IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Appellant, vs. 180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Respondents.	No. 84345
180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Appellants/Cross-Respondents, vs. CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent/Cross-Appellant.	No. 84640 **AMENDED JOINT APPENDIX VOLUME 119, PART 1**

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability company, FORE STARS, LTD,, a Nevada limited liability company and SEVENTY ACRES, LLC, a Nevada limited liability company, DOE INDIVIDUALS I-X, DOE CORPORATIONS I-X, and DOE LIMITED LIABILITY COMPANIES I-X, Plaintiffs, v. CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I-X; ROE CORPORATIONS I-X; ROE INDIVIDUALS I-X; ROE LIMITED-LIABILITY COMPANIES I-X; ROE QUASI-GOVERNMENTAL ENTITIES I-X, Defendants.	Case No. A-17-758528-J DEPT. NO.: XVI **CITY'S OPPOSITION TO DEVELOPER'S MOTION TO DETERMINE PREJUDGMENT INTEREST** **AND** **DECLARATION OF GEORGE F. OGILVIE III** **(HEARING REQUESTED)**

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

The Developer's motion to determine prejudgment interest ("Motion") requesting $52,515,866.90 in "interest" is an improper grab for alleged consequential damages. The Court has already awarded the Developer $34,135,000 for land the Developer bought for $630,000, which is 54

times the Developer's investment.[1] To triple down on that enormous windfall by adding $52,515,866.90 for a total award of nearly $87 million—a profit of 13,800 percent on its investment—would be a further, and grave, blow to justice.

Under clear Nevada law, a taking claimant is entitled to a rate of prejudgment interest on a taking judgment higher than the statutory rate of prime plus two percent (NRS 37.175) only if the higher rate is necessary to put the claimant in the same monetary position it would have been without the taking. Because the Court has already awarded the Developer 54 times the Developer's investment in the 35-Acre Property, the Developer does not require *any* prejudgment interest, no less interest at the extraordinary rate of 23 percent per year, to be made whole. Without conceding the validity of the judgment, the City contends that the Motion is preposterous and should be denied. Even if the Court limits prejudgment interest to the statutory rate, the Developer will be made far more than whole.

Moreover, the Developer requests an award not of "interest" as defined in Nevada law, but rather "profit" from a hypothetical, and completely speculative, real estate investment. No authority supports this outlandish claim. The Developer wants money from the taxpayers equivalent to the gains it alleges it would have made had it invested the $34 million judgment in other real estate that the Developer claims would have appreciated during this litigation. The Developer ignores the facts and the law in arguing the City should pay 23 percent annual prejudgment interest on the judgment because the Developer was deprived of a real estate investment opportunity.

The Developer is not in the business of buying land and selling it for more than it paid. It is in the business of real estate development. The Developer, however, did not miss a real estate development opportunity, even if the City had paid the Developer $34,135,000 in 2017, because the Developer's actions reveal that it had no intention of developing any real estate. After the Developer bought the 250-acre Badlands in 2015, it segmented the property into four development sites. The City approved the Developer's application to develop 435 luxury housing units on the 17-Acre Property, yet the Developer has declined to build. Similarly, the Developer abandoned any attempt

[1] The Developer purchased the entire-acre Badlands for $4,500,000, or $18,000 per acre. 35 acres x $18,000 = $630,000.

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to develop the 35-Acre Property after filing only one application. (The Master Development Agreement the City denied was not an application to develop the 35-Acre Property standing alone.) The Developer also abandoned its proposal to develop the 133-Acre Property without obtaining a City decision on the merits of any application. And the Developer failed to file ***any*** application to develop the 65-Acre Property. Accordingly, the Developer's claim that it needed the $34 million judgment in 2017 to engage in real estate development is wholly meritless, given that the Developer has displayed no interest in actually developing the Badlands.

The Developer claims that Nevada eminent domain law governs an award of prejudgment interest. Even if that were the case, the Developer should be limited to prejudgment interest at a rate of prime plus two percent as provided by the eminent domain law.

Argument

I. A rate of prejudgment interest higher than the statutory rate is not necessary to put the Developer in the same position monetarily as if the City had not taken the property.

