Rents"), subject to the terms and provisions of Article II of this Deed of Trust with respect to all leases and subleases of the Premises or Improvements now or hereafter existing or entered into,

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or portions thereof, granted by Trustor, and further subject to the right, power and authority hereinafter given to Trustor to collect and apply such Rents;

TOGETHER WITH all interests, estates or other claims, both in law and in equity, which Trustor now has or may hereafter acquire in the Premises or the Improvements;

TOGETHER WITH all easements, rights-of-way and other rights now owned or hereafter acquired by Trustor used in connection with the Premises or the Improvements or as a means of access thereto (including, without limitation, all rights pursuant to any truckage agreement and all rights to the nonexclusive use of common drive entries, and all tenements, hereditaments and appurtenances thereof and thereto) and all water and water rights and shares of stock evidencing the same;

TOGETHER WITH all rights of Trustor under any covenants, conditions, and restrictions affecting the Premises, the Improvements, or the master planned community of which the Premises and the Improvements are a part, whether now existing or hereafter arising, including, without limitation, all voting rights, declarant's rights, developer rights, developmental rights, and similar rights arising under any such covenants, conditions, and restrictions (collectively, the "CC&R's");

TOGETHER WITH all rights (but none of the obligations) of Trustor under any agreements affecting the Premises, the Improvements, or the master planned community of which the Premises and the Improvements are a part, whether now existing or hereafter arising (collectively, the "Other Agreements");

TOGETHER WITH all leasehold estate, right, title and interest of Trustor in and to all leases or subleases covering the Premises or the Improvements or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Trustor thereunder, including, without limitation, all rights of Trustor against guarantors thereof, all cash or security deposits, advance rentals, and deposits or payments of similar nature (collectively, the "Leases");

TOGETHER WITH all right, title and interest now owned or hereafter acquired by Trustor in and to any greater estate in the Premises or the Improvements;

TOGETHER WITH all right, title, and interest of Trustor in (i) the property and interests in property described on Exhibit B attached hereto and incorporated herein by reference, (ii) all other personal property now or hereafter owned by Trustor that is now or hereafter located on or used in connection with the Premises or the Improvements, (iii) all other rights and interests of Trustor now or hereafter held in personal property that is now or hereafter located on or used in connection with the Premises or the Improvements, (iv) all personal property and rights and interests in personal property of similar type or kind hereafter acquired by Trustor, and (v) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Personal Property");

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Premises, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

TOGETHER WITH all the estate, interest, right, title, other claim or demand, both in law and in equity (including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto) that Trustor now has or may hereafter acquire in the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate (as defined below), and any and all awards made for the taking by eminent domain, or by any proceeding of purchase in lieu thereof, of the whole or any part of the Trust Estate (including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages);

TOGETHER WITH all proceeds of the foregoing.

The Premises, the Improvements, the Rents, the Leases, the Personal Property, and the entire estate, property, right, title and interest hereby conveyed to Trustee may hereafter be collectively referred to as the "Trust Estate."

FOR THE PURPOSE OF SECURING (in such order of priority as Beneficiary may elect) the following (the "Obligations"):

- (a) Agreement Among Members. Payment of indebtedness upon the occurrence of a Default Event under the Agreement Among Members, dated as of even date herewith, between P.V.D. Nevada Family Limited Partnership, a Nevada limited partnership ("PVD"), Y.M.L. Nevada Family Limited Partnership, a Nevada limited partnership ("YML"), and Beneficiary (as amended, modified, extended and renewed from time to time, the "Agreement Among Members"), as evidenced by that certain Promissory Note of even date herewith (as amended, modified, extended, and renewed from time to time, the "Note"), executed by PVD and YML, as Maker ("Maker"), and payable to the Beneficiary, as Lender; and
- (b) Other Obligations Secured. Payment of all sums advanced by Beneficiary to protect the Trust Estate or otherwise owing by Trustor to Beneficiary under this Deed of Trust, with interest thereon equal to the Default Rate (as defined in the Bank Loan Agreement referenced in the Agreement Among Members) (which rate of interest is hereinafter referred to as the "Agreed Rate").

This Deed of Trust, the Note, the Agreement Among Members, and any other deeds of trust, mortgages, agreements, guaranties or other instruments given to evidence or further secure the payment and performance of any or all of the Obligations, as the foregoing may be amended, modified, extended, or renewed from time to time may hereinafter be collectively referred to as the "Loan Documents". Capitalized terms as used in this Deed of Trust and not otherwise defined are used with the meanings set forth in the Agreement Among Members. Any term used or defined in the Uniform Commercial Code of Nevada (Nevada Revised Statutes ("NRS") Chapters 104 and 104A, as amended from time to time ("Uniform Commercial Code of Nevada"), and not defined in this Deed of Trust, has the meaning given to the term in the Uniform Commercial Code of Nevada, when used in this Deed of Trust. Notwithstanding

anything to the contrary herein or in any other Loan Document, in no event shall this Deed of Trust be deemed given to secure the obligations of Borrower, or any other "Indemnitor" thereunder, arising under any environmental indemnity agreement made in respect of the Premises, or the obligations of any "Guarantor" under any guaranty given in support of the Obligations, or any other obligor under an instrument given to further secure the Obligations, notwithstanding the fact that such indemnity, guaranty or instrument shall constitute Loan Documents as herein defined.

This Deed of Trust is governed by NRS Sections 106.300 to 106.400. This Deed of Trust shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Premises given priority by law.

TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I
COVENANTS AND AGREEMENTS OF TRUSTOR

1.01 Payment and Performance of Secured Obligations. Trustor shall pay when due and/or perform each of the Obligations. Without limiting the application of NRS Chapter 106, funds disbursed that, in the reasonable exercise of Beneficiary's judgment, are needed to complete the Improvements or to protect Beneficiary's security are to be deemed obligatory advances hereunder and will be added to the total indebtedness evidenced by the Note and secured by this Deed of Trust and this indebtedness shall be increased accordingly.

1.02 Maintenance, Repair, Alterations. Trustor shall keep the Trust Estate in good condition and repair. Trustor shall not remove, demolish, or substantially alter any of the Improvements, except with the prior written consent of Beneficiary. Trustor shall complete promptly and in a good and workmanlike manner any Improvement that may be now or hereafter constructed on the Premises and promptly restore in like manner any Improvements that may be damaged or destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor. Trustor shall comply with all Requirements (as defined below) and shall not suffer to occur or exist any violation of any Requirement. Trustor shall not commit or permit any waste or deterioration of the Trust Estate, and, to the extent required by law, shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair. Trustor shall perform its obligations under each Lease, the CC&R's and the Other Agreements. "Requirement" and "Requirements" mean, respectively, each and all obligations and requirements now or hereafter in effect by which Trustor or the Trust Estate are bound or which are otherwise applicable to the Trust Estate, construction of any Improvements on the Trust Estate, or operation, occupancy or use of the Trust Estate (including, without limitation, (i) such obligations and requirements imposed by common law or any law, statute, ordinance, regulation, or rule (federal, state, or local), and (ii) such obligations and requirements of, in, or in respect of (A) any consent, authorization, license, permit, or approval relating to the Trust Estate, (B) any condition, covenant, restriction, easement, or right-of-way reservation applicable to the Trust Estate, (C) any Lien or Encumbrance, (D) any other agreement, document, or instrument to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected (including, without limitation, the CC&R's and the Other Agreements), and (E) any order, writ, judgment,

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injunction, decree, determination, or award of any arbitrator, other private adjudicator, court, government, or governmental authority (federal, state, or local) to which Trustor is a party or by which Trustor or the Trust Estate is bound or affected).

1.03 Required Insurance. Trustor shall maintain reasonable and customary amounts of insurance.

1.04 Delivery of Policies, Payment of Premiums. Trustor shall comply with the insurance requirements set forth in the Loan Agreement.

1.05 Casualties; Insurance Proceeds. Trustor shall comply with the casualty and insurance proceeds requirements set forth in the Agreement Among Members, if any.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust as a mortgage, a sale under the power of sale, or any other transfer of title or assignment of the Trust Estate in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Trustor in and to all policies of insurance pertaining to the Trust Estate shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Trust Estate, to the extent such policies are assignable pursuant to the terms thereof.

1.07 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Trust Estate or any part thereof or interest therein, or the occupancy of the Trust Estate by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless for, from and against all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any Event of Default, Trustor shall pay Beneficiary reasonable attorneys' fees and expenses incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, its successors and assigns, their directors, officers, employees, agents and representatives, for loss of or damage to Trustor, the Trust Estate, Trustor's property or the property of others under Trustor's control from any cause insured against by Trustor or required to be insured against by this Deed of Trust.

(c) All sums payable by Trustor pursuant to this Deed of Trust shall be paid without notice (except for such notice as may be expressly required hereunder or under the other Loan Documents), demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Trust Estate or any part

thereof; (ii) any restriction or prevention of or interference by any Person (as defined below) with any use of the Trust Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim that Trustor has or might have against Beneficiary; (vi) any default or failure on the part of Beneficiary to perform or comply with any of the terms of the Loan Documents or of any other agreement with Trustor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor. "Person" means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any trust, any other legal entity, or any governmental authority (federal, state, local or foreign).

1.08 Impositions. Trustor shall pay all Impositions (as such term is defined in the Bank Loan Agreement referenced in the Agreement Among Members) relating to the Trust Estate.

1.09 Utilities. Trustor shall pay when due all charges that are incurred by Trustor for the benefit of the Trust Estate or that may become a charge or lien against the Trust Estate for gas, electricity, water, sewer, or other services furnished to the Trust Estate.

1.10 Actions Affecting Trust Estate. Trustor shall appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and shall pay all costs and expenses (including, without limitation, costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Beneficiary or Trustee may appear.

1.11 Actions By Trustee or Beneficiary. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary and/or Trustee, each in its absolute and sole discretion, without obligation so to do, without releasing Trustor from any obligation, and with only such notice to or demand upon Trustor as may be reasonable under the then existing circumstances, but in no event exceeding ten (10) days prior written notice, may make or do the same in such manner and to such extent as either may deem necessary or appropriate. In connection therewith (without limiting their general powers, whether conferred herein, in another Loan Document or by law), Beneficiary and Trustee shall have and are hereby given the right, but not the obligation, (a) to enter upon and take possession of the Trust Estate; (b) to make additions, alterations, repairs and improvements to the Trust Estate that they or either of them may consider necessary or appropriate to keep the Trust Estate in good condition and repair, (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary or Trustee; (d) to pay, purchase, contest or compromise any Lien or Encumbrance (as defined below) or alleged Lien or Encumbrance whether superior or junior to this Deed of

Trust; and (e) in exercising such powers, to pay necessary expenses (including, without limitation, expenses of employment of counsel or other necessary or desirable consultants). Trustor shall, immediately upon demand therefor by Beneficiary and Trustee or either of them, pay to Beneficiary and Trustee an amount equal to all respective costs and expenses incurred by them in connection with the exercise by either Beneficiary or Trustee or both of the foregoing rights (including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees) together with interest thereon from the date of such expenditures at the Agreed Rate.

1.12 Transfer of Trust Estate by Trustor. Trustor shall not allow any Transfer under Section 3.6(b) of the Agreement Among Members to occur. Trustor agrees that, in the event of any such Transfer without the prior written consent of Beneficiary, in its sole and absolute discretion, Beneficiary shall have the absolute right, without prior demand or notice, to declare all of the Obligations immediately due and payable. Consent to one Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers. Trustor acknowledges that Beneficiary has no obligation to consent to any Transfer and that if Beneficiary grants such consent, Beneficiary may impose such conditions as Beneficiary may deem appropriate in Beneficiary's sole and absolute discretion, including, without limitation, the payment and performance in full of all of the Obligations or the delivery to Beneficiary of all net sales proceeds from any Transfer for application to the Obligations.

1.13 Eminent Domain. Trustor shall comply with the eminent domain requirements set forth in the Agreement Among Members, if any.

1.14 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust. All security for the Obligations from time to time shall be taken, considered and held as cumulative. Any taking of additional security, execution of partial releases of the security, or any extension of the time of payment of, or modification of other terms of any of the Obligations shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, guarantor, surety or endorser for the payment or performance of any of the Obligations. In the event Beneficiary at any time holds additional security for any of the Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with, or after a sale or realization is made hereunder.

1.15 Appointment of Successor Trustee. Beneficiary may, from time to time, by a written instrument executed and acknowledged by Beneficiary, mailed to Trustor and recorded in the county in which the Trust Estate is located and by otherwise complying with the provisions of applicable law, substitute a successor or successors to any Trustee named herein or acting hereunder, and such successor(s) shall, without conveyance from the Trustee predecessor, succeed to all title, estate, rights, powers and duties of such predecessor. Such written instrument, upon recordation, shall be conclusive proof of proper substitution of such substitute or successor Trustee, and no further documentation, including any corporate resolution or other authorization shall be required to appoint a substitute or successor to any Trustee named herein.

1.16 Inspections. Beneficiary, and its agents, representatives officers, and employees, are authorized to enter at any reasonable time upon or in any part of the Trust Estate for the purpose of inspecting the same and for the purpose of performing any of the acts Beneficiary is authorized to perform hereunder or under the terms of any of the Loan Documents.

1.17 Ownership and Liens and Encumbrances. Trustor is, and as to any portion of the Trust Estate acquired hereafter will upon such acquisitions be, and shall remain the owner of the Trust Estate free and clear of any Liens and Encumbrances. Trustor shall not grant, shall not suffer to exist, and shall pay and promptly discharge, at Trustor's cost and expense, all Liens and Encumbrances and any claims thereof upon the Trust Estate, or any part thereof or interest therein. Trustor shall notify Beneficiary immediately in writing of any Lien or Encumbrance or claim thereof. Trustor shall have the right to contest in good faith the validity of any involuntary Lien or Encumbrance, provided Trustor shall first deposit with Beneficiary a bond or other security satisfactory to Beneficiary in such amount as Beneficiary shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that if Trustor loses such contest, Trustor shall thereafter diligently proceed to cause such Lien or Encumbrance to be removed and discharged. If Trustor shall fail to remove and discharge any Lien or Encumbrance or claim thereof, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, after only such notice to Trustor as may be reasonable under the then existing circumstances, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any Lien or Encumbrance or claim thereof, together with interest thereon from the date of each such expenditure at the Agreed Rate. Such costs and expenses shall be secured by this Deed of Trust. "Lien or Encumbrance" and "Liens and Encumbrances" mean, respectively, each and all of the following in respect of the Trust Estate: leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions, and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created and regardless of whether prior or subordinate to any estate, right, title, or interest granted to Trustee or Beneficiary in this Deed of Trust, excluding from the foregoing the Permitted Exceptions.

1.18 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, Trustee may (a) reconvey any part of said Trust Estate, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.19 Beneficiary's Powers. Without affecting the liability of any Person liable for the payment of the Obligations herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Trust Estate not then or theretofore released as security for the Obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the Obligations, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed, at any time at Beneficiary's option any parcel, portion or all of the Trust Estate, (e) take or release any other or additional security or any guaranty for any Obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.20 Trade Names. At the request of Beneficiary from time to time, Trustor shall execute a certificate in form satisfactory to Beneficiary listing the trade names or fictitious business names under which Trustor intends to operate the Trust Estate or any business located thereon and representing and warranting that Trustor does business under no other trade names or fictitious business names with respect to the Trust Estate. Trustor shall immediately notify Beneficiary in writing of any change in said trade names or fictitious business names, and will, upon request of Beneficiary, authorize any additional financing statements and execute any certificates necessary to reflect the change in trade names or fictitious business names.

ARTICLE II ASSIGNMENT OF RENTS

2.01 Assignment of Rents. Trustor hereby absolutely and irrevocably assigns and transfers to Beneficiary all the Rents of the Trust Estate, and hereby gives to and confers upon Beneficiary the right, power and authority to collect the Rents. Trustor irrevocably appoints Beneficiary its true and lawful attorney-in-fact, at the option of Beneficiary at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Trustor or Beneficiary, for all Rents and apply the same to the payment of the Obligations in such order as Beneficiary shall determine. Trustor hereby authorizes and directs the lessees, tenants and occupants to make all payments under the Leases directly to Beneficiary upon written demand by Beneficiary, without further consent of Trustor; provided, however, that Trustor shall have the right to collect such Rents (but not more than one (1) month in advance unless the written approval of Beneficiary is first obtained), and to retain and enjoy same, so long as an Event of Default shall not have occurred hereunder or under the other Loan Documents. The assignment of the Rents of the Trust Estate in this Article II is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

2.02 Collection Upon an Event of Default. Upon the occurrence of an Event of Default, Beneficiary may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, enter upon and take possession of the Trust Estate, or any part thereof, and, with or without such entry or taking possession, in its own name sue for or otherwise collect the Rents (including, without limitation, those past due and unpaid) and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon payment of the Obligations in such order as Beneficiary may determine. The collection of such Rents, or the entering upon and taking possession of the Trust Estate, or the application of

the Rents as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default. Trustor also hereby authorizes Beneficiary upon such entry, at its option, to take over and assume the management, operation and maintenance of the Trust Estate and to perform all acts Beneficiary in its sole discretion deems necessary and proper and to expend such sums out of Rents as may be needed in connection therewith, in the same manner and to the same extent as Trustor theretofore could do (including, without limitation, the right to enter into new leases, collectively, the "Leases," to cancel, surrender, alter or amend the terms of, and/or renew existing leases and/or to make concessions to tenants). Trustor hereby releases all claims of any kind or nature against Beneficiary arising out of such management, operation and maintenance, excepting the liability of Beneficiary to account as hereinafter set forth.

2.03 Application of Rents. Upon such entry, Beneficiary shall, after payment of all property charges and expenses (including, without limitation, reasonable compensation to such managing agent as it may select and employ) and after the accumulation of a reserve to meet requisite amounts, credit the net amount of the Rents received by it to the Obligations, but the manner of the application of such net income and which items shall be credited shall be determined in the sole discretion of Beneficiary. Beneficiary shall not be accountable for more monies than it actually receives from the Trust Estate; nor shall it be liable for failure to collect Rents. Beneficiary shall make reasonable efforts to collect Rents, reserving, however, within its own absolute and sole discretion, the right to determine the method of collection and the extent to which enforcement of collection of Rents shall be prosecuted and Beneficiary's judgment shall be deemed conclusive and reasonable.

2.04 Mortgagee in Possession. It is not the intention of the parties hereto that an entry by Beneficiary upon the Premises under the terms of this instrument shall make Beneficiary a party in possession in contemplation of the law, except at the option of Beneficiary.

2.05 Indemnity. Trustor hereby agrees to indemnify and hold harmless Beneficiary for, from and against any and all losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs, and expenses, including legal fees and expenses, howsoever and by whomsoever asserted, arising out of or in any way connected with this assignment; and all such losses, liabilities, obligations, claims, demands, damages, penalties, judgments, costs and expenses shall be deemed added to the indebtedness secured hereby and shall be secured by any and all other instruments securing said indebtedness.

2.06 No Obligation to Perform. Nothing contained herein shall operate or be construed to obligate Beneficiary to perform any obligations of Trustor under any Lease (including, without limitation, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the lessee under any such Lease shall have been joined as a party defendant in any action to foreclose and the estate of such lessee shall have been thereby terminated). Prior to actual entry into and taking possession of the Premises by Beneficiary, this assignment shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of the Trust Estate or any portion thereof, and the execution of this assignment by Trustor shall constitute conclusive evidence that all

responsibility for the operation, control, care, management and repair of the Trust Estate is and shall be that of Trustor, prior to such actual entry and taking of possession.

2.07 Uniform Assignment of Rents Act. The assignment of rents pursuant to this Article II is subject to the Uniform Assignment of Rents Act (the "Rents Act") codified as NRS Chapter 107A, as amended or recodified from time to time, and in the event of any conflict or inconsistency between the provisions of this Article II and the provisions of the Rents Act, the provisions of the Rents Act shall control.

ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Trustor hereby grants to Beneficiary, a security interest in and to all the Personal Property.

3.02 Representations, Warranties and Covenants of Trustor. Trustor hereby represents, warrants and covenants (which representations, warranties and covenants shall survive creation of any indebtedness of Trustor to Beneficiary and any extension of credit thereunder) as follows:

(a) The Personal Property is not used or bought for personal, family or household purposes.

(b) The tangible portion of the Personal Property will be kept on or at the Premises or Improvements and Trustor will not, without the prior written consent of Beneficiary, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Trustor with similar items of greater value.

(c) At the request of Beneficiary, Trustor will authorize Beneficiary to file one or more financing statements and fixture filings pursuant to the Uniform Commercial Code of Nevada, in form satisfactory to Beneficiary and will pay the cost of recording and filing the same in all public offices wherever recording or filing is deemed by Beneficiary to be necessary or desirable.

(d) Trustor's principal place of business is set forth above. Trustor does not do business under any trade name except as previously disclosed in writing to Beneficiary. Trustor will immediately notify Beneficiary in writing of any change in its place of business or the adoption or change of any organizational name, trade name or fictitious business name, and will upon request of Beneficiary, authorize any additional financing statements or execute any other certificates necessary to reflect the adoption or change in trade name or fictitious business name. Trustor will also promptly notify Beneficiary (i) of any change of Trustor's organizational identification number, or (ii) if Trustor does not now have an organizational identification number and later obtains one, of such organizational identification number.

(c) Trustor shall immediately notify Beneficiary of any claim against the Personal Property adverse to the interest of Beneficiary therein.

3.03 Use of Personal Property by Trustor. Until the occurrence of an Event of Default hereunder or under any other Loan Document, Trustor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance thereon.

3.04 Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Section 4.02 hereof, upon the occurrence of an Event of Default hereunder, Beneficiary may, at its option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Trustor and all others claiming under Trustor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor with respect to the Personal Property or any part thereof. In the event Beneficiary demands, or attempts to take possession of the Personal Property in the exercise of any rights under this Deed of Trust, Trustor agrees to promptly turn over and deliver possession thereof to Beneficiary;

(ii) Without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect its security interest in the Personal Property (including, without limitation, paying, purchasing, contesting or compromising any Lien or Encumbrance, whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including, without limitation, litigation costs and reasonable attorney's fees) incurred in connection therewith;

(iii) Require Trustor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by Beneficiary and reasonably convenient to both parties, and deliver promptly such Personal Property to Beneficiary, or an agent or representative designated by Beneficiary. Beneficiary, and its agents and representatives, shall have the right to enter upon any or all of Trustor's premises and property to exercise Beneficiary's rights hereunder;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon Beneficiary by this Deed of Trust, any other Loan Document, or by law, either concurrently or in such order as Beneficiary may determine;

(v) Sell or cause to be sold in such order as Beneficiary may determine, as a whole or in such parcels as Beneficiary may determine, the Personal Property and the remainder of the Trust Estate;

(vi) Sell, lease, or otherwise dispose of the Personal Property at public sale, upon terms and in such manner as Beneficiary may determine. Beneficiary may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code of Nevada or any other applicable law.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Beneficiary shall give Trustor at least five (5) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made. Such notice may be mailed to Trustor at the address set forth in Section 5.05. If Beneficiary fails to comply with this Section 3.04(b) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the Uniform Commercial Code of Nevada.

(c) The proceeds of any sale under Section 3.04(a)(iv) shall be applied as follows:

(i) To the repayment of the reasonable costs and expenses of taking, holding, and preparing for the sale and the selling of the Personal Property (including, without limitation, costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) To the payment of the Obligations in such order as Beneficiary shall determine; and

(iii) The surplus, if any, shall be paid to the Trustor or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Beneficiary shall have the right to enforce one or more remedies hereunder, successively or concurrently, and such action shall not operate to estop or prevent Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the terms hereof shall not operate to release Trustor until full payment of any deficiency has been made in cash.

(d) Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Personal Property and

such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Personal Property.

(e) Beneficiary may sell the Personal Property without giving any warranties as to such property, and may specifically disclaim any warranties of title, merchantability, fitness for a particular purpose or the like, and this procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Personal Property.

(f) Trustor acknowledges that a private sale of the Personal Property may result in less proceeds than a public sale.

(g) Trustor acknowledges that the Personal Property may be sold at a loss to Trustor and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss.

3.05 Security Agreement. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code of Nevada and Beneficiary shall be entitled to all the rights and remedies of a "secured party" under such Uniform Commercial Code of Nevada.

3.06 Fixture Filing. Upon its recording in the real property records, this Deed of Trust shall be effective as a financing statement filed as a fixture filing. This Deed of Trust shall also be effective as a financing statement covering as extracted collateral (including oil and gas), accounts and general intangibles under the Uniform Commercial Code of Nevada and the Uniform Commercial Code as in effect from time to time in any other state where the Property is situated. In addition, a carbon, photographic or other reproduced copy of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property, rights or interests described herein shall not be construed to diminish any right or priority hereunder.

3.07 Authorization to File Financing Statements; Power of Attorney. Trustor hereby authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto, and continuation statements with or without signature of Trustor as authorized by applicable law, as applicable to the Trust Estate. For purposes of such filing, Trustor agrees to furnish any information requested by Beneficiary promptly upon request by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary and any officer or agent of Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor or in Trustor's own name to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section 3.07, to the extent that Trustor's authorization above is not sufficient. To the extent permitted by law, Trustor hereby ratifies and affirms all acts said attorneys-in-fact shall lawfully do, have done in the past, or caused to be done in the

future by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Each of the following shall constitute an event of default ("Event of Default"):

(a) The occurrence of any Default Event, as such term is defined in the Agreement Among Members.

(b) The occurrence of any Transfer under Section 3.6(b) of the Agreement Among Members, unless prior to such Transfer the Beneficiary has delivered to Trustor its written consent to such Transfer.

(c) If Trustor or any other "borrower" (as that term is defined in NRS Section 106.310, as amended or recodified from time to time) who may send a notice pursuant to NRS Section 106.380(1), as amended or recodified from time to time, with respect to this Deed of Trust; (i) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give to Beneficiary: (A) any notice of an election to terminate the operation of this Deed of Trust as security for any Obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS Section 106.320, as amended or recodified from time to time) of "principal" (as defined in NRS Section 106.345, as amended or recodified from time to time), or (B) any other notice pursuant to NRS Section 106.380(3), as amended or recodified from time to time, (ii) records a statement pursuant to NRS Section 106.380(3), as amended or recodified from time to time, or (iii) causes this Deed of Trust, any Obligation, or Beneficiary to be subject to NRS Sections 106.380(2), 106.380(3) or 106.400, as amended or recodified from time to time.

4.02 Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Beneficiary may, at its option, declare all or any part of the Obligations immediately due and payable without any presentment, demand, protest or notice of any kind. Beneficiary may, in addition to the exercise of any or all of the remedies specified in Section 3.04:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate, or any part thereof, in its own name or in the name of Trustee, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, sue for or otherwise collect the Rents, or any part thereof, including, without limitation, those past due and unpaid, and apply the same, less costs and expenses of operation and collection (including, without limitation, attorneys' fees) upon the Obligations, all in such order as Beneficiary may determine.

The entering upon and taking possession of the Trust Estate, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of all or any portion of the Trust Estate or the collection, receipt and application of Rents, Trustee or Beneficiary shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including, without limitation, the right to exercise the power of sale;

(b) Commence an action to foreclose the lien of this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Exercise of the power of sale herein contained and deliver to Trustee a written statement of breach, notice of default and election to cause Trustor's interest in the Trust Estate to be sold; or

(d) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing or guarantying all or any portion of the Obligations, or by law.

