

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
VOLUME 62**

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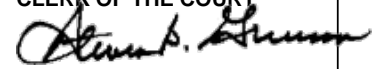
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15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 v.

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

32 Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

**APPENDIX OF EXHIBITS IN
SUPPORT OF CITY'S OPPOSITION
TO PLAINTIFF'S MOTION TO
DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON THE
FIRST, THIRD, AND FOURTH
CLAIMS FOR RELIEF AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

VOLUME 6

33 The City of Las Vegas ("City") submits this Appendix of Exhibits in Support of the City's
34 Opposition to Plaintiff's Motion to Determine Take and For Summary Judgment on the First, Third,
35 and Fourth Claims for Relief and its Countermotion for Summary Judgment.

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

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

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

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

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

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

Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-2	Summary of Communications between Developer and Peccole family regarding acquisition of Badlands Property	9	1623-1629
FFFF-3	Reference map of properties involved in transactions between Developer and Peccole family	9	1630
FFFF-4	Excerpt of appraisal for One Queensridge place dated October 13, 2005	9	1631-1632
FFFF-5	Site Plan Approval for One Queensridge Place (SDR-4206)	9	1633-1636
FFFF-6	Securities Redemption Agreement dated September 14, 2005	9	1637-1654
FFFF-7	Securities Purchase Agreement dated September 14, 2005	9	1655-1692
FFFF-8	Badlands Golf Course Clubhouse Improvement Agreement dated September 6, 2005	9	1693-1730
FFFF-9	Settlement Agreement and Mutual Release dated June 28, 2013	10	1731-1782
FFFF-10	June 12, 2014 emails and Letter of Intent regarding the Badlands Golf Course	10	1783-1786
FFFF-11	July 25, 2014 email and initial draft of Golf Course Purchase Agreement	10	1787-1813
FFFF-12	August 26, 2014 email from Todd Davis and revised purchase agreement	10	1814-1843
FFFF-13	August 27, 2014 email from Billy Bayne regarding purchase agreement	10	1844-1846
FFFF-14	September 15, 2014 email and draft letter to BGC Holdings LLC regarding right of first refusal	10	1847-1848
FFFF-15	November 3, 2014 email regarding BGC Holdings LLC	10	1849-1851
FFFF-16	November 26, 2014 email and initial draft of stock purchase and sale agreement	10	1852-1870
FFFF-17	December 1, 2015 emails regarding stock purchase agreement	10	1871-1872
FFFF-18	December 1, 2015 email and fully executed signature page for stock purchase agreement	10	1873-1874
FFFF-19	December 23, 2014 emails regarding separation of Fore Stars Ltd. and WRL LLC acquisitions into separate agreements	10	1875-1876
FFFF-20	February 19, 2015 emails regarding notes and clarifications to purchase agreement	10	1877-1879
FFFF-21	February 26, 2015 email regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1880
FFFF-22	February 27, 2015 emails regarding revised purchase agreements for Fore Stars Ltd. and WRL LLC	10	1881-1882
FFFF-23	Fully executed Membership Interest Purchase Agreement for WRL LLC	10	1883-1890

Exhibit	Exhibit Description	Vol.	Bates No.
FFFF-24	June 12, 2015 email regarding clubhouse parcel and recorded parcel map	10	1891-1895
FFFF-25	Quitclaim deed for Clubhouse Parcel from Queensridge Towers LLC to Fore Stars Ltd.	10	1896-1900
FFFF-26	Record of Survey for Hualapai Commons Ltd.	10	1901
FFFF-27	Deed from Hualapai Commons Ltd. to EHC Hualapai LLC	10	1902-1914
FFFF-28	Purchase Agreement between Hualapai Commons Ltd. and EHC Hualapai LLC	10	1915-1931
FFFF-29	City of Las Vegas' First Set of Interrogatories to Plaintiff	10	1932-1945
FFFF-30	Plaintiff 180 Land Company LLC's Responses to City of Las Vegas' First Set of Interrogatories to Plaintiff, 3 rd Supplement	10	1946-1973
FFFF-31	City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1974-1981
FFFF-32	Plaintiff 180 Land Company LLC's Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1982-1989
FFFF-33	September 14, 2020 Letter to Plaintiff regarding Response to Second Set of Requests for Production of Documents	11	1990-1994
FFFF-34	First Supplement to Plaintiff Landowners Response to Defendant City of Las Vegas' Second Set of Requests for Production of Documents to Plaintiff	11	1995-2002
FFFF-35	Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2003-2032
FFFF-36	Transcript of November 17, 2020 hearing regarding City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2033-2109
FFFF-37	February 24, 2021 Order Granting in Part and denying in part City's Motion to Compel Discovery Responses, Documents and Damages Calculation, and Related Documents on Order Shortening Time	11	2110-2118
FFFF-38	April 1, 2021 Letter to Plaintiff regarding February 24, 2021 Order	11	2119-2120
FFFF-39	April 6, 2021 email from Elizabeth Ghanem Ham regarding letter dated April 1, 2021	11	2121-2123
FFFF-40	Hydrologic Criteria and Drainage Design Manual, Section 200	11	2124-2142
FFFF-41	Hydrologic Criteria and Drainage Design Manual, Standard Form 1	11	2143
FFFF-42	Hydrologic Criteria and Drainage Design Manual, Standard Form 2	11	2144-2148
FFFF-43	Email correspondence regarding minutes of August 13, 2018 meeting with GCW regarding Technical Drainage Study	11	2149-2152

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

Exhibit	Exhibit Description	Vol.	Bates No.
QQQQ-9	1992 Las Vegas General Plan	15-16	2808-3257
QQQQ-10	1992 Southwest Sector Map	17	3258
QQQQ-11	Ordinance No. 5250 (Adopting 2020 Master Plan)	17	3259-3266
QQQQ-12	Las Vegas 2020 Master Plan	17	3267-3349
QQQQ-13	Ordinance No. 5787 (Adopting 2005 Land Use Element)	17	3350-3416
QQQQ-14	2005 Land Use Element	17	3417-3474
QQQQ-15	Ordinance No. 6056 (Adopting 2009 Land Use and Rural Neighborhoods Preservation Element)	17	3475-3479
QQQQ-16	2009 Land Use and Rural Neighborhoods Preservation Element	18	3480-3579
QQQQ-17	Ordinance No. 6152 (Adopting revisions to 2009 Land Use and Rural Neighborhoods Preservation Element)	18	3580-3589
QQQQ-18	Ordinance No. 6622 (Adopting 2018 Land Use and Rural Neighborhoods Preservation Element)	18	3590-3600
QQQQ-19	2018 Land Use & Rural Neighborhoods Preservation Element	18	3601-3700

DATED this 25th day of August 2021.

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 Lauren M. Tarpey (CA Bar No. 321775)
 (Admitted *pro hac vice*)
 396 Hayes Street
 San Francisco, California 94102

Attorneys for City of Las Vegas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 25th day of August, 2020, I caused a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF CITY’S OPPOSITION TO PLAINTIFF’S MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE FIRST, THIRD, AND FOURTH CLAIMS FOR RELIEF AND COUNTERMOTION FOR SUMMARY JUDGMENT – VOLUME 6** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

EXHIBIT “AAA”

MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AND SALE AGREEMENT (this "Agreement") to be effective December 1st, 2014 is made at Las Vegas, Nevada by and between **THE WILLIAM PETER PECCOLE AND WANDA RUTH PECCOLE FAMILY LIMITED PARTNERSHIP** dated **December 30, 1992**, a Nevada limited partnership ("Seller") and **RAMALTA LLC**, a Nevada limited liability company ("Purchaser") (the foregoing parties are collectively the "Parties" and each one a "Party"). For purposes of this Agreement, "Effective Date" shall be December 1, 2014.

RECITALS

WHEREAS, Seller is the sole member of Fore Stars, Ltd., a Nevada limited liability company ("Fore Stars");

WHEREAS, the Manager of Fore Stars and the General Partner of the Seller is Peccole-Nevada Corporation, a Nevada corporation ("PNC").

WHEREAS, Fore Stars is the owner of that certain real property and improvements, which includes a golf course, driving range, and other facilities located in the City of Las Vegas, Nevada, more particularly described on the attached Exhibit "A", which is incorporated herein by reference (collectively the "Real Property").

WHEREAS, Seller desires to sell all its ownership interest in Fore Stars (the "Securities") and Purchaser desires to purchase the Securities upon and subject to the terms and conditions of this Agreement;

WHEREAS, the Parties have reached an understanding with respect to the transfer by Seller and the acquisition by Purchaser of the Securities; and

NOW, THEREFORE, in consideration of the foregoing and due consideration paid by Purchaser to Seller, the Parties hereby agree:

SECTION 1 Definitions.

For purposes of this Agreement, the following definitions shall apply.

1.01 "Assets" shall mean the following assets of Seller: (1) all of the Seller's fixtures, fittings and equipment associated or used in connection with the Real Property, the equipment is set forth in Exhibit "B"; (2) all of Seller's right, title and interest in and to the use of the name "Badlands Golf Course" used in connection with the Real Property, and any derivatives or combinations thereof; (3) Seller's vendor lists and business records relating to the operation of the golf course and the Real Property; (4) all of the stock of goods owned by Seller used in the operation of the golf course and the Real Property, including without limitation any pro shop, clubhouse, office, and kitchen goods; (5) Seller's existing contracts with its suppliers and vendors, including that certain Water Rights Lease Agreement dated June 14, 2007 between the Seller and Allen G. Nel; (6) all leases and agreements to which Seller is a party with respect to machinery, equipment, vehicles, and other tangible personal property used in the operation of the golf course and the Real Property and all claims and rights arising under or pursuant to the Equipment Leases; (7) all other licenses and permits issued to the Seller (or held by Par 4 as part of the operation of the golf course and would be considered personal to such operation) related to the used in the operation of the golf course, including the liquor license issued by the City of Las Vegas, Nevada identified as License Number L16-00065 (the "Liquor License") and the Real Property; and (8) all rights under the Clubhouse

Lease. Assets shall not include any and all personal property, goods or rights owned by Par 4 as it relates to the Golf Course Lease.

1.02 "Golf Course Lease" shall mean that certain Golf Course Ground Lease dated as of June 1, 2010, as amended, between Fore Stars and Par 4 Golf Management, Inc., a Nevada corporation (the "Par 4").

SECTION 2
PURCHASE PRICE; DEPOSIT; FEASIBILITY PERIOD; DILIGENCE DOCUMENTS;
PRORATIONS; CLOSING DATE

2.01 Purchase Price. The total Purchase price for the Securities in Fore Stars shall be SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO/100 CENTS (\$7,500,000) (the "Purchase Price"). Purchaser shall pay the Purchase Price as follows:

(a) Initial Deposit. THREE HUNDRED THOUSAND DOLLARS AND NO/100 CENTS (\$300,000.00) as an earnest money deposit (the "Deposit"), by wire transfer to the following account designated by and controlled by PNC for the benefit of the Seller.

(b) Feasibility Period. Purchaser shall have thirty (30) days from the Effective Date of this Agreement to cause Seller to receive written notice of its disapproval of the feasibility of this transaction (the "Feasibility Period"). If Seller has not received such notice of disapproval before the expiration of the Feasibility Period, Purchaser shall be deemed to have approved the feasibility of this transaction. If Purchaser causes Seller to receive written notice of disapproval within the Feasibility Period, this Agreement shall be deemed terminated and shall be of no further force or effect. If no notice is received by the Seller to terminate this Agreement, then the Deposit shall be deemed non-refundable and released to Seller. If the Purchaser elects to proceed and not cancel this Agreement during the Feasibility Period, at the Closing, the Deposit shall be credited towards the Purchase Price with the balance to be paid by wire transfer to Seller using the same account information provided for in Section 2.01(a). Notwithstanding the provisions of this subsection (b), until the Feasibility Period, Purchaser shall have the right to terminate this Agreement and receive a full refund of the Deposit in the event that: (i) Purchaser discovers the existence of any written commitment, covenant, or restriction to any party executed in any capacity by Larry Miller, J. Bruce Bayne, or Fredrick P. Waid in their capacity as an officer and/or director of PNC, which commitment, covenant, or restriction would limit the ability of Purchaser to change the present use of the Real Property; or (ii) Purchaser discovers the presence of any materials, wastes or substances that are regulated under or classified as toxic or hazardous, under any Environmental Law, including without limitation, petroleum, oil, gasoline or other petroleum products, by products or waste .

Seller hereby grants Purchaser, from the date hereof until expiration of the Feasibility Period, upon twenty-four (24) hours' notice to Seller and reasonable consent of Par 4, the right, license, permission and consent for Purchaser and Purchaser's agents or independent contractors to enter upon the Real Property for the purposes of performing tests, studies and analyses thereon. Seller or Par 4 may elect to have a representative of Seller present during Purchaser's site inspections. The parties shall coordinate Purchaser's on site investigations so as to minimize disruption of the golf course operations on the Real Property and impact upon Par 4 and their employees. Purchaser shall indemnify and hold Seller and Par 4 harmless from and against any property damages or bodily injury that may be incurred by Seller or Par 4 as a result of such actions by Purchaser, its employees, agents and independent contractors. Purchaser shall obtain, and shall require that its contractors obtain, liability insurance, naming Seller and Par 4 each as an additional insured, in an amount not less than \$1,000,000 (combined single limit) with respect to all such activities conducted at Purchaser's direction on the Real Property. The rights of Seller and Par 4 and Purchaser's obligations set forth in this subsection shall expressly survive any termination of this Agreement. Purchaser agrees not to permit or suffer and, to the extent so permitted or suffered, to cause

to be removed and released, any mechanic's, materialman's, or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with the planning, design, inspection, construction, alteration, repair or surveying of the Real Property, or preparation of plans with respect thereto as aforesaid by, through or under Purchaser during the Feasibility Period and through the Closing Date.

(c) Delivery of Documents. On or before ten (10) business days after the Effective Date, or as otherwise provided below, Seller shall deliver to Purchaser copies of all of the following items, provided Seller has such items in its actual possession (collectively referred to herein as "Documents"):

a. Copies of all development agreements, subdivision improvement agreements, CC&R's, water supply agreements, effluent use agreements, irrigation agreements, or other agreements entered into with the any third parties, the City of Las Vegas, Nevada or any special district, quasi-municipality or municipality having jurisdiction over the Real Property, if any;

b. Copies of all operations, maintenance, management, service and other contracts and agreements relating to operation of the golf course (which agreements may be assumed in full by the Purchaser in Purchaser's sole discretion) and copies of any and all subleases and license agreements relating to the Real Property, if any;

c. Last six (6) months of statements issued to the Seller for water, storm and sanitation sewer, gas, electric, and other utilities connected to or serving the Real Property (if any), including availability and standby charges;

d. Real property tax bills and notices of assessed valuation, including any special assessments, pertaining to the Real Property (if any) for the most recent three (3) tax years, including documents relating to any pending or past tax protests or appeals made by Seller, if any;

e. Any governmental and utility permits, licenses, permits and approvals relating to the Real Property, Assets or Liquor License issued to the Seller, if any;

f. List of personal property owned by Seller together with any security interest or encumbrances thereon that are being conveyed to the Purchaser as the Closing;

g. A copy of any plans and specifications (including "as-builts") of improvements and any other architectural, engineering, irrigation and landscaping drawings, plans and specifications in the Seller's possession;

h. A summary of all pending and threatened claims that were reduced to writing and delivered to the Seller existing at the time of the Effective Date of this Agreement that may result in future liability to Purchaser in excess of \$5,000 and all written notices of violation or enforcement action from governmental agencies served upon Seller that require curative action related to the Real Property, or Assets or involving the golf course operation. After the summary is provided to Purchaser, to the extent that any new claims are delivered in writing to the Seller prior to Closing, Seller shall advise Purchaser in writing;

i. 5.9 The Golf Course Lease.

Purchaser shall retain in strict confidence all Proprietary Information received by Seller, and shall not reveal it to anyone except as may be necessary for the accomplishment of the purposes of such examination and the consummation of the transactions provided for hereby. In the event the sale provided for hereby is not consummated for any reason, for a period of five (5) years, Purchaser shall not,

directly or indirectly: (i) utilize for its own benefit any Proprietary Information (as hereinafter defined) or (ii) disclose to any person any Proprietary Information, except as such disclosure may be required in connection with this Agreement or by law. For purposes of this Agreement, "Proprietary Information" shall mean all confidential business information concerning the pricing, costs, profits and plans for the future development of the Real Property, the Assets or the operation of the golf course, and the identity, requirements, preferences, practices and methods of doing business of specific customers or otherwise relating to the business and affairs of the parties, other than information which (A) was lawfully in the possession of Purchaser prior to the date of disclosure of such Proprietary Information; (B) is obtained by Purchaser after such date from a source other than Seller who is not under an obligation of confidentiality to the Seller; or (C) is in the public domain when received or thereafter enters the public domain through no action of Purchaser. In the event the transactions contemplated hereby are not consummated for any reason, upon receipt of written request from Seller, Purchaser shall return to Seller all Documents and Records received from the Seller (the Documents and Records collectively referred to herein as "Due Diligence Items".)

Seller, however, makes no warranty or representation as to the accuracy, correctness or completeness of the information contained in the Due Diligence Items except as expressly set forth in this Agreement. The Due Diligence Items are being provided to Purchaser for Purchaser's informational purposes only with the understanding and agreement that Purchaser will obtain its own soils, environmental and other studies and reports in order to satisfy itself with the condition of the Real Property.

2.02 Prorations.

(a) Credits and Prorations. In addition to the Purchase Price, the following shall be apportioned with respect to the Real Property as of 12:01 a.m., on the day of Closing (the "Cut-Off Time"), as if Purchaser were vested with title to the Real Property during the entire day upon which Closing occurs with the understanding that all or a portion of the charges may be due and owing to Par 4 in accordance with the terms and conditions of the Golf Course Lease, if the date of termination of the Golf Course Lease occurs after the Closing Date, by agreement of Purchaser and Seller: (i) taxes (including personal property taxes on all personal property and Inventory) and assessments levied against the Real Property; (ii) gas, electricity and other utility charges for the golf course operations, if any; (iii) charges and fees paid or payable for licenses and permits transferred by Seller to Purchaser; (iv) water and sewer charges; and (v) any other operating expenses or other items pertaining to the Real Property which are customarily prorated between a purchaser and a seller in the area in which the Property is located including, without limitation, any prepaid expenses. At Closing, Purchaser shall credit to the account of Seller all deposits posted with utility companies serving the Real Property. Any taxes paid at or prior to Closing shall be prorated based upon the amounts actually paid. If taxes and assessments for the current year have not been paid before Closing, Seller shall be charged at the Closing an amount equal to that portion of such taxes and assessments for the period prior to the Cut Off-Time. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves following Closing. All necessary adjustments shall be made within fifteen (15) business days after the tax bill for the current year is received. As to gas, electricity and other utility charges, such charges to be apportioned at Closing on the basis of the most recent meter reading occurring prior to Closing (but subject to later readjustment as set forth below).

(b) Apportionment Credit. In the event the apportionments to be made at the Closing result in a credit balance (i) to Purchaser, such sum shall be paid at the Closing by giving Purchaser a credit against the Purchase Price in the amount of such credit balance, or (ii) to Seller, Purchaser shall pay

the amount thereof to the Title Company, to be delivered to Seller together with the net proceeds of the Purchase Price by wire transfer of immediately available funds to the account or accounts to be designated by Seller for the payment of the balance.

2.03 Closing. The purchase and sale of the Securities contemplated by this Agreement shall be consummated by a closing (the "Closing") at the offices of Sklar Williams PLLC, 410 South Rampart Boulevard, Suite 350, Las Vegas, Nevada 89145 at 10 a.m. on March 2, 2015 or such earlier date as is mutually acceptable to Seller and Purchaser (the "Closing Date"). The procedure to be followed by the parties in connection with the Closing shall be as follows:

(a) Closing Deliveries by Seller:

- (i) Good Standing Certificate and a copy of the filed Articles of Organization for Fore Stars;
- (ii) executed resignations by PNC as the duly appointed Manager for Fore Stars;
- (iii) amendment to annual list to be filed with the Nevada Secretary of State for Fore Stars to replace PNC as the Manager with a designee of the Purchaser;
- (iv) executed documents (if any) and if not previously delivered showing the sale of the Securities in Fore Stars to the Purchaser that may be required to maintain the Liquor License issued by the City of Las Vegas, Nevada;
- (v) a License Agreement issued by an affiliate of the Seller for Purchaser to have the right to use the mark "Queensridge" in accordance with the terms and conditions set forth therein (the "Trademark License Agreement"); and
- (vi) such other documents as are reasonable or necessary to consummate the transactions contemplated by this Agreement.

(b) Closing Deliveries by Purchaser:

- (i) the balance of the Purchase Price;
- (ii) an executed Trademark License Agreement; and
- (iii) all other documents required to be executed by Purchaser pursuant to the terms of this Agreement.

SECTION 3
REPRESENTATIONS AND WARRANTIES; COVENANTS

3.01 Mutual Representations. As of the date hereof, each Party (with Seller through PNC, its duly appointed Manager for the PNC as the sole member of Fore Stars) hereby represents and warrants to the other Party as follows:

(a) Fore Stars is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

(b) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada.

(c) This Agreement has been duly executed and delivered by such Party. This Agreement and the other agreements and instruments contemplated hereby constitute legal, valid and binding obligations of such Party, enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditor's rights generally, and except as subject to general principles of equity.

(d) The execution, delivery or performance of this Agreement by such Party will not breach or conflict with or result in a material breach of, or constitute a material default under, (i) any statute, law, ordinance, rule or regulation of any governmental authority, or any judgment, order, injunction, decree or ruling of any court or governmental authority to which such Party is subject or by which such Party is bound, or (ii) any agreement to which such Party is a party.

(e) All consents, approvals, authorizations, agreements, estoppel certificates and beneficiary statements of any third party required or reasonably requested by another Party in connection with the consummation of the transactions contemplated hereby have been delivered to the requesting Party.

(f) No representations or warranties by such Party, nor any statement or certificate furnished, or to be furnished, to any other Party pursuant hereto or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits, or will omit, to state a material fact known to such Party, necessary to make the statements contained herein or therein not misleading.

3.02 Seller's Representations. As of the Effective Date, Seller (through PNC, its duly appointed Manager for the PNC) covenants, represents and warrants to Purchaser as follows:

(a) Seller is the lawful record and beneficial owner of 100% of the Shares. Seller owns the Shares free and clear of all liabilities, obligations, security interests, liens and other encumbrances ("Liens and Encumbrances"). As the Shares are uncertificated, at the Closing Buyer will receive good, valid and marketable title to the Shares, free and clear of all Liens and Encumbrances resulting in the Buyer becoming the sole shareholder of the Company. .

(b) There is (i) no outstanding consent, order, judgment, injunction, award or decree of any court, government or regulatory body or arbitration tribunal against or involving Fore Stars, (ii) no action, suit, dispute or governmental, administrative, arbitration or regulatory proceeding pending or, to Seller's actual knowledge, threatened against or involving Fore Stars or Seller in Seller's capacity as the sole owner of Fore Stars, and (iii) to Seller's actual knowledge, no investigation pending or threatened against or relating to either Fore Stars or any of its respective officers or directors as such or Seller in Seller's capacity as the sole owner of Fore Stars.

(c) Fore Stars has good and marketable title to all of its properties (except as noted on Exhibit "A"), assets and other rights, free and clear of all Liens and Encumbrances.

(d) Seller has furnished Purchaser with a compiled financial statement for Fore Stars for the periods ending December 31, 2013 and November 30, 2014. Except as noted therein and except for normal year-end adjustments, all such financial statements are complete and correct and present fairly the financial position of Fore Stars at such dates and the results of its operations and its cash flows.

(e) Since November 30, 2014, there has been no material adverse change in the financial condition, assets, liabilities (contingent or otherwise), result of operations, business or business prospects of Fore Stars.

(f) Since November 30, 2014, the Seller has caused Fore Stars to conduct its business only in the ordinary course.

(g) Fore Stars is not a party to, nor are any of its respective Assets bound by, any written or oral agreement, purchase order, commitment, understanding, lease, evidence of indebtedness, security agreement or other contract. Further, Fore Stars is not subject to any liabilities that have already accrued or potential liability that either Purchaser or Seller is aware of that have not yet accrued.

(h) To the best of Seller's Knowledge, Seller has not received any notice from any governmental unit that (i) the Real Property is not in compliance with any Environmental Law (ii) there are any administrative, regulatory or judicial proceedings pending or threatened with respect to the Real Property pursuant to, or alleging any violation of, or liability under, any Environmental Law. "Environmental Laws" means any environmental, health or safety law, rule, regulation, ordinance, order or decree, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, any "Superfund" or "Super Lien" law or any other federal, state, county or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any petroleum, natural or synthetic gas products and/or hazardous, toxic or dangerous waste pollutant or contaminant, substance or material as may now or any time hereinafter be in effect.

(i) To the best of Seller's Knowledge, the execution and delivery of this Agreement will not (i) violate or conflict with the Seller's articles of organization or the limited liability company operating agreement of Seller, (ii) violate or conflict with any judgment, decree or order of any court applicable to or affecting Seller, (iii) breach the provisions of, or constitute a default under, any contract, agreement, instrument or obligation to which Seller is a party or the Real Property is the subject matter or is bound, or (iv) violate or conflict with any law, ordinance or governmental regulation or permit applicable to Seller.

(j) To the best of Seller's Knowledge, Seller has not commenced, nor has Seller been served with process or notice of any attachment, execution proceeding, assignment for the benefit of creditors, insolvency, bankruptcy, reorganization or other similar proceedings against Seller (the "*Creditor's Proceeding*"), nor is any Creditor's Proceeding contemplated by Seller. No Creditor's Proceeding is pending, or to Seller's knowledge, threatened against Seller.

(k) Fore Stars does not have any employees.

(l) To the best of Seller's Knowledge, Seller has not received any notice of violation from any federal, state or municipal entity that has not been cured or otherwise resolved to the satisfaction of such governmental entity.

As used herein the phrase "to Seller's Knowledge" or "to the best of Seller's Knowledge" shall mean the current, actual (as opposed to constructive) knowledge of William Bayne, the duly appointed Vice President of PNC without having made any investigation of facts or legal issues and without any duty to do so and without imputing to either person the knowledge of any employee, agent, representative or affiliate of Seller. All of Seller's representations and warranties shall survive Closing for a period six (6) months.

SECTION 4 TAX MATTERS

Each Party to this Agreement shall be fully responsible for any and all taxes (income or otherwise) that may result from this Agreement and the payment of the Purchase Price.