The Developer has consistently contended that the eminent domain law provides the rules and standards for judicial review for this regulatory taking action. *See*, *e.g.*, Motion at 3-4; Landowner's Motion for Summary Judgment To Determine Take Etc. filed 3/26/21 at 36. The City disagrees with that contention. Even assuming, however, that the Developer is correct, prejudgment interest here would be governed by NRS 37.175, which provides, in relevant part:

> 4. The court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:
>
> (a) The date on which the computation of interest will commence;
>
> (b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and
>
> (c) Whether the interest will be compounded annually.

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The Developer also claims that prejudgment interest at 23 percent per year is required to make the Developer "whole" *i.e.*, in the same position monetarily as before the alleged taking, under Nevada Constitution Article 1, Section 22(4). This section provides:

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

The Developer relies on *State ex rel. Dept. of Transp. v. Barsy*, 113 Nev. 172, 718, 941 P.2d 971 (1997), applying an earlier version of NRS 37.175, for the proposition that prejudgment interest should not be the prime rate plus two percent as required by the statute, but rather 23 percent, to make the Developer whole. An interest rate of 23 percent is not remotely necessary to put the Developer in the same position as before the City's alleged taking. Neither *Barsy* nor the evidence supports this sky-high rate of interest.

In *Barsy*, the defendant in an eminent domain action owned a building occupied by two tenants. In 1988, the Nevada Department of Transportation ("NDOT") identified Barsy's property for acquisition by eminent domain for a highway construction project. In late 1988 or early 1989, a representative of NDOT informed Barsy's tenants "of the imminent project and of the relocation costs and benefits which NDOT would pay them. Due to NDOT's inability to indicate an accurate time frame for the acquisition of the property, the tenants refused to renew their leases upon expiration." 113 Nev. at 715-16, 941 P.2d at 974. "Barsy was unable to attract new tenants because of the uncertainty surrounding the acquisition by NDOT." *Id*. Barsy presumably had no income from his building after the tenants vacated. The NDOT delayed filing a condemnation action against Barsy until 1992, after Barsy's two tenants had vacated the premises. 113 Nev. at 716, 941 P.2d at 974. During the entire eminent domain action, Barsy was unable to attract new tenants and suffered lost income. *Id*.

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The District Court awarded Barsy prejudgment interest of eight percent, two percent above the prime rate, rather than the rate specified in the eminent domain law at the time,[2] to account for Barsy's lost rental income during the eminent domain litigation. 100 Nev. at 178-19, 941 P.2d at 975-76. The higher rate was required, according to the Court, because the award of just compensation did not account for Barsy's total damages due to the loss of his tenants and hence his income from the property prior to and during the pendency of the eminent domain action. The Court found that if the compensation had been paid before the judgment, Barsy could have used it to extend his mortgage, presumably at a lower rate, or invest in other property that would produce a return that would have made up for Barsy's lost income from before and during the litigation. In sum, the higher interest rate was necessary to put Barsy in the same position monetarily as he would have been but for the blight of the eminent domain action on his property. *See* NRS 37.175(4).

This case presents the opposite facts to *Barsy*. Here, the Developer has already been made more than whole by the award of just compensation of $34,135,000, which is 54 times the amount the $630,000 the Developer paid for the 35-Acre Property (35 x $18,000/acre = $630,000; $34,135,000/$630,000 = 54).[3] This windfall is on top of the City's lifting the PR-OS designation and

[2] At the time *Barsy* was decided, NRS 37.175 set prejudgment interest at the rate of interest paid on one year's United States Treasury bills. NRS 37.175 was later amended to require prejudgment interest at the prime rate plus two percent.