4.03 Exercise of Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require. To the extent the obligation secured hereby arises from a commitment of Beneficiary to make future advances either to Trustor or a third party or extend credit subsequent to the recordation of a notice of default hereunder, the sums secured hereby shall also include the amount of such commitment to make future advances or extend credit, and subject to acceleration as provided in the previous paragraph. The Trustee shall pay such amount at such time as it pays all other sums secured hereby and the Beneficiary shall hold same as additional collateral for the obligation secured hereby, at such interest as is available to Beneficiary's customers in an insured deposit account with no restrictions on withdrawal.

(a) Upon receipt of such notice from Beneficiary, Trustee shall cause to be recorded, mailed or delivered to Trustor such notice of default and election to sell as is then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale has been given as required by law, sell the Trust Estate at time and place of sale, in the County in which the Premises is located, fixed by it in such notice of sale, either as a whole, or in separate lots or parcels, and in such order as it may determine, at public auction, to the highest bidder for cash in lawful money of the United States payable at the time of sale. If the Premises consists of more than one lot or parcel, the lots or parcels may be sold separately, together or in any combination, and in such order as Beneficiary determines, at the sole discretion of the Beneficiary. Trustor waives the right to direct the order in which the Premises may be sold when it consists of more than one lot or parcel. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the

property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including without limitation Trustor or Beneficiary, may purchase at such sale and Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers. If allowed by law, Beneficiary, if it is the purchaser, may turn in the Note at the amount owing thereon toward payment of the purchase price (or for endorsement of the purchase price as a payment on the Note if the amount owing thereon exceeds the purchase price). Trustor hereby expressly waives any right of redemption after sale that Trustor may have at the time of sale or that may apply to the sale.

(b) After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to NRS 107.080, Trustee may postpone sale of all or any portion of the Trust Estate by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or by subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement; or Trustee may, in its discretion, give a new notice of sale. Beneficiary may rescind any such notice of default at any time before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute a cancellation of any prior declaration of default and demand for sale and of any acceleration of maturity of the Indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default and demand for sale, or notices of default and of election to cause the Premises to be sold, nor otherwise affect the Note or this Deed of Trust, or any of the rights, obligations or remedies of Beneficiary or Trustee hereunder.

(d) To the extent that such rights may then be lawfully waived, Trustor hereby covenants that it will not at any time insist upon or plead or in any manner whatever claim or take any benefit or advantage of: (i) any stay or extension or moratorium law now or at any time hereafter in force; (ii) any law now or hereinafter in force providing for the valuation or appraisal of the Trust Estate or any part thereof prior to any sales thereof to be made pursuant to any provisions herein contained or pursuant to the decree, judgment, or order of any court of competent jurisdiction; and (iii) any law now or at any time hereafter made or enacted granting a right to redeem the Trust Estate so sold or any part thereof. To the extent permitted by law, Trustor expressly waives for itself and on behalf of each and every person acquiring any interest in or title to the Trust Estate or any part thereof, subsequent to the date of this Deed of Trust, all benefit and advantage of any such law or laws and covenants that it will not invoke or utilize and such law or laws or otherwise hinder, delay, or impede the execution of any power herein granted and delegated to Beneficiary, but will suffer and permit the execution of every such power as though no such law or laws have been made or enacted.

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4.04 Personal Property. It is the express understanding and intent of the parties that as to any personal property interests subject to Chapter 9 of the Uniform Commercial Code of Nevada, Beneficiary, upon an Event of Default, may proceed under such Uniform Commercial Code of Nevada or may proceed as to both real and personal property interests in accordance with the provisions of this Deed of Trust and its rights and remedies in respect to real property, as specifically permitted under NRS Section 105.9604, and treat both real and personal property interests as one parcel or package of security.

4.05 Appointment of Receiver. Upon the occurrence of an Event of Default, Beneficiary, as a matter of right and without notice to Trustor or any one claiming under Trustor, and without regard to the then value of the Trust Estate or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Trust Estate, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein and shall continue as such and exercise all such powers until the later of the date of confirmation of sale of the Trust Estate or the date of expiration of any redemption period unless such receivership is sooner terminated. Without limiting the generality of above, the receiver shall have the power to (i) enter on and take immediate possession of the Premises; (ii) protect and preserve the Trust Estate; (iii) operate the Premises prior to and during any foreclosure proceedings; (iv) collect the Rents and apply the proceeds, over and above the costs of the receivership, to the indebtedness secured hereby; (v) in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due; (vi) enter into, enforce, modify or cancel leases on such terms and conditions as Beneficiary may consider proper; (vii) obtain and evict tenants; (viii) fix or modify Rents; (ix) complete any unfinished construction and contract for and make repairs and alterations; (x) perform such acts of cultivation or irrigation as necessary to conserve the value of the Premises; (xi) advance funds to keep current any liens, if any, taxes and assessments encumbering the Premises which are senior to any lien arising under this Deed of Trust; (xii) apply, obtain and pay any reasonable fees for any lawful license, permit or other governmental approval relating to the Premises or the operation thereof; (xiii) take possession and control of all the records, correspondence, insurance policies, books and accounts of Trustor and the Trust Estate; (xiv) open all mail and other correspondence received in connection with the Premises whether addressed to Trustor or otherwise; (xv) access all office equipment used by Trustor in connection with the development, construction, improvement, leasing, sales, marketing and/or conveyance of the Premises, including all computer equipment, all software programs and passwords, and any other information, data, equipment or items necessary for the operation of Trustor's business with respect to the Premises, whether in the possession and control of Trustor or its agents, servants or employees; (xvi) hire, employ, pay and terminate servants, agents, employees, clerks and accountants, purchase materials, supplies advertising and other services at ordinary and usual rates and prices; (xvii) market, sell and/or convey the Premises, including the right and power to execute and deliver any and all necessary documents to consummate any sale of the Premises including, but not limited to, any contracts, deeds and, if the Premises is sold with the Loan in place to a party assuming the Loan on terms satisfactory to Beneficiary, Loan assumption and modification documents; and (xviii) engage one or more third parties or affiliates to act as broker in marketing or selling the Premises with

the costs of such broker(s) being paid on a commercially reasonable leasing commission basis as may be approved by the sole discretion of Beneficiary. Any proposed sale of the Premises in connection with (xvii) and (xviii) above which would provide to Beneficiary less than the full amount of the indebtedness owed by Trustor shall be subject to Beneficiary's prior written approval in its sole and absolute discretion.

4.06 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any and all of the Obligations and to exercise all rights and powers under the Loan Documents and under the law now or hereafter in effect, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured or guaranteed. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other rights herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security or guaranty now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them shall be entitled to enforce this Deed of Trust and any other security or any guaranty now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing under the law. Every power or remedy given by any of the Loan Documents or by law to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and, to the extent permitted by law, either of them may pursue inconsistent remedies.

4.07 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth in Section 5.05.

4.08 Acceptance of Sums After Default. The acceptance by Beneficiary of any sum in payment, or part payment, of the Obligations, after the same is due or after the giving of any notice of default, or the giving or recording of any notice of breach, or after giving of any notice of sale, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining Event of Default, except as otherwise provided by applicable law, or invalidate any sale held pursuant to such notice for any such remaining Event of Default, or prejudice any of the rights of Beneficiary under this Deed of Trust. Notwithstanding anything to the contrary contained in this Deed of Trust or in any other agreement securing the Note and without limiting the generality of this Section 4.08, in the case of any Event of Default, Beneficiary may accept payments or performance of any obligations due hereunder without thereby waiving the existence of such Event of Default if the payment or performance is not sufficient to completely cure such Event of Default.

ARTICLE V
MISCELLANEOUS

5.01 Change, Discharge, Termination, or Waiver. No provision of this Deed of Trust may be changed, discharged, terminated, or waived except in a writing signed by the party against whom enforcement of the change, discharge, termination, or waiver is sought. No failure on the part of Beneficiary to exercise and no delay by Beneficiary in exercising any right or remedy under the Loan Documents or under the law shall operate as a waiver thereof.

5.02 Trustor Waiver of Rights. Trustor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Trust Estate, and (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the Obligations and marshaling in the event of foreclosure of the liens hereby created, and (c) all rights and remedies that Trustor may have or be able to assert by reason of the laws of the State of Nevada pertaining to the rights and remedies of sureties.

5.03 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset or defense exists against such principal and interest or such other amounts.

5.04 Reconveyance by Trustee. Upon written request of Beneficiary stating that all Obligations have been satisfied in full, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Trust Estate then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto."

5.05 Notices. All notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing) and shall be given to such party at its address or facsimile number set forth on the signature pages hereof. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, three (3) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, (iii) if given by reputable overnight delivery service, when delivered, or (iv) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified below.

To Beneficiary: NLV LLC
9101 Alta Drive, Unit 107
Las Vegas, NV 89145
Attention: Thomas Spiegel

To Trustor: FORE STARS LTD.
9755 W. Charleston Blvd.
Las Vegas, Nevada 89117
Attention: Brett Harrison

5.06 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

5.07 Captions and References. The headings at the beginning of each section of this Deed of Trust are solely for convenience and are not part of this Deed of Trust. Unless otherwise indicated, each reference in this Deed of Trust to a section or an exhibit is a reference to the respective section herein or exhibit hereto.

5.08 Invalidity of Certain Provisions. If any provision of this Deed of Trust is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Trust Estate, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Deed of Trust.

5.09 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Trust Estate, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.10 Attorneys' Fees. If any or all of the Obligations are not paid when due or if an Event of Default occurs, Trustor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorney's fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)), together with interest therein from the date of demand at the Agreed Rate.

5.11 GOVERNING LAW; VENUE; JURISDICTION. THIS DEED OF TRUST HAS BEEN DELIVERED IN NEVADA, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES. THE COURTS OF NEVADA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS DEED OF TRUST. BY EXECUTING THIS DEED OF TRUST, TRUSTOR CONSENTS AND SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF NEVADA.

5.12 JURY WAIVER. TRUSTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH TRUSTOR AND BENEFICIARY MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS DEED OF TRUST, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

5.13 Joint and Several Obligations. If this Deed of Trust is signed by more than one party as Trustor, all obligations of Trustor herein shall be the joint and several obligations of each party executing this Deed of Trust as Trustor.

5.14 Number and Gender. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter gender and vice versa, if the context so requires.

5.15 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the Obligations, provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

5.16 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to form physically one document, which may be recorded.

5.17 No Merger of Lease. If both the lessor's and lessee's estate under any lease or any portion thereof which constitutes a part of the Trust Estate shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Beneficiary so elects as evidenced by recording a written declaration executed by Beneficiary so stating, and, unless and until Beneficiary so elects, Beneficiary shall continue to have and enjoy all of the rights and privileges of Beneficiary as to the separate estates. In addition, upon the foreclosure of the lien created by this Deed of Trust on the Trust Estate pursuant to the provisions hereof, any leases

or subleases then existing and affecting all or any portion of the Trust Estate shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Beneficiary or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Beneficiary or any such purchaser shall constitute a termination of any lease or sublease unless Beneficiary or such purchaser shall give written notice thereof to such tenant or subtenant.

5.18 Representations and Warranties. Trustor represents and warrants to Beneficiary that:

(a) Trustor is the lawful owner of the Trust Estate free and clear of all Liens and Encumbrances and holds a fee simple estate interest in the Premises and Improvements, subject only to the Permitted Exceptions and that Trustor has full right, power and authority to convey and mortgage the same and to execute this Deed of Trust;

(b) Trustor's exact legal name is correctly set forth in the introductory paragraph of this Deed of Trust;

(c) If any Trustor is not an individual, such Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust;

(d) If any Trustor is an unregistered entity (including, without limitation, a general partnership), such Trustor is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust; and

(e) Trustor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Deed of Trust.

5.19 Integration. The Loan Documents contain the complete understanding and agreement of Trustor and Beneficiary and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

5.20 Binding Effect. The Loan Documents will be binding upon, and inure to the benefit of, Trustor, Trustee and Beneficiary and their respective successors and assigns. Trustor may not delegate its obligations under the Loan Documents.

5.21 Time of the Essence. Time is of the essence with regard to the each provision of the Loan Documents as to which time is a factor.

5.22 Amendments. This Deed of Trust may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought. No course of dealing or conduct by or among Beneficiary, Trustee and Trustor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents.

5.23 Survival. The representations, warranties, and covenants of the Trustor and the Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Loan.

5.24 Incorporation. To the extent not inconsistent with any other provision of this Deed of Trust or any other Loan Document, the following numbered covenants of NRS Section 107.030 are hereby adopted and made a part of this Deed of Trust by reference, the parenthetical wording following certain covenant numbers representing the wording to be included in the blank area of the respective numbered covenant which is hereby incorporated: 1; 2 (the full replacement value); 3; 4 (the Agreed Rate); 5; 6; 7 (a reasonable); 8; and 9.

5.25 Waivers.

(a) Trustor waives, to the extent permitted under applicable law: (i) any defense based upon any legal disability or other defense of Maker or any other person, or by reason of the cessation or limitation of the liability of Maker from any cause other than full payment of all sums payable under the Note; (ii) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Maker or any principal of Maker or any defect in the formation of Maker or any principal of Maker; (iii) all rights and defenses arising out of an election of remedies by Beneficiary; (iv) any defense based upon Beneficiary's failure to disclose to Trustor any information concerning Maker's financial condition or any other circumstances bearing on Maker's ability to pay all sums payable under the Agreement Among Members or Note; (v) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (vi) any defense based upon Beneficiary's election, in any proceeding instituted under the United States Bankruptcy Code, as amended, or any successor state (the "Bankruptcy Code"), of the application of Section 1111(b)(2) of the Bankruptcy Code; (vii) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Bankruptcy Code; (viii) presentment, demand, protest or notice of any kind; and (ix) the benefit of any statute of limitations affecting the liability of Trustor hereunder or the enforcement hereof. Finally, Trustor agrees that the payment of all sums payable under the Note or any part thereof or other act which tolls any statute of limitations applicable to the Note shall similarly operate to toll the statute of limitations applicable to Trustor's liability hereunder.

(b) Trustor hereby acknowledges that: (i) as part of Beneficiary's consideration for entering into this transaction, Beneficiary has specifically bargained for the waiver and relinquishment by Trustor of all such defenses and (ii) Trustor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type reflected in this Deed of Trust. Trustor hereby represents and confirms to Beneficiary that Trustor is fully informed regarding, and that Trustor does thoroughly understand, (w) the nature of all such possible defenses, (x) the circumstances under which those defenses may arise, (y) the benefits which those defenses might confer upon Trustor, and (z) the legal consequences to Trustor of waiving those defenses. Trustor acknowledges that Trustor has entered into this Deed of Trust,

and both undertaken Trustor's obligations and given its unconditional waiver with the intent that this Deed of Trust and all such waivers shall be fully enforceable by Beneficiary, and that Beneficiary has been induced to enter into this transaction in material reliance upon the presumed full enforceability thereof (in each case subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Trustor further agrees that the validity of this Deed of Trust and the obligations of Trustor hereunder shall in no way be terminated, affected or impaired by reason of (i) Beneficiary's failure to exercise, or delay in exercising, any right or remedy, (ii) the commencement of a case under the Bankruptcy Code by or against any person obligated under the Note, (iii) by any partial or total transfer or pledge of the interests in Maker, or in any direct or indirect owner of Maker, and/or the reconstitution of Maker as a result of such transfer or pledge, or (iv) any payment made with respect to the Obligations or any other indebtedness arising under the Note, whether made by Maker or Trustor or any other person, which is required to be refunded pursuant to any bankruptcy or insolvency law; it being understood that no payment so refunded shall be considered as a payment of any portion of the Obligations, nor shall it have the effect of reducing the liability of Trustor hereunder. In the event that pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law or any judgment, order or decision thereunder Beneficiary must rescind or restore any payment or any part thereof received by Beneficiary in satisfaction of the Obligations, as set forth herein, any prior release or discharge from the terms of this Deed of Trust given to Trustor by Beneficiary shall be without effect and this Deed of Trust shall remain in full force and effect.

(d) Trustor warrants and acknowledges that: (i) Trustor is indirectly owned by Maker and will benefit from Beneficiary's entering into the transactions contemplated by the Loan Documents; (ii) Beneficiary would not enter into the transactions contemplated by the Loan Documents but for this Deed of Trust; (iii) there are no conditions precedent to the effectiveness of this Deed of Trust and this Deed of Trust shall be in full force and effect and binding on Trustor regardless of whether Beneficiary obtains other collateral or any guaranties from others or takes any other action contemplated by Trustor; and (iv) Trustor has established adequate means of obtaining from sources other than Beneficiary, on a continuing basis, financial and other information pertaining to Maker's financial condition, the Property and Maker's activities relating thereto, and the status of Maker's performance of obligations under the Loan Documents, and Trustor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Trustor's risks hereunder and Beneficiary has not made any representation to Trustor as to any such matters.

(e) Trustor further covenants that this Deed of Trust shall remain and continue in full force and effect as to any modification, extension or renewal of the Note or any of the other Loan Documents and that other indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done or suffered without notice to, or further consent of, Trustor.

(f) Trustor, to the fullest extent permitted by law, (i) waives and relinquishes any defense based on any right of subrogation, reimbursement, contribution or indemnification or any other suretyship defenses it otherwise might or would have under Nevada law or other applicable law (including, to the extent permitted by Section 40.495, any defense or benefit that may be derived from NRS 40.430 and judicial decisions relating thereto, and/or NRS 40.451 et. seq., and judicial decisions relating thereto) and agrees that it will be fully liable under this Deed of Trust even though Beneficiary forecloses against any Property as security for the Obligations; (ii) waives any and all defenses now or hereafter arising or asserted by reason of Trustor's rights under NRS 104.3605, Trustor specifically agreeing that such waiver shall constitute a waiver of discharge under NRS 104.3605(9); (iii) agrees that such Trustor will not assert any such defense in any action or proceeding which Beneficiary may commence to enforce this Deed of Trust; and (iv) waives the provisions of NRS 40.495(4) including, without limitation, the right to a fair market value hearing pursuant to NRS 40.495(4)(a) and the limitation on the money judgment set forth in NRS 40.495(4)(b). Trustor, to the fullest extent permitted by applicable law waives the provisions and application of NRS 40.459(1)(c) and, without limiting the foregoing, agrees that any application of NRS 40.459(1)(c) would apply only to a circumstance where a deficiency judgment or claim was sold by Beneficiary after the obtaining of the same separate and apart from any sale or transfer of Beneficiary's interest in the Obligations. Trustor stipulates that, for purposes of applying NRS 40.459(1)(c), it shall be deemed that the amount of the consideration paid by the purchaser for any transfer, sale, or other conveyance of all or any portion of the Obligations is an amount equal to the amount of the outstanding principal balance of the portion of the Obligations so purchased. Without affecting the rights actually so acquired by such a purchaser, such rights shall not be deemed to constitute in whole or part the "right to obtain a judgment" for purposes of applying NRS 40.459(1)(c).

(g) If any of the waivers or consents herein is determined to be contrary to any applicable law or public policy, such waivers and consents shall be effective to the maximum extent permitted by applicable law.

[SIGNATURE PAGE FOLLOWS]


IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

FORE STARS LTD., a Nevada limited liability company

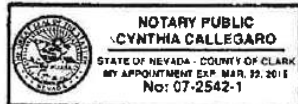
By Its Managers:

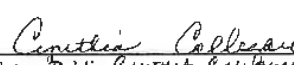

Yohan Lowie


Vickie DeHart

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 27 day of February, 2015, by Yohan Lowie, the Manager of FORE STARS LTD, a Nevada limited liability company.





Notary Public CYNTHIA CALLEGARO
My commission expires: 3-22-15

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The foregoing instrument was acknowledged before me this 27 day of February, 2015, by Vickie DeHart, the Manager of FORE STARS LTD, a Nevada limited liability company.




Notary Public CYNTHIA CALLEGARO
My commission expires: 3-22-15

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EXHIBIT A

LEGAL DESCRIPTION

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

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

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

Also that certain parcel of land described as follows:

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

Beginning at the most westerly corner of said Lot Four (4); thence South 58°26'37" East a distance of 26.46 feet; thence North 29°03'33" West a distance of 28.42 feet; thence South 39°33'23" West a distance of 10.36 feet to the point of beginning.

Excepting therefrom that certain parcel of land described as follows:

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

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

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East; thence Northwesterly 79.44 feet along a curve concave Southwest having a central angle of $5^{\circ}59'20''$ with a radius of 760.00 feet to the point of beginning.

Also that certain parcel of land described as follows:

Being a portion of the Amended Plat of Peccole West, recorded in Book 83 of Plats, Page 57, lying within the West Half ($W \frac{1}{2}$) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows:

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

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

Excepting therefrom that portion of Lot 5 of Amended Peccole West as shown by map thereof on file in Book 83, Page 57 of Plats, in the Clark County Recorder's Office, Clark County, Nevada, lying within the Southwest Quarter ($SW \frac{1}{4}$) of Section 32, Township 20 South, Range 60 East, M.D.M., City of Las Vegas, Clark County, Nevada, and described as follows:

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

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

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

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

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

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

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EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, inventory, and construction materials and software embedded in any of the foregoing) in which Trustor now or hereafter acquires an interest or right, which is now or hereafter located on or affixed to the Premises or the Improvements or used or useful in the operation, use, or occupancy thereof or the construction of any Improvements thereon, together with any interest of Trustor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character, relating to the Premises, Improvements, or such personal property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the Obligations remains unpaid or unperformed, may accrue from such personal property or any part thereof or from the Premises, the Improvements or any other part of the Trust Estate, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Trustor's present and future rights to receive payments of money, services, or property, including, without limitation, rights to all deposits from tenants of the Premises or Improvements, rights to receive capital contributions or subscriptions from Trustor's partners or shareholders, amounts payable on account of the sale of partnership interests in Trustor or the capital stock of Trustor, accounts and other accounts receivable, deposit accounts, chattel paper (whether tangible or electronic), notes, drafts, contract rights, instruments, general intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) All other intangible property (and related software) and rights relating to the Premises, the Improvements, the personal property described in Paragraph (a) above or the operation, occupancy, or use thereof, including, without limitation, all governmental and non-governmental permits, licenses, and approvals relating to construction on or operation, occupancy, or use of the Premises or Improvements, all names under or by which the Premises or Improvements may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Premises or the Improvements, and all good will and software in any way relating to the Premises or the Improvements;

(e) Trustor's rights under all insurance policies covering the Premises, the Improvements, the Personal Property, and the other parts of the Trust Estate and any and all proceeds, loss payments, and premium refunds payable regarding the same;

(f) All reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of any Improvements on the Premises;

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- (g) All water stock relating to the Premises;
- (h) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate, or for any loss or diminution in value of the Premises, the Improvements, the Personal Property, or any other part of the Trust Estate;
- (i) All as extracted collateral produced from or allocated to the Premises, including, without limitation, oil, gas, and other hydrocarbons and other minerals;
- (j) All architectural, structural, mechanical, and engineering plans and specifications prepared for construction of Improvements or extraction of minerals or gravel from the Premises and all studies, data, and drawings related thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data, and drawings or to the construction of Improvements on or extraction of minerals or gravel from the Premises;
- (k) All commercial tort claims Trustor now has or hereafter acquires relating to the properties, rights, titles, and interests referred to in this Exhibit B or elsewhere in the Deed of Trust;
- (l) All letter of credit rights (whether or not the letter of credit is evidenced by a writing) Trustor now has or hereafter acquires relating to the properties, rights, titles and interest referred to in this Deed of Trust;
- (m) All proceeds from sale or disposition of any of the aforesaid collateral and all supporting obligations ancillary thereto or arising in any way in connection therewith;
- (n) All Trustor's rights in the undisbursed proceeds of the Loan evidenced by the Note;
- (o) All of Trustor's rights in any and all warranties and guaranties with respect to any goods, materials, supplies, chattels, fixtures, equipment, machinery, building materials, and work in progress attached to or placed in or on any part of the Premises, or used in connection with any construction on the Premises, and all funds paid under, or set aside with respect to, such warranties;
- (p) All of Trustor's rights under any agreements affecting the Premises, whether now existing or hereafter arising;
- (q) All contracts and contract rights, licenses, including without limitation, any and all of Trustor's alcohol and retail beverage licenses, causes of action, claims, condemnation proceeds, profits, concessions, fees, leases and lease guaranties, rents, security deposits, utility deposits, trademarks or trade names, utility contracts, maintenance contracts and agreements, management contracts, service contracts, chattel paper, negotiable instruments, instruments, letters of credit, policies and proceeds of insurance, cash bank accounts, and refunds

for taxes or premiums of any insurance, equipment, fixtures, furnishings, inventory and supplies, landscaping equipment, tools and supplies, computer or other control systems, accounts receivable for expenditures and any other payments, and related facilities owned by Trustor and located on the Premises, together with all present and future attachments, accessions, replacements, additions, products and proceeds thereof;

(r) All of Trustor's rights as a declarant, developer, or otherwise, including, without limitation, all voting and other rights under all covenants, conditions, and restrictions affecting the Premises, the Improvements, or the master planned community of which the Premises are a part, whether now existing or hereafter arising;

(s) All of Trustor's rights in all plans, specifications, plats, agreements, assessments, reports, and surveys related to the Premises;

(t) All proceeds of any of the foregoing.

As used in this Exhibit B the terms "Obligations," "Note," "Trust Estate," "Premises," "Improvements," "Loan Agreement," and "Personal Property" shall have the meanings set forth in the Deed of Trust to which this Exhibit B is attached.

APN: 138-32-301-004

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

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

**NOTICES OF TAXES SHOULD BE
SENT TO:**

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

RPTT: \$-0- (exempt) /

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

15540174 S-G-S

QUITCLAIM DEED

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

[SIGNATURE PAGE FOLLOWS]

PRJ-63491
02/25/16

ROR023899

25331

25308

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

180 LAND CO LLC, a Nevada limited-liability company

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

By: [Signature]
Name: U. DEHART
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

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

[Signature]
NOTARY PUBLIC



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

PRJ-63491
02/25/16

ROR023900

25332

25309

**EXHIBIT A
LEGAL DESCRIPTION**

PARCEL I

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

PARCEL II

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

PRJ-63491
02/25/16

ROR023901

25333

25310

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

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

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

**NOTICES OF TAXES SHOULD BE
SENT TO:**

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

RPTT: \$-0- (exempt) Section 1

1540174 565

QUITCLAIM DEED

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

[SIGNATURE PAGE FOLLOWS]

Inet #: 20151116-0000238
Fees: \$19.00 N/C Fee: \$25.00
RPTT: \$0.00 Exc #001
11/16/2015 09:01:44 AM
Receipt #: 2807151
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: RNS Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

PRJ-63491
02/25/16

ROR023902

25334

25311

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

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

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

By: [Signature]
Name: V DeHart
Title: Manager

STATE OF NEVADA)
) :SS
COUNTY OF CLARK)

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

[Signature]
NOTARY PUBLIC



PRJ-63491
02/25/16

ROR023903

25335

25312

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

PARCEL I:

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

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

PARCEL II:

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

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

PARCEL III:

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

PRJ-63491
02/25/16

ROR023904

25336

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- 1 by Defendants' former co-Plaintiff Frank Schreck in late December 2015, and
2 repeated again in early 2016.
- 3 25. On December 17, 2015, the Binion Lawsuit was furnished by Defendants and the
4 DOES to a reporter at the Las Vegas Review Journal, four (4) days prior to service of
5 the lawsuit upon 180 Land Co LLC, Seventy Acres LLC, and Fore Stars Ltd., in order
6 to print the baseless and scurrilous allegations against the Plaintiffs in this action as
7 part of the character attack campaign. This was just the beginning, as Defendants
8 and the DOES intended to filing future baseless litigation, as stated by Attorney Todd
9 Bice in the Las Vegas Review Journal article, "This is the first lawsuit to bring an end
10 to that process," he said. "I don't know whether it will be the last one."
- 11
12 26. On December 21, 2015, the Binion Lawsuit was served upon 180 Land Co LLC,
13 Seventy Acres LLC, and Fore Stars Ltd.
- 14
15 27. On December 1, 2015, Plaintiff Seventy Acres LLC entered into an Agreement for
16 Purchase and Sale of Property with a luxury apartment builder ("Apartment Builder")
17 to acquire 16-18 acres of land for Thirty Million Two Hundred Forty Thousand Dollars
18 (\$30,240,000) (\$30 Million Sale Agreement).
- 19
20 28. On January 29, 2016, Bank of Nevada, Plaintiffs' lender withdrew its offer to provide
21 a large development loan for the overall project, as a result of the Binion Lawsuit.
- 22
23 29. Defendants and DOES knowingly interfered with Plaintiffs' relationship with Bank of
24 Nevada.
- 25
26 30. As a result of the Binion Lawsuit, prospective purchasers of lots on the Land withdrew
27 consideration of purchasing the multi-million dollar lots.
- 28

BINION, JACK B.