SECTION 5 ARBITRATION

Any dispute, controversy or claim arising under, out of, in connection with, or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision of this Agreement, will be settled by final and binding arbitration conducted in accordance with, and before a three-member

arbitration panel (the "Arbitrator") whereby each Party selects on panel member to represent their interests and the two panel members jointly select a neutral arbitrator. The arbitration will be conducted according to the rules of the American Arbitration Association. Unless otherwise mutually agreed upon by the parties, the arbitration hearings shall be held in the City of Las Vegas, Nevada. The Parties hereby agree that the Arbitrators have full power and authority to hear and determine the controversy and make an award in writing in the form of a reasoned judicial opinion. The Parties hereby stipulate in advance that the award is binding and final. The Parties hereto also agree that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof. The prevailing party in any arbitration or other action pursuant to this Section 5 shall be entitled to recover its reasonable legal fees and out-of-pocket expenses.

SECTION 6 BROKERAGE FEES

Each Party represents that it has not entered into any agreement for the payment of any fees, compensation or expenses to any natural or legal person in connection with the transactions provided for herein, and shall hold and save the other Parties harmless from any such fees, compensation or expenses, including attorneys fees and costs, which may be suffered by reason of any such agreement or purported agreement.

SECTION 7 PURCHASER'S INDEMNIFICATION

Notwithstanding anything to the contrary contained herein, if Seller, PNC or any direct or indirect owner thereof is made a party to any litigation in which the Seller, PNC or any direct or indirect owner thereof is a party for any matters relating to Purchaser's development of the Real Property, then Purchaser as well as Executive Home Builders, Inc., a Nevada corporation shall indemnify, defend and hold Seller, PNC or any direct or indirect owner thereof harmless from all costs and expenses incurred by such party related to such litigation. This indemnity obligation shall survive the Closing for a period of six (6) years from the final and non-appealable date triggered from each time Purchaser obtains any required permits and approvals for the development, changes, modifications or improvements to all or portions of the Real Property and/or golf course. Upon expiration of such period, the provisions of this Section 7 shall expire and be of no further force and effect.

SECTION 8 NOTICES

8.01 Procedure. Any and all notices and demands by any Party to any other Party, required or desired to be given hereunder, shall be in writing and shall be validly given or made only if (a) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (b) made by Federal Express or other similar courier service keeping records of deliveries and attempted deliveries. Service by mail or courier shall be conclusively deemed made on the first business day delivery is attempted or upon receipt, whichever is sooner.

8.02 Notice Addresses. Any notice or demand shall be delivered to a Party as follows:

To Seller:	c/o Peccole-Nevada Corporation 851 South Rampart Boulevard, Suite 105 Las Vegas, Nevada 89145 Attention: William Bayne
------------	---

To Purchaser:

9755 West Charleston Boulevard
Las Vegas, Nevada 89117
Attention: Yohan Lowie, Manager

8.03 Change of Notice Address. The Parties may change their address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner provided above.

SECTION 9 MISCELLANEOUS

9.01 Choice of Law. This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Nevada, without giving effect to the principles of conflict of laws thereof.

9.02 Attorneys' Fees. In the event any action is commenced by any Party against any other Party in connection herewith, including, without limitation, any bankruptcy proceeding, the prevailing Party shall be entitled to its costs and expenses, including without limitation reasonable attorneys' fees.

9.03 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Except as specifically provided herein, this Agreement is not intended to, and shall not, create any rights in any person or entity whatsoever except Purchaser and Seller.

9.04 Severability. If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, then all terms, provisions, covenants or conditions of this Agreement, and all applications thereof, not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby, provided that the invalidity, voidness or unenforceability of such term, provision, covenant or condition (after giving effect to the next sentence) does not materially impair the ability of the Parties to consummate the transactions contemplated hereby. In lieu of such invalid, void or unenforceable term, provision, covenant or condition there shall be added this Agreement a term, provision, covenant or condition that is valid, not void, and enforceable and is as similar to such invalid, void, or unenforceable term, provision, covenant or condition as may be possible.

9.05 Integration Clause; Modifications; Waivers. This Agreement (along with the documents referred to herein) constitutes the entire agreement among the Parties pertaining to the subject matter contained herein and supersedes all prior agreements, representations and understandings of the Parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

9.06 Captions. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

9.07 Negotiation. This Agreement has been subject to negotiation by the Parties and shall not be construed either for or against any Party, but this Agreement shall be interpreted in accordance with the general intent of its language.

9.08 Construction. Personal pronouns shall be construed as though of the gender and number required by the context, and the singular shall include the plural and the plural the singular as may be required by the context.

9.09 Other Parties. Except as expressly provided otherwise, nothing in this Agreement is intended to confer any rights or remedies under this Agreement on any persons other than the Parties and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any Party to this Agreement.

9.10 Counterparts. This Agreement may be executed in any number of counterparts; each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same Agreement. Any signature page of this Agreement may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart, identical in form thereto, but having attached to it one or more additional signature pages. The Parties contemplate that they may be executing counterparts of this Agreement transmitted by facsimile and agree and intend that a signature transmitted through a facsimile machine shall bind the party so signing with the same effect as though the signature were an original signature.

9.11 Attorney Representation. In the negotiation, preparation and execution of this Agreement, the parties hereto acknowledge that Seller has been represented by the law firm of Sklar Williams PLLC, Las Vegas, Nevada and that Purchaser has been represented by Todd D. Davis, Esq. The parties have read this Agreement in its entirety and fully understand the terms and provisions contained herein. The parties hereto execute this Agreement freely and voluntarily and accept the terms, conditions and provisions of this Agreement and state that the execution by each of them of this Agreement is free from any coercion whatsoever.

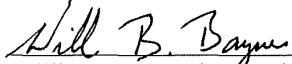
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement and intend the effective date to be as written above.

SELLER:

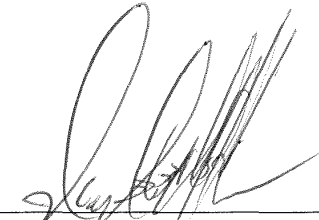
WILLIAM PETER PECCOLE AND
WANDA RUTH PECCOLE FAMILY
LIMITED PARTNERSHIP dated
December 30, 1992, a Nevada
limited partnership

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


William Bayne, Vice President

PURCHASER:

RAMALTA LLC
a Nevada limited liability company


Yohan Lowie, Manager

The undersigned hereby joins in the execution of this Agreement for the provisions set forth in Section 7 hereof.

Executive Home Builders, Inc.
a Nevada corporation

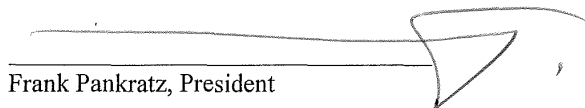

Frank Pankratz, President

EXHIBIT "A"

REAL PROPERTY 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:

Being 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 50°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" East;

thence Northwesterly 79.44 feet along a curve concave Southwest having a central angle of 5°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 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 northerly corner of said Amended Plat of Peccole West; thence South 42°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°19'35" with a radius of 25.00 feet; thence South 39°33'23" West a distance of 229.20 feet; thence South 50°26'37" East a distance of 80.00 feet; thence North 39°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°40'27" with a radius of 25.00 feet; thence North 35°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°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 ¼) 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°08'21" West, 197.13 feet; thence North 46°08'45" East, 17.75 feet; thence North 57°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°21'06" West; thence Northeasterly along said curve, through a central angle of 03°03'21", an arc length of 96.80 feet; thence North 39°51'15" East, 199.00 feet; thence South 50°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°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.

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

Exhibit A, Page 2

0977

LO 00036819

11070

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.

Assessor's Parcel Number: 138-31-712-004

Lot G (Common Area) of Peccole West - Parcel 20, as shown by map thereof on file in Book 87 of Plats, Page 54, in the Office of the County Recorder of Clark County, Nevada.

THE FOLLOWING TO BE INCLUDED AS PART OF THE REAL PROPERTY, BUT NOT AS OF THE CLOSING DATE, IN ACCORDANCE WITH THAT CERTAIN LOT LINE ADJUSTMENT AGREEMENT DATED NOVEMBER 14, 2014 BETWEEN FORE STARS AND QUEENSRIDGE TOWERS LLC, A NEVADA LIMITED LIABILITY COMPANY

That portion of Assessor's Parcel Number: 138-32-210-005 described as [:

BEING A PORTION OF THE WEST HALF (W1/2) 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 SOUTHERLY CORNER OF FINAL MAP OF "ONE QUEENSRIDGE PLACE, PHASE 1", RECORDED IN BOOK 137, PAGE 88 OF PLATS, CLARK COUNTY, OFFICIAL RECORDS; THENCE SOUTH 65°04'09" WEST A DISTANCE OF 37.06 FEET; THENCE NORTH 89°22'39" WEST A DISTANCE OF 275.72 FEET; THENCE NORTH 68°22'14" WEST A DISTANCE OF 218.50 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°23'29" WEST A DISTANCE OF 268.84 FEET; THENCE NORTH 05°34'48" WEST A DISTANCE OF 95.02 FEET; THENCE NORTH 24°04'10" WEST A DISTANCE OF 95.59 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 07°28'45" EAST A DISTANCE OF 75.10 FEET; THENCE SOUTHEASTERLY 31.34 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 24.41 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

EQUIPMENT LIST

Manufacturers Name:	Model	Quantity	Own/leased	Serial Number	Description	Notes
Dakota	440	1	Owned	44001306	Large Material Handler	
Toro		1	Owned	260000114	Rake-o-vac	Sweeper
Classen	sc18	1	Owned	3051	Sod Cutter	Includes Trailer
Buffalo		1	Owned	12832	Turbine Blower	Wireless Remote
Buffalo		1	Owned	113777	Turbine Blower	
Kubota	m4030	1	Owned	24308	Large Tractor	
Kubota	L2900	1	Owned	2900d58699	Small Tractor	
John Deere	310d	1	Owned	818488	Backhoe/loader	
TyCrop	qp500	1	Owned	630	Beltdrop top dresser	
AD Williams		1	Owned		300gal tow behind sray	
Jacobson		1	Owned		PTO drive blower	
Lely	1250	1	Owned		3pt. Hitch spreader	
Lely	w1250	1	Owned		Tow behind spreader	
Ryan Aerifier			Owned		Tow Behind	
Turfco	triwave60	1	Owned	k00861	PTO drive slitseeder	
Turfco	mtrmatic	1	Owned		walking top dresser	
GreensGroomer	drgbroom	1	Owned		towable drag broom	
Landpride	boxblade	1	Owned		tractor box blade	
Broyhill		1	Owned		in workman or trailer	100 GAL spot spray
Pratt Rake		1	Owned		3pt. Hitch dethatcher	
Jacobson	t535d	1	Owned	66150	turfcat rotary mower	extra desk
First Products	af80	1	Owned		aera vator	
Smithco	X-press	1	Owned	t725	greens roller	
Toro	3300d	1	Owned	50332	workman	poor condition
Toro	3300d	1	Owned	60471	workman	poor condition
Ditch Witch		1	Owned	1330	trencher	
Clubcar		1	Owned	544656	Mechanics Cart	
EZ GO	St350	1	Owned	2255615	utility vehicle	Good condition
EZ GO	St350	1	Owned	2255617	utility vehicle	Good condition
EZ GO	St350	1	Owned	1325630	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62000	utility vehicle	avg. condition
EZ GO	St350	1	Owned	1168216	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62015	utility vehicle	avg. condition
EZ GO	St350	1	Owned	13225631	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62020	utility vehicle	avg. condition
EZ GO	St350	1	Owned	a62017	utility vehicle	avg. condition
Toro	5040	1	Owned	270000704	Sand Pro	boxblade,pushblade
Kubota	M4900	1	Owned	55172	4wd Tractor	

Exhibit B, Page 1

0979

LO 00036821

11072

Kitchen (back of house)

American Range (char-broiler) 4 burner type
Electric Salamander
Pitco Frialator (G11BC004851) 2 basket type
American Range 4 burner/griddle combo
Built in 6 drawer line refrigerator
Mobile refrigeration unit (5277474)
Amana Commercial Microwave
Star Toaster (TQ135100800528)
Mobile 5 burner hot line
True Freezer (4562096)
Randell Refrigerator (500000004829)
Moffat Convection Over (713199)
Alto-Shaam (4321-135-686) – Slow Roaster
Alto-Shaam (5049-78-290) – Slow Roaster
Manitowoc Ice Machine
Built in walk in refrigerator (1513-P1)
Globe Meat Slicer (353824)
Randell Freezer (500000004819)
8 storage racks
Liquor Storage Cabinet (locked)
Cooler Storage Outside (Beverage Cart)
4 Large Storage Coolers (Glass Front)
Serial #'s: 4957419; 1-3705092; 1-2505390; 6533204

Food and Beverage (Front of House)

Bar Coolers:
Beverage Air Glass Cooler (9206937)
True Beer Cooler (12111352)
True Small Keg Cooler (1-3705092)
Beverage Air Large Keg Cooler (4411615)
Large Bar Cooler (22-96843)
Bain Marie Front Load Cooler (22-46842)
IMI Cornelius Soda Dispenser Pepsi (63R0526KD057)
Furniture:
Wood Square Table (4' by 4') – 10
Wood Round Table (48") – 7
Wood Square Table High Top (36") – 2
Wood Chairs High Top – 4
Wood Chairs Standard – 78
Televisions:
3 Panasonic 50" (Pro-Shop included)
1 Vizio 50"

Furniture Throughout Building (Front of House and Offices)

Cloth Chair Large
Dark Blue Leather Loveseat
Dark Blue Leather Sofa
2 Brown Leather Chair w/ Ottoman
Brown Leather Loveseat
Brown Leather Sofa
4 Wooden End Table
7 Wooden Chair (Assorted)
Red Leather Couch
2 Large Wood/Cloth Chair
Wood Coffee Table
Wood/Glass Coffee Table
4 Wood Desk (48")
3 L-Shape Wood Desk
2 Large File Cabinet
2 Tall Document Size File Cabinet

EXHIBIT “BBB”

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

- 1 **ITEM 71 - For Possible Action - Any items from the afternoon session that the Council,**
2 **staff and /or the applicant wish to be stricken, tabled, withdrawn or held in abeyance to a**
3 **future meeting may be brought forward and acted upon at this time**
4 **Agenda Item 71, for possible action, any items Council, Staff and/or applicant wish to be**
5 **stricken, tabled, withdrawn, held in abeyance to a future meeting may be brought forward**
6 **and acted upon at this time.**
7
8 **ITEM 74 - GPA-72220 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT -**
9 **PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC - For possible action**
10 **on a request for a General Plan Amendment FROM: PR-OS**
11 **(PARKS/RECREATION/OPEN SPACE) TO: ML (MEDIUM LOW DENSITY**
12 **RESIDENTIAL) on 132.92 acres on the east side of Hualapai Way, approximately 830 feet**
13 **north of Charleston Boulevard (APNs 138-31-601-008; and 138-31-702-003 and 004), Ward**
14 **2 (Seroka) [PRJ-72218]. The Planning Commission vote resulted in a tie, which is**
15 **tantamount to a recommendation of DENIAL. Staff recommends APPROVAL.**
16
17 **ITEM 75 - WVR-72004 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING -**
18 **APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for**
19 **a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE**
20 **47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES**
21 **ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on**
22 **a portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road**
23 **(APN 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7**
24 **(Residential Planned Development - 7 Units per Acre) and PD (Planned Development)**
25 **Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff**
26 **recommend APPROVAL.**
27
28 **ITEM 76 - SDR-72005 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW**
29 **RELATED TO WVR-72004 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND**

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

30 **CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review**
31 **FOR A PROPOSED 75-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a**
32 **portion of 71.91 acres on the north side of Verlaine Court, east of Regents Park Road**
33 **(APNs 138-31-601-008; 138-32-202-001; 138-32-210-008; and 138-32-301-007), R-PD7**
34 **(Residential Planned Development - 7 Units per Acre) and PD (Planned Development)**
35 **Zones, Ward 2 (Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff**
36 **recommend APPROVAL.**

37

38 **ITEM 77 - TMP-72006 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-**
39 **72004 AND SDR-72005 - PARCEL 2 @ THE 180 - PUBLIC HEARING -**
40 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**
41 **Tentative Map FOR A 75-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on**
42 **22.19 acres on the north side of Verlaine Court, east of Regents Park Road (APN 138-31-**
43 **601-008), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2**
44 **(Seroka) [PRJ-71990]. The Planning Commission (4-2-1 vote) and Staff recommend**
45 **APPROVAL.**

46

47 **ITEM 78 - WVR-72007 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING -**
48 **APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for**
49 **a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE**
50 **47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES**
51 **ARE REQUIRED on a portion of 126.65 acres on the east side of Hualapai Way,**
52 **approximately 830 feet north of Charleston Boulevard (APN 138-31-702-003; 138-32-202-**
53 **001; 138-32-210-008; and 138-32-301-007), R-PD7 (Residential Planned Development - 7**
54 **Units per Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The**
55 **Planning Commission (4-2-1 vote) and Staff recommend APPROVAL.**

56

57 **ITEM 79 - SDR-72008 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW**
58 **RELATED TO WVR-72007 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND**

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

59 **CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review**
60 **FOR A PROPOSED 106-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a**
61 **portion of 126.65 acres on the east side of Hualapai Way, approximately 830 feet north of**
62 **Charleston Boulevard (APNs 138-31-702-003; 138-32-202-001; 138-32-210-008; and 138-32-**
63 **301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned**
64 **Development) Zones, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1**
65 **vote) and Staff recommend APPROVAL.**

66

67 **ITEM 80 - TMP-72009 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-**
68 **72007 AND SDR-72008 - PARCEL 3 @ THE 180 - PUBLIC HEARING -**
69 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**
70 **Tentative Map FOR A 106-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on**
71 **76.93 acres on the east side of Hualapai Way, approximately 830 feet north of Charleston**
72 **Boulevard (APN 138-31-702-003), R-PD7 (Residential Planned Development - 7 Units per**
73 **Acre) Zone, Ward 2 (Seroka) [PRJ-71991]. The Planning Commission (4-2-1 vote) and**
74 **Staff recommend APPROVAL.**

75

76 **ITEM 81 - WVR-72010 - ABEYANCE ITEM - WAIVER - PUBLIC HEARING -**
77 **APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for**
78 **a Waiver TO ALLOW 40-FOOT PRIVATE STREETS WITH NO SIDEWALKS WHERE**
79 **47-FOOT PRIVATE STREETS WITH FIVE-FOOT SIDEWALKS ON BOTH SIDES**
80 **ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on**
81 **a portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of**
82 **Charleston Boulevard (APN 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-**
83 **301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned**
84 **Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1**
85 **vote) and Staff recommend APPROVAL.**

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

86 **ITEM 82 - SDR-72011 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW**
87 **RELATED TO WVR-72010 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND**
88 **CO, LLC, ET AL - For possible action on a request for a Site Development Plan Review**
89 **FOR A PROPOSED 53-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on a**
90 **portion of 83.52 acres on the east side of Palace Court, approximately 330 feet north of**
91 **Charleston Boulevard (APNs 138-31-702-004; 138-32-202-001; 138-32-210-008; and 138-32-**
92 **301-007), R-PD7 (Residential Planned Development - 7 Units per Acre) and PD (Planned**
93 **Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning Commission (4-2-1**
94 **vote) and Staff recommend APPROVAL.**

95
96 **ITEM 83 - TMP-72012 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO WVR-**
97 **72010 AND SDR-72011 - PARCEL 4 @ THE 180 - PUBLIC HEARING -**
98 **APPLICANT/OWNER: 180 LAND CO, LLC - For possible action on a request for a**
99 **Tentative Map FOR A 53-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on**
100 **33.80 acres on the east side of Palace Court, approximately 330 feet north of Charleston**
101 **Boulevard (APN 138-31-702-004), R-PD7 (Residential Planned Development - 7 Units per**
102 **Acre) and PD (Planned Development) Zones, Ward 2 (Seroka) [PRJ-71992]. The Planning**
103 **Commission (4-2-1 vote) and Staff recommend APPROVAL.**

104

105 **Appearance List**

106 CAROLYN G. GOODMAN, Mayor
107 STEVEN G. SEROKA, Councilman
108 CEDRIC CREAM, Councilman
109 MICHELE FIORE, Councilwoman
110 LUANN D. HOLMES, City Clerk
111 LOIS TARKANIAN, Councilwoman
112 BRAD JERBIC, City Attorney
113 BOB COFFIN, Councilman
114 SCOTT ADAMS, City Manager

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

115 STAVROS S. ANTHONY, Councilman
116 ROBERT SUMMERFIELD, Director of Planning
117 TOM PERRIGO, Executive Director, Community Development
118 STEPHANIE ALLEN, 1980 Festival Plaza, on behalf of the applicant
119 MARK HUTCHISON, Counsel for the applicant
120 ELIZABETH GHANEM HAM, in-house Counsel, on behalf of the applicant
121 MICHAEL BUCKLEY, on behalf of the homeowners
122 FRANK SCHRECK, 9824 Winter Palace Drive
123 YOHAN LOWIE, property owner
124 DOUG RANKIN, on behalf of the homeowners
125 BOB PECCOLE, Attorney, and homeowner at 9740 Verlaine Lane
126
127 (1 hour, 54 minutes) [3:25 – 5:19]
128
129 Typed by: Speechpad.com
130 Proofed by: Jacquie Miller
131
132 **MAYOR GOODMAN**
133 Okay. I will start reading.
134
135 **END RELATED DISCUSSION**
136 **RESUME RELATED DISCUSSION**
137
138 **COUNCILMAN SEROKA**
139 Mayor, I'd like to make a motion also. I have some items to discuss.
140
141 **MAYOR GOODMAN**
142 Okay. I think that-

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

143 **COUNCILMAN SEROKA**

144 I would like to-

145

146 **MAYOR GOODMAN**

147 -get through these and then you'll make yours. Or do you want one of those to be discussed?

148

149 **COUNCILMAN SEROKA**

150 No. No, we can do that if you allow me the floor. Thank you.

151

152 **MAYOR GOODMAN**

153 Okay. So please vote on Agenda Items 68 through 91, 98, 99, 110, and 111 for those abeyances,

154 assuming technology is, there we go. Please vote and please post. Councilman?

155

156 **COUNCILMAN SEROKA**

157 Mayor, I have a purely procedural motion. I move to strike-

158

159 **MAYOR GOODMAN**

160 Oh-

161

162 **COUNCILMAN SEROKA**

163 Item 74.

164

165 **MAYOR GOODMAN**

166 -wait, we're not done.

167

168 **COUNCILMAN SEROKA**

169 What?

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

170 **MAYOR GOODMAN**

171 Hold one sec, sorry. Councilwoman Fiore and Councilman Crear, please vote on those items.

172

173 **COUNCILMAN CREAR**

174 I apologize (inaudible). Can you restate whatever the motion on the table is?

175

176 **MAYOR GOODMAN**

177 And Councilwoman Fiore. Councilwoman Fiore?

178

179 **COUNCILWOMAN FIORE**

180 I did it.

181

182 **MAYOR GOODMAN**

183 Do it again. Push, push, push.

184

185 **COUNCILWOMAN FIORE**

186 There's no button. There's no button.

187

188 **LUANN D. HOLMES**

189 How would you like to vote?

190

191 **COUNCILWOMAN FIORE**

192 Yea. There's no, there's no vote

193

194 **COUNCILWOMAN TARKANIAN**

195 There's no vote brackets.

196

197 **MAYOR GOODMAN**

198 Okay. Here we go. Now we're posting it. It carries. Now, Councilman-

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

199 **COUNCILMAN SEROKA**

200 -Thank you Ma'am.

201

202 **MAYOR GOODMAN**

203 -Seroka, please.

204

205 **COUNCILMAN SEROKA**

206 I have purely a procedural motion. Based on procedure, I move to strike Agenda Items 74
207 through 83 on the grounds that I will go through here. It is an incomplete application. There is a
208 violation of our 12-month cooling off period, and it is a violation of the law as it stands today,
209 and I will go through those items to demonstrate that we have an incomplete application.
210 According to our Code, Code 90.10.040, modification of a master development plan and
211 development standards, such as Peccole Ranch Master Development Plan Phase 2, requires a
212 Major Modification because it is increasing the density of the development from which was -
213 previously approved. It also requires a Major Modification, cause it's a change in location of
214 density, and according to our Code, it says that a Major Modification shall be processed in
215 accordance with the procedures and standards applicable to zoning.
216 Further, we have an incomplete application that says due to Nevada Administrative Code
217 278.260 for review of a Tentative Map, which we have here today, it says, A developer shall
218 submit all of the following items of information for its review of a Tentative Map. If a system for
219 a disposal or sewage is to be used or considered, a report on the soil including the types of soil, a
220 table showing seasonal high water levels and the rate of percolation at depth of any proposed
221 system of absorption for soil is required. A smaller item is that a map of the 100-year floodplain
222 for the applicable area must be included. A larger item, and a very significant item in this case, is
223 that also is required a master plan showing the future development and intended use of all land
224 under the ownership or control of the developer in the vicinity of the proposed subdivision. In
225 other words, all 250-acre plan must be submitted with the Tentative Maps. And that is also in
226 accordance with the staff's preferred process as - discussed in their staff analysis, and this is all
227 right out of the Nevada Code. Further, it says that we have violated our, the 12-month cooling off

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

228 period for successive applications of a General Plan Amendment.
229 So, I wanted to go through the requirements for a General Plan Amendment to show that a
230 General Plan Amendment is required in this case, and that since it, has been submitted, the
231 manner in which it's submitted violates the - Code that we have in place for a 12-month cooling
232 off period, and it was, that period would end in June.
233 Under our State laws, we have a law that's called NRS 278.230, governing body must put
234 adopted master plan into effect, and it says except as otherwise provided, whenever a governing
235 body or a city or county has adopted a master plan thereof, for the county or any major section
236 thereof, the governing body shall, upon recommendation of the, of, and I'll skip through some of
237 the language, and if practical needs of putting into effect a master plan, it must be in
238 conformance. The governing body must make sure it's in conformance.
239 Going, and there is some concern about that being whether our State law applies. Well, I'm –
240 gonna describe to you a couple of Supreme Court cases that say that you must amend and require
241 your master plan to be adopted when you change other things.
242 It's, the first case is the (sic) Nova Horizon case, and it is documented in the City documents
243 here that says the City, the courts have held that the master plan is a standard that commands
244 deference and presumption of applicability. The Nevada Supreme Court has held that master
245 plans in Nevada must be accorded substantial compliance, while Nevada statutes require the
246 zoning authority, must adopt zoning regulations that are in agreement with the master plan.
247 Further, there is the second case that says essentially the same thing, in that the master plan of a
248 community is a standard that commands deference and presumption and applicability.
249 So we have established that both at the State that a master plan must be in conformance with the
250 decisions you make on the day. So a General, GPA would be required if we're going to change
251 these items.
252 Further, in our own Title Code, Title 19, Paragraph 19.00.040, it is the intent of the City Council
253 that all regulatory decisions made pursuant to this Title be consistent with the General Plan. For
254 the purpose of this, of this section, consistency with the General Plans means, and it says what it
255 means, both the land use and the density and also all policies, programs of the General Plan
256 include those that promote compatibility of the uses and orderly development.