[3] Under the Membership Purchase and Sale Agreement between the Peccoles and the Developer, the Developer purchased the 250-acre Badlands golf course for $7,500,000. Ex. AAA at 966. The City established from the Developer's own records and from the deposition of the representative of the Peccoles who sold the Badlands to the Developer that $3,000,000 of that purchase price was consideration for other real estate interests, putting the price paid for the Badlands at less than $4,500,000, or less than $18,000 per acre. Ex. FFFF at 1591-95; Ex. SSSS at 3787-88. This price is not surprising given that both the Developer and the seller knew that the Badlands was subject to the PR-OS designation. Ex. Y at 420; Ex. SSSS at 3780. Although the Developer alleges that the purchase price was $45 million (Ex. 12 at 456; Ex. 57 at 2-3), it concedes that it has no documents or other objective evidence to support that claim. Ex. UUU at 1300; Ex. FFFF at 1595-97; Ex. FFFF-34 at 1998 ("[T]here are no documents within the Plaintiffs custody and control that state that the aggregate of consideration given to the Peccole family for the former Badlands golf course property was $45 million."). In sum, the Developer has no evidence to refute the very clear documentation and the seller's testimony under oath that the purchase price for the entire 250-acre Badlands was less than $4.5 million, putting the purchase price of the 35-Acre Property at less than $630,000. Even if the Developer paid $45 million for the Badlands, the judgment would be 5.5 times
(footnote continued on next page)

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upzoning the 17-Acre Property to allow the construction of 435 luxury housing units, which, by the Developer's own evidence, increased the value of the Badlands by $26 million. Ex. VVV at 1319; Ex. CCCC at 1496.[4] Accordingly, requiring the City to pay any prejudgment interest, no less $52 million, would only compound the injustice of the $34,135,000 award and is not required to make the Developer whole monetarily. The Developer has already been made whole *95 times over* ($34,135,000 + $26,000,000 = $60,135,000/$630,000 = 95). *Barsy*, therefore, provides no support to the Developer.

The Developer's claim that a rate of prejudgment interest higher than the statutory rate is necessary to put it in the same position monetarily before the City's alleged taking fails not only because the City changed the law to the Developer's significant benefit with regard to the 17-Acre Property and awarded the Developer $34,135,000 for the alleged value of the 35-Acre Property, but also because the Developer's remaining 233 acres has potential for additional development.[5] Nevertheless, the Developer has declined to attempt to make any use of this property. In 2018, adhering to Judge Crockett's Order then in effect, the City Council was compelled to strike the Developer's 133-Acre Applications because the Developer had not filed a Major Modification Application. After the Supreme Court reversed the Crockett Order, the City notified the Developer

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the purchase price for the 35-Acre Property alone ($45,000,000/250 acres = $180,000/acre x 35 acres = $6,300,000; $34,135,000/$6,300,000 = 5.5).

[4] The Nevada Supreme Court reinstated the City's approval of 435 luxury housing units on the 17-Acre Property in August 2020. Ex. DDD at 1014. The City notified the Developer in September 2020 that the City's approval of construction of 435 luxury housing units on the 17-Acre Property is valid and extended the approval for two years. Ex. GGG at 1021. The City notified the Developer again on December 23, 2021, that the approvals for the 435-unit project are valid and that the Developer can start building as soon as it obtains ministerial building permits. *See* Letter attached hereto as **Exhibit A** (unless otherwise noted, all exhibit references in this opposition refer to the City's Appendix of Exhibits). As Judge Herndon found, the Developer's contention that the City has nullified the 17-Acre approvals is frivolous. Ex. CCCC at 1508.

[5] The Developer admitted in its appeal of its tax assessment that even after the Developer voluntarily closed the golf course in December 2016 (Ex. HHHH at 2181), the Badlands has continuing use, and therefore value, for golfing or golf practice. Ex. LLLL at 2210-11. Even if the Badlands had no use for golf after the Developer shut the golf course down, the Badlands had value as an open space amenity for the parcel as a whole, which is the Peccole Ranch Master Plan area. *See* Ex. XXX at 1392.

that it was free to refile the 133-Acre Applications to allow the City Council to consider the applications on the merits for the first time. Ex. NNN. Despite the fact that the City Council had not disapproved any application to develop the 133-Acre Property on the merits and that the City invited the Developer to resubmit the applications for a decision on the merits, the Developer declined to refile the applications or do anything to develop the 133-Acre Property. The Developer even vigorously opposed the City's request, made after the Nevada Supreme Court overturned the Crockett Order, that Judge Sturman remand the 133-Acre Applications to the City Council for consideration of the applications for the first time on the merits. Ex. AAAAA (Plaintiff Landowner's Opposition to City of Las Vegas' Motion to Remand 133-Acre Applications to the Las Vegas City Council filed 8/24/2021).