V.

FORE STARS, LTD.

CASE NO.: A-15-729053-B

DEPT. NO.: XXVII

CITY COUNCIL MEETING

DATE: June 21ST, 2017

TIME: 3:00 P.M.

LOCATION: CITY HALL

Submitted at City Council

Date 6/21/17 Item 131 - 134

By: JIMMY JIMMERSON

ROR023906

25338

25315

1 BILL NO. Z-2001-1

2 ORDINANCE NO. 5353

3 AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP ATLAS OF THE CITY OF LAS
4 VEGAS BY CHANGING THE ZONING DESIGNATIONS OF CERTAIN PARCELS OF LAND,
AND TO PROVIDE FOR OTHER RELATED MATTERS.

5 Proposed by: Robert S. Genzer,
6 Director of Planning and Development

Summary: Amends the Official Zoning Map
Atlas of the City of Las Vegas by changing the
zoning designations of certain parcels of land.

7 THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
8 AS FOLLOWS:

9 SECTION 1: The Official Zoning Map Atlas of the City of Las Vegas, as adopted in
10 Title 19A, Chapter 2, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983
11 Edition, is hereby amended by changing the zoning designations for the parcels of land listed in the
12 attached document. The parcels of land have been approved for rezoning by vote of the City Council
13 or by means of a resolution of intent to rezone pursuant to applicable zoning regulations. In each case
14 the conditions of rezoning have been fulfilled, and changing the corresponding zoning designations
15 on the Official Zoning Map Atlas is now indicated. On the attached document, the parcels are listed
16 by Assessor's Parcel Number. The attached document shows, for each parcel, the zoning designation
17 currently shown on the Official Zoning Map Atlas (indicated as "Current Zoning") and the new zoning
18 designation to be shown for the parcel (indicated as "New Zoning").

19 SECTION 2: Of the parcels referred to in Section 1 of this Ordinance whose rezoning
20 was approved by means of a resolution of intent to rezone, some or all of those resolutions were not
21 reduced to writing-as has been the practice previously. All actions and proceedings by the City
22 concerning the rezoning of those parcels are hereby ratified, approved and confirmed as if the
23 resolutions of intent had been reduced to writing, and the City Council deems that no additional action
24 in that regard is necessary.

25 SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or
26 phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional, or invalid
27 or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
28 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the

FORE000102

ROR023907

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1 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
2 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
3 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
4 invalid or ineffective.

5 SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases,
6 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
7 1983 Edition, in conflict herewith are hereby repealed.

8 PASSED, ADOPTED and APPROVED this 15th day of August, 2001.

9 APPROVED:

10 By 
11 OSCAR B. GOODMAN, Mayor

12 ATTEST:

13 
14 BARBARA J. RONEMUS, City Clerk

15 APPROVED AS TO FORM:

16 Valsted 7-6-01
17 Date

FORE000103

ROR023908

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1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 18th day of July, 2001, and referred to the following committee composed of Councilmembers
3 Weekly and L. B. McDonald for recommendation; thereafter the said committee reported
4 favorably on said ordinance on the 15th day of August, 2001, which was a regular meeting of said
5 Council; that at said regular meeting, the proposed ordinance was read by title to the City
6 Council as first introduced and adopted by the following vote:

7 VOTING "AYE": Mayor Goodman and Councilmembers Reese, M. McDonald, Brown, L.B.
8 McDonald, Weekly and Mack

9 VOTING "NAY": None

10 ABSENT: None

11 APPROVED:

12 
13 OSCAR B. GOODMAN, Mayor

14 ATTEST:

15 
16 BARBARA JO RONEMUS, City Clerk

17
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FORE000104

ROR023909

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[illegible]

* 022
* 3831-71300Z (179.2)
* 022

* 22

* CUY R907 LHC.

FORE000105

ROR023910

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25319

Prepared 7/6/2001

1250432009	R-E	R-PD6	12516613003	R-E	R-PD6	12527610047	R-E	R-PD3	13931420062	U(M,L)	R-PD7
12506320002	R-E	R-PD6	12516613004	R-E	R-PD6	12528310048	R-E	R-PD2	13931420063	U(M,L)	R-PD7
12510632003	R-E	R-PD6	12516613005	R-E	R-PD6	12528597001	R-E	R-PD3	13931420064	U(M,L)	R-PD7
12518320034	R-E	R-PD6	12516613006	R-E	R-PD6	12528597002	R-E	R-PD3	13931420065	U(M,L)	R-PD7
125190320037	R-E	R-PD6	12516613007	R-E	R-PD6	12527312001	U(M,L)	R-CL	13931420066	U(M,L)	R-PD7
12519320036	R-E	R-PD6	12516613008	R-E	R-PD6	12527312002	U(M,L)	R-CL	13931420067	U(M,L)	R-PD7
12519320037	R-E	R-PD6	12516613009	R-E	R-PD6	12527312003	U(M,L)	R-CL	13931420068	U(M,L)	R-PD7
12519320038	R-E	R-PD6	12516613010	R-E	R-PD6	12527312004	U(M,L)	R-CL	13931420069	U(M,L)	R-PD7
12519320039	R-E	R-PD6	12516613011	R-E	R-PD6	12527312005	U(M,L)	R-CL	13931420070	U(M,L)	R-PD7
12519320019	R-E	R-PD6	12516613012	R-E	R-PD6	12527312006	U(M,L)	R-CL	13931420071	U(M,L)	R-PD7
12519320011	R-E	R-PD6	12516613013	R-E	R-PD6	12527312007	U(M,L)	R-CL	13931420072	U(M,L)	R-PD7
12519320012	R-E	R-PD6	12516613014	R-E	R-PD6	12527312008	U(M,L)	R-CL	13931420073	U(M,L)	R-PD7
12519320013	R-E	R-PD6	12516613015	R-E	R-PD6	12527312009	U(M,L)	R-CL	13931420074	U(M,L)	R-PD7
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12519320017	R-E	R-PD6	12516613019	R-E	R-PD6	12527312013	U(M,L)	R-CL	13931420078	U(M,L)	R-PD7
12519320018	R-E	R-PD6	12516613020	R-E	R-PD6	12527312014	U(M,L)	R-CL	13931420079	U(M,L)	R-PD7
12519320019	R-E	R-PD6	12516613021	R-E	R-PD6	12527312015	U(M,L)	R-CL	13931420080	U(M,L)	R-PD7
12519320020	R-E	R-PD6	12516613022	R-E	R-PD6	12527312016	U(M,L)	R-CL	13931420081	U(M,L)	R-PD7
12519320021	R-E	R-PD6	12516613023	R-E	R-PD6	12527312017	U(M,L)	R-CL	13931420082	U(M,L)	R-PD7
12519320022	R-E	R-PD6	12516613024	R-E	R-PD6	12527312018	U(M,L)	R-CL	13931420083	U(M,L)	R-PD7
12519320023	R-E	R-PD6	12516613025	R-E	R-PD6	12527312019	U(M,L)	R-CL	13931420084	U(M,L)	R-PD7
12519320024	R-E	R-PD6	12516613026	R-E	R-PD6	12527312020	U(M,L)	R-CL	13931420085	U(M,L)	R-PD7
12519320025	R-E	R-PD6	12516613027	R-E	R-PD6	12527312021	U(M,L)	R-CL	13931420086	U(M,L)	R-PD7
12519320026	R-E	R-PD6	12516613028	R-E	R-PD6	12527312022	U(M,L)	R-CL	13931420087	U(M,L)	R-PD7
12519320027	R-E	R-PD6	12516613029	R-E	R-PD6	12527312023	U(M,L)	R-CL	13931420088	U(M,L)	R-PD7
12519320028	R-E	R-PD6	12516613030	R-E	R-PD6	12527312024	U(M,L)	R-CL	13931420089	U(M,L)	R-PD7
12519320029	R-E	R-PD6	12516613031	R-E	R-PD6	12527312025	U(M,L)	R-CL	13931420090	U(M,L)	R-PD7
12519320030	R-E	R-PD6	12516613032	R-E	R-PD6	12527312026	U(M,L)	R-CL	13931420091	U(M,L)	R-PD7
12519320031	R-E	R-PD6	12516613033	R-E	R-PD6	12527312027	U(M,L)	R-CL	13931420092	U(M,L)	R-PD7
12519320032	R-E	R-PD6	12516613034	R-E	R-PD6	12527312028	U(M,L)	R-CL	13931420093	U(M,L)	R-PD7

53.024

422

FORE000106

ROR023911

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25320

Prepared 7/6/2001

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12508218001	R-E	R-PD6	12516513063	R-E	R-PD6	12525811062	R-E	R-CL	12531297008	U(ML)	R-PD7
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12508218003	R-E	R-PD6	12516513065	R-E	R-PD6	12525811064	R-E	R-CL	12531297010	U(ML)	R-PD7
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12508218007	R-E	R-PD6	12516513069	R-E	R-PD6	12525811068	R-E	R-CL	12531297014	U(ML)	R-PD7
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12508218009	R-E	R-PD6	12516513071	R-E	R-PD6	12525811070	R-E	R-CL	12531297016	U(ML)	R-PD7
12508218010	R-E	R-PD6	12516513072	R-E	R-PD6	12525811071	R-E	R-CL	12531297017	U(ML)	R-PD7
12508218011	R-E	R-PD6	12516513073	R-E	R-PD6	12525811072	R-E	R-CL	12531297018	U(ML)	R-PD7
12508218012	R-E	R-PD6	12516513074	R-E	R-PD6	12525811073	R-E	R-CL	12531297019	U(ML)	R-PD7
12508218013	R-E	R-PD6	12516513075	R-E	R-PD6	12525811074	R-E	R-CL	12531297020	U(ML)	R-PD7
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12508218016	R-E	R-PD6	12516513078	R-E	R-PD6	12525811077	R-E	R-CL	12531297023	U(ML)	R-PD7
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12508218018	R-E	R-PD6	12516513080	R-E	R-PD6	12525811079	R-E	R-CL	12531297025	U(ML)	R-PD7
12508218019	R-E	R-PD6	12516513081	R-E	R-PD6	12525811080	R-E	R-CL	12531297026	U(ML)	R-PD7
12508218020	R-E	R-PD6	12516513082	R-E	R-PD6	12525811081	R-E	R-CL	12531297027	U(ML)	R-PD7
12508218021	R-E	R-PD6	12516513083	R-E	R-PD6	12525811082	R-E	R-CL	12531297028	U(ML)	R-PD7
12508218022	R-E	R-PD6	12516513084	R-E	R-PD6	12525811083	R-E	R-CL	12531297029	U(ML)	R-PD7
12508218023	R-E	R-PD6	12516513085	R-E	R-PD6	12525811084	R-E	R-CL	12531297030	U(ML)	R-PD7
12508218024	R-E	R-PD6	12516513086	R-E	R-PD6	12525811085	R-E	R-CL	12531297031	U(ML)	R-PD7
12508218025	R-E	R-PD6	12516513087	R-E	R-PD6	12525811086	R-E	R-CL	12531297032	U(ML)	R-PD7
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12508218027	R-E	R-PD6	12516513089	R-E	R-PD6	12525811088	R-E	R-CL	12531297034	U(ML)	R-PD7
12508218028	R-E	R-PD6	12516513090	R-E	R-PD6	12525811089	R-E	R-CL	12531297035	U(ML)	R-PD7
12508218029	R-E	R-PD6	12516513091	R-E	R-PD6	12525811090	R-E	R-CL	12531297036	U(ML)	R-PD7
12508218030	R-E	R-PD6	12516513092	R-E	R-PD6	12525811091	R-E	R-CL	12531297037	U(ML)	R-PD7
12508218031	R-E	R-PD6	12516513093	R-E	R-PD6	12525811092	R-E	R-CL	12531297038	U(ML)	R-PD7
12508218032	R-E	R-PD6	12516513094	R-E	R-PD6	12525811093	R-E	R-CL	12531297039	U(ML)	R-PD7
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NOEJ

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*Attorneys for Defendants Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC;
Yohan Lowie, Vickie DeHart
and Frank Pankratz*

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CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROBERT N. PECCOLE and NANCY A.
PECCOLE, individuals, and Trustees of the
ROBERT N. and NANCY A. PECCOLE
FAMILY TRUST,

Plaintiffs,
vs.

PECCOLE NEVADA, CORPORATION, a
Nevada Corporation; WILLIAM PECCOLE
1982 TRUST; WILLIAM PETER and
WANDA PECCOLE FAMILY LIMITED
PARTNERSHIP, a Nevada Limited
Partnership; WILLIAM PECCOLE and
WANDA PECCOLE 1971 TRUST; LISA P.
MILLER 1976 TRUST; LAURETTA P.
BAYNE 1976 TRUST; LEANN P.
GOORJIAN 1976 TRUST; WILLIAM
PECCOLE and WANDA PECCOLE 1991
TRUST; FORE STARS, LTD., a Nevada
Limited Liability Company; 180 Land Co.,
LLC, a Nevada Limited Liability Company;
SEVENTY ACRES, LLC., a Nevada Limited
Liability Company; EHB COMPANIES, LLC,
a Nevada Limited Liability Company; THE
CITY OF LAS VEGAS; LARRY MILLER, an
individual; LISA MILLER, an individual;
BRUCE BAYNE, an individual; LAURETTA
P. BAYNE, an individual; YOHAN LOWIE,
an individual; VICKIE DEHART, an
individual; FRANK PANKRATZ, an
individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
JUDGMENT GRANTING DEFENDANTS
FORE STARS, LTD., 180 LAND CO.,
LLC, SEVENTY ACRES, LLC, EHB
COMPANIES, LLC, YOHAN LOWIE,
VICKIE DEHART AND FRANK
PANKRATZ'S NRCP 12(b)(5) MOTION
TO DISMISS PLAINTIFFS' AMENDED
COMPLAINT**

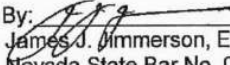
Date: November 1, 2016
Time: 8:00 a.m.
Courtroom 11B

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 386-7171 - Facsimile (702) 387-1167

1 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and Judgment
2 Granting Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres, LLC, EHB
3 Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5)
4 Motion to Dismiss Plaintiffs' Amended Complaint was entered in the above-entitled action
5 on the 30th day of November, 2016, a copy of which is attached hereto.

6 Dated: November ¹¹30, 2016.

7 THE JIMMERSON LAW FIRM, P.C.

8
9
10 By:  11/30/16
11 James J. Jimmerson, Esq.
12 Nevada State Bar No. 000264
13 415 South 6th Street, Suite 100
14 Las Vegas, Nevada 89101
15 Attorneys for Defendants Fore Stars, Ltd.,
16 180 Land Co., LLC., Seventy Acres, LLC;
17 Yohan Lowie, Vickie DeHart
18 and Frank Pankratz
19
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THE JIMMERSON LAW FIRM, P.C.
415 South State Street, Suite 100, Las Vegas, Nevada 89101
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 30th day of November, 2016, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC, SEVENTY ACRES, LLC, EHB COMPANIES, LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S NRCP 12(b)(5) MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT as indicated below:

X by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

X by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk


To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

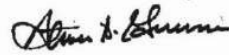
Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
Lewis J. Gazda, Esq. GAZDA & TADAYON 2600 S. Rainbow Blvd., #200 Las Vegas, NV 89146 efile@gazdatadayon.com abeltran@gazdatadayon.com kgerwick@gazdatadayon.com lewisjgazda@gmail.com mbdepiula@gazdatadayon.com	Stephen R. Hackett, Esq. SKLAR WILLIAMS, PLLC 410 S. Rampart Blvd., #350 Las Vegas, NV 89145 ekapoinai@klar-law.com shackett@sklar-law.com

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Bradford R. Jerbic City Attorney Philip R. Byrnes Senior Litigation Counsel City of Las Vegas 495 S. Main Street, Sixth Floor Las Vegas, NV 89101 bcomella@lasvegasnevada.gov ckelly@lasvegasnevada.gov jdorocak@lasvegasnevada.gov khansen@lasvegasnevada.gov pbyrnes@lasvegasnevada.gov	
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An employee of The Jimmerson Law Firm, P.C


CLERK OF THE COURT

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2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 ROBERT N. PECCOLE and NANCY A.
6 PECCOLE, individuals, and Trustees of the
7 ROBERT N. AND NANCY A. PECCOLE
8 FAMILY TRUST,

9 Plaintiffs,

10 v.

11 PECCOLE NEVADA, CORPORATION, a
12 Nevada Corporation; WILLIAM PECCOLE
13 1982 TRUST; WILLIAM PETER and
14 WANDA PECCOLE FAMILY LIMITED
15 PARTNERSHIP, a Nevada Limited
16 Partnership; WILLIAM PECCOLE and
17 WANDA PECCOLE 1971 TRUST; LISA P.
18 MILLER 1976 TRUST; LAURETTA P.
19 BAYNE 1976 TRUST; LEANN P.
20 GOORJIAN 1976 TRUST; WILLIAM
21 PECCOLE and WANDA PECCOLE 1991
22 TRUST; FORE STARS, LTD., a Nevada
23 Limited Liability Company; 180 LAND CO,
24 LLC, a Nevada Limited Liability Company;
25 SEVENTY ACRES, LLC, a Nevada Limited
26 Liability Company; EHB COMPANIES,
27 LLC, a Nevada Limited Liability Company;
28 THE CITY OF LAS VEGAS; LARRY
MILLER, an individual; LISA MILLER, an
individual; BRUCE BAYNE, an individual;
LAURETTA P. BAYNE, an individual;
YOHAN LOWIE, an individual; VICKIE
DEHART, an individual; and FRANK
PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT GRANTING
DEFENDANTS FORE STARS, LTD., 180
LAND CO LLC, SEVENTY ACRES LLC,
EHB COMPANIES LLC, YOHAN
LOWIE, VICKIE DEHART AND FRANK
PANKRATZ'S NRCP 12(b)(5) MOTION
TO DISMISS PLAINTIFFS' AMENDED
COMPLAINT**

Hearing Date: November 1, 2016
Hearing Time: 8:00 a.m.

Courtroom 11B

23 This matter coming on for Hearing on the 2nd day of November, 2016 on Defendants
24 Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,
25 Vickie Dehart and Frank Pankratz's NRCP 12(B)(5) Motion To Dismiss Plaintiffs' Amended
26 Complaint, James J. Jimmerson of the Jimmerson Law Firm, P.C. appeared on behalf of
27 Defendants, Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie
28 DeHart and Frank Pankratz; Stephen R. Hackett of Sklar Williams, PLLC and Todd D. Davis of

1 EHB Companies LLC, appeared on behalf of Defendant EHB Companies LLC; and Robert N.
2 Peccole of Peccole & Peccole, Ltd. appeared on behalf of the Plaintiffs.

3 The Court, having fully considered the Motion, the Plaintiffs' Oppositions thereto, the
4 Defendants' Replies, and all other papers and pleadings on file herein, including each party's
5 Supplemental filings following oral argument, as permitted by the Court, hearing oral argument,
6 and good cause appearing, issues the following Findings of Fact, Conclusions of Law and
7 Judgment:

8 **FINDINGS OF FACT**

9 **Complaint and Amended Complaint**

10 1. Plaintiffs initially filed a Complaint in this matter on July 7, 2016 which raised
11 three Claims for Relief against all Defendants: 1) Declaratory and Injunctive Relief; 2) Breach
12 of Contract and 3) Fraud.

13 2. On August 4, 2016, before any of the Defendants had filed a responsive pleading
14 to the original Complaint, Plaintiffs filed their Amended Complaint which alleged the following
15 Claims for Relief against all Defendants: 1) Injunctive Relief; 2) Violations of Plaintiffs' Vested
16 Rights and 3) Fraud.

17 3. Plaintiffs Robert and Nancy Peccole are residents of the Queensridge common
18 interest community ("Queensridge CIC"), as defined in NRS 116, and owners of the property
19 identified as APN 138-31-215-013, commonly known as 9740 Verlaine Court, Las Vegas,
20 Nevada ("Residence"). (Amended Complaint, Par. 2).

21 4. At the time of filing of the Complaint and Amended Complaint, the Residence
22 was owned by the Robert N. and Nancy A. Peccole Family Trust ("Peccole Trust"). The
23 Peccole Trust acquired title to the Residence on August 28, 2013 from Plaintiff's Robert and
24 Nancy Peccole, as individuals, and transferred ownership of the residence to Plaintiff's Robert
25 N. and Nancy A. Peccole on September 12, 2016.

26 5. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no
27 ownership interest in the Residence and therefor have no standing in this action.
28

1 6. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their
2 present ownership interest in the Residence on September 12, 2016 and therefore had full
3 knowledge of the plans to develop the land upon which the Badlands Golf Course is presently
4 operated at the time they acquired the Residence.

5 7. Plaintiffs' Amended Complaint alleges that the City of Las Vegas, along with
6 Defendants Fore Stars Ltd., Yohan Lowie, Vickie DeHart and Frank Pankratz, openly sought to
7 circumvent the requirements of state law, the City Code and Plaintiffs' alleged vested rights,
8 which they allegedly gained under their Purchase Agreement, by applying to the City for
9 redevelopment, rezoning and by interfering with and allegedly violating the drainage system in
10 order to deprive Plaintiffs and other Queensridge homeowners from notice and an opportunity to
11 be heard and to protect their vested rights under the Master Declaration of Covenants,
12 Conditions, Restrictions and Easements for Queensridge (hereinafter "Master Declaration" or
13 "Queensridge Master Declaration")(See Amended Complaint, Par. 1).

14 8. Plaintiffs allege that Defendant Fore Stars Ltd. convinced the City of Las Vegas
15 Planning Department to put a Staff sponsored proposed amendment to the City of Las Vegas
16 Master Plan on the September 8, 2015 Planning Commission Agenda. The Amended Complaint
17 alleges that the proposed Amendment would have allowed Fore Stars Ltd. to exceed the density
18 cap of 8 units per acre on the Badlands Golf Course located in the Queensridge Master Planned
19 Community. (Amended Complaint, Par. 44).

20 9. Plaintiffs allege that Defendant Fore Stars Ltd., recorded a Parcel Map relative to
21 the Badlands Golf Course property without public notification and process required by NRS
22 278.320 to 278.4725. Plaintiffs further allege that the requirements of NRS 278.4925 and City
23 of Las Vegas Unified Development Code 19.16.070 were not met when the City Planning
24 Director certified the Parcel Map and allowed it to be recorded by Fore Stars, Ltd. and that the
25 City of Las Vegas should have known that it was unlawfully recorded. (Amended Complaint,
26 Par. 51, 61 and 62).

1 10. Plaintiffs allege in their First Claim for Relief that they are entitled to Injunctive
2 Relief against the Developer Defendants and City of Las Vegas enjoining them from taking any
3 action that violates the provisions of the Master Declaration.

4 11. Plaintiffs allege in their Second Claim for Relief that Developer Defendants have
5 violated their "vested rights" as allegedly afforded to them in the Master Declaration.

6 12. Plaintiffs allege the following "Specific Acts of Fraud" committed by some or
7 all of the Defendants in this case:
8

9 1. Implied representations by Peccole Nevada Corporation, Larry Miller, Bruce
10 Bayne and Greg Goorjian. (Amended Complaint, ¶ 76).

11 2. A "scheme" by Defendants Peccole Nevada Corporation, Larry Miller, Bruce
12 Bayne, all of the entities listed in Paragraph 34 as members of Fore Stars, Ltd, and
13 Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies LLC in
14 collusion with each other whereby Fore Stars, Ltd would be sold to Lowie and his
15 partners and they in turn would clandestinely apply to the City of Las Vegas to
16 eliminate Badlands Golf Course and replace it with residential development
17 including high density apartments. (Amended Complaint, ¶ 77).

18 3. The City of Las Vegas, through its Planning Department and members joined in
19 the scheme contrived by the Defendants and participated in the collusion by
20 approving and allowing Fore Stars to illegally record a Merger and Resubdivision
21 Parcel Map and accepting an illegal application designed to change drainage
22 system and subdivide and rezone the Badlands Golf Course. (Amended
23 Complaint, ¶ 78).

24 4. That Yohan Lowie and his agents publicly represented that the Badlands Golf
25 Course was losing money and used this as an excuse to redevelop the entire
26 course. (Amended Complaint, ¶ 79).

27 5. That Yohan Lowie publically represented that he paid \$30,000,000 for Fore Stars
28 of his own personal money when he really paid \$15,000,000 and borrowed
\$15,800,000. (Amended Complaint, ¶ 80).

 6. Lowie's land use representatives and attorneys have made public claims that the
golf course is zoned R-PD7 and if the City doesn't grant this zoning, it will result
in an inverse condemnation. (Amended Complaint, ¶ 81).

**Plaintiffs' Motions for Preliminary Injunction against the City of Las Vegas and against
the Developer Defendants and Orders Denying Plaintiffs' Motions for Rehearing, for Stay
on Appeal and Notice of Appeal.**

1 13. On August 8, 2016, Plaintiffs filed a Motion for Preliminary Injunction seeking
2 to enjoin the City of Las Vegas from entertaining or acting upon agenda items presently before
3 the City Planning Commission that allegedly violated Plaintiffs' vested rights as home owners in
4 the Queensridge common interest community.

5 14. The Court denied Plaintiffs' Motion for Preliminary Injunction in an Order
6 entered on September 30, 2016 because Plaintiffs failed to demonstrate that permitting the City
7 of Las Vegas Planning Commission (or the Las Vegas City Council) to proceed with its
8 consideration of the Applications constitutes irreparable harm to Plaintiffs that would compel
9 the Court to grant Plaintiffs the requested injunctive relief in contravention of the Nevada
10 Supreme Court's holding in *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers*
11 *Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

12 15. On September 28, 2016—the day after their Motion for Preliminary Injunction
13 directed at the City of Las Vegas was denied—Plaintiffs filed a virtually identical Motion for
14 Preliminary Injunction, but directed it at Defendants Fore Stars Ltd., Seventy Acres LLC, 180
15 Land Co LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz
16 (hereinafter "Developer Defendants").

17 16. On October 5, 2016, Plaintiffs improperly filed a Motion for Rehearing of
18 Plaintiffs' Motion for Preliminary Injunction.¹

19 17. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in
20 relation to the Order Denying their Motion for Preliminary Injunction against the City of Las
21 Vegas.

22 18. On October 17, 2016, the Court, through Minute Order, denied the Plaintiffs'
23 Motion for Rehearing, Motion for Stay Pending Appeal and Motion for Preliminary Injunction
24

25 ¹ The Motion was procedurally improper because Plaintiffs are required to seek leave of Court prior to filing a
26 Motion for Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the Court
27 issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing, converting Plaintiffs
28 Motion to a Motion for Leave of Court to File Motion for Rehearing and setting same for in chambers hearing on
October 17, 2016.