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

257 So we have a State law and City law that says your General Plan must be in conformance with
258 whatever you're doing. So if you change something, you have to change your General Plan. So it
259 is required that we change our General Plan.

260 Further, in 19.16.010, it's titled Compliance with the General Plan. It says, Except as otherwise
261 authorized in this Title, which means it would have to state below that a General Plan
262 Amendment is not required. Otherwise, it is required. So it says except as otherwise authorized,
263 approval of all Maps, which we have today, Site Development Plan Reviews, which we have
264 today, Waivers which we have today, and Deviations and Development Agreements shall be
265 consistent with the spirit and intent of the General Plan.

266 Further, it says Site Development Reviews will be in conformance with the General Plan. In
267 subsequent paragraphs, it says Waivers shall be, granting a Waiver will not be inconsistent with
268 the spirit of the General Plan; and Tentative Maps, it says no application for a Tentative Map is
269 eligible for approval unless it is determined that the proposed, proposal will be in conformance
270 with all applicable zoning regulations, including all applicable provisions of this Title. The
271 zoning classification of the site and all zoning master plan or site plan approvals for the site,
272 including all applicable conditions.

273 So, in order to make the zoning in conformance, you need a Major Modification, as described
274 earlier. But what I have just demonstrated is that a General Plan Amendment is required, and we
275 have a provision in our Code that says if you have successive applications of a similar category,
276 the same category, and it goes on to describe many things that apply here today, and there is a,
277 that have been previously denied, that is a lesser intensity and you come now with a greater
278 intensity, you have to wait a year. Now, let's explain that. I asked for clarification from the
279 attorneys on that issue, and they said they really didn't know the spirit and intent behind that rule,
280 so we'll just clarify that here, since this is a policy making body and that the staff is a policy
281 implementing body, that, in this case, what it's saying is if you had a General Plan Amendment
282 for say, let's say 10 units and it was denied, you can come back with a General Plan Amendment
283 saying, Yeah, we'll - lower that to one, that's less - intense use. And that makes sense. So you
284 could go to a lower intensity or less demand when you come forward. But let's say you were
285 previously denied for 10. It wouldn't make any sense to then come back for, let's exaggerate a

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

286 little bit, for 100. So if you got denied for 10, don't come forward with 100 because that's a
287 successive application, and the waiting period for that is a period of 12 months. The 12-month
288 delay, and that would not expire until June, so we should not have accepted this application
289 based of the General Plan Amendment because it's still within the window. And therefore,
290 without the General Plan Amendment and without the Major Mod, we can't do the Tentative
291 Maps, and the Tentative Maps have to be in conformance with the General Plan as the, our own
292 Code says.

293 Further, in the court case that Judge Crockett ruled, a very respected, highly regarded, very
294 thorough judge, he said that in, he - followed our own rules. He followed our staff
295 recommendations. And these are facts that the Peccole Ranch Master Plan must be modified to
296 change the land use designations from Golf Course Drainage to Multi-family, prior to approval
297 of the General Plan Amendment. That would be a Major Mod.

298 In order to develop, and these are written by our own staff, by the way. In order to redevelop the
299 property as anything other than Golf Course or Open Space, the applicant has proposed a Major
300 Modification of the master plan. So the applicant actually knows a Major Mod is required.

301 The judge further ruled the City's failure to require or - approve a Major Modification without
302 getting is legally fatal to the City's approval. So we knowingly would be operating outside the
303 law. And further, it says the City is not permitted to change the rules or follow something other
304 than the law in place. The staff made it clear the Major Mod was mandatory. Its record shows the
305 City Council chose to ignore that and move past it.

306 So we have this decision by a judge that says a Major Modification is required, amongst other
307 things, in order to move forward on the Peccole Ranch Master Plan Phase 2, of which the entire
308 250 acres is considered Parcel 5 of the Peccole Ranch Master Plan Phase 2. So it doesn't matter if
309 you're talking about one part of the golf course or another, it's all designated Drainage Golf
310 Course. So if you're going to change anything on the 250 acres, you need to have a Major
311 Modification first, a required General Plan Amendment, and then you can do your other steps.

312 So I have demonstrated we have an incomplete application, we're not in conformance with State
313 law, State code, City code, City law, and we have absent the Major Modification that both our
314 own Code requires, and at the current state of things, since we did not appeal the judge's decision

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

315 and we did not ask for a stay, what we have said is we are compelled to abide by the Court's
316 ruling. And the Court ruling says that we are required a Major Modification.
317 Therefore, my motion is to Strike Items 74 through 83. However, I will allow the Applicant the
318 opportunity to withdraw them at this time if they would like to do that. Otherwise, that is my
319 motion.

320

321 **MAYOR GOODMAN**

322 Okay, I'd like some clarification-

323

324 **COUNCILWOMAN FIORE**

325 Could I ask-

326

327 **MAYOR GOODMAN**

328 -If I may, I'm gonna ask for Brad Jerbic, first of all, and then I wanna hear if there was briefing
329 by our City Manager on - these issues. Did you brief the Council? Are they fully knowledgeable
330 that this motion was gonna come? But let's go to Brad Jerbic first, please.

331

332 **BRAD JERBIC**

333 Procedurally, will you please read 74 through 83 into the record?

334

335 **MAYOR GOODMAN**

336 Okay, 74, GPA-72220, on a request for a General Plan Amendment from PR-OS
337 (Parks/Recreation/Open Space) to ML (Medium Low Density Residential) on 132.92 acres on
338 the east side Hualapai Way, approximately 830 feet north of Charleston Boulevard.
339 Number 75, WVR-72004, on a request for a Waiver to allow 40-foot private streets with no
340 sidewalks where 47-foot private streets with 5-foot sidewalks on both sides are required within a
341 proposed gated residential development on a portion of 71.91 acres on the north side of Verlaine
342 Court, east of Regents Park Road, R-PD7 (Residential Planned Development - 7 Units per Acre)
343 and PD (Planned Development) zones.

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

1827 clients as a Chief Deputy were some of the top agencies in the State of Nevada that I legally
1828 advised. How about the Athletic Commission, which is the Boxing Commission? How about the
1829 Architectural Board? How about the Racing Commission and many others, including this entire
1830 office of the Attorney General down here in Clark County?
1831 I would be appalled to tell any of my agencies when there is a decision of a court judge telling
1832 me I must recognize a certain point and I must abide by that. That ruling becomes one that is the
1833 law. And if I were to tell my client, oh well, but as a matter of policy, you can ignore it, I would
1834 have the same concerns that Councilman Crear has. Am I going to jail? Yes, you are. I don't
1835 know if any of these attorneys sitting in the public here have ever been involved in those types of
1836 hearings when you're held in contempt.
1837 I've been involved in those, and I know how they work. And it wouldn't take anything if you
1838 were to take Mr. Jerbic's advice and say, well, we can ignore that decision because this is the
1839 way I think it works. Well, you could all end up in jail. And it, and it does happen. And it just
1840 depends on who - pushes that contempt. So you got to keep that in mind. You can't just ignore it
1841 because that isn't the way it works.
1842 Now, that judgment stands solid until it's either stayed by the court or it's reversed by the court.
1843 But until those two things happen, that judgment is solid. Now I, and that's an argument they've
1844 used against me in the Smith case. They've said because you don't have a stay, that judgment is
1845 valid. So what do they do? They take Smith's judgment, sues me and my wife for \$30 million.
1846 That's Mr. Yohan. He's quite the guy.
1847 But in any event, I would just like to say do not ignore the Crockett decision, because you're
1848 going to put yourself in trouble. The other part of it is you might have to take Mr. Jerbic's advice,
1849 you know, like maybe a grain of salt.

1850

1851 **COUNCILMAN SEROKA**

1852 Mayor, I'd like to call the question at this time. I believe we have established that the GPA is
1853 duplicitous and the GPA should not have been accepted, and that I also believe we've established
1854 that the law of the land, as it stands today, is Judge Crockett's decision, which requires a GPA
1855 and a Major, or correction, Judge Crockett's decision requires a Major Modification. And my

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

1856 bottom line here is that I expect everyone to follow the Code and the law. If we're following the
1857 Code and the law, we all move forward. If we don't follow the - Code and the law, we have
1858 challenges.

1859 **So I move to strike the 74 through 83 from today's agenda, cause they should not have been**
1860 **accepted in the first place.** I did offer, and a head nod would work just fine, the offer to
1861 withdraw without prejudice your applications if you would like to do that, or not.

1862

1863 **STEPHANIE ALLEN**

1864 Through you, Madam Mayor. No, we would not like to withdraw those. We'd like to have those-

1865

1866 **COUNCILMAN SEROKA**

1867 **Okay. Then my motion stands, Mayor, and I call the question. I call for the vote.**

1868

1869 **MAYOR GOODMAN**

1870 Okay. There's a motion made by Councilman Seroka. And again, I'm gonna ask you, Mr. Jerbic,
1871 if in fact Council members feel that they don't have enough information and clarity on this, they
1872 have the permission to abstain.

1873

1874 **BRAD JERBIC**

1875 They do. I, I've never told anyone up here to vote when you don't feel you have enough
1876 information.

1877

1878 **MAYOR GOODMAN**

1879 But again, you have to reiterate they can't-

1880

1881 **BRAD JERBIC**

1882 I will, I will say this. It's gonna take four votes for the motion to strike to pass. If it doesn't pass
1883 and you've abstained and now we're onto the merits of the application-

CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83

1941 applications coming in because of his decision, the applicant would have to do it?

1942

1943 **BRAD JERBIC**

1944 Well, the - legal answer is his decision is limited to that set of facts. By extrapolation, if
1945 somebody went there with more lawsuits and said, hey, even though this is a different project, it's
1946 the same argument, you need a Major Modification, I have no doubt that Judge Crockett would
1947 say the same thing about every one of these applications. You don't know if you're gonna get
1948 Judge Crockett, and you don't know what the Supreme Court's gonna do.

1949 So let me just maybe suggest a different approach. There's kind of a cart before the horse thing
1950 here. The applicant gets a decision and then you go to court. You don't go to court and then get
1951 an application. Then we have zoning by judge. The applicant's entitled to a vote, up or down,
1952 and unless you think for procedural reasons he's incomplete in his application and then you make
1953 that record and that's what the Councilman has tried to with his motion on the procedural
1954 grounds, but if you think the procedural grounds are valid, then vote, you know in favor. If you
1955 don't, then move on to the next part of the application, and then let the courts decide.

1956 If - we do it the other around, the courts don't have facts to decide in this case. How does the
1957 applicant get to court on these three applications without you making a decision? You have to
1958 make the decision, or there's nothing, no record for the court to vote on, whether you go for or
1959 against it.

1960 So that's what I'm saying in the procedural motion, I wouldn't overly complicate it and think it's a
1961 big legal decision. I think it's your call to look at your ordinance and say do you think this GPA
1962 is duplicitous and, therefore, you're subject to the one-year timeout, and he's a month too early.
1963 Or two, you think Judge Crockett's decision or your own policy or both require a Major
1964 Modification and he doesn't have one, so he's incomplete. I think it's a pretty simple call.

1965

1966 **MAYOR GOODMAN**

1967 Okay. There's a motion then. Please vote and please post. Councilwoman, Councilwoman your
1968 vote?

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

2054 **COUNCILMAN CREAR**

2055 Great. How does, what's that procedure that, does that happen now? You – show it again, or-
2056

2057 **LUANN D. HOLMES**

2058 No, for the minute record we'll change it to show that orally you want us to reflect that you voted
2059 in favor to strike it.

2060

2061 **COUNCILMAN CREAR**

2062 Yes, I voted in favor to strike it.

2063

2064 **BRAD JERBIC**

2065 For the record, it's a 4-3 vote to strike the item from the agenda, so the item is stricken, and it's
2066 on to the next order of business.

2067

2068 **MAYOR GOODMAN**

2069 Okay.

2070

2071 **COUNCILMAN CREAR**

2072 No, no, no. Hold on, hold on, hold on, hold on, hold on. Point of clarification. It's not a-

2073

2074 **BRAD JERBIC**

2075 5-2, I'm sorry. It's 5-2.

2076

2077 **COUNCILMAN CREAR**

2078 It's not a 4-3 vote.

2079

2080 **BRAD JERBIC**

2081 Yeah, 5-2, I'm sorry. My mistake.

**CITY COUNCIL MEETING OF
MAY 16, 2018
VERBATIM TRANSCRIPT – AGENDA ITEMS 71 AND 74-83**

2082 **MAYOR GOODMAN**

2083 It's 5-2 vote. (The motion to Strike passed with Mayor Goodman and Councilwoman Fiore
2084 **voting No).**

2085

2086 **COUNCILMAN CREAR**

2087 Thank you.

EXHIBIT “CCC”

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

SEVENTY ACRES, LLC, a Nevada
Limited Liability Company,

Appellant,

vs.

JACK B. BINION, et al.,

Respondents.

CASE NO. 75481

DC CASE No. A-17-752344-J

FILED

NOV 14 2019

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

CITY OF LAS VEGAS' AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CASES AND AUTHORITIES	ii
I. IDENTITY AND INTEREST OF AMICUS CURIAE	1
II. A MAJOR MODIFICATION WAS NOT REQUIRED AS A CONDITION FOR THE DEVELOPMENT OF THE SUBJECT PROPERTY	2
III. CONCLUSION	5
CERTIFICATE OF COMPLIANCE	7
CERTIFICATE OF SERVICE	8

TABLE OF CASES AND AUTHORITIES

Page

Cases

<i>Boulder City v. Cinnamon Hills Associates</i> , 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).....	3
<i>Nevada Public Employees Retirement Board v. Smith</i> , 129 Nev. 618, 624, 310 P.3d 560, 565 (2013).....	3
<i>Pyramid Lake Paiute Tribe of Indians v. Washoe County</i> , 112 Nev. 743, 747-48, 918 P.2d 697, 700 (1996)	3
<i>State v. Morros</i> , 104 Nev. 709, 712-13, 766 P.2d 263, 265-66 (1988).....	3

Other Authorities

UDC 19.10.040(G).....	4, 5
UDC 19.10.040(G)(2)	4
UDC 19.10.050	4
UDC 19.10.050(D).....	5
UDC 19.16.100	5

I.

IDENTITY AND INTEREST OF AMICUS CURIAE

The City of Las Vegas (hereinafter “City”), through its attorneys of record, BRADFORD R. JERBIC, City Attorney, by PHILIP R. BYRNES, Senior Litigation Counsel, respectfully submits this brief as amicus curiae.

This appeal involves the approval by the Las Vegas City Council of several development applications by Appellant Seventy Acres, LLC for a project on a portion of the former Badlands Golf Course. This appeal was taken after the district court granted a petition for judicial review reversing the City Council’s approval of the development applications. This decision was based primarily on the District Court’s finding that the City Council did not require a major modification of the Peccole Ranch Phase II Master Plan prior to approving Appellant’s applications.

The City was a party to the proceedings below and presented arguments supporting the decision of the City Council. After the adverse decision by the District Court, the City Council, on a 3 to 3 vote, did not authorize the City Attorney’s Office to pursue an appeal of the District Court decision. Subsequently, the composition of the City Council changed. After an inquiry from Appellant, the City Council authorized, on September 18, 2019, the City Attorney’s Office to submit an amicus curiae brief in this matter. The City submits this amicus curiae

brief to reiterate its argument in the District Court that, under the City's interpretation of its own development code, a major modification was not required for the subject property in this matter.

The City has a further interest in this matter. Since the District Court decision below, two other District Court departments in related matters, Case No. A-17-758528 and Case No. A-18-775804, have found that the District Court decision in this matter has a preclusive effect. As a result, the City is now compelled to require major modifications for other applications in this development area. As a result of the decision in this action, and the decisions of the other district courts, the City has been forced to deem subsequent land use applications submitted by Appellant to be incomplete due to the lack of a major modification. The City has also argued in other litigation that Appellant's claims in those matters are not ripe due to the failure to file complete applications including requests for a major modification.

II.

A MAJOR MODIFICATION WAS NOT REQUIRED AS A CONDITION FOR THE DEVELOPMENT OF THE SUBJECT PROPERTY

The subject property is zoned RPD-7. The major modification procedure is only applicable to properties in a PD zone. Under the express terms of the City's development code, a major modification was not required for the subject property.

The approval of a major modification of the Peccole Ranch Phase II Master Plan was not a prerequisite to the City Council's approval of Appellant's applications for the subject property.¹

This Court has long recognized that an agency charged with administering a statute is "impliedly clothed with power to construe it" and that "great deference should be given to the [administrative] agency's interpretation when it is within the language of the statute." *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 747-48, 918 P.2d 697, 700 (1996). *See also Nevada Public Employees Retirement Board v. Smith*, 129 Nev. 618, 624, 310 P.3d 560, 565 (2013); *State v. Morros*, 104 Nev. 709, 712-13, 766 P.2d 263, 265-66 (1988). A local government's construction of "its own land use laws is cloaked with a presumption of validity and will not be disturbed absent a manifest abuse of discretion." *Boulder City v. Cinnamon Hills Associates*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).

In this case, the plain language of the City's Unified Development Code ("UDC") establishes that a major modification is not required for property in an RPD zone, such as the Badlands Golf Course. Only one provision in the UDC

¹ Although the City does not believe that a major modification of the Peccole Ranch Master Plan was required under this interpretation of UDC 19.10.040, the City required, and approved, an application for a General Plan Amendment to bring the General Plan Designation of Parks, Recreation and Open Space into conformity with Appellant's proposed residential use of the property.

requires the use of a major modification. UDC 19.10.040 governs Planned Development Districts, a district known as PD. UDC 19.10.040(G) provides:

The development of property within the Planned Development District may proceed only in strict accordance with the approved Master Development Plan and Development Standards. Any request by or on behalf of the property owner, or any proposal by the City, to modify the approved Master Development Plan or Development Standards shall be filed with the Department. In accordance with Paragraphs (1) and (2) of this Subsection, the Director shall determine if the proposed modification is “minor” or “major,” and the request or proposal shall be processed accordingly. [Emphasis added.]

UDC 19.10.040(G)(2) provides the standards for considering a major modification of a master development plan or development standards in a Planned Development District. By its express terms, UDC 19.10.040(G) applies only to property in a Planned Development, or PD, District. It is undisputed that the subject property in this appeal is in an RPD rather than a PD district.

RPD Districts are governed by UDC 19.10.050.² Unlike the PD District, development standards in the RPD District are established through Site Development Review rather than through a Master Development Plan. Rather than using a Major Modification as in a Planned Development District, changes in an

....

² The RPD District is considered obsolete and new development under the RPD district is disfavored.

RPD District are accomplished through Site Development Review under UDC 19.16.100. *See* UDC 19.10.050(D).

Comparing the two ordinances establishes that Major Modification is a procedure only applicable in Planned Development Districts. In RPD Districts, modifications are accomplished through Site Development Review. In the instant case, the City Council properly approved a Site Development Plan for the subject property. A major modification was unnecessary.

III.

CONCLUSION

The plain language of the City's development code demonstrates that a major modification is not required in a RPD district or under the Peccole Ranch Phase II Master Plan. The District Court incorrectly found that a major modification, under UDC 19.10.040(G) was a prerequisite to the approval of the development applications of the subject property. As Respondents have pointed

....

....

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....

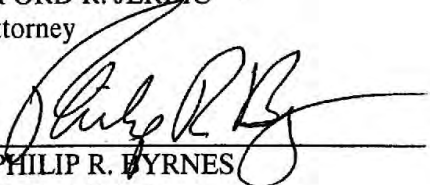
....

out in their Answering Brief, the City made these arguments before the District Court.

DATED this 15th day of October, 2019.

BRADFORD R. JERBIC
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2007 in Times New Roman 14 point font size.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

....

....

....

....

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of October, 2019.

BRADFORD R. JERBIC
City Attorney

By:


PHILIP R. BYRNES

Deputy City Attorney
Nevada Bar No. 166
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2019, I served a true and correct copy of the foregoing CITY OF LAS VEGAS' AMICUS CURIAE BRIEF by depositing the same in the United States Mail at Las Vegas, Nevada, postage fully prepaid and addressed to:

Micah S. Echols, Esq.
MARQUIS AURBACH COFFIN
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for Appellant SEVENTY
ACRES, LLC

Todd L. Bice, Esq.
PISANELLI BICE, PLLC
400 South Seventh Street, #300
Las Vegas, NV 89101
Attorneys for Respondents


AN EMPLOYEE OF THE CITY OF LAS VEGAS

EXHIBIT “DDD”

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,

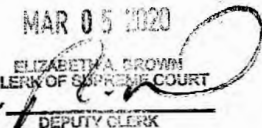
vs.

JACK B. BINION, AN INDIVIDUAL;
DUNCAN R. LEE AND IRENE LEE,
INDIVIDUALS AND TRUSTEES OF
THE LEE FAMILY TRUST; FRANK A.
SCHRECK, AN INDIVIDUAL; TURNER
INVESTMENTS, LTD., A NEVADA
LIMITED LIABILITY COMPANY;
ROGER P. WAGNER AND CAROLYN G.
WAGNER, INDIVIDUALS AND AS
TRUSTEES OF THE WAGNER FAMILY
TRUST; BETTY ENGLESTAD AS
TRUSTEE OF THE BETTY
ENGLESTAD TRUST; PYRAMID LAKE
HOLDINGS, LLC; JASON AWAD AND
SHEREEN AWAD AS TRUSTEES OF
THE AWAD ASSET PROTECTION
TRUST; THOMAS LOVE AS TRUSTEE
OF THE ZENA TRUST; STEVE
THOMAS AND KAREN THOMAS AS
TRUSTEES OF THE STEVE AND
KAREN THOMAS TRUST; SUSAN
SULLIVAN AS TRUSTEE OF THE
KENNETH J. SULLIVAN FAMILY
TRUST; DR. GREGORY BIGLER; AND
SALLY BIGLER,
Respondents.

No. 75481

FILED

MAR 05 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a petition
for judicial review of the Las Vegas City Council's decision that approved

SUPREME COURT
OF
NEVADA

(O) 1947A 

20-08895

three land use applications. Eighth Judicial District Court, Clark County; James Crockett, Judge.¹

Appellant Seventy Acres filed three development applications with the City's Planning Department in order to construct a multi-family residential development on a parcel it recently acquired. Specifically, Seventy Acres filed a general plan amendment, a rezoning application, and a site development plan amendment. Relying on reports compiled by the Planning Commission staff and statements made by the Planning Director, the City's Planning Commission and City Council approved the three applications.

Respondents filed a petition for judicial review of the City Council's approval of Seventy Acres's applications. Respondents' primary argument was that the City failed to follow the express terms of Title 19 of the Las Vegas Municipal Code (LVMC) in granting the applications. Respondents also argued that the City's decision was not supported by substantial evidence. Following a hearing, the district court concluded that the City adopted its interpretation of Title 19 of the LVMC as a litigation strategy and declined to give the City's interpretation of its land use ordinances deference. Citing a report prepared by the Planning Commission staff, the district court found that the City previously interpreted Title 19 of the LVMC as requiring Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan before it could develop

¹The Honorables Kristina Pickering, Chief Justice, and Mark Gibbons, James Hardesty, Ron Parraguirre, and Abbi Silver, Justices, voluntarily recused themselves from participation in the decision of this matter. The Governor designated The Honorable Lynne Simons, District Judge of the Second Judicial District Court, to sit in place of the Honorable James Hardesty.

the parcel. Therefore, the district court determined that the City's previous interpretation should apply and Seventy Acres was required to obtain a major modification of the Peccole Ranch Master Plan before having the subject applications approved. Accordingly, the district court granted the petition for judicial review and vacated the City Council's approval of Seventy Acres's three applications. Seventy Acres appeals.

Title 19 of the LVMC does not require a major modification for residential planned development districts

This court's role in reviewing an administrative agency's decision is identical to that of the district court and we give no deference to the district court's decision. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). We review an administrative agency's legal conclusions de novo and its "factual findings for clear error or an arbitrary abuse of discretion and will only overturn those findings if they are not supported by substantial evidence." *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011) (internal quotations omitted). When construing ordinances, this court "gives meaning to all of the terms and language[,] . . . read[ing] each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 274, 236 P.3d 10, 17-18 (2010) (internal citation and internal quotation omitted). Additionally, this court presumes a city's interpretation of its land use ordinances is valid "absent a manifest abuse of discretion." *Boulder City v. Cinnamon Hills Assocs.*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).

Having considered the record and the parties' arguments, we conclude that the City Council properly interpreted the City's land use ordinances in determining that Seventy Acres was not required to obtain a major modification of the Peccole Ranch Master Plan before it could develop the parcel. LVMC 19.10.040(B)(1) expressly limits master development plans to planned development district zoning designations. Therefore, the major modification process described in LVMC 19.10.040(G)(2), which is required to amend a master development plan, only applies to planned development district zoning designations. Here, the parcel does not carry the planned development district zoning designation. Therefore, the major modification process is not applicable to the parcel.

Instead, the parcel carries a zoning designation of residential planned development district. LVMC 19.10.050(B)(1) expressly states that site development plans govern the development of residential planned development districts. Therefore, as the City correctly determined, Seventy Acres must follow the site development plan amendment process outlined under LVMC 19.16.100(H) to develop the parcel. LVMC 19.10.050(D). This process does not require Seventy Acres to obtain a major modification of the Peccole Ranch Master Plan prior to submitting the at-issue applications. Accordingly, we conclude that the City Council's interpretation of the City's land use ordinances did not constitute a manifest abuse of discretion. *Cinnamon Hills Assocs.*, 110 Nev. at 247, 871 P.2d at 326 (1994).

Substantial evidence supports the City's approval of the applications

We next consider whether substantial evidence supports the City's decision to grant Seventy Acres's applications. "Substantial evidence is evidence that a reasonable person would deem adequate to support a decision." *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 899,

59 P.3d 1212, 1219 (2002). In determining whether substantial evidence exists to support an agency's decision, this court is limited to the record as presented to the agency. *Id.* Although conflicting evidence may be present in the record, "we cannot substitute our judgment for that of the City Council as to the weight of the evidence." *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d 756, 761 (2004).

The parties dispute whether substantial evidence supported the City's decision to grant Seventy Acres's three applications.² The governing ordinances require the City to make specific findings to approve a general plan amendment, LVMC 19.16.030(I), a rezoning application, LVMC 19.16.090(L), and a site development plan amendment, LVMC 19.16.100(E). In approving the applications, the City primarily relied on a report prepared by the Planning Commission staff that analyzed the merits of each application.³ The report found that Seventy Acres's applications met the statutory requirements for approval. The City also relied on the testimony

²Respondents point to evidence in the record showing that the public schools that serve the community where the parcel is located are currently over capacity and that many of the residents that live in the surrounding area are opposed to the project. However, "it is not the place of the court to substitute its judgment for that of the [City Council] as to weight of the evidence." *Clark Cty. Liquor & Gaming Licensing Bd. v. Simon & Tucker, Inc.*, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990) (explaining that "conflicting evidence does not compel interference with [a] . . . decision so long as the decision was supported by substantial evidence").