Similarly, after the Supreme Court's decision reversing Judge Crockett, the City also invited the Developer to file a first application for the 65-Acre Property (the Developer has not filed any applications to develop the 65-Acre Property) and a second application for the 35-Acre Property. Exs. OOO, PPP.[6] The City recently reiterated its notice to the Developer that it is free to file applications to develop the 65-Acre, 133-Acre, and 35-Acre Properties. *See* Letter attached hereto as Exhibit A. The Developer ignored all such requests. It is clear, therefore, that not only has the Developer been placed in a significantly better position than it occupied prior to the City's alleged taking, but also that it has the potential to be put in a still better position merely by applying for additional development.

Thus, the Developer's claim rings hollow that it was harmed during this litigation by not having on hand either the $4.5 million it paid for the Badlands or the $34,135,000 judgment to ostensibly develop an alternative real estate project. The Developer has repeatedly made it clear that it has no interest in developing anything on the Badlands; its only interest is in receiving a massive gift from the public treasury for doing nothing other than litigating. Although the City handed the

[6] The Developer filed only one application to develop the individual 35-Acre Property. After the City denied that application, the Developer failed to file a second application to develop the 35-Acre Property standing alone. *See* City's Supp. App. Vol. 24 Ex. DDDDD. Accordingly, the Developer's categorical and *Penn Central* regulatory taking claims are unripe. *See State v. Eighth Judicial. Dist. Ct.*, 131 Nev. 411, 419-20, 351 P.3d 736, 742 (2015)

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Developer a permit for 435 luxury units, the Developer has elected instead to attempt to try to extort $386 million—the Developer's total damages claim—from the taxpayers, and now, an additional $52 million for prejudgment interest. If the Developer had elected to develop the Badlands instead of filing these regulatory taking actions, it would have no complaint that it was denied access to the City's funds in 2017.

II. No Nevada Court has awarded prejudgment interest at rate higher than prime plus two percent

There is no Nevada precedent for an award of annual prejudgment interest in a taking case greater than two percent above the prime rate and no precedent that prejudgment "interest" could be set by the speculative profit from an investment of the award of just compensation in another property or business venture. Twenty three percent would be three times the statutory rate and would be unconscionable.

In *County of Clark v. Alper*, 100 Nev. 381, 685 P.2d 943 (1984), the District Court awarded prejudgment interest of seven percent per year, which was the rate provided in NRS 37.175 at the time. 100 Nev. at 393, 685 P.2d at 950. The Nevada Supreme Court remanded the case to the District Court for an evidentiary hearing to determine whether a different rate of interest was warranted to make the property owners whole. 100 Nev. at 394, 685 P.2d at 951. The Court indicated that the proper rate of prejudgment interest should be based "on the actual market rate of interest during the years in question." There is no suggestion in *Alper* that the rate of prejudgment interest could be the profit the condemnee could make by investing the award of just compensation during the litigation.

In *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987), the Court ordered that prejudgment interest should be at the statutory rate under NRS 37.175, even though the subject property was "vacant, unimproved, and held for investment purposes at the time of the taking." 103 Nev. at 623. There is no suggestion that prejudgment "interest" could be interpreted as the value of the profit from a speculative investment of the judgment.

Finally, in *Barsy*, the Court affirmed an award of prejudgment interest of eight percent, which was two percent above the prime rate. The Court found that a rate higher than the statutory rate (at that time) was warranted to make up for Barsy's precondemnation and condemnation damage;

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namely, the loss of his tenants. The Court found that that loss was not fully compensated in the award of just compensation and therefore it was necessary to restore Barsy to his monetary position before NDOT caused his tenants to move out. 100 Nev. at 178-19, 941 P.2d at 975-76. Because the statutory prejudgment interest rate has been increased to prime plus two percent after *Barsy*, the Court should find that that rate is consistent with all Nevada authority.