1 against Developer Defendants. Formal Orders were subsequently entered by the Court
2 thereafter on October 19, 2016, October 19, 2016 and October 31, 2016, respectively.

3 19. The Court denied Plaintiffs' Motion for Rehearing of the Motion for Preliminary
4 Injunction because Plaintiffs could not show irreparable harm, because they possess
5 administrative remedies before the City Planning Commission and City Council pursuant to
6 NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, and because Plaintiffs failed to show a
7 reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to
8 allege any change of circumstances since that time that would show a reasonable likelihood of
9 success as of October 17, 2016.

10 20. The Court denied Plaintiffs' Motion for Stay Pending Appeal on the Order
11 Denying Plaintiffs' Motion for Preliminary Injunction against the City of Las Vegas because
12 Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCF 62(c). Plaintiffs failed to
13 show that the object of their potential writ petition will be defeated if their stay is denied, they
14 failed to show that they would suffer irreparable harm or serious injury if the stay is not issued
15 and they failed to show a likelihood of success on the merits.

16 21. The Court denied Plaintiffs' Motion for Preliminary Injunction against Developer
17 Defendants because Plaintiffs failed to meet their burden of proof that they have suffered
18 irreparable harm for which compensatory damages are an inadequate remedy and failed to show
19 a reasonable likelihood of success on the merits. The Court also based its denial on the fact that
20 Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of
21 avoiding well-established prohibitions and/or limitations against interfering with or seeking
22 advanced restraint against an administrative body's exercise of legislative power:

23 In Nevada, it is established that equity cannot directly interfere with, or in advance
24 restrain, the discretion of an administrative body's exercise of legislative power.
25 [Citation omitted] This means that a court could not enjoin the City of Reno from
26 entertaining Eagle Thrifty's request to review the planning commission
27 recommendation. *This established principle may not be avoided by the expedient
28 of directing the injunction to the applicant instead of the City Council.*

Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n, 85 Nev. 162, 165,
451 P.2d 713, 714 (1969) (emphasis added).

1 22. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying
2 their Motion for Preliminary Injunction against the City of Las Vegas. Subsequently, on
3 October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10,
4 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was
5 therefore denied as moot.

6 **Defendants' Motion to Dismiss**

7 23. Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres LLC, EHB
8 Companies, LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz filed a Motion to Dismiss
9 Amended Complaint on September 6, 2016.

10 24. The Amended Complaint makes several allegations against the Developer
11 Defendants:

- 12 1) that they improperly obtained and unlawfully recorded a parcel map merging and
13 re-subdividing three lots which comprise the Badlands Golf Course land;
- 14 2) that, with the assistance of the City Planning Director, they did not follow
15 procedures for a tentative map in the creation of the parcel map,;
- 16 3) that the City accepted unlawful Applications from the Developer Defendants for
17 a general plan amendment, zone change and site development review and
18 scheduled a hearing before the Planning Commission on the Applications;
- 19 4) that they have violated Plaintiffs' "vested rights" by filing Applications to
20 rezone, develop and construct residential units on their land in violation of the
21 Master Declaration and by attempting to change the drainage system; and
- 22 5) that Developer Defendants have committed acts of fraud against Plaintiffs.

23 25. The Developer Defendants contended that they properly followed procedures for
24 approval of a parcel map because the map involved the merger and re-subdividing of only three
25 parcels and that Plaintiffs' arguments about tentative maps only apply to transactions involving
26 five or more parcels, whereas parcel maps are used for merger and re-subdividing of four or
27
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1 fewer parcels of land. *See* NRS 278.461(1)(a)("[a] person who proposed to divide any land for
2 transfer or development into four lots or less... [p]repare a parcel map...").

3 26. The Developer Defendants further argued that Plaintiffs erroneously represent
4 that a parcel map is subject to same requirements as a tentative map or final map of NRS
5 278.4925. Tentative maps are used for larger parcels and subdivisions of land and subdivisions
6 of land require "five or more lots." NRS 278.320(1).

7 27. The Developer Defendants argued that Plaintiffs have not pursued their appeal
8 remedies under UDC 19.16.040(I) and have failed to exhaust their administrative remedies.
9 The City similarly notes that they seek direct judicial challenge without exhausting their
10 administrative remedies and this is fatal to their claims regarding the parcel map in this case.
11 *See Benson v. State Engineer*, 131 Nev. ___, 358 P.3d 221, 224 (2015) and *Allstate Insurance*
12 *Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).

13 28. The Developer Defendants also argued that Plaintiffs have failed to exhaust their
14 administrative remedies prior to seeking judicial review. The Amended Complaint notes that
15 the Defendants' Applications are scheduled for a public hearing before the City Planning
16 Commission and thereafter, before the City of Las Vegas City Council. The Planning
17 Commission Staff had recommended approval of all seven (7) applications. *See* Defendants'
18 Supplemental Exhibit H, filed November 2, 2016. The Applications were heard by the City
19 Planning Commission at its Meeting of October 18, 2016. The Planning Commission's action
20 and decisions on the Applications are subject to review by the Las Vegas City Council at its
21 upcoming November 16, 2016 Meeting under UDC 19.16.030(H), 19.16.090(K) and
22 19.16.100(G). It is only after a final decision of the City Council that Plaintiffs would be
23 entitled to seek judicial review in the District Court pursuant to NRS 278.3195(4).

24 29. The Developer Defendants argued that Plaintiffs do not have the "vested rights"
25 that they claim are being violated in their Second Claim for Relief because the Badlands Golf
26 Course land that was not annexed into Queensridge CIC, as required by the Master Declaration
27
28

1 and NRS 116, is unburdened, unencumbered by, and not subject to the CC&Rs and the
2 restrictions of the Master Declaration.

3 30. The Developer Defendants argued that the Plaintiffs have failed to plead fraud
4 with particularity as required by NRCP 9(b).

5 31. The Developer Defendants argued that Plaintiffs have not alleged any viable
6 claims against them and their Amended Complaint should be dismissed for failure to state a
7 claim.

8 **Plaintiffs' Voluntary Dismissal of Certain Defendants**

9
10 32. On October 4, 2016, Plaintiffs dismissed several Peccole Defendants from this
11 case through a Stipulation and Order Dismissing Without Prejudice Defendants Lauretta P.
12 Bayne, individually, Lisa Miller, individually, Lauretta P. Bayne 1976 Trust, Leann P. Goorjian
13 1976 Trust, Lisa P. Miller 1976 Trust, William Peccole 1982 Trust, William and Wanda Peccole
14 1991 Trust, and the William Peccole and Wanda Peccole 1971 Trust was entered.

15 33. On October 11, 2016, Plaintiffs dismissed the remaining Peccole Defendants
16 through a Stipulation and Order Dismissing Without Prejudice Defendants: Peccole Nevada
17 Corporation; William Peter and Wanda Peccole Family Limited Partnership, Larry Miller and
18 Bruce Bayne. As such, no Peccole-related Defendants remain as Defendants in this case.

19
20 **Dismissal of the City of Las Vegas**

21 34. The City of Las Vegas filed a Motion to Dismiss on August 30, 2016. Said
22 Motion was heard on October 11, 2016 and was granted on October 19, 2016, dismissing all of
23 Plaintiffs' claims against the City of Las Vegas.

24 **Lack of Standing**

25 35. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no
26 ownership interest in the Residence and therefor have no standing in this action. As such, all
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1 claims asserted by Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust are
2 dismissed.

3 **Facts Regarding Developer Defendants' Motion to Dismiss**

4
5 36. The Court has reviewed and considered the filings by Plaintiffs and Defendants,
6 including the Supplements filed by both sides following the November 1, 2016 Hearing, as well
7 as the oral argument of counsel at the hearing.

8 37. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present
9 ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of
10 the plans to develop the land upon which the Badlands Golf Course is presently operated at the
11 time they acquired the Residence.

12
13 38. Plaintiffs have not set forth facts that would substantiate a basis for the three
14 claims set forth in their Complaint against the Developer Defendants: Injunctive Relief/Parcel
15 Map, Vested Rights, and Fraud.

16 39. The Developer Defendants are the successors in interest to the rights, interests and
17 title in the Badlands Golf Course land formerly held by Peccole 1982 Trust, Dated February 15,
18 1982; William Peter and Wanda Ruth Peccole Family Limited Partnership; and Nevada Legacy
19 14 LLC.

20
21 40. Plaintiffs' have made some scurrilous allegations without factual basis and
22 without affidavit or any other competent proof. The Court sees no evidence supporting those
23 claims.

24 41. The Developer Defendants properly followed procedures for approval of a parcel
25 map over Defendants' property pursuant to NRS 278.461(1)(a) because the division involved
26 four or fewer lots. The Developer Defendants parcel map is a legal merger and re-subdividing of
27 land within their own boundaries.
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1 42. The Developer Defendants have complied with all relevant provisions of NRS
2 Chapter 278.

3 43. NRS 278A.080 provides: "The powers granted under the provisions of this
4 chapter may be exercised by any city or county which enacts an ordinance conforming to the
5 provisions of this chapter."

6 44. The Declaration of Luann Holmes, City Clerk for the City of Las Vegas, Exhibit
7 L to Defendants' November 2, 2016 Supplemental Exhibits, states at paragraph 5, "[T]he
8 Unified Development Code and City Ordinances for the City of Las Vegas do not contain
9 provisions adopted pursuant to NRS 278A."

10 45. The Queensridge Master Declaration (Court Exhibit B and attached to
11 Defendants' November 2, 2016 Supplement as Exhibit B), at p. 1, Recital B, states: "Declarant
12 intends, without obligation, to develop the Property and the Annexable Property in one or more
13 phases as a mixed-use common interest community pursuant to Chapter 116 of the Nevada
14 Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas,
15 which may, but is not required to, include "planned communities" and "condominiums," as such
16 quoted terms are used and defined in NRS Chapter 116."

17 46. The Queensridge community is a Common Interest Community organized under
18 NRS 116. This is not a PUD community.

19 47. NRS 116.1201(4) states that "The provisions of Chapter 117 and 278A of NRS do
20 not apply to common-interest communities." See Defendants' Supplemental Exhibit Q.

21 48. In contrast to the City of Las Vegas' choice not to adopt the provisions of NRS
22 278A, municipal or city councils that choose to adopt the provisions of NRS 278A do so, as
23 required by NRS 278A.080, by affirmatively enacting ordinances that specifically adopt Chapter
24 278A. *See, e.g.,* Defendants' Supplemental Exhibit N and O, Title 20 Consolidated
25
26
27
28

1 Development Code 20.704.040 and 20.676, Douglas County, Nevada and Defendants'
2 Supplemental Exhibit P, Ordinance No. 17.040.030, City of North Las Vegas. The provisions of
3 NRS 278A do not apply to the facts of this case.

4
5 49. The City Council has not voted on Defendants' pending Applications and the
6 Court will not stop the City Council from conducting its ordinary business and reaching a
7 decision on the Applications. Plaintiffs may not enjoin the City of Las Vegas or Defendants with
8 regard to their instant Applications, or other Applications they may submit in the future. *See*
9 *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451
10 P.2d 713, 714 (1969).

11
12 50. Plaintiffs are improperly trying to impede upon the City's land use review and
13 zoning processes. The Defendants are permitted to seek approval of their Applications, or any
14 Applications submitted in the future, before the City of Las Vegas, and the City of Las Vegas,
15 likewise, is entitled to exercise its legislative function without interference by Plaintiffs.

16
17 51. Plaintiffs' claim that the Applications were "illegal" or "violations of the Master
18 Declaration" is without merit. The filing of these Applications by Defendants, or any
19 Applications by Defendants, is not prohibited by the terms of the Master Declaration, because
20 the Applications concern Defendants' own land, and such land that is not annexed into the
21 Queensridge CIC is therefore not subject to the terms of its Master Declaration. Defendants
22 cannot violate the terms of an agreement to which they are not a party and which does not apply
23 to them.

24
25 52. Plaintiffs' inferences and allegations regarding whether the Badlands Golf Course
26 land is subject to the Queensridge Master Declaration are not fair and reasonable, and have no
27 support in fact or law.
28

1 53. The land which is owned by the Defendants, upon which the Badlands Golf
2 Course is presently operated ("GC Land") that was never annexed into the Queensridge CIC,
3 never became part of the "Property" as defined in the Queensridge Master Declaration and is
4 therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge
5 Master Declaration.

6
7 54. Plaintiffs cannot prove a set of facts under which the GC Land was annexed into
8 the "Property" as defined in the Queensridge Master Declaration.

9 55. Since Plaintiffs have failed to prove that the GC Land was annexed into the
10 "Property" as defined in the Master Declaration, then the GC Land is not subject to the terms and
11 conditions of the Master Declaration.

12 56. There can be no violation of the Master Declaration by Defendants if the GC
13 Land is not subject to the Master Declaration. Therefore, the Defendants' Applications are not
14 prohibited by, or violative of, the Master Declaration.

15
16 57. Plaintiffs' Exhibit 1 to their Supplement filed November 8, 2016 depicts a
17 proposed and conceptual master plan amendment. The maps attached thereto do not appear to
18 depict the 9-hole golf course, but instead identifies that area as proposed single family
19 development units.

20 58. Plaintiffs' Exhibit 2 to their Supplement filed November 8, 2016, which is also
21 Exhibit J to Defendants' Supplement filed November 2, 2016, approves a request for rezoning to
22 R-PD3, R-PD7 and C-1, which all indicate the intent to develop in the future as residential or
23 commercial. Plaintiffs alleged this was a Resolution of Intent which was "expunged" upon
24 approval of the application. Plaintiffs alleged that Exhibit 3 to their Supplement, the 1991
25 zoning approval letter, was likewise expunged. However, the Zoning Bill No. Z-20011,
26 Ordinance No. 5353, attached as Exhibit I to Defendants' Motion to Dismiss, demonstrates that
27
28

1 the R-PD7 Zoning was codified and incorporated into the amended Atlas in 2001. Therefore,
2 Plaintiffs' claim that Attorney Jerbic's presentation at the Planning Commission Meeting
3 (Exhibit D to Defendants' Supplement) is "erroneous" is, in fact, incorrect. Attorney Jerbic's
4 presentation is supported by the documentation of public record.

5
6 59. Defendants' Supplemental Exhibit I, a March 26, 1986 letter to the City Planning
7 Commission, specifically sought the R-PD zoning for a planned golf course "as it allows the
8 developer flexibility and the City design control." Thus, keeping the golf course zoned for
9 potential future development as residential was an intentional part of the plan.

10
11 60. Further, Defendants' Supplemental Exhibit K, two letters from the City of Las
12 Vegas to Frank Pankratz dated December 20, 2014, confirm the R-PD7 zoning on all parcels
13 held by Fore Stars, Ltd.

14
15 61. Plaintiffs' Exhibit 4 to their Supplement filed November 8, 2016, a 1986 map
16 depicts two proposed golf courses, one proposed in Canyon Gate and the other proposed around
17 what is currently Badlands. However, the current Badlands Golf Course is not the same as what
18 is depicted on that map. Of note, the area on which the 9 hole golf course currently sits is
19 depicted as single family development.

20
21 62. Exhibit A to the Queensridge Master Declaration defines the initial land
22 committed as "Property" and Exhibit B defines the land that is eligible to be annexed, but it only
23 becomes part of the "Property" if a Declaration of Annexation is filed with the County Recorder.

24
25 63. The Court finds that Recital A to the Queensridge Master Declaration defines
26 "Property" to "mean and include both of the real property described in Exhibit "A" hereto and
27 that portion of the Annexable Property which may be annexed from time to time in accordance
28 with Section 2.3, below."

1 64. The Court finds that Recital A of the Queensridge Master Declaration further
2 states that "In no event shall the term "Property" include any portion of the Annexable Property
3 for which a Declaration of Annexation has not been Recorded..."

4 65. The Court finds that after reviewing the Supplemental Exhibit, Annexation Binder
5 filed on October 20, 2016 at the Court's request, and the map entered as Exhibit A at the
6 November 1, 2016 Hearing and to Defendants' November 2, 2016 Supplement, that the property
7 owned by Developer Defendants that was never annexed into the Queensridge CIC is therefore
8 not part of the "Property" as defined in the Queensridge Master Declaration.
9

10 66. The Court therefore finds that the terms, conditions, and restrictions of the
11 Queensridge Master Declaration do not apply to the GC Land and cannot be enforced against the
12 GC Land.
13

14 67. The Court finds that Exhibit C to the Master Declaration is not a depiction
15 exclusively of the "Property" as Plaintiffs allege. It is clear that it depicts both the Property,
16 which is a very small piece, and the Annexable Property, pursuant to the Master Declaration,
17 page 10, Section 1.55, which states that Master Plan is defined as the "Queensridge Master Plan
18 proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit
19 "C," hereto..." Plaintiffs' Supplement filed November 8, 2016, Exhibit 5, is page 10 of the
20 Master Declaration, and Plaintiffs emphasize that is a master plan proposed by the Declaration
21 "for the property." But reading the provision as a whole, it is clear that it is a "proposed" plan for
22 the Property (as defined by the Master Declaration at Recital A) and "the Annexable Property."
23

24 68. Likewise, Exhibit 6 to Plaintiffs' Supplement filed November 8, 2016 defines
25 'Final Map' as a Recorded map of "any portion" of the Property. It does not depict all of the
26 Property. The Master Declaration at Section 1.55 is clear that its Exhibit C depicts the Property
27
28

1 and the Annexable Property, and Defendants' Supplemental Exhibit A makes clear that not all of
2 the Annexable Property was actually annexed into the Queensridge CIC.

3 69. Plaintiffs' Supplemental Exhibit 7, which is Exhibit C to the Master Declaration,
4 does not depict "Lot 10" as part of the Property. It depicts Lot 10 as part of the Annexable
5 Property. Plaintiffs' Supplemental Exhibit 8 depicts, as discussed by Defendants at the
6 November 1, 2016 Hearing, that Lot 10 was subdivided into several parcels, one of which
7 became the 9 hole golf course. It was not designated as "not a part of the Property or Annexable
8 Property" because it was Annexable Property. However, again, the public record Declarations of
9 Annexation, as summarized in Defendants' Supplemental Exhibit A, shows that Parcel 21, the 9
10 holes, was never annexed into the Queensridge CIC.

11
12 70. The Master Declaration at Recital B provides that the Property "may, but is not
13 required to, include...a golf course."

14
15 71. The Master Declaration at Recital B further provides that "The existing 18-hole
16 golf course commonly known as the "Badlands Golf Course" is not a part of the Property or
17 Annexable Property." The Court finds that does not mean that the 9-hole golf course was a part
18 of the Property. It is clear that it was part of the Annexable Property, and was subject to
19 development rights. In addition to the "diamond" on the Exhibit C Map indicating it is "subject
20 to development rights, p. 1, Recital B of the Master Declaration states: "Declarant intends,
21 without obligation, to develop the Property and the Annexable Property..."

22
23 72. In any event, the Amended and Restated Master Declaration of October, 2000
24 included the 9 holes, and provides "The existing 27-hole golf course commonly known as the
25 "Badlands Golf Court" is not a part of the Property or Annexable Property."

26 73. The Court finds that Mr. Peccole's Deed (Plaintiffs' Supplemental Exhibit 9) and
27 Preliminary Title Report provided by Plaintiffs both indicate that his home was part of the
28

1 Queensridge CIC, that it sits on Parcel 19, which was annexed into the Queensridge CIC in
2 March, 2000. Both indicate that his home is subject to the terms and conditions of the Master
3 Declaration, "including any amendments and supplements thereto."

4 74. The Court finds that, conversely, the Fore Stars, Ltd. Deed of 2005 does not have
5 any such reference to the Queensridge Master Declaration or Queensridge CIC. Likewise none of
6 the other Deeds involving the GC Land, Defendants' Supplemental Exhibits E, F, and G filed
7 November 2, 2016, make any reference to such land being subject to, or restricted by, the
8 Queensridge Master Declaration.
9

10 75. Plaintiffs' Supplemental Exhibit 10, likewise, ignores the second sentence of
11 Section 13.2.1, which provides "In addition, Declarant shall have the right to unilaterally amend
12 this Master Declaration to make the following amendments..." The four (4) rights including the
13 right to amend the Master Declaration as necessary to correct exhibits or satisfy requirements of
14 governmental agencies, to amend the Master Plan, to amend the Master Declaration as necessary
15 or appropriate to the exercise Declarant's rights, and to amend the Master declaration as
16 necessary to comply with the provisions of NRS 116. Declarant, indeed, amended the Master
17 Declaration as such just a few months after Plaintiffs' purchased their home.
18

19 76. Contrary to Plaintiffs' claim, the Amended and Restated Master Declaration was,
20 in fact, recorded on August 16, 2002, as reflected in Defendants' Second Supplement, Exhibit Q.
21

22 77. Regardless, whether or not the 9-hole course is "not a party of the Property or
23 Annexable Property" is irrelevant, if it was never annexed.

24 78. The Court finds that the Master Declaration and Deeds, as well as the
25 Declarations of Annexation, are recorded documents and public record.

26 79. This Court has heard Plaintiffs' arguments and is not satisfied, and does not
27 believe, that the GC Land is subject to the Master Declaration of Queensridge.
28

1 80. This Court is of the opinion that Plaintiffs' counsel Robert N. Peccole, Esq. may
2 be so personally close to the case that he is missing the key issues central to the causes of action.

3 81. The Court finds that the Developer Defendants have the right to develop the GC
4 Land.

5 82. The Court finds that the GC Land owned by Developer Defendants has "hard
6 zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las
7 Vegas requirements.

8 83. Of Plaintiffs' six averments of Fraud in their Amended Complaint, the only one
9 that could *possibly* meet all of the elements required is #1. That is the only averment where
10 Plaintiffs claim that a false representation was made by any of the Defendants with the intention
11 of inducing Plaintiffs to act based upon a specific misrepresentation. None of the remaining five
12 averments involve representations made directly to Plaintiffs. Plaintiffs' first fraud claim fails
13 for two reasons: first, Plaintiffs alleged that the representations were "implied representations."
14 The elements of Fraud require actual representations, not implied representations and second,
15 and more importantly, Plaintiffs have dismissed all of the Defendants listed in averment #1 who
16 they claim made false representations to them.

17 84. Plaintiffs allegations of fraud against Developer Defendants fail and are
18 insufficient pursuant to NRCP 9(b) because they are not plead with particularity and do not
19 include averments as to time, place, identity of parties involved and the nature of the fraud.
20 Plaintiffs have not plead any facts which allege any contact or communication with the
21 Developer Defendants at the time of purchase of the custom lot. Furthermore, Plaintiffs have
22 voluntarily dismissed the Peccole Defendants who allegedly engaged in said alleged fraud.

23 85. Assuming the facts alleged by Plaintiffs to be true, Plaintiffs cannot meet the
24 elements of any type of fraud recognized in the State of Nevada, including: negligent
25
26
27
28

1 misrepresentation, intentional misrepresentation or fraud in the inducement as their claim is pled
2 against Developer Defendants. This alleged "scheme," does not meet the elements of fraud
3 because Plaintiffs fail to allege that Developer Defendants made a false representation to them;
4 that Developer Defendants knew the representation was false; that Developer Defendants
5 intended to induce Plaintiffs to rely on this knowing, false representation; and that Plaintiffs
6 actually relied on such knowing, false representation. Plaintiffs not only fail to allege that they
7 have ever spoken to any of the Developer Defendants, but Mr. Peccole admitted at the October
8 11, 2016 Hearing that he had never spoken to Mr. Lowie.

10 86. Plaintiffs are alleging a conspiracy, but that would be a criminal matter. What
11 they are trying to do is stop an administrative arm of the City of Las Vegas from doing their job.

12 87. Plaintiffs' general and unsupported allegations of a "scheme" involving
13 Developer Defendants and the now-dismissed Peccole Defendants and Defendant City of Las
14 Vegas do not meet the legal burden of stating a fraud claim with particularity. There is quite
15 simply no competent evidence to even begin to suggest the truth of such scurrilous allegations.

16 88. Plaintiffs have failed to state a claim for relief against the following Defendants:
17 Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies LLC and those claims
18 should be dismissed. Plaintiffs' only claims against Lowie, DeHart and Pankratz are the fraud
19 claims, but the fraud claim is legally insufficient because it fails to allege that any of these
20 individuals ever made any fraudulent representations to Plaintiffs. Lowie, DeHart and Pankratz
21 are Managers of EHB Companies LLC. EHB Companies LLC is the sole Manager of Fore Stars
22 Ltd., 180 Land Co LLC, and Seventy Acres LLC. Plaintiffs have failed to properly allege the
23 elements of any causes of action sufficient to impose liability, nor even pierce the corporate veil,
24 against the Managers of any of the above-listed entities.
25
26
27
28

1 89. In light of Plaintiffs voluntarily dismissal of the Peccole Defendants, whom are
2 alleged to have actually made the fraudulent representations to Plaintiff Robert Peccole,
3 Plaintiffs' claims against Yohan Lowie, Vickie DeHart, Frank Pankratz, and EHB Companies
4 LLC, whom are not alleged to have ever held a conversation with Plaintiff Robert Peccole,
5 appear to have been brought solely for the purpose of harassment and nuisance.

6
7 90. Although ordinarily leave to amend the Complaint should be freely given when
8 justice requires, Plaintiffs have already amended their Complaint once and have failed to state a
9 claim against the Developer Defendants. For the reasons set forth hereinabove, Plaintiffs shall
10 not be permitted to amend their Complaint a second time in relation to their claims against
11 Developer Defendants as the attempt to amend the Complaint would be futile.

12
13 91. Developer Defendants introduced, and the Court accepted, the following Exhibits
14 at the Hearing, as well as taking notice of multiple other exhibits which were attached to the
15 various filings (including Plaintiffs' Deeds, Title Reports, Plaintiffs' Purchase Agreement,
16 Addendum to Plaintiffs' Purchase Agreement, Fore Stars, Ltd.'s Deed, the Declarations of
17 Annexation, and others):

- 18 1) Exhibit A: Property Annexation Summary Map;
19 2) Exhibit B: Master Declaration;
20 3) Exhibit C: Amended Master Declaration;
21 4) Exhibit D: Video/thumb drive from Planning Commission hearing of City
22 Attorney Brad Jerbic.

23 92. If any of these Findings of Fact is more appropriately deemed a Conclusion of
24 Law, so shall it be deemed.

25 CONCLUSIONS OF LAW

26 93. The Nevada Supreme Court has explained that "a timely notice of appeal divests
27 the district court of jurisdiction to act and vests jurisdiction in this court" and that the point at
28 which jurisdiction is transferred from the district court to the Supreme Court must be clearly

1 defined. Although, when an appeal is perfected, the district court is divested of jurisdiction to
2 revisit issues that are pending before the Supreme Court, the district court retains jurisdiction to
3 enter orders on matters that are collateral to and independent from the appealed order, i.e.,
4 matters that in no way affect the appeal's merits. *Mack-Manley v. Manley*, 122 Nev. 849, 855,
5 138 P.3d 525, 529-530 (2006).

6
7 94. In order for a complaint to be dismissed for failure to state a claim, it must appear
8 beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact,
9 would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev.
10 1213, 1217, 14 P.3d 1275, 1278 (2000)(emphasis added).

11 95. The Court must draw every fair inference in favor of the non-moving party. *Id.*
12 (emphasis added).

13
14 96. Courts are generally to accept the factual allegations of a Complaint as true on a
15 Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of the
16 claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010).

17 97. Plaintiffs have failed to state a claim upon which relief can be granted, even with
18 every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no
19 set of facts which would entitle them to relief.