³The report erroneously found that Seventy Acres had to obtain a major modification of the Peccole Ranch Master Plan prior to submitting a general plan amendment. Setting that finding aside, the report found that Seventy Acres met the other statutory requirements for approval of its general plan amendment, its rezoning application, and its site development plan amendment.

of the Planning Director, who found that the applications were consistent with the goals, objectives, and policies of the City's 2020 Master Plan, compatible with surrounding developments, and substantially complied with the requirements of the City's land use ordinances. Evidence in the record supports these findings. Accordingly, we conclude that a reasonable person would find this evidence adequate to support the City's decision to approve Seventy Acres's general plan amendment, rezoning application, and site development plan amendment. *Reno Police Protective Ass'n*, 118 Nev. at 899, 59 P.3d at 1219.

In sum, we conclude that the district court erred when it granted respondents' petition for judicial review. The City correctly interpreted its land use ordinances and substantial evidence supports its decision to approve Seventy Acres's three applications. We therefore

ORDER the judgment of the district court REVERSED.

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Simons, D.J.
Simons

cc: Hon. James Crockett, District Judge
Ara H. Shirinian, Settlement Judge
Law Offices of Kermitt L. Waters
EHB Companies, LLC
Marquis Aurbach Coffing
Claggett & Sykes Law Firm
Hutchison & Steffen, LLC/Las Vegas
Pisanelli Bice, PLLC
Las Vegas City Attorney
Eighth District Court Clerk

EXHIBIT “EEE”

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Appellant,

vs.

JACK B. BINION, AN INDIVIDUAL; DUNCAN
R. LEE; IRENE LEE, INDIVIDUALS AND
TRUSTEES OF THE LEE FAMILY TRUST;
FRANK A. SCHRECK, AN INDIVIDUAL;
TURNER INVESTMENTS, LTD., A NEVADA
LIMITED LIABILITY COMPANY; ROGER P.
WAGNER; CAROLYN G. WAGNER,
INDIVIDUALS AND AS TRUSTEES OF THE
WAGNER FAMILY TRUST; BETTY
ENGLESTAD AS TRUSTEE OF THE BETTY
ENGLESTAD TRUST; PYRAMID LAKE
HOLDINGS, LLC; JASON AWAD; SHEREEN
AWAD AS TRUSTEES OF THE AWAD ASSET
PROTECTION TRUST; THOMAS LOVE AS
TRUSTEE OF THE ZENA TRUST; STEVE
THOMAS; KAREN THOMAS AS TRUSTEES
OF THE STEVE AND KAREN THOMAS
TRUST; SUSAN SULLIVAN AS TRUSTEE OF
THE KENNETH J. SULLIVAN FAMILY TRUST;
DR. GREGORY BIGLER; AND SALLY
BIGLER,
Respondents.

Supreme Court No. 75481

District Court Case No. A752344

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 24, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. James Crockett, District Judge
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Law Offices of Kermit L. Waters
Hutchison & Steffen, LLC/Las Vegas
EHB Companies, LLC
Las Vegas City Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on AUG 26 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

AUG 25 2020

CLERK OF THE COURT

2

20-81052

16/16

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EXHIBIT “FFF”

Seth T. Floyd
Deputy City Attorney

City of Las Vegas
Office of the City Attorney



495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101
Office (702) 229-6629
Fax (702) 386-1749
sfloyd@lasvegasnevada.gov

March 26, 2020

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135

RE: ENTITLEMENTS ON 17 ACRES

Dear Mr. Kaempfer:


As you know, on March 5, 2020, a panel of the Nevada Supreme Court entered an unpublished Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Order"). The Order reversed a prior decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J, which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 multi-family housing units on a 17-acre portion of the former Badlands golf course in the Peccole Ranch Master Plan area.

Under the Reversal Order, that major modification is no longer required and, once remittitur issues, the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) will be reinstated. Such entitlements include all of the discretionary entitlements required for your client's project and the SDR will remain valid for two years after the date of remittitur, despite the fact that 382 days elapsed between the City's February 16, 2017 approval and Judge Crockett's March 5, 2018 Order vacating those entitlements. The City will accept applications for any ministerial permits required to begin construction pursuant to those discretionary entitlements.

If you have any questions about the effect of the Order, please do not hesitate to contact me at (702) 229-6629. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to continue with development pursuant to its entitlements.

Sincerely,

OFFICE OF THE CITY ATTORNEY


SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4955
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)

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CLV65-000965

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SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <u>SG SW</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Christopher L. Kaempfer, Esq. KAEMPFER CROWELL 1980 Festival Plaza Drive, #650 Las Vegas, NV 89135		B. Received by (Printed Name) <u>49 3507</u>	C. Date of Delivery <u>3/27</u>
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		<u>7002 3150 0001 1717 4955</u>	
PS Form 3811, February 2004		Domestic Return Receipt	17 102595-02-M-1540

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CLV65-000966

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EXHIBIT “GGG”

Seth T. Floyd
Deputy City Attorney

City of Las Vegas
Office of the City Attorney



495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101
Office (702) 229-6629
Fax (702) 386-1749
sfloyd@lasvegasnevada.gov

September 1, 2020

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135

**RE: FINAL ENTITLEMENTS FOR 435-UNIT HOUSING DEVELOPMENT
PROJECT IN BADLANDS**

Dear Mr. Kaempfer:

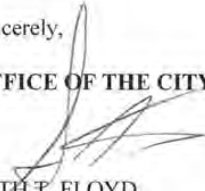
On March 26, 2020, the City sent you a letter concerning the Nevada Supreme Court's Order of Reversal in *Seventy Acres, LLC v. Binion, et al.*, Case No. 75481 ("Order"). See March 26, 2020 Letter Re: Entitlements on 17 Acres, attached as **Exhibit A**. The Order reversed a decision by Judge Crockett of the Eighth Judicial District in Case No. A-17-752344-J, which had concluded that your client, Seventy Acres, LLC, was required to submit a major modification application along with its other entitlement requests to develop 435 housing units on a 17-acre portion of the former Badlands golf course in the Peccole Ranch Master Plan area.

As the City emphasized in its prior letter, once remittitur issues, the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) will be reinstated. Remittitur issued on August 24, 2020. See **Exhibit B**. Accordingly, the City Council's February 2017 action approving all discretionary entitlements required for your client's 435-unit project on the 17-acre portion of the Badlands are now valid and will remain so for two years after the date of the remittitur (or as extended by any approved Extension of Time). Now that there are no more discretionary entitlements required to develop your client's project, the City will accept applications for any ministerial permits required to begin construction pursuant to the approved discretionary entitlements and the conditions included in them.

If you have any questions about the effect of the Order, please do not hesitate to contact me at (702) 229-6629. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to continue with development pursuant to its entitlements.

Sincerely,

OFFICE OF THE CITY ATTORNEY


SETH T. FLOYD
Deputy City Attorney

Attachments
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)
CERTIFIED MAIL NO. 7003 3110 0003 1081 5236

EXHIBIT A

EXHIBIT A

Seth T. Floyd
Deputy City Attorney

City of Las Vegas
Office of the City Attorney



495 South Main Street, Sixth Floor
Las Vegas, Nevada 89101
Office (702) 229-6629
Fax (702) 386-1749
sfloyd@lasvegasnevada.gov

March 26, 2020

Christopher L. Kaempfer, Esq.
KAEMPFER CROWELL
1980 Festival Plaza Drive, #650
Las Vegas, NV 89135

RE: ENTITLEMENTS ON 17 ACRES

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Under the Reversal Order, that major modification is no longer required and, once remittitur issues, the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) will be reinstated. Such entitlements include all of the discretionary entitlements required for your client's project and the SDR will remain valid for two years after the date of remittitur, despite the fact that 382 days elapsed between the City's February 16, 2017 approval and Judge Crockett's March 5, 2018 Order vacating those entitlements. The City will accept applications for any ministerial permits required to begin construction pursuant to those discretionary entitlements.

If you have any questions about the effect of the Order, please do not hesitate to contact me at (702) 229-6629. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to continue with development pursuant to its entitlements.

Sincerely,

OFFICE OF THE CITY ATTORNEY


SETH T. FLOYD
Deputy City Attorney

CERTIFIED MAIL NO. 7002 3150 0001 1717 4955
cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)

1023

11122

EXHIBIT B

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEVENTY ACRES, LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Appellant,

vs.

JACK B. BINION, AN INDIVIDUAL; DUNCAN
R. LEE; IRENE LEE, INDIVIDUALS AND
TRUSTEES OF THE LEE FAMILY TRUST;
FRANK A. SCHRECK, AN INDIVIDUAL;
TURNER INVESTMENTS, LTD., A NEVADA
LIMITED LIABILITY COMPANY; ROGER P.
WAGNER; CAROLYN G. WAGNER,
INDIVIDUALS AND AS TRUSTEES OF THE
WAGNER FAMILY TRUST; BETTY
ENGLESTAD AS TRUSTEE OF THE BETTY
ENGLESTAD TRUST; PYRAMID LAKE
HOLDINGS, LLC; JASON AWAD; SHEREEN
AWAD AS TRUSTEES OF THE AWAD ASSET
PROTECTION TRUST; THOMAS LOVE AS
TRUSTEE OF THE ZENA TRUST; STEVE
THOMAS; KAREN THOMAS AS TRUSTEES
OF THE STEVE AND KAREN THOMAS
TRUST; SUSAN SULLIVAN AS TRUSTEE OF
THE KENNETH J. SULLIVAN FAMILY TRUST;
DR. GREGORY BIGLER; AND SALLY
BIGLER,
Respondents.

Supreme Court No. 75481

District Court Case No. A752344

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 24, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. James Crockett, District Judge
Claggett & Sykes Law Firm
Pisanelli Bice, PLLC
Law Offices of Kermitt L. Waters
Hutchison & Steffen, LLC/Las Vegas
EHB Companies, LLC
Las Vegas City Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on AUG 26 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

AUG 25 2020

CLERK OF THE COURT

2

20-81052

EXHIBIT “HHH”

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

1 Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
2 Robert T. Stewart (13770)
HUTCHISON & STEFFEN, PLLC
3 10080 West Alta Drive, Suite 200
4 Las Vegas, Nevada 89145
Telephone: (702) 385-2500
5 Facsimile: (702) 385-2086
6 mhutchison@hutchlegal.com
jkistler@hutchlegal.com
7 rstewart@hutchlegal.com
8 *Attorneys for Plaintiffs*

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 180 LAND CO LLC, a Nevada limited-liability
12 company; FORE STARS, LTD., a Nevada limited-
13 liability company; Seventy Acres LLC, a Nevada
14 limited-liability company; Yohan Lowie, an
individual,

15 Plaintiffs,

16 v.

17 CITY OF LAS VEGAS, a political subdivision of
18 the State of Nevada; JAMES R. COFFIN, in both his
19 official capacity with the City of Las Vegas and in
20 his personal capacity; STEVEN G. SEROKA, in
both his official capacity with the City of Las Vegas
and in his personal capacity,

21 Defendants.
22

**COMPLAINT PURSUANT TO
42 U.S.C. § 1983**

Jury trial requested

23 Plaintiffs 180 Land Co LLC, Fore Stars, Ltd., Seventy Acres LLC, and Yohan Lowie
24 (collectively, "Plaintiffs") complain against the above-referenced defendants (collectively,
25 "Defendants") as follows:

26 ///
27
28

1 **1. Jurisdiction and Venue.**

2 1. This lawsuit is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation
3 that occurred under color of state statute, ordinance, regulation, custom, and usage of the rights,
4 privileges, and immunities secured to the Plaintiffs by the Equal Protection Clause and Due
5 Process Clause of the Fourteenth Amendment of the United States Constitution and the Equal
6 Protection Clause of Article 4, Section 21 and the Due Process Clause of Article 1, Section 8(5)
7 of the Constitution of the State of Nevada.

8 2. With respect to Plaintiffs' claims arising from Defendants' violations of
9 Plaintiffs' rights secured by the United States Constitution, original jurisdiction is conferred
10 upon this Court by 28 U.S.C. § 1331.

11 3. With respect to Plaintiffs' claims arising from Defendants' violations of
12 Plaintiffs' rights secured by the Constitution and laws of the State of Nevada, supplemental
13 jurisdiction is conferred upon this Court by 28 U.S.C. § 1367(a).

14 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b) because the acts or
15 omissions which form the basis of the Plaintiffs' claims occurred in the State of Nevada and all
16 Defendants reside in the State of Nevada.

17 **2. The Parties.**

18 5. Plaintiff Fore Stars, Ltd. ("Fore Stars") is, and at all relevant times was, a
19 Nevada limited-liability company.

20 6. Plaintiff 180 Land Co LLC ("180 Land") is, and at all relevant times was, a
21 Nevada limited-liability company.

22 7. Plaintiff Seventy Acres LLC ("Seventy Acres") is, and at all relevant times was,
23 a Nevada limited-liability company.

24 8. Fore Stars, 180 Land and Seventy Acres are managed by EHB Companies LLC,
25 a Nevada limited-liability company.

26 9. Plaintiff Yohan Lowie is, and at all relevant times was, an individual residing in
27 Clark County, Nevada. Yohan Lowie is a Manager of EHB Companies LLC.
28

10. Defendant City of Las Vegas (“City”) is, and at all relevant times was, a political subdivision of the State of Nevada and a municipal corporation subject to the provisions of the Nevada Revised Statutes. The governing body of the City is the “City Council,” which is comprised of six councilpersons and the mayor.

11. Defendant James R. Coffin (“Coffin”) is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 2011 to the present, Defendant Coffin was and continues to be a councilperson on the City Council.

12. Defendant Steven G. Seroka (“Seroka”) is, and at all relevant times was, an individual residing in Clark County, Nevada. From approximately July 19, 2017 to the present, Defendant Seroka was and continues to be a councilperson on the City Council.

3. General Allegations.

13. Yohan Lowie and his partners have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs and semi-custom homes, and (4) the recently-opened Nevada Supreme Court and Appellate Court building located in downtown Las Vegas.

A. The Land.

14. Fore Stars, 180 Land and Seventy Acres (collectively “Plaintiff Landowners”) collectively own approximately 250 acres of real property (collectively the “Land”) within the boundaries of the City. The Land is located between the following roads: Alta Drive (to the north of the Land); Charleston Boulevard (to the south of the Land); Rampart Boulevard (to the east of the Land); and Hualapai Way (to the west of the Land).

15. In March 2015, Yohan Lowie and his partners, acquired the membership interests of Fore Stars, which at that time owned the entirety of the parcels that comprise the Land.

16. In June, 2015, Fore Stars re-drew the boundaries of the various parcels that comprise the Land, and in November, 2015 ownership of approximately 178.27 acres of the Land

1 was transferred to 180 Land and approximately 70.52 acres of the Land was transferred to Seventy
2 Acres. Fore Stars retained ownership of approximately 4.5 acres of the Land.

3 17. Today, 180 Land owns the parcels with the following Clark County Assessor
4 Parcel Numbers (“APNs”): APNs 138-31-201-005 (herein referred to as “Parcel 1,” totaling 34.07
5 acres), 138-31-601-008 (herein referred to as “Parcel 2,” totaling 22.19 acres), 138-31-702-003
6 (herein referred to as “Parcel 3,” totaling 76.93 acres), 138-31-702-004 (herein referred to as
7 “Parcel 4,” totaling 33.8 acres), and 138-31-801-002 (herein referred to as “Parcel 5,” totaling
8 11.28 acres).

9 18. Today, Seventy Acres owns the parcels more particularly described by the Clark
10 County Assessor as APNs 138-31-801-003 (herein referred to as “Parcel 6,” totaling 5.44 acres),
11 138-32-301-007 (herein referred to as “Parcel 7,” totaling 47.59 acres), and 138-32-301-005
12 (herein referred to as “Parcel 8,” totaling 17.49 acres).

13 19. Today, Fore Stars owns the parcels more particularly described by the Clark
14 County Assessor as APNs 138-32-210-008 (herein referred to as “Parcel 9,” totaling 2.37 acres);
15 and 138-32-202-001 (herein referred to as “Parcel 10,” totaling 2.13 acres).

16 20. The Land abuts the common interest community commonly known as
17 “Queensridge” (the “Queensridge CIC”). The Queensridge CIC is governed by the Master
18 Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge (“Queensridge
19 Master Declaration”), recorded with the Clark County Recorder’s Office on May 30, 1996.

20 21. The Land is not a part of the Queensridge CIC.

21 22. In Clark County, Nevada, District Court Case No. A-16-739654, Judge Douglas
22 Smith affirmed that the Land is not part of the Queensridge CIC in an order dated November 30,
23 2016 and titled Findings of Fact and Conclusions of Law (the “November 30, 2016 Court Order”).
24 In finding No. 53 of the November 30, 2016 Order, Judge Smith found that “The land which is
25 owned by the Defendants [herein “Plaintiff Landowners”], upon which the Badlands Golf Course
26 is presently operated (“GC Land”) [herein “Land”] that was never annexed into the Queensridge
27 CIC, never became part of the “Property” as defined in the Queensridge Master Declaration and
28 is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge

1 Master Declaration.” A true and correct copy of the November 30, 2016 Court Order is attached
2 as Exhibit 1.

3 23. The Queensridge Master Declaration provides in recital B, on page 2, “*The*
4 *existing 18-hole golf course commonly known as the “Badlands Golf Course” is not a part of the*
5 *Property or the Annexable Property.*” After the Badlands Golf Course was expanded to 27 holes,
6 the Queensridge Master Declaration was refiled in an August 16, 2002 filing of the Amended and
7 Restated Queensridge Master Declaration providing “*The existing 27-hole golf course commonly*
8 *known as the “Badlands Golf Course” is not a part of the Property or the Annexable Property.*”

9 24. The Land was leased to a golf course operator. On August 31, 2016, the golf
10 course operator served a 90 day notice of termination of the Golf Course Lease. On December 1,
11 2016, the Golf Course Lease terminated, the golf course operator vacated the property and the
12 property ceased to be used as a golf course.

13 25. The Clark County Assessor determined that the Land no longer falls within the
14 definition of open-space real property, as defined in NRS 361A.040, is no longer deemed to be
15 used as an open-space use under NRS 361A.050, in accordance with NRS 361A.230 the Land
16 has been disqualified for open-space use assessment, and the Land has been converted to a higher
17 use in accordance with NRS 361A.031 (collectively “Clark County Assessor Determinations”).

18 26. On November 30, 2017, the State of Nevada State Board of Equalization approved,
19 by unanimous vote, the Clark County Assessor’s Determinations. True and correct copies of the
20 approval letter from the Nevada State Board of Equalization and the “determination and
21 stipulation” documents from the Clark County Assessor are attached as Exhibit 2.

22 27. The taxes are assessed on the Land by the Clark County Assessor based on the
23 following “higher use(s)” of the Land:

- 24 a. The Assessor Land Use Classification for Parcel 1 is “**12.00 – Vacant – Single**
25 **Family Residential**”;
- 26 b. The Assessor Land Use Classification for Parcel 2 is “**12.00 – Vacant Single**
27 **Family Residential**”;

- c. The Assessor Land Use Classification for Parcel 3 is “**12.00 – Vacant Single Family Residential**”;
- d. The Assessor Land Use Classification for Parcel 4 is “**12.00 – Vacant Single Family Residential**”;
- e. The Assessor Land Use Classification for Parcel 5 is “**12.00 – Vacant Single Family Residential**”;
- f. The Assessor Land Use Classification for Parcel 6 “**12.00 – Vacant Single Family Residential**”;
- g. The Assessor Land Use Classification for Parcel 7 is “**12.00 – Vacant Single Family Residential**”
- h. The Assessor Land Use Classification for Parcel 8 is “**13.000 – Vacant – Multi residential**”;
- i. The Assessor Land Use Classification for Parcel 9 is “**40.399 – General Commercial, Other Commercial**”; and
- j. The Assessor Land Use Classification for Parcel 10 is “**12.00 – Vacant Single Family Residential**”.

28. As a result of the cessation of the golf course operations on the Land and the conversion of the Land to higher use(s), meaning a use other than agricultural use or open-space use, Plaintiff Landowners were required by Nevada law to pay property taxes for the tax years commencing in 2011 through the present, based on the value of the respective higher uses for each of the parcels.

B. The planning and zoning relating to the Land.

29. At all relevant times, the City Council and its councilpersons acted under color of state statute, ordinance, regulation, and custom and usage. Nevada Revised Statutes, Title 21 provides for the incorporation of cities and towns within the State of Nevada, such as the City. The Municipal Code of the City of Las Vegas, Nevada (“Municipal Code”), which includes the Las Vegas City Charter, provides for the roles, responsibilities, and authorities of the City Council and the councilpersons. Nevada Revised Statutes, Chapter 278 provides for the State of Nevada’s

1 laws for zoning and land use. An official policy and custom of the City is for the City Council to
2 participate in and adjudicate zoning and land use matters that arise in the City.

3 30. The Las Vegas City Council adopted the Unified Development Code – Title 19
4 (“Title 19”) as part of its Municipal Code pursuant to the provisions of the Nevada Revised
5 Statutes (NRS), including NRS Chapter 278. The City of Las Vegas Official Zoning Map Atlas
6 is a part of Title 19.

7 31. Title 19 establishes “zoning districts”. Zoning districts are areas designated on the
8 Official Zoning Map in which certain uses are permitted and certain others are not permitted, all
9 in accordance with Title 19.

10 32. The “PD” and “R-PD” zoning districts are separate and distinct from each other,
11 with each being governed by different sections of Title 19. The PD district is governed by Title
12 19.10.40 subsection titled “PD Planned District Development” and the R-PD district is governed
13 by Title 19.10.050 subsection titled “R-PD Residential Planned Development District”.

14 33. The density allowed in the R-PD District is reflected by a numerical designation
15 for that district. By way of example, R-PD4 allows up to four units per gross acre.

16 34. On August 15, 2001, the Las Vegas City Council passed, adopted and approved
17 Bill No. Z-2001-1 Ordinance No. 5353 zoning Parcels 1, 2, 3, 4, 5, 6, 7, 8, and 10 R-PD7.

18 35. In the November 30, 2016 Court Order, Finding No. 58 states that “...the R-PD7
19 Zoning was codified and incorporated into the amended Atlas in 2001.”

20 36. CLV Ordinance 5353 provided in its Section 4: “All ordinances or parts of
21 ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the
22 Municipal Code of the City of Las Vegas, Nevada 1983 Edition, in conflict herewith are hereby
23 repealed.”

24 37. On December 30, 2014, the City of Las Vegas issued a zoning verification letter
25 for the Land confirming that “The subject properties are zoned R-PD7 (Residential Planned
26 Development District – 7 Units per Acre).” A true and correct copy of the “Zoning Verification
27 Letter” is attached as Exhibit 3.
28

38. On October 18, 2016, at a Las Vegas Special Planning Commission Meeting specifically relating to the Land, City Attorney Brad Jerbic confirmed that the Land is hard zoned R-PD7 entitling the property owners up to 7.49 units per acre, subject to adjacency and compatibility planning principles.

39. The November 30, 2016 Court Order affirmed City Attorney Jerbic's legal opinion in Finding No. 58 stating "Attorney Jerbic's presentation is supported by the documentation of public record"; and in Finding No. 82 stating, "The Court finds that the GC Land owner by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements."

40. Today, the zoning districts for the various parcels comprising the Land, are as follows:

- a. The zoning district for Parcel 1 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- b. The zoning district for Parcel 2 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- c. The zoning district for Parcel 3 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- d. The zoning district for Parcel 4 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- e. The zoning district for Parcel 5 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- f. The zoning district for Parcel 6 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- g. The zoning district for Parcel 7 is "R-PD7", per CLV Ordinance 5353 adopted on August 15, 2001;
- h. In February 2017, the zoning district for Parcel 8 was changed by the Las Vegas City Council from "R-PD7" (per CLV Ordinance 5353 adopted on August 15,

1 2001) to “R-4”. R-4 is the zoning designation for residential high-density multi-
2 family unit development;

3 i. The zoning district for Parcel 9 was changed to “PD” in July of 2004;

4 j. The zoning district for Parcel 10 was changed to “PD” in July of 2004;

5 41. The November 30, 2016 Court Order found in Finding No. 82, “The Court finds
6 that the GC Land owned by Developer Defendants has “hard zoning” of R-PD7. This allows up
7 to 7.49 development units per acre subject to City of Las Vegas requirements.”

8 42. The November 30, 2016 Court Order also affirmed the Plaintiff Landowner’s
9 property rights in Finding No. 81 which stated, “The Court finds that the Developer Defendants
10 [“Plaintiff Landowners” in the present matter] have the right to develop the GC Land [“Land” in
11 the present matter].”

12 43. At all relevant times — including from the time the Land was purchased in or
13 around March 2015 to the present — Plaintiffs have been entitled with the rights to develop the
14 Land with residential dwelling units under the R-PD7 zoning district subject to compliance with
15 Title 19.

16 **C. Plaintiffs’ applications to develop the Land.**

17 44. It is the purpose and intent of the Las Vegas City Council for Title 19:

18 a. to promote the establishment of a system of fair, comprehensive, consistent and
19 equitable regulations, standards and procedures for the review and approval of all
20 proposed development, divisions, and mapping of land within the City in a
21 manner consistent with Nevada law;

22 b. to promote fair procedures that are efficient and effective in terms of time and
23 expense and that appropriate process is followed in the review and approval of
24 applications made under Title 19;

25 c. to be effective and responsive in terms of the allocation of authority and
26 delegation of powers and duties among ministerial, appointed and elected
27 officials; and to foster a positive customer service attitude and to respect the rights
28 of all applicants and affected citizens

1 45. Title 19 provides that no land shall be divided, used, or structure constructed upon,
2 except in accordance with the regulations and requirements of Title 19, including the requirement
3 to obtain applicable approvals and permits prior to the development of the property.

4 46. In Title 19 the City codified the process that the City must follow when reviewing
5 and adjudicating an application to use or develop real property within the City's jurisdiction,
6 whether within the property's existing zoning district classification or as part of an application to
7 change the zoning. The process is codified in Title 19 and NRS Chapter 278.

8 47. The City Council acts in a quasi-judicial capacity when reviewing and acting upon
9 applications related to the use and development of real property within the City.

10 48. Since 2015, in accordance and compliance with NRS 278 and Title 19, Plaintiff
11 Landowners have submitted numerous applications to the City relating to development and use
12 of the Land, including but not limited to, site development reviews (SDR), zone change requests
13 (ZON), waiver requests (WVR), and general plan amendments (GPA).