III. The Developer does not seek interest on the judgment, but rather a windfall profit from a speculative investment

As demonstrated above, the exorbitant rate of prejudgment interest claimed by the Developer is not necessary to put the Developer in its prior monetary position. Moreover, it is clear that the Developer's lack of access to the judgment in 2017 did not prevent its development of the Badlands, because the Developer has no intention of actually developing the Badlands. The Developer's objective is to use the courts to effect a massive transfer of funds from the public treasury to the Developer. Putting aside these facts, however, the Developer's claim to 23 percent annual prejudgment interest is based on a perversion of the concept of interest. The Developer seeks lost profits from a speculative investment under the guise of "interest." No authority supports the Developer's claim.

"Interest" is defined by Oxford Languages as "money paid regularly at a particular rate for the use of money lent, or for delaying the repayment of a debt." "Profit" is defined by Oxford Languages as "a financial gain, especially the difference between the amount earned and the amount spent in buying, operating, or producing something." "Interest" in this case, therefore, is the return the Developer would have earned if it had received the judgment in 2017 and loaned it to others. The interest rate would logically be a rate competitive with the rates charged by other lenders. That rate would be close to the prime rate. In Nevada, the legislature has set that rate for eminent domain actions at two percent above the prime lending rate of large banks. Profit, by contrast, would be money that the Developer could earn if it invested the money in a real estate venture. In that case, the investment would "produce" something of value that the Developer could then sell or rent, hence, "profit." Interest, by its definition, is a known amount that must be paid by contract; profit, in contrast, is speculative, and depends on a myriad of factors.

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Here, the Developer relies on portions of the market data obtained by its consultants to concoct a hypothetical real estate investment project that, if started in 2017, would have made it a profit of 23 percent in every year between 2017 and the present day. This claim is pure speculation. But more important, it is not "interest." It is "profit." It has no place in determination of prejudgment interest.

If the Court were to conflate "interest" with "profit" in the manner proposed by the Developer, in every case of a money judgment in Nevada, the plaintiff could (a) contend that if it had been paid the money at the time of the damage, it could have invested the money in real estate, the stock market, its uncle's business, or any other unidentified business venture; (b) obtain the testimony of an "expert" predicting that the investment in the hypothetical and unidentified venture would yield a profit of a certain amount; and (c) call the profit prejudgment "interest." Profits from real estate investment and other businesses, however, are uncertain and generally too speculative to be admitted in evidence. *See Sargon Enterprises, Inc. v. University of S. Cal.*, 55 Cal.4th 747, 776 (2012) (excluding an expert's lost profit estimates based on a hypothetical increased share of the market). Profit from a business investment is nowhere close to the certainty of the prime rate of interest, which is publicized by the federal government. The Nevada Supreme Court has determined that property owners are entitled to prejudgment "interest" on takings judgments, not prejudgment "profit" from speculative business ventures.

In the instant case, the Developer has submitted opinions of its consultants dated December 8, 2021, that if the Developer had access to the judgment in 2017 and invested in land in Las Vegas, the Developer would have made a profit of almost double the amount of the judgment by December 2021, and would continue to make a profit in the future. This opinion is rank speculation and should not be considered. If the Court considers the opinions of the Developer's consultants to be relevant, however, the City should be given the opportunity to retain its own consultants to rebut their testimony.

IV. The prejudgment interest rate should be limited to $10,632,369.64

As stated in the attached Declaration of George F. Ogilvie III, the prejudgment interest on the judgment of $34,135,000 at the statutory rate prescribed by NRS 37.175 and NRS 99.040 calculated over the period August 2, 2017 through February 1, with interest compounded annually,

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would be $10,730,468.22. *Id*. ¶ 4 and Exs. A and B. Without conceding the erroneous award of damages in this matter, the City submits the Court should deny the Developer's motion and award $10,730,468.22 in prejudgment interest.

Conclusion

The Developer's Motion should be denied. The prejudgment interest on the $34,135,000 judgment should be $10,730,468.22.

Dated this 23rd day of December, 2021.

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By: */s/ George F. Ogilvie III*

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DECLARATION OF GEORGE F. OGILVIE III IN SUPPORT OF CITY OF LAS VEGAS' OPPOSITION TO DEVELOPER'S MOTION TO DETERMINE PREJUDGMENT INTEREST

I, George F. Ogilvie III, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and I am a partner in the law firm of McDonald Carano LLP. I am co-counsel for the City of Las Vegas ("City") in the above-captioned matter. I am over the age of 18 years and a resident of Clark County, Nevada. I make this declaration based upon personal knowledge, except where stated to be upon information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this declaration, I am legally competent to do so in a court of law.