20
21 98. NRS 52.275 provides that "the contents of voluminous writings, recordings or
22 photographs which cannot conveniently be examined in court may be presented in the form of a
23 chart, summary or calculation."

24 99. While a Court generally may not consider material beyond the complaint in ruling
25 on a 12(b)(6) motion, "[a] court may take judicial notice of 'matters of public record' without
26 converting a motion to dismiss into a motion for summary judgment," as long as the facts
27 noticed are not "subject to reasonable dispute." *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499
28

1 F.3d 1048, 1052 (9th Cir. 2007)(citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th
2 Cir. 2001); see also *United States v. Ritchie*, 342 F.3d 903, 908–09 (9th Cir.2003)). Courts may
3 take judicial notice of some public records, including the “records and reports of administrative
4 bodies.” *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (citing *Interstate Nat. Gas*
5 *Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir.1953)). The administrative regulations,
6 zoning letters, CC&R and Master Declarations referenced herein are such documents.
7

8 100. Plaintiffs have sought judicial challenge and review of the parcel maps without
9 exhausting their administrative remedies first and this is fatal to their claims regarding the parcel
10 maps. *Benson v. State Engineer*, 131 Nev. ___, 358 P.3d 221, 224 (2015) and *Allstate Insurance*
11 *Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).
12

13 101. The City Planning Commission and City Council’s work is of a legislative
14 function and Plaintiffs’ claims attempting to enjoin the review of Defendant Developers’
15 Applications are not ripe. UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G).
16

17 102. Plaintiffs have an adequate remedy in law in the form of judicial review pursuant
18 to UDC 19.16.040(T) and NRS 233B.
19

20 103. Zoning ordinances do not override privately-placed restrictions and courts cannot
21 invalidate restrictive covenants because of a zoning change. *Western Land Co. v. Truskolaski*, 88
22 Nev. 200, 206, 495 P.2d 624, 627 (1972).
23

24 104. NRS 278A.080 provides: “The powers granted under the provisions of this
25 chapter may be exercised by any city or county which enacts an ordinance conforming to the
26 provisions of this chapter.”
27

28 105. NRS 116.1201(4) specifically and unambiguously provides, “The provisions of
chapters 117 and 278A of NRS do not apply to common-interest communities.”

1 106. NRS 278.320(2) states that "A common-interest community consisting of five or
2 more units shall be deemed to be a subdivision of land within the meaning of this section, but
3 need only comply with NRS 278.326 to 278.460, inclusive and 278.473 to 278.490, inclusive."

4 107. Private land use agreements are enforced by actions between the parties to the
5 agreement and enforcement of such agreements is to be carried out by the Courts, not zoning
6 boards.
7

8 108. Plaintiffs "vested rights" Claim for Relief is not a viable claim because Plaintiffs
9 have failed to show that the GC Land is subject to the Master Declaration and therefore that
10 claim should be dismissed.

11 109. Plaintiffs have failed to plead fraud with particularity as required by NRCP 9(b).
12 The absence of any plausible claim of fraud against the Defendants was further demonstrated by
13 the fact that throughout the Court's lengthy hearing upon the Defendants' Motion to Dismiss
14 Plaintiffs' Amended Complaint, Plaintiffs did not make a single reference or allegation
15 whatsoever that would suggest in any way that the Plaintiffs had any claim of fraud against any
16 of the Defendants. Plaintiffs did not reference their alleged claim at all, and the Court Finds, at
17 this time, that the Plaintiffs have failed to state any claim upon which relief may be granted against
18 the Defendants. *See NRCP 9(b)*.
19

20 110. Under Nevada law, a Plaintiff must prove the elements of fraudulent
21 misrepresentation by clear and convincing evidence: (1) A false representation made by the
22 defendant; (2) defendant's knowledge or belief that its representation was false or that defendant
23 has an insufficient basis of information for making the representation; (3) defendant intended to
24 induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the
25 plaintiff as a result of relying on the misrepresentation. *Barnettler v. Reno Air, Inc.*, 114 Nev.
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1 441, 447, 956 P.2d 1382, 1386 (1998), citing *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110-
2 11, 825 P.2d 588, 592 (1992); *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115, 117 (1975).

3 111. Nevada law provides: (i) a shield to protect members and managers from liability
4 for the debts and liabilities of the limited liability company. *NRS 86.371*; and (ii) a member of a
5 limited-liability company is not a proper party to proceedings by or against the company. *NRS*
6 *86.381*. The Court finds that naming the individual Defendants, Lowie, DeHart and Pankratz,
7 was not made in good faith, nor was there any reasonable factual basis to assert such serious and
8 scurrilous allegations against them.

9
10 112. If any of these Conclusions of Law is more appropriately deemed a Findings of
11 Fact, so shall it be deemed.

12
13 **ORDER AND JUDGMENT**

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Defendants
15 Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,
16 Vickie Dehart and Frank Pankratz' Motion to Dismiss Amended Complaint is hereby
17 GRANTED.

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC,
20 Yohan Lowie, Vickie Dehart and Frank Pankratz, Plaintiffs' Amended Complaint is hereby
21 dismissed with prejudice.

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that collateral to the
23 instant Findings of Fact, Conclusions of Law, Order and Judgment, the Court will address the
24 Defendants' Motion for Attorneys' Fees and Costs, and Supplement thereto pursuant to NRCP
25 11, and issue a separate Order and Judgment relating thereto.

26 DATED this 21 day of November 2016.

27 
28 DISTRICT COURT JUDGE
A-16-739654-C

1 Respectfully submitted by:
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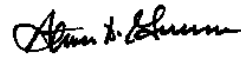
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CLERK OF THE COURT

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12 Yohan Lowie, Vickie DeHart
13 and Frank Pankratz

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 ROBERT N. PECCOLE and NANCY A.
17 PECCOLE, individuals, and Trustees of the
18 ROBERT N. and NANCY A. PECCOLE
19 FAMILY TRUST,

20 Plaintiffs,
21 vs.

22 PECCOLE NEVADA, CORPORATION, a
23 Nevada Corporation; WILLIAM PECCOLE
24 1982 TRUST; WILLIAM PETER and
25 WANDA PECCOLE FAMILY LIMITED
26 PARTNERSHIP, a Nevada Limited
27 Partnership; WILLIAM PECCOLE and
28 WANDA PECCOLE 1971 TRUST; LISA P.
MILLER 1976 TRUST; LAURETTA P.
BAYNE 1976 TRUST; LEANN P.
GOORJIAN 1976 TRUST; WILLIAM
PECCOLE and WANDA PECCOLE 1991
TRUST; FORE STARS, LTD., a Nevada
Limited Liability Company; 180 Land Co.,
LLC, a Nevada Limited Liability Company;
SEVENTY ACRES, LLC., a Nevada Limited
Liability Company; EHB COMPANIES, LLC,
a Nevada Limited Liability Company; THE
CITY OF LAS VEGAS; LARRY MILLER, an
individual; LISA MILLER, an individual;
BRUCE BAYNE, an individual; LAURETTA
P. BAYNE, an individual; YOHAN LOWIE,
an individual; VICKIE DEHART, an
individual; FRANK PANKRATZ, an
individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
JUDGMENT GRANTING DEFENDANTS
FORE STARS, LTD., 180 LAND CO.,
LLC, SEVENTY ACRES, LLC, EHB
COMPANIES, LLC, YOHAN LOWIE,
VICKIE DEHART AND FRANK
PANKRATZ'S MOTION FOR
ATTORNEYS' FEES AND COSTS

Date: November 21, 2016
In Chambers
Courtroom 11B


THE JIMMERSON LAW FIRM, P.C.
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1 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law and Judgment
2 Granting Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres, LLC, EHB
3 Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's Motion For
4 Attorneys' Fees and Costs was entered in the above-entitled action on the 20th day of
5 January, 2017, a copy of which is attached hereto.

6 Dated: January 26, 2017.

7 THE JIMMERSON LAW FIRM, P.C.

8
9
10 By: 
11 James J. Jimmerson, Esq.
12 Nevada State Bar No. 000264
13 415 South 6th Street, Suite 100
14 Las Vegas, Nevada 89101
15 Attorneys for Defendants Fore Stars, Ltd.,
16 180 Land Co., LLC., Seventy Acres, LLC;
17 Yohan Lowie, Vickie DeHart
18 and Frank Pankratz
19
20
21
22
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28

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 24th day of January, 2017, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC, SEVENTY ACRES, LLC, EHB COMPANIES, LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S MOTION FOR ATTORNEYS' FEES AND COSTS as indicated below:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
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An employee of The Jimmerson Law Firm, P.C.


CLERK OF THE COURT

1
2 **FFCL**

3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 **ROBERT N. PECCOLE and NANCY A.**
6 **PECCOLE, individuals, and Trustees of the**
7 **ROBERT N. AND NANCY A. PECCOLE**
8 **FAMILY TRUST,**

9 Plaintiffs,

10 v.

11 **PECCOLE NEVADA, CORPORATION, a**
12 **Nevada Corporation; WILLIAM PECCOLE**
13 **1982 TRUST; WILLIAM PETER and**
14 **WANDA PECCOLE FAMILY LIMITED**
15 **PARTNERSHIP, a Nevada Limited**
16 **Partnership; WILLIAM PECCOLE and**
17 **WANDA PECCOLE 1971 TRUST; LISA P.**
18 **MILLER 1976 TRUST; LAURETTA P.**
19 **BAYNE 1976 TRUST; LEANN P.**
20 **GOORJIAN 1976 TRUST; WILLIAM**
21 **PECCOLE and WANDA PECCOLE 1991**
22 **TRUST; FORE STARS, LTD., a Nevada**
23 **Limited Liability Company; 180 LAND CO,**
24 **LLC, a Nevada Limited Liability Company;**
25 **SEVENTY ACRES, LLC, a Nevada Limited**
26 **Liability Company; EHB COMPANIES,**
27 **LLC, a Nevada Limited Liability Company;**
28 **THE CITY OF LAS VEGAS; LARRY**
MILLER, an individual; LISA MILLER, an
individual; BRUCE BAYNE, an individual;
LAURETTA P. BAYNE, an individual;
YOHAN LOWIE, an individual; VICKIE
DEHART, an individual; and FRANK
PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS
OF LAW, ORDER AND JUDGMENT
GRANTING DEFENDANTS FORE
STARS, LTD., 180 LAND CO LLC,
SEVENTY ACRES LLC, EHB
COMPANIES LLC, YOHAN LOWIE,
VICKIE DEHART AND FRANK
PANKRATZ'S MOTION FOR
ATTORNEYS' FEES AND COSTS

Hearing Date: November 21, 2016
IN CHAMBERS

Courtroom 11B

This matter coming on for Hearing on the 21st day of November, 2016 on Defendants
Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,
Vickie Dehart and Frank Pankratz's Motion for Attorney's Fees and Costs, and the
Supplement thereto and request for NRCP 11 Sanctions, and Plaintiffs' Response thereto, and

DOUGLAS E. SMITH
DISTRICT JUDGE
DEPARTMENT EIGHT
LAS VEGAS NV 89159

ROR023948

25380

25357

1 the Court, having fully considered the papers and pleadings on file herein, and good cause
2 appearing, issues the following Findings of Fact, Conclusions of Law, Order and Judgment:

3 **FINDINGS OF FACT**

4 1. Plaintiffs Robert and Nancy Peccole are residents of the Queensridge common
5 interest community ("Queensridge CIC"), as defined in NRS 116, and owners of the property
6 identified as APN 138-31-215-013, commonly known as 9740 Verlaine Court, Las Vegas,
7 Nevada ("Residence"). (Amended Complaint, Par. 2). On August 4, 2016, Plaintiffs filed their
8 Amended Complaint which alleged the following Claims for Relief against all Defendants: 1)
9 Injunctive Relief; 2) Violations of Plaintiffs' Vested Rights and 3) Fraud.

10 2. At the time of filing of the Complaint and Amended Complaint, the Residence
11 was owned by the Robert N. and Nancy A. Peccole Family Trust ("Peccole Trust"). The
12 Peccole Trust acquired title to the Residence on August 28, 2013 from Plaintiff's Robert and
13 Nancy Peccole, as individuals. Plaintiff's Robert N. and Nancy A. Peccole, as individuals,
14 acquired their present ownership interest in the Residence on September 12, 2016 and
15 therefore had full knowledge of the plans to develop the land upon which the Badlands Golf
16 Course is presently operated at the time they acquired the Residence. By September 12, 2016,
17 and thereafter, Plaintiffs also had full knowledge of the hard zoning on Plaintiff and
18 Defendants' property of R-PD7, and of the City of Las Vegas' Ordinance of July 6, 2001, Bill
19 No. Z-2001-1, Ordinance No. 5353, that formally codified that zoning for the properties at
20 issue.

21 3. Earlier, on August 8, 2016, Plaintiffs filed a Motion for Preliminary Injunction
22 seeking to enjoin the City of Las Vegas from entertaining or acting upon agenda items before
23 the City Planning Commission that allegedly violated Plaintiffs' vested rights as home owners
24 in the Queensridge CIC.

25 4. All Defendants opposed the Motion, and in Plaintiffs' Reply, Plaintiffs
26 confirmed that their Motion was directed not just to the City, but to other Defendants, stating:
27 "The Motion for Preliminary Injunction does not involve the zoning issue, but instead,
28

1 addresses the Fore Stars Defendants' violation of the conditions and restrictions contained in
2 the Master Declaration." (Reply, p. 16/ln. 2-4). By their own argument, Plaintiffs
3 acknowledged that the Motion for Preliminary Injunction was for all intents and purposes
4 directed at the Fore Stars Defendants, notwithstanding that it was done so under the guise of
5 the City's conduct.

6
7 5. On September 2, 2016, Defendants filed a detailed Opposition, with copies of
8 the Master Declaration, Deeds, Title Reports and multiple other documents attached,
9 demonstrating that the covenants, conditions and restrictions of the Queensridge Master
10 Declaration (the Master Declaration of CC&Rs of the Queensridge CIC) only apply to land
11 which was originally declared to be a part of, or which was later annexed into, the Queensridge
12 CIC by a Declaration of Annexation. The property owned by the Defendants was not annexed
13 into the Queensridge CIC. Defendants' land is free and clear of encumbrances by CC&Rs, and
14 the restrictions of the Master Declaration. Defendants' Deeds, Plaintiffs' Deeds and title
15 report, and the Master Declaration all confirm that fact.

16
17 6. Thus, it was a misrepresentation by Plaintiffs to claim the land not subject to
18 annexation or easement is impacted by the CC&Rs of the adjacent Queensridge CIC, when
19 CC&Rs have no applicability to such land. Therefore, Plaintiffs' alleged "vested rights" to
20 "enforce the conditions and restrictive covenants of the Master Declaration" relating to the
21 Queensridge CIC, allegedly arising from their Purchase Agreement, Property Deed and the
22 Master Declaration, have no applicability to land that is not annexed into, or a part of, the
23 Queensridge CIC. As such, the Master Declaration has no applicability to Defendants' land.

24
25 7. On September 27, 2016, the parties were before the Court on the Motion for
26 Preliminary Injunction and, after reading all papers and pleadings on file, the Court heard
27 extensive oral argument lasting nearly two (2) hours from all parties. The Court concluded
28 that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to
demonstrate irreparable injury by the City's consideration of the Applications, and failed to
demonstrate a likelihood of success on the merits, amongst other failings.

1
2 8. The Court denied Plaintiffs' Motion for Preliminary Injunction in an Order
3 entered on September 30, 2016, because Plaintiffs failed to demonstrate that permitting the
4 City of Las Vegas Planning Commission (or the Las Vegas City Council) to proceed with its
5 consideration of the Applications constitutes irreparable harm to Plaintiffs that would compel
6 the Court to grant Plaintiffs the requested injunctive relief in contravention of the Nevada
7 Supreme Court's holding in *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers*
8 *Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

9 9. On September 28, 2016—the day after their Motion for Preliminary Injunction
10 directed at the City of Las Vegas was denied—Plaintiffs ignored that Nevada Supreme Court
11 precedent and filed a virtually identical Motion for Preliminary Injunction, but directed it
12 specifically at Defendants Fore Stars Ltd., Seventy Acres LLC, 180 Land Co LLC, EHB
13 Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz (hereinafter "Developer
14 Defendants"), and no longer against the Defendant City of Las Vegas. Substantively, the
15 Motion and the arguments are identical to those made in the original Motion which had just
16 been denied the day before, except that Plaintiffs focused a bit more on the "vested rights"
17 claim, namely, that the applications themselves could not have been filed because they are
18 allegedly prohibited by the Queensridge Master Declaration.

19 10. Extensive briefing followed in which Defendants demonstrated that the terms,
20 conditions and restrictions of the Queensridge Master Declaration could not be enforced
21 against land which is not within the Queensridge CIC, either because it was "Not a Part of the
22 Property or Annexable Property" as defined within the Queensridge Master Declaration, or
23 because it was Annexable Property, but which was never annexed (and therefore never became
24 a part of the Queensridge CIC).

25 11. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first
26 Motion for Preliminary Injunction. The Court found that the Motion was procedurally
27 improper because Plaintiffs were required to seek leave of Court prior to filing a Motion for
28 Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the

1 Court issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing,
2 converting Plaintiffs Motion to a Motion for Leave of Court to File Motion for Rehearing and
3 setting same for in chambers hearing on October 17, 2016.

4 12. On October 11, 2016, the Court held a hearing on Defendants City of Las
5 Vegas' Motion to Dismiss Amended Complaint, which was ultimately was granted by Order
6 filed October 19, 2016. At the hearing, the Court advised Mr. Peccole, counsel for Plaintiffs,
7 that it believed that he was too close to this" and was missing the issue of whether the Master
8 Declaration would apply to land which is not part of the Queensridge CIC. *October 11, 2016*
9 *Hearing Transcript at 13:11-13.*

10 13. Also on October 11, 2016, Defendants wrote a letter to Plaintiffs pursuant to
11 NRCP 11, asking Plaintiffs to withdraw their second Motion for Preliminary Injunction.
12 Defendants, in accordance with the procedures contained within NRCP 11, gave Plaintiffs 21
13 days to withdraw their Motion, and also enclosed within their letter the proposed Motion for
14 Rule 11 Sanctions Defendants intended to file if the offending second Motion for Preliminary
15 Injunction filed by Plaintiffs was not withdrawn.

16 14. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in
17 relation to the Order Denying their first Motion for Preliminary Injunction against the City of
18 Las Vegas.

19 15. On October 13, 2016, Plaintiffs' counsel responded to the NRCP 11 letter from
20 counsel for EHB Companies, LLC, refusing to withdraw the second Motion for Preliminary
21 Injunction against Developer Defendants.

22 16. On October 18, 2016, Defendants filed an Opposition to Plaintiffs' Motion for
23 Preliminary Injunction against Developer Defendants.

24 17. On October 18, 2016, Defendants filed an Opposition to Plaintiffs' Motion for
25 Stay Pending Appeal.

26 18. On October 19, 2016, Defendants filed an Opposition to Plaintiffs' Motion for
27 Rehearing.
28

1
2 19. On October 19, 2016, the Court entered an Order denying Plaintiffs' Motion for
3 Rehearing of Plaintiffs' first Motion for Preliminary Injunction because Plaintiffs could not
4 show irreparable harm, because they possess administrative remedies before the City Planning
5 Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS
6 278.0235, which they had failed to exhaust, and because Plaintiffs failed to show a reasonable
7 likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any
8 change of circumstances since that time that would show a reasonable likelihood of success as
9 of October 17, 2016.

10 20. On October 19, 2016, the Court entered an Order denying Plaintiffs' Motion for
11 Stay Pending Appeal on the Order Denying Plaintiffs' Motion for Preliminary Injunction
12 against the City of Las Vegas because, as the Order stated, Plaintiffs failed to satisfy the
13 requirements of NRAP 8 and NRCF 62(c). Plaintiffs failed to show that the object of their
14 potential writ petition will be defeated if their stay is denied, they failed to show that they
15 would suffer irreparable harm or serious injury if the stay is not issued and they failed to show
16 a likelihood of success on the merits.

17 21. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and
18 Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 13.070,
19 which was set to be heard in Chambers on November 21, 2016.

20 22. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying
21 their Motion for Preliminary Injunction against the City of Las Vegas. Subsequently, on
22 October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10,
23 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was
24 therefore denied as moot.

25 23. On October 31, 2016, the Court entered an Order denying Plaintiffs' Motion for
26 Preliminary Injunction against Developer Defendants because, as the Court's Order stated,
27 Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for
28 which compensatory damages are an inadequate remedy and failed to show a reasonable

1 likelihood of success on the merits, since the Master Declaration of the Queensridge CIC did
2 not apply to land which was not annexed into, nor a part of, the Queensridge CIC. The Court
3 also based its denial on the fact that Nevada law does not permit a litigant from seeking to
4 enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations
5 against interfering with or seeking advanced restraint against an administrative body's exercise
6 of legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers*
7 *Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969)

8
9 24. As this Court has already found, Plaintiffs' claim within their Motion for
10 Preliminary Injunction that the Applications were "illegal" or "violations of the Master
11 Declaration" is without merit. The filing of these Applications by Defendants, or any
12 Applications by Defendants, is not prohibited by the terms of the Master Declaration, because
13 the Applications concerned Defendants' own land, and such land that is not annexed into the
14 Queensridge CIC is therefore not subject to the terms of its Master Declaration. Defendants
15 cannot violate the terms of an agreement to which they are not a party and which does not
16 apply to them.

17 25. Exhibit A to the Queensridge Master Declaration defines the initial land
18 committed as "Property" and Exhibit B defines the land that is eligible to be annexed, but it
19 only becomes part of the "Property" if a Declaration of Annexation is filed with the County
20 Recorder. Recital A to the Queensridge Master Declaration defines "Property" to "mean and
21 include both of the real property described in Exhibit "A" hereto and that portion of the
22 Annexable Property which may be annexed from time to time in accordance with Section 2.3,
23 below," and further states that "In no event shall the term "Property" include any portion of the
24 Annexable Property for which a Declaration of Annexation has not been Recorded..."

25 26. The Court finds that publically available recorded documents, the Declarations
26 of Annexation recorded between 1996-2011 (contained within the Supplemental Exhibit,
27 Annexation Binder filed on October 20, 2016 at the Court's request), and the map entered as
28 Exhibit A at the November 1, 2016 Hearing and to Defendants' November 2, 2016 Supplement

1 for illustrative purposes, show that the property owned by Developer Defendants that was
2 never annexed into the Queensridge CIC is not part of the "Property" as defined in the
3 Queensridge Master Declaration. The Court therefore finds that the terms, conditions, and
4 restrictions of the Queensridge Master Declaration do not apply to the GC Land and cannot be
5 enforced against the GC Land.

6
7 27. Plaintiffs cannot prove a set of facts under which the GC Land was annexed
8 into the "Property" as defined in the Queensridge Master Declaration. Since Plaintiffs have
9 failed to prove that the GC Land was annexed into the "Property" as defined in the Master
10 Declaration, then the GC Land is not subject to the terms and conditions of the Master
11 Declaration. There can be no violation of the Master Declaration by Defendants if the GC
12 Land is not subject to the Master Declaration. Therefore, the Defendants' Applications are not
13 prohibited by, or violative of, the Master Declaration.

14 28. The Court finds that Exhibit C to the Master Declaration is not a depiction
15 exclusively of the "Property" as Plaintiffs allege. It is clear that it depicts both the Property,
16 which is a very small piece, and the Annexable Property, pursuant to the Master Declaration,
17 page 10, Section 1.55, which states that Master Plan is defined as the "Queensridge Master
18 Plan proposed by Declarant for the Property and the Annexable Property which is set forth in
19 Exhibit "C," hereto..." Plaintiffs' Supplement filed November 8, 2016, Exhibit 5, is page 10 of
20 the Master Declaration, and Plaintiffs emphasize that is a master plan proposed by the
21 Declaration "for the property." But reading the provision as a whole, it is clear that it is a
22 "proposed" plan for the Property (a defined term within the Master Declaration at Recital A)
23 and "the Annexable Property" (a defined term within the Mater Declaration, also at Recital A).
24 Likewise, Exhibit 6 to Plaintiffs' Supplement filed November 8, 2016 defines 'Final Map' as a
25 Recorded map of "any portion" of the Property. It does not depict only the Property. The
26 Master Declaration at Section 1.55 is clear that its Exhibit C depicts the Property and the
27 Annexable Property, and Defendants' Supplemental Exhibit A makes clear that not all of the
28 possible Annexable Property was actually annexed into the Queensridge CIC. Therefore, not

1 all of the possible Annexable Property became part of the Queensridge CIC, including, but not
2 limited to, the nine (9) holes of golf course owned by Defendants, commonly referred to as
3 "Outlaw."
4

5 29. Plaintiffs' Supplemental Exhibit 7, which is Exhibit C to the Master
6 Declaration, does not depict "Lot 10" as part of the Property. It depicts Lot 10 as part of the
7 Annexable Property. Plaintiffs' Supplemental Exhibit 8 depicts, as discussed by Defendants at
8 the November 1, 2016 Hearing, that Lot 10 was subdivided into several parcels (one of which
9 was Parcel 21) became the 9-hole golf course, commonly referred to as "Outlaw." It was not
10 designated as "not a part of the Property or Annexable Property" because it was Annexable
11 Property. However, again, the public record Declarations of Annexation, as summarized in
12 Defendants' Supplemental Exhibit A, shows that Parcel 21, the 9 holes, was never annexed
13 into the Queensridge CIC and never became subject to the Queensridge CIC Master
14 Declaration of CC&R's.

15 30. The Master Declaration at Recital B provides that the Property "may, but is not
16 required to, include...a golf course," and further provides that "The existing 18-hole golf
17 course commonly known as the "Badlands Golf Course" is not a part of the Property or
18 Annexable Property." Plaintiffs concede that the 18-hole golf course is clearly not a part of the
19 Property or Annexable Property and is not subject to the Queensridge CIC. The Court finds
20 that does not mean that the 9-hole golf course was a part of the Property. Quite the contrary. It
21 is clear that it was part of the Annexable Property, and was subject to development rights. In
22 addition to the "diamond" on the Exhibit C Map indicating it is "subject to development rights,
23 p. 1, Recital B of the Master Declaration states: "Declarant intends, without obligation, to
24 develop the Property and the Annexable Property..."

25 31. Further, the Amended and Restated Master Declaration of October, 2000
26 included the 9 holes, and provides "The existing 27-hole golf course commonly known as the
27 "Badlands Golf Course" is not a part of the Property or Annexable Property."
28

1 32. The Court finds that Mr. Peccole's Deed (Plaintiffs' Supplemental Ex. 1
2 and Preliminary Title Report provided by Plaintiffs (Exhibit 3 to Plaintiffs' Reply in support of
3 their first Motion for Preliminary Injunction, filed September 9, 2016), as well as the current
4 Title Report for Plaintiffs' residence (Exhibit B to Defendants' Opposition to Motion for
5 Rehearing, filed October 19, 2016) both indicate that his home was part of the Queensridge
6 CIC, that it sits on Parcel 19, which was annexed into the Queensridge CIC in March, 2000.
7 Both indicate that his home is subject to the terms and conditions of the Master Declaration,
8 "including any amendments and supplements thereto." Conversely, the Fore Stars, Ltd. Deed
9 of 2005 does not have any such reference to the Queensridge Master Declaration or
10 Queensridge CIC. Likewise none of the other Deeds involving the GC Land, Defendants'
11 Supplemental Exhibits E, F, and G filed November 2, 2016 (all public documents), make any
12 reference to such land being subject to, or restricted by, the Queensridge Master Declaration.