14 49. In late-2015, and continuing to the present, a handful of wealthy and influential
15 homeowners living in the Queensridge CIC and One Queensridge Place (the "Queensridge Elite")
16 schemed to oppose *any and all* development or use of the Land, notwithstanding that:

- 17 a. the Land was not part of the Queensridge CIC, the Queensridge Master
18 Declaration expressly stated that the "golf course commonly known as "Badlands
19 Golf Course" is not a part of the Property or the Annexable Property [of the
20 Queensridge CIC]";
- 21 b. the Queensridge CIC custom Purchase Agreements expressly disclosed:
 - 22 i. "Seller has made no representations or warranties concerning zoning or
23 the future development of phases of the Planned Community
24 [Queensridge] or the surrounding area or nearby property";
 - 25 ii. "Purchaser shall not acquire any rights, privileges, interest, or
26 membership in the Badlands Golf Course or any other golf course, public
27 or private, or any country club membership by virtue of its purchase of
28 the Lot";

iii. “The view may at present or in the future include, without limitation, adjacent or nearby single-family homes, multiple family residential structures, commercial structures, utility facilities, landscaping and other items”

c. the One Queensridge Place purchase documents expressly disclosed:

i. in the Purchase Contract, “Seller makes no representation as to the subdivision, use or development of any adjoining or neighboring land...views from the Unit may be obstructed by future development of adjoining or neighboring land and Seller disclaims any representation that views from the Unit will not be altered or obstructed by development of neighboring land”, and “Neither Seller nor its affiliates made any representation whatsoever relating to the future development of neighboring or adjacent land and expressly reserve the right to develop this land in any manner that Seller or Seller’s affiliates determine in their sole discretion.”

ii. In the Public Offering Statement (2007), “ current zoning on the contiguous parcels is as follows: [to the] South R-PD7 Residential up to 7 du.”

d. Plaintiffs have vested zoning rights to develop residential units on the Land.

50. The City Council has held numerous and lengthy hearings on Plaintiff Landowners’ applications for use and/or development of the Land.

D. Defendant Coffin’s personal agenda, animus, bias, and discrimination against Plaintiff Lowie and Plaintiff Landowners in the development of the Land.

51. Defendant Coffin has repeatedly and publicly, including during City Council hearings, furthered his personal agenda and demonstrated personal animus against Mr. Lowie, an American citizen of Israeli descent, for reasons totally unconnected to the merits of Plaintiff Landowners’ applications.

52. In late 2015, Defendant Coffin contacted Mr. Lowie about the development of the Land, telling Mr. Lowie to “shut up and listen” and telling Mr. Lowie that Jack Binion was demanding that no development occur on the portion of the Land where 18 of the 27 holes of the Badlands Golf Course were located (*i.e.*, approximately 180 acres comprising Parcels 1, 2, 3, and 4). Defendant Coffin told Mr. Lowie that if Mr. Binion’s demands were met that Defendant Coffin would “allow” Mr. Lowie to build “anything” he wanted on the remainder portion of the Land (*i.e.* approximately 70 acres comprising Parcels 5, 6, 7, 8, 9, and 10). Defendant Coffin told Mr. Lowie that Mr. Binion was Defendant Coffin’s longtime friend and that he would not take a position against Mr. Binion.

53. In or around April 2016, in a meeting between a representative of the Plaintiffs and Mr. Binion, Defendant Coffin repeated his command not to develop the portion of the Land where the 18 holes of the golf course were located. In that meeting, the Plaintiffs’ representatives were told by Defendant Coffin that in order to allow any development on the northeast portion of the Land, Plaintiffs need to “hand over” 183 acres of the Land and certain water rights in perpetuity to a group of wealthy and high-profile members of the Queensridge community (“Queensridge Elite”). Defendant Coffin told the Plaintiffs’ representatives that this was a “fair deal” and that Plaintiffs should accept it.

54. In or around February 2016, in a meeting between Defendant Coffin and Mr. Lowie, Defendant Coffin made statements that compared Mr. Lowie’s personal actions in pursuing the development of the Land to the treatment of “unruly Palestinians.” Thereafter, Defendant Coffin authored and sent a letter to Todd Polikoff, the president and CEO of Jewish Nevada, wherein Defendant Coffin stated, “*In the context of the Council meeting in question I was describing a private meeting with Mr. Yohan Lowie and his colleagues at EHB. I said that I thought his opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood reminded me of Bibi Netanyahu’s insertion of the concreted settlements in the West Bank Neighborhoods. To me it is just as inconsiderate and Yohan looked upon them as a band of unruly Palestinians. I feel that it is such.*” A true and correct copy of the letter sent from Defendant Coffin to Todd Polikoff is attached as Exhibit 4.

1 55. In April 2017, in a City meeting relating to the Plaintiffs' applications, Defendant
2 Coffin met with Anthony Speigel, a representative of the Plaintiffs. Defendant Coffin told Mr.
3 Speigel that the only issue that mattered to Defendant Coffin was the statements that Defendant
4 Coffin made to Mr. Lowie regarding "unruly Palestinians." Defendant Coffin stated that until that
5 issue is remedied, [Defendant Coffin] could not be impartial to any application that [the Plaintiffs]
6 present before the City Council. Defendant Coffin followed through with this statement by
7 subsequently voting to deny every application relating to the development of the Land or,
8 alternatively, voting to hold in abeyance a vote to approve or deny Plaintiffs' applications thereby
9 causing extensive delay and costs to Plaintiffs. Defendant Coffin in furtherance of his ultimatum
10 given to Plaintiffs, and admitted inability to be impartial toward Plaintiff Lowie, has voted against
11 every one of Plaintiffs' applications to develop the Land.

12 56. On June 20, 2017, Plaintiffs sent a letter to Defendant Coffin recommending his
13 recusal from Plaintiffs' applications to develop a portion of the Land set to be heard June 21,
14 2017. Defendant Coffin ignored the letter and on June 21, 2017 voted to deny Plaintiffs'
15 applications.

16 57. On February 15, 2018, Plaintiffs sent a letter to Defendant Coffin, formally
17 requesting that Defendant Coffin recuse himself from voting on all matters before the City
18 Council related to Plaintiffs' efforts to exercise their property rights and develop the Land. A true
19 and correct copy of the letter to Defendant Coffin requesting Defendant Coffin's recusal is
20 attached as Exhibit 5. On February 21, 2018, at a City Council hearing, Plaintiffs made another
21 request that Defendant Coffin recuse himself from voting on all matters related to Plaintiffs' Land.
22 In response, on February 21, 2018, Defendant Coffin stated at the same City Council hearing that
23 he would not recuse himself from participating in and voting on matters before the City Council
24 related to Plaintiffs' applications. Defendant Coffin, on the record, embraced his earlier Lowie-
25 targeted anti-Semitic comments and comparisons to Israeli Prime Minister Netanyahu. Defendant
26 Coffin proceeded to call Prime Minister Netanyahu a "buffoon" who "was driving his country to
27 war." After stating that he would not recuse himself, Defendant Coffin proceeded to vote on a
28 motion for an abeyance of several of Plaintiffs' applications, despite Plaintiffs' objection to the

1 abeyance and right to have the applications heard and voted upon and despite the fact that this
2 would further delay decision on Plaintiffs' applications, causing additional unnecessary costs to
3 Plaintiffs.

4 58. In all instances where Plaintiffs' applications relating to the development of the
5 Land were presented to the City Council, Defendant Coffin was a member of the City Council
6 and voted on all applications related to the projects. In every instance, in furtherance of his
7 ultimatum given to Plaintiffs, admitted inability to be impartial and personal bias against
8 Plaintiffs, Defendant Coffin advocated against and voted against Plaintiffs' applications.

9
10 **E. Defendant Seroka's personal agenda, animus, bias, and discrimination against
Plaintiff Lowie and Plaintiff Landowners in the development of the Land.**

11 59. From July 2017 to the present, Defendant Seroka has been a member of the City
12 Council, representing Ward 2. The Land is located in Ward 2.

13 60. Defendant Seroka campaigned on the promise that, if elected to the City Council,
14 he would prevent Plaintiff Landowners from developing the Land.

15 61. Defendant Seroka's campaign was heavily financed by members of the
16 Queensridge Elite.

17 62. Upon information and belief, Defendant Seroka agreed to deny Plaintiffs'
18 constitutional property rights in exchange for campaign funding by the Queensridge Elite.

19 63. Notwithstanding Plaintiff Landowner's property rights, the Land's zoning, the
20 Queensridge Master Declaration, the Queensridge purchase documents and disclosures, and the
21 November 30, 2016 Court Order, during Defendant Seroka's campaign he publicly proclaimed:

22 a. That he was **"focused on the property rights of the existing homeowners, all
23 of whom have an expectation to the open space that played heavily in their
24 [previous] decisions to purchase"**.

25 b. That, if elected, he would require Plaintiff Landowners to participate in a property
26 swap with the City of Las Vegas. He called it the "Seroka Badlands Solution."
27 Upon information and belief, the City of Las Vegas deemed the Seroka Badlands
28 Solution "illegal".

c. At a Planning Commission in February 2017, while wearing a “Steve Seroka for Las Vegas City Council” pin, at the podium, Seroka stated that he was **“representing [his] neighbors in Queensridge and hundreds of thousands of people that [he] had spoken to in [his] community.”** At the hearing, Defendant Seroka strongly advocated against the Plaintiffs’ property rights and applications, broadcasting that **“over my dead body will I allow a project that would drive property values down 30%”** and **“over my dead body will I allow a project that will set a precedent that will ripple across the community that those property values not just affected in Queensridge but throughout the community.”**

64. Shortly after Defendant Seroka was sworn in as a City Council member, he appointed Christina Roush, his rival in the election, as the Planning Commissioner for Ward 2. Upon information and belief, Ms. Roush was specifically appointed by Defendant Seroka because of her vocal opposition to the land rights of the Plaintiff Landowners during her campaign.

65. On August 2, 2017, the City Council held a hearing on a development application (in this case, a “Development Agreement”) that the City demanded Plaintiffs submit relating to the development of the Land. The Development Agreement had been negotiated and drafted by and between the Staff, the City Attorney, and representatives for Plaintiffs, and received recommendations for approval by Staff and the Planning Commission. Notwithstanding such recommendations for approval, Defendant Seroka made a motion to deny the Development Agreement and read a prepared statement underscoring the basis for denial.

66. Upon information and belief, the statement made by Defendant Seroka at the August 2, 2017 City Council hearing was written by Frank Schreck, the leader among the Queensridge Elite.

67. At a City Council hearing on September 6, 2017, as a direct attack on the Plaintiff Landowners’ efforts to exercise their property rights and develop the Land, Defendant Seroka proposed that the City impose a six-month development moratorium directed to delay the development of the Land (“Queensridge Ordinance”). Defendant Seroka made the motion to

1 approve the Queensridge Ordinance, and upon Defendant Seroka's determining that the
2 moratorium motion would fail, he modified it to convert it to a directive to City Staff to revise the
3 ordinance so that the City Council could revisit it in the future.

4 68. In November 29, 2017, in a "town hall meeting" held at the Queensridge CIC
5 clubhouse, Defendant Seroka publicly stated, while a member of the City Council and while
6 Plaintiffs' applications for the development of the Land were pending before the City Council,
7 that for the City to follow the letter of the law in adjudicating Plaintiffs' applications — as Staff
8 desired to do — was **"the stupidest thing in the world."** In contravention to his duties as a seated
9 Councilman, Defendant Seroka advocated to the residents of the Queensridge CIC to send in
10 opposition letters to all of Plaintiffs' applications and development efforts to both the Planning
11 Commission and City Council.

12 69. On February 15, 2018, Plaintiffs sent a letter to Defendant Seroka, formally
13 requesting that Defendant Seroka recuse himself from voting on all matters before the City
14 Council related to Plaintiffs' efforts to exercise their property rights to develop the Land. A true
15 and correct copy of the letter to Defendant Seroka requesting Defendant Seroka's recusal is
16 attached as Exhibit 6. On February 21, 2018, at a City Council hearing, Plaintiffs made another
17 request that Defendant Seroka recuse himself from voting on all matters related to Plaintiffs'
18 Land. In response, on February 21, 2018, Defendant Seroka stated at the same City Council
19 hearing that he would not recuse himself from participating in and voting on matters before the
20 City Council related to Plaintiffs' applications. After stating that he would not recuse himself,
21 Defendant Seroka proceeded to vote on a motion for an abeyance of several of Plaintiffs'
22 applications, despite Plaintiffs' objections to the abeyance and right to have the applications heard
23 and voted upon and despite the fact that this would further delay decision on Plaintiffs'
24 applications, causing additional unnecessary costs to Plaintiffs.

25 70. In all instances where Plaintiffs' applications relating to the development of the
26 Land were presented to the City Council after July 2017, Defendant Seroka was a member of the
27 City Council and voted on all applications related to the projects. In every instance, in furtherance
28 of his statements that applying applicable law to Plaintiffs' applications would be "the stupidest

1 thing in the world,” and his objective inability to be fair and impartial regarding Plaintiffs,
2 Defendant Seroka advocated against and voted against Plaintiffs’ applications.

3
4 **F. Defendant Coffin and Defendant Seroka illegally scheme to deprive Plaintiff**
5 **Landowners of their constitutional property rights through abuse of authority and**
6 **violation of municipal code.**

7 71. Upon information and belief, Defendant Coffin and Defendant Seroka have
8 aggressively advocated to the City Staff, Planning Commission, and City Council members to
9 oppose all of Plaintiff Landowners’ applications with the City relating in any way to the Land.

10 72. Upon information and belief, Defendant Coffin and Defendant Seroka conspired
11 with members of the Queensridge Elite to deprive Plaintiffs of their property rights and
12 constitutional rights of equal protection and due process.

13 73. Upon information and belief, Defendant Coffin and Defendant Seroka are
14 conducting their duties as members of the City Council under the direction of Frank Schreck, Jack
15 Binion and the Queensridge Elite with the instructions and intention to deny the constitutional
16 property rights of Plaintiff Landowners.

17 74. Upon information and belief, Defendant Coffin and Seroka have acted illegally
18 and with the intent to deprive Plaintiffs of their constitutional rights to equal protection and
19 procedural due process, by among other things, they:

- 20 a. Instructed City Staff to to alter federal mails by checking the ‘I OPPOSE’ box on
21 City of Las Vegas Official Notice of Public Hearing postcards, both before cards
22 are sent to Las Vegas citizens, and after returned by the United States Post Office;
23 and
- 24 b. Instructed City Staff to violate Title 19.16.100(F)(3), which provides that the City
25 Council may not review building permit level reviews, by mandating that all
26 building permit level review applications submitted by Plaintiff Landowners must
27 go through formal City Council hearings, thereby depriving Plaintiffs of the
28 ability to protect or safely access the Land; and

- c. Instructed City Staff to alter Staff Reports relating to land use applications submitted by Plaintiff Landowners, such that they fraudulently describe the Land's permitted use as "Non-operational Golf Course" a non-existent classification under Title 19.12, as opposed to the proper Title 19.12 classification for the Land being "Single Family, Vacant"; delete the Existing Land Use column reference to "Title 19.12"; and make other biased and non-customary changes to the reports intended to prejudice Plaintiff Landowners' zoning rights; and
- d. Instructed City Staff to impose applications submittal requirements upon Plaintiff Landowners' that are intended solely for the purpose of delay; and
- e. Instructed City Staff to draft the Queensridge Ordinance in a manner to target and impair the constitutional property rights and existing zoning rights of Plaintiff Landowners; and
- f. Instructed City Staff on what to say at public hearings such that notwithstanding that the Queensridge Ordinance is specifically targeted at the Land, the City Staff is fed sound bites to give the appearance of broad applicability; and
- g. Instructed City Staff not to do an analysis of what properties would actually be subject to the Queensridge Ordinance; and
- h. Requested that third party quasi-municipal and county agencies manufacture unjustified reasons to support the denial of the applications by the City Council.

75. Have taken the position that the PROS land use designation governs the use of the Land in blatant violation of NRS 278.349(3)(e), which states, in pertinent part, as follows: "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider . . . [c]onformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence" When Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons of the City Council against Plaintiffs' applications to develop the Land, Defendant Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City Charter, which outlines the position and duties of a councilperson of the City Council

(see, e.g., Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; and Nevada Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land use.

76. The City and the City Council permitted Defendant Coffin and Defendant Seroka to engage in the aforementioned conduct that was intended to intentionally violate Plaintiffs' constitutional rights of equal protection and due process.

77. The City and the City Council have treated Plaintiffs as a class of one, foisting upon them extraordinary requirements that have not been required of other similarly situated individuals or entities. The City's and the City Council's treatment of Plaintiffs as a class of one has caused Plaintiffs to incur extraordinary costs and expenses in attempting to meet requirements that are both unlawful and not required of any other similarly situated individual or entity.

78. The City and the City Council have also consciously and willfully prevented Plaintiffs from having their applications heard by an impartial decision maker such that Plaintiffs' applications are either denied or decisions delayed, causing extensive delay and costs to Plaintiffs.

79. The City and the City Council ratified Defendant Coffin's and Defendant Seroka's aforementioned conduct.

80. Regardless of the ultimate outcome of any of Plaintiffs' applications concerning the Land, Plaintiffs have suffered substantial harm in the process of pursuing approval of such applications based on the conduct of Defendants as set forth herein.

First Cause of Action
Violation of Equal Protection of 14th Amendment to United States Constitution, brought pursuant to 42 U.S.C. § 1983 (against all Defendants)

81. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

82. Section 1 of the 14th Amendment to the United States Constitution states, in part, as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

1 States; nor shall any State deprive any person of life, liberty, or property, without due process of
2 law; nor deny to any person within its jurisdiction the equal protection of the laws.”

3 83. Plaintiffs have vested property rights in the Land.

4 84. Plaintiffs have been deprived of their equal protection rights, privileges, and
5 immunities provided by the Equal Protection Clause of the Fourteenth Amendment of the United
6 States Constitution. The deprivation was caused by Defendants’ actions that were taken under
7 color of state statute, ordinance, regulation, and custom and usage.

8 85. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

9 86. Defendant Coffin’s discrimination towards Plaintiffs is based, in part, on Plaintiff
10 Lowie’s Israeli ethnicity and Jewish faith. Defendant Coffin’s discrimination was not narrowly
11 tailored to advance a compelling government interest.

12 87. Defendants, including Defendant Coffin and Defendant Seroka and other members
13 of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly
14 situated land use applicants and property owners. Defendants had no rational basis for treating
15 Plaintiffs differently than other similarly situated land use applicants and property owners. When
16 other similarly situated land use applicants and property owners presented applications to the City
17 Council that were similar to Plaintiffs’ applications — meaning, in part, that the applications
18 conformed with all relevant laws and regulations and were approved by the Staff and the Planning
19 Commission — the City Council has not repeatedly refused to approve such applications, created
20 unreasonable delay, or imposed unsupported and suspect conditions, like the City Council has
21 done with Plaintiffs’ applications. Further, with respect to the property rights, development
22 rights, and applications of other developers and property owners that are similarly situated to
23 Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those
24 property rights, development rights, and applications, like Defendant Coffin and Defendant
25 Seroka have done, including in private gatherings, City Council meetings, “town hall meetings,”
26 and elsewhere with respect to Plaintiffs’ applications. Further, with respect to the property rights,
27 zoning rights, and applications of other developers and property owners that are similarly situated
28 to Plaintiffs and the Principals, the City Council has not repeatedly refused to uphold and approve

1 those rights and applications due to certain councilpersons' personal friendships with wealthy,
2 high-profile homeowners who are opposed to the applications, like Defendant Coffin and
3 Defendant Seroka have done towards Plaintiffs' applications due to personal relationships with
4 Frank Schreck, Jack Binion and other members of the Queensridge Elite. Upon information and
5 belief, the applications to develop the Land have experienced more delays, abeyances, and denials
6 than any other applications in the history of the City of Las Vegas.

7 88. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and
8 immunities provided by the Equal Protection Clause of the 14th Amendment to the United States
9 Constitution involved reckless and callous indifference to Plaintiffs' constitutionally protected
10 rights and, additionally, was motivated by evil and malicious motive and intent.

11 89. Plaintiffs have suffered damages, including, but not limited to, increased
12 maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants'
13 violations of the Equal Protection Clause of the 14th Amendment to the United States
14 Constitution, as set forth herein, in a sum to be proven at trial.

15 90. It has become necessary for Plaintiffs to retain the services of legal counsel to
16 prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this
17 action.

18 **Second Cause of Action**

19 **Violation of Procedural Due Process of 14th Amendment to United States Constitution,** 20 **brought pursuant to 42 U.S.C. § 1983 (against all Defendants)**

21 91. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if
22 set forth fully herein.

23 92. Section 1 of the 14th Amendment to the United States Constitution states, in part,
24 as follows: "[N]or shall any State deprive any person of life, liberty, or property, without due
25 process of law."

26 93. Plaintiffs have been deprived of their procedural due process rights, privileges,
27 and immunities provided by the Due Process Clause of the Fourteenth Amendment of the United
28

1 States Constitution. The deprivation was caused by Defendants acting under color of state statute,
2 ordinance, regulation, and custom and usage.

3 94. Defendant Coffin and Defendant Seroka, as members of the City Council,
4 participated in and voted at multiple hearings wherein the City Council voted on and adjudicated
5 whether Plaintiffs would be allowed to develop the Land pursuant to Plaintiffs' applications.
6 Further, Defendant Coffin and Defendant Seroka participated in multiple meetings and
7 discussions relating to Plaintiffs' applications to develop the Land.

8 95. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the
9 Land, the members of the City Council had a duty to act as impartial decision-makers.

10 96. The members of the City Council, including Defendant Coffin and Defendant
11 Seroka, have not acted as impartial decision-makers. The members of the City Council, including
12 Defendant Coffin and Defendant Seroka, made their decisions based on animus, bias, and
13 discrimination against Plaintiffs and as a result, the City Council has repeatedly refused to
14 approve such applications, has created unreasonable delay, and has imposed unsupported and
15 suspect conditions, all of which cause unnecessary and extraordinary costs to Plaintiffs in
16 pursuing the right to develop the Land.

17 97. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the
18 Land, the members of the City Council had a duty to base their decisions on articulated standards
19 and requirements — such as the standards and requirements provided for by the relevant laws and
20 regulations, including those in Title 19 and Nevada Revised Statutes, and Chapter 278— but the
21 members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so.
22 Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka,
23 made their decisions based on animus, bias, and discrimination against Plaintiffs and their
24 applications to develop the Land. In fact, Defendant Seroka publicly advocated against
25 application of relevant law regarding Plaintiffs' applications.

26 98. Defendant Coffin and Defendant Seroka also made their decisions and engaged in
27 their City Council discussions motivated by favoritism and partiality to their friends who lived in
28

1 the Queensridge CIC and were members of the Queensridge Elite, such as Mr. Binion's friendship
2 with Defendant Coffin and Defendant Seroka's relationship with Frank Schreck.

3 99. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and
4 immunities provided by the Due Process Clause of the 14th Amendment to the U.S. Constitution
5 involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and,
6 additionally, was motivated by evil and malicious motive and intent.

7 100. Plaintiffs have suffered damages, including, but not limited to, increased
8 maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants'
9 violations of the Procedural Due Process Clause of the 14th Amendment to the United States
10 Constitution, as set forth herein, in a sum to be proven at trial.

11 101. It has become necessary for Plaintiffs to retain the services of legal counsel to
12 prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this
13 action.

14
15 **Third Cause of Action**
16 **Violation of Equal Protection of Article 4, Section 21 of Nevada Constitution**
17 **(against all Defendants)**

18 102. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if
19 set forth fully herein.

20 103. Article 4, Section 21 of the Nevada Constitution states as follows: "In all cases
21 enumerated in the preceding section, and in all other cases where a general law can be made
22 applicable, all laws shall be general and of uniform operation throughout the State."

23 104. Plaintiffs have vested property rights in the Land. Plaintiffs have been deprived
24 of their equal protection rights, privileges, and immunities provided by the Equal Protection
25 Clause of the Nevada Constitution. The deprivation was caused by Defendants' actions that were
26 taken under color of state statute, ordinance, regulation, and custom and usage. For example,
27 when Defendant Coffin and Defendant Seroka took the aforementioned actions as councilpersons
28 of the City Council against Plaintiffs and Plaintiffs' applications to develop the Land, Defendant
Coffin, Defendant Seroka, and the City Council were acting under the color of the Las Vegas City

1 Charter, which outlines the position and duties of a councilperson of the City Council (*see, e.g.*,
2 Articles I, II, III); Title 19, which contains the City's laws for zoning and land use; Nevada
3 Revised Statutes, Chapter 278, which contains the State of Nevada's laws for zoning and land
4 use.

5 105. Defendants acted with an intent and purpose to discriminate against Plaintiffs.

6 106. Defendant Coffin's discrimination towards Plaintiffs was based, at least in part,
7 on Plaintiff Lowie's Israeli ethnicity and Jewish faith. Defendant Coffin's discrimination was not
8 narrowly tailored to advance a compelling government interest.

9 107. Defendants, including Defendant Coffin and Defendant Seroka and other members
10 of the City Council, acted with an intent and purpose to single out Plaintiffs from other similarly
11 situated land use applicants and property owners. Defendants had no rational basis for treating
12 Plaintiffs differently than other similarly situated land use applicants and property owners. When
13 other similarly situated land use applicants and property owners presented development
14 applications to the City Council that were similar to Plaintiffs' applications — meaning, in part,
15 that the applications conformed with all relevant laws and regulations and were approved by the
16 Staff and the Planning Commission — the City Council has not repeatedly refused to approve
17 such applications, created delays, or imposed unsupported and suspect classifications, like the
18 City Council has done with Plaintiffs' applications. Further, with respect to the property rights,
19 development rights, and applications of other property owners that are similarly situated to
20 Plaintiffs, the City Council has not openly, unconditionally, and publicly advocated against those
21 property rights, zoning rights, and applications, like Defendant Seroka and Defendant Coffin have
22 done, including in private gatherings, City Council meetings, "town-hall meetings," and
23 elsewhere with respect to Plaintiffs' applications. Further, with respect to the property rights,
24 zoning rights, and applications of other land use applicants and property owners that are similarly
25 situated to Plaintiffs, the City Council has not repeatedly refused to uphold and approve those
26 rights and applications due to certain councilpersons' personal friendships with wealthy, high-
27 profile homeowners who are opposed to the applications, like Defendant Coffin and Defendant
28

1 Seroka have done towards Plaintiffs and Plaintiffs' applications due to personal relationships with
2 Frank Schreck, Jack Binion and other members of the Queensridge Elite.

3 108. Defendants' conduct in violating Plaintiffs' equal protection rights, privileges, and
4 immunities provided by the Nevada Constitution involved reckless and callous indifference to
5 Plaintiffs' constitutionally protected rights and, additionally, was motivated by evil and malicious
6 motive and intent.