2. I make this declaration in support of the City's Opposition to the Developer's Motion to Determine Prejudgment Interest.

3. NRS 99.040 provides, in relevant part:

> When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due.

4. Attached hereto as **Exhibit B** is the table of prime rates as ascertained by the Nevada Commissioner of Financial Institutions required to be used in accordance with NRS 99.040(1).

5. NRS 37.175 governs the prejudgment rate of interest in eminent domain actions. Applying the NRS 37.175 and NRS 99.040.(1) statutory rate that would accrue on $34,135,000 judgment in this case, at an annual rate of prime plus two percent, compounded annually, from August 2, 2017 through February 1, 2022, the total prejudgment interest is $10,730,468.22, as reflected in the spreadsheet attached hereto as **Exhibit C**.

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

DATED this 23rd day of December, 2021.

/s/ George F. Ogilvie III
George F. Ogilvie III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on the 23rd day of December, 2021, I caused a true and correct copy of the foregoing **CITY'S OPPOSITION TO DEVELOPER'S MOTION TO DETERMINE PREJUDGMENT INTEREST AND DECLARATION OF GEORGE F. OGILVIE III** to be electronically served with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ Jelena Jovanovic
An employee of McDonald Carano LLP

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

EXHIBIT “A”

By Certified Mail and Email

December 23, 2021

Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Autumn L. Waters, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas, Nevada 89101
jim@kermittwaters.com

RE: Entitlements on 17-Acre Property; Applications for development of other segments of former Badlands Golf Course

Dear Mr. Leavitt:

17-Acre Entitlements

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"). 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 ("PRMP") area. On September 1, 2020, the City sent you a letter noting that the remittitur in *Seventy Acres, LLC v. Binion* had been issued on August 24, 2020. The September 1, 2020 letter notified you that (a) the discretionary entitlements the City approved for your client's 435-unit project on February 15, 2017 (GPA-62387, ZON-62392, and SDR-62393) were reinstated, (b) 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 valid and will remain so for two years after the date of the remittitur, and (c) because no more discretionary entitlements are 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.

Since the City's March 26, 2020 letter, the City has received no applications for ministerial permits or other communications from you regarding the 435-unit project. This is to notify you, again, that the City will accept applications for any ministerial permits required to begin construction of the 435-unit project pursuant to the approved discretionary entitlements and the conditions included in them. As indicated in the City's September 1, 2020 letter, however, the entitlement to build the 435-unit project will expire two years from September 1, 2020, on August 31, 2022.

133-Acre Applications

While Judge Crockett's Order was in effect, the City followed the Court's directive and required a major modification of the PRMP to redevelop any part of the former Badlands golf course. This included approximately 133 acres of land owned by one of EHB's other subsidiaries, 180 Land Company, LLC, for which the City Council considered entitlement applications on May 16, 2018 ("the 133-Acre Applications"). The 133-Acre Applications consisted of GPA-72220, WVR-72004, SDR-72005, TMP-72006, WVR-72007, SDR-72008, TMP-72009, WVR-72010, SDR-72011, and TMP-72012. The City Council struck the 133-Acre Applications from its agenda as incomplete for two reasons. First, the 133-Acre Applications did not include an application for a major modification, as Judge Crockett's Order required. Second, the application for a general plan amendment violated the City's Unified Development Code §19.16.030(D) because it was duplicative of one that had been filed within the previous 12-month period and was therefore time-barred.

On March 26, 2020, the City sent you a letter notifying you that the Supreme Court has reversed Judge Crockett's Order, more than a year had passed from the original GPA request, and the City Council was then permitted by law to consider the 133-Acre Applications on their merits. Since March 2020, the City has received no applications or communication from your client regarding reconsideration of the 133-Acre Applications by the City Council on the merits. For the City Council to consider the 133-Acre Applications on the merits, 180 Land needs to contact the Department of Planning and request that the 133-Acre Applications be heard on the next available City Council agenda. No major modification need be filed. The City will waive any applicable fees for the reconsideration of your application.