13 33. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration
14 does not apply to the land proposed to be developed by the Defendants, as it states on page 2,
15 paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by
16 including a Restrictive Covenant that Badlands must remain a golf course as he and other
17 agents of the developer had represented to homeowners." The Amended Complaint reiterated
18 at page 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out
19 any restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded
20 in prosecuting this case and attempting to enjoin development with full knowledge that there
21 were no applicable restrictions, conditions and covenants from the Master Declaration which
22 applied to Defendants' land, and there were no restrictive covenants in place relating to the
23 sale which prevented Defendants from doing so.

24 34. Indeed, while Plaintiffs made the false allegation that the density cap on the golf
25 course was "0" units under the Queensridge Master Plan, page 11, paragraph 44 of the
26 Amended Complaint alleges that Defendants' proposed "amendment" to the City of Las Vegas
27 Master Plan "would allow Fore Stars, Ltd. to exceed the density cap of 8 units per acre on the
28

1 Badlands Golf Course that is located in the Queensridge Master Planned Community." *Id.* at
2 lines 10-13.

3
4 35. As part of Defendants having prevailed on all the Motions filed by Plaintiffs
5 attempting to improperly obtain a preliminary injunction, Defendants have been forced to incur
6 significant attorneys' fees and costs to respond to the repetitive filings of Plaintiffs. Plaintiffs'
7 Motions are without merit and their repetitive nature, and their repetitive advancement of
8 arguments that were without merit, and after the Court expressly warned Plaintiffs that they
9 were "too close" to the dispute (with Plaintiffs being relatives of, and a part of, the family who
10 developed the Queensridge CIC), were filed in bad faith as that term is used within NRS
11 18.010(2)(b) and EDCR 7.60. Plaintiffs' goals, to delay and to cost Defendants as much as
12 possible in attorneys' fees and costs, becomes more and more apparent, as Developer
13 Defendants have the right to develop the GC Land.

14 36. This Court has heard Plaintiffs' arguments and is not satisfied, and does not
15 believe, that the GC Land is subject to the Master Declaration of Queensridge. Thus, Plaintiffs
16 do not have the ability to "enforce" the Master Declaration of Queensridge against Defendants.

17 37. On November 15, 2016, Defendants filed a Supplement to the Motion for
18 Attorneys' Fees and Costs and Joint Motion for Rule 11 Sanctions and Attorneys' Fees and
19 Costs, having waited, as noted above, the requisite period following service of the demand to
20 withdraw the Motion. The Supplement sought attorneys' fees and costs against Plaintiffs in the
21 sum of \$147,216.85, relating to preliminary injunction and related issues (but not the Motion
22 to Dismiss), or, at minimum, the reduced sum of attorneys' fees and costs representing the total
23 attorneys' fees and costs incurred after the September 2, 2016 filing of Defendants' Opposition
24 to the first Motion for Preliminary Injunction, totaling \$82,718.50, as well as sanctions against
25 Plaintiffs and Plaintiffs' counsel pursuant to NRCP 11.

26 38. On November 17, 2016, Plaintiffs filed a Response to that Supplement.

27 39. As previously found, this Court is of the opinion that Plaintiffs' counsel Robert
28 N. Peccole, Esq. appeared to be so personally close to the case that he is blinded by his

1 relativity to the case that he is ignoring the key issues central to the causes of action and failing
2 to recognize that continuing to pursue flawed claims for relief, and rehashing the arguments
3 again and again, following the date of the Defendants' September 2, 2016 Opposition when
4 Plaintiffs had actual notice of the flaws in their position, the proof contained within the
5 Exhibits, and the error in Plaintiffs' improper and scurrilous allegations, has caused
6 Defendants substantial attorneys' fees and costs.

7
8 40. In fact, completely ignoring the Findings of this Court to date regarding the
9 inapplicability of the Master Declaration to land not annexed into the Queensridge CIC,
10 Plaintiffs filed three (3) additional documents: Renewed Motion for Preliminary Injunction
11 Against Fore Stars, Ltd. Seventy Acres, 180 Land Co., EHB Companies, Yohan Lowie, Vickie
12 DeHart and Frank Pankratz, filed November 18, 2016, Motion Requesting Leave to Amend
13 Amended Complaint, filed November 21, 2016, and Additional Information to Renewed
14 Motion for Preliminary Injunction, filed November 28, 2016.

15 41. On November 30, 2016, this Court entered extensive *Findings of Fact*,
16 *Conclusions of Law and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC*,
17 *Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank*
18 *Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint*. Such Findings
19 of Fact, Conclusions of Law and Orders are referred to and hereby incorporated herein by
20 reference, as if set forth in full.

21 42. Defendants have submitted, pursuant to the *Brunzell* case, its affidavits
22 regarding attorney's fees and costs requested, in the total sum of \$147,216.85, with
23 \$114,368.94 incurred with The Jimmerson Law Firm, PC through October 20, 2016, and
24 \$32,847.91 incurred with Sklar Williams, PLLC, through October 31, 2016, for all of the fees
25 and costs incurred relating to Plaintiffs' attempts to improperly enjoin the City and Defendants.
26 Defendants have identified the total attorneys' fees and costs incurred after the September 2,
27 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction, totaling
28 \$92,718.50, with \$65,266.04 incurred with The Jimmerson Law Firm, PC through October 20,

1 2016, and \$17,452.46 incurred with Sklar Williams, PLLC, through October 31, 2016. Those
2 attorneys' fees and costs continued to accrue after October 20, 2016, through the Court's
3 Minute Order of November 21, 2016.

4 43. The specific Findings within the prior Orders filed with the Court demonstrate
5 the frivolousness of Plaintiffs' position, and certainly after receipt of the September 2, 2016
6 Opposition and the voluminous exhibits attached thereto, Plaintiffs were on notice that their
7 claims were unreasonable and unsupported by fact or law and, as such, Plaintiffs' maintaining
8 the same was unreasonable and in bad faith.

9 44. The Court Finds Defendants have been forced to incur substantial fees and costs
10 relating to Plaintiffs' improper attempts to obtain a preliminary injunction to prevent review of
11 Defendants' applications, and to prevent submission of applications by Defendants. The Court
12 has reviewed the redacted billings, which show sums incurred from the date of Defendants'
13 receipt of the initial Motion for Preliminary Injunction in August, 2016 through the October,
14 2016 billing, not including additional fees and costs, not yet calculated, from October 20, 2016
15 through the date of filing of the Supplement. While Defendants sought all of their fees from
16 the date of the filing of Plaintiffs' first Motion for Preliminary Injunction, in addition thereto,
17 Defendants separately calculated those sums incurred only following the filing of their
18 September 2, 2016 Opposition to the first Motion for Preliminary Injunction through the
19 October, 2016 billing for their respective counsel.

20 45. Defendants sought an award of attorneys' fees and costs, dollar for dollar,
21 relating to the need to oppose Plaintiffs' preliminary injunction and related Motions, not
22 including the fees and costs incurred relating to Defendants' Motion to Dismiss. Defendants
23 requested, at minimum, those fees and costs incurred following the filing of their Opposition,
24 dollar for dollar, as the same were reasonable and necessarily incurred.

25 46. The Court Finds that Plaintiffs were on notice that their position was
26 maintained without reasonable ground after the September 2, 2016 filing of Defendants'
27 Opposition to the first Motion for Preliminary Injunction. The voluminous documentation
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1 attached thereto made clear that the Master Declaration does not apply to Developer
2 Defendants' land that was not annexed into the Queensridge CIC.

3 47. The Court finds that the sums incurred after September 2, 2016 were reasonable
4 and necessary, as Plaintiffs continued to maintain their frivolous position and filed multiple,
5 repetitive documents which required response.

6 48. The Court Finds that Defendants and Defendants' counsel meet the factors
7 outlined in Nevada Rules of Professional Conduct, Rule 1.5 and *Brunzell v. Golden Gate*
8 *National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

9 49. Regarding the time and labor required, the novelty and difficulty of the
10 questions involved and the skill requisite to perform legal services properly was significant and
11 substantial. The issues presented required an understanding and clear presentation of zoning,
12 land use, the applicability of NRS 116, common interest communities, the inapplicability of
13 NRS 278A, the City's administrative process, annexation and related matters. The time
14 associated with this work was substantial as evidenced by the briefing, and the Court finds that
15 these efforts were both reasonable and necessary to incur in order to receive the Court's
16 Orders.

17 50. The Declaration of Counsel attests that the acceptance of this work required
18 counsel to do a substantial amount of work and spend a significant amount of time on these
19 issues. The substantial documents prepared and filed by Defendants, the analysis of the
20 relevant codes, statutes and case law, as well as the presentations and boards in Court, all
21 evidence the significant amount of time and effort devoted by Defendants' counsel.

22 51. The fee customarily charged in the locality for similar legal services--namely
23 hourly rates of Mr. Jimmerson at \$595.00 per hour downward to paralegals and other staff in
24 accordance with their fee agreement, are customarily charged in Clark County, Nevada for
25 similar legal services and are, indeed, reasonable. The firm's use of paralegals promoted cost-
26 effective litigation and reduced litigation costs, as they were billed at a lower rate. Mr.
27 Hackett's current hourly rate is \$395.00 per hour, and his Associate at \$275 per hour. These
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1 billing rates, too, are consistent with the rates for similar services for attorneys with similar
2 training and experience in the local area and are reasonable for this type of commercial and
3 business litigation work in Las Vegas, Nevada.

4 52. The amount involved and the results obtained are another factor for the Court to
5 consider. This case involves the right to develop millions of dollars' worth of property. Given
6 the number of filings by Plaintiffs that required responses, and the Court hearings, the time
7 spent was reasonable and necessary to explain and defend Defendants' position.

8 53. The nature and length of the professional relationship between Defendants and
9 their counsel is such that Defendants sought out The Jimmerson Law Firm, P.C. and Sklar
10 Williams believing them to be well-qualified to process Defendants' work, and indeed these
11 firms have completed significant work on their behalf.

12 54. The experience, reputation, and ability of the lawyer or lawyers performing the
13 services are certainly commensurate with the requests being made. The Jimmerson Law Firm,
14 P.C., is an AV rated law firm. Mr. Jimmerson has long been recognized as one of the State's
15 better attorneys as a civil litigator, and nationally is in many specific professional societies and
16 nationally-known organizations. Mr. Jimmerson has been awarded "Top 100 Trial Lawyers"
17 by the National Trial Lawyer Association; repeatedly noted in Steven Naifeh's "Best
18 Lawyers"; elected to "Super Lawyers Business Litigation"; a Fellow in the American College
19 of Family Trial Lawyers, and Diplomat of the American Academy of Matrimonial Lawyers.
20 The Jimmerson Law Firm and Mr. Jimmerson have been named in the Preeminent Attorneys
21 and Law Firms in Martindale Hubbell for more than two dozen years. Mr. Jimmerson was
22 nominated for and awarded the Ellis Island Medal of Honor, a Lifetime Achievement Award
23 for work as a trial attorney and for humanitarian and other efforts.

24 55. Mr. Hackett was awarded his *Juris Doctorate* degree *cum laude* from California
25 Western School of Law in 1991, where he served as the Articles Editor on the Law Review
26 and thereafter served as a law clerk for a federal judge on the United States Court of Appeals
27 for the Sixth Circuit for 1 year, until 1992. Mr. Hackett then sat for and passed the California
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1 Bar and was admitted in 1992, and sat for and passed the Nevada Bar and was admitted in
2 1993. Mr. Hackett is admitted to practice in all courts in the State of California and the State
3 of Nevada, the United States District Court for the District of Nevada and the United States
4 Court of Appeals for the Ninth Circuit. Mr. Hackett was previously employed as an associate
5 attorney for seven (7) years and then became a shareholder for four (4) years at Lionel Sawyer
6 & Collins, until leaving the firm in 2003. During that time, he practiced primarily as a
7 commercial litigator handling preliminary injunctions, trials, appeals and all other manner of
8 commercial disputes, including many real estate development matters similar to the present
9 case. From 2003 through 2009, Mr. Hackett was the Managing Director of an international real
10 estate development company based in Israel, which was developing condominiums and other
11 real estate ventures in Las Vegas, Nevada and through the United States, Europe and Asia,
12 directly responsible for all aspects of a 450 unit condominium development valued at
13 approximately \$900 million dollars and oversaw a workforce of fifty (50) employees. Mr.
14 Hackett joined the firm of Sklar Williams PLLC in 2010 and has been practicing in
15 commercial litigation with that firm since that date. Mr. Hackett was assisted in this case by
16 associate Johnathan Fayeghi, a 2012 graduate of UNLV Boyd School of Law, and admitted to
17 the Nevada Bar in 2012 and has practiced in commercial litigation since joining SW in 2014.
18

19 56. The costs incurred by Defendants include those for hearing transcripts,
20 photocopies and printing, boards, legal research, filing fees, fax transaction charges, hand
21 delivery, recorded documents, and related costs. These were reasonable and necessary to
22 prosecute this action. Each cost was actually incurred and none appear to be "estimated" costs.

23 57. Because of the multiple hearings and Orders made by this Court, due to
24 Plaintiffs' duplicative filings, and to prepare for briefing, hearing and oral argument,
25 Defendants had to obtain the Transcripts from multiple hearings. Those Transcripts and
26 documentation of rulings, which were used and weaved into argument at the hearing and in
27 briefings, helped Defendants to prevail.

28 58. Photocopies and Printing included copies of the Master Declaration, Amended

1 Master Declaration, several maps and boards, and other voluminous exhibits and supplements.
2 Several copies needed to be made for service and for the Court, as well as for the oral
3 presentations. There were tens of thousands of pages of documents not just to copy, but to
4 print and review.

5 59. Legal Research was necessary due to the complexity and inaccuracy of many of
6 the issues raised in Plaintiffs' Motions. Given the complexity of the issues, these research
7 costs were reasonable and appropriate.

8 60. Filing Fees, Fax Transaction Charges, and Hand Delivery fees are all reasonable
9 and necessary litigation costs which are permitted under statute, and none of these charges are
10 unreasonable or excessive. Likewise, recording fees, certified copies, and documents obtained
11 from the Clark County Recorder were, unfortunately, necessary to address the claims made by
12 Plaintiffs.

13 61. Defendants are the prevailing party in this case, and Plaintiffs' position was
14 maintained without reasonable ground or to harass the prevailing party. NRS 18.010.

15 62. Plaintiffs have presented to the court motions which were, or became, frivolous,
16 unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as
17 to increase costs unreasonably and vexatiously. EDCR 7.60.

18 63. Given the attorneys' fees and costs incurred relating to the preliminary
19 injunction issues, Plaintiffs' other multiple related Motions, and the meritorious request for
20 attorneys' fees and costs relating thereto, awarding further attorneys' fees and costs pursuant to
21 NRCP 11, which addresses the same Motions, attorneys' fees, and costs, is unnecessary and
22 denied as moot.

23 64. If any of these Findings of Fact is more appropriately deemed a Conclusion of
24 Law, so shall it be deemed.

25 CONCLUSIONS OF LAW
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1 65. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the
2 claim of the opposing party was brought without reasonable ground or to harass the prevailing
3 party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless
4 and made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856
5 P.2d 560 (1993). Sanctions may be awarded where the pleading fails to be well grounded in
6 fact and warranted by existing law and where the attorney fails to make a reasonable competent
7 inquiry. *Id.* The decision to award attorney fees as a sanction against a party for pursuing a
8 claim without reasonable ground is within the district court's sound discretion and will not be
9 overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*,
10 130 P.3d 1280 (Nev. 2006).
11

12 66. NRS 18.010 (2) provides that: "In addition to the cases where an allowance is
13 authorized by specific statute, the court may make an allowance of attorney's fees to a
14 prevailing party: (a) When the prevailing party has not recovered more than \$20,000; or (b)
15 Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-
16 claim or third-party complaint or defense of the opposing party was brought or maintained
17 without reasonable ground or to harass the prevailing party. The court shall liberally construe
18 the provisions of this paragraph in favor of awarding attorney's fees in all appropriate
19 situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this
20 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in
21 all appropriate situations to punish for and deter frivolous or vexatious claims and defenses
22 because such claims and defenses overburden limited judicial resources, hinder the timely
23 resolution of meritorious claims and increase the costs of engaging in business and providing
24 professional services to the public."
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1 67. An award of attorney's fees and costs in this case is appropriate, as Plaintiffs'
2 claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry
3 before, proceeding with their first Motion for Preliminary Injunction after receipt of the
4 Opposition, and in filing their second Preliminary Injunction Motion, their Motion for
5 Rehearing or their Motion for Stay Pending Appeal, particularly in light of the Decision of the
6 Court the day prior. Plaintiffs' Motion is the epitome of a pleading that "fails to be well
7 grounded in fact and warranted by existing law and where the attorney fails to make a
8 reasonable competent inquiry."
9

10 68. The Court finds that the Motions appear to be part of a long line of attempts to
11 delay Developer Defendants' development of their land, with the hope that such delays—and
12 the negative publicity generated by lies—will deter the City in approving just, reasonable, and
13 appropriate zoning applications, and to financially burden Defendants with litigation costs.
14

15 69. Further, there was absolutely no competent evidence to support the contentions
16 in Plaintiffs' Motions, neither the purported "facts" they assert, nor the "irreparable harm" that
17 they alleged would occur if their Motions were denied. There was no Affidavit or Declaration
18 filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit
19 their needs by transferring title to their property mid-litigation after the Opposition to Motion
20 for Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting
21 "vested rights" which they had no right to assert against Defendants.
22

23 70. In contrast, the evidence submitted by Defendants, and attested to by
24 Declaration and Affidavit, demonstrated the frivolousness of Plaintiffs' claims. The Court
25 agrees that Plaintiffs' attempts to twist the facts to fit their argument in an effort to mislead the
26 Court should be met with stiff admonishment, and an award to Defendants of their attorneys'
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1 fees and costs, dollar for dollar, following the filing of Defendants' September 2, 2016
2 Opposition and the exhibits attached thereto.

3
4 71. Plaintiffs certainly did not, and cannot present any set of circumstances under
5 which they would have had a good faith basis in law or fact to assert their Motion for
6 Preliminary Injunction against the non-Applicant Defendants whose names do not appear on
7 the Applications. The non-Applicant Defendants had nothing to do with the Applications, and
8 Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally,
9 served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs.

10 72. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party
11 without just cause: (1) Presents to the court a motion or an opposition to a motion which is
12 obviously frivolous, unnecessary or unwarranted, and (3) So multiplies the proceedings in a
13 case as to increase costs unreasonably and vexatiously.

14
15 73. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions
16 was to interfere with, and delay, knowing full well that they ultimately could not deny,
17 Defendants' development of their land. Plaintiffs have again forced Defendants to incur
18 attorneys' fees to respond to the unsupported positions taken by Plaintiffs, and their frivolous
19 attempt to bypass City Ordinances and circumvent the legislative process. The Court concludes
20 that Plaintiffs filed Motions that were obviously frivolous, unnecessary, or unsupported, and so
21 multiplied the proceedings in this case so as to increase costs unreasonably and vexatiously.

22
23 74. The Plaintiffs' Motion for Preliminary Injunction, first against the City of Las
24 Vegas and then against the remaining Defendants, was prosecuted in bad faith and warrants an
25 award of attorney fees and costs. The allegations within Plaintiffs' Motion for Preliminary
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1 Injunction against the City, then repeated against the remaining Defendants, were not based
2 upon fact, were not based upon law and were without reasonable basis.

3 75. This Court, and specifically the Defendants, have each given the Plaintiffs
4 ample opportunity to withdraw their Motions, rescind their actions and otherwise seek to
5 exhaust their administrative remedies as against both the City of Las Vegas and the remaining
6 Defendants rather than to persist and maintain a bad faith piece of litigation that harms the
7 Defendants. Instead they proceeded in making "scurrilous allegations" and in trying to assert
8 alleged "vested rights" which they do not possess against Defendants. Plaintiffs' refusal to
9 withdraw their improper Motion for Preliminary Injunction stands in stark contrast to the quick
10 amendment of their original Complaint in response to correspondence from counsel for the
11 now-dismissed Peccole Defendants, Lance C. Earl, Esq.

12 76. Considering the length of time that the Plaintiffs have maintained their action,
13 coupled with the fact that they have been given ample time to withdraw their Motions, but still
14 fail to do the right thing, the Court can only reach one inference and conclusion from Plaintiffs
15 actions, including the naming defendants personally with no basis whatsoever, which is that
16 Plaintiffs are seeking to harm the Defendants, their project and their land, improperly and
17 without justification, and have committed an abuse of process in doing so. Thus, this is a very
18 compelling case of bad faith having been demonstrated on the part of the Plaintiffs, whose
19 emotional approach and lack of clear analysis or care in the drafting and submission of their
20 pleadings and Motions warrant the award of reasonable attorney's fees and costs in favor of the
21 Defendants and against the Plaintiffs.

22 77. The Nevada Supreme Court, in *Eagle Thrifty Drugs & Markets, Inc., v. Hunter*
23 *Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969),
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1 specifically found that a litigant could not enjoin administrative or legislative procedures by
2 seeking an injunction against the applicant rather than the City Council, finding: "This means
3 that a court could not enjoin the City of Reno from entertaining Eagle Thrifty's request to
4 review the planning commission recommendation. This established principle may not be
5 avoided by the expedient of directing the injunction to the applicant instead of the City
6 Council." *Id.* (Emphasis added.) Thus, this Court's denial of Plaintiffs' Motion for a
7 Preliminary Injunction with respect to the Application was already a denial of an injunction
8 against Developer Defendants, as well as the City.
9

10 78. Nevada law grants the City broad authority to implement procedures necessary
11 to effectuate zoning, including granting cities and counties the authority to "provide for the
12 manner in which zoning regulations and restrictions and the boundaries of zoning districts are
13 determined, established, enforced and amended." NRS 278.250; NRS 278.260.
14

15 79. The Nevada Supreme Court has long recognized that zoning is a matter properly
16 within the province of the legislature and that the judiciary should not interfere with zoning
17 decisions, especially before they are even final. *See, e.g., McKenzie v. Shelly*, 77 Nev. 237, 362
18 P.2d 268 (1961) (judiciary must not interfere with board's determination to recognize
19 desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie*,
20 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not interfere with the zoning power unless
21 clearly necessary); *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234
22 (1973) (statutes guide the zoning process and the means of implementation until amended,
23 repealed, referred or changed through initiative).
24

25 80. In fact, the Nevada Supreme Court has specifically ruled that local zoning
26 decisions should not be interfered with by means of a Court injunction. In *Eagle Thrifty Drugs*
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1 & Markets, Inc., v. Hunter Lake Parent Teachers Assoc., 85 Nev. 162, 164-165, 451 P.2d 713,
2 714-715 (1969), the Nevada Supreme Court reversed the District Court's decision to grant an
3 injunction, finding that it was not within the province of the judiciary to interfere with the
4 zoning power delegated to the cities and counties by the State. *Id.* 451 P.2d at 715.
5

6 81. Although the Supreme Court noted that none of the City's reapplication
7 procedures were expressly authorized under State law, the Supreme Court nevertheless
8 determined that the procedures were encompassed by the broad grant of authority in NRS
9 278.250 and NRS 278.260, which expressly authorizes cities and counties "to establish the
10 administrative machinery to amend, supplement and change zoning districts." *Id.* The
11 Supreme Court further declared that, "[a]lthough some may believe that the procedural
12 provisions of the city do not afford sufficient protection ... any correction must come from the
13 City Council... it is not [the Court's] business to write a new city ordinance." *Id.*, 451 P.2d at
14 715.
15

16 82. For identical reasons, it is not the business of this Court to intervene in the
17 zoning process by issuance of an injunction prohibiting the City of Las Vegas Planning
18 Commission "entertaining or acting upon agenda items presently before the City Planning
19 Commission..." See *Plaintiffs' Motion for Preliminary Injunction at p. 2, lines 4-8*. Plaintiffs'
20 remedy is to follow the process outlined in NRS 278, not prematurely rush into this Court
21 seeking an injunction against something that has not even occurred and therefore is not ripe.
22 As stated by the Nevada Supreme Court: "Zoning is a legislative matter, and the legislature has
23 acted. It has authorized 'the governing body' to provide for zoning districts and to establish the
24 administrative machinery to amend, supplement and change zoning districts. As a general
25 proposition, the zoning powers should not be subjected to judicial interference unless clearly
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1 necessary." See *Board of Commissioners v. Dayton Dev. Co.*, 91 Nev. 71, 530 P.2d 1187
2 (1975), attached hereto as Exhibit "M." Plaintiffs' Motion is without legal or factual basis,
3 and judicial intervention is not clearly necessary.

4
5 83. Further, the Court explicitly found in their Order denying Plaintiffs' Motion for
6 a Preliminary Injunction against the City of Las Vegas, that the City does not act in accordance
7 with private agreements. The City of Las Vegas Municipal Code Title 19 (Unified
8 Development Code) 19.00.080(j) provides: "No provision of this Title is intended to interfere
9 with or abrogate or annul any easement, private covenants, deed restriction or other agreement
10 between private parties. In cases in which this Title imposes a greater restriction upon the use
11 of land or structures, the provisions of this Title shall prevail and control. By virtue of this
12 Title, the City is not a party to and has no power or authority to enforce private deed covenants,
13 conditions or restrictions. Private covenants or deed restrictions which impose conditions more
14 restrictive than those imposed by this Title, or which impose restrictions not covered by this
15 Title, are not implemented nor superseded by this Title." See also, *Western Land Co. v.*
16 *Truskolaski*, 88 Nev. 200, 495 P.2d 624 (1972) (a zoning ordinance cannot override privately-
17 placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants
18 merely because of a zoning change). The Court found that "the City ordinance is not
19 inconsistent with *Gladstone v. Gregory*, 95 Nev. 474, 596 P.2d 291 (1979), cited by
20 Plaintiffs."
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23 84. Plaintiffs have created a fiction of "vested rights" which they allege Defendants
24 are infringing upon, but which they do not legally have. "The cradle of equity is the power to
25 afford adequate remedy where the law is impotent; it does not create new rights, but affords a
26 remedy for existing rights." *Aetna Cas. & Sur. Co. v. Jeppesen & Co.*, 440 F. Supp. 394, 404
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1 (D. Nev. 1977) (quoting *Berdie v. Kurtz*, 88 F.2d 158, 159 (9th Cir. 1937)). (emphasis added)
2 "Equity, in other words, may not be used to create new substantive rights." *E. Tennessee*
3 *Natural Gas Co. v. Sage*, 361 F.3d 808, 823 (4th Cir. 2004); see also *N. Border Pipeline Co. v.*
4 *86.72 Acres of Land*, 144 F.3d 469, 471 (7th Cir. 1998) ("A preliminary injunction may issue
5 only when the moving party has a substantive entitlement to the relief sought.") (Emphasis
6 added).
7

8 85. Here, the injunction that Plaintiffs sought was already denied by the Court, just
9 one (1) day prior, and Plaintiffs original Motion was directed towards all Defendants. Thus,
10 Plaintiffs' almost-verbatim, duplicative Motion has already been found by the Court to be
11 without merit, and Plaintiffs can only be duplicating and resubmitting the same for an improper
12 purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of
13 litigation.
14

15 86. The injunction that Plaintiffs sought that was already denied by the Court just
16 one day prior filed by Plaintiffs, under the totality of the circumstances, evidences an improper
17 and ulterior purpose by the Plaintiffs other than resolving a legal dispute. The Court has grave
18 concerns regarding an improper motive underlying Plaintiffs' filing of the second Motion for
19 Preliminary Injunction. This is evidenced by the Plaintiffs having filed multiple Motions
20 alleging and maintaining that they possess "vested rights" in the Defendants' GC Land through
21 the CC&Rs of the Queensridge Master Declaration that they do not possess. Plaintiffs have
22 continued to make these allegations after Defendants briefed the reasons Plaintiffs did not
23 possess such "vested rights," after the Court issued Orders ruling the Plaintiffs did not possess
24 such "vested rights," and even in the face of Plaintiffs' own admission, through their internally-
25 inconsistent Amended Complaint, that there was no restrictive covenant on the GC Land that
26 prevented the development thereof. These various vexatious and groundless Motions were
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1 filed with the improper purpose and intent to delay Defendants' construction plans and force
2 Defendants to unnecessarily incur attorney's fees and costs.