7 109. Plaintiffs have suffered damages, including, but not limited to, increased
8 maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants'
9 violations of the Equal Protection Clause of the Nevada Constitution, as set forth herein, in a sum
10 to be proven at trial.

11 110. It has become necessary for Plaintiffs to retain the services of legal counsel to
12 prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this
13 action.

14
15 **Fourth Cause of Action**
16 **Violation of Procedural Due Process of Article 1, Section 8(5) of Nevada Constitution**
17 **(against all Defendants)**

18 111. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if
19 set forth fully herein.

20 112. Article 1, Section 8(5) of the Nevada Constitution states, in part, as follows: "No
21 person shall be deprived of life, liberty, or property, without due process of law."

22 113. Plaintiffs have been deprived of their procedural due process rights, privileges,
23 and immunities provided by the Due Process Clause of the Nevada Constitution. The deprivation
24 was caused by Defendants acting under color of state statute, ordinance, regulation, and custom
25 and usage.

26 114. Defendant Coffin and Defendant Seroka, as members of the City Council,
27 participated in and voted at multiple hearings wherein the City Council voted on and adjudicated
28 whether Plaintiffs would be allowed to develop the Land and associated conditions pursuant to

1 Plaintiffs' applications. Further, Defendant Coffin and Defendant Seroka participated in multiple
2 meetings and discussions relating to Plaintiffs' applications to develop the Land.

3 115. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the
4 Land, the members of the City Council had a duty to act as impartial decision-makers, but the
5 members of the City Council, including Defendant Coffin and Defendant Seroka, were not
6 impartial decision-makers. The members of the City Council, including Defendant Coffin and
7 Defendant Seroka, made their decisions based on animus, bias, and discrimination against Mr.
8 Lowie and Plaintiffs' applications to develop the Land.

9 116. With respect to Plaintiffs, the Land, and Plaintiffs' applications to develop the
10 Land, the members of the City Council had a duty to base their decisions on articulated standards
11 and requirements — such as the standards and requirements provided for by the relevant laws and
12 regulations, including those in Title 19 and Nevada Revised Statutes, Chapter 278— but the
13 members of the City Council, including Defendant Coffin and Defendant Seroka, did not do so.
14 Instead, the members of the City Council, including Defendant Coffin and Defendant Seroka,
15 made their decisions based on animus, bias, and discrimination against Plaintiffs, and Plaintiffs'
16 applications to develop the Land. In fact, Defendant Seroka publicly advocated against
17 application of relevant law regarding Plaintiffs' applications. Defendant Coffin and Defendant
18 Seroka also made their decisions and engaged in their City Council discussions motivated by
19 favoritism and partiality to their friends Frank Schreck, Jack Binion and other members of the
20 Queensridge Elite.

21 117. Defendants' conduct in violating Plaintiffs' due process rights, privileges, and
22 immunities provided by the Due Process Clause of the Nevada Constitution involved reckless and
23 callous indifference to Plaintiffs' constitutionally protected rights and, additionally, was
24 motivated by evil and malicious motive and intent.

25 118. Plaintiffs have suffered damages, including, but not limited to, increased
26 maintenance and carrying costs, engineering fees, and architectural fees as a result of Defendants'
27 violations of the Procedural Due Process Clause of the Nevada Constitution, as set forth herein,
28 in a sum to be proven at trial.

119. It has become necessary for Plaintiffs to retain the services of legal counsel to prosecute this action; therefore, Plaintiffs are entitled to attorneys' fees and costs related to this action.

Fifth Cause of Action

Attorneys' fees and costs as special damages, pursuant to Nevada Rule of Civil Procedure 9(g) (against all Defendants)

120. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as if set forth fully herein.

121. Based upon Defendants' aforementioned violations of Plaintiffs' constitutional rights, privileges, and immunities, Plaintiffs have incurred attorneys' fees and costs in bringing this lawsuit to protect and enforce Plaintiffs' rights.

122. The attorneys' fees and costs incurred by Plaintiffs were directly and proximately caused by Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities. Defendants' actions involved reckless and callous indifference to Plaintiffs' constitutionally protected rights and, additionally, were motivated by evil and malicious motive and intent.

123. It was reasonably foreseeable that Plaintiffs would have to incur attorneys' fees and costs in response to Defendants' violations of Plaintiffs' constitutional rights, privileges, and immunities.

124. Plaintiffs are therefore entitled to recover their attorneys' fees and costs as special damages pursuant to Nevada Rule of Civil Procedure 9(g).

Prayer for Relief

Plaintiffs pray for relief, as follows:

1. Injunctive relief;
2. An award of damages in the nature of fees, costs, and expenses incurred as a result of Defendants' unlawful actions set forth herein, in an amount to be proven at trial;
3. An award of punitive damages;

HUTCHISON & STEFFEN

A PROFESSIONAL LLC
PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NV 89145

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4. An award of attorneys' fees and litigation costs pursuant to 42 U.S.C. § 1988 and Nevada Rule of Civil Procedure 9(g); and
5. Any other relief that this Court deems necessary and justified.
- Plaintiffs also demand a jury trial for all issues triable by a jury.
- Dated this 26th day of March 2018.

HUTCHISON & STEFFEN, PLLC

/s/ Mark A. Hutchison

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Robert T. Stewart (13770)
Attorneys for Plaintiffs

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EXHIBIT 1

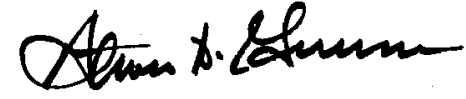
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CLERK OF THE COURT

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

21 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

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

- 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
26 ¹ The Motion was procedurally improper because Plaintiffs are required to seek leave of Court prior to filing a
27 Motion for Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the Court
28 issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing, converting Plaintiffs
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 NRCP 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
24 In Nevada, it is established that equity cannot directly interfere with, or in advance
25 restrain, the discretion of an administrative body's exercise of legislative power.
26 [Citation omitted] This means that a court could not enjoin the City of Reno from
27 entertaining Eagle Thrifty's request to review the planning commission
28 recommendation. ***This established principle may not be avoided by the expedient
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

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(T) 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 Laretta P.
12 Bayne, individually, Lisa Miller, individually, Laretta 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
27
28

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

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

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

22 41. The Developer Defendants properly followed procedures for approval of a parcel
23 map over Defendants' property pursuant to NRS 278.461(1)(a) because the division involved
24 four or fewer lots. The Developer Defendants parcel map is a legal merger and re-subdividing of
25 land within their own boundaries.

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

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

11 45. The Queensridge Master Declaration (Court Exhibit B and attached to
12 Defendants’ November 2, 2016 Supplement as Exhibit B), at p. 1, Recital B, states: “Declarant
13 intends, without obligation, to develop the Property and the Annexable Property in one or more
14 phases as a mixed-use common interest community pursuant to Chapter 116 of the Nevada
15 Revised Statutes (“NRS”), which shall contain “non-residential” areas and “residential” areas,
16 which may, but is not required to, include “planned communities” and “condominiums,” as such
17 quoted terms are used and defined in NRS Chapter 116.”
18

19 46. The Queensridge community is a Common Interest Community organized under
20 NRS 116. This is not a PUD community.
21

22 47. NRS 116.1201(4) states that “The provisions of Chapter 117 and 278A of NRS do
23 not apply to common-interest communities.” See Defendants’ Supplemental Exhibit Q.

24 48. In contrast to the City of Las Vegas’ choice not to adopt the provisions of NRS
25 278A, municipal or city councils that choose to adopt the provisions of NRS 278A do so, as
26 required by NRS 278A.080, by affirmatively enacting ordinances that specifically adopt Chapter
27 278A. *See, e.g.,* Defendants’ Supplemental Exhibit N and O, Title 20 Consolidated
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 49. The City Council has not voted on Defendants' pending Applications and the
5 Court will not stop the City Council from conducting its ordinary business and reaching a
6 decision on the Applications. Plaintiffs may not enjoin the City of Las Vegas or Defendants with
7 regard to their instant Applications, or other Applications they may submit in the future. *See*
8 *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451
9 P.2d 713, 714 (1969).
10

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

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

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

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

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

21 58. Plaintiffs' Exhibit 2 to their Supplement filed November 8, 2016, which is also
22 Exhibit J to Defendants' Supplement filed November 2, 2016, approves a request for rezoning to
23 R-PD3, R-PD7 and C-1, which all indicate the intent to develop in the future as residential or
24 commercial. Plaintiffs alleged this was a Resolution of Intent which was "expunged" upon
25 approval of the application. Plaintiffs alleged that Exhibit 3 to their Supplement, the 1991
26 zoning approval letter, was likewise expunged. However, the Zoning Bill No. Z-20011,
27 Ordinance No. 5353, attached as Exhibit I to Defendants' Motion to Dismiss, demonstrates that
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 60. Further, Defendants' Supplemental Exhibit K, two letters from the City of Las
11 Vegas to Frank Pankratz dated December 20, 2014, confirm the R-PD7 zoning on all parcels
12 held by Fore Stars, Ltd.
13

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

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

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

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

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

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

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.

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

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

CONCLUSIONS OF LAW

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

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.

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

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

18 110. Under Nevada law, a Plaintiff must prove the elements of fraudulent
19 misrepresentation by clear and convincing evidence: (1) A false representation made by the
20 defendant; (2) defendant's knowledge or belief that its representation was false or that defendant
21 has an insufficient basis of information for making the representation; (3) defendant intended to
22 induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the
23 plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 114 Nev.

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

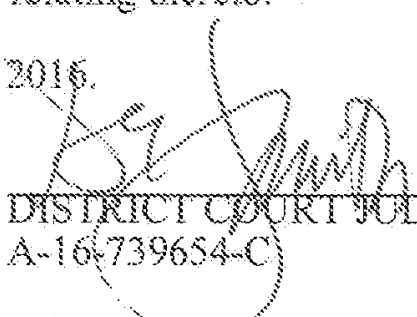
13 ORDER AND JUDGMENT

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:

2 **JIMMERSON LAW FIRM, P.C.**

3 /s/ James J. Jimmerson, Esq.

James J. Jimmerson, Esq.

4 Nevada Bar No. 000264

415 South 6th Street, Suite 100

5 Las Vegas, Nevada 89101

(702) 388-7171

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EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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STATE OF NEVADA
STATE BOARD OF EQUALIZATION

BRIAN SANDOVAL
Governor

1550 College Parkway, Suite 115
Carson City, Nevada 89706-7921
Telephone (775) 684-2160
Fax (775) 684-2020

DEONNE E. CONTINE
Secretary

In the Matter of

Fore Stars LTD, 180 Land Co LLC, and
Seventy Acres, LLC
PETITIONERS

Michele Shafe, Clark County Assessor
RESPONDENT

)
) Case Nos. 17-175; 17-176; 17-177
)
)
)
)
)
)
)



NOTICE OF DECISION

Appearances

Andrew Glendon, appeared on behalf of Fore Stars LTD, 180 Land Co LLC, and Seventy Acres, LLC (Taxpayers).

Jeff Payson appeared on behalf of the Clark County Assessor (Assessor).

Summary

The matter of the Taxpayers' direct appeal of conversion of golf course property came before the State Board of Equalization (State Board) on October 17, 2017 via telephone conference in Carson City, Nevada. The cases were consolidated at the request of the parties.

The Assessor and Mr. Glendon presented the State Board with a signed stipulation for review and approval of the State Board for each case number.

DECISION

The State Board, having considered the signed stipulations, hereby approves, by unanimous vote, the signed stipulations presented by the Department. The stipulations provide that the Taxpayers stipulated to and accepted the Assessor's determinations with the Taxpayers reserving their rights to appeal the 2017/2018 tax year valuations.

BY THE STATE BOARD OF EQUALIZATION THIS 30th DAY OF NOVEMBER, 2017.

A handwritten signature in black ink, reading "Deonne E. Contine", is written over a horizontal line.
Deonne Contine, Secretary
DC/jm

CERTIFICATE OF SERVICE

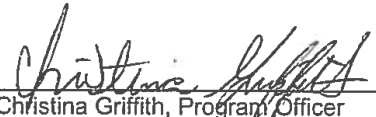
Fore Stars Ltd Case No. 17-175, 176, 177

I hereby certify on the 30th day of November 2017, I served the foregoing Findings of Fact, Conclusions of Law, and Decision by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

CERTIFIED MAIL: 7013 1090 0000 7280 8415
PETITIONER'S REPRESENTATIVE
17-175
FORE STARS LTD
ANDREW J GLENDON
C/O SANTORO WHITMIRE LTD
10100 W CHARLESTON BLVD SUITE 250
LAS VEGAS NV 89135

CERTIFIED MAIL: 7013 1090 0000 7280 8460
RESPONDENT
17-175
MS. MICHELE SHAFE
CLARK COUNTY ASSESSOR
500 SOUTH GRAND CENTRAL PARKWAY 2ND FLOOR
LAS VEGAS NV 89155-1401

Copy: Clark County Clerk
Clark County Comptroller
Clark County Treasurer


Christina Griffith, Program Officer
Department of Taxation
State Board of Equalization



MICHELE W. SHAFE

Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor



Stipulation for the State Board of Equalization

September 21, 2017

180 Land Co LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-176
Parcel No(s). 138-31-801-002; 138-31-201-005; 138-31-601-008;
138-31-702-003; 138-31-702-004; 138-31-712-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

- (1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.
- (2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.
- (3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Petitioner reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

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MICHELE W. SHAFE

Clark County Assessor
APPRAISAL DIVISION

500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401

Telephone 702-455-4997

www.ClarkCountyNV.gov/assessor



Stipulation for the State Board of Equalization

September 21, 2017

Fore Stars, Ltd ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-175
Parcel No(s). 138-32-202-001; 138-32-210-008; 138-31-212-002;
138-31-610-002; 138-31-713-002; 138-32-210-005 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

- (1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.
- (2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.
- (3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Fore Stars Ltd.

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MICHELE W. SHAFE

Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor



Stipulation for the State Board of Equalization

September 21, 2017

Seventy Acres LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-177
Parcel No(s). 138-31-801-003; 138-32-301-005; 138-32-301-007; 138-32-301-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

- (1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.
- (2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.
- (3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Taxpayer reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17

Jeff Payson
Appraisal Division

DATE: 9/25/17

Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: Seventy Acres LLC

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EXHIBIT 3

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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LAS VEGAS
CITY COUNCIL

CAROLYN G. GOODMAN
MAYOR

STAVROS S. ANTHONY
MAYOR PRO TEM

LOIS TARKANIAN
STEVEN D. ROSS
RICKY Y. BARLOW
BOB COFFIN
BOB BEERS

ELIZABETH N. FRETWELL
CITY MANAGER

CITY OF LAS VEGAS
DEPARTMENT OF PLANNING
DEVELOPMENT SERVICES CENTER
333 NORTH RANCHO DRIVE
3RD FLOOR
LAS VEGAS, NEVADA 89106

VOICE 702.229.6301

FAX 702.474.0352

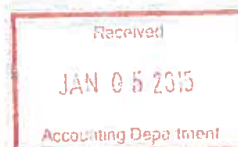
TTY 702.386.9108

www.lasvegasnevada.gov

December 30, 2014

Frank Pankratz
ENB Companies
9755 W. Charleston Blvd.
Las Vegas, NV 89117

RE: 138-31-713-002
138-31-712-004
138-31-610-002
138-31-212-002 (ZVL-57350)



Mr. Pankratz,

This letter is in response to a request for zoning verification on properties located within Las Vegas, Nevada with Assessor's Parcel Numbers of 138-31-713-002; 138-31-712-004; 138-31-610-002; and 138-31-212-002. The subject properties are zoned R-PD7 (Residential Planned Development District – 7 Units per Acre).

The R-PD District is intended to provide for flexibility and innovation in residential development, with emphasis on enhanced residential amenities, efficient utilization of open space, the separation of pedestrian and vehicular traffic, and homogeneity of land use patterns. The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.) A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code. The Las Vegas Zoning Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/LawsCodes/zoning_laws.htm

The department is unable to provide you with a statement as to whether or not this property conforms to current City codes. If a use or building is nonconforming, then Title 19.14 grants certain rights to the owner, which are addressed in Sections 19.14.040 and 19.14.050 located in Title 19 ("Unified Development Code") of the Las Vegas Municipal Code. The Unified Development Code may be found on the City of Las Vegas website:

http://www.lasvegasnevada.gov/files/CLV_Unified_Development_Code.pdf

Should you wish to obtain copies of a Certificate of Occupancy or other public records related to the subject property, please contact the Las Vegas Building and Safety Department at (702) 229-6251. Information regarding City code violations on the subject property can be obtained from the Code Enforcement Division of the Building and Safety Department at (702) 229-2330.

If you have any questions concerning this matter, please contact me at (702) 229-6745.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Eddowes".

Nicole Eddowes
Planner I
Planning & Development Department

FM-0073a-04-12

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EXHIBIT PAGE ONLY

EXHIBIT 4

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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City of Las Vegas

Bob Coffin
Councilman, Ward 3

March 27, 2017

Jewish Nevada
Todd S. Polikoff, President & CEO
2317 Renaissance Drive
Las Vegas, NV 89119

RE: Sent via email

Dear Todd,

I received your letter and I am surprised that you have taken such a leap to conclusion as to label me anti-Semite and anti-Israel. I do not know you and you do not know me but as I look at your Board I see friends who would disagree with your insulting and half-baked opinion of me. I have grown up in this city since 1951. In my youth there were only three kinds of friends; Jews, Catholics and Mormons, all friends.

First, I have been in mourning since the death of my son in late January. Marla Letizia is fully aware of this. I have not answered many communications, much less these odd claims and meeting demands as they were first put to me by Marla. So, in a sense I did respond to you through your Board Chair. I only participate in official meetings at City Hall and the conversation with her was by phone call. She asked for a formal meeting and I declined for the obvious reason. She seemed to understand so imagine my surprise when I received this letter, which I can only describe as odd, to be charitable.

In the context of the Council meeting in question I was describing a private meeting with Mr. Yohan Lowie and his colleagues at EHB. I said that I thought his opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood reminded me of Bibi Netanyahu's insertion of the concreted settlements in the West Bank neighborhoods. To me it is just as inconsiderate and Yohan looked upon them as a band of unruly Palestinians. I feel that it is such.

495 S. Main St. | Las Vegas, Nevada 89101 | (702) 229-6405 | FAX (702) 382-8558
bcoffin@lasvegasnevada.gov | www.lasvegasnevada.gov



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Just four days ago, at a building dedication, I asked Mr Lowie if he had said to people that he thought I was anti-Semitic and he said he told no one this but your letter describes how Mr Lowie informed your office of the "Incident." No wonder the Queensridge neighborhood has such frustration with his methods.

So, in the retelling of the story at Council I see from my transcript, which I had my staff prepare for Marla, that I said "Israel" instead of Netanyahu. Since neither you or Marla were at the meeting, I can see how you miss the context. I did not even realize it myself at the time. The point of the retelling of the private meeting was to emphasize to all present at Council that I had no secret agenda but was pushing for compromise.


It is certainly not anti-Semitic or anti-Israel to criticize Netanyahu, a loud-mouthed buffoon of a right-wing politician who feels free to meddle in our Presidential elections. I also do not believe that he represents the thoughts of all Israelis just as no Prime Minister represents the thoughts of any country. And, I do not object to the billions of dollars of US taxpayer support to Israel.

So, call me anti-Bibi but anything else is just not true. If you wish to make this dispute public I think you will find it unprofitable for everyone.

I am responding to your letter by email from my home so I apologize for not responding to you in kind.

I do hope you will exercise your best effort to undo the damage you cause me by your unfounded accusations.

Thank you,


Councilman Bob Coffin
City of Las Vegas, Ward 3
CC: copy of email

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EXHIBIT 5

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

JOSEPH S. KISTLER
PARTNER
JKISTLER@HUTCHLEGAL.COM

February 15, 2018

Via U.S. Mail, facsimile, and hand delivery

Councilman Bob Coffin
Las Vegas City Hall
495 S. Main Street
Las Vegas, NV 89101

Re: Your Admitted Bias and Resulting Denial of Due Process.

Councilman Coffin:

This firm is special litigation counsel for 180 Land Co., LLC, Seventy Acres, LLC, and Fore Stars, Ltd. (collectively "Property Owners"). Chris Kaempfer continues to represent the Property Owners as co-counsel for their entitlements applications pending with the City of Las Vegas. This letter addresses certain governmental procedural and substantive deficiencies that exist regarding the Property Owners' exercise of their real property rights with respect to their respective parcels identified as: APNs 138-31-201-005; 138-31-702-003; 138-31-601-008; 138-31-702-004; 138-31-801-002; 138-32-301-007; 138-32-301-005; 138-31-801-003; 138-32-202-001 totaling, among the three owners, approximately 250 acres (the "Properties"). Unfortunately, the deficiencies relate, at least in part, to your activities regarding our clients' applications in the exercise of their property rights. As a result, we make the following formal requests and will seek judicial intervention if our requests are not adequately addressed.

First, we formally request that you recuse yourself from any discussions and voting on the Property Owners' application. You have repeatedly and publicly demonstrated personal animus against the applicants' principal, Mr. Yohan Lowie, for reasons totally unconnected to the merits of the applications. Mr. Lowie is a member of the Jewish faith, and you have publically stated on multiple occasions that he is treating the residents of Queensridge like the Jewish state of Israel allegedly treats the "unruly Palestinians." Such comments are indefensible and clearly show that you hold the applicant's faith against both him and the applicants' exercise of their property rights.

It is true that you, as an elected public official, have the right—the obligation even—to oppose applications that you believe will be detrimental to your constituents. The law gives you wide latitude to make those decisions. Nevertheless, there are legal limits on your discretion, your latitude is not limitless. It is always arbitrary and out of bounds to oppose an application because of an applicant's race, ethnicity, gender, or religion. This restriction is a bright-line rule for which there are no exceptions. Your personal dislike for the applicants' principal and his religion goes far beyond any acceptable bias, and there is simply no way that you should now

Councilman Bob Coffin
February 12, 2018, page 2

participate in any official action involving any applications submitted in any way involving Mr. Lowie. You must recuse yourself, and failure to do so will deny my clients' rights under the law.

Second, we formally request the production of all documentation related to any communications between yourself and any parties who have taken an adverse position regarding the development of the Properties. This includes, both public and private, emails, letters, voice mails, text messages, messages via social media, and any and all other forms of communication regardless of medium. A public records request has also been submitted. *See* City of Las Vegas Public Record Request form attached herein as Exhibit 1.

Absent your appropriate response, we will attend the February 21st City Council meeting and will make this written submission part of the public record for the relevant agenda items.

After review of the almost two years of meetings, discussions, filings, and statements regarding the Properties, we have ascertained that your statements and actions have violated the Property Owners' due process rights of a fair and impartial consideration of their application as protected by the United States Constitution, the Nevada State Constitution, and in both federal and state case law precedents. Consequently, your recusal is required.

1. Facts Objectively Showing Personal Animus Towards the Applicant.

As can be substantiated by admissible evidence, in late 2015 you contacted Mr. Lowie telling him to "shut up and listen" and emphatically advising him to leave the portion of the Properties with 18 golf course holes on it alone, and if he did, you would allow Mr. Lowie to build anything he wanted on the remainder portion of the Properties. You steadfastly commented that Jack Binion was your friend and you were not going to take a position against his interests. *See* affidavit of Yohan Lowie attached herein as Exhibit 2. In April 2016, you repeated this vehement directive in a meeting between a representative of the Property Owners and Mr. Binion where the Property Owners' representatives were told to "hand over" the 183 acres and certain water rights in perpetuity. *Id.* You proclaimed that this was a "fair deal" and that the Property Owners should accept it. *Id.*

Moreover, in a January 2017 meeting between yourself and Mr. Lowie, you again compared Mr. Lowie's personal actions in pursuing the development of the Properties to "Netanyahu and the settlements in the West Bank." *Id.* You shockingly doubled-down on this comment in a letter to Todd Polikoff, President and CEO of Jewish Nevada, where you stated that not only was Mr. Lowie "arrogantly disregarding" the residents of Queensridge, but his handling of the acquisition of the Properties was "opportunistic." You classified his actions as "inconsiderate" and *again* compared Mr. Lowie's business decisions to the highly-political and highly-divisive topic of Jewish settlements in the West Bank. *See* letter and reply attached herein as Exhibit 3. In a City of Las Vegas pre-application meeting on April 17, 2017, you met with Anthony Spiegel a representative of the Property Owners. *See* affidavit of Anthony Spiegel, attached herein as Exhibit 4. You told Mr. Spiegel the "only issue that mattered to [you]" was the statements you made to Mr. Lowie regarding "unruly Palestinians." *Id.* You stated that until that "issue was remedied, [you] could not be impartial to any application that

Councilman Bob Coffin
February 12, 2018, page 3

[the Property Owners] present before the City Council.” *Id.* You followed through with your statements by subsequently denying every application that came before you submitted by the Property Owners.

In short, you have repeatedly expressed the ingrained bias you have against Mr. Lowie through both actions and words. Your prejudice is entirely unrelated to the merits of the applications submitted for review to the City of Las Vegas. Your continued participation in the consideration of my clients’ applications denies them fundamental due process rights.

2. Bias Violates an Applicant’s Due Process Rights.

When a municipal body, *i.e.* the Las Vegas City Council, is performing an administrative function, such as making land use decisions involving specific projects or specific property the due process of law clause of the Nevada Constitution applies. *See Hantges v. City of Henderson*, 121 Nev. 319, 324-27 (2005) (discussing case law which holds that an appearance of bias or impropriety in land use decisions deprives interested parties of procedural due process). Additionally, it has been a universal and long-established rule that members of municipal bodies are prohibited from voting on matters in which they have a disqualifying conflict of interest, as it would violate “principles of natural justice and sound public policy.” *See, e.g., Bd. of Superv’rs v. Hall*, 2 N.W. 291, 294 (Wis. 1879); *Daly v. Ga. S. & Fla. R.R.*, 7 S.E. 146, 149 (Ga. 1888); *Sec. Nat’l Bank v. Bagley*, 210 N.W. 947, 951 (Iowa 1926); *Woodward v. City of Wakefield*, 210 N.W. 322, 323 (Mich. 1926); *Commw. ex rel. Whitehouse v. Raudenbush*, 94 A. 555, 555 (Pa. 1915); *Pyatt v. Mayor & Council of Dunellen*, 89 A.2d 1, 4-5 (N.J. 1952).

Under Nevada’s due process clause, “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Nev. Const. Art. 1, § 8(5). The similarities between the due process clauses contained in the United States and Nevada Constitutions, *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 808 n. 22, 102 P.3d 41, 48 n. 22 (2004) (recognizing that “[t]he language in Article 1, Section 8(5) of the Nevada Constitution mirrors the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution”), permit us to look to federal precedent for guidance as we determine whether the procedures utilized by the Las Vegas City Council are consistent with the Due Process Clause set forth in Article 1, Section 8(5) of the Nevada Constitution. *See also, Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012). Your actions and statements regarding Mr. Lowie, as discussed *supra*, make clear that your participation, in any manner, in the processing of the Property Owners’ applications has violated and will continue to violate the Property Owners’ right to due process of law.