65-Acre Property

On March 26, 2020, the City sent you a letter notifying you of the Reversal Order and that your client had not submitted any applications or requests for entitlements to redevelop 65 acres of land owned by 180 Land Company, LLC, a subsidiary of your client EHB Properties ("65-Acre Property"). If your client wishes to file applications to redevelop the 65-Acre Property, your client may submit the applications to the City Planning Department. As a result of the reversal of the Crockett Order, your client does not need to submit a major modification application as part of its entitlement package.

35-Acre Property Applications

The City also sent you a letter dated April 15, 2020 regarding entitlements to redevelop 35 acres of land owned by one of EHB Properties, LLC's other subsidiaries, 180 Land Company, LLC ("35-Acre Property"). 180 Land filed one set of applications for entitlements to develop the 35 Acres (WVR-68480, SDR-68481, TMP-68482), which the City Council denied. Under the Reversal Order, and because 180 Land only submitted a single set of requests for entitlements, the City is now able to consider new applications to develop the 35 Acres without any requirement for a major modification application. If your client wishes to file additional applications to redevelop the 35-Acre Property, your client may submit the applications to the City Planning Department.

If you have any questions about the application process for development of any of the four Badlands parcels, please do not hesitate to contact me at (702) 229-6184. You or your client may also contact the appropriate City department with specific questions about the permits your client will need to develop the 435-unit project or to apply to develop the other three development sites in the Badlands.

Sincerely,

Seth T. Floyd, Esq.
Director of Community Development

STF:mre

CERTIFIED MAIL NO. 7021-2720-0001-0127-9513

cc: Elizabeth Ham, Esq. (via email to eham@ehbcompanies.com)
Phil Byrnes, Deputy City Attorney

EXHIBIT “B”

PRIME INTEREST RATE

NRS 99.040(1) requires:
*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . . "**
Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2021	3.25%		
January 1, 2020	4.75%	July 1, 2020	3.25%
January 1, 2019	5.50%	July 1, 2019	5.50%
January 1, 2018	4.50%	July 1, 2018	5.00%
January 1, 2017	3.75%	July 1, 2017	4.25%
January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

*** Attorney General Opinion No. 98-20:**

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is

EXHIBIT “C”

Interest Calculator / COMPOUNDING

Begin Date: 8/2/2017

Judgment Amount $34,135,000.00

Amount	Start date	End date	Days	Rate	Daily Rate	Interest	Daily Accrual
$34,135,000.00	August 2, 2017	December 31, 2017	152	5.25%	0.01%	$746,293.97	$4,909.83
$34,135,000.00	January 1, 2018	June 30, 2018	181	6.50%	0.02%	$1,100,269.25	$6,078.84
$34,135,000.00	July 1, 2018	August 1, 2018	32	7.00%	0.02%	$209,486.03	$6,546.44
$36,191,049.25	August 2, 2018	December 31, 2018	152	7.00%	0.02%	$1,054,993.87	$6,940.75
$36,191,049.25	January 1, 2019	June 30, 2019	181	7.50%	0.02%	$1,346,009.57	$7,436.52
$36,191,049.25	July 1, 2019	August 1, 2019	32	7.50%	0.02%	$237,968.54	$7,436.52
$38,830,021.23	August 2, 2019	December 31, 2019	152	7.50%	0.02%	$1,212,773.27	$7,978.77
$38,830,021.23	January 1, 2020	June 30, 2020	182	6.75%	0.02%	$1,306,922.77	$7,180.89
$38,830,021.23	July 1, 2020	August 1, 2020	32	5.25%	0.01%	$178,724.48	$5,585.14
$41,528,441.75	August 2, 2020	December 31, 2020	152	5.25%	0.01%	$907,936.89	$5,973.27
$41,528,441.75	January 1, 2021	June 30, 2021	181	5.25%	0.01%	$1,081,161.69	$5,973.27
$41,528,441.75	July 1, 2021	August 1, 2021	32	5.25%	0.01%	$191,144.61	$5,973.27
$43,708,684.94	August 2, 2021	February 1, 2022	184	5.25%	0.01%	$1,156,783.28	$6,286.87
Judgment Balance	$44,865,468.22					$10,730,468.22	