3 87. Further, Plaintiffs have admitted to the Supreme Court that their duplicative
4 Motion for Preliminary Injunction filed on September 28, 2016 was without merit and
5 unsupported by the law. In their *Response to Motion to Amend Caption and Joinder and*
6 *Response to the Motion to Dismiss Appeal of Order Granting the City of Las Vegas Motion to*
7 *Dismiss Amended Complaint*, filed November 10, 2016, Plaintiff's state: "[T]he case of *Eagle*
8 *Thrifty Drugs & Market, Inc. v. Hunter Lake Parent Teachers Association*, 85 Nev. 162 (1969)
9 would not allow directing of a Preliminary Injunction against any party but the City
10 Council. Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie
11 DeHart, Frank Pankratz and EHB Companies, LLC could not be made parties to the
12 Preliminary Injunction because only the City was appropriate under *Eagle Thrifty*.
13 (Emphasis added.)
14

15 88. The Supreme Court, by Order filed November 10, 2016, dismissed Plaintiffs'
16 Notice of Appeal of the Order denying its first Motion for Preliminary Injunction, holding that
17 "the district court has not certified the order dismissing appellants' complaint as to respondent
18 as final pursuant to NRCP 54(b)" and "in light of the district court's dismissal of appellants'
19 complaint for injunctive relief against respondent, "the existence of which is necessary to
20 permit the granting of an injunction, the question of the propriety of an injunction be[comes]
21 moot."
22

23 89. Plaintiffs clearly recognized that the filing of a Preliminary Injunction Motion
24 against undersigned Defendants was improper, but they did it anyway.
25

26 90. Plaintiffs' Motions are duplicative, improper, vexatious and sanctionable.
27 Plaintiffs' decision to also direct their Motion to the non-Applicant Defendants--EHB
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1 Companies LLC, Lowie, DeHart and Pankratz—was especially egregious given the fact that it
2 is a violation of established Nevada law to seek an injunction against a Manager of a Limited
3 Liability Company, and their refusal to withdraw that aspect of the Motion is sanctionable.
4 NRS 86.371; NRS 86.381.
5

6 91. The City Planning Commission and City Council's work is of a legislative
7 function and Plaintiffs' claims attempting to enjoin the review of Defendant Developers'
8 Applications are not ripe. UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G).
9

10 92. Plaintiffs had an adequate remedy in law in the form of judicial review pursuant
11 to UDC 19.16.040(I) and NRS 233B.

12 93. Zoning ordinances do not override privately-placed restrictions and courts
13 cannot invalidate restrictive covenants because of a zoning change. *Western Land Co. v.*
14 *Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972).

15 94. NRS 278A.080 provides: "The powers granted under the provisions of this
16 chapter may be exercised by any city or county which enacts an ordinance conforming to the
17 provisions of this chapter." The evidence demonstrates that no such ordinance was enacted by
18 the City of Las Vegas. See Exhibit "L" to Defendants' Second Supplement, filed November 15,
19 2016 (*Declaration of Luann Holmes*).
20

21 95. NRS 116.1201(4) specifically and unambiguously provides, "The provisions of
22 chapters 117 and 278A of NRS do not apply to common-interest communities."
23

24 96. NRS 278.320(2) states that "A common-interest community consisting of five or
25 more units shall be deemed to be a subdivision of land within the meaning of this section, but
26 need only comply with NRS 278.326 to 278.460, inclusive and 278.473 to 278.490, inclusive."
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1 97. Plaintiffs "vested rights" argument is not a viable one because Plaintiffs have
2 failed to show that the GC Land is subject to the Master Declaration.

3 98. In making an award of attorneys' fees and costs, the Court shall consider the
4 quality of the advocate, the character of the work to be done, the work actually performed, and
5 the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).
6

7 99. Nevada Rule of Professional Conduct 1.5 (a) provides: "A lawyer shall not
8 make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for
9 expenses. The factors to be considered in determining the reasonableness of a fee include the
10 following:
11

12 (1) The time and labor required, the novelty and difficulty of the questions
13 involved, and the skill requisite to perform the legal service properly;

14 (2) The likelihood, if apparent to the client, that the acceptance of the
15 particular employment will preclude other employment by the lawyer;

16 (3) The fee customarily charged in the locality for similar legal services;

17 (4) The amount involved and the results obtained;

18 (5) The time limitations imposed by the client or by the circumstances;

19 (6) The nature and length of the professional relationship with the client;

20 (7) The experience, reputation, and ability of the lawyer or lawyers
21 performing the services; and

22 (8) Whether the fee is fixed or contingent."

23 100. In *LVMPD v. Yeghiazarian*, 312 P.3d 503 (2013), the Supreme Court adopted
24 the majority opinion in *Missouri v. Jenkins*, 491 U.S. at 285, 109 S.Ct. 2463 (1989), which
25 stated that: [A] "reasonable attorney's fee" cannot have been meant to compensate only work
26 performed personally by members of the bar. Rather, the term must refer to a reasonable fee for
27 the work product of an attorney. Thus, the fee must take into account the work not only of
28 attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor

1 contributes to the work product for which an attorney bills her client.... We thus take as our
2 starting point the self-evident proposition that the "reasonable attorney's fee" provided
3 for by statute should compensate the work of paralegals, as well as that of attorneys."
4 (Emphasis added.) The Court held that "the use of paralegals and other nonattorney staff
5 reduces litigation costs, so long as they are billed at a lower rate." *Id.* at 288, 109 S.Ct. 2463.
6 "As NRS 17.115(4)(d)(3) and NRCP 68(f)(2) both refer to "reasonable attorney's fees," we
7 conclude that this phrase includes charges for persons such as paralegals and law clerks." *Id.*

8 101. The Ninth Circuit and other jurisdictions have also adopted this position. See
9 *Richlin Sec'y Serv. Co. v. Chertoff*, 553 U.S. 571, 580-83, 128 S.Ct. 2007, 170 L.Ed.2d 960
10 (2008) (reaffirming *Jenkins*); *Trs. of Constr. Indus. & Laborers Health & Welfare Trust v.*
11 *Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir.2006) ("[F]ees for work performed by
12 nonattorneys such as paralegals may be billed separately, at market rates, if this is the
13 prevailing practice in a given community." (internal quotations omitted)); *U.S. Football League*
14 *v. Nat'l Football League*, 887 F.2d 408, 416 (2d Cir.1989) ("Paralegals' time is includable in an
15 award of attorney's fees."); *Todd Shipyards Corp. v. Dir., Office of Workers' Comp. Programs*,
16 545 F.2d 1176, 1182 (9th Cir.1976) ("Paralegals can do some of the work that the attorney
17 would have to do anyway and can do it at substantially less cost per hour."); *Guinn v. Dotson*,
18 23 Cal.App.4th 262, 28 Cal.Rptr.2d 409, 413 (1994) (reasonable attorney fees include
19 necessary support services for attorneys).

20 102. If any of these Conclusions of Law is more appropriately deemed a Findings of
21 Fact, so shall it be deemed.

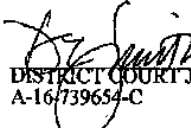
22 ORDER AND JUDGMENT

23
24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants
25 Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan
26 Lowie, Vickie Dehart and Frank Pankratz' Motion for Attorneys' Fees and Costs is hereby
27 GRANTED.
28

1
2 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants Fore
3 Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,
4 Vickie DeHart and Frank Pankratz are hereby awarded, and Plaintiffs shall pay to Defendants,
5 attorneys' fees and costs in the amount of \$82,718.50, this being the total amount incurred
6 after the September 2, 2016 filing of the Defendants' Opposition to the Plaintiffs' first Motion
7 for Preliminary Injunction. Said sum is hereby reduced to judgment, plus legal interest
8 accruing thereon until paid in full, collectible by any lawful means.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that given the
10 attorneys' fees and costs awarded herein pursuant to NRS 18.010 and EDCR 7.60, Defendants
11 Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan
12 Lowie, Vickie DeHart and Frank Pankratz's Joint Motion for Rule 11 Sanctions is denied as
13 moot.

14 DATED this 19 day of January, 2017.

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16 
17 DISTRICT COURT JUDGE
18 A-16-739654-C
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed,
a copy of the foregoing was served on the
parties by electronic service, by placing a copy
in the attorneys' folders in the Clerk's Office, by mailing,
emailing, or faxing to the following:

City of Las Vegas-City Attorney's Office			
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Kelli Hansen	khansen@lasvegascity.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Holland and Hart, LLP			
Name	Email		Select

DOUGLAS E. SMITH
DISTRICT JUDGE
DEPT. 8
LAS VEGAS, NV 89101

1	Lance C. Earl	learl@hollandhart.com	<input checked="" type="checkbox"/>	2
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15	Steve Hackett	shackett@sklar-law.com	<input checked="" type="checkbox"/>	2

Jill Jacoby

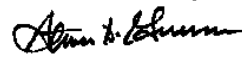
Jill Jacoby
Judicial Executive Assistant

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CLERK OF THE COURT

NOEJ

James J. Jimmerson, Esq.
Nevada State Bar No. 00264
Email: ks@jimmersonlawfirm.com
JIMMERSON LAW FIRM, P.C.
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Telephone: (702) 388-7171
Facsimile: (702) 380-6422
*Attorneys for Defendants Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC;
Yohan Lowie, Vickie DeHart
and Frank Pankratz*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROBERT N. PECCOLE and NANCY A.
PECCOLE, individuals, and Trustees of the
ROBERT N. and NANCY A. PECCOLE
FAMILY TRUST,

Plaintiffs,
vs.

PECCOLE NEVADA, CORPORATION, a
Nevada Corporation; WILLIAM PECCOLE
1982 TRUST; WILLIAM PETER and
WANDA PECCOLE FAMILY LIMITED
PARTNERSHIP, a Nevada Limited
Partnership; WILLIAM PECCOLE and
WANDA PECCOLE 1971 TRUST; LISA P.
MILLER 1976 TRUST; LAURETTA P.
BAYNE 1976 TRUST; LEANN P.
GOORJIAN 1976 TRUST; WILLIAM
PECCOLE and WANDA PECCOLE 1991
TRUST; FORE STARS, LTD., a Nevada
Limited Liability Company; 180 Land Co.,
LLC, a Nevada Limited Liability Company;
SEVENTY ACRES, LLC., a Nevada Limited
Liability Company; EHB COMPANIES, LLC,
a Nevada Limited Liability Company; THE
CITY OF LAS VEGAS; LARRY MILLER, an
individual; LISA MILLER, an individual;
BRUCE BAYNE, an individual; LAURETTA
P. BAYNE, an individual; YOHAN LOWIE,
an individual; VICKIE DEHART, an
individual; FRANK PANKRATZ, an
individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, FINAL
ORDER AND JUDGMENT**

Date: January 10, 2017
Courtroom 11B

THE JIMMERSON LAW FIRM, P.C.
415 South 6th Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 • Facsimile (702) 380-6422

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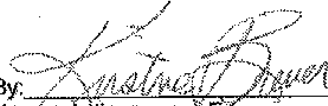
THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, Final Order
and Judgment was entered in the above-entitled action on the 31st day of January, 2017,
a copy of which is attached hereto.

Dated: January 31st, 2017.

THE JIMMERSON LAW FIRM, P.C.

By:  8387 for
James J. Jimmerson, Esq.
Nevada State Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendants Fore Stars, Ltd.,
180 Land Co., LLC., Seventy Acres, LLC;
Yohan Lowie, Vickie DeHart
and Frank Pankratz

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone: (702) 988-7171 Fax: (702) 987-1167

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 25th day of January, 2017, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT as indicated below:

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8889 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxml.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
Lewis J. Gazda, Esq. GAZDA & TADAYON 2600 S. Rainbow Blvd., #200 Las Vegas, NV 89146 efile@gazdatadayon.com abeltran@gazdatadayon.com kgerwick@gazdatadayon.com lewisgazda@gmail.com mbdeptula@gazdatadayon.com	Stephen R. Hackett, Esq. SKLAR WILLIAMS, PLLC 410 S. Rampart Blvd., #350 Las Vegas, NV 89145 ekapolnai@klar-law.com shackett@klar-law.com


An employee of The Jimmerson Law Firm, P.C


CLERK OF THE COURT

1 FFCL

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 ROBERT N. PECCOLE and NANCY A.
5 PECCOLE, individuals, and Trustees of the
6 ROBERT N. AND NANCY A. PECCOLE
FAMILY TRUST,

7 Plaintiffs,

8 v.

9 PECCOLE NEVADA, CORPORATION, a
10 Nevada Corporation; WILLIAM PECCOLE
11 1982 TRUST; WILLIAM PETER and
WANDA PECCOLE FAMILY LIMITED
12 PARTNERSHIP, a Nevada Limited
Partnership; WILLIAM PECCOLE and
13 WANDA PECCOLE 1971 TRUST; LISA P.
MILLER 1976 TRUST; LAURETTA P.
14 BAYNE 1976 TRUST; LEANN P.
GOORJIAN 1976 TRUST; WILLIAM
15 PECCOLE and WANDA PECCOLE 1991
TRUST; FORE STARS, LTD., a Nevada
16 Limited Liability Company; 180 LAND CO,
LLC, a Nevada Limited Liability Company;
17 SEVENTY ACRES, LLC, a Nevada Limited
Liability Company; EHB COMPANIES,
18 LLC, a Nevada Limited Liability Company;
THE CITY OF LAS VEGAS; LARRY
19 MILLER, an individual; LISA MILLER, an
individual; BRUCE BAYNE, an individual;
20 LAURETTA P. BAYNE, an individual;
YOHAN LOWIE, an individual; VICKIE
21 DEHART, an individual; and FRANK
PANKRATZ, an individual,

22 Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS
OF LAW, FINAL ORDER AND
JUDGMENT

Hearing Date: January 10, 2017
Hearing Time: 8:00 a.m.

Courtroom 11B

23 This matter coming on for Hearing on the 10th day of January, 2017 on Plaintiffs'
24 Renewed Motion For Preliminary Injunction, Plaintiffs' Motion For Leave To Amend Amended
25 Complaint, Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees
26 And Costs, Plaintiffs' Motion For Court To Reconsider Order Of Dismissal, and Defendants
27 Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,
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1 Vickie Dehart and Frank Pankratz's *Oppositions* thereto and *Counter motions for Attorneys'*
2 *Fees and Costs*, and upon *Plaintiffs' Opposition to Counter motion for Attorney's Fees and*
3 *Costs* and Defendants' *Counter motion to Strike Plaintiffs' Rogue and Untimely Opposition* filed
4 *January 5, 2017 and Attorneys' Fees and Costs*, and upon Defendants Fore Stars, Ltd., 180
5 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and
6 Frank Pankratz's *Memorandum of Costs and Disbursements*, and no objection or Motion to
7 Retax having been filed by Plaintiffs in response thereto, ROBERT N. PECCOLE, ESQ. of
8 PECCOLE & PECCOLE, LTD. and LEWIS J. GAZDA, ESQ. of GAZDA & TADAYON
9 appearing on behalf of Plaintiffs, and Plaintiff, ROBERT N. PECCOLE being present, and
10 JAMES J. JIMMERSON, ESQ. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of
11 Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie
12 DeHart and Frank Pankratz, and Defendants Yohan Lowie and Vickie DeHart being present,
13 and STEPHEN R. HACKETT, ESQ. of SKLAR WILLIAMS, PLLC and TODD DAVIS, ESQ.
14 of EHB COMPANIES, LLC appearing on behalf of Defendants EHB Companies, LLC and the
15 Court having reviewed and fully considered the papers and pleadings on file herein, and having
16 heard the lengthy arguments of counsel, and having allowed Plaintiffs, over Defendants'
17 objection, to enter Exhibits 1-13 at the hearing, and having reviewed the record, good cause
18 appearing, issues the following Findings of Fact, Conclusions of Law, Final Orders and
19 Judgment:
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23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 **Preliminary Findings**

25 1. The Court hearing on November 1, 2016 was extensive and lengthy, and this
26 Court does not need a re-argument of those points. At that time, the Court granted both parties
27 great leeway to argue their case and, thereafter, to file any and all additional documents and/or
28

1 exhibits that they wished to file, so long as they did so on or before November 15, 2016. Each
2 party took advantage of said opportunity by submitting additional documents for the Court's
3 review and consideration. The Court has reviewed all submissions by each party. Further, at the
4 Court's extended hearing on January 10, 2017, upon Plaintiffs' and Defendants' post-judgment
5 motions and oppositions, the Court further allowed the parties to make whatever arguments
6 necessary to supplement their respective filings and in support of their respective requests;
7

8 2. On November 30, 2016, this Court, after a full review of the pleadings, exhibits,
9 affidavits, declarations, and record, entered extensive *Findings of Fact, Conclusions of Law,*
10 *Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres*
11 *LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5)*
12 *Motion to Dismiss Plaintiffs' Amended Complaint.* On January 20, 2017, the Court also entered
13 its *Findings Of Fact, Conclusions Of Law, and Judgment Granting Defendants Fore Stars, Ltd.,*
14 *180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart And*
15 *Frank Pankratz's Motion For Attorneys' Fees And Costs* (the "Fee Order"). Both of these
16 Findings of Fact, Conclusions of Law and Orders are hereby incorporated herein by reference, as
17 if set forth in full, and shall become a part of these Final Orders and Judgment;
18

19 3. Following the Notice of Entry of the Court's extensive *Findings of Fact,*
20 *Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co*
21 *LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank*
22 *Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint,* Plaintiffs filed
23 four (4) Motions and one (1) Opposition, on an Order Shortening Time set for hearing on this
24 date, Defendants filed their Oppositions and Countermotions for Attorneys' Fees and Costs,
25 Defendants timely filed their *Memorandum of Costs and Disbursements,* and Plaintiffs chose not
26 to file any Motion to Retax. After this briefing, Plaintiffs, at the January 10, 2017 Court hearing,
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1 presented in excess of an hour and a half of oral argument. The Court allowed the new exhibits
2 to be admitted over the objection of Defendants;

3 4. Following the hearing, the Court has reviewed the papers and pleadings filed by
4 both Plaintiffs and Defendants, along with Exhibits, and the oral argument of Plaintiffs and
5 Defendants, and relevant statutes and caselaw, and based upon the totality of the record, makes
6 the following Findings:
7

8 **Plaintiffs' Renewed Motion for Preliminary Injunction**

9 5. As a preliminary matter, based on the record and the evidence presented to date
10 by both sides, the Court does not believe the golf course land ("GC Land") is subject to the terms
11 and restrictions of the Master Declaration of Covenants, Conditions, Restrictions and Easements
12 of Queensridge ("Master Declaration" or "CC&Rs"), because it was not annexed into, or made
13 part of, the Queensridge Common Interest Community ("Queensridge CIC") which the Master
14 Declaration governs. The Court has repeatedly made, and stands by, this Finding;
15

16 6. The Court does not believe that William and Wanda Peccole, or their entities
17 (Nevada Legacy 14, LLC, the William Peter and Wanda Ruth Peccole Family Limited
18 Partnership, and/or the William Peccole 1982 Trust) intended the GC Land to be a part of the
19 Queensridge CIC, as evidenced by the fact that if that land had been included within that
20 community, then every person in Queensridge would be paying money to be a member of the
21 Badlands Golf Course and paying to maintain it. They were not, and have not. In fact, the
22 Master Declaration at Recital B states that the CIC "may, but is not required to include...a golf
23 course" and Plaintiffs' Purchase documents make clear that residents of Queensridge acquire no
24 golf course rights or membership privileges by their purchase of a house within the Queensridge
25 CIC. *Exhibit C to Defendants' Opposition filed September 2, 2016 at page 1, Recital B, and*
26 *Exhibit L to Defendants' Opposition filed September 2, 2016 at paragraph 4 of Addendum 1;*
27
28

1 7. By Plaintiffs' own exhibit, the enlargement of the Exhibit C Map to the Master
2 Declaration, it shows that the GC Land is not a part of the CC&Rs. The Exhibit C map showed
3 the initial Property and the Annexable Property, as confirmed by Section 1.55 of the Master
4 Declaration;

5 8. Therefore, the argument about whether or not the Master Declaration applies to
6 the GC Land does not need to be rehashed, despite Plaintiffs' insistence that it do so. The Court
7 has repeatedly found that it does not. That is the Court's prior ruling, and nothing Plaintiffs
8 have brought forward reasonably convinces the Court otherwise. See the Court's November 20,
9 2016 Order, Findings 51-76;

10 9. Regarding the Renewed Motion for Preliminary Injunction, Plaintiffs' Renewed
11 Motion and Exhibits are not persuasive, and the Court has made clear that it will not stop a
12 governmental agency from doing its job. The Court does not believe that intervention is "clearly
13 necessary" or appropriate for this Court. As the Court understands it, if the owner of the GC
14 Land has made an application, the governmental agency would be derelict in their duty if it did
15 not review it, consider it and do all of its necessary work to follow the legal process and make its
16 recommendations and/or decision. The Court will not stop that process;

17 10. Based upon the papers, there is no basis to grant Plaintiffs' Renewed Motion for
18 Preliminary Injunction;

19 11. Plaintiffs' argument that there is a "conspiracy" with the City of Las Vegas
20 "behind closed doors" to get certain things done is inappropriate and without merit;

21 12. It is entirely proper for Defendants to follow the City rules that require the filing
22 of applications if they want to develop their property, or to discuss a development agreement
23 with the City Attorney, or present a plan to the City of Las Vegas Planning Commission or the
24 Las Vegas City Council. That is what they are supposed to do;

1 13. Plaintiffs submitted four (4) photos to demonstrate that the proposed new
2 development under the current application would "ruin his views." However, Plaintiffs'
3 purchase documents make clear that no such "views" or location advantages were guaranteed to
4 Plaintiffs, and that Plaintiffs were on notice through their own exhibit that their existing views
5 could be blocked or impaired by development of adjoining property "whether within the Planned
6 Community or outside of the Planned Community" *Exhibit I to Plaintiffs' Reply to Defendants'*
7 *Motion to Dismiss, filed September 9, 2016.*

9 14. In response to the Court's inquiry regarding what Plaintiffs are trying to enjoin,
10 Plaintiffs indicate they desire to enjoin Defendants from resubmitting the four (4) applications
11 that have been withdrawn, without prejudice, but which can be refiled. The Court finds that
12 refiling is exactly what Defendants are supposed to do if they want those applications
13 considered;

15 15. Plaintiffs' argument that Defendants cannot file Applications with the City,
16 because it is a violation of the Master Declaration is without merit. That might be true if the GC
17 Land was part of the CC&R's. As repeatedly stated, this Court does not believe, and the
18 evidence does not suggest, that the GC Land is subject to the CC&Rs, period;

19 16. Defendants' applications were legal and the proper thing to do, and the Court will
20 not stop such filings. Plaintiffs' position is the filing was not allowed under the Master
21 Declaration, and Plaintiffs will not listen to the Court's Findings that the GC Land was not added
22 to the Queensridge CIC by William Peccole or his entities. Plaintiffs' position is vexatious and
23 harassing to the Defendants under the facts of this case;

25 17. Plaintiffs argue that the new applications that were filed were negotiated and
26 discussed with the City Attorneys' Office without the knowledge of the City Council. But,
27 again, that is not improper. The City Council does not get involved until the applications are
28

1 submitted and reviewed by the Planning Staff and City Planning Commission. The Court finds
2 that there is no "conspiracy" there. People are supposed to follow the rules, and the rules say
3 that if you are going to seek a zone change or a variance, you may submit a pre-application for
4 review, have appropriate discussions and negotiations, and then have a public review by the
5 Planning Commission and ultimately the City Council;
6

7 18. The fact that a new application was submitted proposing 61 homes, which is
8 different from the original applications submitted for "The Preserve" which were withdrawn
9 without prejudice, is irrelevant;

10 19. Plaintiffs' argument that Defendants submitted a new application on December
11 30, 2016 to allegedly defeat Plaintiffs' Renewed Motion for Preliminary Injunction, to bring the
12 case back into the administrative process, is not reasonable, nor accurate. There were already
13 three (3) applications which were pending and which had been held in abeyance, and thus were
14 still within the administrative process. The new application changes nothing as far as Plaintiffs'
15 requests for a preliminary injunction;
16

17 20. Plaintiffs' Exhibit 5 demonstrates that notice was provided to the homeowners,
18 which is what Defendants were supposed to do. There was nothing improper in this;
19

20 21. Even if *all* the applications had been withdrawn, Plaintiffs could not "directly
21 interfere with, or in advance restrain, the discretion of an administrative body's exercise of
22 legislative power." *Eagle Thrifty Drugs & Markets, Inc. v. Hunter Lake Parent Teachers Assn. et*
23 *al.*, 85 Nev. 162, 451 P.2d 713 (1969) at 165, 451 P.2d at 714. Additionally, "This established
24 principle may not be avoided by the expedient of directing the injunction to the applicant
25 instead of the City Council." *Id.* This holding still applies to these facts;
26

27 22. Regardless, the possible submission of zoning and land use applications will not
28 violate any rights or restrictions Plaintiffs claim in their Master Declaration, as "A zoning

1 ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to
2 invalidate restrictive covenants merely because of a zoning change." *W. Land Co. v.*
3 *Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972). Additionally, UDC 19.00.0809(j)
4 provides: "No provision of this Title is intended to interfere with or abrogate or annul any
5 easement, private covenants, deed restriction or other agreement between private parties....
6 Private covenants or deed restrictions which impose restrictions not covered by this Title, are not
7 implemented nor superseded by this Title."