3. While Engaging in Quasi-Judicial Proceedings, the Las Vegas City Council Must Guarantee The Applicant’s Due Process Rights.

The Las Vegas City Council performs both legislative functions and administrative functions. *See Nevadans for Protection of Prop. Rights v. Heller*, 122 Nev. 894, 914 (2006) (“Unlike the Legislature, which performs strictly legislative functions, a local government body performs administrative functions as well.”). A municipal body, like the Las Vegas City Council, performs administrative functions (also known as an adjudicative function or a quasi-

Councilman Bob Coffin
February 12, 2018, page 4

judicial function) when it applies existing land use or zoning laws to specific projects or specific property. *See Id.*

Applying the requisite standards, an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is executive in character. *Forman v. Eagle Thrifty Drugs & Mkts, Inc.*, 89 Nev. 533, 537 (1973), *overruled on other grounds by Garvin v. Ninth Judicial Dist. Court ex rel. Cty. of Douglas*, 118 Nev. 749, 59 P.3d 1180 (2002). On the other hand land use measures that are intended to regulate specific projects or specific property are quasi-judicial in nature. *See Citizens for Public Train Trench Vote v. City of Reno*, 118 Nev. 574, 582-85 (2002); *Glover v. Concerned Citizens for Fuji Park*, 118 Nev. 488, 493-96 (2002)(both cases overruled in part on other grounds by *Garvin*). Here, as a member of the Las Vegas City Council, you are reviewing applications requesting approval of a development plan, based on current land use laws, rules, and codified policies that govern the administrative proceedings conducted by the City of Las Vegas.

4. In Order to Provide Due Process Rights to the Applicants, the Las Vegas City Council Must Meet the Requirements for a Fair Hearing.

Under the due process clause, the parties to quasi-judicial proceedings are entitled to a fair hearing before a fair tribunal consisting of decision-makers who do not have any disqualifying conflicts of interest. *Gilman v. Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 269 (2004), *disapproved on other grounds in Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op.27, 327 P.3d 487 (2014). If a decision-maker has a disqualifying conflict of interest and fails to withdraw from the proceedings, the tainted participation violates due process and requires invalidation of the proceedings. *See Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973); *In re Ross*, 99 Nev. 1, 7-15 (1983). Courts have consistently applied these due process principles to conclude that city council and other local government members who have a disqualifying conflict of interest are prohibited by the due process clause from participating in land use decisions involving specific projects or specific property. *See, e.g., Nasierowski Bros. Inv. Co. V. City of Sterling Heights*, 949 F.2d 890, 896-97 (6th Cir. 1991). In determining whether a decision-maker has a disqualifying conflict of interest, courts use the same standards that apply to the disqualification of judges. *See Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975); *Gilman*, 120 Nev. at 269. Under those standards, a decision-maker is disqualified not only for actual bias but for "an implied probability of bias" as well. *Mosley v. Comm'n on Judicial Discipline*, 117 Nev. 371, 378 (2001).

Actual bias or an implied probability of bias can occur in many different ways. City Council members can be found to have disqualifying bias when they advocate for a position against projects by either writing articles or making statements about the project that exceeds mere information sharing. Also, bias may be found when a City Council member is speaking against the project at meetings and additionally making motions to either deny an application or to raise an appeal against a project that has been approved. It is presumed City Council members are actively engaged in and committed to the improvement of the city; however, they must follow the municipal rules as they are presently enacted. A council member attempting to change the rules in the middle of a proceeding or during the course of an application does not

Councilman Bob Coffin
February 12, 2018, page 5

accord with due process. Simply, where there is a commitment to a certain (*i.e.* specific) result, even just a tentative commitment on the part of a City Council member, bias exists. Your repeated statements against my clients' applications shows bias. Your actual, expressed animus towards my client underscores the depth of that bias.

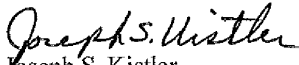
A public officer does not have an absolute right to participate or vote in every matter that comes before the public body and the due process clause requires the disqualification and/or recusal of a decision-maker who has a conflict of interest that creates an appearance or implied probability of bias. *See DeGrassi v. City of Glendora*, 207 F.3d 636, 645-47 (9th Cir. 2000) (city council member did not have First Amendment right to participate in council meeting where excluded member had potential conflict of interest regarding matter to be discussed); *Gilman*, 120 Nev. at 269. Your actions and words confirm that your participation in the processing and consideration of the Property Owners' applications infects the fairness of any hearing and denies my clients due process of law.

Councilman, in your own words you have openly stated that you are biased. Consequently, you have an inability to remain impartial in the review of land use applications related to the Properties, or to which Mr. Lowie has any connection as a principal. The result is that the Property Owners will not receive a fair hearing if you are involved, in any manner, with respect to the processing of the applications thereby denying the due process rights of the Property Owners. Therefore, we urge you to recuse yourself prior to any further processing, discussion, or voting on our clients' applications.

We await your reply. Please feel free to contact our office with any additional concerns or questions.

Sincere regards,

HUTCHISON & STEFFEN, PLLC


Joseph S. Kistler
For the Firm

MAH:JSK:PRT

cc: The Honorable Carolyn Goodman
Brad Jerbic, Esq.

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
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PUBLIC RECORDS CENTER

Menu

- 🏠 Home
- 📄 Submit a Request
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My Request

Request / Incident Summary

Contact E-Mail: ptueller@hutchlegal.com
Reference No: W009103-021518
Status: Assigned

Additional Information

FAQ

See All FAQs

Public Records Request Fees

I don't know how much of the Las Vegas Valley is part of the City of Las Vegas

I would like a copy of a birth or death certificate

I would like a copy of a marriage license

I need a copy of an older record

I need to locate a jailed inmate

I need to review a court case

Response time to my request

I missed a meeting and want to know what happened

I need information on the City's laws

Type of Records Requested:

Other

Describe the record(s) you are requesting:

1. Any and all written communications to and from Councilman Bob Coffin concerning the Badlands golf course development from June 7, 2011, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

2. Any and all written communications to and from Councilman Steve Seroka concerning the Badlands golf course development from June 13, 2017, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

Certified Copies:

Yes

Preferred Method to Receive Records:

Pick-up Copies

Requesting Records From:

General Other

Free viewers are required for some of the attached documents.
 They can be downloaded by clicking on the icons below.



Powered by
GovQA

✓ On 2/15/2018 6:21:05 PM, The City of Las Vegas Open Records Center wrote:

Dear Piers Tueller:

Thank you for your interest in public records of the City of Las Vegas. Your request was received on 2/15/2018 and is being processed. We will respond within five business days by providing one of the following:

1. We will complete the request by providing the requested records,
2. We will provide you with the estimated date of completion of your request,
3. We will provide a partial installment and inform you of the schedule of future installments,
4. We will ask for clarification if your request is unclear,
5. We will direct you to the City's website to access the records requested, or
6. We may deny the request because no responsive records exist.

Record Requested: 1. Any and all written communications to and from Councilman Bob Coffin concerning the Badlands golf course development from June 7, 2011, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

2. Any and all written communications to and from Councilman Steve Seroka concerning the Badlands golf course development from June 13, 2017, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

You can monitor the progress of your request at the link below. Again, you will receive an official response within five business days and an additional notification when your request has been completed. Thank you for submitting a Public Records Request. Your request was given the reference number **W009103-021518** for tracking purposes.

City of Las Vegas

Please note: There is a charge for copies of public records. If the estimated cost of the copies requested is \$25.00 or more, the requestor will be required to pay in full prior to reproduction. Materials will be held for 14 days. If not retrieved, the requestor will be charged in full for a second reproduction in addition to any unpaid original charges. Advance payment will be forfeited if material is not retrieved.

To monitor the progress or update this request please log into the Public Records Center.

Track the issue status and respond at:

https://lasvegasnv.mycusthelp.com/WEBAPP/_rs/RequestEdit.aspx?rid=9103

> On 2/15/2018 6:21:05 PM, Mr. Piers Tueller wrote:



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EXHIBIT 2

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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AFFIDAVIT OF YOHAN LOWIE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

YOHAN LOWIE, being first duly sworn, deposes and says:

1. I am a Manager of EHB Companies LLC, a Nevada limited liability company, the Manager of 180 Land Co LLC, Seventy Acres LLC, and Fore Stars, Ltd, all Nevada limited liability companies, (collectively "Property Owners"). The Property Owners own various properties (each owned by one of the Property Owners) identified as: APNs 138-31-201-005; 138-31-702-003; 138-31-601-008; 138-31-702-004; 138-31-801-002; 138-32-301-007; 138-32-301-005; 138-31-801-003; 138-32-202-001 (collectively the "Properties").

2. I am over the age of 18 and am mentally competent and if called upon to testify could and would do so.

3. I have personal knowledge of the facts in this matter and I make the following statements and state that the same to be true of my own personal knowledge except those matters stated on information and belief, and as to those matters, I believe them to be true.

4. A letter dated June 20, 2017 was sent to Las Vegas City Councilman Bob Coffin by attorney, James J. Jimmerson, Esq., on behalf of the Property Owners, requesting Councilman Coffin's recusal from any discussion or vote on land use applications related to the Properties. There was never any reply from either Councilman Coffin or his office.

5. In or around late 2015, early 2016, I was contacted by Councilman Coffin telling me to "shut up and listen" and emphatically advising me that I needed to leave the

1 portion of the Properties with 18 golf course holes alone, and if I did, Councilman Coffin
2 would allow me to build anything I wanted on the remainder portion of the Properties.
3 Councilman Coffin further stated that Mr. Binion, a homeowner in Queensridge, was his
4 friend since the 6th grade and he was not going to go against him.
5

6 6. In April 2016, in a meeting between Councilman Coffin, a representative of the
7 Property Owners and Mr. Binon, the Property Owners were told to "hand over" the 183
8 acres and certain water rights in perpetuity. Councilman Coffin proclaimed that this was
9 a "fair deal" and that the Property Owners should accept it. He stated in return the
10 Property Owners would get approved 4,000 units, 1,000 more than we asked for.
11

12 7. I am a member of the Jewish faith.

13 8. On January 16, 2017 I met with Las Vegas City Councilman Bob Coffin. At that
14 meeting he compared my actions in pursuing the development of the Properties to the
15 treatment "unruly Palestinians." This comment appeared to be used in a premeditated
16 manner.
17

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

20 Executed on 15th of February, 2018.

21
22 
Yohan Lowie

23 County of Clark

24 State of Nevada

25 Acknowledged before me Jennifer Knighton, on February 15, 2018

26 By Yohan Lowie

27 Jennifer Knighton

28 (Signature of notarial officer)



EXHIBIT 3

EXHIBIT 3

HUTCHISON & STEFFEN
A PROFESSIONAL LLC



JEWISHnevada
NEVADA'S JEWISH FEDERATION

PHONE 702.732.0556

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Robert Unger

March 27, 2017

Councilman Bob Coffin

495 South Main Street

Las Vegas, NV 89101

Dear Councilman Coffin:

I am writing regarding your remarks during the City Council meeting on February 15, 2017 pertaining to a member of the Jewish community, Mr. Yohan Lowie. Mr. Lowie informed my office of the incident and I am aware that our Board Chair, Marla Letizia, spoke with you directly regarding your remarks. Unfortunately, for all parties involved, your response to what ultimately amounts to anti-Israel and anti-Semitic bias was less than adequate in the eyes of our community.

Mr. Coffin, Las Vegas is over 7,600 miles away from Israel. Therefore, I find it strange that you would accuse Mr. Lowie of "treating people like Palestinians" during the course of a meeting in Las Vegas that had nothing to do with the Middle East or the Israeli-Palestinian conflict. I must deduce that your words were preconceived and reflect your thoughts and feelings toward Israel and Israelis. If this is the case then you, in a public forum, discriminated against a citizen of Las Vegas and the United States based solely on his country of origin. Your discriminatory actions, as an elected official representing a segment of our Las Vegas community in a meeting of record (as you have shared your transcript with my office) against any person based on their race, religion, creed, or country of origin is in total, appalling. It is also in direct contradiction of the community that many people and organizations are working to create in our city.

Mr. Coffin, I don't think I need to express to you the extent to which your actions have created alarm in the Nevada Jewish community. We, as a Jewish people, know the consequences of allowing anti-Israel and anti-Semitic rhetoric to go unchecked. If Mr. Lowie were born in the



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NEVADA'S JEWISH FEDERATION

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David Goldwater
Danny Greenspun
Senator Bill Herstadt
Loyl Katz '77
Arthur Marshall
Michael Novick
Hal Ober '77
Dr. Marvin A. Peter
Arne Rosencrantz
Leonard H. Stone
Doug Unger
Robert Unger

United States, would you have accused him of treating people like Native Americans? If Mr. Lowie were Chinese, would you accuse him of

treating people like Uyghurs? If he were Iraqi or Turkish, would you accuse him of treating people like Kurds? The answer, Mr. Coffin, is most certainly not. Therefore, I am left to assume that you have a preconditioned bias toward Israel in particular. If that is the case, and I have no other information to the contrary, by singling out and condemning Mr. Lowie as an Israeli your words are not only anti-Israel, but anti-Semitic.

Mr. Coffin, you clearly do not agree with Mr. Lowie regarding the Badlands development. Fortunately for you, in the United States, you are allowed to have and share your opinions regarding both Mr. Lowie and his business. What you are not permitted to do is allow those opinions to enter into a public forum in an effort to demonize Mr. Lowie based on his country of origin. I, on behalf of the 70,000 member Jewish community of Nevada, hope that you understand the gravity of your actions and request that you issue an apology to Mr. Lowie and to the Jewish Community of Nevada for your highly insensitive and discriminatory remarks.

I look forward to your response to this request and will once again, as Mrs. Letizia has done, extend an invitation for a dialogue with you on this matter and impact of your words on our community.

Thank You,

Todd S. Polkoff
President & CEO, Jewish Nevada

CC: Dr. Miriam Adelson
Mr. Yohan Lowie
Mayor Carolyn Goodman
Marla Letizia



City of Las Vegas

Bob Coffin
Councilman, Ward 3

March 27, 2017

Jewish Nevada
Todd S. Polikoff, President & CEO
2317 Renaissance Drive
Las Vegas, NV 89119

RE: Sent via email

Dear Todd,

I received your letter and I am surprised that you have taken such a leap to conclusion as to label me anti-Semitic and anti-Israel. I do not know you and you do not know me but as I look at your Board I see friends who would disagree with your insulting and half-baked opinion of me. I have grown up in this city since 1951. In my youth there were only three kinds of friends; Jews, Catholics and Mormons, all friends.

First, I have been in mourning since the death of my son in late January. Marla Letizia is fully aware of this. I have not answered many communications, much less these odd claims and meeting demands as they were first put to me by Marla. So, in a sense I did respond to you through your Board Chair. I only participate in official meetings at City Hall and the conversation with her was by phone call. She asked for a formal meeting and I declined for the obvious reason. She seemed to understand so imagine my surprise when I received this letter, which I can only describe as odd, to be charitable.

In the context of the Council meeting in question I was describing a private meeting with Mr. Yohan Lowie and his colleagues at EHB. I said that I thought his opportunistic handling of the Badlands purchase and his arrogant disregard of the Queensridge neighborhood reminded me of Bibi Netanyahu's insertion of the concreted settlements in the West Bank neighborhoods. To me it is just as inconsiderate and Yohan looked upon them as a band of unruly Palestinians. I feel that it is such.

495 S. Main St. | Las Vegas, Nevada 89101 | (702) 229-6405 | FAX (702) 382-8558
bcoffin@lasvegasnevada.gov | www.lasvegasnevada.gov

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Just four days ago, at a building dedication, I asked Mr Lowie if he had said to people that he thought I was anti-Semitic and he said he told no one this but your letter describes how Mr Lowie informed your office of the "incident." No wonder the Queensridge neighborhood has such frustration with his methods.

So, in the retelling of the story at Council I see from my transcript, which I had my staff prepare for Marla, that I said "Israel" instead of Netanyahu. Since neither you or Marla were at the meeting, I can see how you miss the context. I did not even realize it myself at the time. The point of the retelling of the private meeting was to emphasize to all present at Council that I had no secret agenda but was pushing for compromise.

It is certainly not anti-Semitic or anti-Israel to criticize Netanyahu, a loud-mouthed buffoon of a right-wing politician who feels free to meddle in our Presidential elections. I also do not believe that he represents the thoughts of all Israelis just as no Prime Minister represents the thoughts of any country. And, I do not object to the billions of dollars of US taxpayer support to Israel.

So, call me anti-Bibi but anything else is just not true. If you wish to make this dispute public I think you will find it unprofitable for everyone.

I am responding to your letter by email from my home so I apologize for not responding to you in kind.

I do hope you will exercise your best effort to undo the damage you cause me by your unfounded accusations.

Thank you,



Councilman Bob Coffin
City of Las Vegas, Ward 3
CC: copy of email

EXHIBIT 4

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

AFFIDAVIT OF ANTHONY SPIEGEL

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

ANTHONY SPIEGEL, being first duly sworn, deposes and says:

1. I am a former employee of EHB Companies, which holds the ownership interest in the property encompassing the former Badlands golf course, APNs 138-31-201-005; 138-31-702-003; 138-31-601-008; 138-31-702-004; 138-31-801-002; 138-32-301-007; 138-32-301-005; 138-31-801-003; 138-32-202-001 (the Property).
2. I am over the age of 18 and am mentally competent and if called upon to testify could and would do so.
3. I have personal knowledge of the facts in this matter and I make the following statements and state that the same to be true of my own personal knowledge except those matters stated on information and belief, and as to those matters, I believe them to be true.
4. I have acted as a representative of the Property Owners in various meetings related to the development of the Property.
5. On April 17, 2017, while acting as a representative of the Property Owners, I met with Las Vegas City Councilman Bob Coffin to discuss proposed development on the Property.
6. The purpose of the meeting was to discuss an application pertaining to a 61-Lot subdivision located on the Property and be available to answer any questions Councilman Coffin might have, in preparation for the Las Vegas City Council meeting that would take place later in the month.

1 7. While commencing discussions regarding the application, Councilman Coffin
2 interjected and stated that he'd first like to discuss the only matter that was of concern to
3 him, accusations of anti-Semitism by Yohan Lowie in response to his (Council Coffin's)
4 words at a prior City Council Meeting and a letter from Todd Polikoff regarding the
5 matter.
6

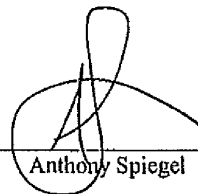
7 8. I informed Councilman Coffin that I was in no position to respond, as I was only
8 aware of his comments that were made publicly at a prior City Council meeting, and not
9 those of Yohan Lowie or Todd Polikoff. I suggested that we resume the discussion
10 regarding the application and he appeared disinterested.
11

12 9. He suggested that until this issue was remedied, that he could not be impartial to
13 any application that EHB Companies presented before the City Council.
14

15 10. Councilman Coffin denied the claims against him and felt that an apology was
16 necessary.
17

18 I declare under penalty of perjury under the laws of the State of Nevada that the
19 foregoing is true and correct.
20

21 Executed on 15th of February, 2018.
22



Anthony Spiegel

23 County of Clark

24 State of Nevada

25 Acknowledged before me Jennifer Knighton, on February 15, 2018

26 By Anthony Spiegel

27 Jennifer Knighton
28 (Signature of notarial officer)



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EXHIBIT PAGE ONLY

EXHIBIT 6

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

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11212



PECCOLE PROFESSIONAL PARK
10080 WEST ALTA DRIVE, SUITE 200
LAS VEGAS, NEVADA 89145
702.385.2500
FAX 702.385.2086
HUTCHLEGAL.COM

JOSEPH S. KISTLER
PARTNER
JKISTLER@HUTCHLEGAL.COM

February 16, 2018

Via U.S. Mail, facsimile, and hand delivery

Councilman Steve Seroka
Las Vegas City Hall
495 S. Main Street
Las Vegas, NV 89101

Re: Your Bias and Resulting Denial of Due Process.

Councilman Seroka:

This firm is special litigation counsel for 180 Land Co., LLC, Seventy Acres, LLC, and Fore Stars, Ltd. (collectively "Property Owners"). This letter addresses certain governmental procedural and substantive deficiencies that exist regarding the Property Owners' exercise of their real property rights with respect to their respective parcels identified as: APNs 138-31-201-005; 138-31-702-003; 138-31-601-008; 138-31-702-004; 138-31-801-002; 138-32-301-007; 138-32-301-005; 138-31-801-003; 138-32-202-001 totaling, among the three owners, approximately 250 acres (the "Properties"). Unfortunately, the deficiencies relate, at least in part, to your activities regarding our clients' applications in the exercise of their property rights. As a result, we make the following formal requests and will seek judicial intervention if our requests are not adequately addressed.

First, we formally request that you recuse yourself from any discussions and voting on the Property Owners' applications. After review of your statements and actions regarding the Properties, it is clear your continued participation regarding my clients' applications would violate the Property Owners' due process rights of a fair and impartial consideration of their applications as protected by the United States Constitution, the Nevada State Constitution, and in both federal and state case law precedent. We have determined that you have actively impeded the development of the Properties through your public comments, including, but not limited to taking the position that following existing law is the "stupidest thing in the world in this case." You have actively advocated against the Property Owners' rights and their development plans. Consequently, your recusal is the only way fundamental fairness in this process can be restored.

Second, we formally request the production of all documentation related to any communications between yourself and any parties who have taken an adverse position regarding the development of the Properties. This includes, both public and private emails, letters, voice mails, text messages, messages via social media, and any and all other forms of communication regardless of medium. A public records request has also been submitted. See City of Las Vegas Public Record Request form attached herein as Exhibit 1.

Councilman Steve Seroka
February 12, 2018, page 2

Absent your appropriate response, we will attend the February 21st City Council meeting and will make this written submission part of the public record for the relevant agenda items.

1. Facts Objectively Show a Self-Interested Agenda and Scheme to Specifically Stop Applicants' Planned Development and Deny Applicants' Property Rights.

In your campaign handout, you announced what you called, the "Seroka Badlands Solution." As part of your advocacy against my client's applications, you stated the Property Owners would be required to participate in a property swap regardless of the property rights currently held in the Properties. Moreover, your plan highlighted your unwillingness to even consider the Property Owners' property rights and development plans. You have advocated against the development of the Properties, alleging falsely that if such occurs it would devalue the neighboring properties. You expressly stated, "[you] are focused on the property rights of the existing homeowners, (who have no ownership interest in the Properties) all of whom have an expectation to the open space that played heavily in their [previous] decisions to purchase."

During public comment at the February 14, 2017 Las Vegas Planning Commission meeting, while wearing a "Steve Seroka for Las Vegas City Council" pin, you stated you were "representing [your] neighbors in Queensridge and *hundreds of thousands of people* that [you] had spoken to in [your] community" (emphasis added). You strongly advocated against the Property Owners' property rights and development plans stating "over my dead body will I allow a project that would drive property values down 30%, . . . over my dead body will I allow a project that will set a precedent that will ripple across the community that those property values not just affected in Queensridge but throughout the community. . ." You asked the Commissioners to reject Staff's approval recommendation and deny the Property Owner's applications. The following day at the City Council meeting you stated, "I am against this project."

After your election to City Council, as a precondition to having any discussions regarding the Properties with my client's development point of contact, Mr. Yohan Lowie, you improperly required him to sign a nondisclosure agreement. In a "Townhall Meeting" held on November 29, 2017 at the Queensridge Clubhouse, you stated that having your staff follow the letter of the law, when reviewing development applications, is "the stupidest thing in the world in this case." You also continually encouraged the Queensridge homeowners to send in oppositions to the Planning Commission and City Council.

At the August 2, 2017 City Council hearing for the proposed Development Agreement on the entire Properties, negotiated with City Staff and the City Attorney, after delivering what appeared to be pre-scripted remarks, you made the motion to deny the Development Agreement. Shortly thereafter, at the September 6, 2017 City Council meeting, you proposed a six-month moratorium specifically targeting development of the Properties. Prior to this meeting, you failed to provide anything more than nominal notice to the Property Owners about this moratorium, who then had at most four (4) business days to prepare a response. Your moratorium was another of your attempts to further delay consideration of my clients' applications to further your special interests agenda. After delivering what appeared again to be

pre-scripted remarks, you made the motion to approve the moratorium, and a vote was held adopting an amended version of your proposal. In short, you have become an outspoken advocate against my clients' property rights and have actively squelched timely consideration of my clients' applications.

2. Bias Violates an Applicant's Due Process Rights.

Under Nevada's due process clause, "[n]o person shall be deprived of life, liberty, or property, without due process of law." Nev. Const. Art. 1, § 8(5). The similarities between the due process clauses contained in the United States and Nevada Constitutions, *Rodriguez v. Dist. Ct.*, 120 Nev. 798, 808 n. 22, 102 P.3d 41, 48 n. 22 (2004) (recognizing that "[t]he language in Article 1, Section 8(5) of the Nevada Constitution mirrors the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution"), permit us to look to federal precedent for guidance as we determine whether the procedures utilized by the Las Vegas City Council are consistent with the due process clause set forth in Article 1, Section 8(5) of the Nevada Constitution. *See also, Hernandez v. Bennett-Haron*, 128 Nev. 580, 587, 287 P.3d 305, 310 (2012).

When a municipal body, i.e. the Las Vegas City Council, is performing an administrative function, such as making land use decisions involving specific projects or specific property, the due process clause of the Nevada Constitution applies. *See Hantges v. City of Henderson*, 121 Nev. 319, 324-27 (2005) (discussing case law which holds that an appearance of bias or impropriety in land use decisions deprives interested parties of procedural due process). Additionally, it has been a universal and long-established rule that members of municipal bodies are prohibited from voting on matters in which they have a disqualifying conflict of interest, as it would violate "principles of natural justice and sound public policy." *See, e.g., Bd. of Superv'rs v. Hall*, 2 N.W. 291, 294 (Wis. 1879); *Daly v. Ga. S. & Fla. R.R.*, 7 S.E. 146, 149 (Ga. 1888); *Sec. Nat'l Bank v. Bagley*, 210 N.W. 947, 951 (Iowa 1926); *Woodward v. City of Wakefield*, 210 N.W. 322, 323 (Mich. 1926); *Commw. ex rel. Whitehouse v. Raudenbush*, 94 A. 555, 555 (Pa. 1915); *Pyatt v. Mayor & Council of Dunellen*, 89 A.2d 1, 4-5 (N.J. 1952).

3. While Engaging in Quasi-Judicial Proceedings, the Las Vegas City Council Must Guarantee an Applicant's Due Process Rights by Providing a Fair Hearing.