9 23. Plaintiffs' argument that Defendants needed permission to file the applications for
10 the 61 homes is, again, without merit, because Plaintiffs incorrectly assume that the CC&Rs
11 apply to the GC Land, when the Court has already found they do not. Plaintiffs unreasonably
12 refuse to accept this ruling;

14 24. Plaintiffs have no standing under *Gladstone v. Gregory*, 95 Nev. 474, 596 P.2d
15 491 (1979) to enforce the restrictive covenants of the Master Declaration against Defendants on
16 the GC Land. The Court has already, repeatedly, found that the Master Declaration does not
17 apply to the GC Land, and thus Plaintiffs have no standing to enforce it against the Defendants.
18 Defendants did not, and cannot, violate a rule that does not govern the GC Land. The Plaintiffs
19 refuse to hear or accept these findings of the Court;

21 25. Contrary to Plaintiffs' statement, the Court is not making an "argument" that
22 Plaintiffs' are required to exhaust their administrative remedies; that is a "decision" on the part
23 of the Court. As the Court stated at the November 1, 2016 hearing, Plaintiffs believe that CC&Rs
24 of the Queensridge CIC cover the GC Land, and Mr. Peccole is so closely involved in it, he
25 refuses to see the Court's decision coming in as fair or following the law. No matter what
26 decisions are made, Mr. Peccole is so closely involved with the issues, he would never accept
27
28

1 any Court's decision, because if it does not follow his interpretation, in Plaintiffs' mind, the
2 Court is wrong. *November 1, 2016 Hearing Transcript, P. 3, L. 13-2;*

3 26. Defendants have the right to close the golf course and not water it. This action
4 does not impact Plaintiffs' "rights;"

5 27. A preliminary injunction is available when the moving party can demonstrate that
6 the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which
7 compensatory relief is inadequate and that the moving party has a reasonable likelihood of
8 success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrew Enters., LLC*, 125 Nev. 397,
9 403, 215 P.3d 27, 31 (2009); citing NRS 33.010, *University Sys. v. Nevadans for Sound Gov't*,
10 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev.
11 129, 142, 978 P.2d 311, 319 (1999). A district court has discretion in deciding whether to grant a
12 preliminary injunction. *Id.* The Plaintiffs have failed to make the requisite showing;
13

14 28. On September 27, 2016, the parties were before the Court on Plaintiffs' first
15 Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court
16 heard extensive oral argument lasting nearly two (2) hours from all parties. The Court ultimately
17 concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to
18 demonstrate irreparable injury by the City's consideration of the Applications, and failed to
19 demonstrate a likelihood of success on the merits, amongst other failings;
20

21 29. On September 28, 2016—the day after their Motion for Preliminary Injunction
22 directed at the City of Las Vegas was heard—Plaintiffs ignored the Court's words and filed
23 another Motion for Preliminary Injunction which, substantively, made arguments identical to
24 those made in the original Motion which had just been heard the day before, except that
25 Plaintiffs focused more on the "vested rights" claim, namely, that the applications themselves
26 could not have been filed because they are allegedly prohibited by the Master Declaration. On
27
28

1 October 31, 2016, the Court entered an Order denying that Motion, finding that Plaintiffs failed
2 to meet their burden of proof that they have suffered irreparable harm for which compensatory
3 damages are an inadequate remedy and failed to show a reasonable likelihood of success on the
4 merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not
5 annexed into, nor a part of, the Property (as defined in the Master Declaration). The Court also
6 based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the
7 Applicant as a means of avoiding well-established prohibitions and/or limitations against
8 interfering with or seeking advanced restraint against an administrative body's exercise of
9 legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers*
10 *Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969);
11

12 30. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first
13 Motion for Preliminary Injunction, without seeking leave from the Court. The Court denied the
14 Motion on October 19, 2016, finding Plaintiffs could not show irreparable harm, because they
15 possess administrative remedies before the City Planning Commission and City Council pursuant
16 to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and
17 because Plaintiffs failed to show a reasonable likelihood of success on the merits at the
18 September 27, 2016 hearing and failed to allege any change of circumstances since that time that
19 would show a reasonable likelihood of success as of October 17, 2016;
20

21 31. At the October 11, 2016 hearing on Defendants City of Las Vegas' Motion to
22 Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19,
23 2016, the Court advised Mr. Peccole, as an individual Plaintiff and counsel for Plaintiffs, that it
24 believed that he was too close to this" and was missing that the Master Declaration would not
25 apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at*
26 *13:11-13;*
27
28

1 32. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in
2 relation to the Order Denying their first Motion for Preliminary Injunction against the City of
3 Las Vegas, which sought, again, an injunction. That Motion was denied on October 19, 2016,
4 finding that Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c), Plaintiffs
5 failed to show that the object of their potential writ petition will be defeated if their stay is
6 denied, Plaintiffs failed to show that they would suffer irreparable harm or serious injury if the
7 stay is not issued, and Plaintiffs failed to show a likelihood of success on the merits;

8 33. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying
9 their Motion for Preliminary Injunction against the City of Las Vegas, and on October 24, 2016,
10 Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada
11 Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as
12 moot;
13

14 34. Plaintiffs can assert no harm, let alone "irreparable" harm from the three
15 remaining pending applications, which deal with development of 720 condominiums located a
16 mile from Plaintiffs' home on the Northeast corner of the GC Land;
17

18 35. Plaintiffs cannot demonstrate a likelihood of success on the merits. Plaintiffs
19 have argued the "merits" of their claims *ad nauseum* and they have not had established any
20 possibility of success;
21

22 36. The Court has repeatedly found that the claim that Defendants' applications were
23 "illegal" or "violations of the Master Declaration" is without merit, and such claim is being
24 maintained without reasonable grounds;

25 37. Plaintiffs' argument within his Renewed Motion is just a rehash of his prior
26 arguments that Lot 10 was "part of" the "Property," (as defined in the Master Declaration) that
27
28

1 the flood drainage easements along the golf course are not included in the "not a part" language,
2 and that he has "vested rights." These arguments have already been addressed repeatedly;

3 38. In its *Findings of Fact, Conclusions of Law and Order Granting Defendants*
4 *Motion to Dismiss*, filed November 30, 2016, the Court detailed its analysis of the Master
5 Declaration, the Declarations of Annexation, Lot 10, and the other documents of public record,
6 and made its Findings that the Plaintiffs were not guaranteed any golf course views or access,
7 and that the adjoining GC Land was not governed by the Master Declaration. Those Findings
8 are incorporated herein by reference, as if set forth in full. Specifically Findings No. 51-76 make
9 clear that the GC Land is not a part of and not subject to the Master Declaration of the NRS 116
10 Queensridge CIC;
11

12 39. There is no "new evidence" that changes this basic finding of fact, and Plaintiffs
13 cannot "stop renewal of the 4 applications" or "stop the application" allegedly contemplated for
14 property merely adjacent to Plaintiffs' Lot and which is not within the Queensridge CIC;
15

16 40. Since Plaintiffs were on notice of this undeniable fact on September 2, 2016, yet
17 persisted in filing Motion after Motion to try and "enjoin" Defendants, that is exactly why this
18 Court awarded Defendants \$82,718.50 relating to the second Motion for Preliminary Injunction,
19 the Motion for Rehearing and the Motion for Stay (Injunction), and why this Court awards
20 additional attorneys' fees and costs for being forced to oppose a Renewed Motion for
21 Preliminary Injunction and these other Motions now;
22

23 41. The alleged "new" information cited by Plaintiffs--the withdrawal of four
24 applications without prejudice at the November 16, 2016 City Council meeting--is irrelevant
25 because this Court cannot and will not, in advance, restrain Defendants from submitting
26 applications. Further, the three (3) remaining applications are pending and still in the
27 administrative process;
28

1 42. Zoning is a matter properly within the province of the legislature and that the
2 judiciary should not interfere with zoning decisions, especially before they are even final. *See,*
3 *e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with
4 board's determination to recognize desirability of commercial growth within a zoning district);
5 *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not
6 interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and*
7 *Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of
8 implementation until amended, repealed, referred or changed through initiative). Court
9 intervention is not "clearly necessary" in this instance;

10
11 43. Plaintiffs have admitted to the Supreme Court that their duplicative Motion for
12 Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the
13 law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to*
14 *Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*,
15 filed November 10, 2016, Plaintiff's state: "[T]he case of *Eagle Thrifty Drugs & Market, Inc. v.*
16 *Hunter Lake Parent Teachers Association*, 85 Nev. 162 (1969) **would not allow directing of a**
17 **Preliminary Injunction against any party but the City Council.** *Fore Stars, Ltd., 180 Land*
18 *Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB*
19 *Companies, LLC* **could not be made parties to the Preliminary Injunction because only the**
20 **City was appropriate under *Eagle Thrifty*.**" (Emphasis added.) Yet Plaintiffs have now filed a
21 "Renewed" Motion for Preliminary Injunction;

22
23 44. Procedurally, Plaintiffs' Renewed Motion is improper because "No motions once
24 heard and disposed of may be *renewed* in the same cause, nor may the same matters therein
25 embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of
26
27
28

1 such motion to the adverse parties." EDCR 2.24 (*Emphasis added.*) This is the second time the
2 Plaintiffs have failed to seek leave of Court before filing such a Motion;

3 45. After hearing all of the arguments of Plaintiffs and Defendants, Plaintiffs have
4 failed to meet their burden for a preliminary injunction against Defendants, and Plaintiffs have
5 no standing to do so;

6
7 **Plaintiffs' Motion for Leave to Amend Amended Complaint**

8 46. Plaintiffs have already been permitted to amend their Complaint, and did so on
9 August 4, 2016;

10 47. Plaintiffs deleted the Declaratory Relief cause of action, but maintained a cause of
11 action for injunctive relief even after Plaintiffs were advised that the same could not be
12 sustained, Plaintiffs withdrew the Breach of Contract cause of action and replaced it with a cause
13 of action entitled "Violations of Plaintiffs' Vested Rights," and Plaintiffs' Fraud cause of action
14 remained, for all intents and purposes, unchanged;

15 48. Plaintiffs were given the opportunity to present a proposed Amended Complaint
16 and failed to do so. There is no Amended Complaint which supports the new alter ego theory
17 Plaintiffs suggest;

18 49. After the November 1, 2016 hearing on the Motion to Dismiss, the Court
19 provided an opportunity for Plaintiffs (or Defendants) to file any additional documents or
20 requests, including a request to Amend the Complaint, with a deadline of November 15, 2016.
21 Plaintiffs' Motion to Amend Amended Complaint was not filed within that deadline;

22 50. EDCR 2.30 requires a copy of a proposed amended pleading to be attached to any
23 motion to amend the pleading. Plaintiffs never attached a proposed amended pleading, in
24 violation of this Rule. This makes it impossible for the Court to measure what claims Plaintiffs
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26
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28

1 propose, other than those outlined in their briefs, all of which are based on a failed and untrue
2 argument;

3 51. Plaintiffs continue to attempt to enjoin the City from completing its legislative
4 function, or to in advance, restrain Defendants from submitting applications for consideration.
5 This Court has repeatedly Ordered that it will not do that;
6

7 52. The Court considered Plaintiffs' oral request from November 1, 2016 to amend
8 the Amended Complaint, and made a Finding in its November 30, 2016 Order of Dismissal, at
9 paragraph 90, "Although ordinarily leave to amend the Complaint should be freely given when
10 justice requires, Plaintiffs have already amended their Complaint once and have failed to state a
11 claim against the Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be
12 permitted to amend their Complaint a second time in relation to their claims against Defendants
13 as the attempt to amend the Complaint would be futile;"
14

15 53. Further amending the Complaint, under the theories proposed by Plaintiffs,
16 remains futile. The Fraud cause of action does not state a claim upon which relief can be
17 granted, as the alleged "fraud" lay in the premise that there was a representation that the golf
18 course would remain a golf course in perpetuity. Again, Plaintiffs' own purchase documents
19 evidence that no such guarantee was made and that Plaintiffs were advised that future
20 development to the adjoining property could occur, and could impair their views or lot
21 advantages. The alleged representation is incompetent (*See NRCP 56(e)*), fails woefully for lack
22 of particularity as required by NRCP 9(b), and appears disingenuous under the facts and law of
23 this case;
24

25 54. The Fraud claim also fails because Plaintiffs voluntarily dismissed the
26 Defendants—all his relatives or their entities—who allegedly made the fraudulent representations
27 that the golf course would remain in perpetuity;
28

1 55. While it is true that Defendants argued that Plaintiffs did not plead their Fraud
2 allegations with particularity as required by NRCP 9(b), Defendants also vociferously argued in
3 their Motion to Dismiss that Plaintiffs failed to state a Fraud claim upon which relief could be
4 granted because their allegations failed to meet the basic and fundamental elements of Fraud: (1)
5 a false representation of fact; (2) made to the plaintiff; (3) with knowledge or belief that the
6 representation was false or without a sufficient basis; (4) intending to induce reliance; (5)
7 creating justifiable reliance by the plaintiff; (6) resulting in damages. *Blanchard v. Blanchard*,
8 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). The Court concurred;
9

10 56. To this day, Plaintiffs failed to identify any actual false or misleading statements
11 made by Defendants to them, and that alone is fatal to their claim. Defendants' zoning and land
12 use applications to the City to proceed with residential development upon the GC Land does not
13 constitute fraudulent conduct by Defendants because third-parties allegedly represented at some
14 (unknown) time roughly 16 years earlier that the golf course would never be replaced with
15 residential development;
16

17 57. Plaintiffs do not and cannot claim that they justifiably relied on any supposed
18 misrepresentation by any of the Defendants or that they suffered damages as a result of the
19 Defendants' conduct because such justifiable reliance requires a causal connection between the
20 inducement and the plaintiff's act or failure to act resulting in the plaintiff's detriment;
21

22 58. Plaintiffs have not, and cannot claim that any representations on the part of
23 Defendants lead them to enter into their "Purchase Agreement" in April 2000, over 14 years
24 prior to any alleged representations or conduct by any of the Defendants. The Court was left to
25 wonder if any of these failings could be corrected in a second amended complaint, as Plaintiffs
26 failed to proffer a proposed second amended complaint as is required under EDCR 2.30. As
27 such, Plaintiffs' Motion to Amend Complaint was doomed from the outset;
28

1 59. All of Plaintiffs' claims are based on the theory that Plaintiffs have "vested
2 rights" over the Defendants and the GC Land. The request for injunctive relief is based on the
3 assertion of alleged "rights" under the Master Declaration;

4 60. The Court has already found, both of Plaintiffs' legal theories (1) the zoning
5 aspect and exhaustion of administrative remedies, and (2) the alleged breach of the restrictive
6 covenants under a Master Declaration "contract," are maintained without reasonable ground.
7 Defendants are not parties to the "contract" alleged to have been breached, and Court
8 intervention is not "clearly necessary" as an exception to the bar to interfere in an administrative
9 process;
10

11 61. The zoning on the GC Land dictates its use and Defendants rights to develop their
12 land;

13 62. Plaintiffs' reargument of the "Lot 10" claim, which Plaintiffs have argued before,
14 which this Court asked Plaintiffs not to rehash, is without merit. Drainage easements upon the
15 GC Land in favor of the City of Las Vegas do not make the GC Land a part of the Queensridge
16 CIC. The Queensridge CIC would have to be a party to the drainage easements in order to have
17 rights in the easements. Plaintiffs presented no evidence to establish that the Queensridge CIC is
18 a party to any drainage easements upon the GC Land;
19

20 63. Plaintiffs do not represent FEMA or the government, who are the authorities
21 having jurisdiction to set the regulations regarding "flood drainage." Plaintiffs do not have any
22 agreements with Defendants regarding flood drainage and nor any jurisdiction nor standing to
23 claim or assert "drainage" rights. Any claims under flood zones or drainage easements would be
24 asserted by the governmental authority having jurisdiction;
25

26 64. Notwithstanding any alleged "open space" land use designation, the zoning on the
27 GC Land, as supported by the evidence, is R-PD7. Plaintiffs latest argument suggests the land is
28

1 "zoned" as "open space" and that they have some right to prevent any modification of that
2 alleged designation under NRS 278A. But the Master Declaration indicates that Queensridge is a
3 NRS Chapter 116 community, and NRS 116.1201(4) specifically and unambiguously provides,
4 "The provisions of chapters 117 and 278A of NRS do not apply to common-interest
5 communities." The Plaintiffs do not have standing to even make any claim under NRS 278A;
6

7 65. There is no evidence of any recordation of any of the GC Land, by deed, lien, or
8 by any other exception to title, that would remotely suggest that the GC Land is within a planned
9 unit development, or is subject to NRS 278A, or that Queensridge is governed by NRS 278A.
10 Rather, Queensridge is governed by NRS 116;

11 66. NRS 278.349(3)(e) states "The governing body, or planning commission if it is
12 authorized to take final action on a tentative map, shall consider: Conformity with the zoning
13 ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the
14 master plan, the zoning ordinance takes precedence,"
15

16 67. The Plaintiffs do not own the land which allegedly contains the drainage pointed
17 out in Exhibits 11 and 12. It is Defendants' responsibility to deal with it with the government.
18 Tivoli Village is an example of where drainage means were changed and drainage challenges
19 were addressed by the developer. Plaintiffs have no standing to enforce the maintenance of a
20 drainage easement to which they are not a party;
21

22 68. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration
23 does not apply to the land proposed to be developed by the Defendants, as it states on page 2,
24 paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by
25 including a Restrictive Covenant that Badlands must remain a golf course as he and other agents
26 of the developer had represented to homeowners." The Amended Complaint reiterated at page
27 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any
28

1 restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded in
2 prosecuting this case and attempting to enjoin development with full knowledge that there were
3 no applicable restrictions, conditions and covenants from the Master Declaration which applied
4 to the GC Land, and there were no restrictive covenants in place relating to the sale which
5 prevented Defendants from doing so;

6
7 69. Plaintiffs improperly assert that the Motion to Dismiss relied primarily upon the
8 "ripeness" doctrine and the allegation that the Fraud Cause of Action was not pled with
9 particularity. But this is not true. The Motion to Dismiss was granted because Plaintiffs do not
10 possess the "vested rights" they assert because the GC Land is not part of Queensridge CIC and
11 not subject to its CC&Rs. The Fraud claim failed because Plaintiffs could not state the elements
12 of a Fraud Cause of Action. They never had any conversations with any of the Defendants prior
13 to purchasing their Lot and therefore, no fraud could have been committed by Defendants against
14 Plaintiffs in relation to their home/lot purchase because Defendants never made any knowingly
15 false representations to Plaintiffs upon which Plaintiffs relied to their detriment, nor as stated by
16 Plaintiff to the Court did Defendants ever make any representations to Plaintiffs at all. Plaintiffs
17 were denied an opportunity to amend their Complaint a second time because doing so would be
18 futile given the fact that they have failed to state claims and cannot state claims for "vested
19 rights" or Fraud;
20
21

22 70. None of Plaintiffs' alleged "changed circumstances"—neither the withdrawal of
23 applications, the abatement of others, or the introduction of new ones, changes the fundamental
24 fact that Plaintiffs have no standing to enforce the Master Declaration against the GC Land, or
25 any other land which was not annexed into the Queensridge CIC. It really is that simple;

26 71. Likewise, the claim that because applications were withdrawn by Defendants at
27 the City Council Meeting and the rest were held in abeyance, that the *Eagle Thrifty* case no
28

1 longer applies and no longer prevents a preliminary injunction to enjoin Defendants from
2 submitting future Applications, fails as a matter of law. Plaintiffs' Motion to Amend remains
3 improper under *Eagle Thrifty* because Plaintiffs are effectively seeking to restrain the City of Las
4 Vegas by requesting an injunction against the Applicant, and they are improperly seeking to
5 restrain the City from hearing future zoning and development applications from Defendants.
6 *Eagle Thrifty* neither allows such advance restraint, nor does it condone such advance restraint
7 by directing a preliminary injunction against the Applicant;

8
9 72. Amending the Complaint based on the theories argued by Plaintiffs would be
10 futile, and Plaintiffs continue to fail to state a claim upon which relief can be granted;

11 73. Leave to amend should be freely granted "when justice so requires," but in this
12 case, justice requires the Motion for Leave to Amend be denied. It would be futile. Additionally,
13 Plaintiffs have noticeably failed to submit any proposed second amended Complaint at any time.
14 See EDCR 2.30. The Court is compelled to deny Plaintiffs' Motion to Amend;

15
16 ///

17
18 ///

19 **Plaintiffs' Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and**
20 **Costs**

21 74. Plaintiffs are not entitled to an Evidentiary Hearing on the Motion for Attorneys'
22 Fees and Costs. NRS 18.010(3) states "in awarding attorney's fees, the court may pronounce its
23 decision on the fees at the conclusion of the trial or special proceeding without written motion
24 and with or without presentation of additional evidence."

25 75. Plaintiffs' seek an Evidentiary Hearing on the "Order for Rule 11 Fees and
26 Costs," but the request for sanctions and additional attorneys' fees pursuant to NRCP 11 was
27 denied by this Court. Plaintiffs do not seek reconsideration of that denial, and no Evidentiary
28 Hearing is warranted;

1 76. The Motion itself is procedurally defective. It contains only bare citations to
2 statutes and rules, and it contains no Affidavit as required by EDCR 2.21 and NRCP 56(e);

3 77. NRCP 60(b) does not allow for Evidentiary Hearing to give Plaintiffs
4 "opportunity to present evidence as to why they filed a Motion for Preliminary Injunction against
5 Fore Stars and why that was appropriate." It allows the setting aside of a default judgment due to
6 mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud. With respect to
7 the Motion for Attorneys' Fees and Costs and Order granting the same, this is not even alleged;

8 78. Plaintiffs must establish "adequate cause" for an Evidentiary Hearing. *Rooney v.*
9 *Rooney*, 109 Nev. 540, 542-43, 853 P.2d 123, 124-25 (1993). Adequate cause "requires
10 something more than allegations which, if proven, might permit inferences sufficient to establish
11 grounds...." "The moving party must present a prima facie case...showing that (1) the facts
12 alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not
13 merely cumulative or impeaching." *Id.*

14 79. Plaintiffs have failed to establish adequate cause for an Evidentiary Hearing.
15 Plaintiffs have not even submitted a supporting Affidavit alleging any facts whatsoever;

16 80. "Only in very rare instances in which new issues of fact or law are raised
17 supporting a ruling contrary to the ruling already reached should a motion for rehearing be
18 granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76). "Rehearings are
19 not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v.*
20 *McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citation omitted). Points or contentions
21 available before but not raised in the original hearing cannot be maintained or considered on
22 rehearing. See *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450
23 (1996);
24
25
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1 81. There is no basis for an Evidentiary Hearing under NRCP 59(a). There were no
2 irregularities in the proceedings of the court, or any order of the court, or abuse of discretion
3 whereby either party was prevented from having a fair trial. There was no misconduct of the
4 court or of the prevailing party. There was no accident or surprise which ordinary prudence
5 could not have guarded against. There was no newly discovered evidence material for the party
6 making the motion which the party could not, with reasonable diligence, have discovered or
7 produced at trial. There were no excessive damages being given under the influence of passion
8 of prejudice, and there were no errors in law occurring at the trial and objected to by the party
9 making the motion. If anything, the fact that Defendants were awarded 56% of their incurred
10 attorneys' fees and costs relating to the preliminary injunction issues, and denied additional
11 sanctions pursuant to NRCP 11, demonstrates this Court's evenhandedness and fairness to the
12 Plaintiffs;
13

14 82. Plaintiffs are not automatically entitled to an Evidentiary Hearing on the issue of
15 attorneys' fees and costs, and the decision to forego an evidentiary hearing does not deprive a
16 party of due process rights if the party has notice and an opportunity to be heard. *Lim v. Willick*
17 *Law Grp.*, No. 61253, 2014 WL 1006728, at *1 (Nev. Mar. 13, 2014). *See, also, Jones v. Jones*,
18 *22016 WL 3856487, Case No. 66632 (2016)*;
19

20 83. In this case, Plaintiffs had notice and the opportunity to be heard, and already
21 presented to the Court the evidence they would seek to present about why they filed a Motion for
22 a Preliminary Injunction against these Defendants, having argued at the September 27, 2016
23 Hearing, the October 11, 2016 Hearing, the November 1, 2016 Hearing and the January 10, 2017
24 hearing that they had "vested rights to enforce "restrictive covenants" against Defendants under
25 the *Gladstone v. Gregory* case. Those arguments fail;
26
27
28

1 84. The Court also gave Plaintiffs the opportunity to submit any further evidence they
2 wanted, with a deadline of November 15, 2016. The Court considered all evidence timely
3 submitted;

4 85. Plaintiffs filed on November 8, 2016 Supplemental Exhibits with their argument
5 regarding the "Amended Master Declaration" and on November 18, 2016 "Additional
6 Information" including description of the City Council Meeting. Plaintiffs also filed on
7 November 17, 2016, their Response to the Motion for Attorneys' Fees and Costs;

8 86. On its face, the facts claimed in Plaintiffs' Motion, unsupported by Affidavit,
9 regarding why he had to file the first Motion for Preliminary Injunction, second Motion for
10 Preliminary Injunction on September 28, 2016, the Motion for Stay Pending Appeal and the
11 Motion for Rehearing, which Motions were the basis of the award of attorneys' fees and costs,
12 are unbelievable. Plaintiffs claim that the City was dismissed as a Defendant and the "only
13 remedy" was to file directly against the Defendants. But Plaintiffs filed their Motion for
14 Preliminary Injunction against Fore Stars the day after the hearing on their first Motion for
15 Preliminary Injunction—even before the decision on their first Motion was issued detailing the
16 denial of the Motion and the analysis of the *Eagle Thrifty* case. The Court had not even heard,
17 let alone granted, City's Motion to Dismiss at that time;

18 87. Plaintiffs' justification that the administrative process came to an end when four
19 applications were withdrawn without prejudice, three were held in abeyance, and "a
20 contemplated additional violation of the CC&R's appeared on the record" is also without merit.
21 Aside from the fact that Plaintiffs are not permitted to restrain, in advance, the filing of
22 applications or the City's consideration of them, factually, as of September 28, 2016, the
23 Planning Commission Meeting had not even occurred yet (let alone the City Council Meeting).
24 The administrative process was still ongoing;

1 88. The claim that the *Gladstone* case was applicable directly against restrictive
2 covenant violators after the administrative process ended and Defendants were "no longer
3 protected by Eagle Thrifty" is, again, belied by the fact that the CC&R's do not apply to, and
4 cannot be enforced against, land that was not annexed into the Queensridge CIC. *Gladstone*
5 does not apply. Plaintiffs' argument is not convincing;

6
7 89. Plaintiffs' arguments regarding how "frivolous" is defined by NRCP 11 is
8 irrelevant because those additional sanctions against Plaintiffs' counsel were denied as moot, in
9 light of the Court awarding Defendants attorneys' fees and costs under NRS 18.010(2)(b) and
10 EDCR 7.60;

11 90. Defendants' Motion sought an award of \$147,216.85 in attorneys' fees and costs,
12 dollar for dollar, incurred in having to defeat Plaintiffs' repeated efforts to obtain a preliminary
13 injunction against Defendants, which multiplied the proceedings unnecessarily. After
14 considering Defendants' Motion and Supplement and Plaintiffs' Response, the Court awarded
15 Defendants \$82,718.50. The attorneys' fees and costs awarded related only to those efforts to
16 obtain a preliminary injunction through the end of October, 2016, and did not include or consider
17 the additional attorneys' fees, or the additional costs, which were incurred by Defendants relating
18 to the Motions to Dismiss, or the new filings after October, 2016;

19
20 91. NRS 18.010, EDCR 7.60 and NRCP 11 are distinct rules and statutes, and the
21 Court can apply any of the rules and statutes which are applicable;

22
23 92. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the
24 claim of the opposing party was brought without reasonable ground or to harass the prevailing
25 party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless and
26 made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d
27 560 (1993). Sanctions or attorneys' fees may be awarded where the pleading fails to be well
28

1 grounded in fact and warranted by existing law and where the attorney fails to make a reasonable
2 competent inquiry. *Id.* The decision to award attorney fees against a party for pursuing a claim
3 without reasonable ground is within the district court's sound discretion and will not be
4 overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130
5 P.3d 1280 (Nev. 2006).
6

7 93. NRS 18.010 (2) provides that: "The court shall liberally construe the provisions
8 of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent
9 of the Legislature that the court award attorney's fees pursuant to this paragraph and impose
10 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
11 situations to punish for and deter frivolous or vexatious claims and defenses because such claims
12 and defenses overburden limited judicial resources, hinder the timely resolution of meritorious
13 claims and increase the costs of engaging in business and providing professional services to the
14 public."
15

16 94. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party
17 without just cause: (1) Presents to the court a motion or an opposition to a motion which is
18 obviously frivolous, unnecessary or unwarranted, (3) So multiplies the proceedings in a case as
19 to increase costs unreasonably and vexatiously, and (4) Fails or refuses to comply with these
20 rules;
21

22 95. An award of attorney's fees and costs in this case was appropriate, as Plaintiffs'
23 claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry
24 before proceeding with their first Motion for Preliminary Injunction after receipt of the
25 Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing
26 or their Motion for Stay Pending Appeal, particularly in light of the hearing the day prior.
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