The Las Vegas City Council performs both legislative functions and administrative functions. *See Nevadans for Prot. of Prop. Rights v. Heller*, 122 Nev. 894, 914 (2006). An ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is executive in character. *Forman v. Eagle Thrifty Drugs & Mkts, Inc.*, 89 Nev. 533, 537 (1973), overruled on other grounds by *Garvin v. Ninth Judicial Dist. Court ex rel. Cty. of Douglas*, 118 Nev. 749, 59 P.3d 1180 (2002). A municipal body, like the Las Vegas City Council, performs administrative functions (also known as an adjudicative function or a quasi-judicial function) when it applies existing land use or zoning laws to specific projects or specific property. *See Citizens for Pub. Train Trench Vote v. City of Reno*, 118 Nev. 574, 582-85 (2002); *Glover v. Concerned Citizens for Fuji Park*, 118 Nev. 488, 493-96 (2002), both cases overruled

Councilman Steve Seroka
February 12, 2018, page 4

in part on other grounds by *Garvin*, 118 Nev. at 750. Acting on my clients' applications is an adjudicative function.

Under the Due Process Clause, the parties to administrative proceedings are entitled to a fair hearing before a fair tribunal consisting of decision-makers who do not have any disqualifying conflicts of interest. *Gilman v. Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 269 (2004), disapproved on other grounds in *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op.27, 327 P.3d 487 (2014). If a decision-maker has a disqualifying conflict of interest and fails to withdraw from the proceedings, the tainted participation violates due process and requires invalidation of the proceedings. *See Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973); *In re Ross*, 99 Nev. 1, 7-15 (1983). Courts have consistently applied these due process principles to conclude that city council members who have a disqualifying conflict of interest are prohibited by the Due Process Clause from participating in land use decisions involving specific projects or specific property. *Nasierowski Bros. Inv. Co. V. City of Sterling Heights*, 949 F.2d 890, 896-97 (6th Cir. 1991). In determining whether a decision-maker has a disqualifying conflict of interest, courts use the same standards that apply to the disqualification of judges. *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975); *Gilman*, 120 Nev. at 269. Under those standards, a decision-maker is disqualified for either "actual bias" or "an implied probability of bias." *See Mosley v. Comm'n on Jud. Discipline*, 117 Nev. 371, 378 (2001).

In *Woody's Grp., Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1021, 183 Cal. Rptr. 3d 318, 324 (2015), the California court further clarified that bias—either actual or an "unacceptable probability" of it—alone is enough on the part of a municipal decision maker to show a violation of the due process right to fair procedure and is constitutionally unacceptable. Where there is a pre-commitment to a certain (i.e. specific) result, even if that pre-commitment is tentative on the part of a city council member, bias exists. *Id.*

In *Woody's*, the court stated that biased behavior includes: speaking against the project at a neighborhood association meeting, writing an unsigned article in a local residents association's newsletter advocating a position against the project, or making a speech during a meeting advocating against development. *Id.* In that case a restaurant, Woody's Wharf, had sought and received approval from the city planning commission for a conditional use permit. *Id.* at 1017. A city councilman, opposed to the granting of the permit, sent the city clerk an email making an "official request to appeal" because he "strongly believed" the application was inconsistent with the city general plan. *Id.* The city council heard the matter on appeal and ultimately denied the application. *Id.* The court held that the councilman's actions demonstrated bias because he consistently showed that he was opposed to the application through both his email and actions in front of the city council. *Id.* at 1022. The councilman was the one to propose the motion that the lower decision be overturned. *Id.* at 1023. His speech to the council had been written out beforehand, wholly belying his own self-serving comment that "[he] had no bias in this situation." *Id.* The court stated he should not have been part of the body hearing the appeal. *Id.* Consequently, the city council's application denial was nullified. *Id.* at 1031.

Similar to the councilmember-as-advocate in *Woody's*, your words and actions show you have abandoned your responsibilities as a fair adjudicator and have instead become a biased advocate for a small, wealthy group of self-interested Queensridge homeowners. Your repeated

Councilman Steve Seroka
February 12, 2018, page 5

attempts to stop the Property Owners from developing their lawfully owned Properties clearly demonstrates bias, which denies our client due process rights guaranteed under the United States and Nevada Constitutions. The fact you stated that following the law "is the stupidest thing in the world in this case," clearly indicates your inability to remain neutral in the performance of your responsibilities as a sitting City Councilman acting on my clients' applications. Therefore, we strongly urge you recuse yourself prior to any further processing, discussion, and voting on our clients' applications. Failure to do so may result in litigation against the City of Las Vegas.

We await your reply. Please feel free to contact our office with any additional concerns or questions.

Sincere regards,

HUTCHISON & STEFFEN, PLLC


Joseph S. Kistler
For the Firm

MAH:JSK:PRT

cc: The Honorable Carolyn Goodman;
Brad Jerbic, Esq.

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EXHIBIT PAGE ONLY

EXHIBIT 1

HUTCHISON & STEFFEN
ATTORNEYS AT LAW
A PROFESSIONAL LLC

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11218



PUBLIC RECORDS CENTER

Menu

- Home
- Submit a Request
- View FAQ
- My Records Center
- Public Records Archive

My Request

Request / Incident Summary

Contact E-Mail: ptueller@hutchlegal.com
Reference No: W009103-021518
Status: Assigned

Additional Information

FAQ

[See All FAQs](#)

Public Records Request Fees

I don't know how much of the Las Vegas Valley is part of the City of Las Vegas

I would like a copy of a birth or death certificate

I would like a copy of a marriage license

I need a copy of an older record

I need to locate a jailed inmate

I need to review a court case

Response time to my request

I missed a meeting and want to know what happened

I need information on the City's laws

Type of Records Requested:

Other

Describe the record(s) you are requesting:

1. Any and all written communications to and from Councilman Bob Coffin concerning the Badlands golf course development from June 7, 2011, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.
 2. Any and all written communications to and from Councilman Steve Seroka concerning the Badlands golf course development from June 13, 2017, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

Certified Copies:

Yes

Preferred Method to Receive Records:

Pick-up Copies

Requesting Records From:

General Other

Free viewers are required for some of the attached documents.
 They can be downloaded by clicking on the icons below.



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GovQA

✓ On 2/15/2018 6:21:05 PM, The City of Las Vegas Open Records Center wrote:

Dear Piers Tueller:

Thank you for your interest in public records of the City of Las Vegas. Your request was received on 2/15/2018 and is being processed. We will respond within five business days by providing one of the following:

1. We will complete the request by providing the requested records,
2. We will provide you with the estimated date of completion of your request,
3. We will provide a partial installment and inform you of the schedule of future installments,
4. We will ask for clarification if your request is unclear,
5. We will direct you to the City's website to access the records requested, or
6. We may deny the request because no responsive records exist.

Record Requested: 1. Any and all written communications to and from Councilman Bob Coffin concerning the Badlands golf course development from June 7, 2011, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

2. Any and all written communications to and from Councilman Steve Seroka concerning the Badlands golf course development from June 13, 2017, to the present. This includes all emails and text messages on any public device or account, and any personal device or account if the topic of the communications concerned city business with the Badlands golf course development.

You can monitor the progress of your request at the link below. Again, you will receive an official response within five business days and an additional notification when your request has been completed. Thank you for submitting a Public Records Request. Your request was given the reference number **W009103-021518** for tracking purposes.

City of Las Vegas

Please note: There is a charge for copies of public records. If the estimated cost of the copies requested is \$25.00 or more, the requestor will be required to pay in full prior to reproduction. Materials will be held for 14 days. If not retrieved, the requestor will be charged in full for a second reproduction in addition to any unpaid original charges. Advance payment will be forfeited if material is not retrieved.

To monitor the progress or update this request please log into the Public Records Center.

Track the issue status and respond at:

https://lasvegasnv.mycusthelp.com/WEBAPP/_rs/RequestEdit.aspx?rid=9103

➤ On 2/15/2018 6:21:05 PM, Mr. Piers Tueller wrote:



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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EXHIBIT “III”

FILED

OCT 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

180 LAND CO. LLC; et al.,

Plaintiffs-Appellants,

v.

CITY OF LAS VEGAS; et al.,

Defendants-Appellees.

No. 19-16114

DC No. 2:18 cv-0547-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted September 16, 2020
San Francisco, California

Before: WALLACE, TASHIMA, and BADE, Circuit Judges.

Plaintiffs, land developers who own property in Las Vegas, Nevada, appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 action alleging equal protection and procedural due process claims stemming from the Las Vegas City Council's denial of plaintiffs' applications to develop their property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6); denial of leave to amend is reviewed for abuse of discretion. *Cervantes*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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v. Countrywide Home Loans, Inc., 656 F.3d 1034, 1040–41 (9th Cir. 2011). We affirm in part, vacate in part, and remand.

1. The district court properly dismissed plaintiffs’ “class of one” equal protection claim because plaintiffs failed to allege facts that were sufficient to show that plaintiffs were intentionally treated differently from others similarly situated. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam) (stating elements of an equal protection “class of one” claim); *see also In re Candelaria*, 245 P.3d 518, 523 (Nev. 2010) (holding that the standard under the Equal Protection Clause of the Nevada Constitution is the same as the federal standard).

Contrary to plaintiffs’ contention, the district court did not apply a heightened pleading standard to evaluate plaintiffs’ “class of one” equal protection claim. Rather, the district court properly applied binding precedent and correctly determined that plaintiffs failed to plead sufficient facts regarding similarly situated landowners. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (clarifying that a complaint does not “suffice if it tenders naked assertions devoid of further factual enhancement”) (citation, alteration and internal quotation marks omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a complaint must provide “enough facts to state a claim to relief that is plausible on its face”).

Although plaintiffs concede that they failed to request leave to amend below,

the district court abused its discretion by denying plaintiffs leave to amend their “class of one” equal protection claim because it is not clear that the claim’s shortcomings cannot be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (“[A] district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.” (quotation marks and citation omitted)). Thus, although we affirm the dismissal of plaintiffs’ “class of one” equal protection claim, we vacate the district court’s denial of leave to amend and remand with instructions to grant plaintiffs leave to amend their “class of one” claim.

2. Dismissal of plaintiffs’ class-based equal protection claim was proper because plaintiffs alleged contradictory facts as to defendants’ motivation that were insufficient to show that intentional discrimination was a motivating factor for defendants’ actions. *See Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016) (holding that an equal protection claim is supported if a discriminatory purpose was a motivating factor behind the challenged action); *Somers v. Apple, Inc.*, 729 F.3d 953, 964 (9th Cir. 2013) (holding that plaintiff’s theory was “implausible in the face of contradictory . . . facts alleged in her complaint”).

3. The district court properly dismissed plaintiffs’ procedural due

process claim because plaintiffs failed to allege facts sufficient to show that they were deprived of a constitutionally protected property interest. To succeed on a procedural due process claim, a plaintiff must first demonstrate that he or she was deprived of a constitutionally protected interest. To have a constitutionally protected property interest in a government benefit, such as a land use permit, an independent source, such as state law, must give rise to a “legitimate claim of entitlement,” that imposes significant limitations on the discretion of the decision maker. *Gerhart v. Lake County, Mont.*, 637 F.3d 1013, 1019, 1022 (9th Cir. 2011); *see also Reinkemeyer v. Safeco Ins. Co.*, 16 P.3d 1069, 1072 (Nev. 2001) (observing that federal caselaw is used to interpret the Due Process Clause of the Nevada Constitution).

We reject as without merit plaintiffs’ contentions that certain rulings in Nevada state court litigation establish that plaintiffs were deprived of a constitutionally protected property interest and should be given preclusive effect.

The district court did not abuse its discretion by denying plaintiffs leave to amend their class-based equal protection claim or their due process claim because these claims cannot be cured by amendment.

We do not consider claims that were not raised in the operative complaint, including any substantive due process claim. *See Crawford v. Lungren*, 96 F.3d 380, 389 n.6 (9th Cir. 1996) (declining to address claims raised for the first time on

appeal).

Plaintiffs' Request for Judicial Notice (Docket Entry No. 18) is denied as unnecessary.

• • •

The dismissal of plaintiffs' claims is affirmed, as is the denial of leave to amend plaintiffs' complaint, except that plaintiffs shall be granted leave to amend their "class of one" equal protection claim.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

EXHIBIT “JJJ”

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-18-780184-C

DEPT. NO.: III

**PLAINTFF LANDOWNERS' SECOND
SUPPLEMENT TO INITIAL
DISCLOSURES PURSUANT TO
NRCP 16.1**

TO: THE CITY OF LAS VEGAS, Defendant; and

TO: COUNSEL OF RECORD FOR THE CITY OF LAS VEGAS

Plaintiff 180 LAND COMPANY, LLC (hereinafter "Landowners"), by and through their
counsel of record, the Law Offices of Kermitt L. Waters, hereby submit their **second supplement**
to initial list of witnesses and documents pursuant to NRCP 16.1, as follows:

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I.

LIST OF WITNESSES

A. NRCP Rule 16.1(a)(1)(A) disclosure: The name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b), including for impeachment or rebuttal, identifying the subjects of the information:

1. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City's guidelines, instructions, process and/or procedures for adopting a land use designation on the City of Las Vegas General Plan Land Use Element and/or Master Plan, including the guidelines, instructions, process and/or procedures applicable for each and every year from 1986 to present.
2. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the City of Las Vegas guidelines, instructions, process and/or procedures implemented to place a designation of PR-OS or any similar open space designation on all or any part of the Landowners' Property and/or the 250 Acre Residential Zoned Land on the City of Las Vegas General Plan Land Use Element and/or Master Plan from 1986 to present.
3. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the Master Development Agreement referenced in the Landowners' Complaint.
4. Person Most Knowledgeable at the City of Las Vegas
c/o Las Vegas City Attorney's Office
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Person Most Knowledgeable at the City of Las Vegas regarding the major modification process.

1 5. Steve Seroka
2 c/o Las Vegas City Attorney's Office
3 495 S. Main Street, 6th Floor
4 Las Vegas, Nevada 89101
5
6 Mr. Seroka may have information regarding the facts and circumstances surrounding the
7 allegations alleged in the Landowners' Complaint which occurred while Mr. Seroka was running for
8 the City Council and while Mr. Seroka was on the City Council.
9
10 6. Person Most Knowledgeable
11 180 LAND COMPANY, LLC
12 c/o Law Offices of Kermitt L. Waters
13 704 South Ninth Street
14 Las Vegas Nevada 89101
15
16 Person Most Knowledgeable at 180 Land Company, LLC regarding the facts and
17 circumstances surrounding the allegations alleged in the Landowners' Complaint.
18
19 7. Person Most Knowledgeable
20 FORE STARS, Ltd
21 c/o Law Offices of Kermitt L. Waters
22 704 South Ninth Street
23 Las Vegas Nevada 89101
24
25 Person Most Knowledgeable at FORE STARS, LTD regarding the facts and circumstances
26 surrounding the allegations alleged in the Landowners' Complaint.
27
28 8. Person Most Knowledgeable
SEVENTY ACRES, LLC
c/o Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101

Person Most Knowledgeable at Seventy Acres, LLC regarding the facts and circumstances
surrounding the allegations alleged in the Landowners' Complaint.

**B. NRCP Rule 16.1(a)(1)(B) disclosure: A copy of, or a description by category and
location of, all documents, data compilations, and tangible things that are in the
possession, custody, or control of the party and which are discoverable under Rule
26(b):**

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II.

INDEX TO PLAINTIFF LANDOWNERS' EARLY CASE CONFERENCE
DISCLOSURES PURSUANT TO NRCP 16.1

Doc No.	Description	Bates No.
1	Map of 250 Acre Residential Zoned Land Identifying Each Parcel	LO65-00000001
2	Bill No. Z-2001-1: Ordinance No. 5353 Dated 8.15.2001	LO65-00000002-00000083
3	12.30.14 Letter City of Las Vegas to Frank Pankratz "Zoning Verification" letter	LO65-00000084
4	12.7.16 Letter From Jimmerson to Jerbic	LO65-00000085-00000093
5	LVMC 19.10.040	LO65-00000094-00000096
6	LVMC 19.10.050	LO65-00000097-00000098
7	Seroka Campaign Contributions	LO65-00000099-00000147
8	Crear Campaign Contributions	LO65-00000148-00000181
9	2.14.17 Planning Commission Transcript Items 21-14 portions with video still	LO65-00000182-00000183
10	8.2.17 City Council Meeting Transcript Item 8 (excerpt) and Items 53 and 51	LO65-00000184-00000338
11	MDA Combined Documents	LO65-00000339-00000386
12	Email between City Planning Section Manager, Peter Lowenstein, and Landowner representative Frank Pankratz dated 2.24.16	LO65-00000387-00000389
13	Email between City Attorney Brad Jerbic and Landowner's land use attorney Stephanie Allen, dated 5.22.17	LO65-00000390-00000394
14	16 versions of the MDA dating from January, 2016 to July, 2017	LO65-00000395-00001042
15	The Two Fifty Development Agreement's Executive Summary	LO65-00001043
16	City requested concessions signed by Landowners representative dated 5.4.17	LO65-00001044
17	Badlands Development Agreement CLV Comments, dated 11-5-15	LO65-00001045-00001052

1	18	Two Fifty Development Agreement (MDA) Comparison – July 12, 2016 and May 22, 2017	LO65-00001053-00001107
2	19	The Two Fifty Design Guidelines, development Standards and Uses, comparison of the March 17, 2016 and May, 2017 versions	LO65-00001108-00001120
3	20	Seroka Campaign Literature	LO65-00001121-00001126
4	21	2017-12-15 Thoughts on: Eglet-Prince Opioid Proposed Law Suit	LO65-00001127-00001129
5	22	Tax Assessor's Values for 250 Acre Residential Land	LO65-00001130-00001145
6	23	9.6.17 City Council Meeting Agenda Summary Page for Item No. 26	LO65-00001146-00001147
7	24	9.4.18 meeting submission for Item No. 4 by Stephanie Allen	LO65-00001148
8	25	5.16.18 City Council Meeting Agenda Summary Page for Item No. 66	LO65-00001149-00001150
9	26	5.16.18 City Council Meeting Transcript Item No. 66	LO65-00001151-00001171
10	27	Bill No. 2018-5 "Proposed First Amendment (5-1-18 Update)"	LO65-00001172-00001178
11	28	Bill No. 2018-24	LO65-00001179-00001191
12	29	October/November 2017 Applications for the 133 Acre Parcel: GPA-7220; WVR-72004, 72007, 72010; SDR-72005, 72008, 72011; TMP-72006, 72009, 72012	LO65-00001192-00001329
13	30	Staff Recommendation 5.16.18 City Council Meeting GPA-72220	LO65-00001330-00001343
14	31	11.30.17 Justification Letter for GPA-72220	LO65-00001344-00001346
15	32	2.21.18 City Council Meeting Transcript Items 122-131	LO65-00001347-00001380
16	33	5.16.18 City Council Meeting Agenda Summary Page for Item Nos. 74-83	LO65-00001381-00001394
17	34	3.21.18 City Council Meeting Agenda Summary Page for Item No. 47	LO65-00001395-00001399
18	35	5.17.18 Letters from City to Applicant Re: Applications Stricken	LO65-00001400-00001409
19	36	Coffin Email	LO65-00001410-00001417

37	8.10.17 Application For Walls, Fences, Or Retaining Walls Single Lot Only	LO65-00001418-00001425
38	8.24.17 Letter from City of Las Vegas to American Fence Company	LO65-00001426
39	LVMC 19.16.100	LO65-00001427-00001431
40	6.28.16 Letter from Mark Colloton to Victor Bolanos, City of Las Vegas public Works Dept.	LO65-00001432-00001437
41	8.24.17 Letter from the City of Las Vegas to Seventy Acres, LLC	LO65-00001438
42	1.3.18 City Council Meeting Transcript Item No. 78	LO65-00001439-00001521
43	Exhibit F-1 2.22.16 with annotations	LO65-00001522-00001523
44	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	LO65-00001524-00001594
45	Southern Nevada GIS – OpenWeb Info Mapper Parcel Information	LO65-00001595-00001596
46	Email between Frank Schreck and George West 11.2.16	LO65-00001597-00001602
47	Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge	LO65-00001603-00001755
48	Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Easement For Queensridge effective 10.1.2000	LO65-00001756
49	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 Prankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint, Eighth Judicial District Court Case No. A-16-739654-C Filed 11.30.16	LO65-00001757-00001781
50	Custom Lots at Queensridge North Purchase Agreement, Earnest Money Receipt and Escrow Instructions	LO65-00001782-00001790
51	Land Use Hierarchy Exhibit	LO65-00001791
52	2.14.17 Planning Commission Transcript Agenda Items 21-14	LO65-00001792-00001871
53	Email	LO65-00001872
54	6.13.17 PC Meeting Transcript	LO65-00001873-00001955

1	55	1.24.17 onsite Drainage Agmt.	LO65-00001956-00001967
2	56	9.11.18 PC – Hardstone Temp Permit Transcript	LO65-00001968-00001978
3	57	Estate Lot Concepts	LO65-00001979-00001983
4	58	Text Messages	LO65-00001984-00001996
5	59	Intentionally left blank	Not Bates-stamped
6	60	Judge Smith Nov. 2016 Order	LO65-00001997-00002021
7	61	Supreme Court Affirmance	LO65-00002022-00002026
8	62	City Confirmation of R-PD7	LO65-00002027-00002032
9	63	De Facto Case Law	LO65-00002033-00002035
10	64	Johnson v. McCarran	LO65-00002036-00002043
11	65	Boulder Karen v. Clark County	LO65-00002044-00002112
12	66	Supreme Court Order Dismissing Appeal <i>in part</i> and Reinstating Briefing	LO65-00002113-00002115
13	67	Bill No. 2018-24	LO65-00002116-00002128
14	68	July 17, 2018 Hutchison Letter in Opposition of Bill 2018-24	LO65-00002129-00002131
15	69	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 1 of 2)	LO65-00002132-00002329
16	70	October 15, 2018 Allen Letter in Opposition to Bill 2018-24 (Part 2 of 2)	LO65-00002330-00002582
17	71	Minutes from October 15, 2018 Recommending Committee Re Bill 2018-24	LO65-00002583-00002584
18	72	Verbatim Transcript from October 15, 2018 Recommending Committee Re Bill 2018-24	LO65-00002585-00002613
19	73	Minutes from November 7, 2018 City Council Hearing Re Bill 2018-24	LO65-00002614-00002615
20	74	Verbatim Transcript from November 7, 2018 City Council Meeting Adopting Bill 2018-24	LO65-00002616-00002849

75	Supreme Court Order Denying Rehearing	LO65-00002850-00002852
76	Deposition of Greg Steven Goorjian	LO65-00002853-00002904
77	2019.01.07 Robert Summerfield Email	LO65-00002905
78	2019.02.06 Judge Williams' Order Nunc Pro Tunc Regarding Findings of Fact and Conclusion of Law Entered November 21, 2019	LO65-00002906-00002911
79	2020 Master Plan – Southwest Sector Zoning	LO65-00002912
80	CLV Hearing Documents on Major Modifications	LO65-00002913-00003005
81	GPA Code and Application	LO65-00003006-00003015
82	Native Files for L065-00000001-00003015	L065-00000001-00003015

III.

COMPUTATION OF DAMAGES

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:

Objection: The Landowners object to disclosing the computation of any category of “damages” at this time as this information requires the preparation of expert reports that will be produced in the normal course of discovery as provided in the Nevada Discovery Rules. Additionally, the computation of any category of “damages” may contain attorney work product, privileged information, and may require legal instructions or court rulings, accordingly, the same cannot be produced at this time.

The Landowners further object to disclosing the computation of any category of “damages” at this time as the date of value has not be determined by the Court. Without waiving said objections, and assuming the date of value is on or about September, 2017 (the date the inverse condemnation claims were filed and served on the City) the Landowners’ preliminary estimate of damages (just compensation) for the total taking of the 65 Acre Property (APN 138-31-801-002, 138-31-801-003, 138-32-301-007) is approximately \$101 Million. This is an average of the per acre

1 value assigned by the following: 1) an appraisal report prepared by Lubawy and Associates of
2 seventy acres of property formerly known as APN 138-32-301-004 at \pm \$700,510/acre as of July
3 2015; 2) an offer to purchase 16-18 acres of the seventy acre property formerly known as APN 138-
4 32-301-004 for \pm \$1,525,000/acre as of December 2015; and, 3) the sale of APN 138-32-314-001
5 for \pm \$2,478,000/acre as of August 2019.

6 The Landowners' damages also include property tax payments (which are public record).
7 The Landowners' damages also include pre-judgment and post-judgment interest and attorney fees
8 and costs, which will be calculated after trial.

9 This computation will be supplemented upon the completion of expert reports, if needed, or
10 as otherwise deemed necessary in this matter.

11 **IV.**

12 **POTENTIALLY APPLICABLE INSURANCE AGREEMENTS**

13 **D. For inspection and copying as under Rule 34 any insurance agreement under which**
14 **any person carrying on an insurance business may be liable to satisfy party or all of**
15 **a judgment which may be entered in the action to indemnify or reimburse for payments**
made to satisfy the judgment and any disclaimer or limitation of coverage or
reservation or frights under any such insurance agreement:

16 N/A

17 ***THE LANDOWNERS INCORPORATE BY REFERENCE HEREIN ALL***
18 ***WITNESSES AND DOCUMENTS DISCLOSED BY OTHER PARTIES TO THIS ACTION.***
19 ***THE LANDOWNERS FURTHER RESERVE THE RIGHT TO SUPPLEMENT AND/OR***
20 ***AMEND THESE DISCLOSURES AS DISCOVERY CONTINUES. THE LANDOWNERS***
ALSO RESERVE THE RIGHT TO OBJECT TO THE INTRODUCTION AND/OR
ADMISSIBILITY OF ANY DOCUMENT AT THE TIME OF TRIAL.

21 ***THE LANDOWNERS RESERVE THE RIGHT TO SUPPLEMENT AND/OR***
AMEND THESE DISCLOSURES AS DEEMED NECESSARY IN THIS MATTER.

22 DATED this day 3rd day of November, 2020.

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

24 By: /s/ Autumn Waters

25 KERMIT L. WATERS, ESQ.

26 Nevada Bar No. 2571

27 JAMES J. LEAVITT, ESQ.

28 Nevada Bar No. 6032

MICHAEL SCHNEIDER, ESQ.

Nevada Bar No. 8887

AUTUMN L. WATERS, ESQ.

Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 3rd day of November, 2020, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the foregoing document(s): **PLAINTIFF LANDOWNERS’ SECOND SUPPLEMENT TO INITIAL DISCLOSURES PURSUANT TO NRCP 16.1 along with flash drive containing Native Files Bates-stamped LO65-00000001-00003015** was served to the following parties via E-Service through EJDC E-Filing; and that the date and time of the electronic service is in place of the date and place of deposit in the mail.

[X] Flash Drive sent via regular U.S. Mail

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/s/ Evelyn Washington

Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters